



GEORGE GASCÓN  
DISTRICT ATTORNEY  
CITY AND COUNTY OF SAN FRANCISCO

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November 26, 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 16, 2011 (Report No. 110 570 361)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the July 16, 2011 shooting involving San Francisco Police Officers Richard Hastings and Matthew Lopez. We have concluded that the decedent, Kenneth Harding Jr., died as a result of a self-inflicted gunshot wound which was inflicted while he was attempting to shoot at the officers who were acting 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 July 16, 2011, Officers Richard Hastings and Matthew Lopez were assigned to the Oakdale/Palou - Opera House MUNI stop for "high visibility" crime suppression efforts. As part of their assignment, they were conducting proof of payment enforcement on MUNI Light Rail Vehicles (LRV). Approximately 4:38 p.m., Officers Hastings and Lopez boarded an LRV that stopped at the platform. Kenneth Harding Jr. was seated on the LRV and Officer Hastings asked him for proof of payment. Harding did not have proof of payment so Officer Hastings told Harding to exit the LRV with his partner. Harding complied and exited the LRV with Officer Lopez. Before leaving the train, Officer Hastings spoke to a 13-year-old boy who also lacked proof of payment and consequently escorted him off the LRV. Officer Hastings told the juvenile to make payment on the next LRV or walk. After releasing the juvenile, Officer Hastings returned to Officer Lopez who was talking with Harding on the platform.

Officer Lopez asked Harding for a driver's license and Harding said he didn't have one. Unbeknown to the officers, Harding was on parole for promoting prostitution, was the primary suspect in the shooting assault of 10 people, killing a 19 year-old woman three days prior, and was in possession of a loaded semi-automatic handgun. When asked for other identification, Harding stated that he didn't have any. When Officer Lopez asked for his name, Harding stated that his name was "Kennedy Harrison" and his birth date was 8/5/91. Thereafter, Officer Lopez asked Harding to sit on a nearby bench on the platform. Once Harding was seated, Officer Lopez used his radio to contact dispatch to run Harding's criminal history using the name and date of birth provided by Harding. As soon as Officer Lopez finished stating the name of the person to dispatch and was about to read the date of birth, Harding quickly got up from the bench, jumped down from the platform, and ran across 3rd Street towards Mendell Plaza. Officer Hastings immediately began chasing Harding and Officer Lopez followed closely behind.

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After crossing over 3rd Street, Harding ran north through Mendell Plaza. Officer Hastings ran three to four steps behind Harding, with his baton in hand. Officer Lopez was several steps behind Officer Hastings – to his left. Approximately half block, Harding turned to his left and moved his right hand over his left shoulder in the direction of the officers. Harding then fired one shot from an AMT 380 semi-automatic pistol at the officers. The bullet missed the officers and is believed to have hit the Dollar Store which is located more than 100 feet directly behind the officer's line of pursuit. At this point, neither officer had drawn their firearm.

After Harding fired, Officer Lopez immediately broke to his left. Officer Hastings broke to his right, drew his firearm, discarded his baton, and started shooting at Harding. Harding continued to run north through Mendell Plaza towards Opera Plaza. Officer Lopez drew his weapon, took aim, but waited several seconds in an effort to have a safe line of fire. After seeing Harding turn in the officer's direction again, Officer Lopez began to fire at Harding.

As Harding reached the intersection of Mendell at Oakdale Streets, video evidence suggests that he was hit in his left calf with one bullet. Although shot in the calf, Harding continued to run through the intersection towards Opera Plaza. As Harding was at the beginning of Opera Plaza, he again turned left towards Officer Lopez and lifted his right arm. Officer Lopez saw Harding turning and believed Harding was going to shoot at him or his partner again. At that point, both officers fired at Harding. While the officers were shooting, Harding also fired a shot from the gun in his right hand. That bullet entered Harding's neck on his right hand side, severing a facial artery. Harding subsequently fell to the sidewalk dropping the gun and a cell phone fell in front of him. The cell phone came to rest approximately 10 feet in front of him and the gun came to rest approximately 20 feet in front of him.

Officer Lopez immediately called dispatch and announced there had been an officer involved shooting with one person down. Police backup and emergency medical assistance were promptly dispatched to the scene. Officers Lopez and Hastings approached Harding with their guns drawn. Officer Kelly Paul arrived on-scene and approached Harding in an effort to give him medical assistance. Officer Lopez warned Officer Paul that Harding still had a gun as he approached.

Immediately after the OIS, 40 or more bystanders began crowding around the officers and Harding. Within two minutes, more than 100 spectators were around the scene with many of them aggressively yelling at the police, interfering with the investigation and causing the officers to lose control of the crime scene. In the midst of the highly charged chaotic situation, an individual picked up Harding's gun, a semi-automatic AMT .380, and placed it in his sweatshirt. The individual later admitted he took the handgun from the scene, initially stored it at his brother's house, and sold it several days later for \$350. At the request of the police, the individual purchased the gun back and turned it in.

Three civilian witnesses reported seeing all or part of the foot chase and gunfire exchange. One witness, a MUNI bus driver, reported seeing the officers chasing Harding without their guns drawn, heard two shots ring out, and then saw one of the officers pull out his gun before hearing a series of three to four shots. A second witness reported seeing Harding turn while running and



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shoot first at the officers, at which point the officers stopped, split up, and shot six or seven times at Harding. A third witness only had his attention drawn to the scene after hearing the first shots ring out, after which he saw Harding running but did not see anything in his hands, then saw Harding jerk and fall. After the officers arrived he heard them say "he's got a gun" but he didn't see one.

The Medical Examiner (M.E.) found that Harding suffered a penetrating gunshot wound to the right neck area, a perforating gunshot wound of the outer lower left leg, and a graze gunshot wound of the out left thigh. The M.E. concluded that Harding's death was an "Accident" caused by a self-inflicted penetrating gunshot to his neck. The M.E.'s report states: "This wound appears to be self-inflicted based on the proximity of the weapon, the trajectory (right to left and upwards), and the type of bullet recovered from the wound, which matched unused ammunition recovered from the decedent's pocket. The perforating and graze wounds of the leg are superficial in nature, would likely have been survivable, and contributed minimally to the blood loss."

Ballistics testing on the AMT 380 semi-automatic handgun turned in by the individual who picked it up at the scene confirmed that it was in fact the gun that fired the fatal bullet removed by the M.E. from Harding's neck. Ballistics testing also confirmed that the 10 Winchester .40 S&W casings recovered from the scene all came from the officers' firearms – five from Officers Hastings' firearm and five from Officer Lopez' firearm. The officers did not find spent casings from Harding's gun at the scene. It is believed those casings were lost during the spontaneous anti-police demonstration that occurred immediately after the shooting.

Videos retrieved from the MUNI platform and from the LRV show the events beginning with the entry of the officers onto the LRV and ending with Harding taking off running towards Mendell Street/Plaza. Videos retrieved from Opera Plaza show the events involving the officers and Harding once Harding enters Mendell Plaza. All videos are consistent with the reports of the officers and witnesses concerning these events.

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 the 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.

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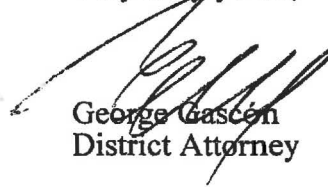
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Here, as previously stated, Harding was lawfully detained for fare evasion. Harding attempted to flee from the officers by running. Unknown to the officers at the time, Harding was a murder suspect armed with a loaded handgun. As the officers attempted to capture Harding by running after him, Harding armed himself with the gun he was carrying and shot at the officers. In self-defense and the defense of others in the vicinity from the deadly attack by Harding, the officers unholstered their department issue pistols and returned fire causing two non-fatal wounds. According to the M.E.'s report, Harding died as a result of an accidentally self-inflicted gunshot to the neck.

It is our conclusion that Officer Hastings and Officer Lopez acted lawfully.

Very truly yours,



George Gascon  
District Attorney

c: Lieutenant Hector Sainez  
Officer Matthew Lopez  
Officer Richard Hastings