



**DONTAE DAEVON LEWIS HAYES
OFFICER-INVOLVED DEATH
PUBLIC REPORT**

CPRC Case No. 13-040

RPD Case No. P13-186428

November 25, 2015

Version 1

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Date of Incident:

December 31, 2013 at 1133 Hours

Location:

Arlington Park, 3860 Van Buren Avenue, Riverside

Decedent:

Dontae Daevon Lewis Hayes

Involved Officers:

Officer Nathan Asbury, #1368

Officer Paul Miranda, #1501

I. Preamble:

The finding of the Community Police Review Commission ("Commission") as stated in this report is based solely on the information presented to the Commission by the Riverside Police Department ("RPD") criminal investigation case files, and follow-up investigative report submitted by CPRC Independent Investigator, Mike Bumcrot of Bumcrot Consulting, Norco, California. The Commission reserves the ability to render a separate, modified, or additional finding based on its review of the Internal Affairs Administrative Investigation. Since the Administrative Investigation contains peace officer personnel information, it is confidential under State law, pursuant to CPC §832.7. Any additional finding made by the Commission that is based on the administrative investigation is also deemed confidential, and therefore cannot be made public.

II. Finding:

On August 26, 2015, by a vote of 8 to 0 (1 absentee), the Commission found that the officers' use of deadly force was consistent with RPD Policy 300 – Use of Force, based on the objective facts and circumstances determined through the Commission's review and investigation.

Rotker	Hawkins	Ybarra	Huerta	Smith	Jackson	Roberts	Andres	Adams
✓	✓	Absent	✓	✓	✓	✓	✓	✓

III. Standard of Proof for Finding:

In coming to a finding, the Commission applies a standard of proof of "Preponderance of Evidence." Preponderance generally means "more likely than not," or may be considered as just the amount necessary to tip a scale. This also means that the Commission is not required to have certainty in their findings, nor are they required to reach a finding as "beyond a reasonable doubt" which is necessary in criminal cases.

The Preponderance of Evidence standard of proof is the same standard applied in most civil court proceedings.

IV. Incident Summary:

On Tuesday, December 31, 2013, at 1133 hours, Officers Nathan Asbury and Paul Miranda were working uniformed patrol in a marked RPD vehicle. The officers were working a "problem oriented policing" (POP) team wearing black "BDU" pants, and black shirts with Department tactical vests with police markings on the front and back.

As part of their duties on the "POP" team, they went to conduct a park check at Arlington Park due to loitering issues. They drove into Arlington Park near the center of it where the playground equipment was located. They saw a male and female sitting on a concrete bench near the playground. The male was later identified as Dontae Hayes and the female identified as a juvenile. Due to purposes of confidentiality concerning the juvenile, her name is not listed in this public report. She will therefore be referred to as "Jane Doe" in this narrative.

The officers parked their marked police vehicle near the playground equipment and exited it. Upon exiting their police vehicle, Officer Asbury detected a strong odor of marijuana coming from the area where Hayes and Jane Doe were sitting. The officers approached Hayes and Jane Doe and asked if they had any marijuana. Hayes held out a fast food wrapper containing marijuana and replied, "Yes, right here." Miranda looked at the substance in the fast food baggie and verified that it was marijuana. Both Asbury and Miranda began to obtain identity information from Hayes and Jane Doe in order to check if they had any outstanding wants or warrants. During this time period, Hayes and Jane Doe remained calm and cooperative with the officers.

Decedent Hayes initially provided the identifying information of his twin brother and told the officers that he may have traffic warrants. A wants and warrants check revealed a felony warrant for possession / receiving stolen property in the name provided by Hayes. The officers were unable to obtain any further identifying information on Jane Doe with the information she provided. The officers believed that Jane Doe was providing false information and they were also not convinced that Hayes was the subject who the warrant was issued for. The officers requested tattoo information on the warrant since Hayes had tattoos, but none were listed on the warrant. Miranda elected to go back to the police vehicle and check the CAL ID database for a photograph to further determine if Hayes was who he claimed he was. Miranda sat in the driver's seat while working on the computer. Hayes and Jane Doe remained seated on the bench while Asbury stood by them.

Officer Asbury decided to handcuff Hayes due to the possible felony warrant, so he asked him to stand up and place his left hand behind his back. Hayes complied with the request and placed his left hand behind his back where Asbury took hold of it. Officer Asbury then told Hayes to place his right hand behind his back, but he failed to comply and instead moved his right hand down around the area of his front waistband. Officer Asbury thought that Hayes was about to run. Hayes took a small step to his right and removed a handgun from his waistband area and then turned to his left and pointed the handgun at Asbury's face. Asbury simultaneously let go of Hayes' left hand and attempted to block or push

Hayes' hand with his (Asbury's) left hand. Asbury saw a muzzle flash from Hayes' handgun and removed his own handgun and fired one round from his (Asbury's) hip position with one hand. This round struck Hayes in the chest. Asbury then fired two more rounds with a two-handed position. The second round hit Hayes in the chest and the third hit him on the left side of his head. Hayes then fell to the ground.

Officer Miranda was sitting in the driver's seat of the police vehicle when Officer Asbury began to handcuff Hayes. Miranda saw Hayes remove a handgun from his front waistband, turn to his left and point it at Asbury. At this point, Miranda exited his vehicle and saw Hayes fire a round at Asbury. Miranda ran toward Asbury and Hayes while at the same time firing his sidearm at Hayes. Miranda then saw Hayes fall to the ground. The officers requested medical aid and additional assistance from RPD officers. Hayes was handcuffed and secured as the first officer arrived. Medical assistance arrived and determined that Hayes was deceased at the scene.

V. CPRC Follow-Up:

The Commission requested a cover-to-cover review of the Criminal Casebook by CPRC Independent Investigator Mike Bumcrot of Bumcrot Consulting, located in Norco, California. Mr. Bumcrot is a nationally recognized expert in homicide and Officer-Involved Death cases. The purpose of this review is for Mr. Bumcrot to provide the Commission with his findings based upon his experience and expertise. Mr. Bumcrot felt that the investigation conducted by the Riverside Police Department was thorough and all evidence collected and preserved was completed accordingly.

VI. Evidence:

The relevant evidence in this case evaluation consisted primarily of testimony, including that of one civilian juvenile witness, the involved officers, and a Deputy Coroner. Other evidence included police reports and photographs, involved weapons, forensic examination results and a report by the Commission's independent investigator.

VII. Applicable RPD Policies:

All policies are from the RPD Policy & Procedures Manual.

- Use of Force Policy, Section 300.

The United States Supreme Court has ruled on one case that has particular relevance to the use of force in this incident. All decisions by the United States Supreme Court are law throughout the United States. The case is incorporated into the Use of Force Policy of the RPD.

Graham v. Connor, 490 U.S. 396 (1989), considered the reasonableness of a police officer's use of force, and instructed that the reasonableness must be judged from the perspective of a reasonable officer on scene.

VIII. Rationale for Finding - Within Policy:

On December 31, 2015, at approximately 11:30 AM, Officers Nathan Asbury and Paul Miranda made contact with a male and female who were seated on a concrete bench near the playground at Arlington Park. The officers parked their marked police vehicle near the playground and exited their vehicle. As the officers exited their police vehicle, they detected an odor of marijuana coming from the area of where the male and female were seated.

Officers Asbury and Miranda made contact with the male and female, and asked if they had any marijuana. The male, later identified as decedent Hayes, replied, "Yeah, right here." At the same time, he produced a fast food bag with a quantity of marijuana in it. The officers asked Hayes and his female companion for their name and date of birth since they claimed to have no identification in their possession. The female provided a name. Hayes provided his twin brother's name and date of birth. The officers ran a wants and warrants check on both Hayes and the female. No information came back under the name the female provided. The officers suspected that she may not have been providing her true identity. Hayes' name came back with a felony warrant. The officers requested a tattoo check on the warrant since Hayes had several tattoos. According to the dispatcher, the warrant indicated there were no tattoos.

Officer Miranda elected to return to the police vehicle to run a CAL ID check on Hayes in order to see if there was a photograph that would identify that he was the same person that was on the warrant. While Officer Miranda sat in the driver seat of the police vehicle to run the CAL ID, Asbury elected to handcuff Hayes due to the felony warrant. Hayes and the female juvenile were calm up to this point.

Officer Asbury asked Hayes to stand up and place his left hand behind his back. Hayes stood up, turned away from Asbury and placed his left hand behind his back. Asbury then asked Hayes for his right hand. At this point, Hayes did not comply and Asbury suspected that he was about to run. Hayes then stepped to his right and pulled a handgun from his front waistband and pointed it at Asbury's face and fired a shot. As Asbury saw the handgun, he tried to deflect Hayes' right hand with his left hand. Asbury, fearing for his life, drew his sidearm and fired one round that stuck Hayes in the chest. Hayes was still standing up and Asbury fired a second round striking him in the chest a second time. Hayes was still standing when Asbury fired a third round, striking Hayes in the left side of his head. Hayes then fell to the ground, dropping the gun to his side as he went down.

While seated in the driver seat of the police vehicle, Officer Miranda saw Hayes pull a handgun from his waistband. Miranda heard a gunshot and was not certain who fired it,

Asbury or Hayes. Miranda ran toward Asbury and Hayes, firing his sidearm at Hayes. Miranda fired (7) rounds at Hayes until he saw him fall to the ground and drop the gun.

Ms. Jeri Elliot became aware of the incident and reported to police that she had encountered Hayes on December 29, 2013, as she was walking her dog near Chestnut and 10th Street. Hayes told Elliot that he was homeless and on parole and felt like doing something “Just to get them to do me like Tyisha Miller.” The female juvenile that was with Hayes admitted that she knew he was in possession of the handgun and that they had planned to sell it.

The crime scene investigation revealed (7) shell casings from where Miranda had been firing his weapon. Three casings from Asbury’s weapon were found where he fired his handgun and one expended casing from Hayes’ handgun was found where he (Hayes) fired his weapon.

The Commission found that Hayes pointed a gun directly at Officer Asbury and fired a round, nearly striking him in the face. Hayes was in close proximity to Asbury when he fired his weapon and gave Asbury no avenue of escape. Hayes gave the officers no choice but to respond in the defense of their own lives. Hayes chose the course of action that would ultimately lead to his death. It was only after Hayes drew a concealed handgun and fired upon Officer Asbury that both officers fired their weapons in response.

The Commission concluded that Officers Asbury and Miranda acted in compliance with the Riverside Police Department’s Policy on Use of Force that allows force that “is objectively reasonable, given the facts and circumstances perceived by the officer at the time of the event to defend themselves.” During the interview of Officer Asbury, he made statements that he was “scared to death,” and realized that Hayes was “trying to kill me. I remember seeing smoke and flame flash in my face. It scared me to say the least.” Based on the actions of Hayes, Asbury’s and Miranda’s use of deadly force was reasonable given the facts and circumstances perceived by the officers at the time they defended themselves and each other.

IX. Recommendations:

None.

I. Closing:

The Commission offers its empathy to the community members, police officers, and City employees who were impacted by the outcome of this incident, as any loss of life is tragic, regardless of the circumstances.

APPENDIX

RPD Press Release / Press-Enterprise Articles

Section A

Fact Sheet

Section B

Bumcrot Consulting Reports of Investigation

Section C

RPD Policy 4.8 (Rev. 6, 5/26/11):

**Investigations of Officer Involved Shootings and Incidents
Where Death or Serious Likelihood of Death Results**

Section D

RPD Policy 4.30, (Rev. 9, 4/5/11): Use of Force Policy

Section E