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01-19426

OFFICE OF THE

# DISTRICT ATTORNEY

SACRAMENTO COUNTY



JAN SCULLY  
DISTRICT ATTORNEY

CYNTHIA G. BESEMER  
CHIEF DEPUTY

September 6, 2001

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

Re: Officer-involved shooting: SPD case number 01-19426  
Shooting officer: Officer T. Shrum #0362  
Person shot: Steven Ray Yount

Dear Chief Venegas:

I have received the reports in this case, together with the audio/video tapes and photographs. Having reviewed the materials, I have concluded that the shooting was an accident. Consequently, criminal charges will not be filed against Officer Shrum.

## FACTS:

On March 10, 2001, at approximately 3:35 in the morning, Sacramento Police Officer Sam Davis was working uniformed patrol in a marked black and white police car when he pulled into the parking lot of a 7-11 convenience store at 7700 La Riviera Drive in the City of Sacramento. Private Security Guard [REDACTED] standing outside the 7-11, flagged Officer Davis down. [REDACTED] pointed out an individual he believed to be drunk who was sitting in the driver's seat of a white Chrysler sedan. The individual began backing the Chrysler out of the parking space. As he did so, the vehicle swerved from side to side as it backed up about eight or ten feet.

Officer Davis blew his horn to get the driver's attention and the driver stopped backing up. Davis told the driver to pull forward into the parking space. The driver did so and Officer Davis positioned his patrol car directly behind the Chrysler. Officer Davis approached the driver's side window. The driver rolled down the window and Davis smelled the odor of an alcoholic beverage coming from the driver. Davis asked the driver to step out of the car. As the driver got out of the car, he staggered backwards and fell back against the car.

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Officer Davis had some conversation with the driver and, believing him to be under the influence of alcohol, walked him back to the patrol car and asked him to get into the back seat. Officer Davis wanted to detain the (DUI) suspect until he could get an additional officer to respond to the scene for assistance. The suspect became agitated, continually saying to the officer, "You're going to take me to jail, aren't you?" The officer tried to calm the suspect down and, eventually, the suspect got into the back seat of the patrol car. Officer Davis closed the door.

Officer Davis got into the driver's seat of the patrol car. At this point, the suspect became verbally abusive. The suspect's verbal abuse included racial epithets directed at Officer Davis, who is African American. The suspect then began banging on the metal screen inside the patrol car with his hands and kicking at the doors and the screen. The patrol car was rocking back and forth.

Officer Davis, afraid the suspect would hurt himself or damage the car, decided he should handcuff the suspect. Davis got out of the patrol car and asked Security Guard [REDACTED] and [REDACTED] partner, [REDACTED] for assistance. Davis and the two security guards were able to get the suspect out of the back seat, but only after a struggle during which the suspect kicked at them and struggled with them. They then put him down on the ground on his stomach and were eventually able to handcuff him as he continued to struggle and kick. They stood him up and, although he resisted and tried to pull away, Officer Davis was able to get him back into the back seat of the patrol car and close the door. The suspect immediately began to kick the door.

Other officers began to arrive on the scene at this point. Officer Debra Hatfield from the Sacramento State University Police arrived, as did Sacramento Police Officers Swafford (#796) and Shrum. As Officer Hatfield approached Officer Davis, she observed that the suspect was angry, hostile and belligerent and he yelled profanities at her. The suspect was banging his head on the metal cage, kicking the window of the patrol car and spitting.

Officer Shrum opened the back door of the patrol car and asked the suspect for his identification and driver's license. As the suspect directed profanity at Officer Shrum and called him names, Shrum reached in the suspect's pocket and removed a wallet. Shrum searched the wallet for a driver's license. Not finding the license, Shrum patted the suspect's pockets. The suspect became louder and began attempting to get out of the patrol car. Shrum tried to push him back inside the car but could not shut the door.

Shrum got out his taser and told the suspect he would "tase" him if he did not get back in the car so that Shrum could close the door. The suspect told Shrum to go ahead and tase him in the forehead, he didn't care. The suspect continued to struggle, at one point kicking at Officer Shrum. Shrum attempted to tase the suspect, moving the taser toward the suspect's chest and

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firing it. The suspect leaned back as Shrum moved toward him and it did not appear to witness officers that the taser made contact with the suspect. The suspect did not react like he had been tased.

In the meantime, Officer Swafford had gone around to the passenger side of the patrol car with his taser out and opened the passenger side rear door. As the suspect slid over to the passenger side with his back to Swafford, Swafford used his taser in the "contact" mode against the suspect's lower back. When the suspect jumped away, breaking contact with the taser, Shrum and Swafford were able to shut patrol car doors.

Shortly thereafter, the suspect kicked out the rear driver's side window of the patrol car and resumed banging his head against the interior of the car. When the window shattered, broken glass flew onto Officer Davis. As the suspect began kicking at the door, Shrum, Davis, Hatfield and Swafford talked about getting the suspect out of the car and hobbling him. Officer Shrum suggested tasing the suspect with the darts and leaving the darts in him as a means of control. Swafford did not agree, believing that the wires would break and it would be ineffective. The officers did agree to remove the suspect from the patrol car he was in, hobble him, and transfer him to an intact patrol car for transport to jail.

The officers reached into the backseat in an attempt to grab the suspect and pull him out. Officer Davis latched onto the suspect and pulled him out, falling backward with the suspect onto the pavement. Davis sustained minor injuries (pain and swelling to his elbow and hand, a pulled calf muscle as well as abrasions and bruises). The suspect continued to kick and move around on the ground as the officers tried to get him in position to hobble him. Shrum finally succeeded in hobbling the suspect. Officer Davis had moved away at this point. Hatfield, Shrum and Swafford then began to walk the suspect to Shrum's patrol car. They got to the rear of Officer Davis's car when the suspect began struggling again and kicking and spitting at the officers. They held him face down as he tried to pull free from their grasp. As officers struggled to gain control of the suspect, Officer Shrum reached for his taser but, instead, grabbed his firearm and fired one round, which struck the suspect in the left buttocks/hip.

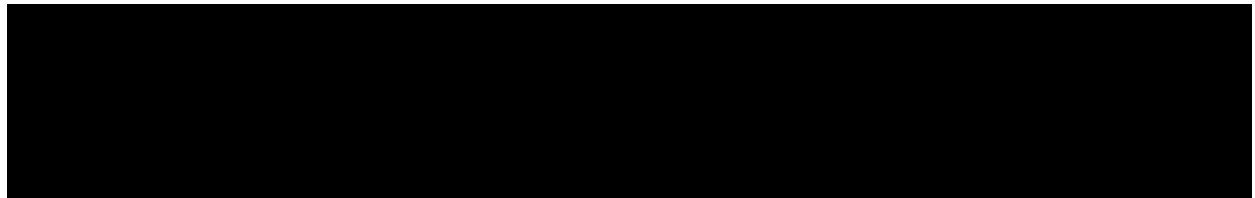
According to witness accounts, Officer Shrum seemed as surprised as everyone else at the scene that the suspect had been shot. Officer Shrum made various statements in the initial aftermath of the shooting. Officer Davis heard Shrum say, "Fuck, I shot him...I thought I was grabbing my taser, but I grabbed my gun..." Officer Swafford heard Shrum say, "Oh my god. Oh my god...I'm sorry for ruining the tasers for you guys." To Lt. Callender, Shrum stated he was holding the suspect by the feet when he (Shrum) reached for his taser but removed his gun and shot the suspect. Security Guard [REDACTED] heard Shrum say, "Oh shit. I didn't shoot him, did I? I shot him." [REDACTED] said Shrum was upset and emotional after the shooting. [REDACTED] said Shrum

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was going for his stun gun, not his firearm. [REDACTED] said he did not believe Shrum intentionally shot the suspect. Security Guard [REDACTED] said he thought Shrum was going to use his stun gun but he accidentally pulled out his gun. [REDACTED] said it appeared to be an accident.

Officer Shrum called for Code 3 fire and ambulance. The suspect, determined to be Steven Yount, was transported to the hospital for treatment. Blood was drawn at the hospital which revealed his blood alcohol level at the time of the blood draw to be .22% Yount spoke with Detective Sall a few hours after being admitted to the hospital. He told Detective Sall that he had been drinking vodka prior to the incident. When asked by the Detective whether he thought he had a drinking problem, he answered in the affirmative.



#### ANALYSIS:

The shooting in this case was accidental. The evidence is clear that Officer Shrum meant to grab and fire his taser, but mistakenly grabbed his gun and fired it. Not only did Shrum make statements to that effect, but also his reaction to the gun going off (as recounted by all the witnesses) was consistent with an unintentional shooting. Moreover, the fact that only one shot was fired further supports the accidental or unintentional nature of the act.

When a person commits an act (such as the shooting in this case) unintentionally, as long as there is no criminal negligence, it is not a crime. CalJic4.45. Ordinary negligence is the failure to exercise ordinary or reasonable care. Criminal negligence exceeds ordinary negligence, and requires gross negligence – a negligent act which is aggravated, reckless or flagrant, and such a departure from what would be the conduct of an ordinarily prudent, careful person under the same circumstances as to be contrary to a proper regard for human life or to constitute indifference to the consequences of those acts. CalJic3.36.

It cannot be said that Officer Shrum's conduct in this case, which resulted in the shooting, constituted a criminally negligent act. In the heat of the moment and without realizing it, he simply grabbed the wrong weapon and pulled the trigger. He was attempting to control a subject who was combative and resistive. He meant to use the taser on the subject, who was struggling, kicking and spitting at officers and attempting to break free. The use of the taser at that point would have been reasonable, as it might have given the officers a few moments without the

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subject struggling to get the subject into the patrol car. Unfortunately, Shrum grabbed the wrong weapon and the unintentional shooting resulted.

CONCLUSION:

Since the shooting of Steven Yount by Officer Shrum was accidental and without criminal negligence, it is not a crime. Thus, we will take no action against Officer Shrum 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: ✓ Sgt. Lance McHenry  
Detective Kingsbury  
Detective Sall  
Officer Shrum  
Don Casimere, Director, Office of Police Accountability

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**Report Number: 2001-19426**

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