

CITY AND COUNTY OF SAN FRANCISCO



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May 21, 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 May 13, 2012 (Report No. 120381255)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the May 13, 2012 shooting at 301 Mission Street in San Francisco by San Francisco Police Department (SFPD) Sergeant Walter Ware (Star # 66). We have concluded that Sergeant Ware was acting lawfully in self-defense and in defense of others when he shot at Derryck King. Our review did not examine such issues as compliance with the policies and procedures of the 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, at approximately 10:40 p.m. on May 13, 2012, Derryck King (King) approached a young female college student (Victim) from behind in front of 301 Mission Street (Millennium Tower) and pressed what appeared to be a handgun into her back. King led Victim into an alcove in front of the building, told her that he "didn't want to shoot her" and then forcibly robbed her of her purse. King used a black BB gun which closely resembled the semi-automatic Sig Sauer handguns issued to SFPD officers. Victim resisted the robbery by trying to get her purse back. King responded by hitting her in the face with her purse and tried to get away.

At the time of the robbery, SFPD Sergeants Ware and Smith (Star # 15) were returning to Tenderloin police station from Treasure Island in an unmarked black SFPD Crown Victoria. Sergeant Ware was driving and Sergeant Smith was in the front passenger seat. Sergeant Ware exited the Bay Bridge via the Fremont Street exit and was traveling northbound on Fremont Street approaching Mission Street. Upon reaching the intersection of Fremont and Mission Street, Sergeant Ware and Sergeant Smith heard an altercation coming from their right hand side, approximately 30 to 40 feet down Mission Street. In looking in that direction, the sergeants observed King and Victim in an altercation. Sergeant Smith immediately believed they were witnessing a robbery in progress.

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WHITE COLLAR CRIME DIVISION

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Sergeant Ware made a right hand turn, quickly parked, and both sergeants exited the vehicle. Sergeant Ware was in dress slacks, a white dress shirt and tie, with his SFPD star and gun on his belt. Sergeant Smith was wearing jeans and a collared dress shirt and sports coat with his SFPD star displayed on his chest from a chain worn around his neck. His gun was also holstered on his belt.

The Victim took the opportunity to grab her purse from King and ran away from the scene. King was now approximately 20 feet away from Sergeant Smith on the passenger side of the police car. Sergeant Ware began to walk from the driver's side of the police car, around the back, towards the passenger side. Sergeant Smith ordered King to stop, but he expected King to run. King stopped and faced Sergeant Smith and Sergeant Ware, who was now standing beside Sergeant Smith on the passenger side of the police car. King then reached into his waistband and produced the same black BB gun which he used to rob the Victim. King came towards the sergeants and lifted the BB gun in the direction of the two sergeants. Sergeants Ware and Smith believed it to be a real firearm and feared for their own safety as well as the safety of the other. Sergeant Smith articulated that when King didn't run, then produced what he believed was a firearm, and subsequently came towards them, he was sure King intended to shoot and kill both sergeants.

Sergeant Ware drew his handgun and fired one shot, which missed King and struck the building behind him. When Sergeant Smith heard the gunshot, he initially believed King had fired his gun, but then realized it was Sergeant Ware who fired. King then threw the BB gun to his side and dropped to the ground. King was not injured and was immediately arrested.

King was interviewed and thereafter confessed to robbing Victim using the BB gun. King has a significant criminal history, including two prior robbery convictions for which he was sentenced to state prison.

## CONCLUSION

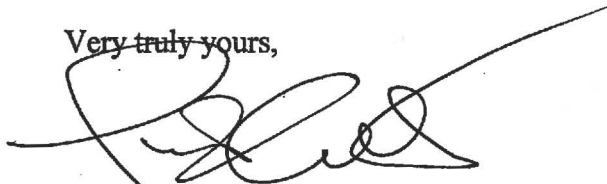
California Penal Code Section 835a allows an officer to use reasonable force to make an arrest, and to overcome resistance by a person for whom he had reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because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

Here, as previously stated, King robbed the victim with a BB gun that was similar in size and appearance to that of commonly manufactured semi-automatic handguns. Sergeants Ware and Smith heard the robbery in progress and immediately responded. As the victim ran from the scene, King reached into his waistband, pulled the BB gun out and began to aim it in the direction of both sergeants. Both Sergeant Ware and Smith reasonably believed the firearm to be real. In fear for his safety, and the safety of Sergeant Smith, Sergeant Ware fired one shot at King, missing him. King dropped the BB gun and was subsequently arrested.

It is our conclusion that Sergeant Ware acted lawfully.

Very truly yours,

A handwritten signature in black ink, appearing to be 'June D. Cravett', written over the closing 'Very truly yours,'.

June D. Cravett  
Assistant Chief District Attorney

c: Lieutenant Tim Plyer  
Sergeant Walter Ware