

REPORT ON THE OFFICER-INVOLVED SHOOTING INVOLVING
RANDAL MAYKOPET AT AVENUE OF THE PALMS ON
OCTOBER 24, 2015



GEORGE GASCÓN, DISTRICT ATTORNEY
INDEPENDENT INVESTIGATIONS BUREAU
CITY AND COUNTY OF SAN FRANCISCO
OCTOBER 17, 2017

TABLE OF CONTENTS

I. INTRODUCTION..... 2

II. FACTUAL SUMMARY..... 2

III. LEGAL STANDARD 8

IV. LEGAL ANALYSIS 8

V. CONCLUSION 10

I. INTRODUCTION

The San Francisco District Attorney's Office (SFDA) has completed its review of the officer-involved shooting that occurred on Saturday, October 24, 2015, at Avenue of the Palms on Treasure Island in San Francisco, California. The SFDA's review was conducted by the office's Independent Investigations Bureau (IIB) and focused exclusively on determining whether any criminal charges relating to the officers' conduct are warranted. IIB's review did not examine issues such as the officers' compliance with internal SFPD policies and procedures, their training or tactics, or any issues related to civil liability. This report should not be interpreted as expressing any opinions on such non-criminal matters.

In brief, on that day, Randal Maykopet stole a marked San Francisco Police Department (SFPD) vehicle and proceeded to drive recklessly all over the streets of San Francisco. Maykopet hit several vehicles in San Francisco's mainland before getting on the Bay Bridge and entering Treasure Island. While on Treasure Island, two officers attempted to set up a roadblock using their cars to block Maykopet; however, Maykopet managed to navigate around the roadblock by driving on the sidewalk. The two officers were positioned near the roadblock and fired two shots each at Maykopet as he passed the roadblock on the sidewalk. Maykopet was not injured by the gunfire. He continued to drive past the two officers, and was apprehended by other SFPD officers shortly thereafter. The two officers shot in response to their fear for the safety of pedestrians further down the sidewalk, as well as the safety of the general public on or around the nearby roadways whom they believed were threatened by Maykopet's extremely reckless driving. For the reasons detailed below, the District Attorney declines to pursue criminal charges against the officers for discharging their weapons because the District Attorney cannot prove beyond a reasonable doubt that their actions were not reasonably undertaken in defense of others.

II. FACTUAL SUMMARY

On Saturday, October 24, 2015, at approximately 8:18 a.m., Officers Marcus Richardson (Star No. 680) and Michael Chantal (Star No. 4055) responded to the area of Lombard and Lyon Streets in San Francisco, California, in response to a 911 call about a man with a knife. The man was described as a white male with a shaved head, wearing a blanket draped around him. The officers met with the 911 caller who said that an unknown white man with a shaved head had kicked his vehicle for no reason. The caller attempted to follow the man, but the man then lifted up the blanket he had draped around him and pointed to his waistband as if to suggest that he had a knife or some other weapon. The caller then backed off and called 911.

The caller pointed the man out to the officers as he was still in the area. The officers then approached him in an attempt to speak with him. However, the man, later identified as Randal Maykopet, ran away from them and headed eastbound on Lombard St. Officer Richardson chased after him on foot while Officer Chantal followed in his marked SFPD SUV, SFPD Vehicle #215. Officer Richardson lost sight of Maykopet, but Officer Chantal continued to follow him to Chestnut and Divisadero Streets. Just north of that intersection, on Divisadero St., Officer Chantal stopped and exited his vehicle—leaving the SUV running—to try and apprehend Maykopet. Instead, while Officer Chantal was out of the vehicle, Maykopet jumped headfirst through the front passenger-side window, moved into the driver's seat, and thereby took control of SFPD Vehicle #215. Officer Chantal attempted to regain control by reaching in through the front driver's side window to grab Maykopet, but was thrown from the vehicle as Maykopet sped away.

At approximately 8:23 a.m. Maykopet began a city-wide driving spree in stolen SFPD Vehicle #215. Vehicle #215 had a functioning police radio, as well as police lights and sirens. Maykopet also had a key to a locked area behind the vehicle's center console that contained a loaded AR-15 rifle and a shotgun loaded with less-than-lethal beanbag ammunition. The vehicle's trunk contained additional ammunition for both weapons.

SFPD officers all over San Francisco searched for Maykopet. 911 dispatch received calls from drivers all over San Francisco reporting a recklessly driven SFPD SUV, and/or that such a vehicle had just hit their cars. Additionally, SFPD officers all over the city reported seeing what they believed was the stolen vehicle. Because the stolen vehicle was a marked SFPD SUV, SFPD officers initially had difficulty distinguishing it from other SFPD SUVs so all SFPD personnel in SUVs were instructed to turn their hazard lights on to help distinguish their vehicles from the stolen vehicle. Also, because the stolen vehicle had a functioning police radio, SFPD officers were concerned that Maykopet could have been listening to their radio calls relaying strategy and tactical decisions. SFPD's radio department was eventually able to remotely turn off the stolen vehicle's radio.

Based on where he was last reportedly seen, SFPD officers believed that Maykopet may have made it on to the Bay Bridge. After much searching, at approximately 9:03 a.m., several SFPD officers saw Maykopet in SFPD Vehicle #215 driving westbound on the Bay Bridge from Oakland towards San Francisco. Several SFPD officers began pursuing him in their vehicles. Maykopet exited towards Treasure Island. He passed the island's main gates and drove further on to the island.¹ Lt. Ron Banta (Star No. 2251) had been waiting on Treasure Island and as soon as he saw SFPD Vehicle #215 pass him, he joined the pursuit in the lead position. He described Maykopet as driving through Treasure Island at approximately 45 miles per hour (in a 25 mile-per-hour speed zone) without regard to stop signs, traffic lanes, or other traffic rules. Lt. Banta instructed officers to lay out spike strips in Maykopet's path. Maykopet ultimately ran over two such strips but neither proved effective in stopping him. Lt. Banta added that there were many civilians out on the island because, in addition to residents and the usual tourists who come to take in the views of San Francisco, this incident occurred just before the Treasure Island Flea Market was scheduled to start.

In the meantime, while Lt. Banta and other officers continued their pursuit of Maykopet on the streets of Treasure Island, Officer Dino Zografos (Star No. 1139) arrived at the Treasure Island main gates, where he waited. He explained that instead of joining the stack of cars following Maykopet, it made more sense to him to wait for Maykopet at the gate. The only way off the island is past the gate, he explained further, so if Maykopet wanted to leave the island, Officer Zografos figured that he would eventually need to go past the gate. Officer Zografos decided to set up a roadblock at the exit path near the main gate. He parked his unmarked Crown Victoria across the crosswalk, perpendicular to the roadway, but the Crown Victoria was not large enough to block the entire exit roadway. Officer Zografos tried to flag down other officers to help him build out the roadblock.

¹ The main gates refers to the area on Avenue of the Palms where the original guard gates for the Treasure Island Naval Station once stood. Since it still serves as an entry point for the island, it's often still referred to as the main gates. The old guard station is now the Island Market Deli.

When Sgt. Damon Hart (Star No. 1271) arrived to the main gate, he saw Officer Zografos waving so he stopped. Officer Zografos asked Sgt. Hart to park his marked police car behind the Crown Victoria to block the other lane of traffic and thereby build out the roadblock, which Sgt. Hart did. Before the two could discuss any further plans though, Sgt. Hart said a call came out over the radio that Maykopet was heading back toward the main gate where they were waiting. Both Officer Zografos and Sgt. Hart described seeing a group of people up the street from them waiting at a bus stop and a group of pedestrians down the street, on the sidewalk near a seawall, taking photos of San Francisco. Directly in front of their vehicles, however, was the San Francisco Bay.

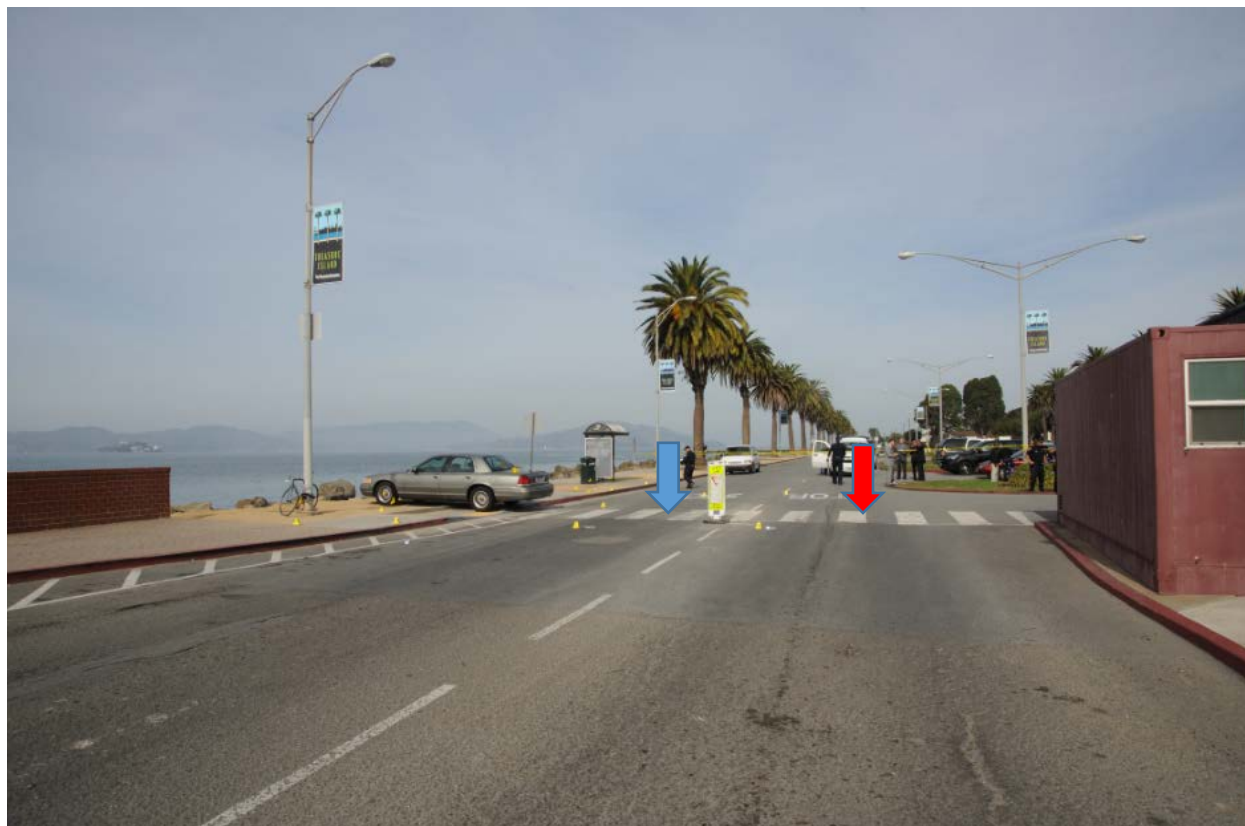


Figure 1: *Depicts crosswalk where Officer Zografos and Sgt. Hart attempted to set up a roadblock. Also shows a portion of the seawall on the left, near which pedestrians were standing. This photo shows Officer Zografos’s unmarked Crown Victoria parked on the sidewalk, but it was in the crosswalk at the time of the incident (blue arrow indicates probable location of Crown Victoria and red arrow indicates probable location of Sgt. Hart’s marked police vehicle during the incident). (Source: SFPD Photo Unit).*

Taking into account the risk Maykopet posed by virtue of his reckless driving, in addition to his potential access to the weapons within the stolen police vehicle, Officer Zografos believed Maykopet posed an imminent threat to the pedestrians at the seawall, as well as the public at-large. Based on these risks, Officer Zografos decided to shoot Maykopet. He could not shoot at Maykopet as he passed the bus stop, because he was concerned about shooting those waiting at the bus stop, so he decided to wait until Maykopet was closer to the roadblock because at that

point Maykopet would only have the San Francisco Bay behind him. As Maykopet approached closer to the roadblock, he swerved his stolen vehicle up on to sidewalk. When Maykopet made the swerve on to the sidewalk, Officer Zografos fired two shots rapidly at Maykopet. Almost immediately, Officer Zografos said he heard two other shots fired from behind and to his left.

Sgt. Hart was standing behind and to the left of Officer Zografos. He explained that he saw Maykopet coming toward the roadblock and then swerve on to the sidewalk. At this point, Sgt. Hart recalled the pedestrians down the sidewalk, near the seawall. He estimated there were about 12-15 such pedestrians and he explained that when Maykopet swerved and began driving on the sidewalk, he believed he posed an imminent threat to the safety of those pedestrians. Sgt. Hart estimated Maykopet was about 25 yards away from the tourists when he fired two shots at Maykopet, with the San Francisco Bay behind Maykopet.

Neither Maykopet nor anyone else suffered any injuries as a result of the gun shots. After passing the roadblock, Maykopet swerved back on to the roadway and avoided the pedestrians near the seawall. Lt. Banta, who was driving immediately behind Maykopet, also swerved on to the sidewalk briefly to get around the roadblock and then rejoined the roadway. Officer Zografos then quickly moved his car forward to remove the roadblock to allow the remaining SFPD officers who were pursuing Maykopet to get through.



Figure 2: Numbered cones and flags indicate tire tracks created when Maykopet drove on to the sidewalk. Together the cones and flags depict the path Maykopet took. This photograph shows Officer Zografos's Crown Victoria on the sidewalk, which is not the position it was at the time of the incident. At the time of the incident, it was on the roadway, going across the sidewalk.

Maykopet continued onward toward the Bay Bridge, but stopped after crashing his vehicle and causing a multiple-car rear-end collision at the westbound on-ramp. He then exited the stolen vehicle and scaled the highway pillars down to the lower deck of the Bay Bridge. SFPD Officer Jared Harris (Star No. 1065) followed him on foot and stopped Maykopet in the process of attempting to steal another vehicle from a civilian on the Bay Bridge's lower deck. He was eventually taken into custody with the assistance of additional SFPD officers.

Once the area was secure, SFPD Crime Scene Investigations (CSI) responded to the scene and identified four .40 caliber shell casings—two near the location where Officer Zografos was standing when he fired his duty-issued .40 caliber Sig Sauer handgun, and two near the location where Sgt. Hart was standing when he fired his duty-issued .40 caliber Sig Sauer handgun.

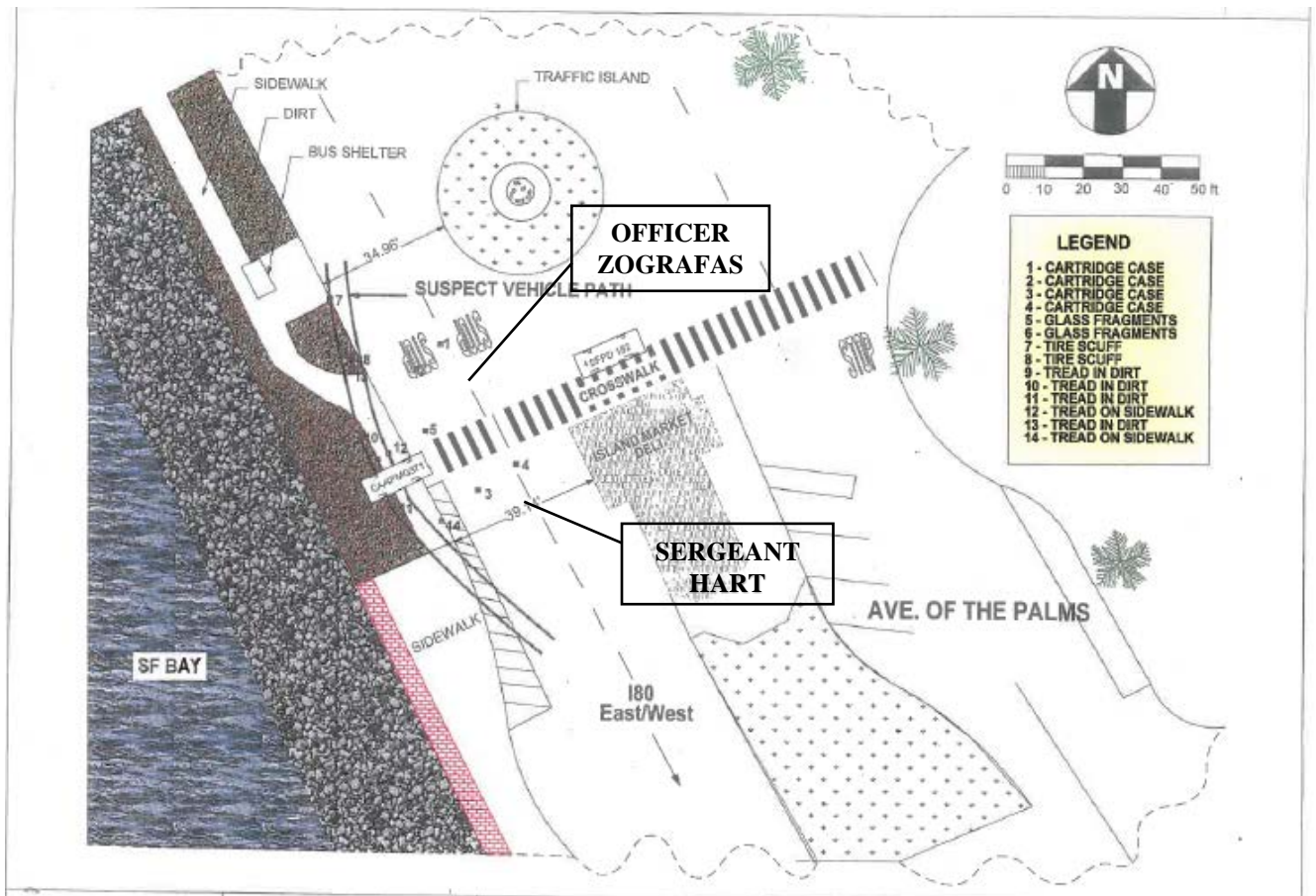


Figure 4: Diagram reflects scene of incident. It shows Maykopet's path around the roadblock on the left. It also depicts the officers' approximate location at the time they fired. Note that the Crown Victoria is again depicted in the position it was moved to by Officer Zografos after the shooting. (Source: SFPD CSI).

CSI discovered that Officer Zografos's unmarked Crown Victoria had a shattered front passenger-side window and discovered bullet fragments in the window casing near the right side-view mirror. Officer Zografos said that he believes that one of the shots he fired is the one that hit his Crown Victoria. CSI also noted four bullet defects in SFPD Vehicle #215; however, based

on further investigation by IIB, one of the noted defects was on the opposite side of the vehicle and could not have been caused by the gunfire. Thus, based on the ballistics evidence gathered by CSI and IIB’s review of that evidence, we believe the officers fired a total of four bullets—one that damaged Officer Zografos’s unmarked Crown Victoria, and three that hit SFPD Vehicle #215, the stolen vehicle that Maykopet was driving.



Figure 5: Stolen SFPD Vehicle #215 after the incident. Red outlines indicate the three bullet holes caused by Officer Zografos and Sgt. Hart’s gunfire. (Source: SFPD Photo Unit).



Figures 6 and 7: Figure 6 shows the damage to Officer Zografos’s unmarked Crown Victoria’s front passenger-side window caused by one of the bullets he fired. Figure 7 shows a portion of the bullet fragments wedged in the Crown Victoria’s right side-view mirror. (Source: SFPD Photo Unit)

In total, Maykopet damaged three vehicles by causing a multi-car rear-end collision at the westbound Bay Bridge on-ramp at the end of the incident. Two of the drivers in the Bay Bridge on-ramp incident reported minor injuries. Maykopet also caused three separate vehicle collisions in mainland San Francisco, prior to heading to Treasure Island. None of those three incidents resulted in any injuries.

Maykopet was interviewed by SFPD Homicide investigators as part of their investigation into this officer-involved shooting. Maykopet appeared to suffer from severe mental and emotional deficiencies and was unable to provide a coherent account of the incident, attributing much of his behavior to “angels,” and other forces beyond his control. He did acknowledge driving and hitting “a lot of cars.” When asked, he said he recalled getting shot at, he could not say by whom, and he said he believed he was hit by a bullet. (Maykopet was not injured by the gunfire). Maykopet was charged with multiple felonies stemming from this incident, but proceedings were suspended until recently because he was adjudged incompetent to stand trial until recently.

III. LEGAL STANDARD

The question presented is whether Officer Zografos and Sgt. Hart committed a criminal act in shooting at Maykopet. To pursue criminal charges, a prosecutor must be satisfied that the evidence will show beyond a reasonable doubt that no legal justifications existed for the act at issue. Here, the relevant legal inquiry is whether Officer Zografos and Sgt. Hart acted in defense of others when they used deadly force, thereby legally justifying their conduct.

California law permits any individual to use deadly force “[w]hen resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.” Cal. Pen. Code, § 197; *see also Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333. Specifically, self-defense or defense of others serves as a complete defense so long as the person (1) subjectively believed in the need to resort to force in order to avert a threat of imminent and great bodily injury, and (2) his perceptions and actions were objectively reasonable under the circumstances. *See People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *People v. Viramontes* (2001) 93 Cal. App. 4th 1256, 1262.

The subjective prong of the self-defense and defense of others standard examines the person’s belief in the need to use force. The objective component asks what a reasonable person would have done in their position. *People v. Humphrey* (1996) 13 Cal.4th at 1082-83. The reasonable person is an abstract individual of ordinary mental and physical capacity who is as prudent and careful as any situation would require him to be. *People v. Jefferson* (2004) 119 Cal.App.4th 508, 519. In making the determination as to whether an officer’s conduct was objectively reasonable, one must consider all the “facts and circumstances . . . in determining whether [they] acted in a manner in which a reasonable man would act in protecting his own life or bodily safety” or that of others. *See People v. Humphrey* (1996) 13 Cal.4th at 1083. Self-defense law “grants a reasonable margin within which one may err on the side of his own safety, and so long as he is found to have done so reasonably, no abuse of the right of self-defense should be found to have occurred.” *People v. Ross* (2007) 155 Cal.App.4th 1033, 1057.

IV. LEGAL ANALYSIS

Beginning with the subjective component, which examines the person’s belief in the need to use force, Officer Zografos explained that he believed he needed to shoot Maykopet in order to stop him. He explained that he was worried about the safety of people further down Maykopet’s path, both the pedestrians on the sidewalk at the seawall, as well as the public at-large who faced a real

danger with Maykopet's continued presence on the roads. "Had he continued on the sidewalk, he could have taken [the pedestrians] out," Officer Zografos said. Moreover, based on his reckless driving and the disregard for safety he had already shown, Officer Zografos believed that Maykopet was "endangering anyone in the Bay Area."

Sgt. Hart explained that he believed he needed to use force once he observed Maykopet swerve on to the sidewalk. Sgt. Hart said he looked down the sidewalk and saw pedestrians out on the sidewalk taking photos near the seawall. He believed that Maykopet was going to hit them. He was particularly concerned because he thought the pedestrians might not know to get out of the way. He explained that because Maykopet was driving in a police vehicle, "people may not realize he is traveling erratically and is a civilian, they may not think he is going to run into them . . . they may not move, they don't know what's going on."

To evaluate whether it was objectively reasonable for the officers to have believed that they needed to resort to force to avert the threat of harm to the nearby pedestrians and the public, we consider all the pertinent facts and circumstances presented to them at the time.

Both officers were aware that for almost one hour, Maykopet had been driving recklessly, without regard to safety, much less basic traffic rules. They were also aware that he had already reportedly rammed into several vehicles before coming to Treasure Island. Based on dispatch radio calls, both SFPD officers as well as civilian 911-callers had reported observing his dangerous and reckless driving.

As Maykopet approached the roadblock, he swerved on to the sidewalk to evade the roadblock. A cluster of pedestrians was approximately 40 to 50 feet further down the sidewalk from Maykopet, near the seawall. Assuming Maykopet was still going 45 mph as he previously had been according to Lt. Banta, he could have hit the pedestrians within one second had he not swerved back on to the roadway. Additionally, when Maykopet continued on, he caused a multi-car collision resulting in several—albeit minor—injuries, thereby validating the officers' fear of the danger posed by Maykopet's continued presence on the roads.

Importantly, civilian witnesses echoed the officers' concerns that Maykopet posed a threat. One witness, Andrea C., described seeing Maykopet "drive up on to the sidewalk, just missing the people waiting there." One pedestrian by the seawall, Eric M., said he and his wife were taking in the views of San Francisco when he noticed a chain of police cars driving in his direction. He realized the first car was perhaps trying to escape the others when he saw it evade the roadblock. At that point, he said, the first car was coming towards him and his wife. He said that they weren't sure whether to stand behind their car "to protect [themselves]" or "whether to move to the left or the right" to get out of the way.

Based on these facts, we conclude that we cannot prove beyond a reasonable doubt that it was objectively unreasonable for Officer Zografos and Sgt. Hart to believe that the pedestrians at the seawall, as well as the local public on or near the nearby roadways faced imminent danger.

V. CONCLUSION

For these reasons, the District Attorney declines to pursue criminal charges against Officer Zografos and Sgt. Hart for discharging their weapons because the District Attorney cannot prove beyond a reasonable doubt that their actions were not reasonably undertaken in defense of others.²

² Both officers explained that they shot at Maykopet's person and did not aim at his vehicle. Their goal was to incapacitate him, not disable his vehicle. As previously stated, this report takes no position as to the tactical efficacy of their decision to shoot, but considers only whether it constitutes a crime that can be proved beyond a reasonable doubt. Likewise, this memo also does not evaluate whether the officers' actions complied with SFPD policy. Nevertheless, it is worth noting that although the current use-of-force policy prohibits shooting at a moving vehicle unless the driver "poses an immediate threat of death or serious bodily injury to the public or an officer *by means other than the vehicle*," the relevant policy at the time permitted an officer to shoot at the operator of a moving vehicle "in defense of another person when the officer has reasonable cause to believe that the person is in imminent danger of death or serious bodily injury." *Compare* SFPD General Order 5.01, Use of Force § VI.G.2.e (effective, Dec. 21, 2016) *with* SFPD General Order 5.02, Use of Firearms § I.C.5.c.3 (effective March 16, 2011 through December 20, 2016).