

MEMORANDUM**SACRAMENTO POLICE DEPARTMENT**

Professional Standards Unit

**DATE:** July 19, 2005**REF:** PSU 07-03**TO:** Albert Nájera
Chief of Police**ATTN:** Steve Segura, Deputy Chief
Office of InvestigationsBrian Louie, Captain
Internal Affairs**FROM:** Dru Donat, Sergeant
Professional Standards Unit**RE:** Shooting Review Disposition W04-05 AD
05-04

A shooting review was held on Wednesday, July 13, 2005 during the management session of Infocom. All findings were made with the concurrence of the Deputy Chief, Office of Investigations. Those in attendance were:

Deputy Chief Segura	Deputy Chief Brazier	Capt. Schiele
Capt. Mandalla	Capt. McCarthy	Capt Somers
Capt LaCosse	Lt. Sakanye	Lt. Beerman
Lt. Bray	Lt. Bernard	Lt. Westin
Lt. Haynes	Lt. Fong	Lt. Peletta
Sgt. Donat	Sgt Hendrickson	Sgt. Winton
Sgt. Olivera	Sgt. McCloskey	Sgt. Enriquez
Sgt. Hose	Ofc. Wann	Ofc. Maxwell
John Greene		

The following is the recommendation for the shooting:

W05-04**NOT JUSTIFIED****Officer involved**
Ofc. J. Tippets**Presenter**
Sgt. Hendrickson**Division Commander**
Capt. Somers

On March 30, 2005, at approximately 2224 hours officers Tippetts and Mehlhaff were dispatched to [REDACTED] W St [REDACTED] on a disturbance call, where the suspect was reportedly intoxicated and threatening the complainant. The suspect, Carlos Holguin, did not open his door or allow officers into his apartment. The officers requested that he quiet down for the evening, which he indicated he would do.

At approximately 0156 hours, the officers were dispatched to a return call at [REDACTED] W Street [REDACTED]. The complainant advised that the suspect was outside, yelling and throwing things, and was also very intoxicated. The officers arrived to find the suspect on an upstairs balcony in front of his apartment. As they approached the suspect to take him into custody for public intoxication, the subject was uncooperative. When the officers attempted to physically take control of the suspect, he pulled away and physically resisted their efforts to take him into custody. Officer Tippetts called for cover and attempted to strike the subject with his baton, but missed. As the suspect pulled away from the officers, he retreated into his apartment with the officers in pursuit. As the officers entered the small apartment, the suspect began throwing items at them from the kitchen/living room counter area.

The officers attempted to verbally get the suspect to stop throwing items, which he refused, striking Officer Tippetts with a ceramic BBQ on his arm. Officer Mehlhaff discharged his Taser at the suspect. It was ineffective. The suspect ripped out the barb(s) and continued to look for items to throw at the officers. As the suspect was going for more items, Officer Tippetts fired his issued handgun three (3) times to protect himself and his partner. The suspect was then taken into custody.

Recommendations:

This case was referred to Internal Affairs for follow-up.

The following items were identified as training issues:

- Force options available to officers in a situation such as this.
- Force options trained regarding physical engagement versus a tactical withdrawal.
- The choice of whether to use cover or not.
- The ability to reload a Taser cartridge, although this incident was 12 seconds between cover call and shots fired transmissions.

In-Service Training Sergeant Winton will review in-service and academy level training on these issues.

[Handwritten signatures and date]
8/8/08



OFFICE OF THE
DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
DISTRICT ATTORNEY

CYNTHIA G. BESEMER
CHIEF DEPUTY

SEP 6 2005

September 1, 2005

Albert Najera, Chief of Police
Sacramento Police Department
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822

Re: Officer-involved shooting: Case no. SPD 05-105634
Shooting officer: Sacramento Police Officer Joseph Tippets #259
Person shot: Carlos Holguin (DOB 09/10/1956)

Dear Chief Najera:

My review of this matter is complete. Please note that this analysis is limited to the question of whether there is sufficient evidence to support filing criminal charges relating to the shooting of Carlos Holguin documented in SPD 05-105634. This review does not assess issues of civil liability, tactics, or department policy. I have determined that the shooting of Carlos Holguin by Officer Tippets was lawful.

In reaching this conclusion, I consulted investigative records compiled by the Sacramento Police Department, Sacramento County District Attorney's Office, and medical records provided by the U.C. Davis Medical Center. In particular, SPD report # 05-105634 documents the particulars of the two law enforcement contacts with Carlos Holguin leading up to the shooting and the investigation of the shooting itself. I also reviewed reports prepared by Sacramento County District Attorney Investigators Bruce Anderson and Terrence Brass documenting their investigation and the investigation conducted by the Sacramento Police Department. In addition, I have received and reviewed scene photographs, and audiotapes and videotapes of law enforcement and civilian witness interviews of the events.

FACTS:

On Tuesday, March 29, 2005 at approximately 10:51 p.m. Officer Tippets and his partner Officer Matthew Mehlhaff # 731 were dispatched to [REDACTED] W Street in midtown Sacramento to respond to a disturbance call. The information they had was that a resident named "Carlos" was outside of his apartment, intoxicated, yelling, throwing objects, and being verbally abusive to a neighbor in

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the complex. Upon arrival, the officers could hear the person identified as "Carlos" talking loudly inside of his apartment. They attempted to speak with him by announcing their presence and knocking on his door. He refused to answer and demanded a warrant.

The officers went to the complainant's apartment and confirmed what had occurred prior to their arrival. The officers stated to [REDACTED], (who was also the apartment manager) that they would contact "Carlos" and mediate the situation. At this time the officers returned to his apartment and knocked on the door again. "Carlos" yelled "what?!" in an aggressive tone.

Officer Mehlhaff asked him to open the door. The officers could hear him yelling as he approached the door. Because of the belligerent tone he used, Officer Mehlhaff unlatched the safety on his taser but did not unholster it. "Carlos" opened the door and stood there with a beer in one hand. He appeared intoxicated. During this contact, the officers identified him more fully as Carlos Holguin.

Both officers were wearing standard issue Sacramento Police Department uniforms with utility belts. Their weapons remained holstered. The officers asked Holguin what had occurred and he stated he was having problems with other people in the complex. Officer Mehlhaff asked Holguin if he would remain in his apartment and stop bothering his neighbors. Holguin stated that he would comply and that he was going to bed. He then made a "peace" sign to the officers and closed his door. The officers cleared this contact without further incident at 11:10 p.m.

On March 30, 2005 Officers Mehlhaff and Tippetts were dispatched to return to [REDACTED] W Street regarding another disturbance. [REDACTED] called 911 at 1:55 a.m. to report that Holguin was again outside of his apartment in a highly agitated and intoxicated state, yelling, and throwing objects over the railing outside of his second floor apartment. The officers arrived in a marked vehicle and in full uniform at the complex at 2:02 a.m. They immediately proceeded to Holguin's apartment. It was decided that he would be arrested if found outside because of his intoxicated state and the reported behavior that Holguin was engaging in.

As they entered the area below apartment [REDACTED], they could see Holguin standing outside of his unit on the balcony. They ascended to the second floor and contacted Holguin outside of his door. As they approached, Holguin attempted to duck inside of his apartment. He was detained at the threshold by Officer Mehlhaff who had Holguin stand with his hands behind his head. Holguin was moved from the threshold back onto the balcony where Officer Tippetts informed him he was going to be patted down for weapons.

Holguin began to act agitated and resisted allowing the officers to place his hands behind his back. Officer Tippetts was trying to place Holguin's right arm behind his back while Officer Mehlhaff worked on his left hand. Holguin struggled to break out of their grip. Officer Tippetts used one hand to radio for cover while he tried to hold on to Holguin with the other.

Holguin broke free from Officer Tippetts and used his back to push Officer Tippetts against the wall next to the door. He then lunged forward and broke free of Officer Mehlhaff's hold while

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knocking that officer backwards. Neither officer was able to complete a weapons check prior to Holguin's breaking free of their grip. Holguin briefly assumed an aggressive fighting stance while facing Officer Mehlhaff. Holguin then retreated into his apartment as Officer Mehlhaff drew his taser. As Holguin entered the apartment, Officer Tippetts attempted to use his baton to subdue him but Holguin evaded the strike.

Both officers approached Holguin's open front door. Officer Mehlhaff was holding a taser as he came to the doorway and Officer Tippetts had his department issued Sig Sauer .40 caliber sidearm drawn. They were calling for Holguin to calm down. He yelled back at them to "get out of here!" The room was not well lit but they could see Holguin standing in the apartment about 7 feet away from them next to the kitchen counter.

Holguin began throwing items at the officers. At this time, Officer Mehlhaff decided to use the taser on Holguin. Officer Mehlhaff yelled "taser!" repeatedly and discharged the taser at Holguin. The taser darts appeared to strike him and he yelled out in pain but was able to remain on his feet. He then yelled "fuck the taser!" tore out the darts and continued grabbing objects from around him and throwing them at the officers.

At least three different times, Holguin threw items at the officers. Officer Tippetts was struck repeatedly. On one occasion, Officer Tippetts had to raise his forearm to block a ceramic and metal crock-pot from striking him in the face. One of the other items thrown was a metal burner from a stovetop. Officer Tippetts made the decision to shoot Holguin during the altercation because of the threat posed by the attacks. Officer Tippetts fired at Holguin three times striking him in the chest, abdomen and hand. Despite the gunshot wounds, Holguin continued to struggle when the officers tried to subdue him for transportation to the U.C. Davis Medical Center.

Holguin has since recovered from the gunshot injuries. On April 4, 2005 charges were filed against him related to his assault on the officers in Sacramento Superior Court case # 05F03048. On July 20, 2005 Holguin pled guilty to a misdemeanor violation of Penal Code section 69 for resisting Officers Mehlhaff and Tippetts with force and violence.

ANALYSIS:

In situations where it is reasonably necessary for an officer to defend himself or others from death or serious bodily injury, the use of deadly force is legally justified. California Penal Code §§ 196, 197; *People v. Ceballos* (1974) 12 Cal.3d 470, 482-483; CALJIC 5.13. The law does not require the danger to be actual. When an officer fears imminent danger of serious bodily or death to himself or others, and the fear is both genuine and objectively reasonable, a sufficient basis exists for the use of deadly force. California Penal Code § 197(3); *In re Christian S.* (1994) 7 Cal.4th 768, CALJIC 5.14. Such a situation faced Officer Tippetts here.

The analysis must be based on the information Officer Tippetts had prior to the shooting, and not what may become apparent after the fact. Holguin displayed volatile, resistive, and unstable behavior prior to and during his encounters with officers before the shooting. He physically

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assaulted the officers on the balcony outside of his apartment, and attacked them with improvised weapons once he retreated into his apartment. Given that conduct and the information which had prompted the police calls in the first place, the officers were justified in attempting to arrest Holguin. Once he had retreated into the apartment, they could continue in their effort to take him into custody. Officers have the right to continue to engage, with reasonable force, a suspect they are attempting to detain or arrest, and to stand their ground when threatened with resistance, even if in retrospect, an officer may have been able to safely retreat. Penal Code section 835a; *People v. Coffey* (1967) 67 Cal.2d 204, 221, CALJIC 9.26.


Holguin's actions went beyond attempts to simply escape. He aggressively attacked the officers, resisted their attempts to search him, and threw things at them that could have caused serious injury. He retreated to an area that gave him access to other weapons of opportunity. This conduct gave credence to Officer Tippet's conclusion that Holguin posed a grave threat to the officers' safety. Faced with these circumstances, it was reasonable for Officer Tippets to draw his pistol before entering the apartment to guard against a more dangerous attack. Once the non-lethal attempt to subdue Holguin with the taser failed, Tippets believed he needed to act with deadly force to end the continued attack. Given all that had occurred prior to the shooting, the officer's honest belief that deadly force was necessary was reasonable and therefore legally justified.

CONCLUSION:

The shooting of Carlos Holguin was lawful. The District Attorney's Office will take no action against the officer connected 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: Officer Joseph Tippets
Jerry Enomoto, Interim Director, Office of Police Accountability

Report Number: 2005-105634

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)); and

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)); and

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); and

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)); and

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
Professional Standards Unit
916-808-3790
spdpasu@pd.cityofsacramento.org