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OFFICE OF THE

00-75784



## DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY  
DISTRICT ATTORNEY

CYNTHIA G. RESEMER  
CHIEF DEPUTY

January 8, 2001

Arturo Venegas  
Chief of Police  
Sacramento Police Department  
900 8<sup>th</sup> Street  
Sacramento, CA 95814

Re: Officer-involved shooting: SPD case number 00-75784  
Shooting officers: Kevin Griffin, Badge #0406  
Steve Walters, Badge #0453  
Person shot: Darrell Eugene Ogburn

Dear Chief Venegas:

I have received the reports in this case, together with the audio/video tapes and photographs. I have also received Coroner's report #00-4143. Having reviewed the material, I have concluded the shooting was justified.

### FACTS:

The shooting took place on September 26, 2000 in the early evening hours. On that date, Officers Griffin and Walters were working in a marked patrol unit dressed in plain clothes as a Problem Oriented Policing (POP) team. One of their duties as POP officers was recognition and apprehension of parole violators. At approximately 6:20 P.M., while the officers were enroute to a narcotics call, Officer Griffin (the passenger officer) spotted a subject he believed to be parolee Darrell Ogburn in a vehicle. The vehicle, a gray Volkswagen Scirocco, was stopped on eastbound Eleanor, west of Del Paso.

Officer Griffin told Officer Walters he believed Ogburn was in the vehicle. Both officers were familiar with Ogburn from prior contacts with him. They had information he had recently misrepresented his address to his parole agent and believed he might be in violation of parole. They were aware he had previously been involved with drugs and illegal weapons. Officer

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Griffin had arrested him just last year for possessing an illegal knife. Officer Walters had approximately ten prior contacts with Ogburn.

Officer Walters pulled over just south of Eleanor and waited for the vehicle to pass by. The Volkswagen made a right turn from Eleanor onto Del Paso and as it passed the patrol vehicle, Officer Walters confirmed that Ogburn was the driver and apparent sole occupant of the vehicle. Officer Walters pulled behind Ogburn's vehicle. The Volkswagen had no license plates and Officer Griffin knew from a previous contact with Ogburn that the registration was expired. The officers decided to pull Ogburn over to conduct a parole search and check the vehicle code violations.

As Officer Walters pulled behind the Volkswagen, he activated the patrol vehicle's overhead lights and siren. Ogburn continued to drive, making no effort to stop. Ogburn turned right onto Lampasas and the patrol vehicle followed behind. Officer Griffin began to broadcast the pursuit. About mid-block on Lampasas the officers saw Ogburn throw an object out the car window on the driver's side. Officer Griffin believed from the size of the object and the dust that flew from it when it landed, that it might be methamphetamine. The pursuit continued as the Volkswagen turned onto southbound Beaumont. Ogburn ran the stop sign at Rio Linda and ran one other stop sign before turning northbound onto Del Paso Blvd.

Suddenly, a big plume of smoke came from the rear of the Volkswagen. Officer Walters was unable to see through the smoke for a short time and slowed the patrol car until the smoke cleared. When the officers saw the Volkswagen again, it was continuing northbound on Del Paso but suddenly veered into the southbound traffic lanes, coming to a stop in front of the driveway of Capital Christian Center. Ogburn immediately got out of the vehicle and started running through the church parking lot. Officer Walters drove into the parking lot, following Ogburn. Officer Walters followed fairly close to Ogburn until he tripped and fell. Walters then stopped the vehicle to avoid running over Ogburn. Ogburn got to his feet as the officers got out of the patrol vehicle.

Officer Griffin began running as soon as he got out of the car. He cleared the front passenger side of the patrol car and saw that Ogburn was again on his feet, running and stumbling. He saw Ogburn start to turn toward him and saw a gun in Ogburn's hand. He immediately yelled, "Gun!". Officer Griffin was fully exposed and began to back up in an attempt to get back to the patrol car for cover. Officer Griffin pulled out his gun. Ogburn pointed his gun at Officer Griffin who believed at that point that Ogburn was going to shoot him. Ogburn then swung the gun toward Officer Walters. Thinking then that Ogburn was going to shoot Officer Walters, Officer Griffin began shooting at Ogburn. Officer Griffin fired six rounds from his 9mm handgun. Officer Griffin believed that Officer Walters fired first.

When Officer Walters got out of the patrol vehicle after it came to a stop, he ran in front of the door. Initially, he saw that Ogburn was running in a shuffling fashion, crouched down and

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partially turned toward the officers. He then saw that Ogburn had a gun, which he was pointing at Officer Griffin. Walters heard Griffin yell, "Gun!" and saw him backing up. Officer Walters was fully exposed and thought that he and Griffin were going to be killed. When Ogburn swung the gun around and pointed it directly at Walters, he (Walters) began firing at Ogburn from a distance of approximately five to seven yards. Walters fired eight rounds from his 9mm handgun.

Ogburn was struck by the gunfire and fell to the ground. Officer Griffin provided cover for Officer Walters who approached Ogburn and handcuffed him. Medical aid was requested for Ogburn but he was pronounced dead at the scene.

Ogburn's gun was a .25 caliber handgun, which was loaded with one live round in the chamber and five live rounds in the magazine. The safety of the gun was in a position between "F" (fire) and "S" (safety). Twelve live bullets were also found in Ogburn's wallet.

Ogburn sustained nine gunshot wounds. He was struck in the neck, back and upper legs. When shot, Ogburn was in almost a direct line of fire from Officer Walters and at an angle in front and to the left of Officer Griffin. The entry wounds Ogburn sustained and the path of the projectiles (as outlined in the Coroner's report) are consistent with the shooting scenario described by the officers. Several witnesses affirm the officers' version of the events.

The Coroner's report revealed that Ogburn had a blood alcohol level of .14 %. One of the autopsy findings was acute alcohol ingestion. At the time of the incident, Ogburn was a parolee at large. He was on parole for being an ex-felon in possession of a firearm. He was first committed to State Prison in 1978 (for first degree burglary) and had several additional prison commitments since then. His record of convictions included evading the police, shooting at an occupied dwelling and escape. Follow-up investigation after the shooting revealed that he had told a relative he was never going back to prison again.

#### 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 or for the defense of others. Penal Code sections 196 and 197. Tennessee v. Garner (1985) 471 U.S. 1; Kortum v. Alkire (1977) 69 Cal. App. 3d 325. Regarding the use of deadly force in self-defense or defense of others, California law permits such use if it reasonably appears that the person claiming the right of self-defense or defense of others actually and reasonably believed he or another were in imminent danger of great bodily injury or death.

Here, each shooting officer was justified in his use of deadly force. Officer Walters began firing after Ogburn pointed the gun at Griffin and then swung the gun around and pointed it at him. At that point, Walters believed that he or Griffin would be killed. Officer Griffin began firing at

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almost the same time Walters did. Griffin believed that Walters was going to be shot. The officers beliefs that they were in imminent danger were reasonable based solely on the fact that Ogburn was pointing the gun at them. The officers had additional information, however, which supported the view that Ogburn intended to use the gun. They knew he was a parolee (involved with drugs and weapons in the past) who was very possibly in violation of his parole. In addition, he had refused to pull over for the red lights and siren and had then bailed out and run from them in an effort to avoid arrest. Every indication was that he desperately wanted to avoid apprehension. That he might go so far as to shoot one or both of them in a continuing effort to avoid being caught, was likely once he chose to point the gun at them.

CONCLUSION:

For the reasons set forth above, the use of deadly force by each of the officers in this case was justified. Accordingly, we will take no action against either officer in connection with this incident. Thank you for referring the matter for our review.

Very truly yours,

IAN SCULLY  
DISTRICT ATTORNEY

  
JEAN WILLIAMSON  
Supervising Deputy District Attorney

cc: Kevin Griffin #406  
Steve Walters #453  
Sgt. Rich Gardella  
Don Casimere, Office of Police Accountability