

OFFICE OF THE

DISTRICT ATTORNEY

SACRAMENTO COUNTY

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June 6, 2000

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

Re: Officer-involved shooting: SPD case number 00-18186
Shooting officer: Officer Darryl Rosen (Badge no. 0450)
Person shot: Kevin Lewis Johnson

Dear Chief Venegas:

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

FACTS:

The shooting occurred on March 5, 2000, shortly after 12:30 in the morning. Officer Darryl Rosen had begun his patrol shift at 9:00 P.M. the evening before. He was in full uniform and was driving a marked patrol car. At approximately 12:30 A.M., Officer Rosen responded as the primary unit to a call regarding a disturbance with domestic violence involved. The information on the call provided the address (█ Olmstead Dr.) as well as a description of the suspect and vehicle involved. As Officer Rosen drove westbound on Fairbanks toward the Olmstead address, he saw a vehicle matching the description of the suspect vehicle (a blue Nissan with tinted windows) making a complete circle in the middle of the intersection of Olmstead and Fairbanks.

Officer Rosen began to follow the vehicle westbound on Fairbanks. The patrol car caught up with the suspect vehicle at Fairbanks and Mabel. At this point, Officer Rosen turned on his red light and siren. The suspect vehicle failed to yield, continuing at a speed of approximately 30 to 35 miles per hour without pulling over. The suspect vehicle made a left turn onto

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southbound Cloyd Street. The suspect vehicle then went westbound on Danville and southbound on Kinnaird Street, finally veering over to the curb and abruptly coming to a stop.

Officer Rosen came to a stop approximately two car lengths behind the vehicle and slightly to its left, with his red (overhead) lights still activated. The patrol car's headlights and driver's side spotlight were on as well. Officer Rosen broadcast the stop over the radio. He got out of the patrol car with his weapon drawn. He was unsure of the number of occupants in the suspect vehicle at that time.

Officer Rosen yelled from behind the driver's door of the squad car for the driver to turn the engine off and put his hands in the air. The suspect opened the driver's door of the Nissan. Rosen yelled again for the suspect to put his hands up. The suspect (approximately 6 feet 4 inches tall and 200 pounds) stepped out of the car, spinning around rapidly to face the officer. The suspect's right hand was concealed inside his jacket. Officer Rosen again yelled at the suspect to put his hands up. Officer Rosen was focused on the suspect's hands and feared that he had a gun.

Officer Rosen stated he was thinking at that time about the shooting of Sergeant Weinrich which took place at the beginning of the year. In that case, a noncompliant subject ended up shooting Sergeant Weinrich.

The suspect asked why he was being stopped. Rosen again told him to put his hands up. Rosen broadcast over the radio that the suspect was not complying. The suspect still had his right hand hidden inside his jacket when he took a step toward Officer Rosen and again asked why he had been stopped. Officer Rosen retreated to the rear of his car and told the suspect, "Stop. Put your hands up or I'm going to have to shoot you." The suspect replied, "You're going to have to fucking kill me." The suspect then charged Officer Rosen as Rosen retreated (backing up) around the squad car yelling, "Stop! Stop!" The suspect's right hand was still in his jacket as he chased Officer Rosen around the rear of the squad car and then to the front of the car. When the suspect was within approximately ten feet of Officer Rosen and Rosen was still backing up, Officer Rosen fired one round from his 9mm handgun at the suspect. The suspect did not go down and continued to advance toward the officer. Officer Rosen continued to retreat and fired two more rounds at the suspect. Officer Rosen stopped firing as soon as the suspect went down.

The suspect fell to the ground and began rolling around. Officer Rosen still could not see the suspect's right hand. Officer Rosen initially took cover behind the driver's door of the squad car, with his gun pointed at the suspect. Officer Rosen then moved around to the passenger side of the squad car, taking cover behind the engine block as he waited for cover to arrive. Officer Rosen recalled an academy scenario in which he was taught that once a suspect was down, he could still present a grave danger to an officer by raising up and firing a weapon if he were armed.

2016-08-18

The fact that shots had been fired and the suspect was down had been put out over the radio by Officer Rosen. Fire and ambulance had also been summoned. Two officers arrived fairly quickly and approached and handcuffed the suspect.

It turned out that the suspect was unarmed. The suspect was identified as 32 year old Kevin Lewis Johnson. According to Johnson's former girlfriend, who resides at [REDACTED] Olmstead Drive (the location of the initial call-out), Johnson's presence at her house that night prompted her to call the police shortly after midnight. Johnson was knocking at her bedroom window and screaming for her. She said it sounded like he was trying to get the window open. He started ringing the doorbell. Eventually, she opened the door. He wanted her new boyfriend, [REDACTED] to come out so that he could beat him up. He told her if [REDACTED] wouldn't come out, he would do something to [REDACTED] car. He said that he didn't care if she called the police and that he would give the police a "fight". He said they would have to shoot him, beat him or carry him out. He also said if he couldn't be with her, he was better off with his (deceased) father. Johnson did cause damage to the new boyfriend's car before leaving. He dented the hood and trunk and broke out the back tail light. The likely weapon used to damage the vehicle was a shovel found at the scene. Johnson's criminal history reflects a [REDACTED]

The trauma surgeon who operated on Kevin Johnson at UCD Medical Center, Dr. [REDACTED] stated that Johnson sustained a bullet wound above his left hip and one to the left side of his back. It was the Doctor's opinion that Johnson was hit once and that one of the wounds was an entrance wound and the other was an exit wound. The Doctor could not tell which was which.

A witness to the shooting who was looking out his kitchen window, stated that as the suspect was going toward the officer, the officer was repeatedly saying, "Put your hands up, or I'll shoot you." The witness said he could hear what the officer was saying from inside his house with the windows closed. He said the officer was running around the police car and the suspect was chasing him.

Kevin Johnson did not want to make a statement when officers contacted him at the hospital. When asked what he would tell the officer who shot him, he stated, "Tell him I'm sorry."

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 Rosen fired because he feared his life was in danger. This fear was reasonable under the circumstances. He knew the suspect was probably the same person who had been

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the subject of the domestic disturbance call. In addition, the suspect had failed to yield to his red lights and siren. When the suspect finally did pull over, he failed to comply with Officer Rosen's repeated directions (at gunpoint) to show his hands. Instead, the suspect kept his right hand concealed inside his jacket. When Officer Rosen gave the suspect an ultimatum (after the suspect took a step toward him) saying, "Put your hands up or I'm going to have to shoot you," the suspect said, "You're going to have to fucking kill me." It was at this point that the suspect, who was an imposing 6 foot 4 inches and 200 pounds, charged the officer and chased him around the squad car. Officer Rosen didn't know what might be concealed in the suspect's jacket and thought it might be a gun. Officer Rosen's concern that the suspect had a gun was more than reasonable in light of the suspect's conduct, including his continued refusal to take his right hand out from inside his jacket. Given all of the foregoing, Officer Rosen's fear for his life at the time he fired his weapon was certainly reasonable.

Officer Rosen stated he fired the first time (as he was walking backwards) to stop the threat. When the suspect kept coming at him, he fired two more rounds. He stopped firing when the suspect went down and was no longer a threat. The suspect was apparently hit once.

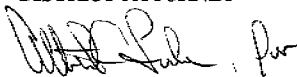
Officer Rosen cannot be expected to have delayed using deadly force until he saw whether or not the suspect was armed with a weapon. Had the suspect had a handgun concealed inside his jacket, any further delay could have resulted in Officer Rosen being shot and possibly killed.

CONCLUSION:

For the reasons set forth above, the shooting of Kevin Lewis Johnson was justified. Accordingly, we will take no action against Officer Rosen in this case. Thank you for referring the matter for our review.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY



JEAN WILLIAMSON
Supervising Deputy District Attorney

cc: Officer Darryl Rosen
Sergeant Rich Gardella
Detective Gene Burchett
Detective Don Parvin

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