

REPORT ON THE OFFICER INVOLVED SHOOTING DEATH OF
JESUS DELGADO-DUARTE ON MARCH 6, 2018



CHESA BOUDIN
INDEPENDENT INVESTIGATIONS BUREAU
DISTRICT ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO
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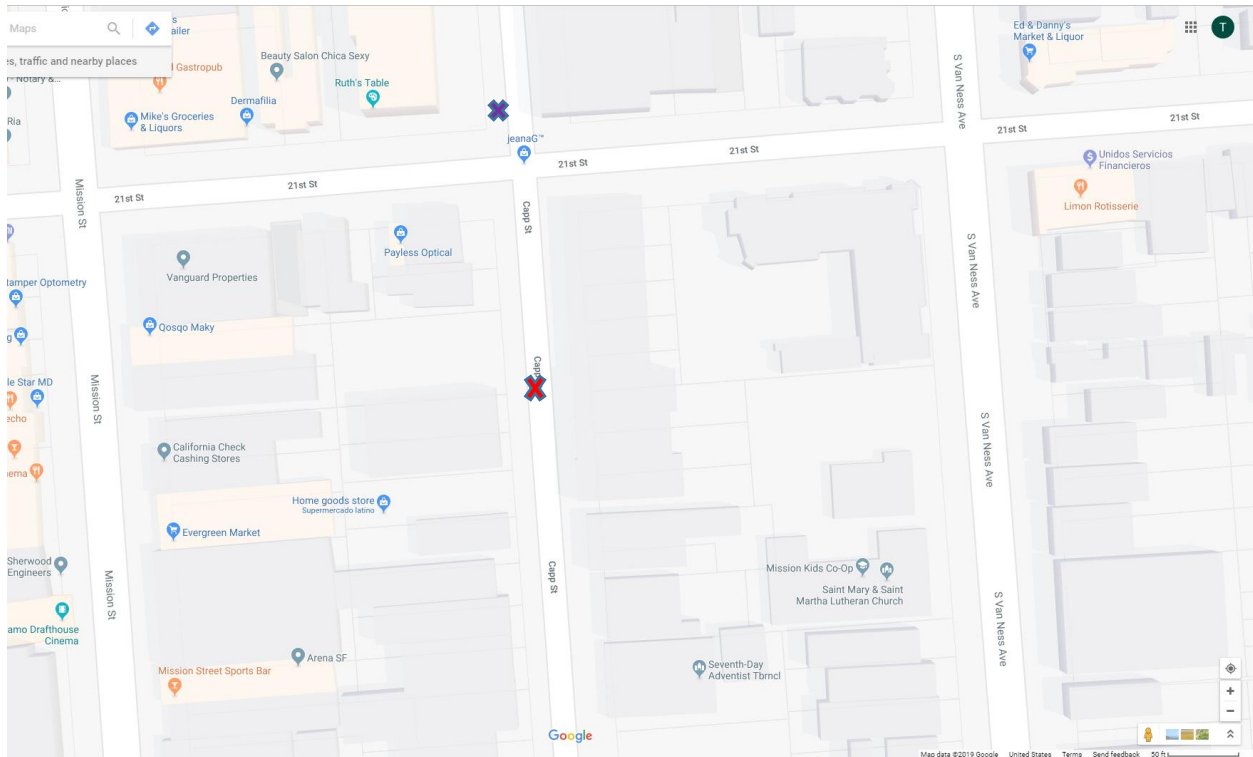
I. INTRODUCTION

The San Francisco District Attorney's Office (SFDA) has completed its review of the officer-involved shooting that resulted in the death of Jesus Delgado-Duarte on the 600 block of Capp St in the Mission neighborhood of San Francisco, California on the night of March 6, 2018. The SFDA's review was conducted by the office's Independent Investigations Bureau (IIB) and focused exclusively on determining whether any criminal charges relating to the involved officers' conduct were warranted. IIB's review did not examine issues such as the 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.

In brief, a San Francisco Police Department (SFPD) patrol car occupied by three officers was hailed down by two men regarding an armed robbery that had just occurred near the intersection of Capp and 21st Streets. The two men pointed to the fleeing suspect who was running away on foot. The police unit pursued the suspect less than half a block and observed him jump in the trunk of a black two door Honda Civic stopped in the street. The police unit immediately conducted a felony traffic stop and ordered the driver to exit the black Honda and thereafter detained him.

The robbery suspect in the partially closed trunk refused repeated commands, given in both English and Spanish, to show his hands and exit the trunk. After several minutes of failed negotiations to gain his compliance, officers fired one less lethal bean bag round at him. Moments later, the suspect screamed an expletive, produced a handgun in his left hand that had been hidden out of sight and fired at the line of police behind the black Honda. Ten officers returned fire, striking the suspect numerous times. Officers then secured the suspect, rendered medical aid, and called for paramedics, who responded and later pronounced him deceased on the scene.

Victim, witnesses, and officers' statements were all consistent and supported by physical and video evidence from SFPD issued Body Worn Cameras and civilian recordings. For the reasons detailed below, the District Attorney declines to pursue criminal charges against the ten officers because their actions appear to have been reasonably undertaken in self-defense and in defense of others and were, therefore, legally justified.



✕ = location of the robbery ✖ = location of the shooting (North is up on the map)

II. INVOLVED OFFICERS

A. SHOOTING OFFICERS

1. Officer Stephen Cassinelli, Star No. 1104 – Unit 3D13E
2. Officer Joshua Tupper, Star No. 4115 – Unit 3D13E (M4)
3. Officer Loren Chiu, Star No. 1306 – Unit 3D13D
4. Officer Juan Daniel Gustillo, Star No. 1469 – Unit 3D13D
5. Officer Corbin Carroll, Star No. 987 – Unit 3D14D
6. Officer Ari Smith-Russack, Star No. 4132 – Unit 3D14D (M4)
7. Officer Colby Smets, Star No. 253 – Unit 3D13S rode with 3D14D
8. Officer Nicholas Nagai, Star No. 2017 – Unit 3D41D
9. Officer Sean O'Rourke, Star No. 2214 – Unit 3D14E
10. Officer John Ishida, Star No. 2035 – Unit 3D91

B. WITNESS OFFICERS

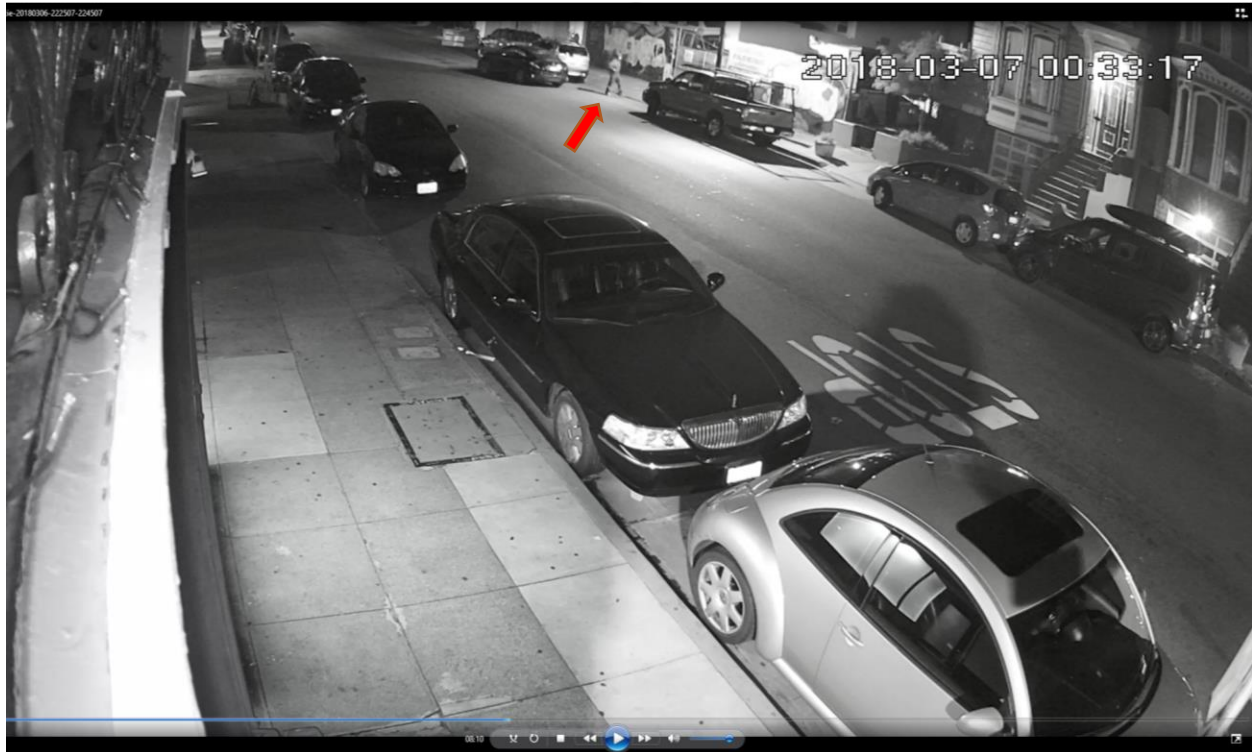
1. Officer Bryan Santana, Star No. 2097 – Unit 3D41D (ERIW)
2. Officer Milen Banegas, Star No. 963 – Unit 3D11D
3. Officer Mathew Andaluz, Star No. 1851 – Unit 3D11D
4. Officer Sean Cody, Star No. 1375 – Unit 3D13F rode with #3D13E

5. Officer Michael Rotschi, Star No. 1306 – Unit 3D14D
6. Officer Caleb Bohannon, Star No. 4005 – Unit 3D91
7. Officer Christopher Wynkoop, Star No. 608 – Unit 3D91
8. Officer Gared Hanson, Star No. 2095 – Unit 3D37
9. Officer Robert Kerrigan, Star No. 28 – Unit 3D37
10. Officer Sanja Kajasa, Star No. 2058 – Unit 3D11E
11. Officer Ryan Champlin, Star No. 145 – Unit 3D11E
12. Sergeant Leonard Caldera, Star No. 498 – Unit 3D113
13. Sergeant George Perez, Star No. 739 – Unit 3D70 rode with 3D113

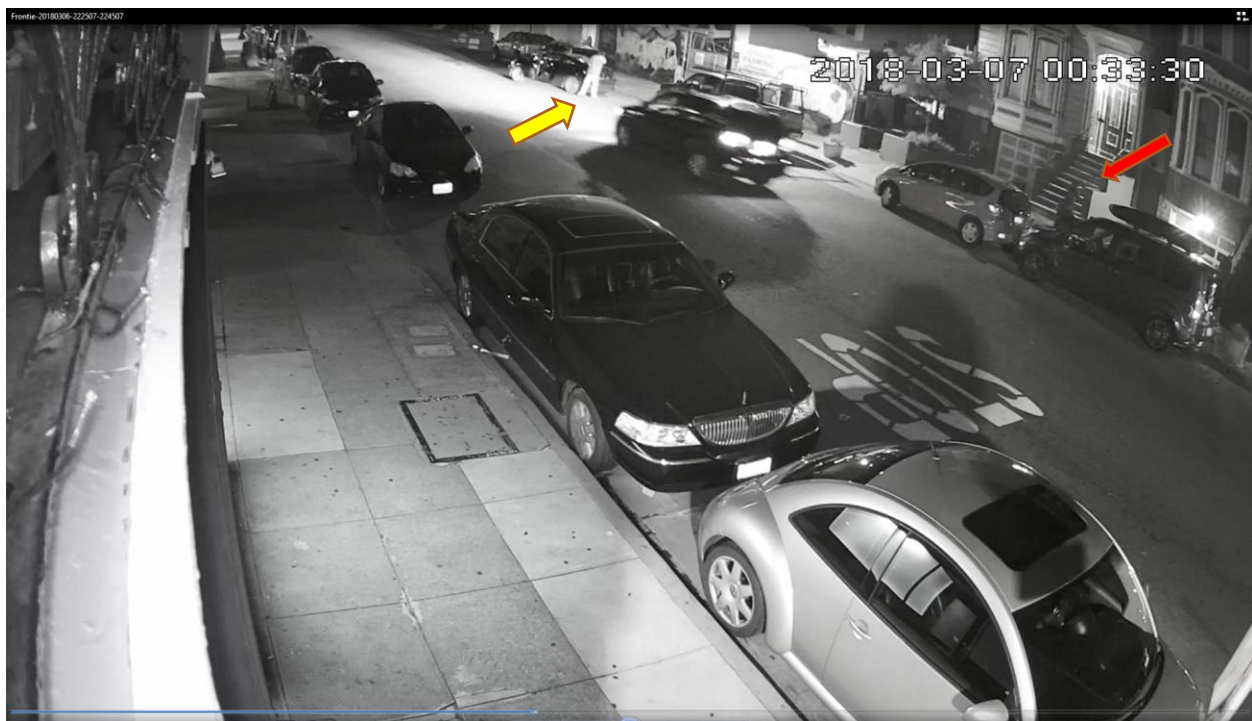
III. SUMMARY OF INVESTIGATION

This summary was based on eyewitness interviews, as well as physical and video evidence obtained and analyzed from the investigation. On the night of March 6, 2018, Victor Navarro, his girlfriend Christina J., and his friend, Decedent Jesus Delgado-Duarte, were driving around the Mission District in San Francisco in Navarro's black two door Honda Civic. Navarro was driving, while Christina J. sat in the back seat and Delgado-Duarte sat in the front passenger seat. Shortly before 10:42 pm, Navarro stopped in the middle of the 600 block of Capp St. Delgado-Duarte exited the car and walked northbound, where he committed an armed robbery, a majority of which was caught on neighborhood security cameras.¹

¹ Three cameras from 601 Capp Street recorded events east and west on 21st Street and events south on the 600 block of Capp Street. The clock on the DVR was 2 hours ahead of real time (see Bates Stamp page SFPD-H 000055). One camera from 606 Capp Street recorded the felony traffic stop location. However, parked cars partially obstruct the view of the black Honda.



Snapshot of security video from 601 Capp Street – South view of Capp Street – **Decedent Delgado-Duarte** just exited car, en route to commit the robbery.



Snapshot of security video from 601 Capp Street – South view of Capp Street – **Navarro** propped open the trunk, then got back in driver's seat while **Decedent Delgado-Duarte** walked north on Capp Street.

A few minutes later, Delgado-Duarte walked up to Elias B., who was on the west side of the 500 block of Capp Street just north of 21st Street. Delgado-Duarte drew a silver pistol from his waist, pressed it into Elias B.'s stomach, and demanded his money in Spanish, using colloquial Spanish indicative of Mexican slang for money, "Me dame tu feria Primo!" ("Give me your money cousin")². In fear for his safety, Elias B. surrendered the \$50 to \$60 dollars he had in his wallet.

Moments before the robbery, Mr. Rosel T. exchanged greetings with Elias B. as they walked past each other³. Rosel T. witnessed the robbery from a few yards distance and was close enough to see Delgado-Duarte push a pistol into Elias B.'s stomach and heard Delgado-Duarte tell Elias B., "Me dame tu feria primo!" Rosel T. saw Elias B. hand over money. In fear for his own safety, Rosel T. ran towards his parked car, where he took cover as he kept watching.

Around the time Elias B. surrendered his money to Delgado-Duarte, a patrol car⁴ on routine patrol happened to be driving west on 21st Street approaching Capp Street. The patrol car was SFPD Mission Station Unit 3D13E, driven by Officer Stephen Cassinelli, with his partner Officer Joshua Tupper in the passenger seat and Officer Sean Cody⁵ in the back seat. When the patrol car was stopped at the intersection of 21st Street and Capp Street, Delgado-Duarte walked and then ran south across 21st Street and down Capp Street, towards Navarro's black Honda.



Snapshot of security video from 601 Capp Street – West view of 21st Street – Witness Rosel T. walking towards robbery in progress. Victim Elias B. and Decedent Delgado-Duarte near one another.

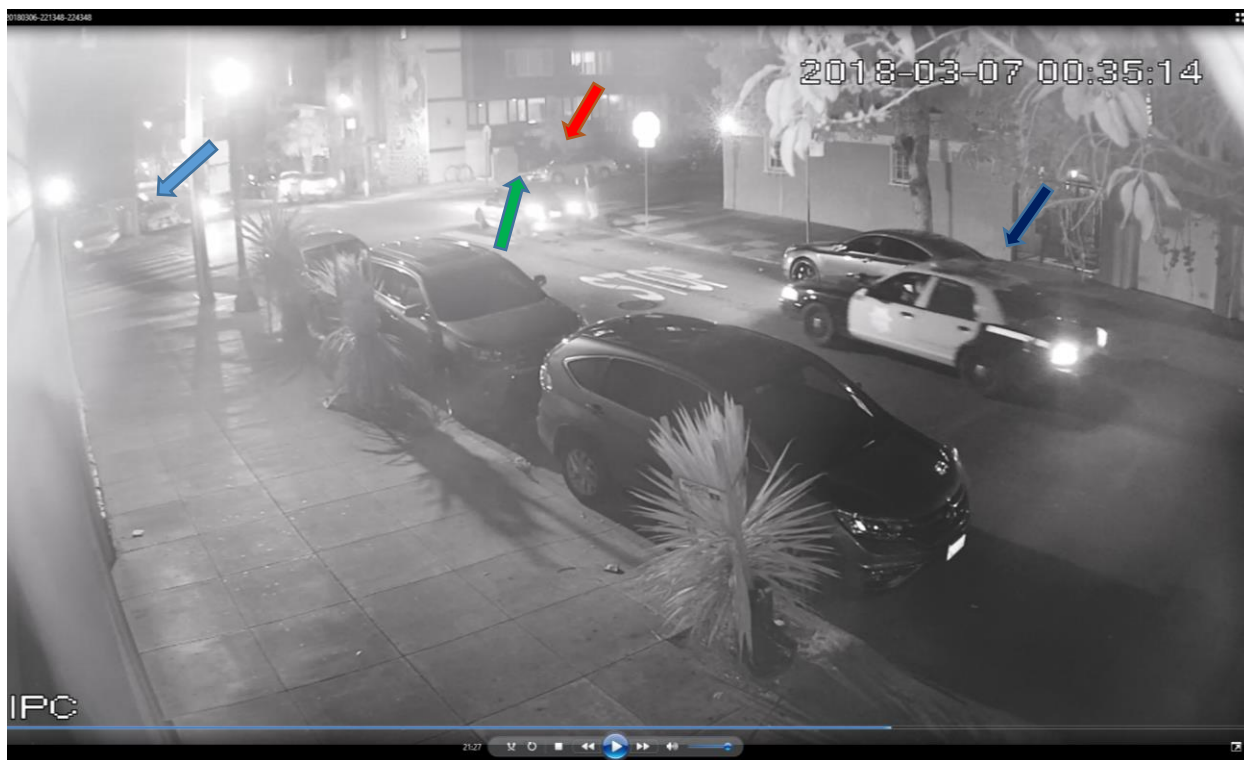
² Translation by SFPD Officer Bayardo Roman (see Bates Stamp pages SFPD-H 000038-39).

³ Rosel T. and Elias B. do not know each other.

⁴ SFPD shop number 067

⁵ Officer Cody was assigned that night as Unit 3D13F. Since he did not have a partner, he rode with Officers Cassinelli and Tupper for officer safety reasons.

The security camera from the building at 601 Capp Street, covering westbound 21st Street, recorded the robbery. The robbery began on the west side of the 500 block of Capp Street, just north of 21st Street. Elias B. was facing north and Delgado-Duarte was facing south, both were wearing dark clothes. Rosel T.⁶ was south of them and can be seen retreating southwesterly on 21st Street while looking back. Elias B. can be seen retreating southerly to the curb of the northwest corner of the intersection, where Delgado-Duarte closed the distance to within arm's reach.



Snapshot of security video from 601 Capp Street – West view of 21st Street – Witness Rosel T. ran away in the southwesterly direction while watching the robbery in progress. Victim Elias B. slowly walked backward southbound. Decedent Delgado-Duarte advanced towards him. SFPD 3D13E approached on routine patrol.

As soon as Delgado-Duarte fled, both Elias B. and Rosel T.⁷ hailed the patrol car and pointed at Delgado-Duarte as he fled. Elias B. pointed and gestured to indicate that he had just been robbed. Rosel T. said he tried to alert the officers to the robbery by pointing and yelling, “Pistola! Pistola!”

Video captured the patrol car approach the intersection just as Delgado-Duarte began to flee south on Capp Street. Elias B. and Rosel T. can be seen walking in the street, close to the patrol car, while pointing south at Delgado-Duarte, who was running south on the west sidewalk of Capp Street, just south of 21st Street.

⁶ Rosel T. was wearing a light-colored top and dark pants. Elias B. and Delgado-Duarte were wearing dark colored clothes and Delgado-Duarte had on a hoodie sweatshirt.

⁷ Both Elias B. and Rosel T. spoke little English and gave their statements with the assistance of SFPD certified Spanish translators



Snapshot of security video from 601 Capp Street – West view of 21st Street – Witness Rosel T. and Victim Elias B. direct SFPD 3D13E to Decedent Delgado-Duarte, who ran south on the 600 block of Capp Street.

Elias B. and Rosel T. saw the patrol car pursue Delgado-Duarte to the waiting black Honda, which was still in the middle of the 600 block of Capp Street.⁸ They ran down Capp Street and watched the police contact. Elias B. saw Delgado-Duarte jump in the trunk of the black Honda. They stood by until assisting officers contacted them and walked them back towards 21st St where they gave an initial statement to Spanish speaking officers.⁹

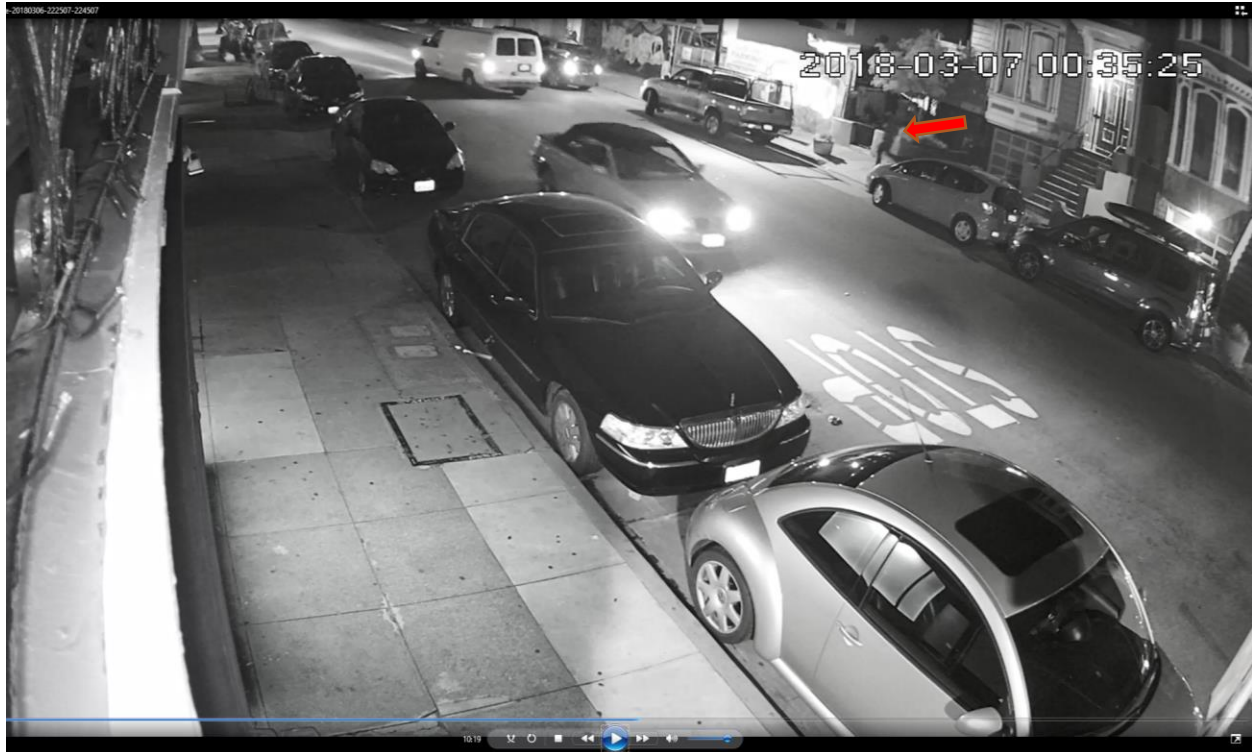
All three officers saw both Elias B. and Rosel T. and heard, “Pistola! Pistola!” being shouted. They all believed the fleeing man had a gun and may have just committed an armed robbery. Officer Cassinelli made an emergency radio broadcast for assistance regarding their pursuit of a possible armed robbery suspect. Numerous units were dispatched and self-dispatched¹⁰ to the scene to assist.

The southbound facing security camera from 601 Capp Street recorded Delgado-Duarte as he ran south on Capp Street to where he jumped into the trunk of the waiting Honda. Moments later, the patrol car came into view and effected a felony traffic stop on the Honda, while the Honda’s trunk was still half open with Delgado-Duarte visible in the partially open trunk.

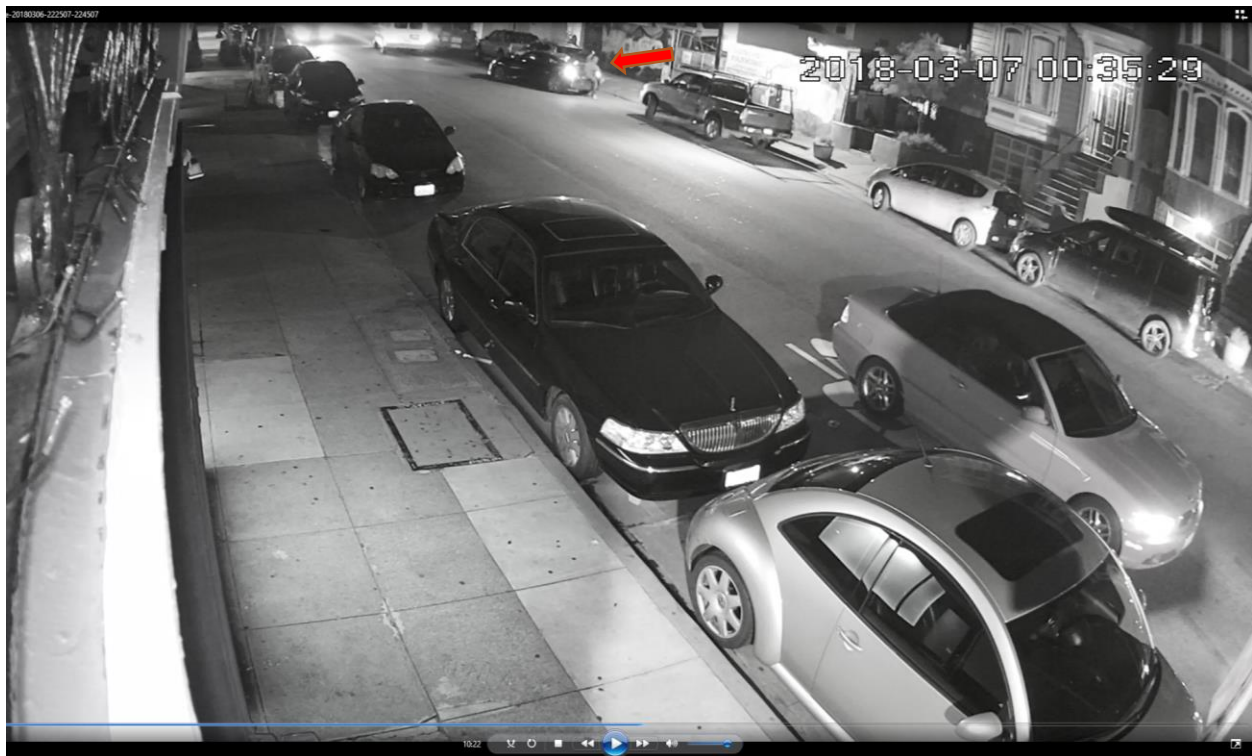
⁸ The black Honda was near 628 Capp Street.

⁹ Elias B. and Rosel T. later gave detailed statements during recorded interviews at SFPD Homicide office. Their statements were consistent with their field interviews.

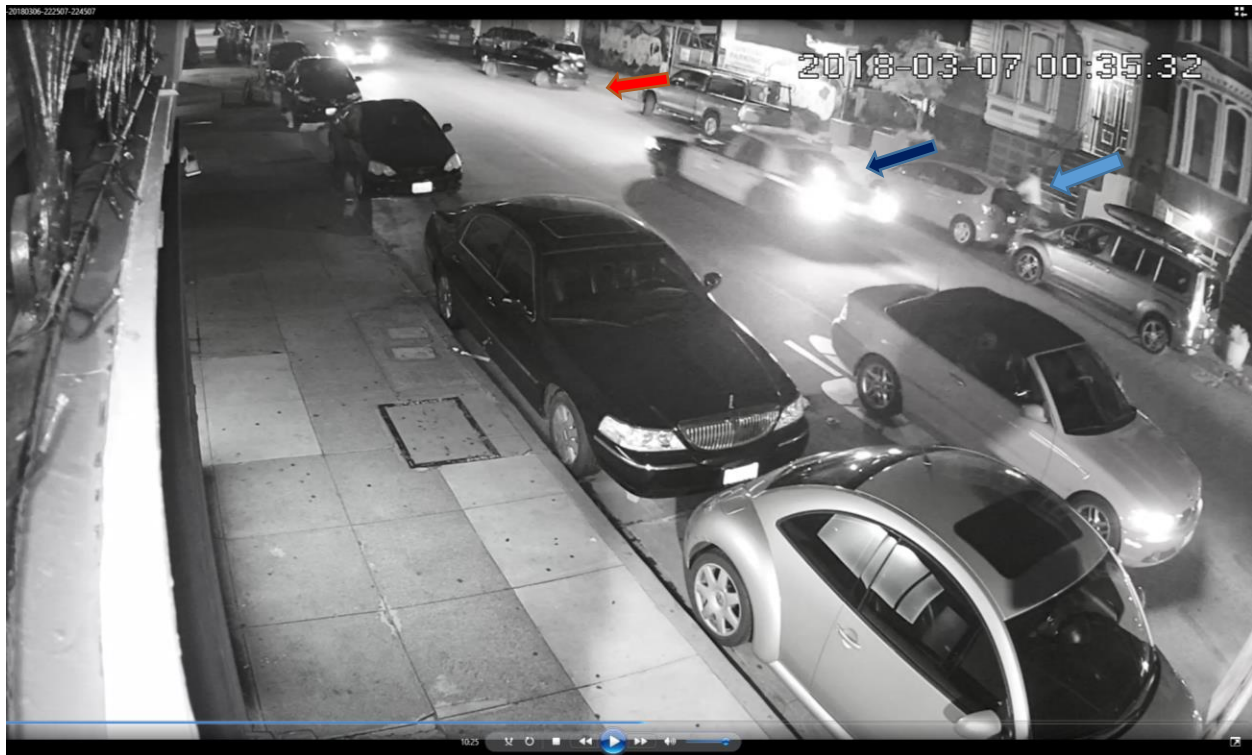
¹⁰ Self-dispatching was a common police practice to keep radio waves clear for emergency traffic.



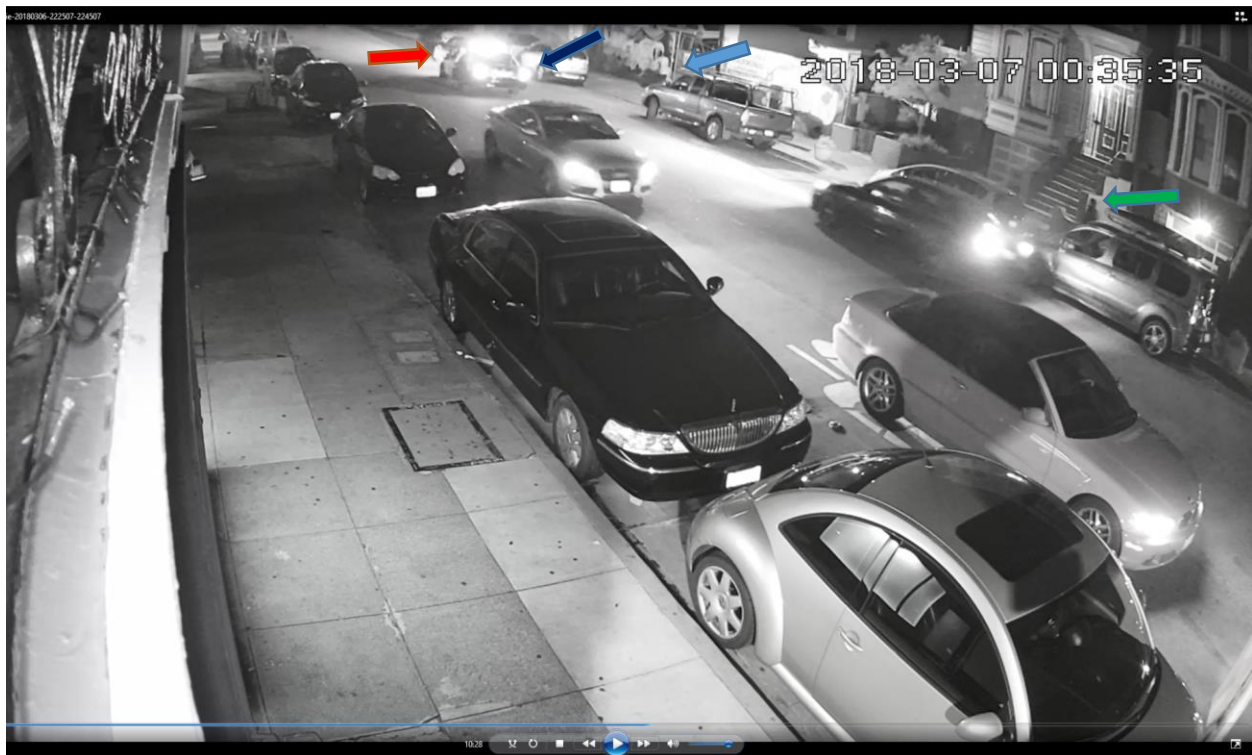
Snapshot of security video from 601 Capp Street – South view of Capp Street – **Decedent Delgado-Duarte** running to Honda after committing the armed robbery.



Snapshot of security video from 601 Capp Street – South view of Capp Street – **Decedent Delgado-Duarte** getting in the trunk of the Honda.



Snapshot of security video from 601 Capp Street – South view of Capp Street – **SFPD Unit 3D13E** on scene. **Decedent Delgado-Duarte** visible in the trunk of the Honda. **Witness Rosel T.** followed the pursuit.



Snapshot of security video from 601 Capp Street – South view of Capp Street – **SFPD Unit 3D13E** felony traffic stop location. **Decedent Delgado-Duarte** visible in the trunk of the Honda. **Witness Rosel T.** and **Victim Elias B.** followed the pursuit.

Officers Cassinelli, and Tupper then exited their patrol car to conduct the felony traffic stop. While waiting for more units to arrive, Officer Cassinelli began giving verbal commands and ordered the occupants of the Honda to raise their hands. The three officers all reported that Navarro, who was in the driver's seat, complied and clearly raised both his hands. However, Delgado-Duarte would not show both his hands. Only his right hand was visible while holding the trunk lid partially open. Against their repeated orders, Delgado-Duarte kept moving his left hand in and out of view behind his body near his waistband.

Officer Cody exited the backseat of the patrol car and took up a position at the rear of a silver sport utility vehicle (SUV), parked on the west side of the street. Elias B. and Rosel T. had run down and were standing on the sidewalk near the same SUV. Officer Cody waived for them to move back for their safety. When they complied, he maintained his position and returned his attention to the felony traffic stop.



Snapshot of security video from 601 Capp Street – South view of Capp Street – SFPD Unit 3D13E felony traffic stop location. Decedent Delgado-Duarte in the trunk of the Honda. Witness Rosel T. and Victim Elias B. followed the pursuit and stood near Officer Cody.



Snapshot of security video from 621 Capp Street – South view of Capp Street – Felony traffic stop location. **Decedent Delgado-Duarte** in the trunk of the Honda. **Witness Rosel T.** and **Victim Elias B.** followed the pursuit and stood near **Officer Cody**.

Elias B. and Rosel T. moved to the rear a pick-up truck, parked just north of the silver SUV. They remained there until they were contacted by Officer Milen Banegas, Star No. 963, a certified Spanish translator, and her partner, Officer Mathew Andaluz, Star No. 1851. Officer Banegas had a quick conversation and confirmed Delgado-Duarte committed an armed robbery. Officer Banegas passed the interview duty to certified Spanish translator Officer Bayardo Roman, Star No. 2373, because officers on the felony traffic stop called for a Spanish speaking officer.

Once additional SFPD officers arrived to assist with the felony traffic stop, Officer Cassinelli directed Navarro to exit the driver's seat of the Honda while keeping his hands raised in the air. These directions were given in English after Navarro shouted that he did not speak Spanish. Navarro followed Officer Cassinelli's directions and walked backward toward the line of police officers.



Snapshot of security video from 601 Capp Street – South view of Capp Street – 5 SFPD Units on scene conducting the felony traffic stop. Driver **Navarro** exited driver's seat with hands up and was safely taken into custody.



Snapshot of security video from 621 Capp Street – South view of Capp Street – 5 SFPD Units on scene conducting the felony traffic stop. Driver **Navarro** exited driver seat with hands up and was safely taken into custody.

When Navarro was close to the trunk, Delgado-Duarte told him he was sorry for getting him involved in this and added that he was not going to get deported and he was not going back to jail. Navarro did not understand what he meant by this.¹¹ The arrest team of Officers Smets and Carroll searched and handcuffed Navarro before they placed in the back seat of the second patrol car on scene.¹² They then returned to the police line to serve as the arrest team for Delgado-Duarte. From the back seat of the patrol car, Navarro heard the police repeatedly tell Delgado-Duarte to get out of the trunk in both English and Spanish.

As Navarro was being handcuffed and secured, Officer Banegas responded to the passenger door of the primary unit to give further orders in Spanish. Officer Banegas used the public address system to give verbal commands to Delgado-Duarte in English and Spanish. She was less than a car length away from the trunk and had a clear, unobstructed, and well-lit view of Delgado-Duarte as he lay on his right side with his head on the driver's side of the Honda. His right hand held the lid of the trunk partially open. He continuously moved his left hand in and out of sight, which all officers on scene observed and stated caused them a significant officer safety hazard. All officers on scene reported the same observation and officer safety concerns. Witness statements, as well as security, cellphone and Body Worn Camera video recordings confirm these observations and the repeated verbal commands in English and Spanish.

After several negotiation attempts to gain Delgado-Duarte's compliance failed, Officer Santana fired a "less lethal" bean bag round from his department issued Extended Range Impact Weapon (ERIW). Numerous officers saw Delgado-Duarte move as if he had been hit in the right arm or upper body area. However, he still refused to comply to repeated commands in both English and Spanish to show his hands and surrender.

Shortly after the bean bag was fired, Delgado-Duarte flipped up the trunk as he screamed what many officers described as a roar or epithet, "Fuck!" or "Fuck you!" He then raised his left hand and fired at least one round at the line of officers flanking the left and right side of the primary patrol car. Many officers behind the Honda and adjacent to the primary patrol car ducked for cover. Then, in fear for their own lives and safety and that of their fellow officers, they reengaged and returned fire. Other officers on the outer end of the police line returned fire immediately.

Owen L. lived on the east side of the 600 block of Capp Street, just south of where the felony traffic occurred. He heard the police activity and went outside to watch. He heard officers give repeated commands for someone to get their hands up in both English and in Spanish. He heard a single shot, then 5-10 seconds later he heard a large number of shots, which he assumed were police retuning fire. Owen L. recorded the incident on his cellphone. The video captured events from moments before the bean bag round was fired by Officer Santana through the end of the shooting. Owen L. allowed SFPD officers and detectives to view his video and record the

¹¹ From Navarro's recorded interview at SFPD Homicide.

¹² Unit 3D15D driven by Officer Gustillo with his partner Officer and Chiu in SFPD shop number 139. The positioning of this car to the left of the primary unit effectively blocked all other vehicle traffic on Capp Street.

recording he displayed on his television. His video clip was approximately 7 min and 41 seconds long. Owen L. later sent this video to KPIX News.¹³

KPIX enhanced and zoomed in on Owen L.'s cellphone footage. KPIX ran several stories and gave their edited recordings to SFPD. The enhanced video clips recorded the verbal commands, the firing of the bean bag round (which appeared to have hit the back of the car, not Delgado-Duarte), the trunk being thrust open, Delgado-Duarte firing at the line of officers and their return fire. Based on the video's timeline, it appeared that less than 5 seconds elapsed from when Delgado-Duarte fired and when the ten SFPD officers ceased their return fire.



Snapshot at 13:12 into KPIX video the moment after SFPD fired the bean bag round at Delgado-Duarte. The bean bag is visible to the right of the "132.11" numbering in the KPIX graphic as it appears to have just bounced off the trunk or Delgado-Duarte.

¹³ SFPD Sergeant Gary Watts wrote a search warrant and obtained a copy of this video from KPIX news.



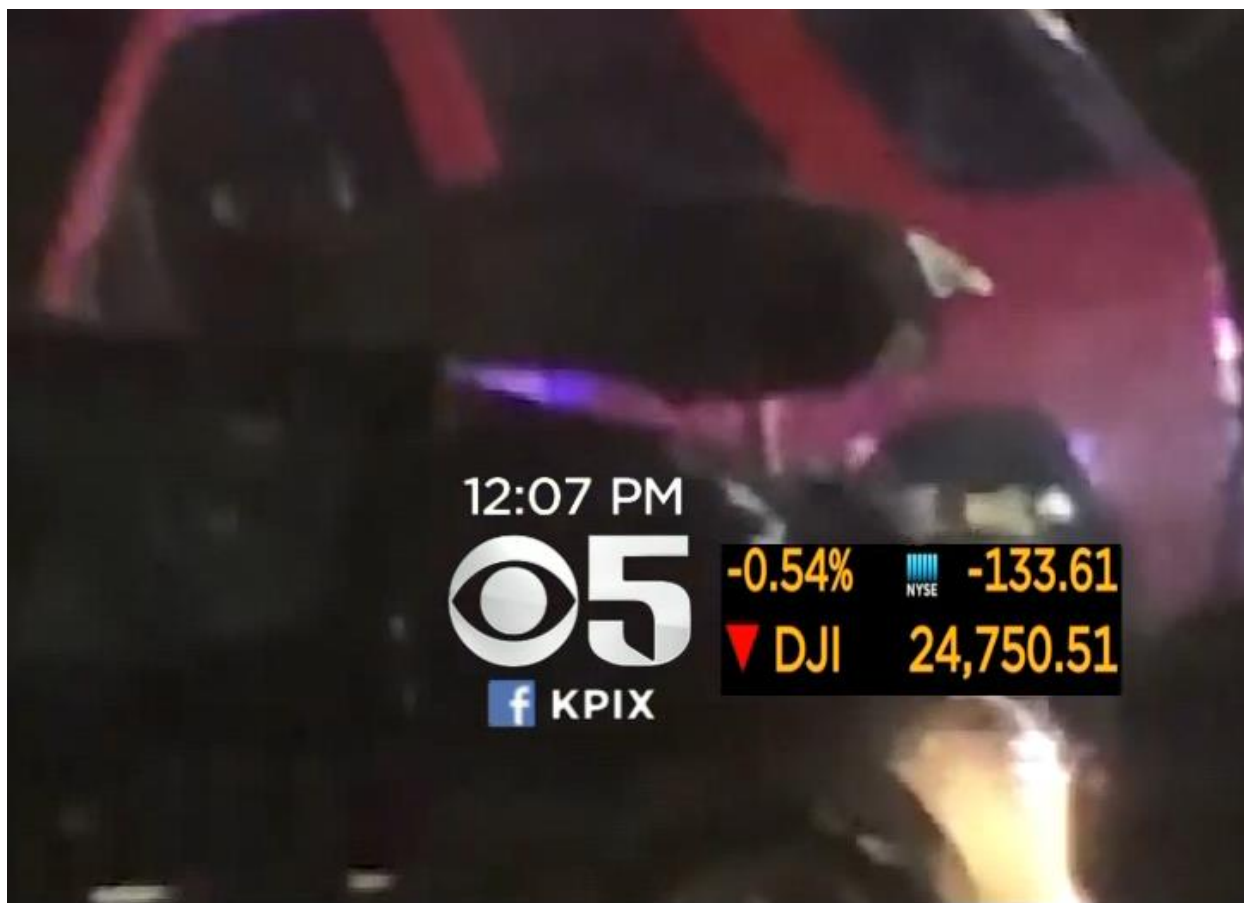
Snapshot at 13:25 into KPIX video the moment the trunk was thrust open, just before Delgado-Duarte fired.



Snapshot at 13:27 minutes into KPIX video of moment Delgado-Duarte fired. A gunpowder cloud is visible on the lower right corner near the KPIX graphic insert.



Snapshot at 13:28 minutes into KPIX video of Delgado-Duarte's left arm, with gun in hand, pointed at police line a fraction of a second after he fired, visible in lower right corner near KPIX graphic insert.



Zoomed in view of snapshot at 13:28 minutes into KPIX video of Delgado-Duarte's left arm, with gun in hand, pointed at police line a fraction of a second after he fired, visible in lower right corner near KPIX graphic insert.



Snapshot 13:33 minutes into KPIX video moments after officers ceased firing at Delgado-Duarte. Trunk rebounded to a nearly closed position, visible lower right corner near KPIX graphic insert.

In a shooting volley that lasted less than 6 seconds from Delgado-Duarte's first shot, eight officers returned fire with their department issued Sig Sauer P226 .40 caliber semiautomatic pistols and two officers returned fire with their department issued Colt M4 .223 caliber patrol rifles.

Officers immediately began giving verbal orders to Delgado-Duarte to surrender and show his hands. Moments before the shooting occurred, a few officers noticed Christina J. was seated in the rear passenger seat. After the shooting, Christina J. raised her hands and made herself known. Sergeant Perez directed several officers to get ballistic shields and helmets, while he coordinated a tactical squad to approach the car.

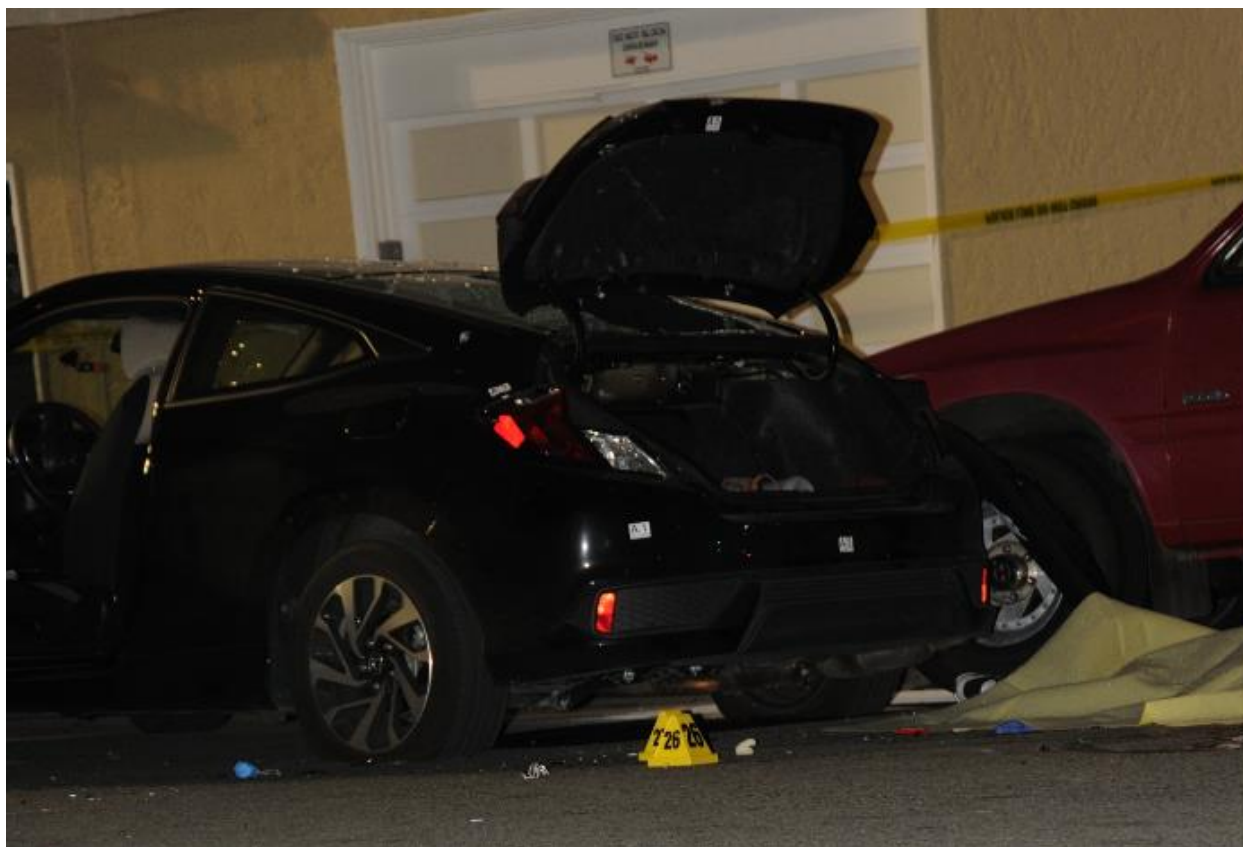
Within minutes, equipped with shields and helmets, Sergeant Perez led a squad of officers and approached the Honda. One group of officers removed Delgado-Duarte from the trunk, placed him on the ground and immediately began rendering medical aid and CPR¹⁴, while another group of officers contacted Christina J. She got out of the Honda and was handcuffed and detained in the backseat of a separate police car. In the trunk, the tactical squad saw, and left in place, a bloodied Taurus 9 mm semiautomatic that had a two-tone silver over black color pattern.¹⁵ One expended 9mm shell casing was located on the ground a few feet to the rear and right of the driver's side of the trunk.

¹⁴ SFPD officers rendered medical aid and CPR until they were relieved by SFFD firefighters and paramedics.

¹⁵ CSI recovered the Taurus semiautomatic. It was loaded with one round in the chamber and nine rounds in a 10 round capacity magazine.



CSI Photo No. 1841928_DSC_5158.NEF of Evidence No. 39 Marker No. 28 – Taurus Millennium 9 mm Semiautomatic pistol Serial No. TVG30029



CSI Photo No. 1841868_DSC_5143.NEF of Evidence No. 36 Marker No. 26 – 9 mm Luger Winchester Casing



CSI Photo No. 1841888_DSC_5148.NEF of Evidence No. 36 Marker No. 26 – 9 mm Luger Winchester Casing

After the shooting, all investigative, administrative, and criminal investigation procedures were enacted. San Francisco Fire emergency medical personnel pronounced Delgado-Duarte deceased on scene. All officers involved in the shooting gave public safety statements to Sergeant Michael Shugras, Star No. 1747, and were then sequestered at Mission Station. CSI responded to process the scene. The SFDA IIB unit was notified and responded to the scene to begin their separate but parallel investigation. The SF Medical Examiner's Office was notified and responded to the scene to conduct their investigation and take custody of the deceased.

All 22 officers present at the scene of the felony traffic stop, who witnessed or fired their weapons during the exchange of gunfire, gave voluntary statements. They were all represented by legal counsel. All officers who fired their weapons, were dispersed along an arc to the left and right of the primary patrol car facing Delgado-Duarte. The several officers estimated that they were within one to two average car lengths of Delgado-Duarte and had clear lines of site, well-lit by both police emergency lights and spotlights. All officers who fired, stated that they did so in fear for their lives and the lives of their fellow officers.

IV. CRIME SCENE INVESTIGATION

SFPD Crime Scene Investigations Unit (SFPD CSI) Officers Raymond Ortiz, Star No. 4189, Ann-Patrice Gamboa, Star No. 1327, Curt Barr, Star No. 961, and Michael Simpson, Star No. 2137, responded. They video recorded and photographed the scene before they collected evidence. The evidence collected included shell casings, bullet projectiles, scientific swabs of chemical and biological matter, body worn camera videos, civilian videos and firearms from all involved.

A. PRIVATE VIDEO EVIDENCE

One cellphone and two security recordings were obtained from three sources. SFPD Mission Station Investigations Team Sergeant Oscar Barcena, Star No. 1715, obtained recordings from three CCTV cameras at 601 Capp Street. He noted the DVR clock was set 2 hours ahead. SFPD CSI Officer Maria Alvarado, Star No. 431, obtained recordings from 606 Capp Street. She observed the DVR clock was slow by 3 minutes and 19 seconds. SFPD Homicide Sergeant Gary Watts, Star No. 1594, obtained a warrant to get a copy of the video from KPIX sent to them from Owen Linzmayer, which Linzmayer recorded on his cellphone.

B. FIREARMS

SFPD CSI Unit collected and examined all firearms involved in the investigation. All firearms, including the Taurus Millennium 9mm semiautomatic pistol, all eight Sig Sauer P226 .40 caliber semiautomatic pistols, both Colt M4 .223 patrol rifles, and the ERIW less lethal bean bag Remington 870 shotgun, were operable within manufacturer's specifications.

The Taurus Millennium 9mm semiautomatic pistol (Serial No. TVG30029) was recovered in the rear driver's side corner of the trunk, in the area where Delgado-Duarte's bloodied upper body was located. It had one bullet in the chamber and nine bullets were in the ten-bullet capacity

magazine. The firearm had a manual safety on the left side of the pistol that was not engaged and thus, could have fired if the trigger was pulled again.

The SFPD Firearms and Tool Marks Unit examined the Taurus Millennium 9mm semiautomatic pistol in accordance with their standard operating procedures. The 9mm Winchester Luger shell casing found on the ground near the trunk of the Honda was microscopically identified as having been fired from the Taurus Millennium 9mm semiautomatic pistol.¹⁶



CSI Photo No. 1844032_DSC_0914.NEF – Delgado-Duarte

All officers who fired pistols were carrying their SFPD issued Sig Sauer P226 .40 Caliber Semiautomatic Pistol. The pistol is carried with one bullet in the chamber and 12 bullets in the magazine. Officers also typically carry two spare magazines in pouches on their duty belts.¹⁷ The Sig Sauer P226 does not have any exterior manual locking safety device.

The two officers who fired patrol rifles were using their SFPD issued Colt M4 .223 Caliber semiautomatic patrol rifles. The patrol rifles are issued each shift to officers approved to use them. The rifles are maintained by the SFPD officer assigned as the Station Keeper.

SFPD CSI received all fired SFPD firearms. They later unloaded and inspected the firearms. Based on the assumption that each officer initially had fully loaded firearms and magazines, post incident weapons inspections determined the maximum number of times each officer fired.

- Pistol
 - Officer Smets fired 13 times
 - Officer Carroll fired 11 times
 - Officer Nagai fired 6 times
 - Officer Gustillo fired 7 times
 - Officer Cassinelli fired 13 times

¹⁶ Per SFPD Forensic Services Division Criminalist II Jaco Swanepoel Firearm and Tool Mark Report.

¹⁷ Officer O'Rourke carried a fully loaded 3rd spare magazine.

- Officer O-Rourke fired 14 times
- Officer Ishida fired 13 times
- Officer Chiu fired 11 times
- Patrol Rifle
 - Officer Tupper fired 5 times
 - Officer Smith-Russack fired 3 times
- ERIW
 - Officer Santana fired one bean bag round

SFPD Sig Sauer P226 .40 Caliber Semiautomatic Pistol:



CSI Photo No. 1844240_DSC_0966.NEF – Sig Sauer P226 issued to Officer Smets (same model pistol as that fired by other officers in this OIS)

SFPD Colt M4 Carbine Patrol Rifle No. 11:



CSI Photo No. 1844624_DSC_1062.NEF – M4 #11 issued to Officer Tupper

SFPD Remington 870 Shotgun configured as ERIW 12 Gauge Bean Bag Weapon:



CSI Photo No. 1844680_DSC_1076.NEF – ERIW issued to Officer Santana

C. DNA ANALYSIS

SFPD CSI took DNA swabs on the grip and slide of the Taurus Millennium 9mm semiautomatic pistol and compared them to a DNA sample taken from Delgado-Duarte. The DNA analysis performed on the grip and slide of the Taurus pistol revealed that a single source male DNA profile was obtained, and Delgado-Duarte could not be excluded as a possible source of the DNA present on the pistol.¹⁸ DNA evaluation protocols mandate that reports are listed as probability

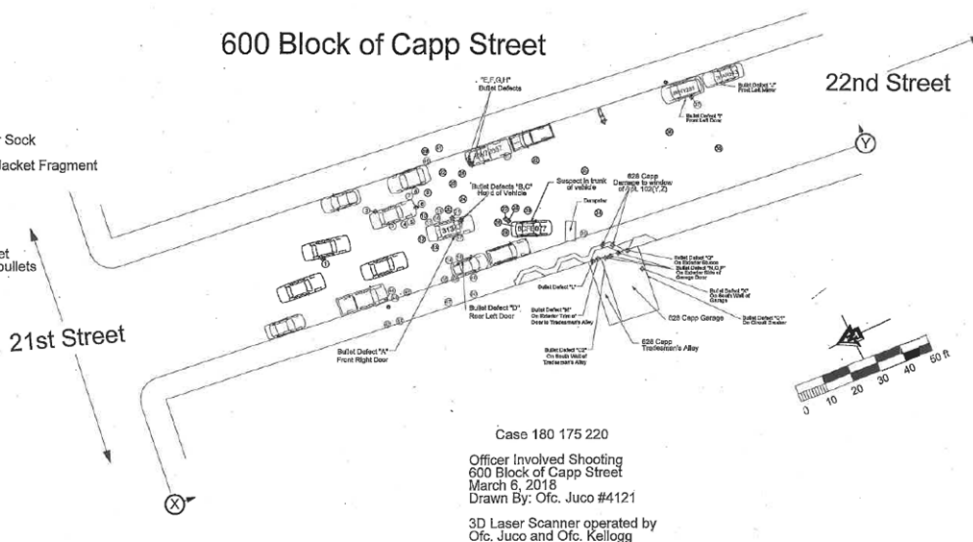
¹⁸ San Francisco Police Department Forensic Services Division-Criminalistics Laboratory Report of Laboratory Examination Forensic Biology Examination for Incident Number 180 174 220.

ratios, not as identification statements. Thus, the report listed that the possibility of the source coming from another random person is statistically improbable.¹⁹

Scene Sketch

EVIDENCE DESCRIPTION

E1 Right Glove
E2 Cartridge Casing
E3 Cartridge Casing
E4 Cartridge Casing
E5 Cartridge Casing
E6 13 Cartridge Casings
E7 4 Cartridge Casings
E8 2 Cartridge Casings
E9 2 Cartridge Casings
E10 3 Cartridge Casings
E11 7 Cartridge Casings
E12 Cartridge Casing
E13 Cartridge Casing
E14 2 Cartridge Casings
E15 3 Cartridge Casings
E16 Cartridge Casing
E17 Cartridge Casing and Bullet
E18 9 Cartridge Casings and Super Sock
E19 Pistol Magazine
E20 Cartridge Casing and Copper Jacket Fragment
E21 Pistol Magazine
E22 Pistol Magazine
E23 Cartridge Casing
E24 Cartridge Casing
E25 Silver Jacket Fragment
E26 Cartridge Casing "9mm Luger"
E27 Bean Bag from ERIVW and Bullet
E28 Taurus Millennium Pistol and 2 bullets
E29 Bullet and Pocket Knife
E30 Fragment
E31 Bullet
E32 Copper Jacket
E33 Bullet
E34 Bullet
E35 Copper Jacket Fragment
E36 2 Copper Jacket Fragments
E37 Bullet Fragment
E38 Copper Jacket Fragment
E39 Cartridge Casing
E40 Cartridge Casing
E41 Cartridge Casing
E42 Cartridge Casing
E43 2 Cartridge Casings
E44 2 Cartridge Casings
E45 2 Cartridge Casings
E46 11 Cartridge Casings
E47 2 Cartridge Casings
E48 Pistol Magazine
E49 5 Cartridge Casings
E50 6 Cartridge Casings



SFPD-H 000554

V. SAN FRANCISCO MEDICAL EXAMINER INVESTIGATION

On March 6, 2018, at 10:48 pm, San Francisco Medical Examiner (SFME) Inspectors Kris Macferren, Star No. 123, and Mark Powning, Star No. 119, responded to the scene and took custody of the deceased, Delgado-Duarte. The SFME Inspectors completed a gunshot residue kit on Delgado-Duarte, then sealed his hands in evidence pouches before transporting the remains to the SFME office for further investigation.

On March 7, 2018 at 9:41 am, Chief Inspector Thomas McDonald, Star No. 110, spoke with Delgado-Duarte's family, Jose Deldado and Maria Duarte, to explain the SFME's investigative process.

On March 7 and 8, 2018, Assistant Medical Examiner, Dr. Louis Pena, conducted an autopsy and determined that the cause of death for Delgado-Duarte was multiple gunshot wounds. He noted that there were 25 gunshot wounds to the body and head, 6 were listed as fatal, 9 were listed as

¹⁹ The FBI's established protocols for DNA investigation reporting does not allow for basing an absolute identification on DNA, but instead is qualified on the probability of another person a having a matching DNA profile. As indicated in this case, there is less than 1 in 10.4 septillion for a match to a US Caucasian male, 1 in 23.2 Octillion for a match to an African American male, less than 1 in 2.66 Septillion for a match to a US Hispanic male, and less than 1 in 46.4 Octillion for a match to US Asian male. Note: A septillion is 10^{24} and an Octillion is 10^{27} .

potentially life threatening, and 11 were listed as non-fatal. Several of these wounds were through and through, leaving partial and no bullet remains available for analysis. Several deformed copper jacketed lead bullets, with a base of about 10 mm (close to a .40 caliber bullet), were recovered in the body.

VI. LEGAL STANDARD

The question presented is whether the officers committed a criminal act in shooting and killing Delgado-Duarte. Possible criminal charges against an officer involved in a fatal shooting include, amongst other possible charges, murder, voluntary manslaughter and discharging a firearm in a grossly negligent manner. In order to charge an officer with any of these crimes, 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 inquiry is whether the officers were acting in self-defense or in defense of others, thereby justifying their conduct.

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.”²⁰ Specifically, self-defense or defense of others serves as a complete defense to murder and to 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 or her perceptions and actions were objectively reasonable under the circumstances.²¹

The subjective prong of the self-defense/defense of others standard examines the person's belief in the need to use deadly force. For the prosecution to prevail on the charge of murder, it must prove beyond a reasonable doubt that the shooting officers did not reasonably believe they or others were in imminent danger of being killed or suffering great bodily injury, or that they did not reasonably believe that the immediate use of deadly force was necessary to defend against that danger.²² To prevail on the charge of voluntary manslaughter, the prosecution must prove beyond a reasonable doubt that the shooting officers unreasonably believed that they or others were in imminent danger of being killed or suffering great bodily injury, or that they unreasonably believed that their immediate use of deadly force was necessary to defend against that danger.²³

The objective prong of self-defense/defense of others asks what a reasonable person would have done in the officer's position.²⁴ 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 or her to be.²⁵ 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

²⁰ Cal. Pen. Code § 197; see also *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.

²¹ See *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-1083; *People v. Viramontes* (2001) 93 Cal. App. 4th 1256, 1262.

²² CALCRIM 505, Cal.Pen.Code §§ 196(2), (3), and 197(1), (4).

²³ CALCRIM 571.

²⁴ See *People v. Humphrey* (1996) 13 Cal.4th at 1082-1083.

²⁵ *People v. Jefferson* (2004) 119 Cal.App.4th 508, 519.

defendant acted in a manner in which a reasonable man would act in protecting his own life or bodily safety.”²⁶

This includes any prior assaults or known threats by the victim to the defendant.²⁷ Penal Code § 835a specifies that an officer shall “not lose his right to self-defense by the use of reasonable force to effect the arrest or ... to overcome resistance.”²⁸ 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.”²⁹

Accordingly, for this Office to prevail in a criminal case against the officers for the murder of Delgado-Duarte, the “prosecution must prove beyond a reasonable doubt the absence of justification.”³⁰ The prosecution “...must prove beyond a reasonable doubt that the defendant did not act in lawful self-defense or defense of another.”³¹ The lesser included crime of voluntary manslaughter based on imperfect self-defense requires the prosecution to similarly prove “beyond a reasonable doubt that the defendant was not acting in imperfect self-defense or imperfect defense of another.”³²

Moreover, for this Office to file criminal charges against the officers, it must determine first that the “admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.”³³

VII. LEGAL ANALYSIS

A. LEGALLY RELEVANT FACTS

As a threshold matter, the investigation established that Delgado-Duarte possessed a silver semi-automatic firearm that he used to commit a robbery, and that he attempted to escape from that robbery scene by getting into the trunk of the black car driven by Navarro, which was immediately stopped by an SFPD patrol car. Delgado-Duarte then lay in the trunk and held the trunk lid partially open with his right hand. Delgado-Duarte ignored numerous SFPD requests in both English and Spanish to show both hands, and to exit. The SFPD used a “bean-bag” rifle to no effect. Delgado-Duarte then uttered an expletive and fired his gun towards the SFPD officers,

²⁶ *People v. Humphrey* (1996) 13 Cal.4th at 1083 (Quoting *People v. Moore* (1954) 43 Cal.2d 517, 528).

²⁷ *People v. Aris* (1989) 215 Cal.App.3d 1178, 1188-89.

²⁸ Penal Code § 835a.

²⁹ *People v. Ross* (2007) 155 Cal.App.4th 1033, 1057.

³⁰ *People v. Banks* (1976) 67 Cal.App.3d 379, 384. See also CALCRIM 505 and CALCRIM 3470.

³¹ CALCRIM 505.

³² CALCRIM 571.

³³ California District Attorneys Association (CDAA), Professionalism (2016), and CDAA, Uniform Crime Charging Standards (1989). See also, National District Attorneys Association (NDAA), National Prosecution Standards (3rd Ed. 2009), Sec. 4-2.2, p.52.

who were to the rear of the trunk. Several SFPD officers fired back, resulting in Delgado-Duarte's death. These events were confirmed by a civilian victim, civilian percipient witness, SFPD officers, and an admission by the driver Navarro, along with multiple videos and CSI evidence.

The civilian victim and civilian percipient witness both saw Delgado-Duarte brandish a silver handgun while committing a robbery and pointed out Delgado-Duarte to a fortuitous passing SFPD patrol car, yelling "pistola, pistola." The two civilians, who did not know each other, saw Delgado-Duarte run to the black car, which was immediately stopped by the patrol car.³⁴

The officers in that flagged-down patrol car radioed in a possible "211" (robbery) and a "220" (man with a gun), requesting emergency assistance. After seeing the person identified by the two civilians as having a "pistola" dive headfirst into an already partially opened trunk, the officers effected a traffic stop on the black car. A security video captured the black car's driver, Navarro, opening and leaving open the trunk lid after Delgado-Duarte initially exited the car before the robbery. Navarro later admitted in an interview that Delgado-Duarte quickly returned, jumped into the trunk, and yelled, "Bro, go, go!"³⁵

After backup patrol cars arrived, officers ordered out and safely detained Navarro, the driver of the black car. Numerous officers, the robbery victim and witness, and residents in nearby houses heard an officer use the public address system in a patrol car to give and repeat orders in both Spanish and English to Delgado-Duarte to show his hands and get out of the trunk.

The officers saw Delgado-Duarte holding the trunk lid up with his right hand, lifting and lowering it variably, while his left hand was sometimes in view and sometimes behind his back. Approximately ten minutes after the traffic stop³⁶, due to Delgado-Duarte's continued failure to comply with SFPD verbal orders, an officer fired a "bean bag" round from his less-lethal ERIW rifle, which apparently hit Delgado-Duarte to no effect. Immediately before he shot, Delgado-Duarte is heard saying or yelling something by at least 5 officers, 4 of which heard the expletive "fuck you."

Approximately 16 seconds later³⁷, after the "bean bag" shot, Delgado-Duarte fired one round from his 9mm silver semi-automatic out of the trunk in the direction of multiple SFPD patrol cars that were all parked on Capp Street behind the rear bumper. Five of the officers stated that Delgado-Duarte's left hand could be seen moving or "punching" to the rear of the car towards them, and 11 officers saw a muzzle flash from the car trunk. Six officers also heard at least one gunshot in conjunction with Delgado-Duarte's left-hand movement and/or muzzle flash.

³⁴ Officers Cassinelli #1104 and Tupper #4115, in the front seat of the felony-stop patrol car, both confirmed the black car traveled less than 2 car lengths on Capp Street after Delgado-Duarte jumped into its trunk.

³⁵ Interview conducted on 6 March 2018 by Sgt. Barry Parker #462, Homicide Division, SFPD.

³⁶ This time estimate is based upon BWC and CAD time records.

³⁷ Based on timestamps on multiple officers' BWCs.

The muzzle flash from the trunk is recorded by the video taken by civilian Owen Linzmayer, as well as seen on multiple BWCs. Corroboration that Delgado-Duarte shot at the police was also provided by Officer Cody #1375, who was either lateral to or behind the officers who later fired their weapons. At the time of Delgado-Duarte's muzzle flash, Officer Cody was hit by shrapnel from a gunshot that pierced the parked car he was using for cover. Due to Officer Cody's position, it is most likely that this gunshot came from Delgado-Duarte's gun. Although the bullet was not recovered, a 9 mm casing was found on the street near the trunk of the black Honda.³⁸

The SFPD reaction to Delgado-Duarte's gunshot was immediate: of the over 22 officers on scene, ten officers returned fire at Delgado-Duarte. Eight officers fired their SFPD-issued P226 Sig Sauer 40 caliber pistols, and two officers fired SFPD-issued Colt M4 patrol rifles, totaling approximately 99 rounds,³⁹ all fired within a few seconds' duration. The shooting stopped after an unknown officer yelled "cease fire."

Patrol officers then approached the trunk where Delgado-Duarte was unresponsive, and moved him to render medical aid, including CPR, and radioed for SFPD paramedics. The SFPD paramedics later pronounced him dead. The Medical Examiner found the cause of death to be "multiple gunshot wounds," finding a total of 25 gunshot wounds, of which 6 were "penetrating fatal" wounds, 8 were "life-threatening" wounds, with the remaining being "non-fatal" wounds.

SFPD crime scene investigators (CSI) subsequently found a silver 9mm Taurus semi-automatic pistol in the trunk, with one 9mm round in the chamber and nine 9mm rounds in the Taurus' 10-round capacity magazine. One empty 9mm casing was also found in the street just outside the trunk, consistent with it being fired from the trunk.

The interview statement provided by Navarro corroborated the statements of the shooting officers and witnesses, and the video evidence, and provided context as to Delgado-Duarte's state of mind and why he decided to shoot at so many police officers. Navarro admitted Delgado-Duarte⁴⁰ showed him a medium-sized 9mm or .380 semiautomatic silver pistol in the car earlier in the evening. As Navarro was walking towards the police, away from the car as instructed by the police, Delgado-Duarte told him from the trunk, "I'm sorry for putting you in this predicament bro, but I'm not going back to jail, nor am I going to be deported."⁴¹

Accordingly, there is no reasonable dispute that Delgado-Duarte committed an armed robbery against Bamaca and fired one shot from the trunk towards the police officers behind him and the rear bumper.

³⁸ SFPD Crime Investigations Unit Scene Report for Case Number 180175220.

³⁹ Four officers emptied their primary pistol magazines and reloaded with new magazines, and four officers fired fewer than all primary pistol magazine rounds. The two officers with patrol rifles fired at maximum 5 and 3 of the rounds in each of their 30 round magazines.

⁴⁰ Navarro used the name "Dopher" for Delgado-Duarte.

⁴¹ Interview conducted on 6 March 2018 by Sgt. Barry Parker #462, Homicide Division, SFPD.

B. SUBJECTIVE PRONG

With respect to the subjective prong of the self-defense analysis, all ten shooting officers stated that they fired out of fear for their lives or lives of other officers when Mr. Delgado-Duarte pointed his gun and fired in their general direction. The investigation revealed no evidence to undermine the officers' statements that they feared for their own, and their fellow officers' safety. Therefore, the subjective prong is satisfied.

C. OBJECTIVE PRONG

The shooting also appears to have been objectively reasonable. Delgado-Duarte posed an imminent risk of great bodily injury or death to the officers and to the public, demonstrated by his opening fire at armed officers. Delgado-Duarte had committed an armed robbery with a loaded pistol, demonstrating that he was willing to use deadly force, and was in the process of fleeing from the scene. Officers Cassinelli and Tupper were aware of this when they responded to the robbery victim's and witness's cries of "pistola", as demonstrated by their tactical use of a felony traffic stop.

After the SFPD's bilingual orders to Delgado-Duarte to get out of the trunk and show his hands were ignored, and the ERIW "bean-bag" round was ineffective, Delgado-Duarte raised his left hand from behind his back and fired at the officers behind him. In response to this imminent threat, ten of the over 22 officers returned fire at Delgado-Duarte, causing his death.

Given Delgado-Duarte's actions before the fatal gunshots and all other available evidence, the ten officers' use of deadly force appears to have been an objectively reasonable response to the imminent and continuing deadly threat posed by Delgado-Duarte's shooting at them.

VII. CONCLUSION

Although the District Attorney's Office understands that any loss of life is tragic, the prosecution would be unable to prove beyond a reasonable doubt that the officers' return fire was an unlawful response to Decedent Delgado-Duarte's shooting at them. It should be noted that District Attorney Boudin, while a member of the San Francisco Public Defender's Office, represented Mr. Victor Navarro in his criminal matter related to this incident. In an attempt to alleviate any perceived conflict of interest, DA Boudin contacted the California Attorney General's Office to take over the investigation, which the California Attorney General's Office declined to do.

