

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE DISTRICT ATTORNEY



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May 22, 2014

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 August 27, 2012 (Report No. 120682172)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the August 27, 2012 shooting outside St. Paul's Church Rectory at 221 Valley Street in San Francisco involving San Francisco Police Officer Regina Berrigan (Star # 1629). We have concluded that Officer Berrigan was acting lawfully in self-defense when she shot at Larry Massey. 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 August 27, 2012 at approximately 6:20 a.m., a 21 year-old black male (victim) was wearing headphones and listening to his iPhone when he saw two black males approach him from the front and felt that they were going to rob him because of the way they walked up to him. According to the victim, the suspects said "give me everything nigga" and the suspect later identified as Armani McFarland took the victim's iPhone from the victim's sweater pocket. At this point, the victim saw what he believed to be a semi-automatic handgun in McFarland's right hand and watched him rack the slide of the gun and point it at the victim's chest. The second suspect, later identified as Larry Massey, then grabbed the victim's backpack with such force that he ripped the victim's shirt. The victim went home, called the police and started trying to track the iPhone online with the help of his twin brother.

San Francisco Police Officer Regina Berrigan (Star #1629) was working solo uniformed patrol starting at 6:00 a.m. that morning out of Taraval Station. Officer Berrigan was aware of a series of armed cell phone robberies that had been occurring in the area involving two black male

WHITE COLLAR CRIME DIVISION

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suspects. At approximately 6:30 a.m. on the morning of August 27, 2012, Officer Berrigan heard that a cell phone robbery at gunpoint had just occurred. The suspects were described as one light-skinned black male wearing a lighter gray t-shirt and one dark-skinned black male wearing a black warm-up jacket. The stolen iPhone was "pinging" its location. The first ping was near Capitol and Holloway, then near Balboa Park Bart Station, then near San Jose and Day, and then near Church and 28th Streets. Officer Berrigan drove to the area of Church and 28th Streets and observed two black males with a matching clothing description crossing the street.

Officer Berrigan pulled up near McFarland and Massey and asked them to stop. She observed them "dancing around" like they were nervous. Since she had heard that the robbery suspects were armed, Officer Berrigan pulled out her gun and put it by her side. The suspects both took off running as she got out of her car. Officer Berrigan re-holstered her gun and gave chase in her car. Citizens started pointing out to Officer Berrigan that the suspects had gone west on Day Street, and a male citizen told her they had run down the walkway by the rectory of a church nearby. Officer Berrigan got out of her car again and saw the two suspects near a six to eight foot closed chain-link gate. She pulled out her gun and pointed it at them and said "Stop! Police" at least two times. She then stood behind a concrete knee-high wall so that she could take cover if necessary.

McFarland jumped over the fence. Massey crouched down by the fence and was "messaging" his belt area. Officer Berrigan said "Stop or I'll shoot!" at least three times. Massey looked back at Officer Berrigan two times, and the second time he got up and put his right hand on the fence and moved his left arm towards her "like he was going to point something" at her. At this point, believing that Massey was going to shoot her, Officer Berrigan fired one shot at Massey, missing him. After she fired the shot, Massey jumped over the fence and Officer Berrigan gave foot chase around the corner. Officer Berrigan saw a patrol car arriving and motioned that car to chase the suspects. Officer Berrigan continued running after the suspects until she felt something "explode" in her heel and could no longer move. Officer Berrigan believed she had been shot, however, it was later determined that she suffered from an Achilles heel rupture.

A number of civilian witnesses heard Officer Berrigan give multiple verbal commands to the suspects before firing the shot, although none of them witnessed the incident. Multiple civilian witnesses heard "Stop! Stop! Police!" and "Stop or I'll shoot!" a few seconds before they heard a single gunshot.

San Francisco Police Officer Duane Elzey (Star #4098) responded to the "shots fired" call and was directed by both Officer Berrigan and a female civilian witness in the direction of southbound on Church Street. Officer Elzey observed Massey running, and followed him in his marked police car with lights and siren activated, eventually exiting his car to chase Massey on foot. Officer Elzey yelled for Massey to stop and get on the ground. Massey eventually complied, put his hands in the air and spontaneously stated "what's going on man? What did I do? She was shooting, so I just ran because I was scared."

The San Francisco Police Department Crime Scene Unit responded to the scene at St. John's Church courtyard located on the 200 block of Valley Street in San Francisco. Firearm evidence was located on the floor of the courtyard and in the planted area. Apparent bullet fragments including one jacket fragment, small lead fragments and one deformed fired bullet were located. In addition, on the ground of the planted area of the courtyard, one silver 40 caliber cartridge case was located. Later testing confirmed that the bullet was fired from Officer Berrigan's service weapon.

At approximately 12:12 p.m. on August 27, 2012, San Francisco Police Officer Jerry King (Star # 810) responded to the area of 8th Avenue and Lawton Street in San Francisco to track the iPhone, which was still pinging location information. Officer King observed a black male in the driver's seat of a white Dodge Charger looking nervously at the officer and slouching down in his seat. By the time Officer King made a U-turn at the intersection and came back around to the vehicle, the black male had exited the vehicle and was standing next to it. While talking to the suspect, later identified as McFarland, Officer King noticed a white iPhone approximately two to three feet next to the garage door at 1547 8th Avenue which matched the description given by the victim of the stolen iPhone. Officer King detained McFarland, who was later identified by the victim as one of the two men who had robbed him earlier that day.

San Francisco Crime Scene Investigations located a black BB gun under the driver's seat of the Dodge, and a black over silver BB gun under the front passenger seat of the Dodge. A second black male was located in the trunk of the car.

CONCLUSION

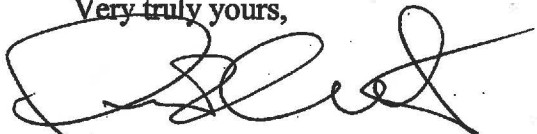
California Penal Code section 835a allows an officer to use reasonable force to make an arrest, to prevent escape or to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because of that person's resistance.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm. California law permits the use of deadly force in self-defense or in defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed he or others were in imminent danger of great bodily injury or death. *People v. Williams* (1977) 75 Cal.App.3d 731. In protecting himself or another, a person 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.

The facts in the present case indicate that Officer Berrigan was in foot pursuit of two suspects reported to have just been involved in an armed robbery, when one of the suspects, after crouching down by a fence while doing something with his hands by his belt area, looked back at her two times, got up and moved his left arm towards her "like he was going to point something" at her. Fearing that she was about to be shot, Officer Berrigan fired one shot at Massey. Under the circumstances, it was reasonable for Officer Berrigan to protect herself.

It is our conclusion that Officer Berrigan acted lawfully.

Very truly yours,

A handwritten signature in black ink, appearing to read "June D. Cravett", written over the phrase "Very truly yours,".

June D. Cravett
Chief of the White Collar Division
San Francisco District Attorney's Office

c: Lieutenant Tim Plyer
Officer Regina Berrigan