

MIKE BUMCROT CONSULTING

REPORT OF INVESTIGATION

DATE: June 23, 2019

SUBJECT: Officer Involved Shooting Death of Luvelle Kennon, which occurred on October 31, 2017

CASE: Riverside Police Department File #P17-196932

LOCATION: 6201 Shaker Drive, Riverside Castle View Elementary School

I was asked by Carlie Myers, Assistant City Manager of Riverside, to review the circumstances surrounding the officer involved shooting death of Luvelle Kennon by Riverside Police Department Detective Tanner Paes. I reviewed several hundred pages of police reports, photographs, and other items contained in the presentation by the Riverside Police Department to the Community Police Review Commission. I also researched and reviewed legal issues regarding the use of deadly force. I also was asked to provide my expert opinion in a written report on the manner in which detectives from the Riverside Police Department investigated this case.

Crime scene photographs taken by Riverside Police Department lab technicians were excellent and I referred to them many times during this review.

FACTUAL ANALYSIS

On October 31, 2017, at about 1100, Luvelle Kennon was having what his mother, Tonya Kennon, referred to as “an episode”. Mr. Kennon was insisting on checking his first grade daughter out of Castle View Elementary School (for the purpose of this report, Mr. Kennon’s daughter’s name is purposely excluded). Mrs. Kennon did not



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want her son to drive, because of his mental condition, and she had taken his car keys from him. Mr. Kennon became agitated and began walking to the school. Tonya Kennon drove to Castle View Elementary School and met with front office employees, including Principal Tiffany Farris. Mrs. Kennon advised everyone that her son was “having an episode” and asked that her granddaughter not be released to Mr. Kennon. As this conversation was taking place, Mr. Kennon entered the front office, asked for his daughter, and became angry when she was not immediately produced. Mr. Kennon saw his mother in Principal Farris’ office and began pounding on the window, ordering his mother out. Mrs. Kennon refused to come out and Mr. Kennon said that he was going to get his daughter no matter what. He then forced his way out of a door and on to the campus. Principal Farris called for a complete campus lockdown while her staff called the police.

Mr. Kennon walked directly to his daughter’s classroom and confronted her teacher, Linda Montgomery, who would later tell detectives that when she heard the lockdown announcement over the loudspeaker, she opened the door to secure her students who were at lunch. She saw Mr. Kennon walking towards her, recognizing him as the father of one of her students. Mr. Kennon walked up to her, pushed her and grabbed her arms, and asked “Where’s my daughter?” Mrs. Montgomery told him that the students were all at lunch and he said something like “I’m tired of people making threats”. Mrs. Montgomery offered to find his daughter on the playground as a diversion to get away from him.

Mrs. Montgomery could see Principal Farris looking through the front classroom window and heard someone knocking on the front door. She then saw a man appear at the back door of the classroom. She thought it may have been a policeman but later discovered him to be Carlos Gallardo, a substitute teacher and husband of another teacher. Mr. Gallardo came in to the classroom and asked Mr. Kennon if he needed help. Mr. Kennon struck Mr. Gallardo in the face with his fist, hard, causing Mr. Gallardo to fall to the floor. Mrs. Montgomery ran out the front door, on to the campus. Mr. Kennon chased her and grabbed her by the shoulder and hair, knocking her to the ground. Mr. Kennon began to drag Mrs. Montgomery back towards the classroom and Mr. Gallardo jumped on Mr. Kennon’s back. Mr. Gallardo was thrown to the ground



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and badly beaten by Mr. Kennon. He would later be treated for a broken nose and lacerations.

Mr. Kennon dragged Mrs. Montgomery completely in to the classroom and began barricading the doors with desks, tables, and chairs. He demanded that she assist him and kept accusing her of having his daughter. When Mr. Kennon saw the first police officers arrive, he grabbed a fire extinguisher and began to spray it all over the classroom, causing the first responders to think Mr. Kennon had thrown smoke or tear gas canisters. Mrs. Montgomery told Mr. Kennon that she couldn't breathe, hoping he would let her go. Instead, he found a partially consumed bottle of water on a student's desk and gave it to her. Mrs. Montgomery was told to sit on the floor near the wall and he moved a bookshelf and placed it at an angle to the wall where they remained hidden for the next several hours.

Many more police officers began to arrive and, while some of them set up containment, others began to evacuate students and staff from the school to a nearby park. An Emergency Response Team was formed in case a forced dynamic entry was required. Special Weapons Teams responded as well as Hostage Negotiators. See below time log charts for significant times.

For the next several hours, negotiators attempted to make contact with Mr. Kennon using several methods. They continually talked to him via the classroom intercom and called his cell phone from his mothers, girl friends, and grandfathers cell phones, hoping he would recognize the number and speak with negotiators. A "throw phone" was also placed next to the classroom front door but Mr. Kennon refused to come outside to get it.

During negotiations, Mrs. Montgomery said Mr. Kennon appeared agitated and told her not to make a sound. He did allow her to cough on one occasion when negotiators asked to hear from the hostage. During the entire ordeal, Mr. Kennon had a pair of scissors with, or near him, that he had found in her desk.

Special Weapons Teams set up around the school with two entry teams ready to enter to rescue Mrs. Montgomery. One team was stationed just outside the classroom front



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door in an Armored Rescue Vehicle (ARV). The other team was in room A-6, directly next door to where the suspect and hostage were located in room A-1. The indoor team noted that the classrooms were in a pod style with a common area in the middle. There were six classrooms separated from each other and the common area by a folding partition wall. (See attached diagram) Since they were right next door to each other, officers used a small camera that they could slide over and under the wall to view Mr. Kennon and his hostage. Since they were hidden behind the bookshelf, the camera was of no value. They also attempted to use a thermal imaging device to locate Mr. Kennon or Mrs. Montgomery through the partition but it also was of no value.

Two Special Weapons Team members went to a different building and were videotaped opening the partition walls so they could return to their team and show them how to open the partitions in case a dynamic entry was required.

Mrs. Montgomery later told detectives that she could hear the officers through the partition and was expecting the police to force entry. While sitting on the floor, Mr. Kennon spread his legs apart and told her to sit in front of him. He pulled his hoodie up over his head and pulled her hooded sweatshirt over her head and she thought he was trying to make it harder for the entry team to determine who was who.

At 1745, based on Mr. Kennon's unwillingness to negotiate, the age of Mrs. Montgomery (70), and not knowing her physical condition, a rescue was initiated. Diversionary devices were deployed inside and outside of the classroom and officers attempted to enter by opening the partition wall. Due to the barricades set up by Mr. Kennon, the wall could be opened only about a foot. Detective Paes, the point man for the entry team became stuck in the opening and he saw Mr. Kennon and Mrs. Montgomery lying on the floor, in a spooning position, with Mr. Kennon behind Mrs. Montgomery. The suspect had his left arm around Mrs. Montgomery's neck and he was holding a pair of scissors. Fearing that Mr. Kennon was killing, or about to kill Mrs. Montgomery right in front of him, Detective Paes fired 5 shots at Mr. Kennon, who stopped moving. Mrs. Montgomery crawled towards the officers and was removed from danger.



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Mrs. Montgomery would later tell detectives that at the time of the rescue, she heard several bangs and it appeared that the officers were having a hard time forcing entry. She saw an officer partially in the doorway and heard someone say, "He still has the victim!" Officers were coming in from two different directions and she began to crawl towards the wall where she was able to squeeze through a small opening and she was promptly grabbed by two officers who ran her outside to a waiting ambulance. She said she knew that the police saved her and she grabbed one of the officers by the leg and told him to not let her go.

Detective Tanner Paes, a six year veteran of the Riverside Police Department, would later tell detectives that he responded to the school at the time Mr. Kennon entered the campus, and was present when the classroom filled with what he thought was tear gas. He saw a blood trail outside of the classroom and thought it was from Mrs. Montgomery. Over the next several hours, he was positioned with his entry team in room A-6, next door to Mr. Kennon and his hostage. When the command was given to force entry to rescue Mrs. Montgomery, he heard the front windows of the classroom being broken out and flash bangs being deployed in the classroom. The officers assigned to open the partition wall were able to open the wall about a foot. He said he had to get through the small opening because Mr. Kennon knew they were coming in. He became stuck in the small opening and his teammates were pushing him from behind.

Using the light on his rifle, Detective Paes scanned the room and saw Mr. Kennon spooning Mrs. Montgomery. Mr. Kennon had a tight grip on the kidnap victim, who wasn't moving. The suspect was also holding what appeared to be a knife in his hand but he was more concerned about the arm around her neck. It appeared he was choking her as he pulled her closer to him. Being stuck in the doorway, Detective Paes knew he couldn't get in to help Mrs. Montgomery and the only way to stop Mr. Kennon was to shoot him. He obtained a sight picture on Mr. Kennon that was the farthest from his hostage and fired 2-3 shots. Mrs. Montgomery gave an agonizing moan and began to crawl away from her captor. Mr. Kennon reached behind him towards a pair of scissors and then back towards Mrs. Montgomery. Fearing for the safety of Mrs. Montgomery, Detective Paes fired an additional 2-3 shots and the victim crawled towards him. He continued to cover Mr. Kennon while entry was made through the front of the classroom. He never entered the classroom where Mr. Kennon was and by the



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time he was helped from his precarious position, Mrs. Montgomery had been removed to an ambulance. Detective Paes said, based on his training and experience, he shot Mr. Kennon because he thought Mrs. Montgomery's life was in danger.

SIGNIFICANT TIME LINE

1112 Original call
1116 Mr. Kennon first enters classroom
1117 Mr. Gallardo intervenes
1119 Mr. Kennon back in classroom. Hostage situation
1123 Police arrive
1137 Officers hear furniture being moved in classroom
1139 Students begin to evacuate
1153 Negotiator makes telephonic contact with Mr. Kennon
1224 Mr. Kennon playing music in classroom
1255 Evacuation complete
1325 Papers being thrown about in classroom
1336 Talking heard in classroom
1423 Under door camera deployed
1459 SWAT positioned in classroom A-6
1501 Thermal imaging attempted
1643 Communicate with Mr. Kennon on grandfather's cell
1650 Mr. Kennon hangs up and stops communicating
1651 Last sign of life from Mrs. Montgomery at 1515
1717 Establish phone contact Mr. Kennon uncooperative
1745 Rescue initiated
1746 Failed breach, suspect down, victim rescued
1748 Paramedics treating Mr. Kennon
1809 Mr. Kennon at hospital

SIGNIFICANT TIME LINE BY HOSTAGE NEGOTIATOR

1209 Negotiator Fernandez arrives on scene
1235 After numerous attempts, Mr. Kennon answers intercom



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1244 After numerous attempts, Mr. Kennon answers intercom
1339 Negotiator Cisneros calls Mr. Kennon on cell. No response
1433 Negotiator Cisneros calls Mr. Kennon on cell. No response
1515 Negotiator Cisneros hears Mrs. Montgomery on intercom
1520 Negotiator Cisneros calls Mr. Kennon on his mother's cell. No response
1520 Negotiator Cisneros texts Mr. Kennon on his mother's cell. No response
1526 Negotiator Cisneros and Mr. Kennon exchange texts on mother's cell
1636 Mr. Kennon asks to see his daughter
1641 AT&T isolates Mr. Kennon's cell so he can only call negotiator
1715 Negotiator Cisneros makes contact with Mr. Kennon on grandfather's cell
1728 Mr. Kennon tells Negotiator Cisneros he's finished talking

EXPERT QUALIFICATIONS

I was employed as a peace officer for the Los Angeles Sheriff's Department for 34 years. I worked as a jail deputy, 18 months as a patrol officer, and four years assigned to the Special Enforcement Bureau (SWAT team). My last 27 years on the department, I was assigned to the Detective Division, including over 22 years assigned to the Homicide Bureau. I investigated over 450 homicides and suspicious deaths and over 100 Officer Involved Shootings, including the murders of ten police officers.

In 1994, I assisted in writing the LASD Homicide Bureau Investigative Manual. I was also selected to be a member of the Joint LASD/LAPD Crime Lab Development Committee as well as the JET Committee to develop Homicide Bureau job standards and selection criteria. In 1995, I was selected as California's Deputy Sheriff of the Year by the California Organization of Police and Sheriffs (COPS) for the investigation, arrest, and conviction of a suspect in the murders of two local policemen.

For over 15 years, I have taught "High Profile Murder Investigations", "Homicide Scene Management", and Officer Involved Shooting Investigations" for the Robert Presley Institute of Criminal Investigation, police academies, advanced training classes, supervisor training, college classes, Homicide School, and in-service training. I am



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currently on staff with the Police Policy Studies Council where I teach and consult nationally on officer involved shooting, homicide, and suspicious death investigations. I am currently the investigator for the Riverside Police Review Commission. Although I retired from LASD in 2002, I was immediately signed to a contract to train newly assigned homicide detectives. In 2006, I was also assigned to the LASD Cold Case team where I have reviewed over one thousand unsolved murders and specifically work the unsolved DNA and latent print cases.

INVESTIGATION AND REVIEW

The investigation in to the officer involved shooting death of Luvelle Kennon was conducted by the Riverside Police Department and the Riverside County District Attorney's Office. I reviewed all the reports submitted to the Community Police Review Commission and researched deadly force legal issues. The District Attorney found there was no criminal liability on the part of any member of the Riverside Police Department.

LEGAL ANALYSIS

The use of deadly force in self defense or in the defense of another is justifiable if the person claiming the right actually and reasonably believed the following: (1) That he or someone else was in imminent danger of being killed or suffering great bodily injury: (2) That the immediate use of force was necessary to defend against that danger: (3) That he used no more force than was reasonably necessary to defend against that danger. CALCRIM No. 505

The test for whether an officers actions were objectively reasonable is "highly deferential to the police officers need to protect himself and others." *Munoz v City of Union City* (2004) 120 Cal. App. 1077, 1102

Reasonableness of force used by an officer depends on the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is



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actively resisting arrest or attempting to evade arrest. The reasonableness of the particular force used must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police are often forced to make split second judgments in circumstances that are tense, uncertain, and rapidly evolving. *Graham v Connor* (1989) 490 U.S. 386, 396-397

In protecting himself or another, a person may use all the force, which he believes reasonable, necessary, and which would appear to a reasonable person in the same or similar circumstances, to be necessary to prevent the injury, which appears imminent. If the person's beliefs were reasonable, the danger does not need to have actually existed. CALCRIM No. 3470

Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. *People v Collins* (1961) 189 Cal. App. 2nd 575, 589

CONCLUSION

The evidence and review of reports examined in this investigation shows that by the time members of the Riverside Police Department arrived at Castle View Elementary School, Luvelle Kennon had already severely beaten Mr. Gallardo and kidnapped and assaulted Mrs. Montgomery, all felonies. There was a very large response by the police department over the next several hours. From the first patrol officers on scene, to hostage negotiators, to highly trained Special Weapons Team members. This does not even account for the numerous logistical staff that responded and was relied upon to evacuate students to a nearby park, traffic control, and perimeter containment. Many of these officers observed a blood trail in front of room A-1 and feared it belonged to the elderly kidnap victim, Mrs. Montgomery, who may have been injured when she was dragged in to her classroom, after escaping once from Mr. Kennon. Negotiations were attempted but Mr. Kennon refused to cooperate with the police. Over a several hour period, Mr. Kennon was repeatedly asked to release his hostage but he was



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unresponsive. Mr. Kennon was given numerous opportunities to exit the classroom unharmed, or at the very least, allow Mrs. Montgomery to be released.

The Riverside Police Department was exceptionally patient with Mr. Kennon when a crisis entry team was certainly justified in the first few minutes, let alone over 6 hours. Officers used negotiations, cameras, thermal imaging, and old-fashioned police work in an attempt to de-escalate the situation.

Fearing for the safety of Mrs. Montgomery, a tactical plan was drawn up to rescue her. Upon entry, Detective Paes became hung up in the doorway and saw Mr. Kennon lying on the floor, holding his hostage against him. When he rolled Mrs. Montgomery on top of him and reached for a pair of scissors that created a fear in Detective Paes of the imminent death or great bodily injury to Mrs. Montgomery. His response with deadly force was certainly justified.

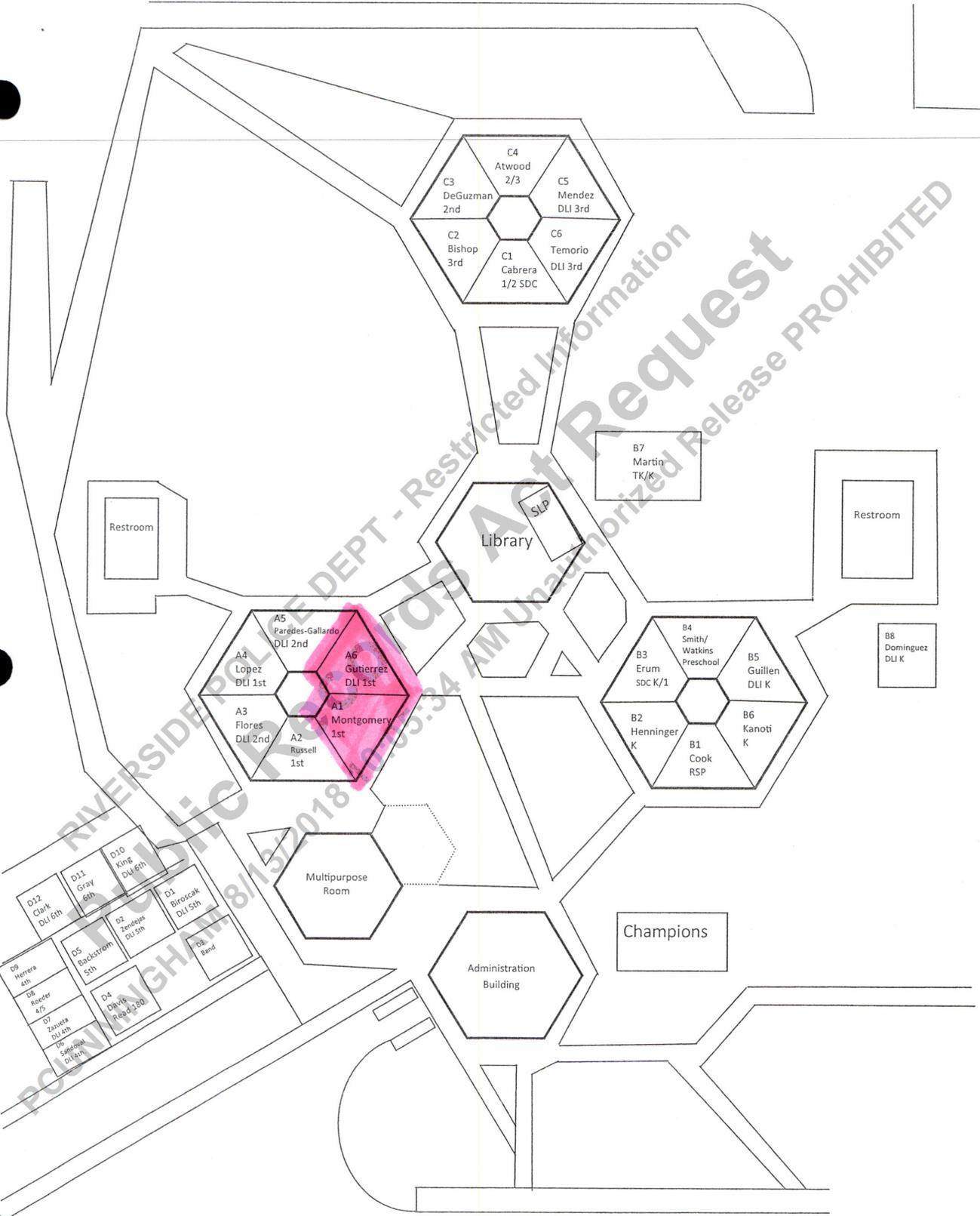
Based on the foregoing, I conclude that Detective Tanner Paes acted reasonably and lawfully when he used deadly force against Luvelle Kennon. I also find the investigation in this case was completed in a fair and impartial manner and met or exceeded POST standards of practice.



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