

05-453434



OFFICE OF THE
DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
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CHIEF DEPUTY

December 18, 2006

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

Re: Officer-Involved-Shooting: Case No. SPD 05-453434

Shooting Officers: Brian Bell #822 and David L. Putman #870

Person shot: Donald Anthony Austin (DOB 05/19/1985;
[REDACTED])

Dear Chief Najera:

The District Attorney's Office, as an independent agency, has completed its investigation and review of the above-referenced officer involved shooting. The review does not address issues of civil liability, tactics, or departmental policies and procedures. We address only whether or not there is sufficient evidence to support the filing of a criminal action in connection with the shooting of Donald Austin. For the reasons set forth below, we conclude that the shooting of Donald Anthony Austin by Officers Brian Bell and David Putman was lawful.

In conducting this review, we considered SPD reports 05-453434 (and connected digital photos, and video and audio tapes copied to DVD's and CD's), 05-450693 and 05-453369, as well as District Attorney investigative reports, and the records in Sacramento Superior Court case number 05F11540.

FACTUAL SUMMARY:

At approximately 2:06 am on December 27, 2005, David Putman was on duty as a patrol officer for the Sacramento Police Department. He and his partner, [REDACTED], were in uniform and in

SPECIAL INVESTIGATIONS

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a marked patrol vehicle as they patrolled the area near Freeport and Broadway. They heard Sacramento Police Department Officer Brian Bell announce over the radio that he was westbound on Broadway following a stolen Toyota Corolla license [REDACTED] Bell was also in uniform and driving a marked patrol vehicle. The Corolla had been reported stolen only hours earlier.

All of the officers activated their red lights and sirens. Bell followed the vehicle to Marina View Drive where the suspect vehicle made a southbound turn into Miller Park, but the entrance was blocked with a gate. At that location Putman and [REDACTED] joined Bell as he began to initiate a felony stop on the gray Toyota Corolla, which had five occupants and was being driven by Donald Austin.

At the dead-end area, Officer Bell stopped and exited his vehicle with his gun drawn. Putman pulled to a stop also, to the left of Bell's patrol car. Putman and [REDACTED] got out of their vehicle and drew their firearms. All three officers, who had taken cover behind the doors of their vehicles, began yelling to the occupants of the stolen vehicle to stop the car and raise their hands.

Instead of complying, Austin turned the Corolla around so that it was positioned northbound on an embankment facing the officers' vehicles. Austin revved the engine, and the tires began to spin in the mud. In spite of the officers' repeated commands to stop the car, the Corolla charged straight at Officers Putman and [REDACTED] and their vehicle. At this time, Officer Bell fired his weapon at the driver of the Corolla in order to protect the other officers, whom he believed Austin intended to run over and kill.

To avoid being crushed by the oncoming suspect vehicle, [REDACTED] moved away from his open door to Bell's car. Putman also sought to reach an area of safety behind Bell's patrol car. He ran around the back of his own patrol vehicle toward Bell's vehicle, which was positioned to the right. As he reached the rear of his vehicle and moved toward Bell's car, Austin rammed the Corolla into Putman and [REDACTED] patrol vehicle head-on and pushed it back about five feet.

Officer Putman then reached the right side of his vehicle, and by this time the Corolla had backed up and was now aiming for him as he was seeking shelter next to Bell's vehicle. He had become caught in an open area between the two patrol vehicles. At this time, Austin accelerated the Corolla and drove straight at the officers, particularly Putman, coming within feet of them. The officers believed that Austin was going to run over Putman, and at this time Bell and Putman each fired their duty weapons at Austin in an effort to prevent death or injury to one or all of them. The windshield of the suspect vehicle shattered but the Corolla continued forward, traveling between the two patrol vehicles. Putman was able to avoid the Corolla, as [REDACTED] and Bell also took evasive action and were able to avoid being hit by Austin. The Corolla then left the area, heading eastbound on Broadway.

Officer [REDACTED] jumped into the driver's seat of their patrol car and Putman got into the passenger side. They gave chase and Bell followed. They were joined by other patrol cars which also pursued the Corolla with red lights and siren. The Corolla hit a curb as it turned northbound onto 3rd Street, where it flipped over and came to rest with the driver's side up. A black pellet

gun, which could easily be mistaken for a firearm, was found on the ground at 3rd Street and Broadway.

Donald Austin sustained gunshot wounds to the face and was taken to UCD Medical Center. [REDACTED] who was a passenger in the front seat, was taken there also, due to a complaint of pain to the leg. There were three passengers in the back seat: [REDACTED] [REDACTED] was also treated at UCD for headaches and pain to her hip and back.

SSD helicopter Star 7 had been overhead observing and illuminating the entire incident, and Deputy Brian Rutledge reported over the radio that the suspect vehicle had committed violations of Penal Code 245(c) (assault with a deadly weapon against the officers) as it rammed the patrol vehicle, then drove towards them.

The Corolla vehicle had been stolen from a location where it had been parked by its owner, [REDACTED] the previous evening. Several of the occupants of the Corolla were also involved in the carjacking of two other vehicles, one of which had occurred the same day and the other a few days previously, a 1996 Toyota Camry [REDACTED] and a 1966 Ford Mustang [REDACTED]

At the Police Station later that night, Officer Bell's duty firearm was unloaded and it was found that 5 rounds had been discharged. [REDACTED] weapon was found to be fully loaded and Officer Putman's weapon had discharged 3 rounds. Eight shell casings were recovered at the scene.

Austin sustained a through and through gunshot wound to his right upper lip and another to his left cheek. His left lower jaw and several teeth were fractured and some were missing.

Austin was charged in Superior Court, and eventually entered a plea of no contest to two felony counts of Penal Code section 245(c), assault with a deadly weapon upon Officers Putman and Bell. On May 19, 2006 he was sentenced to 5 years in state prison in Sacramento Superior Court case 05F11540. All of the occupants of the stolen vehicle gave statements within hours of the incident and none disputed the essential facts reported by the officers.

LEGAL ANALYSIS:

The Office of the District Attorney investigates and reviews cases of officer involved shootings for the purpose of evaluating and applying the law relating to police use of force, and to determine if the officer's acts fall within California laws regarding criminal responsibility. This office has reviewed the facts of this case and applied the controlling legal authority to them. These legal authorities include Penal Code sections 69, 148, 243, 245, 496, 834, 834a, 835, 835a; Vehicle Code sections 10851, 2800.2, and the applicable California Jury Instructions and state and federal case law.

When Officers Bell, Putman and [REDACTED] attempted to stop the stolen vehicle and arrest the driver, they were in the lawful commission of their sworn duty. The vehicle had been stolen and they were attempting to recover the vehicle and arrest Donald Austin for a violation of Vehicle Code

section 10851. Instead of yielding to the officers' red lights and siren, Austin attempted to flee the officers in a willful and wanton manner, a violation of Vehicle Code section 2800.2.

Penal Code section 834a provides that a person being arrested has a duty to refrain from using force or any weapon to resist such arrest. Evans v. City of Bakersfield (1994) 22 Cal.App. 4th 321, 332. "... It has been consistently held that section 834a prohibits forceful resistance to unlawful as well as lawful arrests." People v. Curtis (1969) 70 Cal.2d 347, 351. Thus, Donald Austin was legally obligated to submit peacefully without the use of force or any weapon, to the arrest being effectuated upon him.

Instead of submitting to the lawful arrest, Austin forcibly resisted the officers and assaulted them with a deadly weapon, the vehicle that he was driving. He rammed one patrol vehicle, an act that would have killed or seriously injured Officers Putman and [REDACTED] had they not been able to take evasive action to avoid being crushed by their very own patrol car. In addition, Austin backed up, changed course and drove straight at Officer Putman and the other two officers. Putman at that moment was in a vulnerable position between the two patrol vehicles. This conduct on the part of Austin constituted violations of Penal Code sections 69, 148 and 245(c). Austin's conviction of two counts of Penal Code section 245(c) confirms his criminal liability.

Penal Code sections 196 and 197 provide that in situations where it is reasonably necessary for an officer to defend himself or another person from death or serious bodily harm, using deadly force is legally justified. Additionally, case law holds that a peace officer may use deadly force in self-defense, defense of others, and when flight of an individual poses a risk of serious bodily harm, Tennessee v. Garner (1985) 471 U. S. 1, 11, 16; Kortum v. Alkire (1977) 69 Cal.App.3d 325.

The standard California jury instructions also confirm that when a person reasonably believes that he or she is in imminent danger of great bodily injury, self-defense is justified. CalCrim 505. So long as the person reasonably believed there was danger, actual danger is not necessary to justify self-defense, but in this situation it is clear that the officers were in fact being attacked with deadly force.

Penal Code section 835a also provides that an officer will not be considered the aggressor or lose his right to self-defense by the use of reasonable force to effect an arrest, prevent escape, or overcome resistance. And a peace officer is not required to retreat or desist due to the resistance or threatened resistance of the arrestee. Penal Code section 835a; CalCrim 505. Furthermore, case law clearly provides that officers are authorized to use force to overcome resistance to arrest. Edison v. City of Anaheim (1998) 63 Cal.App. 4th 1269.

Considering the totality of the circumstances in this case, it was appropriate for Officers Bell and Putman to defend themselves, Officer [REDACTED] and each other with the use of deadly force.


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CONCLUSION:

In these circumstances, Sacramento Police Officers David Putman and Brian Bell were justified in the use of deadly force to defend against the attack by Donald Anthony Austin committed during the attempted arrest. We find the shooting to be lawful and will take no further action on this matter.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY


KRISTA J. KASTANOS
Deputy District Attorney

cc: SPD David L. Putman
SPD Brian Bell
✓ Sgt. Fern Enriquez
Don Casimere

MEMORANDUM**SACRAMENTO POLICE DEPARTMENT**

Professional Standards Unit



DATE: January 25, 2006
REF: PSU 01-04

TO: Albert Nájera
 Chief of Police

ATTN: Steve Segura, Deputy Chief
 Office of Investigations

Scott LaCosse, Captain
 Internal Affairs

FROM: Dru Donat, Sergeant
 Professional Standards Unit

RE: Shooting Review Disposition W01-04

A shooting review was held on Wednesday, January 25, 2006 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	Capt. D. Schiele	Capt. LaCosse
Capt. Parker	Capt. Louie	Capt. McCarthy
Capt. J. Schiele	Capt. Somers	Capt. Valenzuela
Capt. Hahn	Lt. Reese	Lt. Schneider
Lt. Haynes	Lt. Maccoun	Lt. Jensen
Lt. Westin	Lt. Quinn	Lt. Sweeney
Lt. Campas	Lt. Bernard	Lt. Brown
Lt. Rehm	Lt. Bray	Lt. Gardner
Lt. Peletta	Sgt. Hendrickson	Sgt. Feenstra
Sgt. Pease	Sgt. McCloskey	Sgt. Enriquez
Sgt. Donat	Sgt. Kidd	Off. Von Schoech
Off. Jason	Off. Aquino	V. Ciarnelli
Larry Kelly	John Green	Steve Cook
Jerry Enomoto (OPSA)		

The following is the recommendation for the shooting:

W05-09

Within Policy

Officer involved	Presenter	Division Commander
Off. Putman	Sgt. Enriquez	Capt. Somers
Off. Bell		

On Tuesday December 27, 2005 at approximately 1:18 A.M., the Sacramento Police Communications Center issued an all units broadcast regarding a carjacking at gunpoint with suspect descriptions. Shortly thereafter, Off. Bell observed a possible suspect vehicle at Broadway and Riverside with several subjects inside. As the vehicle drove by him, Off. Bell checked the license plate and found the suspect vehicle to be stolen. Off. Bell followed the vehicle W/B Broadway while Offs. Putman and [REDACTED] along with SSD air support, arrived as cover. The vehicle led officers W/B Broadway into the dead end of Broadway at the entry to Miller Park. The gate into Miller Park was closed and locked. The officers attempted to conduct a felony stop of the suspected armed vehicle. As the officers exited their vehicles with their guns drawn, the vehicle made a U-turn off the roadway onto a berm area, and became stuck. As the driver gunned the engine trying to escape, officers continuously yelled commands to surrender. The driver drove directly at one of the police vehicles, ramming it. As the suspect vehicle drove at the occupied police vehicle, Off. Bell, fearing for the safety of the officers in the vehicle, fired his issued handgun at the driver of the suspect vehicle. The suspect vehicle then backed up and tried to flee in between the police vehicles, where officers were in its path trying to escape their rammed vehicle. Off. Bell, fearing for the safety of Off. Putman who was now fleeing in between the police vehicles, fired his issued weapon at the suspect. Off. Putman had fled his rammed vehicle and was in between the police vehicles, where the suspect vehicle was now driving at him. Fearing for his own safety, Off. Putman fired his issued weapon at the driver of the suspect vehicle. The suspect vehicle fled east on Broadway then north onto 3rd Street where it crashed.

Recommendations:

Steve Cook, Fleet Management ASO, is investigating the issue of the in-car cameras not recording the full event. One vehicle did not record any of the incident. The other vehicle loses video for a period of time covering the incident after crossing railroad tracks. Fleet will continue to explore the reasons that may cause in-car cameras to stop or black out while resetting.

Additionally, PSU was directed to revise GO 580.03 relative to the discharge of firearms at or from a moving vehicle.

Report Number: 2005-453434

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 pose a significant danger to the physical safety of the peace officer, custodial officer, or another person (Cal. Pen. Code § 832.7(b)(6)(D));

Records or information, the disclosure of which would reveal or compromise official law enforcement security and investigative procedures (Cal. Gov. Code §§ 7923.600(a) & 7923.615(a));

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)); 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; Cal. Pen. Code §§ 11105 and 13300; and Cal. Welfare & Inst. Code § 827).

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