



GEORGE GASCÓN
DISTRICT ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO

October 5, 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 June 7, 2011 (Report No. 110 460 706)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the June 7, 2011 fatal shooting of Joshua Smith by San Francisco Police Officer Albert Liu and Sergeant Scott Ryan. We have concluded that they acted lawfully in self-defense and defense of others. 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.

On June 7, 2011 Sergeant Scott Ryan, Officer Albert Liu and Officer Ruben Reyes were working together as a plain-clothes team out of Park Station. At the beginning of their shift they learned that a stolen gray 2-door BMW 328i with paper plates, which law enforcement authorities believed to be the vehicle involved in a number of bank robberies and police chases in southern California, had been located on Buena Vista Avenue East in San Francisco. Sergeant Ryan and his team, patrolling in an unmarked, gray Ford Crown Victoria, drove northbound on Buena Vista and, as they passed the BMW, they thought the BMW's rear lights were on and that the sunroof may have been opening. The BMW was parked perpendicular to the curb between a van and a 2-door Nissan 240SX. Suspecting that someone was in the car, the officers made a u-turn and pulled their Crown Victoria behind the BMW.

When Sergeant Ryan saw a person in the driver's seat of the BMW, he immediately got out his car, pulled his firearm, and initiated a felony stop with the intention of taking the driver into custody. Sergeant Ryan positioned himself behind the BMW on the driver's side so he could look down and into the driver's side of the BMW, called for back-up, and yelled, "Police, let me see your hands, get out of the car!" Meanwhile, Officer Lieu drew his gun and positioned himself by the trunk area of the Nissan that was to the left of the BMW. Officer Reyes also drew his gun and worked his way towards the passenger side of the BMW. As Officer Reyes identified himself and commanded the driver to put his hands on the steering wheel, the driver made eye contact with him, and the BMW started moving backwards slowly. The front of the BMW moved to the left as the tail of the car moved to the right. Sergeant Ryan moved backwards to get away from the BMW, and observed that the BMW was rubbing up against the Nissan, parked to its left, pushing that car up the hill, as the BMW driver was continuing to move backwards towards him. The BMW hit the passenger side door of the Crown Victoria, and was continuing to maneuver back, getting closer and closer to Sergeant Ryan, who believed he was at risk of

being crushed between the BMW and the Crown Victoria; at that point, Sergeant Ryan opened fire. Officer Lieu, believing Sergeant Ryan was in danger, also fired his weapon. The BMW continued to move, turning towards and shoving the Nissan, now directly threatening Officer Lieu who was positioned behind the Nissan. Both Sergeant Ryan and Officer Lieu, believing Officer Lieu to be in danger, continued to fire their weapons at the driver until the vehicle stopped.

All the civilian witnesses who saw the incident agreed that the police officers did not begin shooting until the BMW was moving and that the shooting stopped as soon as the BMW stopped moving. All the witnesses heard shouting preceding the shooting, and, although they could not make out the exact words, they all heard the officers commanding the driver to "stop" and "don't move." Two of the witnesses said the BMW almost pinned one of the officers (Lieu) and the officer had to jump out of the way to avoid the BMW that was coming at him.

The damage to the vehicles involved in this incident is consistent with the officers' and witnesses' statements. The right front door of the Crown Victoria was open, hyper-extended, and wedged against the left rear of the gray BMW. The BMW had its entire driver's side deeply scratched, consistent with dragging the Crown Victoria's door along its side. The right front passenger side of the BMW was contacting the right rear of the Nissan. The Nissan looked like it had been pushed by the BMW several feet forward, to the south and up onto the curb that borders the park. The BMW driver's door window was shattered and broken out, the small window behind the driver's door was shattered, and there were numerous bullet strikes to the hood, windshield, and driver's side of the car; the sunroof was partially open.

Joshua Smith was pronounced dead at San Francisco General Hospital. According to the autopsy report he died of multiple gunshot wounds. At the time of this incident, Mr. Smith was on Federal bail supervision for an extortion case and there was an outstanding Federal warrant for his arrest which issued on 5/17/11.

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 the person using 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.

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 (9th Cir.1996) 83 F.3d. 1143, 1147 fn9 (citing U.S.v.Acevers-Rosales (9th Cir. 1987) 832 F.2d 1155, 1157, cert.denied, 484 U.S. 1077 (1988)).

In this case, as outlined above, the decedent robbery suspect, in an attempt to avoid capture, ignored the officers' commands to stop and maneuvered the BMW in such a way that both Sergeant Ryan and Officer Lieu were in danger of being pinned and crushed by the BMW. Fearful of being seriously injured or killed, both Sergeant Ryan and Officer Lieu fired their weapons in self-defense and defense of others, and stopped firing their weapons when the vehicle came to a stop. Based on the totality of the circumstances, there is no basis to believe Sergeant Ryan and Officer Lieu acted unlawfully.

Very truly yours,



George Gascon
District Attorney

c: Sergeant Scott Ryan
Officer Albert Lieu