

CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE DISTRICT ATTORNEY



George Gascón
District Attorney

February 15, 2012

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 at Civic Center BART Station on July 3, 2011 (110 535 553)

Dear Chief Suhr:

The Special Prosecutions Unit of the San Francisco District Attorney's Office has completed its review of the July 3, 2011 officer involved shooting ("OIS") at the Civic Center BART Station by BART Police Department Officer James Crowell. We have concluded that the officer acted lawfully in self-defense.

FACTUAL SUMMARY

On 7/3/11, a BART Train Operator saw a white male with a large liquor bottle in his hand on the edge of the platform at Civic Center Station, fearing for the man's safety, he called Central Dispatch. BART Police Officer James Crowell (Star # 238) and his partner Officer Myron Lee (Star #182) were working that day and received the call for service at Civic Center Station (CCS).

Officer Crowell and his partner boarded the next BART train travelling to CCS. Before the train doors opened Officer Crowell saw Hill standing 25-30 feet away directly across from them on the other side of the platform. Hill had what appeared to be a large, clear, alcoholic beverage bottle in his hand.

Officer Lee and Officer Crowell disembarked once the train doors opened. Hill looked up toward the officers and started backing away from them. Crowell saw that Hill appeared intoxicated. At one point Hill, as he was moving away from the officers, slipped and went down to one knee. Crowell ordered Hill to stop. Hill started making erratic movements that Officer Crowell described as "arms moving around that caused the spilling of the alcohol and the bottle in his hand was swinging around."

Officer Lee walked to the opposite side of the platform (Platform 2) while Officer Crowell stayed on the near side of the platform (Platform 1). Both officers moved toward Hill. Hill continued backing away from the officers. Officer Crowell said to Hill, "come back over here" or "get over here." Hill stopped, fell to his knee, then got up and threw the Smirnoff vodka bottle at the officers. Hill threw the bottle in an overhand motion and it hit the metal information sign. Officer Crowell was about 6-7 feet from the sign and he felt a mist of liquid when the bottle shattered on the metal sign.

Officer Crowell does not recall Hill saying anything, only that he was animated and very agitated. After throwing the bottle Hill retreated, stopped, and starting heading back toward the

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officers. Officer Crowell was next to the metal sign when he saw Hill heading toward them. At this point Crowell was wondering, "What's he going to do?" Crowell started to put on his gloves reasoning that Hill had thrown the bottle at the officers and would not be very peaceful. Crowell thought he would likely have to put his hands on Hill to get him under control.

As soon as he finished putting the gloves on Crowell noticed that Hill, still approaching, now had a knife in his right hand as well as something in his left hand. Officer Crowell estimated that Hill was about 10 feet away from him when he noticed the knife. Crowell did not know exactly where Officer Lee was, since Lee was out of view, but thought he was on the opposite side of the BART sign. When Crowell first saw the knife, it was in Hill's right hand, between his shoulder and hip, and a little out in front of Hill. Officer Crowell described the knife as "pretty big" with a 3 or 4 inch blade. Once realizing a knife was in Hill's hand, Officer Crowell drew his firearm and yelled "Drop the knife!" After making that command, he saw Hill cock his arm back in a throwing motion and take a step toward him. He recognized it as a motion that indicated Hill going to throw the knife "for certain." He further described the step forward as "kind of planting his foot" and he believed that it was imminent that Hill was going to throw the knife." Officer Crowell described the progression of events as: he saw the knife, drew his firearm, ordered Hill to drop the knife, Hill cocked his arm back and took a step toward him, and then he fired three shots.

When Crowell fired his weapon Hill was about 15 feet away. Officer Crowell said what was going through his mind was, "I'm close to this guy within that 21 foot threshold that I've been trained that is the danger zone for a knife or a deadly weapon." Officer Crowell went on to say that the training he received provides that if a suspect is armed with a bladed weapon and that person is within 21 feet, they can close the gap before the officer can get their gun out of their holster. As a result, the officer is in the danger zone and the suspect has the upper hand if the officer doesn't have cover. Officer Crowell saw that Hill had cover (behind the pillar), but he himself did not. He believed that the knife would cause death or great bodily injury to himself or his partner and that "this could be it, I could, you know, that could be, then I could be dead if I don't do something." He went on to say "you know, it's me or him at this point and my partner's life's in danger and my life's in danger, you know. Yeah, I feared for my life."

When asked why he didn't use anything else on his belt to respond to the threat, Officer Crowell explained that: "Well, OC I wouldn't have even thought about. The situation he's presenting, a deadly weapon... So my first thought was deadly weapon. My training tells me to present, you know, an equal or greater force and that's why I'm instructed to fire because I didn't feel that any other weapon or anything else on my belt is going to meet what he's presenting."

After Officer Crowell fired, he heard Hill make a screaming noise and drop to the ground. He and his partner approached Hill and Officer Crowell saw another knife two or three feet in front of where Hill was laying. Officer Crowell holstered his firearm and Officer Lee requested backup and medical assistance.

BART Police Officer Myron Lee (Star #182) remembers when he and his partner arrived at the station they saw a man in a tie-died shirt across the platform. He and his partner approached the man and the man started backing away. Officer Lee described Hill's demeanor as angry, maybe belligerent.

Officer Lee said something to the effect of, "Hey, where are you going, come back," but the man kept walking. Lee walked toward the opposite platform. Hill had a bottle in his hand and he "kind of lobs it in our direction throwing it at us." The bottle hit the metal BART information sign and shattered, spilling liquid onto the floor in the area right around the information board.

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Officer Lee looked down quickly at where the bottle pieces landed and when he looked back up Hill had a gray, or silver gray, object in his right hand and another object in his left hand. Lee suspected that it was a knife in Hill's right hand. Hill was around thirty feet away from Lee. Hill then took a couple of steps toward the officer. Officer Lee took one or two steps toward the information sign to his right so that he could see what Hill had in his hand and to have some cover. Officer Lee thinks he may have reached for his gun because he thought there was a knife in Hill's hand, but did not yet remove his gun from the holster. As he stepped toward the information sign Officer Lee slipped on the liquid that was on the floor, he slipped all the way down to the ground on his left side, and then he heard two shots.

When Lee got up, he pulled his weapon out and saw that Hill was on the ground by the second pillar. He noticed that Hill had advanced from his last location, coming closer to the officers. When he approached Hill he saw a knife on the ground near Hill.

Another BART Train Operator ("BTO2") working on 7/3/11 stopped at CCS on Platform 1 at approximately 9:45 that night. After the train stopped he opened the operator's window and heard a large crashing sound, almost as though glass or something was being broken. The sound seemed to come from the opposite side of the platform from an area outside his field of vision. A second or two later he heard a voice command, "Drop the knife." The officer nearest to him came into view. The officer was backing up, then the officer started to move forward. At the time he was moving forward, the officer's hands were out in front of him. BTO2 then saw a man appear with something in his hand, it looked like it may have been a knife, and the man was aggressively waving it around in a threatening manner. BTO2 could only describe the knife as "dark" in color, maybe black or very dark grey. The threatening motions with the knife continued for a couple of seconds. While the officers were backing up, the man with a knife was approaching them – walking fast, but not running. The man was walking faster than the officers were backpedaling. The officer on Platform 1 was closest to the man with a knife, maybe 10-15 feet. Both officers were backing up when BTO2 heard two gunshots.

Civilian Witness 1 ("CW1") was on a BART train with two BPD Officers. Upon arriving at CCS, one officer pointed out a man to the other officer. The doors opened and CW1 watched the officers approach the guy. One of the officers was talking to the man, but the man did not appear to be listening. As soon as the officer started talking with the guy, the guy threw a bottle, a beer bottle or something, at the officers. He believes it was within five seconds of the officers getting off the train. The bottle broke on the side of the BART "thing" and one of the officers slipped and fell on his knee. As the officers approached, the guy stood his ground, "like he wanted to challenge the officers." "He not only threw that bottle, but then he threw a knife." "He threw the knife at the officers, who were right in front of him." CW1 estimated the distance between the officer and Hill was approximately 15 feet. CW1 said that he saw the knife come by him when the officer had already shot the guy and the guy went down. He described the knife as open, having a wooden handle, and about a foot long. CW1 described the interaction as, "it was like he was against the officers. He wasn't gonna let the officer take him."

Civilian Witness 2 ("CW2") was on a train, when the train doors opened he heard a sound consistent with a glass bottle breaking so he looked out toward the sound. CW2 saw a white male with long hair, grey in color, with a grey beard. The man looked angry and crazy by his body language and CW2 connected him to the sound of the smashing glass. CW2 leaned forward to get a better look and saw two police officers at the end of the train on the platform. CW2 looked back at the bearded subject and saw that he now had a knife with the blade out in his right hand, held at head level and about one foot from his torso, with the blade facing up. In his left hand he appeared to be holding a lighter at the same position. He then walked toward the officers with an even pace. The man appeared angry as he advanced. After 3 or 4 steps he stopped and jumped straight up in the air in an aggressive manner and shouted an aggressive cry

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"Yah." One to two seconds after his cry, he heard two shots separated by one or two seconds. CW2 then saw the man fall and let out a cry. The two officers then walked toward the man and one had his gun out while the other checked his pulse.

Civilian Witness 3 ("CW3") saw a man holding a bottle standing on the platform. CW3 heard glass break, looked to the side, and saw the man who was holding the bottle run toward the end of the platform on the other side. The man was making a movement or gesture with his hands like "come and get me." Then CW3 saw the man running toward the officer with a knife in his hand. The knife was raised in front of him with the knife at head level. The man held the knife up in front of him, not down to his side. The pillar on the platform obstructed his view. By the time the guy with the knife got to the pillar, CW3 heard 3 gunshots real fast and the guy fell to the floor. Then the two officers approached the man with the knife.

Civilian Witness 4 ("CW4") was at CCS waiting for a train. After ten minutes, a train on the other side of the platform arrived and two officers disembarked. One of the officers said, "Excuse me, sir!" and a white man looked up at the police officers and started backing away from them. The man had a bottle in his hand. The guy was about 15-20 feet away from them when the officer said "sir, sir!" CW4 did not see Hill throw the bottle, but did see the bottle smash on the ground and glass go everywhere. CW4 then heard the officer say "knife," and they shot. It was two to three seconds after CW4 heard "knife" that the officers shot. CW4 saw a knife skid across the floor after they shouted. CW4 thought both officers shot the person and that 4 shots were fired.

On 7/3/11 Civilian Witness 5 ("CW5") saw a disheveled white man "running around all over the place and screaming about." CW5, thinking the man might become violent, walked away from him. A BART train arrived on the other side, and two police officers got off the train. The officers walked toward the disheveled white man. CW5 heard a bottle break then CW5 heard the officers say either: "Drop the weapon" or "Drop the knife." CW5 then heard three gun shots. CW5 saw a knife on the floor and pointed it out to arriving police officers.

Civilian Witness 6 ("CW6") disembarked at CCS. He heard glass breaking, looked to the right along the platform, and saw a man who "looked drunk." Within several seconds of hearing the glass break CW6 heard yelling. It sounded authoritative, maybe "stop" or "halt." From where he was CW6 saw the man, close to the tracks, walking slowly toward the officer. CW6 was about 40-50 feet away from the incident and a pillar partially obstructed the view of the officer. Hill and the officer were 6-7 feet away from each other, possibly farther apart. The man took one or two steps toward the officer when three shots rang out. At the time the man was walking toward the officers, his elbows were tucked in, but his hands were out - "It looked as though he was trying to gain his balance. It was odd the way he was walking." CW6 didn't observe anything in the man's hands, but wasn't specifically looking for that. After the shots the man fell to his knees and then to the ground.

CW6 was interviewed by The Bay Citizen for an article published on July 6, 2011. In the article, CW6 is quoted as making the following statements. The man was "definitely" not "running or lunging" at the two officers when they shot him. "He wasn't some spry young thing charging after them with death in his eyes." "He definitely was moving toward them, but it didn't look like he was lunging toward them." CW6 said the police officers should "absolutely not" have shot the man who she said "just looked like a drunk hippie." "He was definitely a Taser candidate." CW6 did say her view of the officers was obstructed and didn't understand the context of the situation. She also said she saw the officers with their guns drawn and the man moving slowly toward them.

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There are two BART video cameras at CCS.¹ One camera is on the southern end of Platform 1 and the other at the northern end of Platform 2. Both cameras recorded Hill pacing at the southern end of the platform prior to the incident. In the 45 minutes that preceded the OIS, Hill is seen holding a clear bottle, talking to himself, and at times gesticulating wildly.

The Platform 1 video shows a southbound BART train arriving at 21:45:06 p.m. At 21:45:31, the train comes to a complete stop and the doors open. BPD Officers Crowell and Lee are seen exiting the train with their focus on something directly across the platform from them – that object or person seems to be off-screen. Three seconds later Officer Crowell has his left hand in front of him apparently motioning for someone to come toward him and Officer Lee has his right arm in front of him in a similar manner. Five seconds after exiting the train, the officers begin to separate with Officer Lee walking across the platform toward Platform 2 and Officer Crowell walking along the near side on Platform 1. Six seconds after getting off of the train, Officer Crowell is seen reaching in his left rear pants pocket for his gloves. Officer Crowell continues to walk south along Platform 1 and then stops to put on his gloves.

At 21:45:52, Officer Crowell can be seen moving backwards to his left, one step, and reaching for his gun. Within one second, the video shows Officer Crowell making what appear to be verbal commands as he retreats 4-5 steps to his left while training his firearm directly in front of him. At 21:45:56 Officer Crowell fires three times. Simultaneous with the shots being fired, an object enters the screen; the object flies past the officer, hits the BART train on Platform 1, and then ricochets back on to the platform.

The Platform 2 video shows a figure at the southern end of the platform – some 650 or so feet away from the camera. The figure appears consistent with Hill's description, but the video is inconclusive. The figure appears to move in Officer Crowell's direction immediately before the time Officer Crowell fired his weapon.

The SFPD Crime Scene Investigation Unit ("CSI") processed the scene at CCS. There were numerous pieces of broken glass scattered throughout the platform. CSI collected, among other items, a knife with a black handle, another knife with a camouflage colored handle, a large blue/backpack, camouflage pants, black leather sheath with pepper spray bottle, brown lighter, and three casings. A subsequent search of Hill's belongings revealed a third knife in his left side cargo pants pocket as well as four additional knives and a knife sharpener in his backpack.

A bullet strike was located on the second column from the west end of the platform.

Dr. Azar, Assistant Medical Examiner, noted Hill suffered two gunshot wounds; one to the abdomen and one to the left thigh. Dr. Azar noted that both bullets struck the front of Hill's body. The cause of death was multiple gunshot wounds. Of note, Dr. Azar observed that Hill's myocardium showed patchy mild perivascular interstitial fibrosis.

Dr. Nikolas Lemos, Director & Chief Forensic Toxicologist, conducted a toxicology examination of Hill's blood, Vitreous Humor, and urine. His report shows that Hill tested positive for Ethanol, Methamphetamine, Amphetamine, THC, Nicotine and Caffeine.

Dr. Lemos provided analysis of the toxicology results provided in his report. Dr. Lemos noted the high amount of Methamphetamine in Hill's body. Dr. Lemos said that he has rarely seen living people with Methamphetamine present in their bodies at the level he saw in Hill's body. Dr. Lemos said the fibrosis associated with Hill's heart is a common result of chronic Methamphetamine use. The high volume of methamphetamine present at the time of his death,

¹ These cameras can capture video images, but have no audio recording capabilities.

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along with the fibrosis of the heart, suggests Hill was a chronic methamphetamine user who had recently ingested a significant amount of the drug. Dr. Lemos described the side effects of methamphetamine ingestion as aggression, anti-social behavior, hallucinations and psychosis. Dr. Lemos stated that the ethanol results suggest that Hill had recently consumed a significant amount of alcohol. Dr. Lemos noted that Hill's TCH levels of 9 were very high. Dr. Lemos stated that the combination of alcohol, methamphetamine and THC have a "synergistic" effect. In layman's terms, he described the combination of these depressants and hallucinogens not simply as adding to each other in their effect, but rather compounding the effect of each other exponentially.

CONCLUSION

This review was conducted pursuant to the joint Officer Involved Shooting and In Custody Death protocol between this office and the San Francisco Police Department in which the District Attorney conducts an independent assessment of the circumstances surrounding the use of deadly force by peace officers. The review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

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.

When the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. *People v. Collins* (1961) 189 Cal.App.2d 575. Justice Holmes said it more succinctly, "Detached reflection cannot be demanded in the presence of an uplifted knife." *Brown v. United States* (1921) 256 U.S. 335, 343.

Officer Crowell and Officer Lee were calm and professional when they initiated contact with Hill. Even after Hill threw a bottle at the officers they maintained their calm and professional demeanor despite the fact that they were clearly dealing with an aggressive individual who was under the influence. Crowell only escalated his level of force when he saw Hill was brandishing a knife at them. When Officer Crowell saw Hill holding a knife in his right hand at chest level he recognized the knife as a threat to his safety and to the safety of his partner. Officer Crowell's response to the deadly weapon was to reach for his firearm and to command Hill to drop the knife. Hill did not drop the knife; rather, he cocked back his arm, took a step forward toward the officer, and planted his foot in preparation to throw the knife. At that time, Officer Crowell "knew that he was going to throw the knife for certain." Crowell had seconds to process and respond to this deadly threat. With Hill only 15 feet away, Officer Crowell knew from his training that he was in serious danger. Officer Crowell was also concerned for his partner's safety. Officer Crowell reacted by firing three rounds from his department issued firearm at Hill. Two rounds hit Hill and one hit the pillar to Hill's left. Officer Crowell only fired at Hill after recognizing an imminent threat of serious bodily injury and commanding Hill to drop the

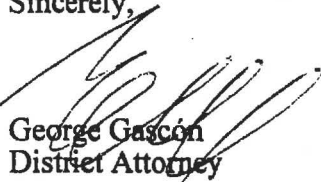
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knife. Having no cover and presented with imminent serious bodily injury, Officer Crowell fired at Hill in self defense.

Based on the investigation we determined Officer Crowell acted lawfully.

This case was considered very carefully by the District Attorney. After a thorough review of the applicable law and the totality of the evidence, including statements by witnesses, the physical evidence, MEO report, Toxicology Report, CSI Report, and opinions by experienced professionals, there appears no reasonable factual or legal basis upon which to charge Officer Crowell, we are therefore closing our file and will take no further action in this matter.

Sincerely,



George Gascon
District Attorney

c: Chief Kenton Rainey, BART Chief of Police
Lt. Hector Sainez, San Francisco Police Department Homicide Unit
Officer James Crowell, BART Officer