

CITY AND COUNTY OF SAN FRANCISCO



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December 11, 2013

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 December 16, 2011 (Report No. 111006404)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the December 16, 2011 shooting at 119 Jerrold Avenue at Donahue Street involving San Francisco Police Officer Gabriel Alcaraz (Star #590). We have concluded that Officer Alcaraz was acting lawfully in self-defense when he shot at Larry Simonton. 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 December 16, 2011, San Francisco Police Officers Gabriel Alcaraz (Star #590) and Michael Ellis (Star #1994) were working plainclothes detail out of Bayview Station. At approximately 9:00 p.m., they were at the station, having returned from a call, and were completing their paperwork. At approximately 9:21 p.m., they received a call of a carjacking at gunpoint at Ingalls Street and Revere Avenue. Officers Alcaraz and Ellis responded to the area in their unmarked police Ford Crown Victoria, with Officer Alcaraz driving. While en route, the officers received a description of the stolen car, its license plate number, and its direction of travel.

The officers searched the area where the carjacking had occurred. While turning onto Jerrold Avenue from Donahue Street, the officers saw a white Honda Accord facing them, parked on the left side of Jerrold Avenue, which matched the description of the stolen vehicle. The suspect, Larry Simonton (age 44), was in the driver's seat. The officers called in the license plate and confirmed that it matched the stolen vehicle. The officers pulled up to within 10 to 20 feet<sup>1</sup> of the stolen vehicle (nose to nose), turned on their forward facing red lights, and began to open their doors.

<sup>1</sup> Officer Alcaraz estimated they were 20 feet away, while Officer Ellis estimated they were 10 feet away, approximately.

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Before the officers could get out of their car, Simonton sped forward and rammed the police car with the officers still inside. Officer Alcaraz tried to put their car in reverse, but Simonton had backed up, hit the truck behind him, sped forward, and rammed the police car again. The officers exited their car and tried to move away. Officer Alcaraz yelled, "Stop! Police!" Officer Alcaraz saw a utility pole to his left, the sidewalk beyond that, and a retaining wall on the other side of the sidewalk. He planned to run toward the sidewalk with the intention of going onto the retaining wall for safety.

Before he could reach the sidewalk, Officer Alcaraz heard the car coming at him again. Officer Alcaraz turned to face the car and un-holstered his gun. He saw the car coming toward him. He drew his weapon and yelled, "Stop! Police!" again. The car kept coming directly at Officer Alcaraz. Officer Alcaraz fired at Simonton once, striking the driver's side of the front windshield.

Officer Alcaraz heard Simonton say something but was unsure as to what he said. He saw Simonton stop. Then he saw Simonton accelerate backward, turning in a clockwise direction. The passenger side of the stolen car then hit the truck that was parked behind it. Officer Alcaraz then saw Simonton driving forward again, turning in a counter-clockwise direction. Officer Alcaraz believed Simonton was again coming around, onto the sidewalk, to run him down. Officer Alcaraz yelled, "Stop!" and then fired three more shots at Simonton. All three shots appeared to hit the driver's door. Simonton drove in reverse again, then forward, again turning as before, and finally u-turned, driving out of the space between the police car and the parked pick-up truck. Simonton fled in the stolen car, heading westbound on Jerrold Avenue. He subsequently collided with two parked cars a few blocks away, where he was apprehended by SFPD Officers Eric Tindall (Star #2030) and Matthew Ortega (Star #1979).

Simonton suffered minor injuries from the crash (multiple abrasions and complaints of right leg pain) but had no other obvious trauma. He was not hit by any of the shots fired by Officer Alcaraz.

## 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.

The facts in the present case indicate Officer Alcaraz fired at Simonton when he saw that Simonton, who had already rammed the police car twice with Officers Alcaraz and Ellis still inside, was now driving toward him-- after Officer Alcaraz had exited the police car but before he had reached a point of safety. Officer Alcaraz believed that Simonton was going to run him over. After he fired, Officer Alcaraz saw Simonton driving forward again, turning in a counter-clockwise direction, going directly toward him. Officer Alcaraz believed that Simonton was going to drive onto the sidewalk in an effort to run him over. Still in fear for his safety, Officer Alcaraz yelled "Stop!" and then fired three more times at Simonton. Officer Alcaraz reasonably

believed he was in imminent danger of great bodily injury or death each time he fired his weapon at Simonton.

It was reasonable for Officer Alcaraz to fire at Larry Simonton to protect himself. It is our conclusion that Officer Alcaraz acted lawfully.

Sincerely,

George Gascón  
District Attorney



June Cravett  
Assistant Chief District Attorney

cc: Lt. Tim Plyer  
Officer Gabriel Alcaraz