

CITY AND COUNTY OF SAN FRANCISCO



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June 29, 2015

Chief Gregory Suhr  
Office of the Chief of Police  
San Francisco Police Department  
850 Bryant Street, Room 525  
San Francisco, CA 94103

Re: Officer Involved Shooting on July 20, 2013 (Report No. 130598478)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the July 20, 2013 shooting on O'Farrell Street near Larkin Street involving San Francisco Police Officer Ryan Doherty (Star # 1022). We have concluded that Officer Doherty was acting lawfully in defense of others when he discharged his weapon. Our review did not examine such issues as compliance with the policies and procedures of the law enforcement agency, ways to improve training or tactics, or any issues related to civil liability; accordingly, our review should not be interpreted as expressing an opinion on these matters.

FACTUAL SUMMARY

According to the investigation, on Saturday, July 20, 2013, Violence Reduction Team (VRT) officers received information from a confidential informant that a Latino male wearing a hoodie and dark clothing, accompanied by a black female, was at or near the intersection of O'Farrell Street and Larkin Street armed with a firearm. Four VRT plain-clothes officers responded to that location from the Hall of Justice in an unmarked police vehicle, with Officer Kelvin Sanders (Star # 4191) driving, Officer Doherty in the front passenger seat, Officer Ariana Daggett (Star # 1296) in the rear driver-side seat, and Officer Alejandro Cortes (Star # 842) in the rear passenger-side seat.

At approximately 10:00 p.m., as the officers drove northbound on Larkin Street approaching O'Farrell Street, they heard two or three shots fired. They believed the shots were coming from the O'Farrell Street and Larkin Street intersection. The officers continued to respond to that location. As they approached O'Farrell Street from Larkin Street, Officers Sanders and Doherty observed a Latino male, later identified as Carlos Miranda, walking backwards eastbound from the northwest corner of that intersection with his arms outstretched and shooting a hand gun pointed westbound (from the officers' right to their left). Officer Sanders stopped the patrol vehicle just South of O'Farrell Street. Officers Sanders and Doherty then saw that Miranda was in a firefight with at least

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two other males, who were shooting eastbound toward Miranda from the west crosswalk. Miranda continued to fire westbound as he walked backwards and southeast across the intersection across the front of the patrol vehicle.

Officers Sanders and Doherty exited the police car. The officers saw a wounded male being dragged by another person in the street, and this was happening in the direction toward which Miranda was shooting, to the officers' left. Officer Doherty shouted something at Miranda, but Miranda did not react, and continued shooting. Fearing that Miranda was going to injure the people across the street or turn and fire on the officers, Officer Doherty discharged his weapon at Miranda. At this time, Miranda was near the southeast corner of the intersection, in front of Officer Doherty, and to his right. Officer Sanders retreated to the rear of the vehicle and then to the passenger side of the vehicle, where he saw Officer Doherty standing at the right front passenger door shooting multiple rounds in the direction of Miranda. According to Officer Sanders, Miranda continued to shoot westbound on O'Farrell Street, not toward the officers, but toward the other males. Meanwhile, the two officers who were seated in the rear of the patrol car were unable to get out of the car because their doors would not unlock. They took cover inside the car as they heard shots being fired. By the time they were able to get out of the car they could still hear gunshots, but they did not see anyone firing.

Of the police officers, only Officer Doherty discharged his weapon, and he fired multiple rounds at Miranda. After Officer Doherty began firing, Miranda continued to move eastbound along the south sidewalk in the 700 block of O'Farrell Street. However, Miranda did not turn toward the officers or provide any indication that he was aware of their presence. He appeared, then, to be shooting at and retreating from the other males, not the officers. The officers gave chase, and Officer Doherty shouted "Police, drop the gun!" Miranda turned back to look at the pursuing officers, and then threw away a firearm and fled. Miranda then tried to force his way into an occupied vehicle, but the vehicle suddenly accelerated and braked, throwing him off. In the process, Miranda's prosthetic leg popped off. He was then taken into custody mid-block in the 700 block of O'Farrell Street.

Miranda was not hit by any gunfire and was not injured. Additional responding units thereafter located a dead Latino male in front of 835 O'Farrell Street (approximately one-third of the way down the 800 block of O'Farrell Street on the south side) and another Latino male with an apparent gunshot wound to his right leg near the bus shelter on the southwest corner of O'Farrell Street, both in the direction Miranda was shooting, and to the left of the responding Officers. Responding units discovered property damage to two parked vehicles and a building, which may have been caused by Officer Doherty's gunfire, as they were located in the direction that Officer Doherty said he was firing. Seven shell casings were located at or near the front passenger door of the patrol vehicle.

There is no indication that Officer Doherty's gunfire struck the two Latino males who were hit, although the lack of ballistics analysis prevents that possibility from being completely ruled out. Officer Doherty was firing toward the Southeast corner of the intersection, while the males who were struck were to the west of the intersection, considerably off-line from the direction that Officer Doherty was firing. The dead Latino male's location was around a corner from where Doherty was located when he discharged his weapon. Finally, the male who was wounded identified Miranda as the person who shot him.

Miranda was interviewed. Although he acknowledged being on scene, he denied any involvement in the shooting or possession of a firearm. Miranda stated he had been in the area and was attempting



to get away from the gunshots when he fell onto a vehicle and was then contacted by police. When confronted with witness accounts and evidence that placed him as a shooter, he invoked his right to counsel. Miranda was thereafter booked on suspicion of murder.

#### ANALYSIS AND CONCLUSION

Under California law, a peace officer may use deadly force to protect himself or another if he actually and reasonably believes he or another is in imminent danger of great bodily injury or death. *People v. Williams* (1977) 75 Cal.App.3d 731. In protecting himself or another, the officer may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent injury which appears to be imminent. CALCRIM 3470. When an officer confronts an armed suspect in close proximity whose actions indicate intent to attack, the officer is not required to hold fire in order to ascertain whether the suspect will, in fact, injure or kill the officer. *Martinez v. County of Los Angeles* (1996) 47 Cal.App.4<sup>th</sup> 334. In addition, an officer is not required to provide a verbal warning to suspect before using deadly force where it would be unfeasible or impracticable to give one, such as where even the slightest delay could result in death or serious injury. *Tennessee v. Garner* (1985) 471 U.S. 1; *Jensen v. City of Oxnard* (9th Cir. 1998) 145 F.3d 1078.

In this case, it is clear that Officer Doherty was acting in defense of others when he discharged his weapon. Officer Daugherty was responding to a report of a man with a gun, and was approaching a firefight in which he had already heard shots fired and personally saw Miranda firing a hand gun at people on a public street. One person already appeared to have been struck by gunfire. Believing the lives of others on the street were being threatened, Officer Doherty discharged his weapon at Miranda. He was under no duty to provide a warning, and under no duty to hold his fire until Miranda turned and pointed his gun at the officers.

While there is no evidence that Officer Doherty's fire hit anyone, if any of bullets that struck the other males at the scene were fired by Officer Doherty, this would have been an accidental and unintended consequence of Officer Doherty's justified use of force in self-defense and defense of others.

Under these facts, the use of deadly force was justified. It is, therefore, our conclusion that Officer Doherty acted lawfully.

Very truly yours,

George Gascón  
District Attorney



June Cravett  
Assistant Chief District Attorney

cc: Lieutenant Toney Chaplin  
Officer Ryan Doherty