

REPORT ON THE OFFICER-INVOLVED SHOOTING OF
JASON SEYMOUR AT 900-914 CONNECTICUT STREET ON
NOVEMBER 6, 2014



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I. INTRODUCTION

The San Francisco District Attorney's Office (SFDA) has completed its review of the officer-involved shooting of Jason Seymour on November 6, 2014. The SFDA's review was conducted by the office's Independent Investigations Bureau (IIB) and focused exclusively on determining whether criminal charges relating to the officers' conduct are warranted. IIB's review did not examine collateral issues such as officers' compliance with internal SFPD policies and procedures, their training or tactics, or any issues related to civil liability. This report should not be interpreted as expressing any opinions on such non-criminal matters.

On the evening of November 6, 2014, San Francisco Police Officer Eduard Ochoa (Star No. 1317) was working on a plainclothes crime suppression team with Officers David Johnson (Star No. 1002), Carlos Mustafich (Star No. 1774), and Eric Solares (Star No. 2011). The officers were driving in an unmarked Ford Crown Victoria in a public housing neighborhood in Potrero Hill when Officer Mustafich observed two African-American men engaged in what he believed was a narcotics transaction. After alerting the other officers, he and Officer Ochoa got out of the car and split up to approach the men. As Officer Ochoa approached the building, he saw a man later identified as Jason Seymour withdraw into an alcove, reach into the right side of his jacket, and pull out a gun. Officer Ochoa ordered Seymour to show his hands and drop the weapon. When Seymour failed to comply, Officer Ochoa fired his weapon, hitting him in the abdomen.

Seymour survived and eventually pleaded guilty to a felony charge of brandishing a firearm at a police officer, thereby admitting that he "drew or exhibited" a gun in Officer Ochoa's "immediate presence" in a "rude, threatening, or angry" manner, knowing, or having reason to know, that Officer Ochoa was a law enforcement officer executing his duties. The District Attorney, therefore, declines to pursue criminal charges against Officer Ochoa relating to his conduct in this matter because we cannot prove beyond a reasonable doubt that his actions were not reasonably taken in defense of himself and others.

II. FACTUAL SUMMARY

The incident occurred at approximately 7:50 p.m. at 900-914 Connecticut Street, which is public housing building E4 in the Potrero Hill neighborhood. *See Fig. 1, Picture of E4 Building.* Connecticut Street is a one-way street with the direction of traffic sloping up a hill. Building E4 is located midway on the hill, with an open grassy plain uphill from it. The apartments can be accessed through recessed alcoves that are three steps higher than the sidewalk. *See Fig. 2, Close-up of the alcove.*



Fig. 1: Building E4. The yellow arrow shows Officer Mustafich's approach, while the red arrow approximately shows Officer Ochoa's path, before he cut down the hill towards the building. The red circle depicts the alcove where Officer Ochoa encountered Seymour. (Source: Google Maps)



Fig. 2: Close-up of alcove where Officer Ochoa encountered Seymour. (Source: SFPD Crime Scene Investigations (CSI))

On the night of the incident, Officer Johnson drove downhill on Connecticut Avenue, against traffic, to allow officers a better vantage point to see any potential crime activity. As they were driving, Officer Mustafich, who was in the front passenger seat, saw one man in a lit alcove give something to another man in exchange for cash. He immediately notified the other officers. The officers decided that Officers Mustafich and Ochoa should approach the building on foot while Officers Johnson and Solares would drive around to the back of the building to cut off anyone who fled.

Officer Johnson stopped the car to let out Officers Mustafich and Ochoa. Officer Mustafich walked along the sidewalk and headed directly towards the building while Officer Ochoa walked parallel to the building along the grassy hill. *See Fig. 1 and Fig. 3, Picture of E4 building.* While uphill from the building, Officer Ochoa saw four individuals, causing him to radio Officer Johnson to return as there were two more people than they anticipated. Officer Ochoa cut down the hill towards the building where he encountered Seymour by an alcove. By the time Officers Johnson and Solares returned to the scene, Officer Ochoa had already shot Seymour and had him in custody.



Fig. 3: *Picture of E4 building from approximately Office Ochoa's vantage point. (Source: SFPD CSI))*

As detailed below, the primary evidence in this matter are the statements of Officers Ochoa and Mustafich; Seymour's guilty plea admitting that he brandished a gun at Officer Ochoa; a revolver recovered at the scene; the testimony of civilian witnesses; and a building surveillance video.

A. Officer Statements

Officer Ochoa reported that on the date of the incident, he was dressed in plainclothes and patrolling in an unmarked unit with Officers Johnson, Mustafich, and Solares. His police badge was affixed to the right front side of his belt next to his duty weapon, both of which were visible. When they were on the 900 block of Connecticut, Officer Mustafich directed their attention to a man, but when Officer Ochoa looked over, the man “ducked” out of sight. Officers Ochoa and Mustafich decided to get out of the car and investigate further. Officer Mustafich walked on the pathway directly towards the building while Officer Ochoa walked on the hill, parallel to the building. While Officer Ochoa was on the hill looking down at the building, he saw three individuals sitting or lying along the walkway and one person standing in an alcove area. He radioed Officer Johnson to return because there were four individuals present, and Officer Ochoa cut down the hill, towards the building. Officer Ochoa’s attention then turned to one man who emerged from the illuminated alcove area. Officer Ochoa directed his flashlight on him. Once the individual made eye contact with him, the man turned around, opened the gate to an apartment unit door, and stuck his head in the door. As he turned around to leave, the door slammed behind him and locked. He left the alcove saying, “Narcs!” and headed in the direction of Officer Mustafich, who was to Officer Ochoa’s left.

Officer Ochoa then heard Officer Mustafich say, “Police!” and assumed that Officer Mustafich was detaining the man who had said “narcs.” He then saw another man, later identified as Seymour, run to the same locked door that the previous man had opened. Seymour was not able to enter the locked door, and instead moved deeper into the alcove as Officer Ochoa reached the stairs near the alcove. As Officer Ochoa approached the mouth of the alcove with his gun and flashlight out, Seymour was reaching for the right side of his jacket area, the right side of his body bladed away from Officer Ochoa. Based on his training and experience, Officer Ochoa believed Seymour was trying to access a firearm. Officer Ochoa shouted three or four verbal commands, escalating from “Let me see your hands!” to “Stop!” to “Drop it!” but by the time he got to the third or fourth verbal command, Seymour was already producing the firearm and pointing it towards Officer Ochoa. Believing that Seymour was going to shoot him, Officer Ochoa fired what he remembered to be two to five rounds at Seymour.

After Officer Ochoa fired his weapon, Seymour yelled and turned his body away from Officer Ochoa, a black handgun falling from his hand. Seymour then fell to the ground and he crawled a bit away from Officer Ochoa, who yelled to Officer Mustafich about the gun. As Officer Ochoa handcuffed Seymour, Seymour said something to the effect of, “It wasn’t mine.” Officer Ochoa searched Seymour and recalled pulling out several objects which he believed could contain illegal substances. Officer Ochoa then began rendering first aid.

Officer Ochoa reported that he feared that Seymour was going to shoot him in the face because Seymour was at a higher elevation than Officer Ochoa. Because Officer Mustafich was behind Officer Ochoa, Officer Ochoa was also worried that Seymour would next shoot Officer Mustafich.

According to **Officer Mustafich**, as they were driving down Connecticut Avenue, he saw one man give something to another man in exchange for cash in a lit alcove. After he notified the other officers about the suspected drug transaction, they decided that he and Officer Ochoa would approach the men. As Officer Mustafich approached the building, he observed one individual (who was not Seymour) walk toward the back of the building and another walk into an alcove.

The man in the alcove turned his back to the officers. When he turned back around after a few seconds, he appeared to be counting money. Officer Mustafich suspected that this man may have been alerted to their presence because he then began to walk alongside the building. Officer Mustafich cut him off, removed his star from beneath his hoodie, and identified himself by stating, “Police, let me see your hands.” The man responded that he did not do anything and began walking towards Officer Mustafich, who unholstered his weapon and held it in a position of “low ready,” *i.e.*, his finger was not on the gun’s trigger and the gun’s barrel was pointed downwards toward the ground.

At the same time, Officer Mustafich saw Officer Ochoa begin to walk rapidly toward a nearby alcove, while shining his flashlight and saying something similar to “Hey, hands up! Let me see your hands!” Officer Mustafich described Ochoa’s voice as “high-pitched” and said he sounded “scared shitless.”

When Officer Mustafich looked up, he saw Seymour, who was wearing a “light colored” shirt, “tugging” a “dark colored” object from his waistband. When Officer Mustafich saw Seymour “tugging” at a dark object in his waistband, he described being “scared shit[less]” because he was concerned Seymour was going to shoot Officer Ochoa and then potentially turn to him. He then heard shots, and saw Seymour take a few more steps.

Officer Mustafich asked Officer Ochoa if he was okay, but Officer Mustafich was not able to check on him because he was still engaged with the other man. Shortly thereafter, Officer Solares and Johnson arrived and assisted Officer Ochoa.

Officer Solares and **Officer Johnson** arrived within seconds of the shooting. Both officers reported that they saw a black revolver near where Seymour lay. Two other SFPD officers, **Officer Justin Erb** (Star No. 686) and **Officer Brent Cader** (Star No. 704), who arrived shortly after the shooting also described seeing a revolver on the ground near Seymour. A gun located on the ground near Seymour was seized as evidence and later determined to be a fully loaded .38 caliber Arminius revolver. *See*. Fig. 4, *Gun*.

B. Civilian Witness Statements

SFPD investigators interviewed three African-American men who were in the vicinity of the incident. None of the witnesses saw the interaction between Officer Ochoa and Seymour, but they heard parts of it. One witness was the man whom Officer Mustafich detained when Officer Ochoa was engaged with Seymour. That individual heard officers yell, “Freeze! Get down!” and then, “You too!” He then realized that he, too, was the subject of the verbal commands. This witness then heard gunshots, but he did not see what happened because his eyes were focused on Officer Mustafich, who had a gun pointed at him. He reported knowing the plainclothes officers were law enforcement because he saw their badges; because their “voices” were identifiable as law enforcement; and because the officers were Caucasian. This witness did not see a gun on the ground, but explained that when he got down on the ground, he was facing away from Seymour.

The other two men detained by SFPD also reported hearing the officers give commands before they heard gunshots. However, both men said they did not know Seymour to carry a gun. One of them additionally reported that after the shooting, he did not see a gun on the ground and he did not hear the sound of anything falling. The other man reported that he specifically heard an

officer say, “He’s got a gun!” before hearing gunshots, but did not know whom the officer was referring to. This witness, who was friendly with Seymour, admitted he saw a .38 revolver on the ground after the shooting, but denied knowing who owned the gun or ever seeing Seymour with a gun.

C. Physical Evidence

Investigators recovered three bullet fragments and three shell casings from the scene, and doctors found an additional fragment or fragments in Seymour’s abdomen. The gun recovered was a fully loaded Arminius .38 caliber revolver. *See Fig. 4, Gun.* Records from the Automated Firearm System indicate it was made in Germany and imported through Florida, but no further information exists in that database. The revolver was tested for fingerprints, but no usable prints were obtained.

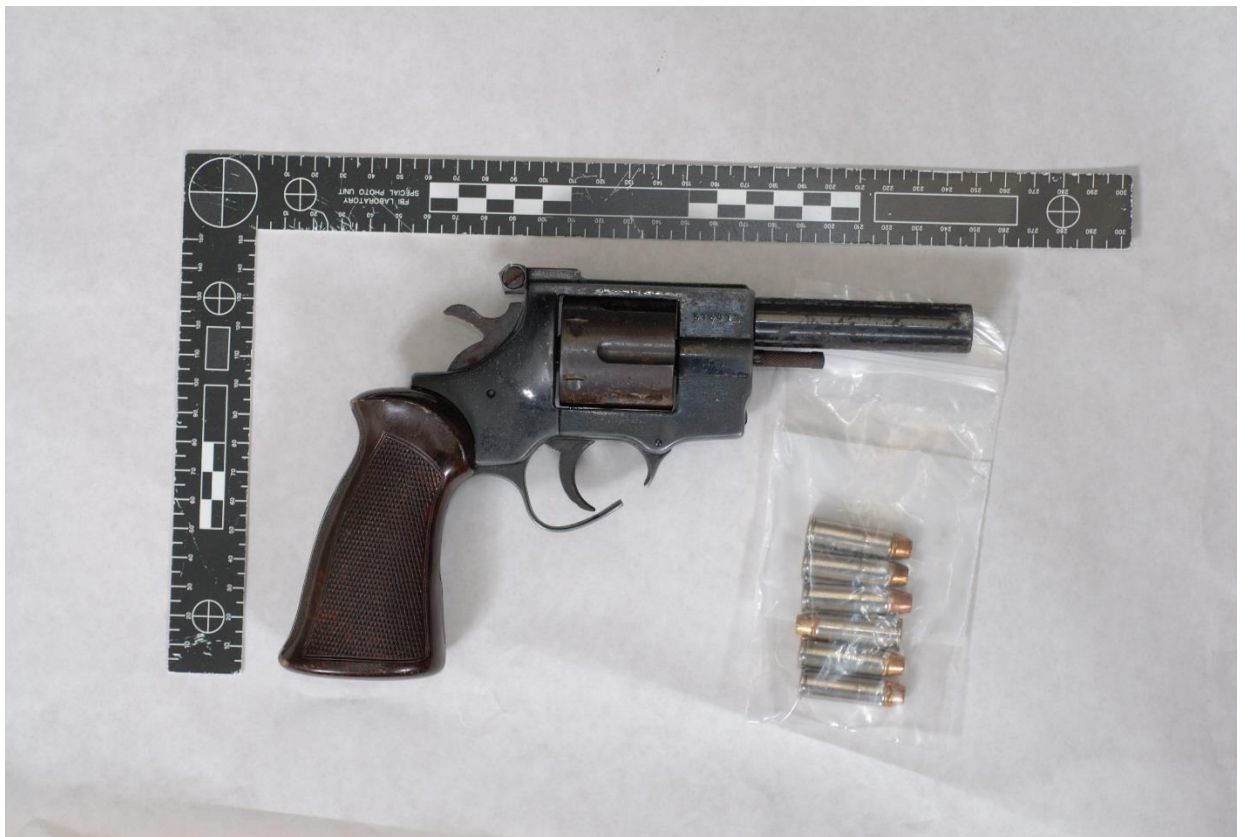


Fig. 4: *Gun recovered at scene. (Source: SFPD CSI)*

Officer Ochoa conducted a search of Seymour and seized several plastic bags of various materials. The Alameda County Sheriff’s Crime Laboratory tested the samples, and determined that they contained the following illicit substances: heroin (.22 grams), methamphetamine (.60 grams), marijuana (.34 grams), and cocaine base (.11 grams).

D. Video

The surveillance footage from a nearby building recorded video, but no audio, and shows a dark-colored Ford Crown Victoria vehicle coming down the street. It stops and what appears to be two males exit the vehicle, one from the rear driver side (presumably, Officer Ochoa) and one from the front passenger side (presumably, Officer Mustafich).¹ Once the officers are several feet from the vehicle, the car proceeds down the street and out of camera view. Both individuals have flashlights illuminated. Officer Mustafich directly approaches the building while Officer Ochoa walks parallel to the building, higher up on the hill. Moments after walking on the path, Officer Mustafich is illuminating someone on the pathway with his flashlight. At this time, Officer Ochoa, at a rushed pace, comes down the hill towards the end of the building where other individuals appear to be. However, because this area is furthest from the camera's view and it is evening, very little can be discerned about the interaction at this point other than the illumination of the flashlights moving randomly in the area. The Crown Victoria comes back up the street in reverse as the driver (presumably, Officer Johnson) quickly exits and runs towards the end of the building on the pathway.

E. Seymour's Plea and Criminal History

Seymour was interviewed at San Francisco General Hospital six days after the shooting. He admitted to using drugs, but he did not admit or deny possessing a gun. Seymour did state, however, that he did not intend to shoot a police officer or anyone else.

On November 12, 2014, Seymour was charged with multiple felonies in connection with this incident. *See People v. Jason Seymour*, (Super. Ct. San Francisco County, 2014, No. 29506). On November 23, 2015, he pled guilty to a felony charge of brandishing a firearm at a police officer in violation of California Penal Code § 417(c). In so pleading, Seymour admitted to each of these four elements: (1) he drew or exhibited a firearm in the immediate presence of Officer Ochoa; (2) he did so in a rude, angry, or threatening manner; (3) when he acted, Officer Ochoa was lawfully performing his duties; and (4) when he acted, he knew, or reasonably should have known, that Officer Ochoa was a peace officer who was performing his duties. He was sentenced to two years in state prison.

Seymour's criminal history includes four prior felony convictions: three convictions for possession of a controlled substance in violation of § 11350(a) of the Health and Safety Code and one conviction for threatening an executive officer in violation of § 69 of the California Penal Code.

III. LEGAL STANDARD

The question presented is whether Officer Ochoa committed a criminal act in shooting Seymour. In order to charge an officer with a crime, the prosecutor must be satisfied that the evidence will show beyond a reasonable doubt that no legal justifications existed for the officer's actions. Here, the relevant legal justification offered by Officer Ochoa is that he was acting in self-defense and/or in defense of others.

¹ The video is not of sufficient quality to identify the officers.

California law permits any individual to use deadly force “[w]hen resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.” Cal. Pen. Code, § 197; *see also Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333. Specifically, self-defense or defense of others serves as a complete defense to murder and to voluntary manslaughter so long as each officer (1) subjectively believed in the need to resort to force in order to avert a threat of imminent and great bodily injury, and (2) his perceptions and actions were objectively reasonable under the circumstances. *See People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *People v. Viramontes* (2001) 93 Cal. App. 4th 1256, 1262.

The subjective prong of the self-defense standard examines the person’s belief in the need to use force. The objective component of self-defense asks what a reasonable person would have done in the officer’s position. The reasonable person is an abstract individual of ordinary mental and physical capacity who is as prudent and careful as any situation would require him to be. *People v. Humphrey* (1996) 13 Cal. 4th at 1083. In making the determination as to whether an officer’s conduct was objectively reasonable, one must consider all the “facts and circumstances . . . in determining whether the defendant acted in a manner in which a reasonable man would act in protecting his own life or bodily safety.” *Id.* Self-defense law “grants a reasonable margin within which one may err on the side of his own safety, and so long as he is found to have done so reasonably, no abuse of the right of self-defense should be found to have occurred.” *People v. Ross* (2007) 155 Cal. App. 4th 1033, 1057.

IV. LEGAL ANALYSIS

In this case, Officer Ochoa stated that he believed that he was in imminent danger of suffering bodily injury because he observed Seymour reaching for the right side of his jacket area and believed Seymour was trying to access a firearm. Officer Ochoa shouted commands for him to drop the weapon. When Seymour failed to obey any of these commands and pulled out a firearm, Officer Ochoa fired his gun because he believed Seymour was going to shoot him in the face, and then shoot Officer Mustafich as well.

The question, then, is whether Officer Ochoa’s belief was objectively reasonable. An important piece of evidence corroborating the reasonableness of Officer Ochoa’s belief is Seymour’s guilty plea. Seymour admitted under oath that he “drew or exhibited” a weapon in a “rude, angry, or threatening manner” in the “immediate presence” of Officer Ochoa who Seymour knew, or reasonably should have known, was performing his duties as an officer.

Officer Ochoa’s account of the shooting is also substantiated by Officer Mustafich, who said he saw Officer Ochoa begin to walk rapidly toward the alcove with his flashlight illuminated; heard Officer Ochoa shout several commands for Seymour to show his hands; saw Seymour emerge from the alcove while pulling a gun from his waistband; and then heard gunshots. Although no civilian witnesses saw Seymour pull a gun from his waistband, several witnesses heard Officer Ochoa shouting a series of commands right before the gunshots were fired. Lastly, Officer Ochoa’s account is also supported by the fact that a revolver was recovered on the ground close to Seymour.

Because Seymour admitted that he brandished his weapon in a “rude, angry, or threatening manner” in Officer Ochoa’s presence knowing that Officer Ochoa was an officer and because his

guilty plea is supported by the evidence, we cannot prove beyond a reasonable doubt that Officer Ochoa's use of deadly force was not an objectively reasonable response. An officer may "reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack. In these circumstances, the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer." *Martinez v. County of Los Angeles* (1996) 47 Cal. App. 4th 334, 345 (quoting *Reynolds v. County of San Diego*, 858 F. Supp. 1064, 1072 (S.D. Cal. 1994)).

V. CONCLUSION

For the reasons stated above, we conclude that we cannot prove beyond a reasonable doubt that Officer Ochoa was not justified in acting in self-defense or defense of others. Therefore, the District Attorney declines to file any criminal charges in this matter.