

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE DISTRICT ATTORNEY



George Gascón
District Attorney

JUNE D. CRAVETT
Assistant Chief District Attorney
DIRECT DIAL: (415) 551-9537
E-MAIL: JUNE.CRAVETT@SFGOV.ORG

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 July 5, 2012 (Report No. 120529364)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the July 5, 2012 shooting at on the Eastern Span of the San Francisco-Oakland Bay Bridge within the City and County of San Francisco limits by California Highway Patrol (CHP) Officer Kyle Kepler (Star # 19489). We have concluded that Officer Kepler was acting lawfully in self-defense and in defense of others when he shot at Antonio Roberson. 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, in the early morning hours on July 5, 2012, CHP Officers Kyle Kepler, Brian Wallace (Star # 20132), and Josh Jones (Star # 19266) were on patrol in a marked CHP vehicle on the western span of the San Francisco-Oakland Bay Bridge ("Bay Bridge" or "the Bridge"). All three officers were in CHP uniform. Officer Kepler was the driver of the patrol vehicle. Officer Wallace was riding in the front passenger seat and Officer Jones was in the right rear passenger seat.

At approximately 1:34 a.m., all three officers noticed a speeding, dark-colored Cadillac as they were driving in San Francisco near the 4th Street exit of eastbound Interstate 80. Antonio Roberson (age 29) was later identified as the driver of the vehicle. The officers all reported that Roberson was driving between 100-120 miles per hour, so fast that the officers believed that he was being pursued by police. Officer Kepler pursued Roberson with lights and sirens activated. He was able to catch up to Roberson near the mid-span area of the western span of the Bridge. Roberson slowed for traffic, but the officers lost sight of him as he passed through the Treasure Island Tunnel. All officers were in agreement that Roberson would not be able to negotiate the section immediately after the tunnel known as the "S-Curve" at the speed he was driving.

WHITE COLLAR CRIME DIVISION

732 BRANNAN STREET • SAN FRANCISCO, CALIFORNIA 94103
RECEPTION: (415) 553-1752 • FACSIMILE: (415) 551-9504

As the patrol vehicle emerged from the tunnel, the officers saw the brake lights of other cars. Roberson's Cadillac was veiled by thick smoke or steam and at rest at an angle crossing the number five lane of traffic along the southern edge of the Bridge. The Cadillac collided with the northern and southern walls of the Bridge. The Cadillac's bumper was toward the south wall, and it was the wrong way, toward oncoming traffic. The vehicle had suffered major damage to the front, side, and rear, and the trunk was popped open. Officer Kepler positioned the patrol vehicle parallel to the lanes of traffic but nose-to-nose at an angle with the Cadillac. The lights on the patrol vehicle were flashing.

Officers Wallace and Jones exited the patrol vehicle on the right side, which was closest to the driver's side of the Cadillac. Officer Jones yelled to Roberson to put his hands up. Both Officers Wallace and Jones had their weapons drawn as it was a high risk stop. Officer Kepler exited the driver's side of the patrol vehicle and took cover in the "V" between the frame of his vehicle and his door. Roberson restarted the engine and began to turn the Cadillac, steering with his left hand. Roberson's Cadillac then hit the push bumper of the patrol vehicle on the driver's side, forcing Officer Kepler to move out of the "V" to avoid being struck by the door.

Officer Kepler then saw Roberson, while steering the Cadillac with his left hand, turn his torso backwards, reach back with his right arm, and draw what appeared to be a black, semiautomatic firearm from somewhere in the vehicle, and point it over his left shoulder in the direction of Officers Wallace and Jones. Officer Kepler was able to see Roberson brandish the firearm because the Bridge was illuminated by overhead lights, and because the black firearm stood out in contrast to Roberson's white shirt that he was wearing. Fearing for the safety of Officers Wallace and Jones, Officer Kepler fired at Roberson, aiming directly at him. Roberson then pointed the gun at Officer Kepler. Now fearing for his own safety, Officer Kepler fired again at Roberson. Officer Kepler's shots hit the Cadillac but missed Roberson. Roberson was able to drive the Cadillac away, traveling in the number two lane of the Bridge.

Officer Kepler and Officer Wallace got back in the patrol vehicle. Officer Jones was not able to enter the patrol vehicle before Officer Kepler continued pursuit of Roberson. The Cadillac rolled slowly and then stopped about 100 feet from the initial stop and 11 to 13 feet from the northern railing of the Bridge in the number one lane. The open trunk interfered with Officer Kepler's view of Roberson except for a crescent shape through the rear windshield. Officer Kepler saw a black object fly from the driver's side of the Cadillac but did not see where the object landed. He could not identify what the object was. A construction worker (later identified as James Hildebrand) on the new eastern span of the Bridge was watching the pursuit and also saw the black object fly from the driver's side of the Cadillac. Officers Kepler and Wallace exited the patrol vehicle and attempted to make contact with Roberson. Officer Jones was able to catch up on foot. Before any officer could make contact with Roberson, he began to drive away again. All three officers got back in the patrol vehicle and continued the pursuit.

Roberson continued driving the Cadillac, which drifted from the number two lane to the number four lane, another few hundred feet eastbound before the Cadillac was completely disabled and stopped. All three officers exited their patrol vehicle for the third time, with weapons drawn.

Officer Kepler told the other officers to watch the driver's hands. Officer Jones shouted to Roberson to "put your hands up, don't move." He saw a woman, later identified as [REDACTED] in the passenger seat with her face covered with a jacket. Officer Jones smashed the passenger side window with his firearm and extracted [REDACTED] from the Cadillac. Officer Wallace covered Officer Kepler, who made contact with Roberson. Officer Kepler ordered Roberson to get out of the car. After Roberson said he could not open the door, Officer Kepler used his expandable baton to break the driver's side window and extracted Roberson through the window.

Roberson made spontaneous statements while being detained. He asked "why [Officer Kepler] was tripping on some high speed chase because they do that in Oakland and it's no big deal." Roberson also indicated that he did not have a gun, and that if he "was going to shoot at the police, the police would be dead." Roberson smelled of alcohol and kept yelling his name to the female passenger as if to coach her. He also indicated that he was on parole.

Roberson had superficial wounds on the far left side of his torso. The investigating officer for CHP determined that the wounds were not caused by gunfire because none of Officer Kepler's rounds penetrated the interior of the vehicle. One bullet was recovered from the frame of the windshield on the driver's side and bullet fragments were recovered from the inside of the driver's side door. There were no exit holes in the interior portion of the driver's door. Roberson was treated at San Francisco General Hospital and released to police custody that same day.

CHP Officers conducted two separate searches of the construction area of the Bay Bridge where a firearm could have fallen if thrown from Roberson's vehicle at the location specified by Officer Kepler and the eyewitness construction worker; however, no firearm was recovered.

CONCLUSION

California Penal Code Section 835a allows an officer to use reasonable force to make an arrest, and to overcome resistance by a person for whom he had 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.

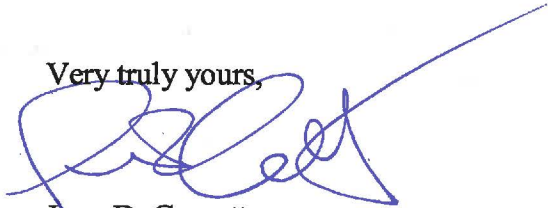
Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm. California law permits the use of deadly force in self-defense or in defense of others if the person using the deadly force actually and reasonably believed he or others were 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.

In the present case, Officer Kepler shot at Antonio Roberson after seeing him reach back and draw what appeared to be a black, semiautomatic firearm from somewhere in the vehicle and point it over his left shoulder in the direction of Officers Wallace and Jones. Fearing for the safety of Officers Wallace and Jones, Officer Kepler fired at Roberson. Roberson then pointed the gun at

Officer Kepler. Now fearing for his own safety, Officer Kepler fired again at Roberson. Officer Kepler's actions were reasonable under the circumstances.

It is our conclusion that Officer Kepler acted lawfully.

Very truly yours,



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

c: Commissioner Joseph A. Farrow, California Highway Patrol
Lieutenant Tim Plyer, San Francisco Police Department Homicide Unit
Officer Kyle Kepler, California Highway Patrol