

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE DISTRICT ATTORNEY



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August 28, 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 on July 3, 2010 (Report No. 100 609 942)

Dear Chief Suhr:

The Special Prosecutions Unit of the San Francisco District Attorney's Office has completed its review of the July 3, 2010 shooting in front of 312 and 314 Columbus Avenue by San Francisco Police Inspector John D. Newman. We have concluded that the officer acted lawfully in self-defense and defense of others.

FACTUAL SUMMARY

On July 3, 2010, at approximately 1:31 a.m., SFPD Inspector John Newman and his partner, Sergeant Jon Kasper, were in the area of Columbus Avenue and Broadway Street in North Beach. They were both in plain clothes, and Sergeant Kasper was driving their unmarked police car northbound on Columbus. As they drove past the front of the Little Darlings strip club at 312 Columbus, Sergeant Kasper and Inspector Newman saw a group of men who looked like they might start fighting. All of a sudden, one of the men on the sidewalk, wearing a red hat, pulled out a black firearm and started shooting at the people in the group while walking backwards. Witnesses heard him fire five to six shots. Inspector Newman immediately put a call out on the radio, and Sergeant Kasper followed the shooter (later identified as Rudy Mejia) in the patrol car, as he ran northbound on Columbus and then eastbound on Grant Street. Inspector Newman got out of the patrol car after it turned onto Grant Street, announced himself as a police officer, and told Mejia to drop the gun. Mejia got close to another man, and then turned in Inspector Newman's direction. Inspector Newman said he felt his safety was in jeopardy, and that he didn't know where his partner was. He said he was in fear of his life and safety, and for those of his partner and the people on the busy street behind him. As Mejia turned towards him with the gun, the inspector felt that the only way he could prevent the threat was to use his own gun. Inspector Newman thought he needed to stop the threat and make sure this person didn't shoot any more people. Inspector Newman fired one round at Mejia from about 10 to 15 feet away. After Inspector Newman fired one round, Mejia complied with Inspector Newman's instructions and got on the ground. The man who had approached Mejia just prior to the shot, fled with a third man. Inspector Newman briefly searched Mejia for the gun but did not find it. Inspector Newman and Sergeant Kasper located a firearm about two business addresses further up the street from where Mejia was arrested. This indicated to the officers that Mejia handed the gun off to the man he had approached just before Inspector Newman shot at him.

WHITE COLLAR CRIME DIVISION

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Three people were shot by Rudy Mejia. Victim 1 suffered a gunshot wound to his lower left leg. Victim 2 suffered two gunshot wounds to his left foot. Victim 3 suffered a graze wound to his left calf. No one was injured as a result of Inspector Newman firing his service weapon.

On February 8, 2012, Mejia pled guilty to one violation of Penal Code § 245(b) as a felony. On March 21, 2012, Mejia was sentenced to nine years in state prison.

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.

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.

In the present case it is undisputed that Inspector Newman witnessed Rudy Mejia shooting at a group of people. Inspector Newman fired one shot at Rudy Mejia when Mejia turned in Inspector Newman's direction. Inspector Newman fired in defense of others and in self-defense. His actions were reasonable under the circumstances.

This case was considered carefully by the District Attorney's Office. After a thorough review of the applicable law, witness statements, physical evidence and police reports, there appears no reasonable factual or legal basis exists to charge Inspector Newman with any crime. We are therefore closing our file and will take no further action in this matter.

Sincerely,

George Gascón
District Attorney



June D. Cravett
Assistant Chief District Attorney

c: Lieutenant Hector Sainez
Inspector John Newman