

# MIKE BUMCROT CONSULTING

## REPORT OF INVESTIGATION

**DATE:** June 22, 2015

**SUBJECT:** Officer Involved Shooting Death of Dontae Hayes which occurred on December 31, 2013 at 1133 Hours

**CASE:** Riverside Police Department File #P13186428, CPRC #13-040

**LOCATION:** 3860 Van Buren Boulevard (Arlington Park), Riverside

On June 16, 2015, I was asked by Frank Hauptmann, Manager of the Community Police Review Commission, to review the circumstances surrounding the officer involved shooting death of Dontae Hayes by members of the Riverside Police Department, Officers Nathan Asbury and Paul Miranda. I was also asked to provide my expert opinion in a written report on the manner in which detectives of the Riverside Police Department investigated this case.

I received several hundred pages of police reports, photographs, recordings, and other documents contained in the presentation by detectives to the Police Review Commission. I also researched legal issues and responded to the location to better understand the police reports, although the photographs taken by Riverside Police Department Lab technicians right after the incident were exceptional and I referred to them several times during this review. I incorporated Riverside Police crime lab photos in this report. See photos.

It is my conclusion that both Officers Asbury and Miranda acted in lawful self-defense and defense of others at the time they fired their handguns at Mr. Hayes, who not only



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brandished a loaded .45 pistol at the officers, but also actually fired one shot at the face of Officer Asbury.

The following analysis is based upon investigative reports, analyzed evidence reports, audio recordings, and statements taken during the investigation.

## **FACTUAL ANALYSIS**

On December 31, 2013, at approximately 1130, Riverside uniformed Police Officers Nathan Asbury and Paul Miranda were working a special problems team regarding homeless persons loitering in certain areas. They drove their marked black and white police car into Arlington Park and observed a male and female seated on a concrete bench near the children's playground. It appeared as if the female subject was vandalizing the bench. The officers exited their police vehicle and Officer Asbury immediately smelled the odor of marijuana. Officer Asbury asked Mr. Hayes if they had marijuana and he said, "Yeah right here", holding up a plastic bag containing a green leafy substance. Mr. Hayes said that they weren't smoking the marijuana, they were just rolling it into cigarettes. He also volunteered to throw it in a nearby trashcan.

See the following photographs depicting the benches next to the playground.



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The officers asked both subjects for their names and dates of birth in order to run them through police systems for wants or warrants. Mr. Hayes provided a name, that detectives would later learn, was his twin brother's name. The female provided a name but would not give a date of birth.

Police dispatch reported that Mr. Hayes had a felony warrant out for his arrest charging him with 496 P.C., receiving stolen property.

Both subjects appeared to be calm. Detectives would later learn that the female was a reported juvenile runaway. The officers believed that the female was providing false information and Mr. Hayes was not the subject with the warrant because he had numerous tattoos on his arms while the warrant subject had no tattoos listed.

As Officer Asbury kept the subjects seated on the park bench, Officer Miranda walked to his police vehicle to check for CAL-ID photos on the computer in the police car.

As Officer Miranda sat in the driver's seat, Officer Asbury decided to handcuff Mr. Hayes due to the possible felony warrant. Mr. Hayes was asked to stand and place his hands behind his back. Officer Asbury grabbed the subject's left hand and could feel Mr. Hayes "moving around" and thought the subject was about to run. The officer reached his right hand around the subject to grasp his right hand. Mr. Hayes reached into his right front waistband and spun around, facing Officer Asbury and holding a pistol. Mr. Hayes pointed the weapon directly at Officer Asbury's face. The officer's reaction was to deflect the pistol, as it fired, with his left hand while drawing his own weapon with his right hand. Mr. Hayes glanced in the direction of Officer Miranda, who had observed the armed encounter and exited the police car.

See the following photographs which depict where the police car was parked and where Mr. Hayes fell (hidden by short barricades).



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As Mr. Hayes turned his attention back to Officer Asbury the officer fired one shot from the hip, striking Mr. Hayes in the chest. The officer continued to bring his weapon up to a two handed stance and fired, striking Mr. Hayes in the chest again. Mr. Hayes remained standing and holding his firearm. Following his firearms training of shooting two shots to the chest, then one to the head, Officer Asbury shot Mr. Hayes in the head and the subject went down. It should be noted that during the confrontation between Mr. Hayes and Officer Asbury, Officer Miranda was running towards the altercation and fired seven rounds from his firearm in the direction of the subject. Medical aid was then summoned. Officer Asbury would later tell detectives "I was literally looking down the barrel" when Mr. Hayes shot at him. He was "scared to death" and realized Mr. Hayes was "trying to kill me". "I remember seeing smoke and flame flash in my face. It scared me to say the least".

Officer Miranda would later tell detectives that at the time of the shooting "I was in disbelief. I can't believe it just happened", and he added he "didn't see it coming. I felt like I was going to be shot".

## **WITNESS**

Witness Jeri Elliott told detectives that on December 29, 2013, she was walking her dog in the area of Chestnut Avenue and 10<sup>th</sup> Street when a black male adult stopped her and began to talk to her dog. This male said he was homeless and on parole and felt like doing something to get locked up. When Ms. Elliott asked what he would do, he replied "Just get them to do me like Tyeshia Miller". She was shown a photograph of Mr. Hayes and positively identified him as being the same male who approached her on December 29, 2013.

## **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



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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 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 into the officer involved shooting death of Dontae Hayes 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.



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## LEGAL ANALYSIS

California law permits the use of deadly force in self-defense if it reasonable appears to the person claiming the right of self-defense that he actually and reasonably believed he was in imminent danger of great bodily injury or death. The belief in the need to defend oneself must be both actual and reasonable.

“The rule is well established that one who, without fault, is placed under circumstances sufficient to excite the fears of a reasonable man that another designs to commit a felony or some great bodily injury and to afford grounds for a reasonable belief of imminent danger, may act upon those fears alone and may slay his assailant and be justified by appearances.” People v. Mercer (1962) 210 Cal.App.2<sup>nd</sup> 153, 161

“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.2<sup>nd</sup> 575

The test of whether the officer’s actions were objectively reasonable is “highly deferential to the police officer’s need to protect himself and others.” Mundz v. City of Union City (2004) 120 Cal.App. 4<sup>th</sup> 1077, 1102

The Fourth Amendment reasonable test is, “An objective one: the question is whether the officer’s actions are objectively reasonable in light of the facts and circumstances confronting them.” Graham v. Conner (1989) 490 U.S. 396.

## CONCLUSION

The evidence examined in this investigation reveals that Dontae Hayes was sitting in Arlington Park, armed with a .45 pistol, and in possession of marijuana. He was also in the presence of a runaway female juvenile.

Riverside Police Officers Nathan Asbury and Paul Miranda made contact with Mr. Hayes and were conducting a legal and reasonable investigation. When Mr. Hayes was



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asked to place his hands behind his back to be handcuffed and detained for possibly having a felony warrant for his arrest, Mr. Hayes chose to not only pull a handgun from his waistband but to also discharge his firearm in the face of Officer Asbury. There is little doubt that Officer Asbury would have been seriously injured or killed if he hadn't deflected Mr. Hayes weapon as it fired.

In listening to the audio recording of the entire incident, Mr. Hayes and the officers appeared to be calm and conversing in a normal manner. Suddenly there is a rustling sound that apparently is Mr. Hayes and Officer Asbury wrestling. Gunshots are heard, followed by the incoherent screams of the female juvenile.

The actions of Dontae Hayes and the fact that he not only pointed his weapon at both Officers Asbury and Miranda, but also actually fired his weapon at Officer Asbury, reasonably created a fear of imminent death or serious bodily injury. Once the officers perceived that Mr. Hayes posed a lethal threat, their response with deadly force was justified.

It should not go unnoticed that not only was Mr. Hayes in possession of marijuana, the Coroner's Toxicology Report indicates that marijuana was in his system.

I find that the investigation into the officer involved shooting death of Dontae Hayes was completed in a fair and impartial manner and met or exceeded POST standards of practice.

It should be noted that, although it was very obvious what had occurred during the incident, the detectives asked the Department of Justice to check Mr. Hayes' weapon for touch DNA. This request was denied. They also asked the Los Angeles County Coroner's Office lab to analyze the gunshot residue test taken on samples from Mr. Hayes' hands. This test revealed gunshot residue on both of Mr. Hayes' hands. This is an example of investigators doing a thorough job to corroborate statements.



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