

CITY AND COUNTY OF SAN FRANCISCO    OFFICE OF THE DISTRICT ATTORNEY



George Gascón  
District Attorney

December 26, 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 April 17, 2013 (Report No. 130 315 028)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the April 17, 2013 shooting at 956 De Haro Street in San Francisco by Officer Aaron Cowhig (Star # 2084). We have concluded that Officer Cowhig was acting lawfully in self-defense when he shot Dale Stuart Wilkerson. Our review did not examine such issues as compliance with the policies and procedures of the San Francisco Police Department (SFPD), 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, Dale Stuart Wilkerson (Wilkerson) was living at 956B De Haro Street with his sister and her husband since Christmas 2012 due to recent mental and physical problems. On April 17, 2013, at approximately 9:40 p.m., Wilkerson's brother-in-law (V1) was walking past Wilkerson's bedroom on his way from the living room to the bathroom of the residence, when Wilkerson opened his bedroom door and jumped on top of him. V1 initially believed that Wilkerson was trying to start a fistfight, but quickly realized that Wilkerson had a knife as Wilkerson began to stab and hack at him.

V1 begged Wilkerson to stop, which caused Wilkerson to pause for a moment. During that pause, V1 was able to get away from Wilkerson by running out a door onto a walkway that leads to the garage. Wilkerson then chased after him and knocked him down. V1 believed that Wilkerson was going to kill him, but instead Wilkerson called 911 with the cordless house phone and told the operator that he had attacked V1 "with a machete." During this time, V1 staggered to the front door, which leads to De Haro Street.

The Department of Emergency Services received the 911 call regarding a possible stabbing at 956B De Haro Street at approximately 9:42 p.m. Multiple SFPD officers were dispatched to the call for service. SFPD Officer Aaron Cowhig and his partner, Officer Tommy Fong (Star # 1088), were

CITY AND COUNTY OF SAN FRANCISCO      OFFICE OF THE DISTRICT ATTORNEY

traveling northbound on Wisconsin Street when they heard the radio broadcast of a stabbing that had just occurred a few blocks from their location. A supplemental broadcast informed responding officers that the suspect had used a machete as the weapon. The officers arrived 40 seconds after being dispatched.

As the officers arrived, V1 walked out the front door of the residence. Officer Cowhig saw V1 holding his right arm, which appeared to have blood on it. The officers exited the police car and drew their duty weapons. Officer Fong asked V1 if he was hurt and he replied that he had been stabbed. Officer Fong asked V1 if the suspect was still at the scene and he told the officers that he was still inside. Officer Fong told V1 to sit down on the sidewalk.

Officer Cowhig then focused his attention on the open door of the residence approximately 15 feet away. Officer Cowhig saw Wilkerson standing in the doorway holding what he thought was a weapon, possibly a machete. Officer Cowhig then saw Wilkerson lift up the weapon, flare his arms, and start to run at him at a fast pace. Officer Fong also saw Wilkerson holding what he thought might be a machete in his right hand above his head, and saw Wilkerson charge towards Officer Cowhig. Officer Fong feared for Officer Cowhig's safety and yelled out "Aaron, Aaron, Aaron!!" to warn him. Officer Cowhig yelled for Wilkerson to drop the weapon, and started backing up to distance himself from Wilkerson. Wilkerson ignored the order and continued to run towards Officer Cowhig while screaming and with the weapon in his right hand raised above his head. Officer Cowhig, believing his life was in danger, retreated a few steps and then fired two rounds at Wilkerson from a distance of approximately eight to 10 feet, striking him once in the chest, as Wilkerson continued to advance. Wilkerson thereafter collapsed face down. Officer Fong approached Wilkerson and found a hammer and a cordless house phone underneath him. Officer Fong then realized that the weapon Wilkerson had been wielding was a hammer, not a machete.

Officer Fong called for an ambulance, notified dispatch of the officer involved shooting, and began to secure the scene. The San Francisco Fire Department responded and attended to V1's wounds, which were described as small lacerations and moderate penetrating wounds to his arm, chest and back. V1 was transported to San Francisco General Hospital for treatment. Wilkerson was found, unresponsive, lying in the street with blood pooling around his head. Wilkerson was also transported to San Francisco General Hospital, where he was pronounced dead at 10:07 p.m.

V1 was interviewed after the incident and said he believed that Wilkerson was holding something, possibly a knife, as he charged at the police officers. V1 estimated that Wilkerson was within a car length of Officer Cowhig when the shots were fired. V1 stated that he had not had a disagreement or a fight with Wilkerson prior to this incident, and believed Wilkerson may have been trying to get the police officers to shoot him by charging at them and not complying with their orders.

Civilian Witness 1 (CW1) was interviewed after the incident and said she was in her bedroom on the third floor of her residence on De Haro Street when she heard yelling coming from outside. CW1 went to her bedroom window, which looks out over De Haro Street, and saw Wilkerson holding something, possibly a hammer, up above his head with his right arm moving towards one of the two police officers who was standing in the street. CW1 saw that both officers had their handguns drawn. As Wilkerson closed in on one of the officers, she heard the officers yelling something at Wilkerson.

# CITY AND COUNTY OF SAN FRANCISCO    OFFICE OF THE DISTRICT ATTORNEY

and then one officer fired two rounds from his handgun striking Wilkerson from a distance of approximately 12 feet.

Civilian Witness 2 (CW2) was interviewed after the incident and said he was standing in the kitchen of his residence on De Haro Street when he heard two loud voices coming from outside. CW2 looked outside his kitchen window and saw Wilkerson walking towards two police officers while the officers were telling him to either "Put it down" or "Drop it." As Wilkerson continued walking towards the officers, CW1 could see something in Wilkerson's right hand. When Wilkerson got to within approximately seven feet of one of the officers, the officer fired his handgun shooting him.

According to the Crime Scene Investigation Report, there was blood on the walls and steps of the walkway to the residence, consistent with the path that V1 walked. The report lists the evidence found at the scene, which included two bullet casings, blood, a phone, a hammer, a knife and clothing. The knife, which was approximately 18 inches long, had blood on the blade and was located on a bench near the entryway of 956 B De Haro Street. The hammer, which had blood on the head, was found on the sidewalk in front of 956 B De Haro Street. The cordless home phone was found on the sidewalk near a pool of blood. Two .40 caliber casings were also found; one under the right rear tire of a black Toyota truck parked in front of 956 De Haro Street; and one underneath a recycling bin on the curb in front of 956 De Haro Street.

Dr. Amy Hart, Chief Medical Examiner, determined that Wilkerson died as a result of a single distant penetrating gunshot wound of the left side of the chest. Her report notes there was no soot, gunpowder, or stippling visible around the wound entrance site. Dr. Nikolas Lemos, Director and Chief Forensic Toxicologist, conducted a toxicology examination of Wilkerson's blood and urine which revealed caffeine in Wilkerson's system.

## CONCLUSION

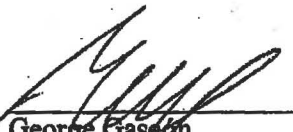
Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm. California law permits the use of deadly force in self-defense or in defense of others if the person using the deadly force actually and reasonably believed he or others were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

Here, as previously stated, Officers Cowhig and Fong responded to a radio dispatch of a 911 call reporting that a man had been stabbed with a machete. Within moments of their arrival, they saw the victim with blood on his arm, and then saw Wilkerson come out of the residence and charge towards officer Cowhig, while screaming, with a weapon raised above his head. Officer Fong called out a warning to Officer Cowhig, and Officer Cowhig ordered Wilkerson to drop the weapon. Wilkerson ignored Officer Cowhig's command and continued to charge him. Officer Cowhig retreated several steps as Wilkerson continued to advance and, in fear for his life, fired his weapon twice at Wilkerson, hitting him once in the chest.

CITY AND COUNTY OF SAN FRANCISCO    OFFICE OF THE DISTRICT ATTORNEY

Based on the evidence, it was reasonable for Officer Cowhig to fire at Wilkerson to protect himself. It is our conclusion that Officer Cowhig acted lawfully.

Very truly yours,



George Gaseon  
District Attorney

cc:    Lieutenant Tim Plyer, San Francisco Police Department Homicide Unit  
     Officer Aaron Cowhig, San Francisco Police Department