

INTEROFFICE MEMORANDUM

DATE: May 24, 2012 **PHONE:** (909) 387-6986

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Subject: OFFICER INVOLVED SHOOTING (FATAL)

Involved Party: Officer Johnny Mack Turner, San Bernardino Police Department
Decedent: Jon McAllister Taylor (D.O.B. 9-19-1968)
Date of Incident: November 28, 2011
Investigating Agency: Detective William Flesher, San Bernardino Police Department
DR #: 2011-33533
DA Star Number: 2012-2165

PREAMBLE

This memo regarding the incident was completed after reviewing the San Bernardino police reports submitted by case agent Det. William Flesher. The reports include diagrams of the area where the incident occurred, CDs of photos of the scene, a video of the scene, aerial photos of the scene, maps of the scene and the radio dispatch of the incident including the initial 911 call. The reports also include interviews with officers present at the time of the incident and a transcript of an interview with Officer J. Turner. A visit was made to the location with Det. William Flesher during day light hours.

FACTUAL SUMMARY

Witness #1

On Monday, Nov. 28, 2011 at approximated 12:18 pm Witness # 1 called the San Bernardino Police Department. She reported that she was in an apartment on North Sierra Way in San Bernardino with Jon Taylor. She had just returned from an out of state trip and found Jon acting as if he may have over medicated himself.

Jon Taylor did not go to work that day due to illness according to Witness #1. She was in another room of the apartment when she heard a pop sound coming from the bedroom Jon was in. She opened the door and saw Jon on the bed with his right hand concealed under a pillow. She asked what happened but Jon made no response. She saw the safe in the bedroom open and the 9mm pistol usually stored there missing. She asked Jon where the gun was and he showed it to her. It was in his hand.

She also saw a hole in the pillow and mattress which appeared to be a bullet hole. Jon would not give her the gun and they struggled for it so she called 911 to report the gun discharge and his unusual behavior.

Witness #1 was directed by San Bernardino Police Dispatch to leave the apartment and meet officers outside the apartment complex. While speaking to the police dispatcher she heard two additional shots coming from the apartment. Witness #1 did not see the shooting incident that resulted in Jon's death.

Det. William Flesher

Det. Flesher was the case agent, interviewed many of the officers who were present, observed the crime scene and directed the investigation. The San Bernardino Police Department, in response to the 911 call of "a man with a gun" in the apartment, evacuated residents for their safety, set up a perimeter and sent a tactical team , an armored vehicle and a hostage negotiation team to the location.

The hostage negotiation team (Officer Joe Valdivia was using the public address equipment) was never able to contact the suspect by phone. Commands were given to come out of the apartment and when he did he was ordered to drop the weapon in his hand. Jon Taylor came out the apartment twice. On the first, he was observed carrying a pistol in his right hand holding it by the slide. He did not drop the weapon as ordered and did not respond in a coherent way to the officers who were in the immediate vicinity of him. On the second he held the weapon in his right hand by the grip with his

forefinger finger on the trigger guard. He then moved his finger to the trigger pull. Again Jon Taylor did not drop the weapon as ordered and made no statements to the officers.

Officer Sochitl Martinez

Officer S. Martinez was part of the arrest team present at the crime scene on Nov 28, 2011. She heard Office J. Valdivia give verbal commands over the public address system asking Jon Taylor to come out of his apartment and to drop the weapon on the two occasions he did step outside. From her location in the area she was able to see only his right arm and he waived his arm around holding the fire arm. She saw him holding the gun by the slide the first time he came out side and the second time he held it by the pistol grip. Jon Taylor waked back and forth on the second time and raised his right arm up toward his head very quickly. She believed that he was pointed the weapon at the officers located near the armored truck from her position.

She related that before the shooting she heard verbal command to put the gun down but the suspect did not and made remarks she could not understand. She heard two shots but did not know Officer Turner fired his AR 15 until much later.

Officer Joe Valdivia

Officer Valdivia was a member of the Hostage and Negotiation Team and responded to the location to facilitate a peaceful resolution to the situation. His assignment was to make contact with Jon Taylor by phone or verbally from inside the armored vehicle parked adjacent to the apartment. He asked Jon to come outside and expressed concerns for his safety. He did not see the weapon when Jon came outside initially but heard other officers yelling "Drop the gun" so he issued the same order over the PA system.

He observed Jon Taylor appeared to be mumbling something and not engaged in any dialogue with the officer present or with him the first time he walked out of the apartment. On the second occasion, Taylor was holding the gun in his right hand with his finger in the trigger guard of the weapon. Taylor made a sweeping motion with his right arm pointing the weapon in the direction of the officer present near the moored vehicle.

As Taylor raised the gun Officer Valdivia thought he was pointing at officers. Taylor then put the gun to his head in the same sweeping motion. Officer Valdivia only heard one shot. Based on his observation Officer Valdivia was surprised that Taylor did not fire the gun right away because he seemed "locked on and focused".

At no time was Officer Valdivia able to communicate with Taylor nor did he observe any reaction by Taylor to the verbal commands given to him by any of the officers.

Officer Lanier Rogers

Officer Rogers was outside the apartment building on the south side behind an embankment so his body was concealed but he could see the front door of Taylor's home. (The area surrounding the apartment building is uneven and the building is below the parking area for residents.) Officer Rogers observed Taylor come outside both times.

The first time he observed Taylor come out side Taylor had the weapon in his right hand but passed it to his left hand. Taylor looked at the police officers above him near the armored car but did not respond verbally or physically with any orders given. Officer Rogers thought Taylor was aware of the officers present.

The second time Taylor come outside he walked straight to the wrought iron fence surrounding the spa several feet from the front door. Taylor did not respond to orders being shouted at him. Taylor lifted the gun and pointed it to his head, stared at the SWAT officers and then shot himself. Officer Rogers heard one shot and felt that the second shot must have been almost simultaneous.

Officer Rogers said his vantage point was different than officers who were to the left side of Taylor. He was not able to see where the gun was in relation to Taylor's head.

Officer Jan Bean

Officer Bean was located on the west side of the building prior to the shooting where she could hear the verbal commands. She did see Taylor come outside both times. The first time she was not sure which hand he held the weapon in but did see him waiving it around. He went back inside and then, within minutes, he came back outside. She described the officers as pleading with Taylor to drop the gun. She saw Taylor point the gun in the direction of officers in the parking lot and then point the gun to his head. She heard both shots.

Officer C. Flowers

Officer Flowers responded to a call of a man with a gun and shots fired. When he arrived at the location he stood near the armored vehicle using it as cover.

A white truck was parked next to the armored truck so his view of the apartment was quite limited.

When Taylor came outside the first time, Officer Flowers moved to an open parking spot to the left of the truck and was able to see clearly using the truck as cover. Officer Flowers had Taylor at rifle point and shouted orders to him to drop the weapon. Taylor looked around and seemed stressed but did not comply. He saw Taylor move the gun from his right to left hand.

Taylor returned to the apartment and re-emerged within seconds holding the pistol in his right hand. Commands were still being given to him. Taylor was facing the officers who were slightly elevated above him and as he brought the gun up, it was pointed toward other officers and then instantaneously he put it to his head and fired a shot. Officer Flowers could not tell if Taylor or Officer Turner fired first but felt Turner had to shoot based on the movement of the gun pointed at the officers.

Officer Johnny M. Turner

Officer J. Turner heard the broadcast of a man with a gun and shots fired while at the police station. He went to the location and was assigned by Lt. Tully to a four man arrest team. (Officers J. Valdivia, J. Bean and S. Martinez comprised the rest of the team).

Once arriving at the location he waited about 20 minutes for the armored SWAT vehicle to be parked in residents parking slightly above the apartment. Once the vehicle was in place in front of the bedroom and living room area he went into position outside the vehicle as a "forward observer" along with Officer Flowers.

Verbal commands were made toward the apartment for about 15 minutes without any response. Finally Taylor came out of the apartment walking, toward the wrought iron fence, carrying a gun by the slide. Turner knew the gun could not be fired in that position. The verbal commands continued and Officer Flowers also tried to talk to Taylor. Taylor stood outside for a minute and then went back inside the apartment.

In minutes Taylor again came outside the apartment and walked to the fence. Turner and Officer Flowers went back into position outside the armored car and kept rifle point on Taylor. Taylor now held the gun in his right hand and his index finger moved from

outside the trigger guard to the trigger. .Officer Turner said Taylor raised the barrel of the gun in the direction of two other officers located on the north side of the armored truck and looked in their direction. Officer Turner then fired his AR 15 one time as this occurred and saw Taylor raise his gun to his head and shoot himself. According to Officer Turner the shots were almost simultaneous.

Officer Turner said he shot Taylor because he believed Taylor was turning the gun towards officers and was going to shoot them. He stated, “ ...in my mind, I thought he was trying to make a decision on whether or not he was gonna --- who he was gonna potentially fire at and then, uh, he raised it and the gun starts coming up fast and I saw his finger going into the trigger and at that point I had to react.”

Jon Taylor’s shot to the head was self-inflicted and Officer Turner fired one time hitting him in the chest. Officer Turner said he thought the self-inflicted shot came almost at the same moment.

Dispatch Log

The dispatch log for Nov 28, 2011 gives the following information beginning with the time of the 911 call, information received from officers at the scene and time of receipt. (Not all entries are listed below and comments are summarized.)

12:18:03 Call received reporting a man with a gun made by Witness #1

12:18:21 Male (Jon Taylor) in bedroom

12:18:59 Witness #1 says he shot the bed

12:19:28 Witness #1 says she thinks he is suicidal

12:23:38 Another shot heard by witness #1

13:23:39 Buildings evacuated

13:25:34 Voice announcements made with no response

13:31:59 Male walked up to the door, looked out and went back in

13:32:33 Subject went to front with a gun in his hand

13:33:00 Male has hand on the gun

13:33:44 Male back inside the apartment

13:34:05 Had gun in left hand on the slide

13:34:16 Male coming back outside

13:34:54 Out of the house standing at pool railing with gun in hand

13:35:11 Subject shot himself

13:37:21 Officer did fire one round as subject fired

Firearm Trace

The weapon used by Jon Taylor was a 9mm Glock, Model 19 semi-automatic pistol with a 4" barrel, serial number FPE 448. The weapon was sold on 11-14-03 to Jon M Taylor.

AUTOPSY PROTOCOL AND TOXICOLOGY

Dr. Glenn E Holt, M.D. conducted an autopsy on Jon Taylor on Dec 1, 2011. Dr. Holt stated in his report the cause of death was gunshot wounds of the head and torso and manner of death was suicide.

The toxicology report on Jon Taylor revealed an alcohol level of .23% and the presence of Cannabinoids as follows: Delta 9-THC at 7.3 ng/mL and Delta 9-Carboxy THC at 120 ng/mL. Catherine E Hamm, toxicologist II, did the analysis.

STAMENT OF APPLICABLE LAW

1. Cal Crim 507 Justifiable Homicide: By a Public Officer (in part)

The defendant is not guilty of murder if he killed someone while acting as a public officer. Such a killing is justified, and therefore not unlawful, if:

1. The defendant was a public officer;
2. The killing was committed while performing any legal duty;
3. The killing was necessary to accomplish a lawful purpose:

AND

4. The defendant had probable cause to believe that Jon Turner posed a threat of serious physical harm, either to the defendant or to others.

A person has *probable cause* to believe that someone poses a threat of serious physical harm when facts known to the person would persuade someone of reasonable caution that the other person is going to cause serious bodily harm to another.

An officer or employee of the San Bernardino Police Department is a public officer.

2. Use of Deadly Force by a Peace Officer

In Graham v. Conner (1989) 490 US 386 the US Supreme court stated:

“The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (Cities omitted) The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested (Cities omitted) nor by the mistaken execution of a valid search warrant on the wrong premises. (Cited omitted) With respect to the claim of excessive force, the same standard of reasonableness at the moment applies. (Cities omitted) 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.”

The court went on to say in Graham, op. cit., the factors to be considered in determining reasonableness: (1) severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. The question is whether the totality of the circumstances justified a particular sort of seizure.

3. Justification does not depend on the existence of actual danger but rather depends upon appearances. It is sufficient that the circumstances be such that a reasonable person would be placed in fear for his safety. (P. v Clark [1982] 130 CA 3rd 371)

ANALYSIS

On November 28, 2011 the San Bernardino Police Department responded to a call of a man with a gun who had already fired the weapon two or three times. They were advised he might be suicidal and under the influence of medication. Such a call poses a serious threat of harm to the public and to those responding to resolve the danger and keep the peace. Officers are trained in such circumstances to reduce the public danger

by controlling as best they can a situation they have little information about and virtually no guarantee that their actions will be successful. This is the situation that developed for officers present at the apartment of Jon Taylor.

Once residents in the immediate area were evacuated multiple attempts were made to contact Mr. Taylor. He would not respond to commands except to come outside waiving a gun. He was not coherent and seemed under stress. His actions escalated the danger when he raised his weapon pointing it in the direction of several officers who surrounded the apartment building. Without knowing what his intentions were, Officer J. Turner felt that his fellow officers were in mortal danger and fired once hitting Mr. Taylor.

There is no way to tell if Mr. Taylor intended solely to shoot himself, which did happen, but legally Officer Turner was not required to wait and see. A delay in acting in this circumstance might have resulted in a member of the public or a police officer being shot.

Justification of his actions does not depend on the existence of actual danger, although these facts certainly suggest the danger was very real, but rather the appearance of danger. Officer J. Turner felt his fellow officers were in danger of being shot and used lethal force to defend them. His conclusion was reasonable under the circumstances he observed and what information had been given to him about Mr. Taylor's conduct.

CONCLUSION

Under the facts presented in the reports submitted by the San Bernardino Police Department and the applicable law, Officer Johnny M. Turner's use of deadly force was in response to an apparent and immediate threat of death or great bodily injury and therefore legally justified.

Respectfully submitted on behalf of the District Attorney for the County of San Bernardino:

Chief Deputy District Attorney
Juvenile Division

Date

Assistant District Attorney

Date

Assistant District Attorney

Date