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01-05214

OFFICE OF THE

DISTRICT ATTORNEY

SACRAMENTO COUNTY



JAN SCULLY
DISTRICT ATTORNEY

CYNTHIA G. BESEMER
CHIEF DEPUTY

May 17, 2001

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

Re: Officer-involved shooting: Case #01-005214
Shooting officers: William Wann, SPD #201
Matthew Nichols, SPD #636
Person shot: Jasmine Creamer, DOB 3-24-75

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 the shooting was justified.

FACTS:

On January 19, 2001, patrol Officers Wann and Nichols were working swing shift, in uniform and in a marked patrol vehicle. They started their shift at 3 P.M. that day. At approximately 7 P.M., they were dispatched to a call of a disturbance involving a broken window at [REDACTED] Spice Way in the City of Sacramento. They responded to the location and immediately noticed a white Suburban vehicle parked in the driveway of the residence. They both recognized the vehicle as belonging to a wanted parolee-at-large with whom they were familiar. Since the individual was considered armed and dangerous, the officers called for backup and waited for cover units to arrive.

As officers were getting ready to enter the residence to check it for the parolee, the complainant [REDACTED] came outside. She began speaking with Officers Nichols and Blackman (one of the backup officers who had arrived by then). The officers advised her that they were looking for the parolee [REDACTED] and that, for their own safety, they were going to check the residence for him before dealing with the vandalism call. Officers Wann, Nichols and Blackman entered

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the residence. They did not locate the parolee and felt comfortable that he was not present. They did, however, encounter several young children.

Officers then spoke with [REDACTED] about the vandalism report and the broken window. While she did not provide much detail, [REDACTED] did say that the suspect who had broken the window was Jasmine Creamer and that Creamer had come over in a stolen car but had left. Officer Wann ran Creamer for warrants and discovered she was on formal searchable probation.

Officers advised [REDACTED] there was not much they could do at that point since the suspect was gone. They gave [REDACTED] a department phone number to call to make a report. As the officers stood talking with [REDACTED] a male and female ([REDACTED] aunt and uncle) arrived in a vehicle. As Officer Wann and Nichols stood on the sidewalk in front of the residence, a white Ford drove past them, northbound on Spice. A female was the driver and sole occupant of the vehicle. [REDACTED] pointed to the car and told the officers Creamer was the driver. The officers entered their patrol car to follow suspect Creamer. As they did so, the suspect vehicle drove out of sight momentarily and reappeared, driving back in their direction. As [REDACTED] stood on the front lawn talking to her aunt, the suspect vehicle drove over the sidewalk and into the yard, crashing through a fence. The suspect vehicle headed directly for [REDACTED] and her aunt, who dove out of the way. The suspect vehicle hit either the house or a tree.

As this was happening, the officers in the patrol car called for backup again and stopped the patrol car. Both officers jumped out with weapons drawn. They yelled repeatedly at the suspect in the car that they were the police and to stop the vehicle. The suspect backed the vehicle up and drove forward again, striking the house. The officers approached the suspect vehicle with weapons drawn, continuing to yell commands at the suspect to stop. The suspect continued ramming the house with the car, failing to respond to the officers' commands.

Officer Wann broke out the driver's window with his baton in hopes that the suspect would be able to hear them better. As the officers continued to yell commands at her, she started driving forward again. By this time, the officers noticed that children had begun to come out of the house and onto the front porch. As the suspect drove once again toward the house (and now the children), both officers fired their weapons at her. Officer Wann fired three rounds and Officer Nichols fired four rounds. Each officer was armed with a .40 caliber Sig Sauer handgun. The officers began firing from about three to five feet away from the suspect. They stopped firing as the vehicle moved forward because they were afraid of hitting the children.

The vehicle hit the house again and came to a stop. Officers approached the suspect and Officer Wann opened the driver's door. As the vehicle was still in drive with the engine running, Officer Wann reached over the suspect and turned the car off. The suspect was crying and saying something about just wanting to pick up her son. The officers pulled the suspect out of the vehicle and laid her on the grass. She had sustained what appeared to be two gunshot wounds to the chest. Fire and ambulance was requested to respond Code 3. The suspect was treated by

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firefighters at the scene and transported to the hospital. After treatment at the hospital, the suspect was medically cleared the next day and booked into the County Jail.

Investigation revealed that the suspect, Jasmine Creamer, had a son (age 11) who had been in the house at [REDACTED] Spice Way at the time of the incident. The father of her son was the parolee [REDACTED]

The complainant, [REDACTED] had three children who were fathered by [REDACTED]

The vehicle Creamer was driving had been reported stolen on the date of the shooting incident. [REDACTED]

[REDACTED] She was on felony probation at the time of the shooting for "petty theft with a prior."

ANALYSIS:

A peace officer as well as a citizen has the right to use deadly force under circumstances where it is reasonably necessary for self-defense or in defense of another. In addition, a peace officer may use deadly force in order to apprehend a person who has committed a dangerous felony (involving threatened infliction of serious physical harm) or when the flight of a subject poses risk of great bodily injury. 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 force in defense of another, California law permits such use of force if a reasonable person has grounds to believe and does believe that bodily injury is about to be inflicted upon another. The degree of force which may be used is that which is reasonably necessary to prevent the injury which appears to be imminent. CalJic 5.32.

Here, the officers fired because they reasonably believed the children who had come out of the house were about to be killed. Officer Wann stated, "I thought she was going to kill one of these kids, I just had to shoot her." Officer Nichols stated he was afraid she was going to run over the children and that he and his partner fired to keep her from killing the kids. The officers had given the suspect numerous commands to stop what she was doing to no avail. Officer Nichols said that he saw the suspect's face every time she rammed the house and she had a blank stare as though she were "5150" or on drugs. The suspect had almost run over [REDACTED] and her aunt. Both officers said that [REDACTED] and the aunt would have been hit, had they not jumped out of the way. Regarding that part of the incident, Officer Wann stated, "She was definitely trying to run them over, there's no question in my mind."

Under the circumstances it was entirely reasonable for the shooting officers to fear for the lives of the children and to use deadly force to prevent the suspect from injuring or killing any of those present. As well, the officers were entitled to use deadly force to apprehend the suspect, who had committed a dangerous felony when she drove directly at [REDACTED] and her aunt.

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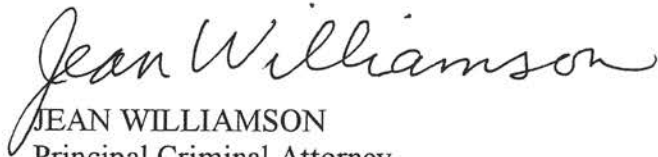
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CONCLUSION:

Finding the shooting of Jasmine Creamer justified, we will take no action against Officer Wann or Officer Nichols in connection with this incident. Thank you for referring the matter for our review.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY


JEAN WILLIAMSON
Principal Criminal Attorney

cc: ✓ Sergeant Rich Gardella
Detective Gene Burchette
Officer William Wann
Officer Matthew Nichols
Don Casimere, Office of Police Accountability

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JEAN WILLIAMSON
Principal Criminal Attorney

cc: ✓ Sergeant Rich Gardella
Detective Gene Burchette
Officer William Wann
Officer Matthew Nichols
Don Casimere, Office of Police Accountability

KATHERINE LESTER
Chief of Police

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Report Number: 2001-5214

Please note that the records provided in this release do not include records or portions of records that are exempt from disclosure pursuant to applicable law. Without limiting other arguments against disclosure that may exist, the following records or portions of records are specifically prohibited or exempted from disclosure:

Records or information, the disclosure of which would compromise the anonymity of whistleblowers, complainants, victims or witnesses (Cal. Pen. Code § 832.7(b)(6)(B))

Records or information, the disclosure of which would reveal personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information (Cal. Pen. Code § 832.7(b)(7))

Records or information wherein the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure (Cal. Gov. Code § 7922.000);

Records or information that constitute confidential medical, financial, or other information, the disclosure of which is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy (Cal. Pen. Code § 832.7(b)(6)(C));

Records or information, the disclosure of which is exempted or prohibited pursuant to federal or state law (Cal. Gov. Code § 7927.705; see also Cal. Const. art. 1 Sec. 1 and Cal. Pen. Code §§ 11105 and 13300).

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