

99-27528

OFFICE OF THE

DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
DISTRICT ATTORNEY

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July 16, 1999

ORIGINAL
99-27528

Arturo Venegas
Chief of Police
Sacramento Police Department
900 8th Street
Sacramento, CA 95814

Re: Officer-involved shooting - SPD case number 99-27528
Shooting officer - Jon Zwolinski (Sacramento Sheriff's Deputy, badge #191)
Person shot - James Russell Patrick

Dear Chief Venegas:

I have received and reviewed the Sacramento Police Department reports in this case, together with the audio/video tapes and photographs. Upon reviewing the material, I have concluded the shooting was justified.

FACTS:

The shooting occurred on April 10, 1999 at approximately 11:37 P.M. Shortly before the shooting, Sheriff's Deputy Jon Zwolinski was in uniform and on duty in a marked Sheriff's patrol car. He was stopped at a traffic light at Stockton Blvd. and 47th Avenue when he saw a red GMC Suburban truck driving westbound on 47th toward Stockton Blvd. with sparks flying off one of its wheels. Once the Suburban turned right onto Stockton Blvd., Deputy Zwolinski observed it to "fishtail" and accelerate with sparks continuing to fly off the tire rim. As the vehicle made the turn, Zwolinski saw the driver look at him with what Zwolinski characterized as a "deer in the headlight look".

Deputy Zwolinski made a U turn to follow the Suburban and activated the emergency lights and siren of his patrol vehicle. At that point, Zwolinski felt the driver was drunk. This was based on both the driving he had witnessed as well as the fact that, in the past, he had pulled over several people driving on their rims and most had been drunk.

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Rather than stopping, the Suburban accelerated and continued to increase its speed. Zwolinski called in on the radio that he was in pursuit of a vehicle that was failing to stop. The Suburban turned off Stockton onto Lemon Hill Avenue. The speed of the Suburban was about 60 mph. The Suburban passed several cars on the left and went through at least one red light and a stop sign.

When the Suburban reached Power Inn Road, the driver made a wide, looping turn and lost control of the vehicle. From the northbound lane, the Suburban crossed into the southbound lane striking the curb, drove in a partial circle and ended up in the northbound lane again, facing away from Zwolinski's vehicle which had come to a stop.

The driver of the Suburban looked over his shoulder at Zwolinski. Suddenly, the Suburban accelerated in reverse and came directly at Zwolinski's patrol car. The Suburban's engine was racing and sparks were flying off the rim. The Suburban hit the front of the patrol car on the driver's side and continued down the driver's side, pinning the door closed and trapping Zwolinski inside. The Suburban then accelerated forward to about ten or fifteen feet in front of the patrol vehicle. The engine was still racing, the rim was spinning, and sparks were flying.

Deputy Zwolinski was able to open the driver's door of his patrol car and began to step out with his gun drawn. As he did so, he saw the driver of the Suburban turn around again and look back. Zwolinski had his left leg out of the patrol car when the Suburban again accelerated in reverse and came at the patrol car and Zwolinski. Zwolinski, afraid that his leg was going to be taken off or that he would be crushed in the door of his vehicle, fell back into the patrol car as quickly as he could. At the same time, he fired four rounds through the window of the patrol car at the driver of the Suburban. The Suburban hit the patrol car again on the driver's side, locking against it and pushing the patrol car sideways. The Suburban pulled forward and dragged the patrol car with it. Zwolinski put the patrol car in reverse and started to back up. The Suburban came along for a short distance but eventually Zwolinski was able to extricate the patrol car from the Suburban and open his door to get out of his vehicle.

By that time, Deputies Albright and Lopes were on the scene and had the driver of the Suburban out of his vehicle and on the ground. The subject, later identified as James Russell Patrick, was on his stomach with his hands underneath his body. Deputy Albright stated that while he was not fighting, he was being "passive" and not responsive to commands. Albright and Lopes were able to remove Patrick's hands from underneath his body and handcuff him. Deputy Lopes stated he could smell the odor of alcohol on Patrick. Patrick's speech was slurred and he said he had been drinking. Patrick also said he had been having a bad day. Once the deputies made sure Patrick was not armed, they checked him for injuries

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and found two (bullet) wounds to the upper middle portion of his back. They unhandcuffed him and allowed him to sit more comfortably while they waited for the Fire Department. Fire personnel did arrive and administer to Patrick and transport him to the hospital.

At the hospital, Patrick made some statements while in the emergency room. He asked if the officer he hit was ok. He also said he was sorry. When Patrick later gave a statement to Detectives, he said he could not recall ramming the officer's car. He said he had been drinking vodka and orange juice before the incident. A witness who was drinking with him gave a statement to Detectives that Patrick was "pretty drunk". Patrick's injuries were not life threatening. He was treated at the hospital and released into custody.

ANALYSIS:

A peace officer as well as a citizen has a right to use deadly force under circumstances where it is reasonably necessary for self defense. Penal Code sections 196, 197; Tennessee v. Garner, 471 U.S. 1; Kortum v. Alkire, 69 Cal.App.3d 325. Regarding the use of deadly force in self defense, California law permits such use if it reasonably appears that the person claiming the right of self defense actually and reasonably believed he was in imminent danger of death or great bodily harm.

Here, Deputy Zwolinski shot Patrick because he feared for his life and limb. Zwolinski said he thought the guy was going to kill him. He said the ramming of the patrol car was clearly a deliberate act. He thought the guy was going to do whatever he could to get away, including harming him. Zwolinski thought he would lose his leg in the door. He also thought the Suburban would topple over his car. He leaned in his seat toward the console as he fired. When the Suburban hit his vehicle the second time, it continued to accelerate.

It was entirely reasonable for Deputy Zwolinski to fear for his life. The Suburban was extremely large and formidable when used to ram the patrol car with Deputy Zwolinski inside. It could have been a very effective deadly weapon. The driver's actions up to that point were consistent with a person who was willing to do whatever it took to escape arrest, including harming or killing Deputy Zwolinski.

It is interesting to note that Deputy Albright was on the scene as the ramming was taking place. He feared for Deputy Zwolinski's safety as well. He could see that Deputy Zwolinski was trapped inside his vehicle and vulnerable. Albright was repeatedly yelling commands at Patrick of, "Let me see your hands!", although he did not know if Patrick was able to hear him over the sound of the Suburban's engine. Albright had his firearm pointed at Patrick and actually started to pull the trigger. He took his finger off the trigger though, before actually firing because, although he was unaware at the time that Zwolinski had fired

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shots, he heard over the radio, "shots fired". At the same time, he saw the driver's body relax and his right hand raise limply as if he were surrendering. Thus, Deputy Albright had also perceived the situation as extremely dangerous to Deputy Zwolinski.

CONCLUSION:

Because Deputy Zwolinski reasonably believed he was in imminent danger of great bodily harm or death, the shooting of James Russell Patrick was justified. Accordingly, we will take no further action with respect to Deputy Zwolinski. Thank you for referring the matter for our review.

JAN SCULLY

DISTRICT ATTORNEY

A handwritten signature in cursive script that reads "Jean Williamson".

JEAN WILLIAMSON

Supervising Deputy District Attorney

cc: Detective Dick Woods, SPD
Detective Rich Overton, SPD
Deputy Jon Zwolinski, SSD