



GEORGE GASCÓN
DISTRICT ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO

Chief Gregory Suhr
Office of the Chief of Police
San Francisco Police Department
850 Bryant Street, Room 525
San Francisco, California 94103

Re: Officer Involved Shooting on August 28, 2010 (Report No. 100793993)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the August 28, 2010 shooting at 75 Northridge Road involving San Francisco Police Officer Ryan Doherty, Star #1022. Based on evidence available, we have concluded that Officer Doherty was acting lawfully in self-defense and defense of others when he fired his service weapon at armed suspect Marcus Gregory Tyson. Our review did not examine such issues as compliance with the policies and procedures of the law enforcement agency, ways to improve training or action's or any issues related to civil liability; accordingly, our review should not be interpreted as expressing an opinion on these matters.

FACTUAL SUMMARY

On August 28, 2010 plain clothes Officers Reginald Scott, Star #441, Kevin Rightmire, Star #1965, and Ryan Doherty, Star #1022, were on duty in the Bayview district targeting gang violence in the housing projects. The three officers were in an unmarked Crown Victoria driven by Officer Rightmire. The officers were dispatched to the area of Kiska and Reardon on reports of four males with guns in that area. Officers Scott and Doherty got out of the unmarked Crown Victoria, and Officer Rightmire drove away to try to cut off the armed suspects.

At approximately 2142 hours Officers Scott and Doherty were walking northbound in the projects to the first building at the corner of the 100 block of Kiska. With Officer Scott behind him and to his right, Officer Doherty looked downhill and saw several males wearing dark clothing. Officer Scott yelled "police" in a loud voice. Marcus Tyson immediately turned toward Officers Scott and Doherty and extended his arms upward as if pointing a gun at them. Officer Doherty simultaneously saw a muzzle flash and heard a shot. Officer Scott saw the face of Tyson at the time of the muzzle flash and heard a whizzing sound as the bullet passed him. Tyson fired two or three other shots. Officer Doherty feared for his life and for the life of Officer Scott. Importantly, there was nothing in Officer Doherty's immediate vicinity behind which he could take cover. Officer Doherty crouched down close to the building line and returned fire. Marcus Tyson rounded the corner and ran off with others towards Northridge. Officer Scott broadcast a description of Tyson. Officers Doherty and Scott, now joined by uniformed Officer Christopher Dunne, Star #1775, pursued the shooter through the area for approximately a half

mile, stopping at Middle Point and Hare where they saw Officer Rightmire in their unmarked vehicle. Officer Ken Marucco, Star #4219, pointed out the area to which Tyson had run to Sgt. Daniel Manning, Star #1076. Sgt. Manning found the shirtless Tyson sweating profusely, lying behind a large eucalyptus tree covered with twigs and leaves texting on his cell. Tyson was arrested.

Later, at Bayshore Police Station, Officer Doherty identified Marcus Tyson as the person who had shot at him. During his interview, Officer Scott stated that Officer Doherty's shots protected their safety and gave them time to broadcast their location and pursue the shooter. No one was struck by gunfire.

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 Officers Doherty and Scott responded to the area because of reports of four men with firearms. Officers Doherty and Scott saw the men with weapons and shouted "Police." Officer Doherty had no cover and fired his weapon at Marcus Tyson only after Marcus Tyson fired his weapon at Officer Doherty and Officer Scott. There were no injuries.

It was reasonable for Officer Doherty to fire at Marcus Tyson to protect himself, Officer Scott and the public. It is our conclusion that Officer Doherty acted lawfully.

Very truly yours,

George Gascon
District Attorney

cc: Lieutenant Tim Plyer
Officer Ryan Doherty