



OFFICE OF THE
DISTRICT ATTORNEY

SACRAMENTO COUNTY

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August 30, 2010

Police Chief Rick Braziel
Sacramento Police Department
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822

RE: Officer-Involved Shooting, Case No. 2010-145940

Shooting Officers: Officer Edward Macaulay, Badge #272
Officer Kenshin Vu, Badge #391

Person Shot: Nilesh Krishna
(DOB 1/8/1978; [REDACTED]; [REDACTED])

Dear Chief Braziel:

The District Attorney's Office, as an independent agency, has completed its investigation and review of the above-referenced officer involved shooting. Issues of 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 shooting of Nilesh Krishna. For the reasons set forth below, we conclude that the shooting was lawful.

Written reports and other documentary items were reviewed. These consisted of: Sacramento Police Department (SPD) report 2010-145940, Sacramento County Laboratory of Forensic Services report 2010-005164, UC Davis laboratory reports MRN 2033496, video and audio recordings, 911 calls, witness interviews, photographs, diagrams, evidence logs, search warrants, and reports prepared by District Attorney Investigators.

SPECIAL INVESTIGATIONS

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FACTUAL SUMMARY:

On May 17, 2010 at approximately 1520 hours, SPD Officer Vu was dispatched to [REDACTED] Martin Luther King Jr. Boulevard regarding a weapons call. This address consisted of a single story residence located at the northwest corner of Martin Luther King Jr. Boulevard and 7th Avenue. The house is surrounded by a wood fence on the west side of the house and a chain link fence on the remaining sides. Officer Vu responded to the scene at approximately 1557 hours and took a report from victim [REDACTED]. [REDACTED] stated he lived in the main house at that address and Nilesch Krishna lived in the detached garage in the back. [REDACTED] recently had a vehicle stolen from the residence and suspected Krishna. Earlier in the day on May 17th [REDACTED] saw Krishna standing in front of the garage door holding a crossbow. [REDACTED] questioned Krishna regarding the theft of [REDACTED] vehicle and Krishna responded by pointing the crossbow directly at [REDACTED]. The crossbow was loaded with a yellow arrow and the bow was locked back into a firing position. Krishna told [REDACTED] he was going to shoot him, and if [REDACTED] called the police, Krishna was going to shoot the police, too. Krishna also threatened to shoot Krishna's brother-in-law, [REDACTED], who was not present. Victim [REDACTED] was scared and felt Krishna would kill him. He ran into his house and out the front door. He jumped into his vehicle and drove away to a safe place. He called the police immediately.

At the time Officer Vu was at the residence with [REDACTED], Krishna was not present. [REDACTED] was trembling during the time Officer Vu took his statement. Officer Vu left the scene and gave [REDACTED] his cellular telephone number with instructions to call Officer Vu should the suspect reappear. Officer Vu then made contact with Krishna's brother-in-law [REDACTED] at A-Tech Automotive located at 5851 Alder Avenue in Sacramento. [REDACTED] stated that Krishna arrived at his business earlier and threatened a customer. [REDACTED] was not present when this occurred. [REDACTED] did state that Krishna had made numerous threats in the past to kill [REDACTED] and [REDACTED]. [REDACTED] referred Officer Vu to witness [REDACTED] who was present at [REDACTED] business when Krishna arrived and threatened a customer.

Officer Vu made contact with [REDACTED] at approximately 1641 hours at 5851 Alder Avenue. [REDACTED] stated that earlier he was working on a vehicle when Krishna drove into the parking lot with a white mid-1990's Dodge Dakota pickup truck. Krishna exited his vehicle and pointed a crossbow at a customer later determined to be [REDACTED]. The crossbow was black in color and loaded with a yellow arrow. The bow was cocked back ready to shoot. Krishna told [REDACTED] that he would shoot him if [REDACTED] got any closer to Krishna in the parking lot. [REDACTED] felt Krishna was going to shoot [REDACTED]. After a few moments, Krishna entered his truck and drove away. According to [REDACTED] this was not the first time that Krishna had come to the business and threatened the owner or the customers.

A records check conducted by Officer Vu revealed that Krishna had a Dodge pickup truck registered to him. The vehicle matched the description provided by [REDACTED]. [REDACTED]

[REDACTED]

While Officer Vu was clearing the call, he received a telephone call on his cellphone from the original complainant [REDACTED]. This was about sixty to ninety minutes after [REDACTED] first made contact with Officer Vu. [REDACTED] advised Officer Vu he had driven by his house and that Krishna was back at the residence and was in the garage. Krishna's truck was parked in the driveway. [REDACTED] stated he himself was not at the home. Based upon this information, Officer Vu decided to arrest Krishna for the earlier felony violations. Officers Loriaux, Macaulay, Stanionis, Buchanan, Leonard, and Landberg arrived to assist with the arrest. Officer Vu briefed the other officers on the situation and also advised them that Krishna had a history of terrorist threats, mental instability, and weapons. All officers were shown a photograph of Krishna. A game plan was devised to go to the garage, knock on the door, and arrest Krishna on site if he answered the door. Officer Landberg ordered all officers to wear their ballistic helmets. Officer Buchanan had the police shield and would help with handcuffing when safe to do so, Officer Stanionis would be the arresting officer, Officer Leonard was designated to use the taser or less lethal force, and Officer Vu was designated to use lethal force if necessary. Officer Macaulay and Officer Loriaux were directed to respond to the area of 7th Avenue and Martin Luther King Jr. Boulevard in order to watch the house, while the other officers prepared to deploy.

Officers arrived at the location at approximately 1800 hours. As they approached the garage, Officer Buchanan was first, Officer Vu was second, Officer Stanionis was third, Officer Leonard was fourth, and Officer Landberg was last and stayed a bit back. Officers went to the front door of the garage, knocked, and announced, "Police. Open up." Officers could hear a scuffling sound coming from inside of the garage. Krishna then put his head through a broken window of the garage on the east side and looked at the officers, all of whom were in department issued uniforms. Another announcement was made, "Police. Open the door." Krishna responded by asking, "What the fuck are you doing here?" and then put his head back inside of the garage. Officer Leonard and Officer Vu then attempted to force entry of the door and kicked the door multiple times until it opened. When the door opened officers were two or three feet from the door. The officers could see Krishna standing inside of the garage with a sledgehammer. Krishna was holding the sledge hammer up over his shoulder with two hands. Officer Vu was concerned for all officers' safety at that moment due to the fact that there was not enough space between the officers and Krishna should Krishna rush out to hit the officers with the sledgehammer. Officers directed Krishna multiple times to put down the weapon and advised Krishna that they just wanted to talk to him. Krishna was screaming at the officers and yelling, "What the fuck are you doing here? I want to die. Shoot me right here!"

Officer Leonard feared for his safety and the safety of other officers and deployed his taser on the right side of Krishna's body, but it was ineffective. Officer Leonard could see the probes drop to the ground. Krishna was still standing in the garage with the sledgehammer in his hands in a ready to swing position. Krishna was yelling at the officers, "Shoot me right here! Shoot me right here!" Officers then retreated back toward the northeast side of the yard. Officers Leonard and Stanionis

¹ Nilesh Krishna was previously arrested on May 5, 2010 under Sacramento Police Report Number 2010-133052. He was charged with Penal Code Section 422, terrorist threats, against victim [REDACTED] in Case Number [REDACTED]. In that matter he allegedly threatened to kill [REDACTED] and had a crossbow.

retreated to the back of Krishna's truck. Officer Stanionis grabbed her taser and Officer Leonard ran to his vehicle and retrieved more taser heads. Both returned to the side of the truck. Officer Stanionis dropped her taser and had her handgun drawn. Officer Leonard then tasered Krishna a second time but it was ineffective; Krishna was wearing a thick jacket. Officer Loriaux also deployed his taser, but to no effect. Krishna pulled out the taser probe from his jacket and threw it back at Officer Loriaux. Officer Buchanan was afraid for his safety as he was armed with only the shield at that moment. Officer Buchanan deployed his taser but it had no effect on Krishna. It appeared Krishna was becoming more agitated.

During the time between the attempted four taser applications, officers were continuing to give Krishna verbal commands which he ignored. Officer Macaulay, who had his handgun drawn, was trying to calm Krishna down by taking control of the voice commands at this point and lowering his voice. Officer Macaulay repeatedly told Krishna to put the sledgehammer down and to come outside. Officer Loriaux then went to Officer Landberg's vehicle to retrieve a bean bag gun. Officers repeatedly told Krishna to put down the weapon, but he refused to comply and slammed the door to the garage shut. Due to the four failed tasers, and because of Krishna's weapon, officers did not attempt to force entry into the garage a second time.

Officer Leonard and Officer Stanionis then climbed over the chain link fence into the next lot and went to the north east side of the garage. From that vantage point, they had a clear view of the north window. Officer Leonard could see Krishna inside of the garage and he saw what he described as a bow. Officers Macaulay, Buchanan and Vu were taking cover behind Officer Buchanan's shield. Officers Vu and Macaulay had their handguns drawn. Officer Vu was positioned to Officer Buchanan's left and Officer Macaulay was positioned to Officer Buchanan's right. While sitting there behind the shield, Officer Vu heard the shooting sounds from the crossbow approximately two times from inside of the garage. Officer Buchanan also heard the sounds of the crossbow being shot inside of the garage, as did Officer Macaulay. It was unclear if Krishna was trying to shoot at the officers or if he was shooting at the ground.

After approximately ten minutes, Krishna opened the door to the garage and was standing about a foot or two feet within the threshold. He was screaming at the officers, "What the fuck are you guys doing here? Shoot me! I want to die!" He repeated the same statements he made earlier. Officers yelled at Krishna to show his hands, but he refused. Officer Landberg ran to the front of the house in order to have a better view of the garage. He also requested a K9 officer to respond to the location. Krishna closed the door slightly and then reopened the door and appeared with a large nail gun. Krishna pointed the nail gun directly toward officers in an aggressive motion as if holding a firearm.² Krishna fired the nail gun in rapid succession and nails went into the plywood which was leaning up against the house next to the officers. The plywood was splintered as a result of the nails from the nail gun. Officer Vu was afraid for his life and afraid that Krishna would use the nail gun to shoot

² In a 2003 Duke University Medical Center journal article by Dr. Hester J. Lipscomb, nail gun injuries were reported as puncture wounds to the hands and fingers and fatal injuries involving the face, eyes and vital organs. The Centers for Disease Control and Prevention in their MMWR weekly from April 13, 2007, listed nail gun injuries as puncture wounds, fractured bones, injuries to upper and lower extremities such as hands, fingers, feet and legs. Nail gun injuries include eye injuries, dental injuries, and lacerations. Nail gun injuries requiring hospitalization included embedded nails in the trunk, head, joints, or bones; fractures from nail penetration; and infected puncture wounds.

the other officers. All officers were in a position whereby they could not retreat or seek coverage. Officer Vu felt trapped and felt his life was in danger. He fired twelve (12) shots at Krishna from his departmental issued handgun. Officer Macaulay fearing for his life, and the lives of Officer Buchanan and Officer Vu, discharged his departmental issued handgun seven (7) times while aiming at Krishna's center of mass. Officer Macaulay felt the nail gun could potentially kill him or cause great bodily injury.³ Krishna went down to the right of the door and slammed the door shut with a kick. The distance between Officer Macaulay and Krishna was approximately 25 feet. No more contact was made with Krishna and the officers did not hear any sounds from inside of the garage. Officer Macaulay broadcasted that shots had been fired and that Krishna had retreated into the garage.

Officer Dahl and his K9 partner Bandit arrived on scene shortly after Krishna shut the door. Officer Dahl took a position on the east side of the detached garage by the door Krishna had closed. He remained there until SWAT arrived. Approximately twenty minutes later, the Sacramento Police Department SWAT team arrived. SWAT members utilized a pole camera to see inside of the garage. Officers could see that the floor of the garage was littered with tools and equipment. Additionally, officers could see the crossbow located on top of a box near the doorway. Officers could see Krishna lying down on a box spring located near the west wall of the garage. Just inside of the door, officers could see a nail gun attached to an air compressor. Krishna was on his side with one hand by his head. His other hand could not be seen. It was unclear if he had a weapon next to him or in close proximity to his hand. Several verbal commands were made to Krishna to show his hands. He refused to show his hands. Officer Dahl then gave K9 Bandit the "find" command and sent him into the garage. K9 Bandit located Krishna and bit him on the right foot. Once the SWAT team moved into the garage and took control of the situation, K9 Bandit was called off the scene.

Krishna was transported via ambulance to UC Davis Medical Center and treated for his injuries, which were determined to be not life threatening. Per Dr. Chae, Krishna suffered one "through and through" gunshot wound to the abdomen. The bullet exited out of his back. Krishna also suffered a gunshot wound to the upper right chest area. According to Dr. Chae, Krishna also had a wound to his right bicep that appeared to be a dog bite, and there was a puncture wound to the bottom of his right foot. A search warrant was served by the Sacramento Police Department on UC Davis Medical Center for the full medical records for Krishna. UC Davis Medical Center refused to provide any medical records beyond the laboratory results. The laboratory results indicated the presence of opiates, Ketamine, Norketamine, methamphetamine, amphetamine and caffeine. Without the full medical records, it cannot be determined whether opiate-based pain medications or anesthetic medicines such as Ketamine were administered by the hospital staff. Krishna admitted to ingesting methamphetamine prior to the incident. He was released into police custody on May 24, 2010.

³ Several high profile cases involving murder have appeared in the media as a result of the use of nail guns: the 1998 murder of John Leitao via nine nail gun shots to his head in Connecticut by his co-workers at a construction site and their subsequent convictions in 2001; the 2005 murder in Nevada County by defendant Richard Williams who shot his wife twice in the head with a nail gun and his subsequent conviction in 2007; and the unsolved 2009 murder of Chinese immigrant Chen Liu in Australia who was shot over 30 times in the head with a nail gun.

In a *Mirandized* statement to Detective Jaspersen on May 21st, Krishna admitted knowing that the police were at his door. He admitted getting his sledgehammer and holding it up. He also stated he saw the police uniforms and knew the police wanted him to come outside to talk. He recognized their shield with the word "police" on it and he saw that they were wearing helmets. He then got his nail gun. Krishna stated, "I fired the nail gun to make them go." He further stated, "I wanted to scare them into leaving." Finally, Krishna admitted to smoking methamphetamine "all day that day."

The District Attorney's Consolidated Intake Division reviewed the case and filed charges against Krishna, on May 26, 2010, for two violations of Penal Code Section 245(a)(1), assault with a deadly weapon; one violation of Penal Code Section 417.8, exhibiting a weapon at a police officer; and three violations of Penal Code Section 245(c), assault with a deadly weapon upon a police officer. That matter is still pending, as well as his earlier matter referenced in Case Number 10F02952.

LEGAL ANALYSIS:

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. Additionally, an officer who had reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to affect arrest or detention, to prevent escape or to overcome resistance. (*Tennessee v. Garner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386; *Kortum v. Alkire* (1977) 69 C.A. 3d 325; California Penal Code Section 853a; CALCRIM 2670.) An officer who attempts to arrest or detain a person need not retreat or desist from his efforts by reasons of the resistance or threatened resistance of the person; nor shall the officer be deemed an aggressor or lose the right to self-defense by use of reasonable force. (California Penal Code section 835a.) Police may use some degree of physical coercion or threat thereof to accomplish an arrest. The force used must be objectively reasonable, considering such issues as the severity of the crime, whether the suspect posed an immediate threat to police or others, and whether the suspect actively resisted arrest or attempted flight. (*Graham v. Connor* (1989) 490 U.S. 386.) The reasonableness inquiry takes into account those facts known to the officer at the moment he or she uses deadly force to apprehend a fleeing suspect. (*Ford v. Childers* (7th Cir. 1988) 855 F.2d. 1271, 1275; *Sherrod v. Berry* (7th Cir. 1988) 856 F.2d 802, 804.)

The person being detained or arrested may be subjected to such restraint as is reasonably necessary for his arrest and detention and has a concomitant duty to permit himself to be detained. (*People v. Allen* (1980) 109 C.A.3d 981, 985; CALCRIM 2670, 2671, 2672.) The rule "requires that the officer's lawful conduct be established as an objective fact; it does not establish any requirement with respect to the defendant's mens rea." (*People v. Jenkins* (2000) 22 Cal.4th 900, 1020.) California law permits the use of deadly force if the officer actually and reasonably believed he was in imminent danger of death or great bodily injury. (CALCRIM 3470.) An officer who uses deadly force must actually believe that force is necessary. The appearance of danger is all that is necessary; actual danger is not. (*People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639.) Thus, the officer may employ all force reasonably believed necessary. (CALCRIM 3470.) The reasonableness of a particular use of

force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. (*Graham v. Connor* (1989) 490 U.S. 386.)

Applying these legal principles to the factual circumstances, Officer Macaulay and Officer Vu had a right to act in defense of themselves and in defense of others. Officer Vu had probable cause to believe that Krishna had committed a felony offense and Krishna was to be apprehended for that felony offense. Officer Vu had information that Krishna had a history of violence, verbal threats, and weapon usage. When officers attempted to effectuate the arrest, Krishna refused to comply with verbal directives and was verbally combative. Krishna aggressively held a sledge hammer in a threatening manner in the presence of the officers. Moreover, during the situation, Krishna had re-entered the garage and was heard to be deploying a crossbow. Krishna then started shooting nails at the officers. Based on the totality of the circumstances, Officer Macaulay and Officer Vu reasonably believed that Nilesh Krishna was going to harm them or the other officers present at the scene. The act of Krishna's shooting the nail gun toward officers supported the reasonable belief that Krishna had a dangerous weapon and would attack officers. Nilesh Krishna's actions placed Officer Macaulay and Officer Vu and the other officers in imminent danger of death or serious bodily injury. Faced with this threat of death or serious bodily injury, Officer Macaulay and Officer Vu were entitled to use deadly force to defend themselves and other officers.

Given the circumstances, Officer Macaulay and Officer Vu were justified in using deadly force in self-defense. We find the shootings to be lawful and will take no further action in this matter.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY


LANI LYNN BIAFORE
Deputy District Attorney

cc: Sacramento Police Detective Kyle Jasperson, Badge #440
Sacramento Police Officer Edward Macaulay, Badge #272
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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))

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));

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 and Cal. Pen. Code §§ 11105 and 13300).

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