

CASE REPORT CLOSING

CASE NO: 2009-181

DATE: April 9th, 2010

INVESTIGATOR: Chief Investigator Kevin L. Smith

SUBJECT: Officer Involved Shooting, Cape Coral Police Department

NARRATIVE:

On December 20th, 2009 at about 1:00 am, seven (7) officers with the Cape Coral Police Department were involved in a shooting ending with one subject dead and two others wounded. The Police Department notified the State Attorney's Office and requested that a representative respond to the scene. Chief Investigator Kevin L. Smith and Investigator J Purdy responded and were briefed on the information available at that time.

The criminal investigation was conducted by the Cape Coral Police Department investigating the actions of their officers as well as criminal events by the subjects which lead to the encounter with police. Their report which is over 1800 pages in volume is an accurate representation of a thorough investigation. The Cape Coral Police Department conducted their investigation in cooperation with the State Attorney's Office allowing for open dialogue and requests to ensure the needs of the state were met to the best of their ability.

Based on the best evidence available from the crime scene, videos, statements and documentation provided, I have formed the following understanding of the events which occurred. It should be understood that the exact details remain unknown to this office as the primary officers who discharged their weapons exercised their right to remain silent and refused to answer additional questions at the advice of their F.O.P. Attorney. Portions of the events were captured on a Steak N Shake surveillance camera and on an in-car camera of a police car.

In summary, the incident began with two 911 calls from 703 NE 15th Terrace, Cape Coral, Florida. The callers reported that 3 to 4 subjects had entered their home wearing masks striking one occupant in the head. The subjects may have fired one round as reported by one caller's statement. The intruders had left the home and the callers could not describe how or what they left in. (A subsequent co-defendant statement also indicates a gun was discharged in the home).

The call was dispatched over the police radio and officers responded to the scene and area to search for any vehicles with multiple occupants. Officer Jason Rosas observed a vehicle fail to stop at a red light turning right from Diplomat E onto Del Prado Blvd. The vehicle was followed north on Del Prado. Other units joined as Rosas conducted a "Felony Traffic Stop" in his marked patrol car on the East side on Steak N Shake at 1721 NE Pine Island Road, Cape Coral, Florida. K-9 Corporal Jamie Grey Joined the stop in his marked SUV pulling next to Officer Rosas Patrol car. Officers Jeff Livingston, Patrick Mullen, Joseph Cielinski, Joshua Morgan, James Carson,

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Chris Abbey, James Canon, and Ryan Tronchet also arrived on scene during the initial contact with the subjects in the vehicle.

The vehicle, a 2008 White 4 door Kia Optima was occupied by four (4) male subjects; Patrick Nelson age 19, Mike Borrell age 27, Jarrett Mundle age 19, and Tyson Richardson age 21. During the initial stop based on officer and co-defendant statements, Nelson was in the driver's seat with Richardson seated directly behind him. Borrell was seated in the front passenger's seat with Mundle seated behind Borrell in the back seat. While officers attempted to give directions to the occupants of the car, Nelson exited the vehicle while Richardson pushed him out to take over the front driver's seat of the car. During this movement, Richardson discharged a 40 caliber pistol once through the back passenger door and possibly a second round towards the front of the car.

Borrell, Mundle, and Richardson remained in the car failing to comply with the officers lawful commands. Officer Livingston specifically reports seeing Richardson climbing over the seat after the gunshot and point a pistol directly at him. In response, Livingston fires his weapon and states that other officers fire in succession. It is believed that Livingston was the first to discharge his weapon after Richardson fired a shot in the car and then pointed the pistol at Livingston. At this time, Officers Rosas, Grey, and Livingston discharge their weapons at the vehicle. Based on the limited information it is unclear if Officer Morgan fired his weapon at this point of the engagement.

Richardson now seated in the driver's seat, and under fire attempted to flee the officers by speeding away with Borrell and Mundle remaining in the car. As the car speed away, an unknown officer is viewed from the Steak N Shake camera giving chase on foot while firing at the fleeing vehicle. Due to the design of the parking lot the vehicle circles the Steak N Shake around to the west, then north towards Officers Abbey and Tronchet's marked patrol cars. Officers stated that Richardson accelerated attempting to deliberately ram their vehicle placing them in fear of their lives. Both police vehicles backed to the west out of the way of the oncoming vehicle blocking of the westerly exit. Richardson turned right, (east) where Officer Livingston and Mullen's marked patrol cars were parked blocking further travel to the east. A civilian patron of the Steak N Shake, Seth Kefer, observed officers jump out of the way of the car as it rounded the parking lot. Richardson accelerated driving head-on into the rear of officer Mullen's vehicle.

As the vehicle drove towards officers and their patrol cars, a second engagement began as the officers responded to the deadly confrontation. Richardson exited the vehicle with his pistol in hand and pointed it to the east in the direction of Officer Mullen's and Officer Cieslinski who were both in full police uniform. Officer's Rosas, Grey, Mullen, Cieslinski, Morgan, and Carson are believed to have discharged their weapons at Richardson at this time. Richardson stepped from the vehicle; fell to his knees, then to the ground with his pistol landing nearby. Officers approached the vehicle and secured Richardson, Borrell, and Mundle.

Best evidence shows that Officer Rosas fired 9 rounds, Grey 8 rounds, Livingston 6 rounds, Mullin 7 rounds, Cieslinski 16 rounds, Morgan 4 rounds, and Carson 12 rounds for a total of 62 rounds fired by police. Each of the officers were using their department issued Glock, model 22,

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40 caliber pistols. Additionally, each officer had demonstrated proficiency in firearms qualifications as required by the State of Florida Criminal Justice Standards and Training Commission. Officer Chris Abbey, James Canon, and Ryan Tronchet did not discharge their weapons and gave supporting statements to these events.

It is believed that Richardson fired at least 2 rounds during the encounter using an Astro model A-75, 40 caliber pistol. Co-defendant statements report that Richardson may have only had four rounds of ammunition and was experiencing problems with the function of the pistol. Two other weapons, an H&R model 923, 22 caliber revolver with removed serial number, and a FEG model SMC-918, 9mm pistol were recovered from inside of the Kia. Each of these weapons were loaded and appeared to not have been discharged during the encounter with police.

An Autopsy performed later that morning by Dr. Wendoyne Sneed, M.D. reported the cause of death to be "Multiple gunshot wounds with perforation of the right lung, aorta & heart". The autopsy revealed 3 perforated gunshot wounds, 9 penetrating gunshot wounds, and 2 grazing wounds, stippling to the back of the right hand, a wound to the top of the head, and various contusions and abrasions.

Passengers Borrell and Mundle each received one non-life threatening gunshot wound from what is believed to be stray rounds during the encounter. No information available suggests that Borrell or Mundle presented an individual deadly threat to law enforcement. Evidence from the Kia suggests that the majority of the rounds fired at the vehicle were directed at the driver Richardson and that the driver was injured before exiting the vehicle.

Later investigation provided probable cause to believe that these four individuals did commit a home invasion robbery with the intent to steal money and drugs. Nelson, Borrell, and Mundle have each been formally charged with Attempted Home Invasion Robbery, First Degree Burglary While Armed, and Second Degree Murder for the death of Tyson Richardson under case numbers 09-21015, 09-21017, and 09-21018CF. Those cases are pending.

While continued investigation may reveal more detailed information regarding the evidence at the scene, a complete understanding of the events will remain unknown without further details from the officers involved. As the criminal prosecution case moves forward additional information may become available that would involve this investigation however, there is substantial and sufficient information for a conclusion for the purpose of this investigation. Based on the contents of this report it is my opinion that these officers used deadly force as justified by law in order to defend their own life and the lives of others.

This investigation is closed.

Kevin L Smith
Chief Investigator