

MEMORANDUM**SACRAMENTO POLICE DEPARTMENT**

Professional Standards Unit

**DATE: July 5, 2006****REF: PSU 07-01****TO: Albert Nájera**
Chief of Police**ATTN: Steve Segura, Deputy Chief**
Office of Operations/Investigations**Scott LaCosse, Captain**
Internal Affairs**FROM: Rudy Chan, Sergeant**
Professional Standards Unit**RE: Shooting Review Disposition W06-04**

A shooting review was held on Wednesday, June 28, 2006 during the management session of Infocom. All findings were made with the concurrence of the Deputy Chief, Office of Operations/Investigations. Those in attendance were:

Deputy Chief Segura
Capt. McCarthy
Capt. Hahn
Lt. Peletta
Lt. Sweeney
Lt. Johnson
Lt. Brown
Sgt. Chan
Ofc. Von Schoech
John Green
Larry Nelson (Risk Mgt.)

Capt. J. Schiele
Capt. LaCosse
Lt. Haynes
Lt. Quinn
Lt. Westin
Lt. Dowden
A/Lt. Kidd
Sgt. Winton
Ofc. Monti
Don Casimere (OPSA)

Capt. Somers
Capt. Louie
Lt. Beerman
Lt. Moir
Lt. Rehm
Lt. Gardner
A/Lt. Pease
Sgt. McCloskey
Claudia Evans
Joe Crady (Risk Mgt.)

The following is the recommendation for the shooting:

W06-04**JUSTIFIED****Officer involved**
Officer Kevin Howland #0835**Presenter**
Sgt. Hendrickson**Division Commander**
Captain J. Schiele

Summary:

On May 22, 2006, at approximately 1307 hours, Officer Howland spotted a Maroon Chrysler sedan possibly matching the description of a 211 vehicle. Officer Howland broadcast the information and followed the vehicle into the Walmart parking lot at the Natomas Marketplace shopping center. The vehicle, containing multiple occupants, pulled into a stall in the parking lot. Officer Howland pulled in behind the vehicle and made contact with the subjects. Officer Howland then stepped to the rear of the suspect vehicle next to his patrol car to reconfirm the vehicle license plate. As Officer Howland was waiting for cover units, the driver of the suspect vehicle backed the vehicle out of the stall towards Officer Howland. The driver then readjusted his vehicle and drove straight towards Officer Howland. The vehicle hit Officer Howland's patrol car and knocked Officer Howland onto the suspect vehicle's hood. The driver then accelerated. Officer Howland fired eight rounds at the driver. The driver was hit multiple times. The left rear passenger was hit once in the wrist. Officer Howland was thrown from the car and landed on his feet. The car crashed into a palm tree and came to rest. The driver died at the scene from a gunshot wound to the chest. All other suspects were arrested by responding units.

Recommendations:

None

PSU



OFFICE OF THE
DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
DISTRICT ATTORNEY

CYNTHIA G. BESEMER
CHIEF DEPUTY

February 8, 2007

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

Re: Officer Involved Shooting - Case No. 06-177421

Shooting Officer – Kevin M. Howland #835

Persons shot – Timothy Eugene Gallegos, Jr. (DOB 10/13/1986; X-Ref [REDACTED]
[REDACTED] (DOB [REDACTED] X-Ref [REDACTED])

Dear Chief Najera:

The District Attorney's Office, as an independent agency, has completed its review of the above referenced officer involved shooting. Civil liability, tactics, and departmental policies and procedures were not considered. We address only whether or not there is sufficient evidence to support the filing of a criminal action in connection with the shootings of Eugene Timothy Gallegos Jr. and [REDACTED]. For the reasons set forth below, we conclude that the shootings were lawful.

Written reports and other documentary items were reviewed. These consisted of: Sacramento Police Reports, video and audio recordings, photographs, Sacramento County Coroner Reports of Autopsy and Findings, and reports by District Attorney investigators.

FACTUAL SUMMARY

On May 22, 2006, at approximately 1:00 p.m., the Sacramento Police Communications Center received a telephone call from a [REDACTED] stating he had just been robbed at gunpoint near Northgate Boulevard and San Juan Road. He had been sitting at a bus stop when confronted

by the subjects displaying handguns and demanding his property. The robbers took his backpack, Ipod, Jordan tennis shoes, wallet, jewelry and work clothing. They fled in a 1970's model maroon Cadillac, heading in the direction of the Natomas Market Place shopping center. He described the assailants as a white and Hispanic male adults.

Sacramento Police Officer Kevin Howland responded to the Natomas Market Place area, Northgate Boulevard and Interstate 80, within minutes of hearing the radio announcement of the "just occurred" robbery, anticipating the suspect may seek concealment in the large parking lot. At approximately 1:09 p.m., Officer Howland, driving a black and white marked police vehicle, observed a maroon older model vehicle with four occupants in the parking lot north of Wal Mart. The vehicle (later determined to be a 1994 Chrysler New Yorker registered to the decedent, Eugene Gallegos) pulled into a parking stall with numerous parked vehicles nearby. Based upon its relationship to the location of the crime and its similar appearance to that of the suspect vehicle, Officer Howland suspected the vehicle was associated with the [REDACTED] robbery. Alone and in full uniform, Officer Howland parked his unit at an angle in the roadway directly behind the rear of the maroon vehicle.

Officer Howland observed multiple people inside the vehicle. The driver, Eugene Gallegos, a male Hispanic adult, immediately exited the driver's door of the vehicle. Believing that this subject and the vehicle were related to the robbery, Officer Howland ordered Gallegos to get back into the vehicle. After Gallegos returned to the interior of the vehicle, the officer instructed the occupants to place their hands on the interior roof of the vehicle having concluded that this was in fact the vehicle associated with the armed robbery. The occupants appeared to comply with his instructions since he saw numerous arms and hands reach upward.

Concerned for his safety (since the robbers had been reported being armed with guns and because he was alone) Officer Howland approached the driver side door cautiously, asking if there was a firearm in the vehicle and indicating that the vehicle matched the description of a robbery vehicle. Gallegos, laughing, denied there was a gun in the car. The officer then moved to the rear of the vehicle and advised the radio communication center via his portable radio the license number (Ca. [REDACTED]) and stressed the need for a cover unit while standing between his patrol unit and the suspect vehicle. Suddenly, the Chrysler accelerated rapidly in reverse directly at the officer, who realized he was likely to be pinned between the rear of the suspect vehicle and the right side of his police unit. Officer Howland was able to jump aside before the Chrysler struck the right rear of his parked police vehicle.

At this point Officer Howland faced the stopped vehicle and made direct eye contact with Gallegos, the driver. Anticipating Gallegos would drive the vehicle at him again, the officer backpedaled, unholstered his handgun, and yelled at Gallegos to stop the car. Gallegos accelerated the vehicle forward striking the officer with its front end. The momentum of the collision forced the officer onto the Chrysler's hood as it continued to travel in an easterly direction. Officer Howland is unsure of exactly what happened at this point but he was aware of pain in his leg and knew he was on the hood of the fast moving vehicle. Realizing that he was in a perilous situation that most likely would result in his death or serious bodily injury, the officer discharged his 40 caliber Sig Sauer semi-automatic handgun into the driver's side of the

windshield. He believes he fired two or three rounds in the direction of the driver as he was spread-eagle on the hood of the moving vehicle. Officer Howland felt a second impact as the vehicle struck a metal shopping cart rack causing the vehicle to slow to near a stop before continuing to move rapidly through the parking lot. The slow down enabled the officer to strengthen his grip on the hood.

Since the vehicle continued to maneuver through the parking lot, Officer Howland believed the driver had survived the initial gunshots. Desperately concerned for his safety, the officer fired additional bullets into the driver's side of the vehicle before he became dislodged from the vehicle, falling to the roadway. He was able to get to his feet as the vehicle continued moving through the parking lot towards the In & Out Burger restaurant while he advised the radio communication center that he had been hit by the car and shots had been fired. Howland was able to observe the vehicle's movement until it collided with a tree near the restaurant. Witnesses, including federal agents who happened to be in the parking lot, came to the aid of the officer and assisted in the apprehension of suspect Saul Rabago, who had fled from the suspect vehicle after it collided with the tree.

Responding officers located Eugene Gallegos deceased in the driver side of the Chrysler with multiple gunshot wounds. In the back seat of the vehicle, officers located [REDACTED] who had a gunshot wound, and a female, [REDACTED]. The right front passenger, Saul Rabago, who had fled after the collision, was captured within minutes in a parking lot nearby. Evidence linking the vehicle and the occupants to the robbery of [REDACTED] was found in the maroon vehicle and on the persons of Gallegos and Rabago. Also in the vehicle, investigators found a replica of a dark automatic handgun on the floorboard.

Officer Howland and suspect [REDACTED] were transported the UCD Medical Center for treatment. The officer was treated for a large contusion of the left knee. Suspect [REDACTED] was hospitalized for a non-life threatening gunshot wound to the wrist. Suspect [REDACTED] was not injured and provided a statement to investigators implicating Gallegos, [REDACTED] and Saul Rabago in the robbery of [REDACTED].

Numerous witnesses were identified and interviewed. Their accounts were consistent with the facts provided by Officer Howland, the statement of [REDACTED] and the physical evidence. Suspects [REDACTED] and Rabago have been charged with numerous felony crimes included the robbery of [REDACTED] and the attempted murder of Officer Kevin Howland and are scheduled for trial on January 16, 2007. No criminal charges were filed against [REDACTED].

Crime scene investigators determined that Officer Howland had fired eight rounds through the windshield of the 1994 Chrysler New Yorker during the incident. The officer's marked police unit sustained right rear damage from the collision with the suspect vehicle. A metal shopping cart rack located in front of the officer's vehicle was significantly damaged and displayed red paint transfer. The rear license plate found on the 1994 Chrysler was assigned to another vehicle, a 1984 Chrysler, registered to a [REDACTED]. The front license plate, [REDACTED] was the

plate assigned to the suspect vehicle, a 1994 Chrysler New Yorker, registered to the decedent, Eugene Gallegos.

Sacramento County Chief Forensic Pathologist Mark Super performed an autopsy on Eugene Gallegos on June 24, 2006 (Sacramento County Coroner's Report 06-02848). He found Gallegos had suffered gunshot wounds to the right hand, wrist, upper arm, elbow, neck and right chest, and a grazing wound of the frontal scalp. It was Dr. Super's opinion that Gallegos died as a result of gunshot wounds to the chest and arm that had been fired through the windshield of the vehicle while driving slouched down and against the driver's door. Gallegos's autopsy blood sample was found to contain methamphetamine.

ANALYSIS

A peace officer is entitled to use deadly force in self-defense, defense of others, or when the flight of a suspect poses a risk of great bodily injury. Penal Code sections 196, 197; Tennessee v. Garner (1985) 471 U.S. 1; Kortum v. Alkire (1977) 69 Cal.App.3d 325. Regarding the use of deadly force in self-defense, California law permits such use if it reasonably appears that the person claiming the right of self-defense actually and reasonably believed he was in imminent danger of great bodily injury or death. CALCRIM 505, 3470. 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. CALCRIM 507.

Under these principals, Officer Howland was justified in using deadly force in self-defense and to detain or arrest Gallegos, [REDACTED] and the other vehicle occupants, who posed a significant threat of harm to the public and to other peace officers. Gallegos was operating a vehicle that fit the description of that used by two male adults who had reportedly robbed a person at gunpoint minutes before, near the Natomas Market Place Shopping Center. Gallegos was driving the suspect vehicle and attempted to evade arrest by using the 1994 Chrysler New Yorker as a deadly weapon against the officer.

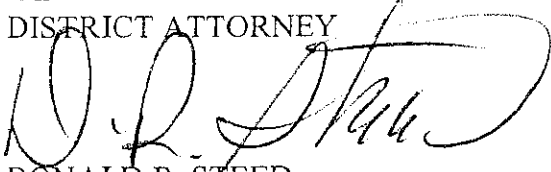
When Gallegos backed his vehicle directly at Officer Howland it was reasonable for the officer to fear that he was about to be struck by the vehicle. Then when Gallegos accelerated directly at the officer knocking him onto the hood of the moving vehicle the officer was without question entitled to defend himself by the use of deadly force. Officer Howland began firing and continued to fire as the vehicle traveled through the parking lot with the officer clinging to the hood of the vehicle. Undoubtedly, Officer Howland shot because he believed the driver of the vehicle intended to kill him or cause him serious bodily injury.

Under these dire circumstances, Officer Howland was justified in using deadly force in defense of himself and to apprehend Gallegos and his associates who posed a significant threat of immediate harm to the officer and to others. Given the facts and circumstances known to the officer at the time, deadly force was objectively reasonable.

We conclude that Officer Howland's actions were necessary and required to prevent his death or serious bodily injury and the escape of persons that the officer had probable cause to believe posed a significant threat of death or serious bodily injury to others. Finding the shooting lawful, we will take no further action in this matter.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY

A handwritten signature in black ink, appearing to read "D.R. Steed", written over the printed name of Donald R. Steed.

DONALD R. STEED
Principal Criminal Attorney

cc: ✓ Sgt. Fern Enriquez
Officer Kevin M. Howland
Don Casimere

City of
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Report Number: 2006-177421

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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)); d

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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