

**REPORT ON THE OFFICER-INVOLVED SHOOTING OF
LUIS GONGORA PAT**



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I. INTRODUCTION

The San Francisco District Attorney's Office (SFDA) has completed its review of the officer-involved shooting death of Luis Gongora Pat¹ at Shotwell Street between 18th and 19th Streets in San Francisco, California, on the morning of April 7, 2016. The SFDA's Independent Investigations Bureau (IIB) reviewed all evidence collected by the San Francisco Police Department (SFPD) and SFDA, and also conducted its own, independent follow-up investigation. IIB's review focused exclusively on the question of whether the involved officers committed a crime. IIB did not examine collateral issues such as whether the officers complied with internal SFPD policies and procedures, received adequate training, used competent tactics, or any other issues that may give rise to civil liability. This report should not be interpreted as expressing any opinions on non-criminal matters.

On April 7, 2016, Officer Michael Mellone (Star No. 4249), Sergeant Nathaniel Steger (Star No. 2252), and Officer Esteban Perez (Star No. 4183) responded to a 911 call from a homeless outreach advocate about a man, later identified as Gongora, waving a large knife on Shotwell Street between 18th and 19th Streets. At approximately 10:04 a.m., the officers found Gongora sitting against a Pacific Gas and Electric Company ("PG&E") building on Shotwell Street with a large kitchen knife.

The available evidence indicates the officers ordered Gongora to drop the knife. He initially let go of the knife but then quickly picked it back up. The officers repeatedly ordered Gongora to drop the knife in both English and Spanish. When Gongora refused, Officer Mellone hit Gongora with beanbag rounds in an unsuccessful attempt to get him to drop the weapon. Rather than comply, Gongora rose to his feet and moved approximately 23 feet toward Sergeant Steger with the knife in hand. Sergeant Steger and Officer Mellone fired a total of seven gunshots, fatally wounding Gongora. The officers said they shot Gongora in self-defense and/or in defense of others.

Before bringing criminal charges, it is a prosecutor's duty to evaluate all of the evidence and determine if it shows beyond a reasonable doubt the potential defendant committed a crime. Here, the evidence would have to show beyond a reasonable doubt that the shooting was *not* legitimately in self-defense and that the officers' belief in the need to defend themselves and/or others was objectively *unreasonable*. The weight of the evidence here indicates Gongora moved toward Sergeant Steger armed with the knife and thereby presented a danger of serious injury or death. Given this evidence, we cannot meet the burden of showing beyond a reasonable doubt the officers' belief that they needed to defend themselves was unreasonable and that they were unjustified in shooting Gongora. Accordingly, the District Attorney declines to file criminal charges against either Sergeant Steger or Officer Mellone.

II. DESCRIPTION OF SCENE

The incident occurred on the east side of Shotwell Street next to a commercial PG&E building approximately 133 feet north from the corner of 19th Street and Shotwell. This part of Shotwell Street is a two-way street that runs in a north-south direction.

¹ For consistency, this Report refers to Mr. Gongora Pat as "Gongora."



Figure 1. Satellite map of Shotwell Street near 19th Street. The yellow circle depicts approximately where Gongora was seated or squatting when the officers first approached him.



Figure 2. The PG&E building that Gongora was seated against and the school crossing sign near where he ultimately fell.

III. SUMMARY OF KEY EVIDENCE

A. THE EVENTS BEFORE THE SHOOTING

On the morning of April 7, 2016, Angela D. and Travis R., members of the San Francisco Homeless Outreach Team (“HOT Team”)², responded to a complaint of a crying baby at a homeless encampment on Shotwell Street. The two HOT Team members did not find a crying baby but did speak with Stephanie G. about an unrelated issue. While at the encampment, the HOT Team members saw a male wearing a red shirt and jeans, later identified as Gongora, standing on Shotwell Street.

Angela D. thought Gongora appeared to be “altered” and was whacking a “really big knife” at trees and garbage cans. Travis R. saw Gongora waving the knife in his right hand and thought Gongora appeared to be under the influence of some type of substance. Because Angela D. felt Gongora “was definitely making sure that people [saw] that he was waving around a very large knife” and generally had “an aggressive energy,” she decided to call the police. As an advocate for the homeless, she was generally reluctant to call the police and had only done so approximately five times during her 10-year career as a HOT Team member.

According to SFPD records, Angela D. called 911 at 9:57 a.m. to report a man wearing a red soccer shirt waving a large kitchen knife. During that call, Angela D. described Gongora as “altered”, “intimidating”, and “kinda scary looking.” She said the knife had a 10- to 12-inch blade and that Gongora was not waving it at anyone in particular.

SFPD dispatch relayed Angela D.’s description to officers and noted that the person with the knife may be mentally disturbed. Video from a security camera located on Shotwell Street (hereinafter referred to as “the Video”) captured Gongora walking south down Shotwell waving what appears to be a knife.

At approximately 10:03 a.m., Officer Mellone, Sergeant Steger, and Officer Perez, in that order, drove down Shotwell Street in three marked SFPD patrol cars in response to the call. By all accounts, Gongora was sitting or squatting against the PG&E building located on Shotwell Street when the officers first arrived. Each of the officers was wearing a standard SFPD uniform with a badge displayed on his chest.

B. OFFICER STATEMENTS

1. THE OFFICERS

Officer Mellone and Sergeant Steger encountered Gongora and ordered him to drop the knife in English. When Gongora did not do so, Officer Mellone tried using less-lethal force as Officer Perez approached and made commands in Spanish. Each officer stated that Gongora moved toward Sergeant Steger with the knife in hand, putting Sergeant Steger’s life in danger and

² The HOT Team is a homeless advocacy collaboration between the City and County of San Francisco and nonprofit organizations that seeks to “engage and stabilize the most vulnerable and at-risk homeless individuals and to help prevent the harmful effects of homelessness.” See <http://www.sfhealthnetwork.org/sfhot/>.

causing the officers to use deadly force. Their accounts, beginning with their approach on Gongora, are summarized below.

i. OFFICER MELLONE

Officer Mellone first saw Gongora sitting against the PG&E building and holding a knife in his right hand. Officer Mellone approached him with an Extended Range Impact Weapon (ERIW), which is an orange shotgun that deploys a less-than-lethal beanbag projectile, and ordered Gongora to get on the ground. Gongora let go of the knife, leading Officer Mellone to believe he would be able to “prone him out on the ground” and end the incident quickly. But Gongora picked the knife back up, causing Officer Mellone to be concerned. Officer Mellone also considered it significant and unusual that the people who called 911 were advocates for the homeless.

Sergeant Steger joined Officer Mellone. Officer Mellone again ordered Gongora to drop the knife as they slowly approached. When Gongora did not comply, Officer Mellone fired a beanbag from his ERIW at Gongora’s right arm hoping that he would drop the knife. Gongora seemed unaffected by the round and did not drop the knife. Officer Mellone fired two more ERIW rounds while the officers again ordered him to drop the knife. Gongora did not react, and Officer Mellone said he was stunned by how ineffective the beanbags were. As Officer Mellone fired his fourth round, Gongora stood up from his position against the building and ran towards Sergeant Steger, who was standing closer to the street, approximately six feet to Mellone’s right.

Gongora fixated on Sergeant Steger with a “thousand-mile stare” as he rapidly advanced with the knife pointing forward, shortening the distance by about half or approximately 10 feet. Officer Mellone stated, “I thought he [wa]s gonna kill Sergeant Steger... There was no question in my mind. There was nobody else in the area that he was charging at, other than him.” Officer Mellone thought it was odd that Gongora focused on Sergeant Steger because he was not the one firing the ERIW. Officer Mellone backed away from Gongora and transitioned the ERIW to his left hand, drew his handgun with his right hand, and fired several shots.

Gongora fell to the ground and landed on his back with the knife still in his right hand. Officer Mellone immediately made a radio call indicating shots had been fired. Throughout the incident, Officer Mellone never heard Gongora say anything.

ii. SERGEANT STEGER

Sergeant Steger first saw Gongora sitting on the pavement against the PG&E building while holding a large knife with his right hand. Sergeant Steger caught up with Officer Mellone, who was standing to his left and closer to the building line. He alerted Officer Mellone about the knife. Sergeant Steger drew his handgun to provide lethal cover as they slowly advanced towards Gongora. Officer Mellone told Gongora to either “lay on the ground” or “drop the knife.”

Sergeant Steger saw Gongora open his hand and release his grasp of the knife. Gongora then quickly grabbed it again and looked toward the officers. Sergeant Steger became concerned and thought, “Why is he grabbing this knife again?” He heard Officer Mellone fire a beanbag round and then saw Gongora starting to get up. Gongora still held onto the knife, so Officer Mellone fired a second round from about fifteen feet away. Gongora did not drop the knife and showed no apparent signs of pain despite being hit with the beanbags.

Gongora stood up and took a step or two in a northwest direction -- in the officers' general direction but not directly toward them. Gongora then turned to his right and ran toward Sergeant Steger with the knife in his right hand. Gongora had the knife by his side and appeared to be "getting ready to slash." Because he was "scared" that Gongora was going to kill him, Sergeant Steger fired his gun at Gongora's torso as Gongora got within approximately eight to ten feet. Gongora continued to advance toward him, so Sergeant Steger backed away and fired additional rounds, including a shot to Gongora's head. Sergeant Steger felt he had no choice but to use deadly force.

Gongora fell to the ground and landed on his back with the knife in his right hand. Sergeant Steger said he was in shock by what had just happened. Gongora was still breathing and holding the knife, so Sergeant Steger stepped on Gongora's wrist as a precaution. Officer Perez approached and asked if he should remove the knife from Gongora's hand. Sgt. Steger said yes, and Officer Perez removed the knife from Gongora's hand.

The incident unfolded very quickly. Sergeant Steger estimated the entire episode, from Officer Mellone issuing verbal commands to Sergeant Steger firing his gun lasted between ten to fifteen seconds. Gongora did not say anything during the incident.

iii. OFFICER PEREZ

Officer Perez was the last of the three officers to arrive on Shotwell Street. As he walked toward the PG&E building, he saw Officer Mellone with an ERIW. Officer Mellone yelled at Gongora to lay on the ground. Gongora was sitting on the sidewalk with his back against the PG&E building and a big knife in his right hand. Gongora held onto the knife. Officer Mellone fired a single beanbag round.

Gongora appeared to be Hispanic, so Officer Perez repeatedly yelled in Spanish, "Drop the knife!" and, "Let it go!" When Gongora did not drop it, Officer Mellone fired additional beanbag rounds. Officer Perez believed Gongora was mentally unstable because he was not reacting to the beanbags or to the repeated commands to drop the knife.

As Officer Mellone fired a fourth beanbag round, Gongora got up, took two steps, and ran straight toward Sergeant Steger, all in one swift motion. Gongora had the knife raised in his right hand as he advanced. Officer Perez estimated Gongora was six to eight feet from Sergeant Steger, who was in the process of retreating, when the sergeant fired his handgun. Officer Perez did not draw his weapon because he was standing on Shotwell Street and the other officers were in his line of fire.

Gongora fell to the ground after he was shot, still clenching the knife in his right hand. Sergeant Steger stepped on Gongora's right wrist while Officer Perez put on gloves. Officer Perez removed the knife from Gongora's hand and tossed it approximately four to five feet away.

C. CIVILIAN WITNESSES

This incident occurred on a Thursday morning in a residential and commercial area, and at least thirteen civilians witnessed some of the incident or its aftermath. Their accounts are summarized

below.³ Although there were some variances, many of these witnesses broadly corroborated the officers' accounts insofar as: (1) the officers gave verbal commands; (2) the officers used less-than-lethal force before resorting to lethal force; and (3) Gongora, armed with a knife, moved toward Sergeant Steger. On this last point, eleven of the witnesses saw the shooting, and eight of them reported Gongora moved towards the officers. Of the remaining three witnesses, one said Gongora made an "abrupt turn" towards the officers while holding an object in his hand; the other two provided substantially different accounts which, as discussed further in Section I below, are not supported by the physical evidence. None of the civilian witnesses said they knew Officer Mellone, Sergeant Steger, or Officer Perez or spoke to them after the incident.

1. THE PG&E EMPLOYEES

Three PG&E employees, Victoria M., Mel W., and Agnes C., witnessed the shooting from the second floor above Shotwell Street. These witnesses described a sequence of events where Gongora got up and move quickly toward the utility pole near where Sergeant Steger was standing. Each said he was holding a knife or an object in his hand.

All three were working at their desks near the second-floor windows that overlook the sidewalk when they heard someone yelling commands. They got up and moved toward the windows and watched the incident from above. The windows were closed but they could hear the incident through the glass. To their knowledge, no one else from PG&E saw the incident. None of them spoke to the shooting officers or went down to the street immediately following the shooting.



Figure 3. Photographs from 2nd floor window of PG&E building showing Mel W.'s viewpoint looking down and to the right. (Source: SFDA)

³ Investigators also interviewed numerous other persons who heard but did not see the incident or did not add material information beyond what was captured by the Video. Their accounts are not included in this report.



*Figure 4. Photograph from 2nd floor window of PG&E building showing Victoria M's viewpoint.
(Source: SFDA)*

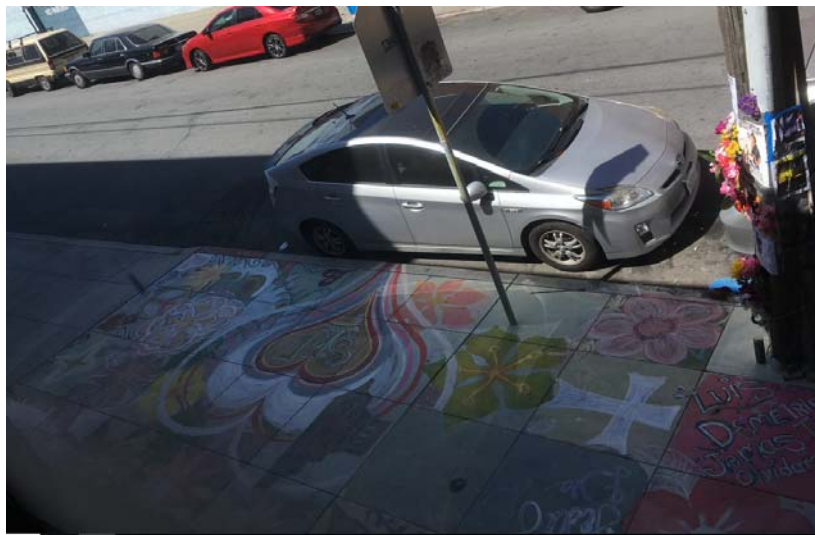


Figure 5. Photograph depicting Agnes C.'s viewpoint looking down and to the left. (Source: SFDA).

a. VICTORIA M.

Victoria M., an employee of PG&E for 26 years, heard someone yelling, “Put it down! Put it down!” She looked down from the window and saw an officer fire an orange shotgun two or three times toward the building. Another officer was pointing a handgun and yelling similar commands. The officer with the shotgun was closer to the building and the other officer was standing near the utility pole on the sidewalk. The two officers were approximately four feet from each other.

At first, she could not see at whom the officer with the shotgun was shooting because Gongora was sitting underneath the window near the rollup door. She later saw Gongora get up from a seated or squatting position and “leap” toward the officers with a “big pointy knife” raised in his left hand. The knife was pointed upward at a height between Gongora’s waist and shoulder. Gongora was approximately six feet from the officer with the handgun when he was shot. Victoria M. thought to herself, “What is he [Gongora] doing?” as Gongora moved toward the officer. She speculated that Gongora wanted to die or was on drugs.

Gongora had the knife in hand as he moved toward the officer, who was standing by the utility pole. She heard the officer yell, “Put it down,” and then saw him fire his weapon two or three times. Gongora fell to the ground still clutching the knife.

Victoria M. was shocked by what she saw and said, “Oh my God, they shot him.” She briefly left the window but returned to see the officers standing over Gongora, who was bleeding. Victoria M. stated the entire incident happened very quickly.

She recognized Gongora from the area and had never felt threatened by him. She added: “The media comes and people are still saying that, uh, the officers shot him, they have witnesses that say he didn’t have a weapon but he did have a weapon and he was leaping towards them and I don’t understand why these people are lying.”

b. AGNES C.

Agnes C. went to the window after she heard someone shout “put it down” or “don’t move.” She saw an officer with an orange shotgun and another officer holding an object in his hand. The officers were standing near the middle of the sidewalk, closer to the street. She could not see with whom the officers were interacting with, so she sat back down at her desk, which was a few steps away from the window.

She heard the officers repeat the same commands, so she returned to the window. The officers ordered Gongora to drop the knife. She heard the sound of gunshots. (Agnes C. did not differentiate between the beanbags and the gunshots.) She saw Gongora stand up and move diagonally toward a utility pole near one of the officers. He was pointing a knife outward in his left hand.

As Gongora moved toward the officers, Agnes C. heard additional gunshots. Gongora seemed unaffected by the rounds. She could not understand why Gongora was going toward the officer with a knife and said, “I was thinking, ‘Gee, how come this – bullet or whatever doesn’t do anything to him because he keep[s] on running.’” Gongora continued forward but she did not see Gongora fall because she turned her head away. When she looked back, he was on his back with his head closer to the street near a parked vehicle. Agnes C. recalled hearing five gunshots.

c. MEL. W.

Mel W. first became aware of the situation when he heard someone say, “Lay down,” or, “Get on the ground,” twice. He got up from his desk and looked out the window but couldn’t see at whom the officer was yelling so he sat back down. The officers kept yelling something similar to “Drop it.” Moments later, Mel W. heard the sound of two light gunshots, similar to the sound of a pellet gun. He got up from his desk and went to the window where he saw two officers

standing on the sidewalk, one near the utility pole and one with a “long gun” standing closer to the building.

Mel W. did not see Gongora until Gongora stood up with an object in his hand. Gongora started moving toward the utility pole where an officer was standing. He was holding an object raised in his hand as he advanced. Mel W. heard live gunshots being fired. Gongora stumbled or staggered toward the pole at a pace that “wasn’t fast, wasn’t slow.” Gongora was about twelve feet away from the officer when he was first shot with lethal rounds.

Gongora fell backwards near the traffic sign. Mel W. saw a knife lying next to Gongora’s body. Gongora never moved away from the officers at any point during the incident.

2. THE HOT TEAM

After calling 911 and directing the officers to the south side of Shotwell Street, Angela D. and Travis R. double parked their Honda Civic near the intersection of Shotwell and 19th Street, facing 19th Street. Angela D. was the driver and Travis R. sat in the front passenger seat.

a. TRAVIS R.

Travis R. turned around in the seat, sitting on his knees, and watched through the Civic’s back window. Three officers, two on the sidewalk and the third on the street behind the others, approached Gongora. He could not see Gongora when Gongora was sitting on the sidewalk because a parked vehicle blocked his view.



Figure 6. Photograph of Shotwell Street looking north. (Source: SFPD Photo Unit)

Travis R. saw two officers approach Gongora. He heard the officers say something but he could not decipher the exact words because the car windows were closed. Travis R. heard a shotgun being racked and within a few seconds saw the officer with the shotgun fire three beanbags at Gongora. The bean bags seemed to hit Gongora in the chest area but Travis R. could not tell for certain. After being hit by the beanbags, Gongora stood up and moved forward and to the right.

Gongora was “flailing about as he was kind of running” toward an officer. He moved at a quick, steady pace, closing the distance from 15 feet to about half of that in a matter of seconds. Gongora never changed direction once he started moving.

Gongora went directly at the officer with the knife and the officer fired his handgun in response. Gongora spun around and fell onto his back with the knife in hand. Travis R. estimated that ten to twelve seconds elapsed between the initial verbal commands and gunshots.

b. ANGELA D.

Angela D., the driver, parked the Civic and watched the officers approach Gongora through her rearview mirror. She heard the officers tell Gongora to “drop the knife!” when they first arrived. She heard shots and said, “Oh my God! They’re fucking shooting him!” She realized later that the initial shots were beanbags. Seconds later, she saw Gongora “swirling” around with the knife in his right hand and raised by his head. She thought Gongora might have been trying to regain his balance after being shot with the beanbags. Gongora had the knife in a “lunging position” as he moved toward the officers who were standing approximately six to eight feet away. Within seconds, she heard five to seven gunshots being fired in quick succession. She added, “It’s frustrating because you know I mean whether he spoke English or not you know universal common sense is drop the frickin’ knife.” She heard four or five simultaneous shots before Gongora collapsed. She did not see Sergeant Steger point or shoot his weapon.

During a follow-up interview more than a year after the incident, Angela D. provided a similar account but was inconsistent from her initial account in certain respects, including that Gongora fell after the first gunshot but the officers kept shooting him as he laid on the sidewalk. She also said she saw Gongora’s body bounce off the ground with every gunshot. She added that she has been traumatized by this incident and feels responsible because she was the one who called 911.

3. RESIDENTS ACROSS THE STREET

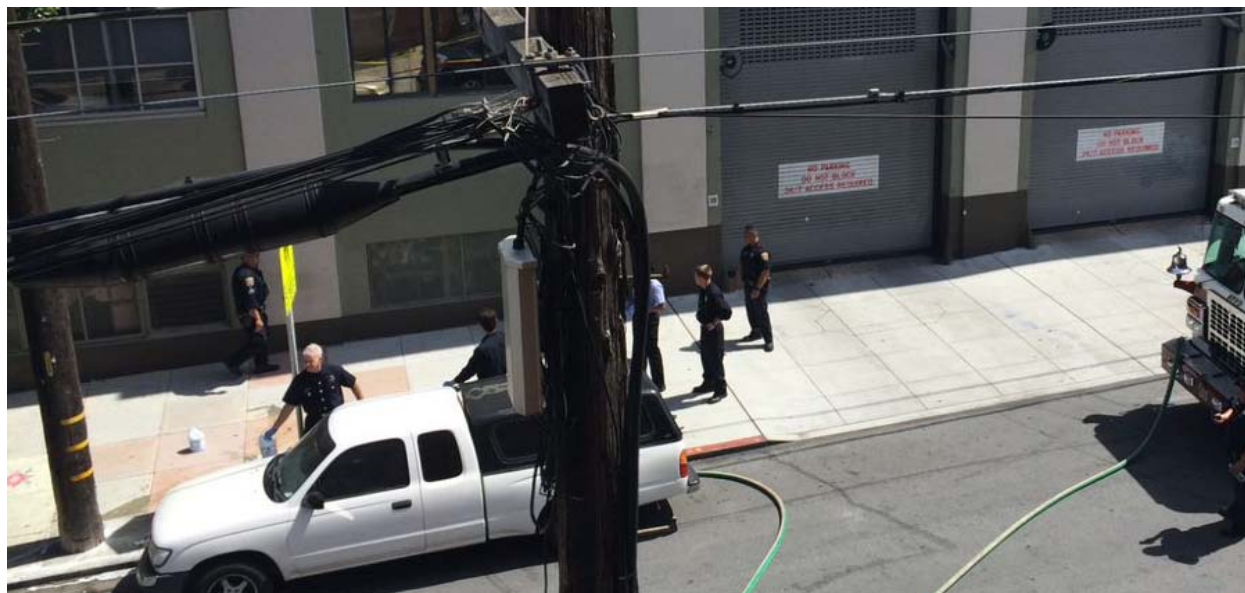


Figure 7: Photo from Smith P.’s window. (Source: SFDA via Smith P.)

a. ROBERT W. AND KAYLEE W.



Figure 8. Photo from Robert W.'s home. (Source: SFPD via Robert W.)

Robert W. was in the kitchen of his home with his wife, Kaylee W., when he heard yelling from Shotwell Street. He looked outside his second story window and saw three police officers approaching Gongora, whom he knew from the neighborhood, sitting against the PG&E building.

One officer had an orange shotgun and was standing closer to the PG&E building while an officer with a handgun was standing closer to the street. Officer Mellone shouted several verbal commands at Gongora to “get on the ground!” When Gongora failed to comply, the officer with the shotgun shot him three to four times with beanbags while Gongora was still seated. Gongora turned and faced away from the officers as the beanbags hit Gongora’s back. The officer with the handgun shouted something similar to, “Drop it!” or, “Put it down!”

Gongora stood up after being shot with the beanbags, faced the officers, and put his arms out while holding what appeared to be a “ping pong paddle” or a “square piece of wood” in his hand. The officers ordered him to drop it. Robert W. could not remember which hand held the object. Gongora appeared angry and made an “abrupt turn” toward the officers. The officer with the handgun shot Gongora. When asked if he would have felt threatened by Gongora, Robert W. stated, “I probably would.”

Robert W. estimated the officers were approximately twenty feet away when they initiated verbal commands before advancing toward Gongora. The distance had closed to about twelve to fifteen feet when the officers used their firearms.

Kaylee W., Robert W.’s wife, did not see the shooting. She had just finished eating breakfast and was sitting in the living room watching TV with her headphones on when she heard popping

noises that sounded like fireworks. She saw her husband get up, look outside the window, and become upset. When she got up and looked out the window, she saw Gongora, whom she knew from the neighborhood, on the ground. She saw Gongora laying on his back and holding an item “still in his left hand when he – after he’d been shot...It just looked like something kind of black and rectangular.”

b. SMITH P.

Smith P. lives on Shotwell Street across the street from the incident. She was sitting at her kitchen table, with the window open, when she heard someone yell, “Get on the ground! Get on the ground!” Smith P. walked to the window and saw two officers, one with a long gun, across Shotwell Street. The officers were between the tree and the pole and were slowly advancing toward a homeless man whom she knew from the neighborhood (Gongora). Gongora was sitting on the ground against the PG&E door with his knees up and his head in his arms. Gongora was visibly shaking as the officers approached him.

She believed the officers never moved closer to Gongora than between the tree and the utility pole. The only verbal command she heard was, “Get on the ground!” According to Smith P., the officer with the long gun shot Gongora with a non-bullet projectile. She never heard anyone say, “Drop your weapon!”

The other officer fired his pistol approximately three to five times and she saw blood spurting from Gongora’s body. Smith P. was unsure whether Gongora was standing when the officer initially fired his handgun but saw blood spurting from his back as he was shot. She never saw Gongora facing the officers or moving or charging at them: “He ran away from them, he didn’t run towards them.” She did not view Gongora as a threat.

Gongora was stumbling as he headed diagonally towards the street. When asked if Gongora was advancing towards the officers, Smith P. said, “I would not say under any circumstances he was ever going toward the officers.” She believed Gongora was getting up and heading toward the street, but turned towards the school crossing sign as his body was out of control from being shot.

While Gongora was moving, Smith P. saw a knife drop from Gongora’s body. When initially interviewed immediately following the incident, she stated “I didn’t see anything, um, until he was shot and--and that knife seemed to drop from him. It wasn’t clear if he had it in his hands or it was on his body.” She stated that “by the time Luis fell...the police were at that telephone pole that’s now an altar.” She lost sight of Gongora after he fell behind a parked vehicle.

4. PERSONS AT THE TENTS

Investigators interviewed three witnesses who viewed the incident from a cluster of tents just north of the shooting site on Shotwell Street.⁴ These three witnesses said Gongora did not have a

⁴ An individual who identified himself as Carlos Guevara provided a statement to the media following the incident. Guevara said that he saw the incident from a distance and did not see Gongora lunge at the officers. He also said that he saw Gongora hitting the knife against a tree before the officers arrived. The SFPD and SFDA repeatedly attempted to locate Mr. Guevara, who is transient, but were unsuccessful.

knife as he got up and moved toward the school sign. All three persons knew Gongora from the homeless encampments.



*Figure 9: View from the tents on Shotwell Street looking south toward the scene of incident.
(Source: SFPD Photo Unit).*

a. JOHN V.

John V. was standing inside the entrance of his tent when he saw three police vehicles drive up. An officer approached and asked if he saw a guy with a knife. He replied he did not. The officer noticed Gongora sitting by the PG&E building with a knife. The officers told Gongora to get down and to drop the knife, but, “the dude didn’t wanna give up the knife.” John V. said that Gongora spoke Spanish, and that he understood some English but not well enough to hold a conversation.⁵

John V. saw Gongora get up, after which the officer with the shotgun shot him twice. The shotgun rounds struck Gongora in the lower hip and ribcage area, causing him to walk in circles by the utility pole. As he did so, another officer with a handgun shot him two or three times. Gongora fell, at which point John V. saw a knife fall from Gongora’s lower hip area. John V. said this was the first time he had seen the knife (notwithstanding his earlier comment) and Gongora was not holding the knife when he was shot. John V. never saw Gongora charging at the officers before being shot.

b. STEPHANIE G.

Stephanie G. was inside her tent speaking to a homeless advocate when she heard a police siren followed by a shot. After the third shot, she looked outside and saw Gongora, whom she knew from living in the same encampment, walking toward her tent with three officers standing behind him. One officer had an orange and black shotgun and another had a revolver pointed at Gongora.

⁵ John V. later told the media that Gongora did not speak English.

Stephanie G. saw Gongora was walking in circles heading in the direction of where her tent was located. She heard an officer yell “stop” before the officers fired an unidentified number of shots and Gongora fell to the ground. She never saw Gongora with any type of weapon.

During a subsequent interview, Stephanie G. said she became aware the police were present when she heard a quick burst of a siren, similar to when the police pull someone over. She was still inside her tent when she heard the police say “stop, get on the ground” followed by what she believed were beanbag shots. She heard John V. yell, “no” so she got out of the tent and saw Gongora squatting near the curb next to the street sign. Stephanie G. heard two or so beanbags discharge. When she got out of the tent, she yelled for Gongora to “stop” in Spanish and told the officers Gongora didn’t understand English. The officers were all yelling at Gongora.

Gongora stood up for maybe a second and turned around. She believed the officers got scared by Gongora standing up. Gongora got shot with a bullet the first time, and he fell to his knees when the rest of the shots occurred. She was focused on the officer next to Gongora and saw him fire three shots. Stephanie G. estimated the officer was approximately 4 to 5 feet away when he fired. When Gongora was standing the officer was close enough to take one step and touch him. She saw three officers, all of whom had their guns drawn and were standing alongside the PG&E building.

Stephanie G. said that Gongora did not charge at the officers. Rather, he was going in circles between the first and maybe the third gunshot but only moved about a foot in any direction. She had time to yell stop between when she got out of tent and the first shot. She said that she heard Gongora say “no” and appeared to put his hand up. The only time that Stephanie G. saw a knife was when it fell from Gongora’s belt. The entire incident lasted only a matter of seconds.

c. ROSALYN B.

Rosalyn B. was standing outside John V.’s tent when she saw three police vehicles pull up. One of the officers asked, “Where’s the knife?” Rosalyn B. replied she did not have a knife. The officer turned and saw Gongora, who was sitting against the PG&E building south of her location, approximately twenty feet or two car lengths away. The officer pointed his orange colored beanbag shotgun at Gongora and ordered him to lay down. Gongora was sitting on the ground with his right leg tucked under his left. The officer kept ordering him to lay down. At one point, Rosalyn B. yelled to the officer, “He’s sitting down already.”

The officer with the shotgun and a second officer approached Gongora. The officer gave several commands to lay down. Gongora briefly raised his hands up and then lowered them. Rosalyn B. initially did not see a knife until John V. pointed to a knife on the ground next to Gongora.⁶ She described the knife as having a 6 to 7-inch chrome blade. Moments later, Gongora picked up the knife with his hand, waved it at the officers, and placed it back on the ground.

The officer with the shotgun fired two or three beanbag rounds at Gongora. After approximately the third shot, Gongora got up and ran at an angle towards a parked vehicle. Gongora would have cut off the officers’ path had they continued advancing. As Gongora continued to run, the second

⁶ Rosalyn B. told media outlets that she only saw Gongora with a cake spreader and said Gongora “was running away. He wasn’t running toward the [police].” But she later told investigators that Gongora did move in the officers’ direction and that she had seen a knife.

officer fired his handgun while the first officer discharged additional beanbags. Gongora was “falling and running but towards [the officers].” She did not see Gongora with the knife when he stood up and she did not know how the knife moved from the PG&E building to the sidewalk near where he fell.

5. PASSERSBY

a. ELLEN M.

Ellen M. was walking down 19th Street when she heard someone yell, “Drop it!” She was on the south side of the street and saw a homeless man she recognized sitting against the PG&E building. He was holding something that looked like shiny silver Mylar in his hand. Approximately four to six officers, one armed with a rifle similar to a pellet gun, were surrounding Gongora.

The officer with the rifle yelled at Gongora to drop the item from his hand and then shot Gongora with beanbags. Gongora rolled to his right, as if he were trying to get away from being hit. As Gongora rolled away, the officer switched to his handgun and shot Gongora. Ellen M. said the incident unfolded quickly and she did not believe Gongora made it to his feet. She said the officer was approximately five feet from Gongora when the shooting occurred.

b. CHRISTINE P.

Christine P. was walking north on Shotwell Street on her way to her dance class when she saw Gongora sitting on the ground near the PG&E building. Gongora, who was across the street from her, was holding some type of object in his left hand and waving it in the air in a non-threatening manner. She did not view Gongora as threatening. She heard someone yelling commands but she could not see who was yelling. She saw an officer pointing an orange colored shotgun toward the ground. Because Christine P. was focused on the shotgun, she was not sure if there were other officers in the area. She thought she heard Gongora make an unidentified comment in Spanish.

Christine P. heard the officer make additional commands as she continued walking. She believed the officer was approximately two car lengths away when he shot Gongora with the rifle.

Moments later, Christine P. heard multiple gunshots that sounded like live ammunition. She ran away from the scene.⁷ She stated, “I never saw him [Gongora] stand up. But that doesn’t mean he didn’t.” Christine P. ran by an unidentified male who told her that Gongora had a knife, but she did not see it herself. She looked back and saw Gongora lying face down in a pool of blood with an object protruding from his left hand.

D. THE VIDEO

As noted earlier, a security camera located on Shotwell Street captured two key points: (1) Gongora before the incident and (2) the police response to the 911 call. The camera was attached to a resident’s home across the street from where the shooting occurred.

⁷ Christine P. is seen in the Video running on Shotwell Street during the shooting.

1. BEFORE GONGORA'S INTERACTION WITH THE POLICE

Gongora appears in the Video in at least two noteworthy moments well before his interaction with the officers. First, Gongora is dribbling a basketball on the west side of Shotwell Street.



Approximately eight and one-half minutes before the officers arrive, Gongora walks south toward the PG&E building holding a silver object. The object catches light as he moves it and it appears to be consistent with a knife (see photo below, with object circled in yellow).



2. THE POLICE RESPONSE

The Video shows the officers' approach on Gongora and their retreat during the shooting. It also recorded audio of the shooting. The Video, however, did not capture the less-than-lethal beanbag shots or the shooting itself.

Figure 10 below shows the Video's recording position. Gongora is to the right of the Video's recording area and does not appear in it during the shooting. The key evidentiary points from the Video and the SFPD radio calls are analyzed below.

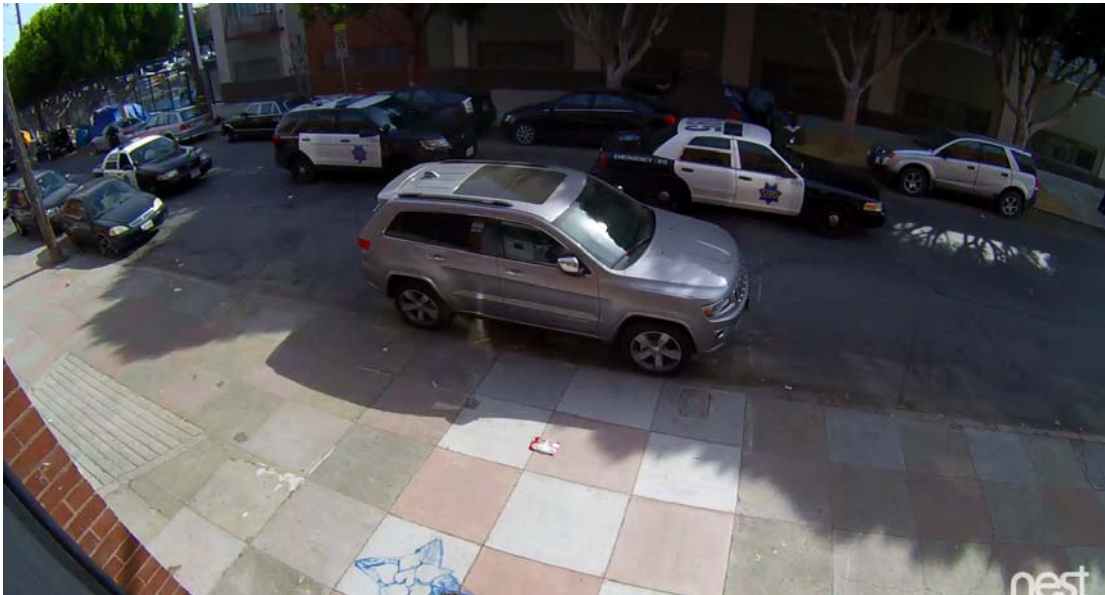


Figure 10. Screenshot from the Video showing Shotwell Street. As see in the photo, the top portion of the Video's recording curves downward at each end. (Source: Video)



Figure 11. Photograph of Shotwell Street and the PG&E building (not from the Video). The blue line notes the approximate edge of the picture frame of the Video. The Video captured events to the left of the blue line, but not to the right. (Source: SFPD Photo Unit)

The Video shows Officer Mellone approach the tent area and then walk toward Gongora while carrying an ERIW with orange markings.



Figure 12. A photograph of the ERIW that Officer Mellone used in this incident (Source: SFPD Photo Unit)

As Officer Mellone approaches, he twice orders Gongora to “Get on the ground.” Officer Mellone then pauses next to a tree and makes a radio call stating, “The challenging one has a large kitchen knife he just dropped.”⁸ After Officer Mellone makes this radio call, he is joined by Sergeant Steger. Officer Perez is approaching, but is multiple car lengths behind the other two officers.

⁸ This timeframe was determined by overlaying the CAD radio call with the Video.



Figure 13. Officer Mellone and Sergeant Steger approach Gongora (circled in yellow). Officer Perez is circled in blue. (Source: Screenshot from the Video)

Sergeant Steger and Officer Mellone approach Gongora, who is off-screen to the right, with Officer Mellone standing closer to the PG&E building and Sergeant Steger standing closer to Shotwell Street. Approximately 10 seconds after Officer Mellone’s initial commands, Officer Mellone makes a third command to get on the ground. Approximately 2 seconds later, Officer Mellone yells, “Put that down” and another individual, presumably Sergeant Steger, also orders Gongora to “Put it down.” The first beanbag shot follows those orders. The officers continue to shout, “Put it down,” as Officer Mellone fires two more beanbag shots.

Officer Perez is walking south down Shotwell Street as the beanbags are deployed. He is pointing his hand downward while yelling in Spanish, “Suelta el cuchillo ahora”, “Suelta el cuchillo”, and “Suelto, sueltalo”, which translates in English to “Let go of the knife now”, “Let go of the knife”, and “Let it go, let it go.”

As Officer Perez continues yelling orders in Spanish, and as the final beanbag shot is fired, Sergeant Steger fires four rounds from his handgun approximately 14 seconds after Officer Mellone’s initial verbal commands.

All three officers return onscreen during or immediately after the shooting. Officer Mellone appears first and transitions the ERIW from his right hand to left hand while pulling his firearm with his right hand. Officer Mellone fires three shots as he moves his right arm, suggesting that he was firing at a moving target. Sergeant Steger reemerges onscreen, rapidly backpedaling while pointing his firearm. Officer Perez is the last to appear as he runs back into view on Shotwell Street. After the shooting, Officer Mellone announces “shots fired” over the radio while Officer Perez continues to shout in Spanish, “Let go of the knife. Sir, let go of the knife.”



Figure 14. The three officers immediately after the shooting. (Source: Screenshot from the Video)

All of the lethal gunshots start and end within approximately 2.5 seconds. Officer Mellone's gunshots occurred immediately after Sergeant Steger's with no noticeable lapse between them.

The Video captures the sound of four beanbag shots and seven gunshots. Approximately 22 seconds separate the first verbal command and the final gun shot.

E. WITNESS VIDEO

A separate 30-second video captured by witness Smith P. shows the immediate aftermath of the shooting. This video shows the PG&E door where Gongora was sitting or leaning against. The three officers are standing around Gongora, who is not visible behind a parked vehicle aside from what appears to be an article of clothing peeking out. Officer Perez is yelling in Spanish for Gongora to let go of the knife.

The knife is not visible in the video, either against the building or where crime scene found it in Figure 14 below. This is significant because the knife was not against the PG&E door as Rosalyn B. stated. Instead, this video corroborates, or at minimum does not contradict, the numerous witness statements that Gongora still had the knife in his hand when he was shot and fell to the ground. It is consistent with the officers' statement that Officer Perez later tossed the knife away from Gongora.



Figure 15. Screenshot of video taken by Smith P. (Source: SFDA via Smith P.)



Figure 16. Crime scene photograph showing where the knife was recovered when CSI responded after the shooting. (Source: SFPD Photo Unit)

F. PHYSICAL EVIDENCE

Every witness other than Stephanie G. stated Gongora was sitting or squatting against or near the PG&E building's north roll-up door when the officers approached. The school crossing sign where Gongora fell is approximately 23 feet north of the roll-up door area where most witnesses initially placed him.

SFPD's Crime Scene Investigation Unit (CSI) responded, seized evidence, and documented the scene. CSI noted the following:

- A large kitchen knife with an eight-inch blade recovered on the sidewalk.



- Bullet defects on the roll-up door. The bullets from those defects had north-to-south trajectories, meaning that the officers fired these shots toward 19th Street.



- Blood pools and splatters contained to an area away from the PG&E building. Gongora fell near the school crossing sign where his clothing was found. (Marker 13 in Figure 11 below). There was no blood splatter on the PG&E door or building.

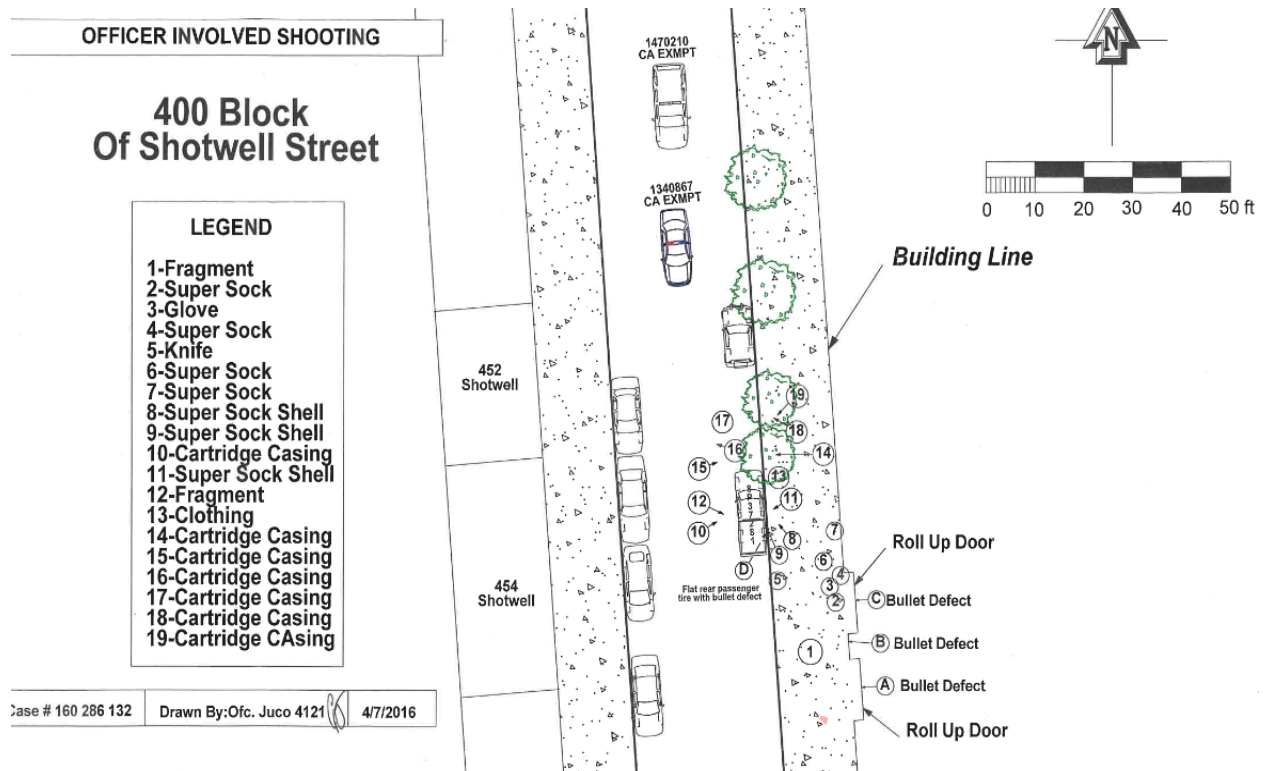


- Four ERIW beanbags and three ERIW beanbag casings on the east sidewalk. Three .40 caliber cartridge casings on the east sidewalk and four .40 caliber casings in the street west of the east sidewalk, for a total of seven casings.
- A Toyota Tacoma truck parked next to Shotwell Street near the school crossing sign had a bullet hole through the rear passenger sidewall of the tire. The yellow rod shows the bullet's trajectory with a slightly downward slope.



- There was a blood splatter pattern on the right front wheel/tire and fender of the Toyota. The Tacoma is included in the diagram below.
- A pair of gloves near the PG&E door

CSI's diagrams document where it recovered the above evidence:



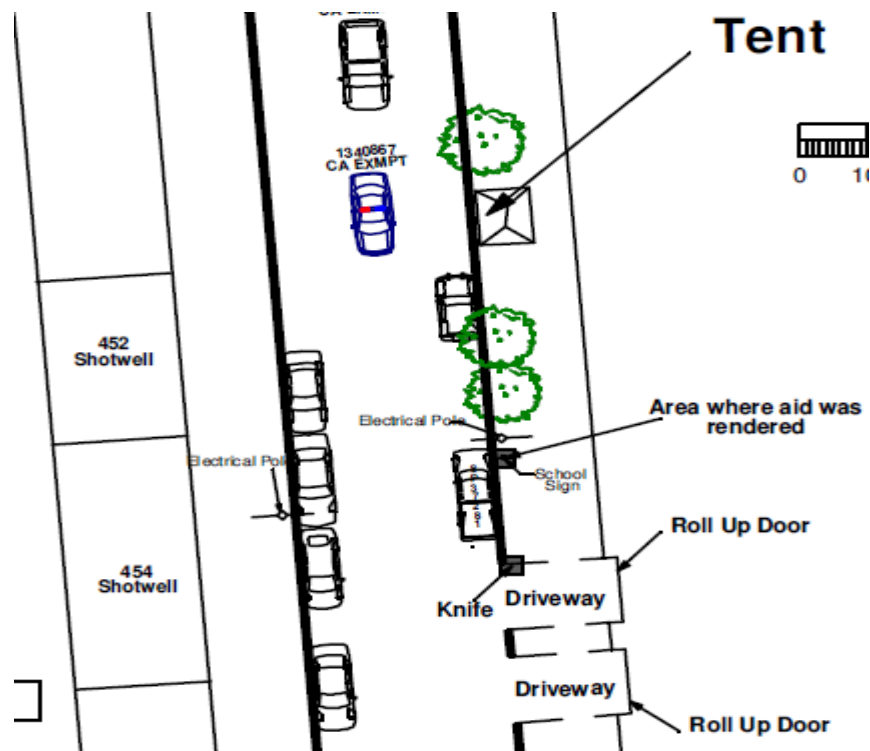


Figure 17, Diagram of Shotwell Street where the shooting occurred. The numbers correspond to the Legend on the left. (Source: CSI)

The physical evidence corroborates the officers' and the majority of witnesses' accounts that Gongora moved north from the PG&E building to near the school sign (toward the officers' position) and that he had a large knife on his person for at least part of the incident.

G. POST-SHOOTING RESPONSE AND MEDICAL EXAMINATION

SFPD Sergeant Jeffrey Aloise (Star No. 1303) arrived within seconds of the radio call of "shots fired!" to see Gongora on his back with a large kitchen knife in his hand. He saw Sergeant Steger with his foot on Gongora's hand. He saw Officer Perez take the knife and move it a short distance away. Sergeant Aloise took public safety statements from Sergeant Steger and Officer Mellone. Steger and Mellone both stated there was only one suspect and there were witnesses at the homeless encampment and on 19th and Shotwell.

John W., a member of the San Francisco Fire Department, was at the fire station across 19th Street when he heard a series of shotgun and then pistol rounds fired. He ran to the scene and saw Gongora lying face up with his head toward the curb with a very large knife nearby. The officers waved for him to approach and John W. provided medical attention until paramedics arrived. Gongora had a number of gunshot wounds, including one to the head. John W. did not discuss the shooting itself with the officers other than asking if they were ok.

John W. stripped off Gongora's clothes and worked on lifesaving measures. Paramedics arrived and transported Gongora to San Francisco General Hospital, where he was declared dead at 12:42 p.m.

The San Francisco Medical Examiner's Office conducted an autopsy and concluded Gongora died as a result of gunshot wounds. Chief Medical Examiner Dr. Michael Hunter opined during an interview that the head shot was the fatal shot. Dr. Hunter noted that there was bruising to Gongora's right arm, right shoulder, and the right upper and lower back area consistent with blunt trauma from the ERIW.

The Medical Examiner's report noted Gongora's body had six gunshots to different parts of his body. The ME found bullet wounds to the following areas:

- The left forehead with an exit wound near the left ear. The wound path was downward, right to left, and front to back.
- The left deltoid, slightly back to front and left to right.
- The right upper back/shoulder area. Dr. Hunter noted that this wound was to a movable portion of Gongora's upper shoulder area rather than to his center back area.
- The right lower chest area.
- Two wounds to his right forearm

A toxicology test found Gongora had methamphetamine (1.01 mg/L) and amphetamine (.14 mg/L) in his system. Dr. Luke Rodda, Chief Forensic Toxicologist for the San Francisco Medical Examiner's Office, noted that Gongora's methamphetamine level was high enough to kill or hospitalize a non-habitual user. The amount in Gongora's system suggested that Gongora was a habitual user. According to Dr. Rodda, that level of methamphetamine in his system could cause a person to exhibit aggression and unpredictable, violent behavior, among other behaviors.

IV. LEGAL STANDARD

The question presented is whether the officers committed a crime by shooting and killing Gongora. Possible criminal charges against an officer involved in a fatal shooting include murder and voluntary manslaughter. A prosecutor must be satisfied that the evidence will show beyond a reasonable doubt the officers were not legally justified in shooting Gongora. Here, both officers said they used deadly force because they believed Gongora was trying to kill Sergeant Steger.

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 the person (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 their position. *People v. Humphrey* (1996) 13 Cal.4th at 1082-83. 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. Jefferson* (2004) 119 Cal.App.4th 508, 519. 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." *People v. Humphrey* (1996) 13 Cal.4th at 1083. 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. California law requires the prosecution to carry the legal burden of proving beyond a reasonable doubt that the officers' use of deadly force was not in defense of themselves or of others.

V. ANALYSIS

A. THE SUBJECTIVE PRONG

Sergeant Steger and Officer Mellone both said they used deadly force because Sergeant Steger faced an imminent threat. Sergeant Steger told investigators that he feared for his life because Gongora was heading toward him with a large knife in spite of repeated orders to drop it and having been hit by multiple less lethal rounds. Officer Mellone said he feared for Sergeant Steger's life and fired in defense of the sergeant.

The investigation did not reveal evidence that undermined either officer's stated subjective belief. Accordingly, the remaining analysis focuses on the objective reasonableness of the officers' perception and their subsequent decision to use deadly force.

B. THE OBJECTIVE PRONG

The objective prong asks what a reasonable person standing in the officers' shoes would have done. That is, what would a reasonable person, standing in the officers' shoes, knowing what they knew and seeing what they saw, have done in that situation. Here, the available evidence would not allow prosecutors to prove beyond a reasonable doubt that their use of force under such circumstances was unreasonable.

The weight of the evidence indicates Gongora initially put down the knife, but picked it back up. This evidence includes Officer Mellone's contemporaneous radio calls, the officers' statements, and the recovery of the knife at the scene. The evidence also supports the officers' statements that (1) Officer Mellone unsuccessfully attempted to gain Gongora's compliance through less-lethal measures multiple times before deadly force was applied; and (2) Gongora got to his feet armed with the knife and moved in Sergeant Steger's direction, even though Gongora had an unobstructed path away from the officers south down Shotwell Street.

The weight of the evidence further indicates that Gongora moved toward rather than away from the officers while carrying a knife. The physical evidence establishes he moved approximately 23 feet from against the PG&E building, where he was initially seated, to the school crossing sign where he fell after being shot. All three officers and most of the civilian witnesses placed an officer (Sergeant Steger) near the school crossing sign during the incident. (See Figure 12

below.) The Video also shows Sergeant Steger quickly backpedaling away from Gongora with his gun raised, indicating that Gongora was indeed coming in his direction during the shooting. Given the physical evidence, there is no reasonable dispute about the general direction Gongora moved during the shooting.



Figure 18. Photograph of the PG&E building's door and the school crossing sign. (Source: CSI)

The weight of the available evidence also suggests Gongora had the knife in his hand as he approached Sergeant Steger.

The officers' statements during the incident and captured in the Video suggest Gongora was holding the knife during and immediately after the incident. Approximately three to four seconds *after* Officer Mellone's radio call stating Gongora had dropped the knife, both officers yelled, "Put that down", indicating Gongora had indeed picked the knife back up. Officer Perez shouted, "Let go of the knife," in Spanish before the lethal gunshots, indicating that Gongora still had the knife when the officers resorted to lethal force. Officer Perez continued yelling orders to Gongora to drop the knife immediately after the shooting, further corroborating that Gongora was holding the knife at the time the officers shot. CSI recovered the knife at the scene.

Aside from the Video evidence, at least eight impartial witnesses corroborated the officers' statements that Gongora had a knife or unidentified object in his hand during or immediately after the shooting. These non-SFPD witnesses include advocates for the homeless, longtime PG&E employees, and residents from the neighborhood:

- Two of the PG&E witnesses saw Gongora moving toward Sergeant Steger with a knife. The third said Gongora had an unidentified object in his hand as he approached the officer and ignored orders to drop it.
- Both Travis R. and Angela D. stated they were worried about Gongora's behavior, which is why Angela D. called 911 despite being reluctant to call the police on the persons she is tasked to help. The HOT Team members stated Gongora got up and moved toward Sergeant Steger armed with the knife.
- Robert W. said Gongora had a "paddle" in his hand when he made an "abrupt turn" toward the officers. Robert W. did not say that Gongora charged at the officers but could not account for the distance Gongora traveled during the shooting.
- Kaylee W., Christine P., and Sergeant Aloise all saw Gongora with something akin to a knife in his hand immediately after the shooting. Kaylee W. said when she looked out the window, she saw a black, rectangular object still in Gongora's hand as he lay on the ground. Sergeant Aloise said he arrived to find Gongora with the knife in his hand shortly after the shooting and saw Officer Perez remove the weapon and toss it several feet. Christine P. saw an object in Gongora's hand when she looked back to the scene after the shooting. These statements suggest that Gongora had the knife in his hand when the officers shot him.

With respect to the officers' accounts of the shooting, all three officers said Gongora came at Sergeant Steger with the knife. Officer Mellone's statement, however, differed in certain respects from the other officers. For example, Sergeant Steger and Officer Perez stated that Gongora took a step or two forward before making a beeline toward the sergeant, while Officer Mellone said Gongora got up and ran straight toward the sergeant as he fired the fourth beanbag shot. This discrepancy cannot be fully reconciled, but the baseline facts – that Gongora went at Sergeant Steger with a knife – combined with the physical evidence and the statements of numerous independent witnesses, does not change the ultimate conclusion that the available evidence cannot support criminal charges against either Officer Mellone or Sergeant Steger.

Most of the other witness accounts stating that Gongora did not have the knife in his hand when he was shot suffer from certain inconsistencies with the physical evidence. For example:

- Smith P. said she did not see Gongora with the knife in his hand and thought that it fell off his hip. She also said Gongora did not go near or threaten the officers. However, a video taken by Smith P. immediately after the shooting shows Officer Perez repeatedly yelling at Gongora in Spanish to "Let go of the knife", supporting that Gongora still had the knife in his hand. The available evidence indicates that Officer Perez's orders seconds after the shooting were based on his contemporaneous observations. Moreover, no knife

is visible in Smith P.'s video, suggesting that Gongora was holding it and generally supporting the statements of the officers and the other witnesses who saw it in Gongora's hand during or immediately after the shooting.

- Stephanie G. and John V. said they did not see Gongora holding a knife. Stephanie G. did, however, say in her initial interview that Gongora was moving toward her tent when the officers fired. Since the officers were undisputable positioned between Gongora and Stephanie G.'s tent, her statements described Gongora as moving toward the officers. Similarly, John V. said Gongora was headed toward the school crossing sign and only saw the knife when it fell from Gongora's hip while being shot. Rosalyn B. contradicted John V.'s account when she said John V. was the one who pointed out the knife to her while Gongora was sitting against the PG&E building.
- Rosalyn B.'s account that Gongora never had the knife when he got up and moved toward the officers is inconsistent with the evidence. There is no explanation of how the knife moved from the PG&E building if he never had it. Indeed, no witness said the knife was moved from the PG&E building to Gongora or where CSI found the knife after Officer Perez moved it for officer safety. The witness video also makes clear there was no knife against the PG&E building.
- Ellen M. saw Gongora with a shiny silver object in his hand but also did not see Gongora stand up. Her statement that Gongora was shot and did not stand up is inconsistent with the physical evidence demonstrating that Gongora moved approximately 23 feet. However, CSI found no blood near the PG&E roll-up door and all of the blood splatter was contained to an area approximately 15 feet from where Gongora was initially seated. Thus, the physical evidence corroborates the officers' and numerous witness statements that Gongora was moving toward them when they used deadly force.

Because this was a violent incident that occurred within a matter of seconds, it is understandable that witness accounts varied. For example, there are inconsistencies regarding which hand Gongora was holding the knife in based on the witness statements or the particular sequence of commands and the firing of shots. However, as reflected in the chart on the following page, numerous witnesses who saw the shooting stated Gongora had a knife as he moved toward Sergeant Steger or immediately after the shooting (highlighted in blue):

Witness	Moved toward officers	Knife or object in Gongora's hand
Ofc. Perez	X	X
Sgt. Aloise	Did not see shooting	X (saw knife in Gongora's hand immediately after shooting)
Travis R.	X	X
Angela D.	X	X
Victoria M.	X	X
Agnes C.	X	X
Mel W.	X	X
Christine P.	Did not see shooting	X (saw knife in Gongora's hand immediately after shooting)
Robert W.	Gongora made "abrupt turn" toward officers	X
Kaylee W.	Did not see shooting	X (saw knife in Gongora's hand immediately after shooting)
Smith P.		(Knife dropped from Gongora as he fell)
John V.	X (Gongora moving in circles)	(Said Gongora did "not want to give up the knife" but denied it later)
Stephanie G.	X (Gongora walking in circles north toward her tent, in initial statement)	(Saw knife fall from Gongora's belt)
Rosalyn B.	X	(Saw Gongora holding a "cake spreader")
Ellen M.		

Given this evidence, a reasonable person would likely conclude that a person moving toward them with a large knife poses an imminent threat of great bodily injury or death. Indeed, numerous witnesses noted how they watched in disbelief as Gongora moved toward Sergeant Steger with the knife. *See, e.g.*, Statements of Victoria M., Angela D. At least one witness, Robert W., said he "probably would" have felt threatened by Gongora had he been in the officers' position, even though he did not mention Gongora moving directly toward the officers. At minimum, given the available evidence, the prosecution cannot prove beyond a reasonable doubt that the officers' perceptions or their use of deadly force was objectively unreasonable. The numerous statements made by multiple independent witnesses stating that Gongora came

toward Sergeant Steger with a knife, combined with the physical evidence, makes this case not prosecutable.

As noted at the beginning of the report, this evaluation **does not** address issues such as whether officers used appropriate crisis intervention tactics or issues related to civil liability. This is solely an analysis of whether criminal charges against any officer are supportable.

Nor can every question be answered regarding every detail of this incident. Although Officer Mellone may have been firing at Gongora as Gongora was falling, that does not amount to a chargeable criminal offense given the timing and circumstances of the shooting when all of the lethal shots occurred consecutively within 2.5 seconds. Under the criminal law, California self-defense law “grants a reasonable margin within which one may err on the side of his own safety....” *Ross*, 155 Cal. App. 4th at 1057; *cf. Scott v. Heinrich* (9th Cir. 1994) 39 F.3d 912-915 (“A reasonable use of deadly force encompasses a range of conduct, and the availability of a less-intrusive alternative will not render conduct unreasonable.”). Courts have also found as a matter of law that it was reasonable for officers to shoot in similar situations involving individuals brandishing knives. *See, e.g., Martinez v. County of L.A.*, 47 Cal. App. 4th 334, 345 (1996) (finding use of deadly force reasonable when officers shot a knife-wielding man as he approached after he refused multiple commands to drop the knife even though he was “walk[ing] slowly” towards the officers and not lunging towards them or any civilian. *Id. See also Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695 (holding that it was reasonable for officer to shoot a suspect when he was four to six feet from the officers because he was armed with a knife; made a kicking or lunging motion towards the officers; and refused multiple verbal warnings) (*accord Martinez v. County of L.A.*, 47 Cal. App. at 344-45).

In the end, because the prosecution carries the legal burden to prove beyond a reasonable doubt that the officers did **not** shoot in self-defense or in defense of others, the available evidence cannot support the filing of criminal charges in this matter.

VI. CONCLUSION

For the reasons set forth above, the District Attorney declines to file criminal charges against either Officer Mellone or Sergeant Steger.