



OFFICE OF THE
DISTRICT ATTORNEY

SACRAMENTO COUNTY

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July 13, 2006

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

RECEIVED
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OFFICE OF THE
CHIEF OF POLICE
Sacramento

Re: In-Custody Death: Case No. 05-189800

Date of Incident: June 4, 2005

Involved Officers: Cynthia Bohrer, #250
Ryan Cleveringa, #481
Ashley Engelfield, #563
Adam Feuerbach, # 601
Kelly Kensic, #742
Orlando Morales, # 738
Bruce Motter, #824
Anthony Yager, # 880

Decedent: Ravan Jermont Conston
DOB 9/24/1971
[REDACTED]

Dear Chief Najera:

This case was referred to this office for review regarding the circumstances surrounding the death of 33-year old Ravan Jermont Conston on June 4, 2006. Conston, who experienced breathing difficulties and became unresponsive while being taken into custody, died shortly after arrival at Sutter General Hospital. This review addresses only whether there is sufficient evidence to support the filing of criminal charges in connection with the death of Ravan Conston. Having completed this review, we find no evidence of criminal misconduct.

SPECIAL INVESTIGATIONS

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Materials reviewed include: Sacramento Police Department Report 05-189800; Sacramento County Coroner's Autopsy and Final Report of Investigation 05-02915; associated photographs, audio and video recordings; reports of District Attorney Investigators Lance McHenry and John Beardsley; and transcripts of interviews of law enforcement, fire/medical personnel and civilian witnesses to the events.

FACTUAL SUMMARY

On June 4, 2005, at 10:24 p.m., Officers Adam Feuerbach and Kelly Kensic, in police uniforms and operating a marked police unit, were dispatched to the intersection of 12th Street and F Street regarding a complaint of an assault by a subject possibly under the influence of narcotics. Upon arrival the officers located a victim of an assault on the ground suffering lacerations to the head, near the alleyway located at 12th Street between E and F Streets.¹ The officers requested immediate medical assistance via radio for the injured victim.

While attempting to assist the injured party, a male black adult, later identified as Ravan Conston (the decedent), angrily approached the officers stating, "Hey that guy cut me up." The officers described Conston as agitated and a threat based upon his demeanor. Conston, who fit the 911 complainant's description of the suspect responsible for the assault (male black 6'2", 300 lbs) was ordered by Officer Feuerbach to place his hands on his head so the officer could conduct a pat down search for weapons and maintain control of his movements. As Officer Feuerbach attempted to handcuff Conston to prevent harm to himself, Officer Kensic, or the injured party, Conston pulled away, stating he had a "crack pipe" in his back pocket, and took a fighting stance. Both officers believed Conston was under the influence of narcotics based on his actions and appearance.

Officer Kensic pulled his baton and ordered Conston to the ground. After a brief hesitation, Conston went to the ground with Officer Feuerbach pointing a Taser in his direction. When Officer Kensic attempted to grab Conston's hand, Conston got to his feet, disregarding the officers' instruction to remain on the ground, and made a sudden move towards the officers. Fearing for their safety, Officer Feuerbach fired the Taser striking Conston, but there was no apparent effect.

At this point, Officer Bohrer had joined Officers Kensic and Feuerbach. Officer Bohrer fired her Taser at Conston as he ran northbound on 12th Street with Officer Feuerbach in foot pursuit. Officer Feuerbach, while running after Conston, reloaded his Taser and fired. Both Taser prongs struck Conston and he immediately fell to the ground in response to the charge. Conston continued to resist Officer Kensic and the other assisting officers (Yager, Cleveringa, Motter and Engelfied) while on the roadway, as they attempted to apply handcuffs.

Officer Feuerbach discharged his Taser a third time which allowed the officers to gain control of Conston's arms and legs. Once the officers gained control of Conston's arms, his legs were

¹ The assault victim was never identified or treated by fire/medical personnel. The party fled the area during the arrest of Conston.

hobble to prevent further kicking. Officers Yager, Cleveringa, Motter and Engelfied assisted the other three officers in the containment of Conston by holding various parts of his body to the ground. According to the officer's statements, Conston was held face down on the ground with his hands cuffed behind his back and his legs and feet restrained with a hobble. Officers Cleveringa discovered a "crack pipe" on the ground near Conston's leg and gave it to Officer Morales. Officers Morles and Officer Engelfied recovered two Taser cartridges near Officer Kensic's vehicle that was parked at 12th and F Streets.

During follow-up interviews, Officer Cleveringa stated that upon his arrival with Officer Motter, he observed officers attempting to take Conston into custody at the intersection of 12th and E Streets. Conston was lying on his stomach in a prone position with one officer holding his left hand in a handcuff as a second officer attempted to place his right hand into the cuff behind his back. A third officer was holding a Taser that had been deployed (attached) while a fourth officer stood nearby with a handgun drawn. He heard the officers ordering Conston to put his hands behind his back numerous times, but Conston continued to struggle in an attempt to get off the ground.

Officer Cleveringa took a position at Conston's head to prevent him from rolling over as the officers continued the handcuffing process. The officer noted that Conston was in a Taser cycle and he could see the barbs protruding from his back. The officer recognized Conston as a parolee he had previously contacted in the area. He believed that Conston was subjected to two complete Taser cycles during the restraining process. While holding Conston to the ground, the officer spoke with Conston and stated he responded coherently.

Officer Yager stated that constant verbal commands were given to Conston during the struggle and it was only after the two Taser cycles that complete restraint occurred. It was his belief that without use of the Taser they would not have been able to secure Conston without injury to the officers.

During the handcuffing process, paramedics were on the scene, including Fire Captain Smoot. Captain Smoot recalls Conston talking to the officers after the level of resistance had subsided. He remembers six officers holding Conston on the ground. One of the officers directed his fire personnel to the area of 12th and E Streets where the assault victim was last located. After failing to find the assault victim Captain Smoot and his team returned within minutes to the arrest location. Conston was verbally responding to the arresting officers, but not physically resisting.

Captain Smoot was asked to medically clear Conston for booking, but he refused since the Taser darts were imbedded and needed to be removed. Additionally he expressed his concern about clearing Conston without further medical evaluation based upon recent deaths associated with the Taser. Ironically, it was at this point that Captain Smoot realized that Conston was in distress and appeared not to be breathing. Immediate medical attention was initiated. By the time Conston was placed into the ambulance he was not breathing and his heart had stopped. Full CPR was begun.

While at the scene neither Captain Smoot nor any of his team saw any of the arresting officers applying a choke hold, nor did any officer use a knee on the subject's back or near his head and neck during restraint. Despite resuscitative efforts, Conston was pronounced dead at 11:15 p.m. during treatment at Sutter General Hospital.

The Communication Center time recordings (CAD) established that ten minutes passed between the request for additional officer assistance, full restraint and unconsciousness. The initial call for additional units by an officer on the scene was recorded at 10:39 pm. The Fire Personnel reports indicate initial contact at 10:49 pm and transportation to Sutter General with full CPR in progress as of 10:56 pm.

ADVANCED TASER M26

Two Taser weapons were activated during this incident. Officer Feuerbach's Taser (#759A) was activated three times for periods of twenty seconds, eleven seconds and five seconds. Officer Bohrer fired her Taser (#514B) once as Conston fled from the initial contact point with Officers Kensic and Feuerbach pursuing. According to the literature issued by the manufacture, Advance Taser is a non-lethal weapon (Model M26) advertised as having the ability to stop an aggressive attacker by causing incapacitation through loss of neuromuscular control and the ability to perform coordinated action. The probes send a pulsating electrical output that interferes with communication between the brain and muscular system without damaging nerves, muscles or other body elements, and without interrupting the heartbeat or causing cardiac ventricular fibrillation. The manufacturer claims no deaths have ever been directly attributed to the Taser.

PATHOLOGY/CAUSE OF DEATH

Dr. Michael Super, Chief Forensic pathologist for the Sacramento County Coroner's Office, performed an autopsy on Ravan Jermont Conston on June 5, 2005. His autopsy findings determined the cause of death to be "sudden cardiac death following physical altercation with police officers during struggle due to excited delirium and acute cocaine intoxication". Another significant condition listed was chronic abuse of illicit drugs. The decedent was 6 feet 11 inches in height and weighed 243 lbs. According to hospital records he had an elevated body temperature of 103 degrees at time of death. Further findings indicated that Conston had three Taser barbs stuck to his back, abrasions of the head and extremities, contusions of the right frontal scalp and arm. Postmortem toxicology found elevated blood levels of cocaine/benzoylecognine (a metabolite of cocaine).

No evidence was found to support a finding that Conston's airway was blocked or that he was restricted from breathing during the struggle with law enforcement, nor was there petichae of the eyes and mouth. Coroner's Investigator Marcus Kelly concluded in his Final Report of Investigation that the manner of death was "accident" as a result of decedent consuming a lethal amount of cocaine.

In a subsequent interview on June 9, 2005, Sacramento Police Investigator Stigerts was informed by Dr. Super that the Taser applications during arrest were not a cause of death. The effects of the CNS stimulant (cocaine) caused the body temperature to rise and the heart and respiratory functions to increase dramatically causing an adrenaline surge which may have caused an increased heart rhythm that lead to fatal arrhythmia. Dr. Super reiterated his autopsy conclusion that death was a result of excited delirium.

LAW AND ANALYSIS

There was reasonable suspicion for the officers to believe that Conston had committed an assault (PC § 243) and was under the influence of narcotics/drugs (H&S § 11550) justifying detention or arrest. Further, during the initial stages of the confrontation, Conston admitted being in possession of illegal narcotics paraphernalia. Conston was legally obligated to submit to detention or arrest. A person detained or arrested by a peace officer has the duty to refrain from using force...to resist the detention or arrest. Penal Code §§ 834, 834(a); Evans v. City of Bakersfield (1994) 22 Cal.App.4th 321; People v. Curtis (1969) 70Cal.2d 347, 357, 359. The evidence is irrefutable that Conston had assaulted a subject, was under the influence of narcotic or drug, and forcibly resisted the officers in violation of Penal Code §§ 148, 69, 243, and Health & Safety Code § 11550. The law clearly authorizes peace officers to use force to overcome such resistance.

“They [police officers] are charged with acting affirmatively and using force as part of their duties, because the ‘right to make an arrest . . . necessarily carries with it the right to use some degree of physical coercion or threat thereof to affect it’” Edison v. City of Anaheim, 63 Cal.App.4th 1269, 74 Cal.Rptr. 614.

Moreover, when an arrestee increases his or her resistance and, as in this case, escalates the level of violence, a peace officer is authorized to meet the level of resistance he faces.

“... A police officer in California may use reasonable force to make an arrest, prevent escape, or overcome resistance, and need not desist in the face of resistance” Id. See also Penal Code § 835(a).

Because the officers’ efforts to detain Conston were lawful, and there is no credible evidence to support a finding that any of the officers intentionally tried to harm Conston, the only possible source of criminal liability would be Penal Code § 192(b), involuntary manslaughter. The threshold issue in any such charge is causation. A violation of Penal Code § 192(b) can only be found if the evidence proves someone other than the decedent caused the death by committing an identifiably act that was grossly negligent. CALJIC 8.55. Dr. Super found that Conston’s death was due to excited delirium and acute cocaine intoxication. He did not find that Conston’s death was caused by the effects of a Taser or the application of force by any of the officers involved. Therefore, there is no evidence that Conston’s death was a direct result of another’s negligent act within the meaning of Penal Code § 192(b).

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The officers involved here had responded to a 9-1-1 call indicating that a person fitting the description of Ravan Conston was assaulting people at 12th and F Streets. Upon arrival Officers Kensic and Feuerbach discovered the victim of the assault on the ground in need of medical attention with a bleeding head wound. While the officers were examining the victim, Conston approached in an agitated narcotic state claiming that the injured person had "...tried to cut me". Because of the Conston's mental state and the fact that he fit the radio call description of the attacker, the officers attempted to detain Conston. He was legally obligated to submit to custody and not resist. He did not submit, but aggressively resisted and escalated the level of violence. The officers were entitled to meet Conston's resistance.

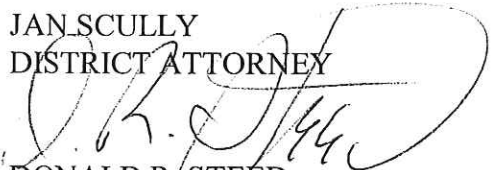
Due to the level of resistance, the officers used a Taser and applied arm and leg restraints. Conston stopped struggling and engaged in dialogue with the officers before becoming non-responsive. The length and intensity of the struggle between Conston and the officers appears to be entirely attributable to Conston's escalating level of resistance. The pathologist's report precludes any finding that the actions of the officers, including use of the Taser, were the cause of Ravan Conston's death.

CONCLUSION

For the reasons set forth above, there is no evidence of criminal conduct on the part of the officers involved in this incident. Accordingly, we will take not further action in this matter.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY



DONALD R. STEED
Supervising Deputy District Attorney

cc: Officer Cynthia Bohrer
Officer Ryan Cleveringa
Officer Ashley Engelfield
Officer Adam Feuerbach
Officer Kelly Kensic
Officer Orlando Morales
Officer Bruce Motter
Officer Anthony Yager
Don Casimere

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Report Number: 2005-189800

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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. Pen. Code §§ 11105 and 13300;

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