



George Gascón  
District Attorney

May 1, 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 May 9, 2012 (Report No. 120370151)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the May 9, 2012 shooting at 861 Post Street involving San Francisco Police Captain Jason Cherniss (Star #387), San Francisco Police Officer Joshua Hinds (Star #1153) and San Francisco Police Sergeant Ronald Liberta (Star #682). We have concluded that Captain Cherniss was acting lawfully when he gave the order to neutralize suspect Dennis Hughes, and that Officer Hinds and Sergeant Liberta were acting lawfully when they discharged their weapons at Hughes. 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

Approximately May 6, 2012, Dianne Hughes was killed with a baseball bat inside of her home in Rohnert Park, California. The investigation led Rohnert Park Public Safety (RPPS) detectives to suspect that the homicide may have been committed by Dennis Hughes, the victim's 41-year-old son. RPPS detectives located Hughes in his girlfriend's apartment at 861 Post Street, in San Francisco, on May 9, 2012.

RPPS detectives went to apartment 12 and got Merry Van Abkoude, Hughes' girlfriend, to answer the door. She informed them that Hughes was inside. However, when the RPPS detectives attempted to coax Hughes out of the apartment to speak with him, Hughes refused to come out. RPPS detectives called the SFPD for backup because they were growing concerned that Hughes would not come out of the apartment. For a time, Hughes spoke to the RPPS detectives through the apartment wall, but once the SFPD arrived, he stopped communicating. Ms. Van Abkoude informed the officers and detectives that she did not believe Hughes had any weapons, and provided verbal consent to enter her apartment.

SFPD officers attempted to gain access to the apartment. The lights had been turned off, and the apartment had an L-shaped entrance that prevented the officers from seeing inside. Additionally, the door to the apartment had been previously blocked with a bicycle, which was still in the apartment entrance. The officers attempted to get around the bicycle and other obstructions, and turn the corner of the L-shaped hallway so they could see inside of the apartment. When they got close to the end of the hallway, Hughes opened fire on the officers, sending rounds through the wall. The officers retreated from the apartment.

Hughes then sprayed a chemical agent (later determined to be pepper spray) into the air. Hughes continued to barricade himself in the apartment and refused commands to come out. Hughes fired rounds into the hallway, into the apartment above through the ceiling, and into the apartment below through the floor. Most of those rounds appeared to have been fired in response to noises that were made by the officers, as they moved around and below the apartment Hughes was in, for perimeter and evacuation purposes.

Hughes began setting fires in the apartment, some of which grew quite large. Burn marks were later discovered on the couch, floor, armoire, and various pieces of trash and other miscellaneous items throughout the apartment. Smoke filled the air inside of the apartment. One officer suffered inhalation injuries from smoke and the pepper spray, and was brought to the hospital.

Once SFPD Captain Jason Cherniss (# 387) arrived on scene, he took the role of incident commander and all further tactical decisions were made through him. A perimeter was set up staffed by specialists and tactical units, and Captain Cherniss asked for members of the hostage negotiation team to respond. His immediate concern was for the people who hadn't been evacuated from the building. Bullets were regularly being shot through doors and walls, and while the officers were conducting a robust evacuation plan, they couldn't get to the people who were the most exposed to the bullets.

After consulting with a member of the hostage negotiating team, Captain Cherniss decided to try and initiate contact with Hughes and asked the tactical commander, SFPD Lieutenant Glenn Mar (# 1829), if they could get a cell phone to Hughes. Lieutenant Mar was adamant that this would be unsafe because every movement was being fired upon by Hughes.

Captain Cherniss heard that fires had been started and that officers were being exposed to smoke, reduced visibility and flames. He knew that several apartments that hadn't been cleared for evacuation, that random and intermittent shots were being fired into a building at police officers, and that there was some use of a chemical agent. More than 50 minutes since the first shots were fired by the suspect, Captain Cherniss believed they had exhausted all means of apprehension and control and decided give the "green light" for officers to engage the suspect and neutralize the situation when the window of opportunity presented itself. Lieutenant Mar immediately put the "green light" order out over the air.

After the "green light" order was issued, Captain Cherniss still wanted to attempt to establish communication with Hughes if possible in order to try to deescalate the situation. However, the situation instead kept escalating. Captain Cherniss heard that there was an officer who had been trapped and needed assistance to get out. He knew that the fires were blazing and that they

couldn't get the evacuation moving. Captain Cherniss was concerned about the fire spreading based on his knowledge that fires in the Tenderloin can easily spread to other buildings.

Sergeant Ronald Liberta, a specialist and member of the SFPD Violence Reduction Team (VRT), along with other members of the VRT, had been inside apartment 12 when Hughes was firing shots through the walls, starting fires and spraying a chemical agent. Sergeant Liberta was covering officers with a high powered rifle (AR-15) as they exited the building down the fire escape outside apartment 11, when he heard the announcement over the air that a "green light" was in effect. Sergeant Liberta understood the order to mean that a supervisor on scene had determined that there was a great risk to the public and that the suspect needed to be stopped. Sergeant Liberta agreed with the assessment and, when the opportunity presented itself, fired at the suspect using the AR-15 from his position on the fire escape. Sergeant Liberta radioed that he had taken a shot at the suspect but didn't know if he had been hit and didn't think he was down.

Officer Hinds, a tactical officer and certified sniper with the VRT, had been inside apartment 11 with Sergeant Liberta and other members of the VRT. He left the building when the chemical agent began to affect his breathing, and set up position in apartment 609 in the building across the street at 760 Geary Blvd. Officer Hinds saw a huge fire growing in the windows of apartment 11, heard over the air that the firefighters could not enter while there was an active shooter, and worried that the fire would spread to other buildings. He had heard gunshots and was worried about his fellow officers. He knew the building was loaded with officers and potentially civilians. Officer Hinds heard over the air that there was a "green light" in effect, which he understood to mean that the threat level was so high that the suspect had to be stopped immediately. Over the next 20 minutes, Officer Hinds kept hearing that the "green light" was still in effect. He also kept hearing single gunshots from his position. He also heard over the air that an officer had taken a shot at the suspect, but didn't know whether the suspect was down.

Ten minutes after Sergeant Liberta had fired at the suspect, Officer Hinds radioed that he saw the very far left window of apartment 11 quickly lift up. In response, he was told that the "green light" was still in effect, and that if the suspect opened the window again he should shoot him. Officer Hinds looked through the scope on his high-powered rifle, and Hughes suddenly appeared and lifted the window up. Officer Hinds shot Hughes once in the head. Officer Hinds reloaded the rifle, but saw that the suspect was down.

Hughes was subsequently located dead at the scene from a perforating gunshot wound to the head. A loaded 9mm handgun with 10 rounds of ammunition in the magazine and one cartridge in the chamber was located next to the right side of his body, and a .22 caliber handgun with a casing in the chamber was located on the bed. Numerous shell casings, bullets and unspent cartridges, an empty 9mm magazine, one empty box of 9mm ammunition, one box of .22 caliber ammunition with 24 cartridges, as well as two canisters of pepper spray were located throughout the apartment. CSI determined that Hughes had fired six rounds through the apartment's storage door in the direction of the apartment's hallway beyond; two rounds into the apartment's floor (perforating the ceiling of the apartment below); and four rounds into the apartment's ceiling (perforating the ceiling of the apartment above).

## CONCLUSION

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm. The 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.

In this case, Captain Cherniss acted reasonably when he issued the order to neutralize suspect Dennis Hughes. As detailed above, Captain Cherniss was aware of the following when he issued the order: (1) Hughes was firing random and intermittent shots inside the apartment building at police officers, and setting fires inside of the apartment; that it was unknown whether all residents of the building had been safely evacuated; (2) officers were being exposed to flames, smoke, reduced visibility, and pepper spray; (3) the fires were preventing police officers from protecting people or containing the situation; (4) the gunshots were preventing firefighters from entering the building; and (5) there was a great danger that the fires would spread to other buildings very quickly.

Based on the order issued by Captain Cherniss and on their own observations, Officer Hinds and Sergeant Liberta reasonably believed that their own lives, and the lives of other law enforcement officers, civilian residents and bystanders were in imminent danger of suffering great bodily injury or death at the time they discharged their firearms.

It is our conclusion that Captain Cherniss, Officer Hinds and Sergeant Liberta acted lawfully.

Very truly yours,



George Gascon  
District Attorney

c: Captain Jason Cherniss  
Sergeant Ronald Liberta  
Officer Joshua Hinds