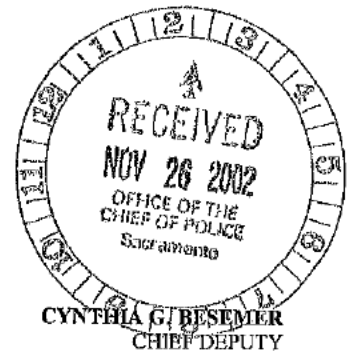




OFFICE OF THE
DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
DISTRICT ATTORNEY



November 22, 2002

Arturo Venegas
Chief of Police
Sacramento Police Department
5770 Freeport Blvd
Sacramento, CA 95822

Re: Officer-involved shooting: Case no. SPD 02-40103
Shooting officer: Police Officer Randy Lozoya #237
Person shot: Marvin Eugene Jackson (DOB 05/06/1943)

Dear Chief Venegas:

I have reviewed this case and determined that the shooting of Marvin Eugene Jackson by Officer Lozoya was justified. I reviewed records collected by the Sacramento Police Department and the Sacramento County District Attorney's Office in making this determination. I read report # SPD 02-40103 that documents the assault on the paramedic that led to the officer response, the shooting, and the follow-up investigation of these occurrences.

I also read reports by Sacramento County District Attorney Investigator Dan Willeford documenting his investigation of the shooting. In addition, I have received and reviewed photographs taken of the scene and audiotapes and videotapes of the interviews of both law enforcement, fire department and civilian witnesses to the events.

FACTS:

On May 15, 2002 at 1:30 a.m., [REDACTED] phoned 911 to report that her husband, Marvin Jackson had overdosed on sleeping pills. Sacramento Fire Department personnel were dispatched at 1:32 a.m. to the Jackson home located at [REDACTED] Village Circle in Sacramento to provide aid. When they arrived on scene at 1:39 a.m., Firefighter Ernest Partridge carried his medical gear to the front door of the residence and made contact with [REDACTED].

She directed him to where Marvin Jackson was sitting in an easy chair in the back of the residence. Firefighter Partridge approached Marvin Jackson, who was conscious, and asked how

Chief Arturo Venegas
November 22, 2002

he was doing. Marvin Jackson suddenly brandished a revolver at the firefighter and ordered him to get out. Firefighter Partridge said "no problem" to Marvin Jackson to calm him and immediately retreated from the residence.

As he was leaving, he told the other firefighters who were entering about what just happened and had them leave with him for safety reasons. Based on the tone of Marvin Jackson's voice and the manner in which he brandished the weapon, Firefighter Partridge felt threatened and that there was a real risk that Marvin Jackson would shoot at the medical personnel if they remained.

After the firefighters left, they reported what had just occurred to dispatch. [REDACTED] remained with her husband and convinced him to holster the pistol. She was then able to take the gun and holster out of his hands even though he resisted. At this point Marvin Jackson stood up and stumbled into the bathroom. While he was there, [REDACTED] hid the revolver in the hallway closet.

[REDACTED] had her mother, [REDACTED] go into her bedroom at this time. Marvin Jackson returned and sat down on the couch in the living room near the front door. While Marvin Jackson was gone, [REDACTED] closed the front door and turned off some of the lights. She also positioned herself between the front door and Marvin Jackson because she was concerned about Marvin Jackson aggressively confronting the officers who showed up to investigate the brandishing against the paramedic.

At 1:41 a.m., Sacramento Police Department officers were dispatched to provide cover for the fire personnel who were chased from the residence at gunpoint. The firefighters were contacted at [REDACTED] Village Circle and they explained what occurred at [REDACTED] Village Circle. They informed the officers that there were at least two other persons in the residence besides Marvin Jackson. Units from the Sacramento Police Department deployed around the residence in covered and concealed areas and evacuated the surrounding homes.

[REDACTED] Village Circle is located in the Village Green Mobile Home Park. It is a gated, multi-unit mobile home community with paved roadways located directly south of Bell Ave. and east of Pinell St. The [REDACTED] unit is a doublewide trailer on the south side of Village Circle. The home is a three-bed, two-bath residence with the front door facing east onto a raised porch. There are mobile home residences on each side of the trailer at [REDACTED] Village Circle.

Officers Pam Seyfert # 739 and Steve Thomson # 364 positioned themselves behind vehicles parked on the south side of Village Circle in front of unit [REDACTED] to the east of the suspect's residence. Officer Scott Farnsworth # 671 drove a marked patrol car along Village Circle near the east side of the residence. He parked the vehicle in the street facing southwest towards the front door and used the vehicle's spotlight and headlights to illuminate that area.

Officer Randy Lazoya # 237 positioned himself on the ground behind the front passenger wheel so that he was shielded by the patrol vehicle but had an unobstructed view of the front door. He

Chief Arturo Venegas
November 22, 2002

was armed with an M-16A1 rifle and was 40-50 feet from the entryway. Officer Farnsworth was standing to the rear of Officer Lazoya crouched behind the vehicle with his weapon drawn.

Officer Lazoya at that time had over 10 years of service with the Sacramento Police Department. He was trained in the use of the M-16A1 rifle and authorized to carry that weapon in his patrol vehicle since 1999. When he positioned himself on the ground, he was in a patrol uniform, and had a Tazer in addition to the rifle and his service pistol. He readied the rifle by inserting a magazine and chambering a round. He initially placed the gun on safety but disengaged the safety after he was positioned properly.

At approximately 1:49 a.m., Officers Paul Grant # 614 and Joshua Dobson # 393 moved to a position behind Officer Thompson. These officers were also in uniform. At this time, an unidentified white female exited from the residence through the front door. She was ordered at gunpoint to raise her hands and move toward Officer Thompson, which she did. He quickly determined that she was not a threat. She told the officers that she was [REDACTED], the suspect's wife.

She said that Marvin Jackson was distraught and angry because she asked for a divorce. Before she left, she heard him threaten to shoot anyone that came to the door. She advised the officers that he had three guns in the house including a shotgun. [REDACTED] was moved back from Officer Thomson's position and Officer Thomson moved to a more secure location. The information that was gathered was communicated to the other officers on scene.

At 1:56 a.m., the front door opened and Marvin Jackson yelled something unintelligible at the officers in an angry voice. Two minutes later he opened the front door again and screamed at the officers. This time he told the officers to get out of there (the trailer park) and to leave him alone. He then warned the officers that they had five minutes to leave or he would come out shooting. It was unclear whether he was armed at this time.

At approximately 2:00 a.m. Marvin Jackson opened the front door again. This time the officers saw what appeared to be a shotgun in his hands as he stood in the threshold of the door. Officer Lozoya was able to see that the weapon was a pump-action shotgun. He initially held the shotgun in a low-ready position with the barrel pointed towards the ground. The weapon was pointed in the direction of Officers Lazoya and Farnsworth and Marvin Jackson was looking down the barrel.

Officer Lozoya yelled that Marvin Jackson had a gun. A number of officers yelled for him to drop the firearm but he did not comply. Moments after he was told to drop the weapon, he raised his view in the direction of Officers Lozoya and Farnsworth. As he looked up, he raised the barrel of the shotgun so that the officers were directly in the line of fire.

Officer Lozoya felt that Marvin Jackson was going to fire at him and Officer Farnsworth so he aimed at Marvin Jackson and discharged two rounds. Marvin Jackson yelled out in pain, and

Chief Arturo Venegas
November 22, 2002

then fell into a seated position inside of the house. He was still clutching the shotgun. Officer Lozoya immediately advised the officers around him that he was the one who shot.

Because Marvin Jackson was still armed with the shotgun, no one was able to approach the house to see how badly hurt he was. Officers began to yell at him to come out for medical attention but he did not exit the residence. At 2:01 a.m., the front door again opened. This time, Marvin Jackson's elderly mother-in-law, [REDACTED] slowly exited the home. The officers began yelling for her to take cover because she had walked into the line of fire.

She was having extreme difficulty walking, so Officer Seyfert had the surrounding officers cover her while she ran to [REDACTED] to assist her. The rescue occurred without incident. [REDACTED] was placed in a patrol vehicle and moved to a place of safety. She advised the officers that Marvin Jackson was shot in the leg and that he "was loading his guns" when she walked out.

The officers at the scene continued to communicate with Marvin Jackson via loudspeaker. He responded with obscenities and yelled that they had shot him in the leg. Despite this, he refused to come out for medical attention. He would yell out "no!" when officers called for him to come out.

At approximately 2:32 a.m. Marvin Jackson opened the front door while he was on his knees. No weapons were visible at this time. He stated in a loud voice "My guns are locked away, and I want my wife to come get me." The officers on scene explained that they could not allow that. Marvin Jackson became agitated and yelled, "If she doesn't come inside, the only way you'll get me is to kill me." He then slammed the door shut.

Marvin Jackson began communicating with officers again at 2:52 a.m. when he called the communications center via a 911 call. During the next ten minutes while Marvin Jackson was on the phone with the department negotiators, he continued to refuse to show his hands from the door of the residence so that officers could approach safely. There was a real concern that Marvin Jackson would attack any officers that tried to enter the residence to render aid.

Communication from Marvin Jackson ceased after approximately 3:30 a.m. for a period of two hours. During this time, the Sacramento Police Department requested from the Sacramento Sheriff's Department their explosive ordinance disposal robot to be used to breach the entrance of Marvin Jackson's residence. The robot arrived at 4:38 a.m. and officers began to ready it for deployment.

At 5:27 a.m., Marvin Jackson reestablished communication with officers via telephone. He started by stating that he was going to kill himself with the shotgun if he was not allowed to speak with his wife in the next five minutes. Officers kept him on the phone after he said this until the robot pushed through the front door. With its onboard video camera they were able to view Marvin Jackson on the floor talking on the phone.

Chief Arturo Venegas
November 22, 2002

They saw that he was unarmed and that no firearms were in easy reach. At approximately 6:08 a.m. officers entered the residence and took Marvin Jackson into custody. They immediately brought in medical personnel to begin treating the gunshot wound to his upper left thigh and he was transported to the emergency room at Mercy San Juan Hospital without further incident.

Officers searched the residence at [REDACTED] Village Circle for the firearms used in the assaults. They recovered a Taurus .38-caliber revolver from the hallway closet where [REDACTED] hid the pistol used against the fire personnel. It was loaded with six rounds of ammunition. The shotgun used in the assault on the officers was found in the south bedroom inside of a plastic case.

It was a Winchester 12-gauge pump action shotgun. At the time of its recovery it was unloaded but the safety was in the "fire" position. Also in the case was a Taurus .22-caliber rifle. The chamber was empty but the magazine was loaded with 9 rounds of ammunition. Additional ammunition for the rifle and shotgun was located in the residence.

Marvin Jackson was later arrested for felonious assaults with a firearm against the fire personnel and officers who were threatened and making felonious criminal threats against the officers who responded to his attack on the fire personnel. He is currently facing multiple felony charges for these assaults and felony threats in Information # 02F04359 in Sacramento Superior Court.

ANALYSIS:

In situations where it is reasonably necessary to defend oneself or others from death or serious bodily injury, the use of deadly force is legally justified. (California Penal Code § 197, *People v. Ceballos* (1974) 12 Cal.3d 470, 482-483, CALJIC 5.13) The law does not require the danger to be real. The appearance of imminent death or serious bodily injury to oneself or others justifies deadly force where the fear is genuine, objectively reasonable and the basis for its use. (California Penal Code § 197(3), *In re Christian S.* (1994) 7 Cal.4th 768, CALJIC 5.14)

Here, Officer Lozoya was compelled to act with deadly force to defend himself and his fellow officers. His shooting of Marvin Jackson to prevent him from using the shotgun was clearly justified. Marvin Jackson came to the door of his residence with a pump-action shotgun, and upon seeing Officer Lozoya and the other officers; suddenly raised it so that the officers were in the path of a shotgun blast. Officer Lozoya was suddenly confronted with Marvin Jackson attempting to follow through on his threat to shoot the officers if they didn't leave.

Officer Lozoya was genuinely fearful that if he didn't immediately act, Marvin Jackson was going to kill or injure the people who were present. Given the suddenness with which Marvin Jackson exited with the weapon and his prior announcement that he would shoot the next time he emerged, the only reasonable conclusion was that Marvin Jackson intended to shoot. Officer Lozoya's only available response under the circumstances was to shoot first to prevent Marvin Jackson from harming them.

Chief Arturo Venegas
November 22, 2002

The possibility that the shotgun may not have been loaded at the time of the shooting does not change the reasonableness of Officer Lozoya's actions. There was no way to distinguish between a loaded and unloaded shotgun with the information that Officer Lozoya had. Moreover, it was reasonable to conclude that Marvin Jackson was capable of shooting and was in fact about to shoot when his wife warned of his violent behavior and indicated that he had multiple weapons and ammunition.


Officer Lozoya, the shooting officer, reasonably believed he needed to instantly act with deadly force to prevent a shotgun attack by Marvin Jackson. Given this officer's training and experience, and given all that had occurred prior to the shooting, the officer believed deadly force was necessary and the only choice available to protect the lives of innocent persons. This belief and his subsequent actions were quite reasonable and clearly justified.

CONCLUSION:

Since the shooting of Marvin Jackson was justified, we will take no action against the shooting officer in connection with this incident. Thank you for referring the matter for our review.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY

A handwritten signature in cursive script, reading "Alberto S. Roldan".

ALBERTO S. ROLDAN
Deputy District Attorney
Special Investigations Unit

cc: SPD Officer Randy Lozoya
SPD Lt. Steve Campas
Don Casimere, Office of Police Accountability.

MEMORANDUM

Sacramento Police Department

To: Arturo Venegas, Jr.,
Chief of Police

Attn: Albert Najera, Deputy Chief
Office of Investigations

Brian Louie, Captain
Internal Affairs Section

From: Holli Brashear, Sergeant
Professional Standards Unit

Date: September 11, 2002
Ref: PSU09-02

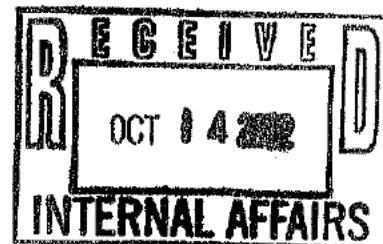
Revised 10/10/02
Revised

Subject: Shooting Review Disposition: W02-02, W02-03, W02-04, W02-05, and W02-06.

A shooting review was held on Monday, July 15, 2002 for the above referenced shootings. Those in attendance were:

Deputy Chief Gibbs
Captain Hyde
Lieutenant Campas
Lieutenant Tatosian
Lieutenant Fong
Lieutenant Dowden
Sergeant Brashear
Sergeant Bernard
Chris Lawley, Risk Management

Captain Parker
Captain Shiraishi
Lieutenant Bray
Lieutenant Schneider
Lieutenant Schiele
Sergeant Jensen
Sergeant Quinn
Corporal Camp



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W02-05

Officer Lazoya

JUSTIFIED

On May 15, 2002, at approximately 0130 hours, SFD responded to the suspect's residence to check him for a possible overdose. The suspect's wife had called for assistance as the suspect had made threats that he was going to kill himself; he had taken an unknown quantity of sleeping pills, and she had been unable to wake him. While fire was on scene, the suspect armed with a .38 caliber revolver, brandished it at the fire personnel, and told them to get out of his house. SFD backed out of the house and requested police assistance.

Officers arrived on scene and set up a perimeter around the residence. The suspect's wife was able to exit the home. She told officers that her husband had several weapons and was distraught over a pending divorce. The officers were also told that an elderly female was still in the residence with the suspect. Shortly thereafter the suspect opened the door and told the officers that they had "5 minutes to leave" or he would "open up with a shotgun." Officer Randy Lazoya, a member of the rifle team and armed with his departmentally issued M16, had taken a prone position north of the residence, using a police vehicle for cover.

The suspect opened the front door and began exiting. All the officers on scene and in a position to observe the suspect observed a long barreled weapon in the suspect's hands. The suspect lowered the weapon, pointing it in the direction of Officer Lazoya and Officer Farnsworth. Officer Lazoya fearing for the safety of himself and Officer Farnsworth, fired his weapon twice, striking the suspect once in the upper right thigh. The suspect fell back into the residence. Hostage negotiators and SWAT personnel arrived and began the barricaded subject protocol. At approximately 0600 hours, the suspect was taken into custody and transported to the hospital.

City of
SACRAMENTO
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KATHERINE LESTER
Chief of Police

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Report Number: 2002-40103

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, 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).

Sacramento Police Department
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