

OFFICE OF THE
DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
DISTRICT ATTORNEY

CYNTHIA G. RESEMER
CHIEF DEPUTY



August 17, 2000

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

Re: Officer-involved shooting: SPD case number 00-27121
Shooting officer: Robert Mueller (Badge no. 0275)
Person shot: Marvin Edward Curry

Dear Chief Venegas:

I have received and reviewed the reports in this case, together with the audio/video tapes and photographs. I have also reviewed the reports of District Attorney Investigators Cox and Wagg. Upon reviewing the material, I have concluded that the shooting was justified.

FACTS:

The shooting occurred on April 4, 2000, at approximately 7:55 P.M. Shortly after 7:35 P.M. on the 4th, Officer Robert Mueller (in uniform and in a marked patrol vehicle) responded to a domestic violence in progress call. Officer Mueller arrived at the location of the call, [REDACTED] U Street, and waited a few minutes for cover officers to arrive. Officers McCurry and Stephens arrived and the three officers proceeded to the gate of the apartment complex, where they were met by an excited female (complainant). The complainant said her next door neighbors had had a fight inside their apartment and that the man had hit the woman. She said the victim was presently inside her (complainant's) apartment.

Officer Stephens contacted the victim who was inside apartment # [REDACTED]. Officers Mueller and McCurry waited outside the apartment. They could hear the suspect inside apartment # [REDACTED] yelling and also heard banging noises. Officer Mueller stated it sounded like he was breaking things. Mueller overheard the victim tell Officer Stephens that she had been hit. The victim also said that there was a gun in the apartment. Mueller could hear the suspect yell something

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like, 'Bitch, you wanted it this way, so this is the way it's going to be.' Officer Stephens heard the suspect yell, "Fucking bitch. You want to escalate this? It's escalated now. They're gonna see you on the evening news!"

The officers obtained the keys to apartment [REDACTED] from the victim and went to the front door of the apartment. There were still banging noises coming from inside. At first the officers were going to unlock the door and go inside the apartment. Ultimately, however, they decided it would not be safe to do so. They were concerned about the suspect having access to a gun. They stepped back to evaluate the situation.

One of the officers knocked on the front door. The suspect yelled, "Who is it?" The officers identified themselves as the police. The suspect yelled an expletive. The officers tried to persuade him to come out of the apartment. The suspect said he was not coming out. According to Officers McCurry and Stephens, the suspect yelled, "...you'll take me out of here dead."

Officer McCurry broadcast over the radio that they had a barricaded subject and asked for a supervisor to respond. Officer Mueller went to the rear of the residence to cover the back. As he walked to the rear of the apartment, he saw a window and walked over to look inside. Officer Mueller could see through a small triangular section of the window that was not covered by the blind. He was looking into the kitchen window of the suspect's apartment. There was still banging and yelling coming from inside the residence. As Officer Mueller looked through the window, he saw the suspect come around a corner into the kitchen with a gun in his hand. The suspect then disappeared from view for a few seconds, returning and walking toward the kitchen window. As the suspect got closer to the window, he looked out and made eye contact with Officer Mueller. Officer Mueller watched as the suspect brought the gun up and pointed it directly at him, taking a couple of steps toward the window. Officer Mueller thought the gun looked like a .357 and that a bullet could penetrate his vest. Officer Mueller stated they were approximately three yards from each other with only the window separating them. Officer Mueller, fearing that he was going to be shot, fired three rounds at the suspect through the window. Officer Mueller backed up a step or two and could see that the suspect had not gone down. Feeling that the suspect was still a threat, Mueller fired three more rounds and the suspect disappeared below the window. He heard the suspect thrashing around and screaming. He heard the suspect say, "I'm sorry. I didn't mean to do it. I won't do it again."

Officer McCurry broadcast over his radio that shots had been fired. After ascertaining that Officer Mueller was not hurt, Officers McCurry and Stephens maintained their positions in front of the apartment and Officer Mueller remained where he was until cover units arrived. Once cover units arrived, a perimeter and command post were set up. Since officers could still

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hear banging noises and could hear the suspect yelling, the SWAT team was requested to respond. SWAT officers began arriving just before 8:00 P.M.

After the shooting, besides the sounds coming from the apartment, the suspect could be seen looking out of the windows on several occasions. The sounds coming from the apartment finally ceased at approximately 9:40 P.M. At approximately 9:57 the suspect was seen looking out a back window. At approximately 10:45, the hostage negotiators placed a phone call to the suspect's apartment. At the same time, Officer Yaranon called out to the suspect over the loud hailer. There was no response. In a further attempt to get a response from the suspect, two rounds of wooden dowels were shot through the windows of the suspect's apartment. There was no response to the windows breaking from the impact of the dowels. At approximately 12:45 A.M. CS gas was deployed into the residence via 37mm projectiles. Again, there was no response from the suspect. At approximately 1:11 A.M. the Sacramento Sheriff's Department hi-tech camera team assisted the SPD SWAT team in going to each exterior window and clearing the room visually. When they got to the window just north of the front door, and inserted the camera into the living room, the suspect could be seen lying on his back on the floor. A SWAT team officer stayed at the window and covered the suspect on the floor, while an entry team forced open the front door and went inside the apartment. The suspect was found lying on the floor with blood on his chest. A long barrel revolver was located on the floor as well. At approximately 2:44 A.M. the fire department examined the suspect and determined that he was dead.

The revolver located on the floor of the apartment was a 9 shot, .22 caliber blue steel revolver. It was loaded with nine .22 caliber bullets, five of which were expended, four were live and one had misfired. Also in the residence was a bag in which was found handcuffs and a box containing 53 rounds of assorted .22 caliber ammunition. Within the kitchen area several bullet fragments and "smashed" bullets were located. (See CSI A.Schiele's report.) There were thirteen empty beer cans on the living room floor and eight empty beer cans in the bedroom.

An autopsy of the suspect, Marvin Edward Curry, conducted on April 7, 2000, by Dr. Fiore revealed that Curry died of a single gunshot wound to the chest. The round apparently entered the front of the chest, striking the rib and passing through the lung. The bullet exited the back left shoulder area. The wound was consistent with being caused by a bullet from a 9mm round. It was also consistent with the bullet having passed through an intermediary target (such as a window). The gun Officer Mueller fired in the shooting was a department issued Sig Sauer P226, 9 mm handgun.

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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 Mueller fired because he feared that he was going to be shot by the suspect, Curry. Mueller stated he thought the suspect's gun looked like a .357 and that a bullet could go right through his bullet resistant vest. He was only a few yards away from the suspect and the window in between them was certainly no protection. Even if he had believed Curry's gun to be a .22, such a weapon is surely lethal and could have caused serious injury or death to Mueller had a shot struck him somewhere other than his body armor. Officer Mueller actually and reasonably feared for his life when he fired at Curry. His first three rounds apparently did not strike Curry and so after a brief pause, he fired three more. He stopped firing as soon as Curry went down and no longer presented a threat. Officer Mueller acted reasonably.

CONCLUSION:

For the reasons set forth above, the shooting of Marvin Curry was justified. Accordingly, we will take no action against Officer Mueller in connection with this incident. Thank you for referring the matter for our review.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY


JEAN WILLIAMSON
Supervising Deputy District Attorney

Cc: Officer Robert Mueller
Sergeant Rich Gardella
Detective Gene Burchette

City of
SACRAMENTO
Police Department

KATHERINE LESTER
Chief of Police

5770 Freeport Blvd., Suite 100
Sacramento, CA 95822-3516

(916) 808-0800
Fax: (916) 808-0818
www.sacpd.org

Report Number: 2000-27121

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Sacramento Police Department
Professional Standards Unit
916-808-3790
spdpsu@pd.cityofsacramento.org