

CITY AND COUNTY OF SAN FRANCISCO



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May 21, 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 September 20, 2012 (Report No. 120756460)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the September 20, 2012 shooting on 14th Street involving San Francisco Police Sergeant Toney D. Chaplin (Star # 951). We have concluded that Officer Chaplin was acting lawfully in self-defense and defense of others when he shot Oliver Jose Barcenas. 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.

According to the investigation, on the evening of September 20, 2012, San Francisco Police Gang Task Force Sergeants Toney Chaplin and Dion McDonnell (Star # 1963) were working with San Francisco Juvenile Probation Officer Ernest Logoleo (Star # 628) and Supervising Officer Fred Collier (Star # 233), monitoring juvenile probationers in San Francisco in "Operation Night Light." Probation Officers Collier and Logoleo identified probationers they wished to check before beginning the evening's work.

The officers travelled in two separate cars. Sergeants McDonnell and Chaplin were in an unmarked white Ford Focus, and both were in plain clothes. Sergeant Chaplin wore a San Francisco Police Department raid jacket with San Francisco Police Department patches on the front and on both upper sleeves. "Police" was written on the back of the jacket. Sergeant McDonnell wore his San Francisco Police Department star displayed on his chest. Both sergeants carried their service weapons.

Juvenile Probation Officers Logoleo and Collier were in a marked white Crown Victoria with a San Francisco City and County emblem on the doors. They wore ballistic vests that had "Probation" written on the front and back, and a law enforcement star embroidered on the front. Neither probation officer was armed.

WHITE COLLAR CRIME DIVISION

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At approximately 8:05 p.m., Sergeants Chaplin and McDonnell turned off Mission Street onto 14th Street, a one-way street running east, with the probation officers following right behind. Sergeant Chaplin noted 14th Street was busy with many people walking, talking on cell phones and bicycling. Sergeant McDonnell was familiar with the Mission district and with many Norteno gang members who frequented this area. Just after turning onto 14th Street, Sergeant McDonnell recognized Oliver Barcenas as Barcenas walked at a quick pace eastbound on the south sidewalk of 14th Street towards Natoma Street. Barcenas wore a shirt and gloves and was holding his waistband area. Sergeant McDonnell told Sergeant Chaplin that Barcenas, who he knew from prior investigations, was on parole. Sergeants McDonnell and Chaplin believed Barcenas might have a gun because of the way he was holding his gloved hand at his waistband area, and because the weather was not cold.

Sergeants McDonnell and Chaplin drove past Barcenas who was still walking at a brisk pace eastbound on the south sidewalk. Barcenas' attention appeared to be directed to his left towards the marked Crown Victoria driving on 14th Street just behind the unmarked Ford. Sergeant McDonnell parked the Ford at a 45 degree angle in front of a black Camaro parked next to the curb on the southeast corner of 14th and Natoma Streets. Loud music was coming from the Camaro, and a male sat in the front passenger seat. Sergeant Chaplin looked towards Barcenas who was still holding his hand at the front waistband area as if he were securing a firearm. As Sergeants Chaplin and McDonnell got out of the Ford, Sergeant Chaplin said, "I think he's got a gun."

Still looking towards the marked Crown Victoria, Barcenas backed up, left the sidewalk and walked to the rear of the Camaro while still holding his waistband. At that point, Sergeant Chaplin could see straight lines in Barcenas' shirt and believed Barcenas had a firearm under his shirt. Barcenas walked back to the south sidewalk. Sergeant Chaplin made eye contact with Barcenas and yelled, "Police." Barcenas turned and ran back west in the direction from which he had just come. Sergeant Chaplin pulled his service weapon and yelled, "Police" and "Stop" as he chased Barcenas on the sidewalk. Sergeant McDonnell and Probation Officer Logoleo also gave chase running westward on 14th Street to block Barcenas should he run to the north side of the street. Probation Officer Collier quickly secured the Camaro's passenger.

Barcenas continued to hold his right side as he ran on the sidewalk away from Sergeant Chaplin. While running, Barcenas turned his torso towards Sergeant Chaplin and pulled an Intratec 9 (hereafter called a "Tec 9") assault weapon from his waistband. As Barcenas pulled the weapon from his waistband, Sergeant Chaplin saw the silhouette of the Tec 9 and its extended clip. Sergeant Chaplin knew the Tec 9 held more rounds than his service weapon, and could be easily converted to a fully automatic weapon that could penetrate his vest. And he knew the consequences of firing the Tec 9 on this busy street could be terrible. When Barcenas turned towards Sergeant Chaplin, Sergeant Chaplin thought Barcenas had made a decision to shoot him. Believing he was out of time, Sergeant Chaplin fired a round and thought he hit Barcenas' calf or lower leg. Barcenas continued to run with the Tec 9, and Sergeant Chaplin fired two more rounds. Barcenas reached the front of 257- 14th Street (the home of a known Norteno gang member) and grabbed the metal gate in front of the building's door. Barcenas appeared to be trying to climb the gate or trying to throw the Tec 9 over the gate, when he fell backwards and the Tec 9 caught at an angle and wedged in the top of the gate. Sergeant McDonnell quickly took control of Barcenas, and Sergeant Chaplin secured the Tec 9.

Officers rendered first aid to Barcenas and called for an ambulance. Barcenas was transported to San Francisco General Hospital by ambulance for treatment of three apparent gunshot wounds: one to the left flank; one to the right lower leg and one to the right calf. At the time of the incident, Barcenas was on active CDC parole for aggravated assault with a firearm.

San Francisco Police Crime Scene Investigations located a total of three casings in front of 257 14th Street, which later testing confirmed were fired from Sergeant Chaplin's service weapon. Examination of Barcenas' Tec 9 by the San Francisco Police Forensic Services Division revealed that it was loaded with 25 - 9mm Luger cartridges and was operable.

CONCLUSION

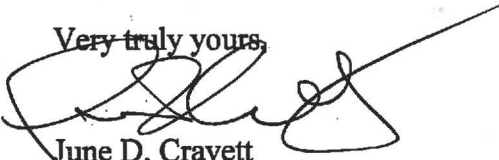
California Penal Code section 835a allows an officer to use reasonable force to make an arrest, to prevent escape or to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make 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 that Sergeant Chaplin fired his weapon at Oliver Jose Barcenas only after Barcenas refused several commands to stop, pulled a loaded Tec 9 out of his waistband and turned towards Sergeant Chaplin. Sergeant Chaplin fired two additional rounds at Barcenas as he continued to run down the busy street with his Tec 9 in hand. It was reasonable for Officer Chaplin to fire at Oliver Jose Barcenas to protect himself, the public and the other officers on 14th Street.

It is our conclusion that Officer Chaplin acted lawfully.

Very truly yours,



June D. Cravett
Assistant Chief District Attorney
San Francisco District Attorney's Office

c: Lieutenant Tim Plyer
Sergeant Toney Chaplin