

Stephen M. Wagstaffe, District Attorney

COUNTY OF SAN MATEO



KAREN GUIDOTTI
CHIEF CRIMINAL DEPUTY

MORLEY PITT | ALBERT SERRATO
ASSISTANT DISTRICT ATTORNEYS

400 COUNTY CENTER, 3RD FLOOR • REDWOOD CITY • CALIFORNIA 94063 • (650) 363-4636

CONFIDENTIAL
until public
5/30

FOR IMMEDIATE RELEASE

May 30, 2014

Re: Death of Errol H. T. Chang on March 18, 2014

The District Attorney's Office has completed its investigation into the death of Errol H. T. Chang which occurred on March 18, 2014 on San Pedro Avenue in the city of Pacifica. After a lengthy investigation by Inspector Kevin Raffaelli and other Inspectors of the San Mateo County District Attorney's Office, and law enforcement personnel from the Daly City and Pacifica Police Departments, District Attorney Stephen M. Wagstaffe has determined that the filing of criminal charges is not warranted as to Officers Mario Busalacchi and Stephen Woelkers of the Daly City Police Department. Mr. Wagstaffe has concluded that the use of lethal force by both officers in the confrontation with Errol Chang was a lawful response to the conduct by Mr. Chang.

The Daly City and Pacifica Police Departments and the San Mateo County District Attorney's Office conducted a thorough and independent investigation of the facts and circumstances leading to the death of Mr. Chang. Based on all of the information ascertained during the investigation, Mr. Wagstaffe concluded that the circumstances surrounding the death of Errol Chang did not involve any criminal conduct by Officers Mario Bussalacchi and Stephen Woelkers. Therefore this case is now deemed closed by this office.

The letter written by Mr. Wagstaffe to Daly City Police Chief Manuel Martinez setting forth the basis for the decision declining to file criminal charges in this case is attached to this e-mail press release.

Binders containing all of the reports referred to above are available for public inspection. Anyone seeking to read all or part of the reports should contact Chief Inspector John Warren of the District Attorney's Office Bureau of Inspectors at 363-4074.

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May 27, 2014

Chief Manuel Martinez
Daly City Police Department
333 90th Street
Daly City, California 94015

Re: Officer Involved Shooting, March 18, 2014

Dear Chief Martinez:

This letter is to formally advise you that the District Attorney's Office has concluded our investigation into the facts and circumstances surrounding the use of lethal force by Daly City Police Officer Mario Busalacchi and Officer Stephen Woelkers on March 18, 2014 in the residence at 384 San Pedro Avenue in the City of Pacifica. The focus of our investigation was on the conduct of Officers Busalacchi and Woelkers since the investigation established that they were the only officers to use lethal force on that afternoon. The results of our investigation lead to the clear conclusion that the use of lethal force by Ofr. Busalacchi and Ofr. Woelkers, resulting in the death of 34 year old Errol H.T. Chang, was legally justifiable and that the actions of the involved police officers complied with the established standards governing officer and public safety, and undoubtedly saved the life of Ofr. Busalacchi.

District Attorney Inspector Kevin Raffaelli, along with various Daly City and Pacifica police investigators, and other inspectors from the San Mateo County District Attorney's Office conducted a thorough and complete investigation into the events that occurred on March 18, 2014 in the rear yard of, and inside of the residence at 384 San Pedro Avenue in Pacifica. The decedents conduct of stabbing Ofr. Busalacchi, as he and members of the SWAT team approached him in order to respond to a request for assistance from Mr. Chang's family, was the direct cause of the use of lethal force by Officers Busalacchi and Woelkers. That use of deadly force unfortunately concluded with the death of Mr. Chang. A summary of the facts and circumstances surrounding the officers' efforts to respond to a request for help from the decedent's family, and the conduct by Mr. Chang that ultimately led to the use of lethal force by Officers Busalacchi and Woelkers are set forth below to

inform you of the basis for our decision that the officers' conduct was lawful and appropriate.

Our investigation establishes the following relevant facts from the evening of the shooting. On March 18, 2014 at approximately 11:52 a.m., the Pacifica Police Department Dispatch Center received a telephone call from the decedent's mother, Christine Goias, requesting police officers to respond to 384 San Pedro Avenue in Pacifica to assist them in getting her son, Errol Chang, who was experiencing mental health issues, to a hospital. In the recorded call, the police were advised that her son needed psychiatric help because he was paranoid and thought that people were trying to assassinate him. She advised dispatch that they were trying to get him to a hospital, but that he would not comply. She further advised dispatch that he had a "little axe" in his pocket.

Officer Stump and Sergeant Romero of the Pacifica Police Department responded to the call within ten minutes of the call for service. They were soon joined by Ofc. Aranda, and several other officers shortly thereafter, who were CIT (Crisis Intervention Trained). The three officers heard yelling and screaming coming from the back of the residence. The officers proceeded around the side of the house where they found the decedent sitting atop a four to five foot retaining wall. Also in the backyard were the decedent's father Thomas Chang, and decedent's brother Matthew Chang. The officers told Thomas Chang to leave the backyard, as they were concerned for his safety. The officers tried to engage the decedent in conversation in an attempt to calm him down and to get him to comply with seeking psychiatric help. The decedent was irrational, exhibiting paranoia by claiming that President Obama was trying to assassinate him, and accusing the officers of wanting to kill him. Additionally, he repeatedly threatened to kill the officers, and to chop their heads off. The officers persistently tried to assure the decedent that they were there to help him. Despite the attempts to calm him down, the decedent removed the axe from his pocket and began raising it above his head. The officers, fearing that the decedent was going to swing the axe at them, pulled their firearms and yelled at him to stop wielding the axe. When the officers pointed their weapons at the decedent, he would lower the axe. This threatening conduct by the decedent, and the reaction of the officers repeated itself several times. Sgt. Romero told investigators that this incident was the closest he had ever come in his career to shooting someone. The Pacifica officers showed enormous restraint in not shooting Mr. Chang at that time.

Because of the decedent's irrational behavior and their inability to calm him down, Sgt. Romero summoned additional assistance. He called for an officer to bring a "bean bag" shotgun to the scene. He also instructed two Pacifica officers with him in the rear yard to deploy their Tasers when they had a good opportunity. At an appropriate time, both officers deployed their Tasers, hitting Mr. Chang. Unfortunately, the Tasers had little effect on him. He fell into his brother Matthew at one point, but was able to right himself and pull out the prongs. He then ran into the residence and barricaded himself inside the house. The less-than-lethal weapons procured by officers did not assist them in subduing the decedent.

At this point, officers had been informed by Thomas Chang that there was a .22 caliber rifle in the house. Thomas Chang informed the officers that he had recently hidden the weapon in the house, and hidden the ammunition separately, as he was afraid of his son

getting his hands on the weapon. Officers also learned at this time that prior to police arrival, the decedent had hugged his family members, told them that he loved them, and thanked them for all they had done for him. The decedent's family members told police that they believed the decedent was saying "his goodbyes."

Officers continued to attempt to communicate in a variety of ways with the decedent in an effort to convince him to come out of the house. Mr. Chang would not communicate with them. Officers were able to hear noise from the house which sounded like furniture being moved around. Officers believed that he was barricading himself in the residence. The Daly City SWAT team responded to the residence. Officers tried to make telephone contact with the decedent by landline telephone to the residence, by cell phone, and by loudspeaker, but he would not communicate with officers. Hostage negotiators tried to reason with the decedent, but he would not engage in discussion with them. At one point, officers utilized a "throw-phone", which was thrown into the residence through a window. Mr. Chang refused to utilize the throw phone to communicate with officers. Additionally, officers attempted to make contact with Mr. Chang's doctor to see if the doctor could provide any insight into the decedent's conduct. The doctor did not respond in time to be of assistance.

The goal of law enforcement was to convince Mr. Chang to exit the residence peacefully before he was able to find the firearm and ammunition in the home. When officers concluded that their attempts to converse and reason with him through communication were not succeeding, officers began using "flash-bangs" to try to get him to flee the residence. "Flash-bangs" are non-lethal explosive devices which produce a blinding flash of light and a loud noise. The purpose of these devices is to temporarily disorient the senses. The use of the flash-bangs was initially successful, as the detonation of these devices forced Mr. Chang into the front of the home where officers could see him at the front windows. At one point, he even broke a front window and thrust himself from the waist up through the broken window. Officers contemplated simply grabbing him and pulling him through the window, but decided that the chance of fatally wounding him by pulling him over protruding glass shards was too dangerous. Meanwhile, decedent kept yelling irrational phrases, such as "go ahead and shoot me in the head", "give me five more minutes", "I'm dead already."

At approximately 6:30 pm, a command decision was made to send some members of the SWAT team into the residence, as the approaching darkness would have compromised the safety of the officers. The tactical plan was to send the team in through the back of the residence, while Mr. Chang was visible at the front window. Once inside, the team was to throw a flash-bang into the room where Mr. Chang was located, which would disorient him long enough for the team to rush in and subdue him. Six hours after the initial call was placed to 911, the officers forced entry through the back glass door and entered the residence. They discovered immediately that Mr. Chang had constructed barricades throughout the home. Most concerning was a substantial barricade that he had constructed with the use of mattresses and furniture, which blocked the path from the hallway to the front room where Mr. Chang was at the front of the house.

Once the team was directly behind the barricade, they threw a flash-bang into the room where Mr. Chang was standing at the window. They immediately tried to move the

barricade, but were unable to do so. At that point, Ofr. Busalacchi jumped up and swung his legs over the barricade, holding himself atop the barricade by his elbows, such that his body was hanging down, but not touching the floor. The rest of the team was on the other side of the barricade from the room that Mr. Chang was in. Just after Ofr. Busalacchi scaled the barricade, he saw the decedent emerge from the darkness and smoke. The decedent began attacking Ofr. Busalacchi, striking him repeatedly in the legs. At this time, Ofr. Busalacchi didn't yet realize that the decedent had a lethal weapon in his hands, with which he was striking the officer. Ofr. Busalacchi was not in a position to defend himself with his arms, as his elbows were holding him up, so he began kicking the decedent away from him. As Ofr. Busalacchi kicked the decedent a few steps back, the officer saw for the first time that the decedent had a knife in his right hand. The knife had a brass-knuckle spiked handle, and a large blade that protruded from it. At that point, Ofr. Busalacchi tried to retreat, but was unable to move himself off of the barricade, perhaps due to the equipment that he had on his body.

At this time, Ofr. Woelkers, who was directly behind Ofr. Busalacchi, but separated by the barricade, also saw the knife in the decedent's hand, and saw him striking the officers in the legs. Officers heard Ofr. Busalacchi yelling, "He's got a knife!"

Ofr. Busalacchi and Ofr. Woelkers watched the decedent advance on Ofr. Busalacchi with the knife in his hand. Mr. Chang raised the knife and was coming down, blade side first toward Ofr. Busalacchi's face. Ofr. Busalacchi raised his left arm to block the strike and protect his face, and the decedent stabbed the officer in the arm. The decedent started to strike again, and believing that his life was in imminent danger, Ofr. Busalacchi fired his handgun at Mr. Chang's chest.

Almost simultaneously Ofr. Woelkers moved into position behind Ofr. Busalacchi, positioning his rifle over the barricade so that he wouldn't hit Ofr. Busalacchi, and fired, believing that Ofr. Busalacchi was about to be stabbed again. Ofr. Busalacchi fired two shots, and Ofr. Woelkers fired several shots. The decedent immediately dropped to the ground.

Officers inside the house called for medics, both for Ofr. Busalacchi who had a substantial stab wound in his arm, as well as for the decedent. Unfortunately, Mr. Chang was pronounced dead a short time later. Ofr. Busalacchi was transported to San Francisco General Hospital and taken into surgery. Ofr. Busalacchi subsequently underwent a second surgery.

Statements were taken from Mr. Chang's family members, as well as from friends and neighbors. Thomas Chang, the decedent's father told Inspector Raffaelli that the decedent had been diagnosed as paranoid schizophrenic. He told Inspector Raffaelli that his son had been hospitalized previously for mental health problems and had also been incarcerated for criminal conduct, including robbery. Mr. Thomas Chang described how the decedent had been experiencing an "extreme mental breakdown" for the previous two weeks. He described him as "unbalanced, angry, aggressive and mean." He further described his son as exhibiting "huge mood swings" and "a lot of paranoia." Mr. Thomas Chang told Inspector Raffaelli that the prior week his son pushed him and tried to punch him. He also said that about a week earlier, his son had fired shots into the ceiling, which prompted him to separate the gun and ammunition and hide them separately. (Officers were able to

observe the bullet holes in the ceiling.) He also informed officers that he had begun barricading himself in his room at night so that he could sleep without fear that the decedent would kill him as he slept. He told officers, "I risked my life as long as I could."

Mr. Thomas Chang told officers that the decedent had not slept for at least three days prior to the day of his death. He told officers that the decedent was intent on arming himself with either the hatchet that he was carrying when the officers arrived, or kitchen knives, an array of which police found spread on the kitchen counter, adjacent to the living room. Mr. Chang told police that he didn't really want to call police that day because his son would "probably be killed because he won't give up his arms. You know he wants to be armed all the time now." Mr. Chang said that even though he believed that his son would be aggressive toward police, he had no choice left but to call them, because his son needed psychiatric help and wouldn't get it. He said that his son had a "death wish"; that his son was "acting like a gorilla" that afternoon, and opined that the police didn't want to hurt him. He expressed his belief that his son was seeking "suicide by cop."

The Pacifica Police Department implemented the county protocol for officer involved shootings and the investigation was conducted in an appropriate and thorough manner. Daly City Police Department provided assistance with the investigation. The San Mateo County Sheriff's Office Forensic Laboratory was called to conduct an examination of the scene of the shooting and to collect all relevant evidence. The San Mateo County Coroner's Office was also notified and conducted their standard investigation into such fatal shootings. The San Mateo County District Attorney's Office was also notified of the shooting and a determination was made for a joint investigation between the District Attorney's Office and the Pacifica Police Department.

The autopsy conducted by Dr. Peter Benson, an experienced pathologist under contract with San Mateo County, is corroborative of the description of events provided by the officers at the scene of the shooting that evening. Dr. Benson noted that Errol Chang was shot multiple times, most likely eight times, predominantly in the chest. The location of the bullet wounds is consistent with the description of the positions of Officers Busalacchi and Woelkers, and the decedent at the time of the shooting. A toxicology report indicated that Errol Chang had cannabinoids in his system at the time of death.

The reports of the criminalists and evidence specialists from the San Mateo County Sheriff's Office Forensic Laboratory also provide conclusions that are consistent with the descriptions provided by the officers. In the yard, they found two expended Taser cartridges, as well as Taser prongs. In the front room where Errol Chang had been just prior to his death, officers found an axe. On the floor in the same room, officers found a knife with a spiked handle. They located the "throw phone", deployed flash-bang devices, and the barricade as described by officers within the residence.

In evaluating an officer-involved fatal shooting, Penal Code sections 196 (justifiable homicide by a public officer), 197 (justifiable homicide in self-defense) and 835a (reasonable force to effect arrest or prevent escape) are reviewed. Section 196, subdivision (2), states that a homicide by a public officer is justifiable when committed in overcoming actual resistance or in the discharge of legal duty. Section 197 is the general self-defense and defense of others statute and its principles can be applied to this situation. Section 197,

subdivision (1), provides that a homicide is justifiable when done to resist an attempt to murder or inflict great bodily injury on another person. Section 835a authorizes a police officer to use reasonable force to arrest a person for a violation of law. Application of all three statutes to the situation facing Officers Busalacchi and Woelkers on the evening of March 18, 2014 leads to the inevitable conclusion that the homicide of Errol Chang, while tragic, was legally justifiable homicide. The only reasonable conclusion that Officers Busalacchi and Woelkers could have entertained at that point was that the use of lethal force was absolutely necessary to save the life of Officer Busalacchi. Therefore it is our decision that criminal proceedings are not warranted and the case is deemed closed by this office.

It should be noted that during the investigation of this incident by the District Attorney's Office and the Pacifica Police Department, all personnel from the Pacifica and Daly City Police Departments cooperated fully. All officers at the scene provided statements, and they cooperated with and submitted to questioning by the investigators. This cooperation contributed significantly to our ability to discern exactly what occurred that March evening.

A special note and commendation for the conduct of Officers Busalacchi and Woelkers must be made. It is our belief that both officers conducted themselves in a professional, reasonable and proper manner and to the last moment sought to avoid the very result demanded by the conduct of Errol Chang. The reaction of both officers to the threat of imminent death to Ofr. Busalacchi is to be commended. Officer Busalacchi faced a remarkably dangerous situation, knowing that an angry, irrational and armed man was now raising the knife to stab him again. When he found it necessary to resort to lethal force, he did so in a manner that probably saved his own life. Ofr. Woelker's conduct in seeking to prevent further attack and the likely death of his fellow officer was equally commendable. The conduct of the officers in this case can only be described as exemplary and the community was well served by their actions.

Very truly yours,

STEPHEN M. WAGSTAFFE, DISTRICT ATTORNEY

cc: Chief James Tasa, Pacifica Police Department
Ofr. Mario Busalacchi, Daly City Police Department
Ofr. Stephen Woelkers, Daly City Police Department