

INTEROFFICE MEMORANDUM

DATE: April 23, 2013 **PHONE:** (909) 387-6979

FROM: Karen Bell
Chief Deputy District Attorney
Central Juvenile Division

TO: Gary Roth,
Assistant Deputy District Attorney
Criminal Operations

Clark Hansen,
Chief Deputy District Attorney
San Bernardino

SUBJECT: OFFICER INVOLVED FATAL SHOOTING

Involved Parties – Officer Todd Smith, Sergeant Steve Davis, Sergeant Lou E. Gamache Colton Police Department;

Suspect – Trevor Michael Taylor. – (D.O.B. 08/14/1990); Colton Resident

Date of Incident – July 31, 2012, 1100 hours;

Investigating Agency – Detective Mauricio Hurtado, San Bernardino Sheriff Department, Homicide;

DR # 601200192

DA Star number – 2013-5528

PREAMBLE

The summary of this incident was completed by reviewing the police reports submitted by Det. Mauricio Hurtado from the San Bernardino Sheriff's Department. The reports included 14 CDs (containing aerial and ground photos of the crime scene, autopsy photographs, interviews with the involved police officers, citizen witnesses, evidence processing photos, and dispatch recordings). The crime scene was also visited in the company of Det. M. Hurtado.

FACTUAL SUMMARY

On Tuesday, July 31, 2012 at approximately 11:12 a.m. Sgt. Steve Davis of the Colton Police Department was on duty in a marked police unit working general patrol duties in Colton. While in the area of 9th street and H Street he saw a green Honda Civic. Because so many cars of that make were being stolen, he noted the plate and asked dispatch to check if the vehicle was stolen.

Dispatch advised the car was stolen. (The victim reported it taken from her residence in Rancho Cucamonga on July 30, 2012. The auto theft report was done by the San Bernardino Sheriff's Department, city of Rancho Cucamonga.) Sgt. Davis maintained eye contact with the car as it traveled in Colton and once establishing it was stolen, asked for additional police units before attempting to stop the car.

As the car continued to travel on city streets, three additional Colton police units responded to Sgt. Davis request for back up. Sgt. Lou Gamache and Officer Todd Smith joined Sgt. Davis following the green Honda. The third unit did not participate in the subsequent pursuit. The car continued on Auto Plaza Way across the 215 freeway onto Orange Show Road with three Colton police cars behind it. Sgt. Davis then attempted to stop the car as it traveled east bound at the intersection of E Street but the car did not stop.

The car proceeded into an adjacent gas station, driving around it, crossed several lanes of north and south bound traffic on E St. without yielding and proceeded into the parking lot of Target. The car drove through the parking at an unsafe speed endangering pedestrians and the pursuing officers.

From that point on the car drove on surface streets in San Bernardino sometimes at speed of 80 mph, ran red traffic lights and stop signs, weaving in and out of heavy lunch time traffic and into oncoming traffic to escape the pursuing officers. On one small residential street in San Bernardino the car came close to striking an older pedestrian using a cane. The pursuit continued from San Bernardino into the city of Highland finally ending in a residential area.

During the 21 minute pursuit Sgt. Davis noted that the car had one occupant who on occasion would move around in the car, put a baseball cap on his head and sometimes reached downward to the floor board area. At one location on Mill Street in San Bernardino he threw an item out the window. The item was not recovered.

During the pursuit, Sgt. Davis attempted a Pursuit Immobilization Technique (referred to as a PIT maneuver) on four separate occasions when he could without endangering the public. (A PIT maneuver is a pursuit tactic in which a pursuing car can force a fleeing car to abruptly turn sideways causing the driver

to lose control and stop.) None were successful. Once the first PIT maneuver had been tried the vehicle moved away from Sgt. Davis quickly to try to avoid further PIT tactics.

Near the end of the pursuit Sgt. Davis attempted a fourth PIT maneuver and lost control of his car. The lead position was then taken over by Officer T. Smith, with Sgt. L. Gamache second and Sgt. Davis following in the rear. At this point, the Honda was heading east bound on Pacific Street in Highland and made a sudden southbound turn onto San Francisco Street. This area is a residential tract of single family residences with little traffic at that time of the day.

The lead police car now driven by Officer T. Smith attempted a fifth PIT maneuver on the Honda with success. The Honda spun to the right toward the curb and then turned around coming to a stop facing North bound on San Francisco St. All three police units approached the Honda heading south. Officer Smith stopped his car facing south-east at the curb in front of the Honda. Sgt. Gamache stopped facing south near driver's side of the Honda. Sgt. Davis attempted to block the Honda by stopping facing south "nose to nose" with the Honda.

The Honda then accelerated into Sgt. Davis' vehicle moving it (the police car) backwards a short distance. Sgt. Davis was out of the car at time of impact. The Honda then went into reverse and stopped with its driver's door lined up with the drivers' door of Sgt. Gamache. The suspect, Trevor Taylor, and Sgt. Gamache were within feet of each other in their respective vehicles.

Officer Smith got out of his car and walked up to the Honda with his weapon out. He shouted commands to the driver, Taylor, to keep his hands in plain sight and take his foot off the gas. At the same time Sgt. Gamache had his weapon pointed at the driver through his open window commanding Taylor to keep his hands visible.

Taylor made eye contact with Sgt. Gamache and mouthed the word "ok". He raised his hands in plain sight and then suddenly leaned forward and dropped his hands, blocking Sgt. Gamache' view of his hands. Sgt. Gamache believed Taylor was reaching for a gun, so he fired his weapon at Taylor. Officer Smith, who was on the opposite side of the Honda, also lost sight of Taylor's hands and believed Taylor was reaching for a gun so he fired almost simultaneously with Sgt. Gamache.

Taylor slumped over to the front passenger seat. Sgt. Davis and Officer Smith pulled Taylor from the car and checked for vital signs. Medical help was requested. Taylor did not survive his wounds.

Taylor had no weapon on his person and no weapon was found in the Honda. A large dog was also in the vehicle with Taylor and suffered a wound to its paw.

WITNESS STATEMENTS

Law Enforcement Officers

Officer Todd Smith

Officer Smith was interviewed by Det. M Hurtado. Officer Smith was on patrol in Colton when he heard Sgt. Davis ask for confirmation on a possible stolen Honda Civic. He was nearby and listened in the event Sgt. Davis needed back up help in stopping the car. He followed Sgt. Davis (who was behind the green Honda) as it passed headed east on F St.

Within a few minutes a third and fourth police car joined to assist. At Orange Show Rd. and E St. in San Bernardino the Honda pulled into a gas station and both Smith and Davis activated their emergency lights and siren to stop the car. The Honda sped away, crossing E street across several lanes of traffic, into the Target parking lot, through San Bernardino and in into Highland on surface streets in commercial and residential areas.

During the pursuit he estimated the vehicle was going 80 mph at times. The Honda drove through red traffic lights, ran stop signs, almost hit a pedestrian, drove into oncoming traffic, and failed to yield to other cars. He could see the driver reaching down in the car. Officer Smith said "He kept reaching for something in the car" and I thought maybe it might be a weapon. He also saw the driver toss a clear item out the window.

At the conclusion of the pursuit on San Francisco St. in Highland, Officer Smith took the lead position because Sgt. Davis lost control of his car. Officer Smith did a PIT maneuver, the Honda spun out of control and stopped. Smith got out of his car and walked up to the Honda commanding the driver to take his foot off the gas and keep his hands in plain sight. The driver moved his upper body to the passenger side of the car leaning forward, dropping his hands. Officer Smith believed Taylor was reaching for a weapon so he fired four times. Smith said he was afraid for his own safety when he fired.

Sgt. Lou Gamache

Sgt. Gamache was interviewed by Det. M Hurtado. Sgt. Gamache joined the pursuit in Colton after hearing over the radio that Sgt. Davis was following a stolen Honda. He was the fourth police vehicle initially. Colton Police Department policy limits three vehicles in a pursuit so the fourth unit dropped out and Sgt. Gamache took third place as supervisor.

Gamache said the Honda failed to yield to lights and sirens just inside San Bernardino city limits and from that point to the conclusion the car posed a threat to the officers and the public. He stated the car at times went 100 mph, ran red lights, passed traffic on the right shoulder and entered blind intersections at a high rate of speed. He described the driving as "wild and reckless". He was very concerned about public safety since this pursuit occurred during the lunch hour when traffic in some locations was heavy. It seemed that the subject wanted to get away at all costs.

At the end of the pursuit, on San Francisco St., Sgt. Gamache stopped his car with the front end very close to the front end of the Honda. The Honda then moved toward him so that the two cars were almost side by side with the two drivers doors across from each other.

Sgt. Gamache knew he was in a vulnerable situation. He could not get out of his car and had no cover other than his car door which he knew would not stop a bullet if Taylor fired at him. Taylor was at eye level a few feet away from him. Gamache drew his weapon, pointed it at Taylor and commanded him to keep his hands in sight. Initially Taylor complied and lifted his hands. Taylor mouthed the words "ok" to Sgt. Gamache and seemed willing to cooperate. Then Taylor dropped his hands and leaned forward. Sgt Gamache believed Taylor was reaching for a gun and was about to shoot the officers, so Gamache fired his weapon. He fired a total of 16 rounds.

Based on how Taylor had driven, the failure to yield to law enforcement, failure to obey commands and the danger he posed on the road, Gamache believed Taylor had a weapon and he was in fear of being shot or killed so he fired when Taylor dropped and obscured his hands.

Sgt. Steve Davis

Sgt. Davis was working patrol in Colton when he spotted a car that he thought might be stolen. Once confirmed as stolen he asked for back up units before making a traffic stop. The Honda would not yield and began a series of very dangerous driving tactics to get away. Davis saw the Honda run red lights, weave in and out of heavy traffic, run stop signs, and speed through a busy parking lot at Target as it traveled from Colton to San Bernardino and into Highland. He observed the driver moving around inside the car during the chase.

Davis tried to PIT the Honda four times to get the car stopped without success. Finally on San Francisco St. the car was stopped after Officer Smith successfully used a PIT maneuver. Davis stopped his car in front of the Honda to block it noting that Smith's car was to his left and Sgt. Gamache was to the right. The Honda then revved up and stuck his car moving it backwards a short distance. Davis got out of his car with pistol drawn, and saw Taylor reaching down below

the windshield. Taylor did not follow verbal orders being given by Sgt. Gamache or Officer Smith to keep his hands visible. He also shouted stop and freeze at Taylor and then heard shots fired. He did not fire his weapon.

Sgt. Davis felt the reckless driving, refusal to stop for law enforcement and Taylor's attempt to escape, even when virtually surrounded by ramming a police car was very dangerous and he was prepared to use lethal force in self-defense or on behalf of his fellow officers. In particular he recognized the dangerous position of Sgt. Gamache should Taylor have a weapon.

Civilian Witnesses

Witness #1

Witness #1 was interviewed by Det. Gibilterra. Witness #1 lived on San Francisco St. and the incident occurred in front of his home. He was present inside the residence at the time of the shooting.

Witness #1 said he heard a helicopter overhead, a screeching sound and then impact. He went to his front door and looked out to see what the noise was. He saw three police cars from Colton around a green car that seemed to be trying to back out. Two officers got out of their cars and walked toward the green car with guns drawn. The officers were shouting commands but he could not hear what they were saying and then after about 5 to 10 seconds shots were fired. He thought about 10 to 12 shots were fired.

Witness #1 said one officer was in the police car right next to the green car when the shooting happened. The other two officers were about 10 feet away from the car when shots were fired.

Witness #2

Witness #2 was interviewed by Det. Gibilterra. She lived on San Francisco St. and the incident happened in front of her home. About 11:30 am she heard a helicopter and possible sirens near her home. When she looked out her front window she saw a police car on the street and a police officer walking toward something. There was a tree in the yard blocking her view of where the officer was going. She moved between two windows in the home and saw a green Honda parked in the area of the police cars. She was not looking out the window when she heard several shots fired.

She later saw an officer trying to open the passenger door of the Honda and officers removing the driver of the car to the street. Although she could not hear what the officers were saying before the shots were fired, in her opinion the officers gave the driver of the Honda a lot of opportunities to surrender.

Witness #3

Witness #3 was interviewed by Det. Gibilterra. She lived on San Francisco and was looking out the window when the pursuit ended. She saw a green car come around the corner and it "flipped" around. She said she saw the police cars ram this car. She then heard three shots. She said the officers were walking toward the green car at the time of the shooting.

AUTOPSY PROTOCOL

An autopsy was conducted on Trevor Michael Taylor on August 2, 2012 in San Bernardino County. Dr. Steven Trenkle, M.D., Pathologist determined that the decedent suffered multiple gunshot wounds to the head and chest causing death within seconds. The decedent was stuck by thirteen bullets.

Samples of blood taken by Dr. Trenkle at the time of the autopsy were analyzed by Iain M. McIntyre, Ph.D, Forensic Toxicology Laboratory Manager for San Diego County. The results indicated the presence of amphetamine and methamphetamine.

EVIDENCE FROM VEHICLE

The vehicle was removed from the scene and searched by the San Bernardino Sheriff's office. No weapons were found in the vehicle. The key in the ignition was a "shaved" key similar to those used to steal cars. Damage to the car from the shots fired were documented and photographed.

A red and black back pack in the vehicle contained the following:

1. 2 Nisan car keys (one remote key and one on a key ring)
2. A wallet with identification and various credit cards of Victim #1
3. A hypodermic needle with orange cap
4. A social security card for Victim #2
5. Miscellaneous CDs

BACKGROUND INFORMATION ON SUSPECT

Trevor Taylor did not have a valid California driver's license at the time of the incident. [REDACTED]



APPLICABLE LEGAL STANDARDS

CALIFORNIA PENAL CODE 196 JUSTIFIABLE HOMICIDE BY A PUBLIC OFFICER

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either—

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

CAL. PENAL CODE SECTION 835a USE OF REASONABLE FORCE TO EFFECT ARREST

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to affect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

CAL CRIM 3470 RIGHT TO SELF-DEFENSE OR DEFENSE OF ANOTHER

Self-defense is a defense to the unlawful killing of a Human Being. A person is not guilty of that/those crimes if (he/she) used force against the other person in lawful self-defense or defense of another. A person acts in lawful self-defense or defense of another if:

1. The defendant reasonably believed that he/she or someone else was in imminent danger of suffering bodily injury [or was in imminent danger of being touched unlawfully];

2. The defendant reasonably believed that the immediate use of force was necessary to defend against that danger; AND
3. The defendant used no more force than was reasonably necessary to defend against that danger.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The person must have believed there was imminent danger of violence to himself/herself or someone else. The person's belief must have been reasonable and he/she must have acted because of that belief. A person is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the person used more force than was reasonable, the person did not act in lawful self-defense or defense of another.

When deciding whether a person's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the person's beliefs were reasonable, the danger does not need to have actually existed.

The person's belief that he/she or someone else was threatened may be reasonable even if he/she relied on information that was not true. However, the person must actually and reasonably have believed that the information was true.

A person is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of death/bodily injury has passed. This is so even if safety could have been achieved by retreating.

ANALYSIS

Colton Police Sgt. S. Davis, while on routine patrol, sees a stolen car, followed it and the "chase was on". What might have ended simply with an arrest developed into a 21+ minute pursuit by three police cars through three San Bernardino county cities in the middle of a weekday endangering the safety of the officers, the public and the individual in the stolen car. After trying to stop the Honda and attempting four PIT maneuvers, the car finally spun out and stopped but even then the danger continued when the driver, Trevor Taylor rammed Sgt. Davis' police car moving it backwards a short distance.

Excess speed, running red lights and stop signs, endangering a pedestrian, driving into oncoming traffic, weaving back and forth in heavy traffic and failure to yield are serious risks and all three officers were in danger during the pursuit. This risk increased once the car stopped. Despite commands to keep his hands in plain sight, Trevor Taylor bent down blocking their view. Each officer had his

weapon out ready to act in self-defense knowing the danger was not over. Losing sight of Taylor's hand was the final act. Each officer described this frightening moment when they believed Taylor was reaching for a weapon to shoot or kill him.

Taylor had a duty to submit to detention (Penal Code 148(a)) but instead led three police officers on a chase. He failed to obey commands to keep his hands in plain sight. The officers were in fear of their lives and did not need to retreat. Justification of Officer Smith's and Sgt. Gamache' action does not depend on the existence of actual danger, although these facts certainly suggest the danger was real, but rather the appearance of danger. The law says that based on the totality of the circumstances, if a reasonable person would be in fear of harm to himself or others, then use of force is justified. Police officers are sometimes required to make split second decisions in circumstances that are tense, uncertain and rapidly evolving. These officers believed they were in danger of immediate harm or death and their conclusion was reasonable under the circumstances.

CONCLUSION

The use of lethal force was justifiable in self-defense or the defense of others and no criminal liability attaches to the conduct of any involved officer.

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

Karen Bell
Chief Deputy District Attorney

Date

Gary S. Roth
Assistant District Attorney for Criminal Operations

Date