

CITY AND COUNTY OF SAN FRANCISCO



GEORGE GASCÓN  
District Attorney

OFFICE OF THE DISTRICT ATTORNEY

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

March 11, 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 February 14, 2013 (Report Nos. 130131711 and 130131868)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the February 14, 2013 shooting on the 300 block of Eddy Street involving San Francisco Police Officer Kohl O'Keefe (Star #4291). We have concluded that Officer O'Keefe was acting lawfully in self-defense and defense of others when he discharged his weapon at Alexander Gibbons. 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 February 14, 2013, at approximately 9:00 p.m., a report of a stolen black town car was broadcast. About forty minutes later, a Violence Reduction Team (VRT) unit observed the stolen car and began to follow it. However, because the VRT team was in plain clothes, they did not pursue the car and instead sought backup from a uniformed unit. About four minutes later, a uniformed SFPD unit engaged in pursuit.

Due to heavy traffic and red lights on Eddy Street in the Tenderloin District, the stolen car stopped at two points. The first time it stopped, the uniformed SFPD unit attempted to stop the stolen car. Two uniformed officers approached the stolen car, and one officer knocked on the driver's side window, ordering the driver to stop the car and get out. The driver, Alexander Gibbons, ignored the officers and stared straight ahead. Gibbons then drove forward when the light turned green. The town car was forced to stop a second time in front of the Tenderloin Police Station because of traffic, and also because the police had blocked one lane with police cars and blocked the other lane with spike strips.

Multiple uniformed officers, guns drawn, attempted to perform a felony stop on the stolen car. They ordered Gibbons out of the car, and demanded that he turn off the town car's engine.

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WHITE COLLAR CRIME DIVISION

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

Gibbons ignored them and refused to comply. Officer Fergus and Officer O'Keefe were both taking cover on the north sidewalk, to the left of the town car. Officer Fergus ordered Gibbons to get out of the car. Both uniformed officers had their guns drawn.

Suddenly, Gibbons turned the wheels of the town car and drove sharply to the left, up a driveway and directly towards Officer Fergus. Officer Fergus had to jump out of the way to avoid being struck – he was nearly pinned against the building line. Gibbons then abruptly turned the wheels and drove sharply to the right, to drive down the sidewalk towards Jones Street. Officer O'Keefe was nearly pinned against a parked car. Fearing for his safety and the safety of others on the street, Officer O'Keefe fired his service weapon three times at Gibbons to try to stop him. Multiple witnesses heard the town car's engine rev, heard the tires of the town car screech, and saw the town car travel at a high rate of speed down the sidewalk. Physical evidence showed an arcing tire mark where the town car sped onto the sidewalk.

Though Officer O'Keefe struck the town car with his shots, he did not strike or injure Gibbons. Gibbons continued to drive down the sidewalk to Jones Street, where he re-entered Eddy Street and drove towards Market Street. Gibbons continued at a high rate of speed, estimated by witnesses to be between 50-70 miles per hour, and drove through the red light at 5<sup>th</sup> Street and Mission Street. There, he drove into a taxi cab that was lawfully travelling through a green light, and caused a multiple-vehicle accident. Several people were injured, along with Gibbons, who suffered a broken neck and other injuries. Police arrived on the scene within seconds of the accident and took Gibbons into custody.

## 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 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.

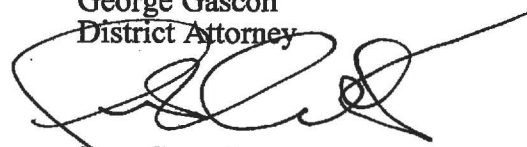
It is well established that an automobile, depending on how it is being used, may constitute a deadly weapon. *People v. Claborn* (1964) 224 Cal.App.2d 38,42; *People v. Finney* (1980) 110 Cal.App.3d 705, 716. Indeed, "[t]here is no question that an automobile can inflict deadly force and thus under certain circumstances can constitute the type of threat that justifies an officer's shooting the driver." *Acosta v. City & County of San Francisco* (9<sup>th</sup> Cir. 1996) 83 F.3d 1143, 1147 fn9 (citing *U.S. v. Acevers-Rosales* (9<sup>th</sup> Cir. 1987) 832 F.2d 1155, 1157, cert.denied, 484 U.S. 1077 (1988)).

In this case, as outlined above, in an attempt to avoid capture, Gibbons ignored the officers' commands to stop and drove directly towards Officer Fergus, forcing him to jump out of the way to avoid being struck, and then sped down the sidewalk towards Jones Street, causing Officer O'Keefe to be nearly pinned against a parked car. Fearing for his safety and the safety of others on the street, Officer O'Keefe fired his service weapon three times at Gibbons to try to stop him.

It was reasonable for Officer O'Keefe to fire at Gibbons to protect himself, the other officers, and the nearby pedestrians. It is our conclusion that Officer O'Keefe acted lawfully.

Sincerely,

George Gascón  
District Attorney

A handwritten signature in black ink, appearing to read 'June Cravett', written over the printed name and title.

June Cravett  
Assistant Chief District Attorney

cc: Lt. Tim Plyer  
Officer Kohl O'Keefe