

CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE DISTRICT ATTORNEY



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February 5, 2016

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 15, 2013 (Report No. 130215371)

Dear Chief Suhr:

The San Francisco District Attorney's Office has completed its review of the March 15, 2013 shooting on Spruce Street near Jackson Street involving San Francisco Police Officer Howard Brown (Star # 1243). After a careful review of this case, we have concluded that there is insufficient evidence to file any criminal charges against Officer Brown. 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

According to the investigation, on March 15, 2013, at approximately 4:28 a.m., suspect Peter Russell tried to flag down a taxicab but was denied a ride when the driver noticed his level of intoxication. Russell then began to vandalize the taxicab by jumping on the roof and kicking the windshield until it cracked. When the driver finally exited the taxicab, Russell jumped into the driver's seat and sped away. Russell then drove extremely recklessly throughout Presidio Heights and in a wooded area on the Presidio. Eventually, Russell drove onto the dead end block of Spruce Street shortly followed by two SFPD marked patrol cars.

The officers stopped their cars nearly parallel to the taxicab and believed they had Russell and the taxicab blocked. Officer Harold Brown (Star #1243) exited the driver's side of his patrol car, left the driver's side door open, and moved towards the rear quarter panel of his car with his gun drawn. The taxicab then backed out of the driveway, turned left and drove directly towards the patrol vehicles. According to Officer Brown, the taxicab slowed down, leading him to believe that Russell was going to stop. Officer Brown said he walked toward the open patrol car door, the taxicab paused, and he pointed his gun at Russell and ordered him to "stop" and "get out of the car." Officer Brown said the taxicab was less than a car length away from him and, although Russell was looking directly at him, Russell showed no signs of complying with the officer's

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WHITE COLLAR CRIME DIVISION

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orders. Officer Brown said he believed Russell had to know that Officer Brown was in harm's way if he continued to drive forward. Nevertheless, Russell accelerated and drove directly toward Officer Brown. The taxicab hit the patrol car's open door and scraped the bumper of a car parked perpendicular to the street several feet from the open door of the patrol car. Officer Brown stated that he believed Russell was trying to strike him with the taxicab, and feared for his life and safety, so he moved to his left toward the parked car while holding his gun with both hands and fired at Russell. According to Officer Brown, as Russell drove past, the side view mirror of the taxicab almost hit him. Officer Brown said he stopped firing after the taxicab passed him and then lost sight of it. Although each of the six shots fired by Officer Brown struck the taxicab, including one which pierced the windshield, none struck Russell. Russell continued to drive recklessly from Spruce Street to a parking lot on Fort Mason, where he was eventually taken into custody on Bay Street by other SFPD officers.

None of the other officers at the scene could see where Officer Brown was standing when he discharged his weapon. However, the description of the events leading to the shooting are corroborated by the statements of his partner, Officer Vincent Padrini (Star # 1222), as well as the two officers in the second patrol car, Officer Leo Lamela (Star # 1105) and Officer Derrick Liang (Star # 1889). Officer Padrini said he exited the patrol car from the passenger side and ran down the sidewalk on the west side of the street toward the taxicab, with his gun drawn but not aimed at Russell. As Officer Padrini approached the taxicab, he commanded Russell to get out of the car. The taxicab then backed out of the spot and began to drive towards the patrol cars. As the taxicab accelerated toward the cars and Officer Brown, Officer Pedrini ran back up the hill, saw the taxicab pass the patrol car, and then heard approximately six gun shots. Officer Pedrini said he believed that Officer Brown would have been run over if he was still standing in the location where Officer Pedrini had last seen him.

Officer Lamela, who had pulled his patrol car to the right side of Spruce Street, said he had exited his car and was standing on the driver's side of his car when he saw the taxicab back out of the parking spot and "gun it" towards the officers. Officer Lamela yelled "Get out of the vehicle!" and "Stop!" Officer Lamela believed he was going to be hit by the taxicab so he jumped behind his patrol car. The taxicab was approximately three feet away from Officer Lamela when it passed him. Officer Lamela then heard a crash and two or three gunshots, but didn't know who fired them.

Officer Liang, who had been in the passenger seat of the patrol car driven by Officer Lamela, said he had exited the car when he saw the taxicab back out of the driveway and turn towards the patrol cars, heard the taxicab's engine rev, saw the taxicab accelerate forward, and heard Officer Lamela yell: "Watch Out!" Officer Liang then heard a loud crash followed by the sound of gun fire but did not see who fired the shots or the location of the other officers.

Video recovered from the taxicab's cameras, which record both the interior of the taxicab and the forward view of the exterior of the taxicab, captured the events beginning with the moment the victim taxicab driver encountered Russell through the time of Russell's arrest. With respect to the moments before, during and after the shots were fired, the video shows the following: At 4:48:06 the taxicab completes a 3-point turn is facing both patrol cars, with SFPD stars visible on both of the patrol cars open drivers' side car doors. At 4:48:08 the taxicab begins to accelerate rapidly toward the patrol car closest to the west side of the street and the car parked perpendicularly to the curb on the west side of the street. The driver's side door of the patrol car is open and fills much

of the space between the side of the patrol car and the rear bumper of the parked car. A person (who we know to be Officer Brown) can be seen standing partially behind the rear bumper of the parked car and partially in the gap between the door of the patrol car and the bumper of the parked car. At 4:48:09 Officer Brown can be seen moving from the area by the open patrol car door towards the parked car and then out of view behind driver's side of the parked car as the taxicab is about a car length away. At 4:48:10, the taxicab momentarily pauses, and then at 4:48:11 Officer Brown can be heard yelling "Get out of the car!" At 4:48:12, the taxicab is seen crashing into the open door of the patrol car at a high rate of speed at the same time that Officer Brown's hand can be seen moving into shooting position by the passenger side of the taxicab, very close to the windshield. At 4:48:12, as the taxicab passes between the stopped patrol car and the parked car, numerous gunshots ring out in rapid succession, with the last shot being fired at 4:48:14.

There appear to be two significant inconsistencies between Officer Brown's account of the events and the physical evidence, including bullet trajectory evidence and the depiction of events captured by the taxicab's digital video camera. The first inconsistency concerns Officer Brown's position during the shooting. In his interview, Officer Brown told investigators that the stolen taxicab driven by Russell advanced towards him as he stood near the rear of his patrol vehicle. Officer Brown recounted that as the taxicab advanced, and then paused, he moved from the rear area of his patrol car to a position up towards the open door of the patrol car. Officer Brown said he thought the taxicab was going to stop since it was essentially blocked in, but instead he heard the engine rev and the tires squeal and saw the taxicab accelerate forward, causing him to start firing his weapon as he was moving to his left towards the parked car to try to get out of the way of the oncoming vehicle. Video from the taxicab appears to indicate that in fact Officer Brown had already moved away from his patrol vehicle to a position just behind the rear of the parked car before the taxicab accelerated forward and he began firing. In the video, it appears that Officer Brown fired all shots from a relatively stationary position near the rear of the parked car.

The second inconsistency concerns when Officer Brown stopped firing. In his interview, Officer Brown stated he stopped firing after the taxicab passed him and he was no longer in danger of being struck by the vehicle. Both the video from the taxicab and the locations and apparent trajectories of bullet holes in the taxicab indicate that Officer Brown fired several shots after the taxicab had passed him. According to the crime scene investigation (CSI) report, the first shot pierced the windshield at a steep angle, indicating that Officer Brown fired the first shot from a position near the windshield on the passenger side of the taxicab as it sped by. This is corroborated by the video, which shows Officer Brown's hand come into view very close to the windshield on the passenger side of the taxicab as the first shot rang out. According to the CSI report, the second bullet struck the rear passenger door just below the window, the third bullet struck the area above the rear passenger side panel above the wheel well, the fourth bullet struck the rear passenger side panel towards the top of the trunk area, the fifth bullet struck the bottom right portion of the trunk lid, and the final bullet struck the bumper of the taxicab. At a minimum, these last two bullets, which struck the rear of the taxicab, were fired after the taxicab had already passed Officer Brown.

## ANALYSIS AND 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. The statute provides that the officer need not retreat or end his effort to make an arrest because of the 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.

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, suspect Peter Russell accelerated the stolen taxicab and sped towards two patrol cars in an effort to crash through the blockade and evade arrest. Officer Brown, who was located in the general path of the taxicab, stated that he was sure Russell saw him, feared Russell was trying to run him over, and discharged his weapon in order to stop the threat to this life. Officer Brown stated that he stopped firing as soon as the taxicab had passed him and he was no longer in danger of being struck. Thus, the questions to be decided here are: (1) whether Officer Brown was reasonably in fear of his safety when he began to fire his weapon at Russell; and (2) whether Officer Brown stopped firing his weapon once the threat to his safety was over. Although Officer Lamela and possibly other officers were also in danger of being struck by the taxicab, Officer Brown was not aware of this fact and did not state that he fired in defense of any of the other officers at the scene. Officer Brown also did not state that he fired to stop Russell from escaping. This analysis will therefore be limited to determining whether Officer Brown's use of deadly force was justified based on the theory of self-defense.

The video evidence alone establishes that it was reasonable for Officer Brown to fear for his safety when he began firing at the taxicab. It shows that Officer Brown would have been in harm's way as the taxicab accelerated quickly forward whether he was moving from behind the open patrol car door towards the perpendicularly parked car to the left, as he stated, or standing on the driver's side of the parked car towards the rear bumper, as the video shows. Thus, Officer Brown's incorrect recollection of his exact position in the street does not change the analysis. Although Officer Brown was able to move out of the way when Russell drove toward him, the close proximity of Russell's vehicle to the officer placed the officer in danger of suffering serious injury or death. Accordingly, Officer Brown reasonably concluded that Russell was posing a threat of

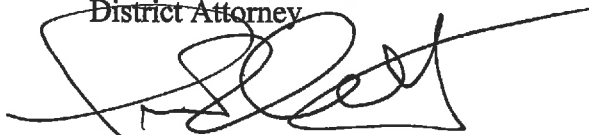
serious physical harm to him, and was justified when he started firing at Russell in order to stop the threat.

The more difficult question is whether Officer Brown stopped firing his weapon once a reasonable officer in the same situation would have perceived that the threat to his safety had ended. As described earlier, the video evidence as well as the location and trajectory of the bullets which struck the taxicab indicate that Officer Brown continued to fire his weapon at the taxicab after it passed him and he was no longer in danger. Nonetheless, the audio portion of the taxicab's video indicates that all six rounds were fired within two seconds. Given the high stress situation facing Officer Brown as the taxicab came speeding in his direction, and the fact that all six shots were fired in less than two seconds, it is unlikely that a jury would find that Officer Brown's conduct was criminal.

For these reasons, we have concluded that there is insufficient evidence to file any criminal charges against Officer Brown. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

George Gascón  
District Attorney



June Cravett  
Assistant Chief District Attorney

cc: Lieutenant Toney Chaplin  
Officer Howard Brown