

# MIKE BUMCROT CONSULTING

## REPORT OF INVESTIGATION

**DATE:** June 21, 2012

**SUBJECT:** Officer Involved Shooting Death of Virgil Millon, which occurred on May 10, 2011

**CASE:** Riverside Police Department File #P11068393

**LOCATION:** 11532 Trailway Dr., Riverside

On June 15, 2012, Frank Hauptmann, Manager of the Community Police Review Commission, asked me to review the circumstances surrounding the officer involved shooting death of Virgil Millon, which occurred on May 10, 2011. I was provided with hundreds of pages of police reports, crime scene photographs and other documents contained in the presentation by the Riverside Police Department to the Community Police Review Commission. I was also asked to provide my expert opinion in a written report on the manner in which the case was investigated by the Riverside Police Department.

It should be noted that on July 2, 2011, I responded to the location to conduct a neighborhood canvas and I also researched legal issues.

### **CASE SYNOPSIS**

On May 10, 2011, at 5:57 PM, Riverside Police Officer Zach Fishell was parked in a church parking lot on La Sierra Ave., conducting police business. He heard several gunshots in the vicinity and immediately received a radio call of unknown trouble on Trailway Dr. The call was then upgraded to "shots fired". Officer Fishell responded to the location, inside a gated community, and parked at the corner of Trailway Dr. and Countrydale Dr. Officer Fishell began to walk westbound on the south sidewalk. As he



P.O. Box 5025  
Norco, CA 92860  
USA

PHONE (951) 733-2062  
E-MAIL [mbumcrot@sbcglobal.net](mailto:mbumcrot@sbcglobal.net)

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reached 11514 Trailway Dr., he observed Virgil Millon, armed with a handgun, standing over victim Bradford, who was lying on the ground in front of her residence at 11532 Trailway Dr. Virgil Millon suddenly fired two rounds into her lifeless body. Officer Fishell drew his duty weapon and fired one shot at Millon from 64 yards.

Mr. Millon turned towards the officer and moved behind a car, parked at the curb. While using parked cars as cover, Millon began a flanking maneuver towards Officer Fishell. When Millon had closed the distance to 30 yards, Officer Fishell fired one round, striking Millon in the upper leg. Mr. Millon continued to aggress Officer Fishell, who again fired one round, striking Millon in the head, knocking him to the ground. It should be noted that Officer Fishell had no time to announce his presence before Millon shot victim Bradford. After that, he chose not to announce himself for safety reasons.

When assistance arrived, it was discovered that Mr. Millon was alive and was transported to the hospital where he died from his head wound. Victims Arabella Bradford and Malvin Conley were found lying on the front yard, dead from multiple gun shot wounds.

## **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 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



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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 Death of Mr. Millon 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.

## **CONCLUSION**

Detectives learned that Mr. Millon and victim Bradford had been in a relationship and Millon had moved out of the location, moving in with friends across the street. The day before the incident, victim Bradford had caused a restraining order to be served on Millon.

The day of the incident, several people were attending a barbeque at the location. Marvin Wooton said he was standing at the barbeque, in the backyard, cooking. He



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was also talking to victim Conley who suddenly said “What the fuck”. Mr. Wooten looked up and saw Mr. Millon dragging victim Bradford out of the kitchen by her hair, and he had a handgun in his other hand. Millon was saying “I’m tired of this shit, bitch. This has got to end.”

Mr. Millon began firing at both victims and Mr. Wooten grabbed a pool repairman and they ran down the side of the house and hid several residences away. He heard shooting continue inside of the house and out into the front yard. He saw both victims on the ground suffering from gunshot wounds. He saw Millon reload his handgun and continue shooting both victims. He saw police arrive but did not see Millon shot by officers.

Marilisa Ayers, sister of victim Bradford said she was cooking in the kitchen when she saw Mr. Millon walk in the back door. He immediately grabbed victim Bradford by the hair and dragged her into the backyard. He had a handgun in his other hand and started shooting down at her. Ms. Ayers ran into a bedroom and grabbed her son and they both hid in the bathroom. She thought she heard 25 - 30 gunshots in the backyard, through the house and the front yard.

Luigina Barkley, mother of victim Bradford said she was cooking in the kitchen when she saw Mr. Millon appear at the back door. Ms. Bradford asked what he was doing at her house. Mr. Millon grabbed her by the hair and pulled her outside. He had a handgun in his other hand and he shot into the air once and then began to shoot at victim Bradford as he continued to hold her by the hair. He emptied his handgun and he dropped it in the back yard, producing another handgun from his clothing. Mr. Millon then dragged Ms. Bradford back into the house and out into the front yard. Ms. Barkley did not go into the front yard.

Brian Nedely, a local realtor, was working several houses away when he saw two black males in the front yard, and one shot the other. A female ran out of the house and the male began shooting at her from five feet. She began to stagger around a truck parked



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in the street. The female crawled under the truck and the male leaned down and continued shooting at her. The witness shouted at Mr. Millon “Give up, the police are on their way”. Mr. Millon shouted back that he was “defending himself” and then shot the female twice at point blank range” Witness Nedely saw a police car arrive and saw Mr. Millon point his weapon in that direction. He heard more gunshots and Mr. Millon went down.

Physical evidence at the scene revealed an empty revolver in the back yard and an empty pistol magazine in the front yard, corroborating the observations of witnesses Wooten and Barkley. Two separate blood trails led from the back yard, through the house, to the bodies of both victims, suggesting that both victims were shot at the beginning of the incident.

Over the years, the courts have been clear on the use of deadly force by police officers. In *People v. Williams*, *People v. Glover*, and *People v. Ortiz*, the court ruled the use of deadly force is permitted in self defense or in defense of others if it reasonably appears to the person claiming that right actually and reasonably believed that he or others were in imminent danger.

In *Martinez v. Los Angeles County*, the court ruled an officer may reasonably use deadly force when he confronts a suspect whose actions indicate intent to attack.

In *Munoz v. Union City*, the court ruled that the test of whether the actions were objectionably reasonable is “highly deferential to the police officers need to protect himself and others.”

The California Criminal Jury Instructions state that the use of deadly force in self defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed (1) that he or the person he was defending was in imminent danger of being killed or suffering great bodily injury, (2) that the immediate use of force was necessary to defend against that danger, and (3) that he used no more force than was reasonably necessary to defend against that danger.



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Officer Fishell was dispatched to a dangerous, stressful call. Upon arrival he found a police officer's nightmare; an active shooter with multiple victims. His main concern was the safety of the neighborhood. I conclude that he acted lawfully in defense of himself and others and was nothing less than heroic.

After reviewing the indicated material, it is my opinion that the investigation into the officer involved shooting death of Mr. Millon was completed in a fair and impartial manner and exceeded POST Standards of Practice.



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