

99-65576

ORIGINAL RECORDS ONLY

OFFICE OF THE

DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
DISTRICT ATTORNEY

CYNTHIA G. BESEMER
CHIEF DEPUTY



December 8, 1999

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

Re: Officer-involved shooting - SPD case number 99-65576
Shooting officer - Geoffroy Winford (Badge no. 376)
Person shot - Kirk Antjuan Harris

Dear Chief Venegas:

I have received and reviewed the Sacramento Police Department reports in this case as well as reports prepared by the Department of Justice. I have also viewed audio and video tapes and photographs. Upon reviewing the material, I have concluded that the shooting was justified.

FACTS:

On August 24, 1999, Officer Winford, a 21 year veteran of the Sacramento Police Department and team leader of the department's SWAT team, reported to work at approximately 5:30 A.M. He attended a 6 A.M. briefing with the narcotics task force, regarding a narcotics search warrant to be served that morning on a Sacramento residence. At the briefing he learned that the case involved a multi-agency task force which would be serving many search warrants throughout the state that morning. The SWAT team was being asked to assist with a search warrant to be served on a subject by the name of Harris who was a suspect in a criminal narcotic conspiracy originating out of Bakersfield, California. Harris was on probation for narcotics and reportedly dealing in cocaine and marijuana. He was wanted on a felony arrest warrant out of Kern county for drug sales and transportation.

Additional information given at the briefing and part of the reason for the SWAT team's involvement was that Harris had a prior felony assault record and violence in his

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background. Also, it was suspected that the Harris family was connected to a recent gang and drug related homicide in the Sacramento area. Thus, the SWAT team was to make entry to the residence and render it safe after which the narcotics officers would enter and serve the search warrant.

After the task force briefing, the SWAT team held their own briefing regarding the plan for entry to the residence. They outlined each person's area of responsibility and identified the role each person would play in making entry. Officer Winford was to be the first officer in the door to be followed by six additional officers. Two team members would carry ballistic shields to the front windows of the residence and act as cover as the officers approached. These team members were known as "Shields". Additionally, two team members were assigned to remove the screen door and use the battering ram on the front door if necessary. These team members were called "Breachers".

After the briefings, the SWAT team was transported to the Harris residence in the SWAT van. The residence was located at [REDACTED] 49th Street. The van was parked at [REDACTED] 49th Street and the officers, who had loaded and checked their equipment and weapons while enroute, got out of the van and began moving toward the residence. At this time, Lieutenant Somers put out the knock and notice advisement over the megaphone. He advised over the megaphone, "Residents of [REDACTED] 49th Street, this is the Sacramento Police Department. We have a search warrant, demand entry." He made four announcements prior to entry of the residence by the SWAT team.

As the announcements were being made, the team members moved at a fast walk to the front of the garage, a few feet from the front door. The two shields took their place near the front windows while one of the breachers, Officer Codog, at the direction of the team supervisor went to the front door and removed the screen. Although the knock and notice advisement had been given several times, no one from inside the residence opened the front door. However, officers saw movement at the front window which alerted them that at least one occupant was inside and knew of their presence. Officer Codog, after removing the screen, took a position next to one of the shield officers at the front window. The shield the officer was holding was marked with the police logo. Officer Codog saw Harris, whom he recognized from a DMV photo he had seen at briefing, in the window looking out at the officers. Codog yelled, "Police, put your hands up!" Codog yelled the same thing again but Harris moved away from the window and out of his view.

The decision was made for one of the breachers to ram the front door. As the door was rammed, it opened from left to right. Once the breacher stepped out of the way, Officer Winford stepped in the door. He and his partner, Officer Hoffman, had previously agreed that Winford would go to the left immediately after entering the residence. As Winford entered, he knew that the person who had been at the front window would likely be to his left once he entered the residence.

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When Winford stepped into the doorway he had his weapon, an MP-5 submachine gun (9mm), shouldered and set on semi-automatic. Winford was dressed in his SWAT uniform with the word, "Police" in large letters across the front. (All team members were dressed this way.) He first saw an archway directly in front of him which led to another room in which a light was on. As he fanned to the left, he saw a second doorway which also had light coming through. As he continued to fan left, he saw an individual sitting on a couch in a darkened corner. Between he and the individual he saw a plant sitting about chest high (on a speaker) and some furniture (an entertainment center) along the wall.

As soon as he saw the person on the couch, he began yelling, "Police!". He took another step in and saw that the subject on the couch was an adult male who appeared to be (and later turned out to be) Harris. Harris was making furtive movements with his hands. As Officer Winford focused on Harris' hands, as he was trained to do, he saw that Harris' right hand was outstretched toward a dark object with a dark handle (grip) sitting on a table to Harris' right. At this point, a mere seconds after gaining entry, Officer Winford stated that both he and Harris were yelling. Officer Winford thought that the object on the table was a gun and feared for his safety and the safety of the officers coming in behind him. He fired one shot at Harris.

It appeared that Harris had been hit. Winford yelled for him to show his hands, which he finally did. Winford directed him to get down on the ground, which he eventually did. The remainder of the SWAT team members had entered the house by this time. None had been inside the residence when Winford fired the shot. It appeared that the bullet had struck Harris in the shoulder. It did not appear that he was mortally wounded.

One of the team members, Officer Phillips, who was trained in first aid, tended to Harris' injury right away. Fire and ambulance were called. Harris was transported to the hospital where he received treatment. He had received a through and through gunshot wound with the bullet entering the upper right chest and exiting the upper right back. He was expected to survive.

The object Officer Winford thought was a gun turned out to be a hammer with part of the rubber grip missing, exposing the metal. The hammer was lying on its side on a tall speaker, with the handle pointed toward the area of the couch where Harris had been sitting.

Harris spoke with Detective Toni Winfield later that morning at the hospital. He said that he had looked out the blinds at officers. He said that after doing so, he sat on the couch knowing the officers were going to kick in the front door. He said when officers entered, he had his hands "in the air". When questioned by Detective Winfield about the exact position of his hands, he bent his arms at the elbow at approximately a 90 degree angle with his palms facing out at about chest level. He denied that there was a hammer next to the couch where he was seated.

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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 great bodily injury or death.

Here, Officer Winford fired because he believed his life was in danger. He knew Harris was a suspected drug dealer and was arrestable on the felony drug warrant out of Kern county. He also knew Harris' prior record included crimes of violence. Before entering the residence, Officer Winford knew someone was inside who knew officers were there but was not opening the front door. When Officer Winford entered and spotted Harris on the couch, he immediately saw him making what appeared to be furtive movements with his hands. The lighting was poor in the corner of the room where Harris was located. Winford further perceived that Harris' right hand was outstretched toward an object which looked to Winford like a gun. Winford knew his partners were coming in right behind him and he needed to protect them as well. In the split second all this was going on, Officer Winford feared for his safety and that of his team members and fired a single shot.

Officer Winford's fears were reasonable. Pictures of the scene show the hammer on the speaker next to the couch. It is not at all unreasonable that Officer Winford thought it was a gun. With the rubber missing from the butt end of the hammer, the metal is showing and it is understandable that it appeared to be a gun, especially given the poor lighting conditions. Further, Officer Winford's perception that Harris was making furtive movements with his hands and that Harris' right hand was outstretched toward the "gun" was reasonable. Even Harris himself admits his hands were raised, palms out at about chest level. Given the extremely short amount of time Officer Winford had to react to the perceived threat, his perceptions and actions were reasonable. He cannot be expected to have delayed reacting to his perceptions of danger as there simply was not time under the circumstances. Had the hammer been a gun as Officer Winford thought, Winford could have been killed.

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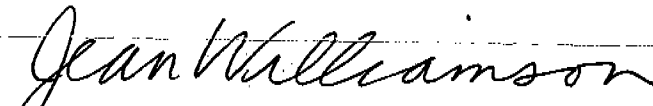
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CONCLUSION:

The shooting of Kirk Harris by Officer Winford was justified. Accordingly, we will take no further action. Thank you for referring the matter for our review.

JAN SCULLY
DISTRICT ATTORNEY


JEAN WILLIAMSON
Supervising Deputy District Attorney

cc: Sgt. Lance McHenry, SPD
James T. Ragan, DEA
Officer Winford

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Report Number: 1999-65576

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