



OFFICE OF THE
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SACRAMENTO COUNTY

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February 8, 2006

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

Re Officer-involved shooting: Case no. SPD 05-198569
Shooting Officers: Sacramento Police Officer Paul Fong #0746
Sacramento Police Officer Kristine Rich #0515
Person Shot: Lalesh Kumar (DOB 8/30/1973)

Dear Chief Najera:

The District Attorney's review of the above-captioned matter is complete. This analysis is limited to the question of whether there is sufficient evidence to support filing criminal charges related to the shooting of Lalesh Kumar as documented in SPD 05-198569. This review does not assess issues of civil liability, tactics, or department policy. In summation, we have determined that the shooting of Lalesh Kumar by Officers Fong and Rich was lawful.

In reaching this conclusion, written reports and other documentary items were reviewed. These consisted of police reports, video and audio tapes provided by the Sacramento Police Department as well 911 tapes and radio logs. A video from Helicopter, Air 1 was also reviewed. Finally, reports by Sacramento District Attorney Investigators Teresa Kahl and Dale Joe were reviewed.

FACTS:

On Saturday, June 11, 2005, at approximately 2323 hours, a 911 call was received. Officers Paul Fong #0746 and Kristine Rich #0515, partners that night in a marked police vehicle (Baker Unit), were dispatched to [REDACTED] S. Meadows Place, Unit [REDACTED] in Sacramento. The content of the call was a "male beating a female at the apartment". They arrived at 2334 hours and were directed by neighbors to Apartment [REDACTED] which was upstairs. Officers went to the front door, where they knocked and announced their presence. Officers noticed that the door appeared to have been forced open on a previous occasion. After repeated attempts to get the resident to answer the door and because of the potential violent nature of the call, Officer Fong kicked the apartment door open. The door opened easily, consistent with their previous observations regarding the condition of the door assembly. They

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immediately observed a female lying on the floor of the bathroom covered in blood. Wedged between the vanity and the toilet, they also observed the body of a young child who appeared to be mortally wounded.

After they entered the apartment they observed a male suspect jump out one of the north-facing, second story windows of the apartment. Other than their observations of the victims' injuries, they had no information at this point whether the suspect had a weapon in his possession or not. Officer Fong ran to the window and yelled at the suspect to stop. When the suspect did not stop, Officer Fong ran downstairs, out of the apartment after him. Following closely behind was Officer Rich. They observed the suspect walking at a brisk pace, northbound through the apartment complex.

The officers yelled continuously for the suspect to stop. The suspect ignored the Officers' orders. When Officer Fong got within 5-10 feet of the suspect, Officer Fong prepared to physically restrain him. Consistent with witness statements, as well as the video from Air 1, the suspect turned toward Officer Fong. It was at this moment that Officer Fong first saw that the suspect had a large, approximate 7 inch meat cleaver in his left hand. Officers Fong and Rich both believed, based on their training and experience, that a subject with a knife presents a deadly threat until a separation distance of 21 feet is established.

The sight of this meat cleaver combined with the lack of safe distance between the suspect and Officer Fong caused Officer Fong to abruptly abort his plan to physically restrain the suspect and to slip and fall backwards to the ground.

Officer Rich was also in close proximity to Officer Fong and the suspect. Together they formed a triangle, both officers having drawn their duty weapons. During this time, they continued yelling commands to the suspect, now directing him to drop the knife (cleaver). The suspect told Officers "I don't care-I'm dead-kill me". During this time, the suspect was approximately 7 to 15 feet away, facing Officers Fong and Rich with the cleaver in his left hand, talking to the officers in English and moving the cleaver. Both Officers reported that they felt, based on the suspect's movements, that he was going to strike them with the cleaver. This observation was consistent with witness' statements. Officers Fong and Rich continued yelling at the suspect to drop the knife (cleaver) while unsuccessfully backing up and trying to create distance between themselves and the suspect who was still holding the cleaver.

The suspect turned west through the apartment parking lot and headed toward the only exit on 29th Street. He continued to ignore the Officers' orders and commands. The suspect then turned toward Officers Fong and Rich and yelled at them to "Go ahead and kill me!" Again, orders and commands to drop the knife (cleaver) were ignored by the suspect. The suspect, who at this point was 5 -10 feet away from the Officers, raised the cleaver and walked a couple of steps toward Officers Fong and Rich. Out of fear for their safety, Officer Fong and Officer Rich fired their duty weapons at the suspect striking him in the ankles, one of his thighs and his left back. The suspect fell to the ground but did not drop the cleaver. Despite being shot, the suspect maintained his grasp of the cleaver and continued to ignore Officers Fong and Rich's orders to drop the knife (cleaver).

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Backup Sacramento Police Department Units arrived and in an attempt to get the suspect to release the cleaver, the taser was deployed. Despite several deployments of the taser, the suspect still had the cleaver in his left hand under his abdomen while lying on the ground. An Officer at the scene was finally able to retrieve the cleaver with the use of a baton. The suspect was then taken into custody.

The suspect was tentatively identified as Lalesh Kumar, DOB: 8/30/1973, [REDACTED] At the time of his arrest, he had a valid \$10,000 warrant out for arrest for a violation of 487 of the Penal Code. [REDACTED]

At this time, police have not discovered any relationship between the suspect and the now deceased victims. The suspect's mother [REDACTED] lived at the complex in the apartment [REDACTED] directly below that of the victims. The suspect's mother confirmed there was no relationship between the suspect and the victims and also added the suspect was transient and did not live regularly in the apartment complex.

ANALYSIS:

A peace officer is entitled to use deadly force in self defense, in defense of others, or when the flight of a suspect poses a risk of great bodily injury to the officer or another person. Penal Code sections 196 and 197; Tennessee v. Garner, 471 U.S. 1; Kortum v. Alkire, 69 Cal.App. 3d 325. California law permits the use of deadly force if the person actually and reasonably believed he or another person was in imminent danger of death or great bodily injury. CALJIC 5.12, 5.51. The use of deadly force is also permitted when necessary to apprehend a dangerous person (e.g., one who poses a significant threat of death or serious bodily injury) who has committed a felony. CALJIC 5.25. It is the reasonable appearance of danger to the officer, and his honest belief in that danger, which is controlling. CALJIC 5.51.

In this case, Officers Fong and Rich were justified in using deadly force in self-defense. At the time they fired, they reasonably believed that if they did not, they would be stabbed or cleaved. They saw the cleaver in Kumar's possession. They knew he had likely already murdered at least one person and possibly two. Kumar had shown that he had no intention of surrendering the cleaver as he had not obeyed any order or command given even when confronted by two uniformed Sacramento Police Officers pointing their duty weapons directly at him at close range. Officer Fong had yelled orders for Kumar to drop the knife (cleaver) so many times that he had grown hoarse. Kumar demonstrated his intention to stab the Officers when he moved toward them holding the cleaver in an attack position. At the time the Officers fired, they reasonably believed that if they did not, they would be stabbed and possibly killed. This reasonable belief is bellied by witness accounts as well as the video from Air 1. The Officers' analysis of Kumar's intentions were further substantiated in that Kumar had

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demonstrated that he was not giving up without a fight by holding onto the cleaver even after Officers had shot him several times. It was not until Kumar was tased several times and then hit with the baton that he relinquished the cleaver.

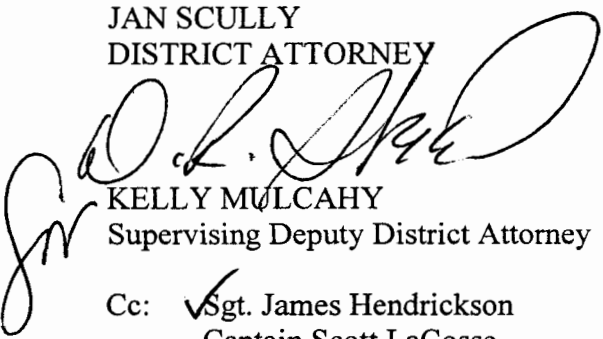
Additionally, in this case, the facts demonstrate that Officers Fong and Rich were also justified in using deadly force to apprehend a dangerous person who had just committed two felonies. They knew as they were chasing him that Kumar had likely murdered a woman and child and, was heading for the only viable exit out of the apartment complex. The officers did not fire their weapons precipitously. Officer Fong was preparing to restrain Kumar in a manner that did not involve shooting him. It was only after Kumar stopped running, turned and moved towards the Officers, and made threatening motions with the cleaver that they un-holstered their firearms.

Officers demonstrated great restraint and control once Kumar dropped to the ground and was off his feet, downgrading the force to the taser. They did so even though Kumar still had the cleaver in his hand and thus presented a danger to the officers. Their reliance on information learned in the Police Academy as well as supplemental training regarding use of force and the threat presented by a knife (cleaver) wielding suspect within a 21 foot radius is reasonable.

We find the shooting in this case was lawful. As such, we will take no further action in connection with this shooting incident. Thank you for referring the matter for our review.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY



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Supervising Deputy District Attorney

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Report Number: 2005-198569

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