



**AARON LUTHER
OFFICER-INVOLVED DEATH
PUBLIC REPORT**

Case Type: OFFICER INVOLVED SHOOTING

RPD Case No. PA19-0023109

MONDAY, AUGUST 12, 2019

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Date of Incident: August 12, 2019 – Approximately 1737 Hours

Location: Southbound I-215 Freeway at the Eastridge Overpass, Riverside, CA

Decedent: Aaron Luther M 03/23/1970 (48-years)

Involved Officer(s): Officer Kevin Feimer
Other officers involved in firing their weapons included Riverside County Sheriff's deputies (RSO) and California Highway Patrol (CHP)

I. Preamble:

The finding by 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 as well as Riverside County Sheriff’s case file # MC192240003

II. Finding:

On September 15, 2023, with two rationale sheets submitted, the Commission found that the officer’s actions were consistent with RPD policy (Section 300 – Use of Force Policy), and circumstances determined through the Commission’s review and investigation.

Hirales W-1	Ward 2	Ward 3	DeBrier W-4	Raya W-5	Berrellez* W-6	Huerta W-7	Teichert** City-wide	Gutierrez City-wide
Not Received			Not Received	Not Received	Received	Received	Not Received	Not Received

*Chair

**Vice Chair

III. Standard of Proof for Finding:

In coming to a finding, the Commission applied a standard of proof known as the “Preponderance of Evidence.” Preponderance generally means “more likely than not,” or may be considered as just the amount necessary to tip the scale. The Commission need not have certainty in their findings, nor do they need to support their finding “beyond a reasonable doubt.” The Preponderance of Evidence standard of proof is the same standard applied in most civil court proceedings.

IV. Incident Summary:

On August 12, 2019, at approximately 1737 hours, RPD dispatch and field officers were notified by the California Highway Patrol (CHP), that CHP field officers requested immediate assistance regarding two of their officers involved in a gun battle with one officer down on the S/B I-215 freeway at the Eastridge overpass.

This broadcast for immediate assistance from area law enforcement agencies prompted emergency police response by the Riverside Police Department, Riverside County Sheriff's Department, and University of Riverside Police Department. Officers were updated via police radio that there were multiple officers down, struck by gunfire. Officers from all of these agencies converged on the area, taking up strategic positions around the perimeter of the shooting location. Initial arriving officers from all of these agencies found an active shooter, later identified as Aaron Luther, armed with an assault rifle, shooting in the direction of police officers positioned north of him. Luther was standing in front of a white color pick-up truck, using it as cover as he continued firing the assault rifle at officers.

Several RPD officers arrived in the area, including Officer Kevin Feimer. When Feimer arrived, CHP officer, Andre Moyer Jr., was lying unconscious on the ground near his police motorcycle. (Officer Moyer was later declared deceased at the hospital). Three other CHP officer sustained gunshot wounds in the gunbattle with Luther, and were being assisted by responding police officers, while at the same time still firing their weapons at Luther.

As Officer Feimer arrived in the area, he armed himself with his Department issue long rifle, and took a position of cover on the Northbound I-215 freeway behind stopped vehicles. He saw an active gunbattle taking place between Aaron Luther and several police officers. Feimer fired three rounds from his Department issue long rifle at the suspect who was moving from side to side in front of the truck, using it as cover as he fired at officers. Other officers were firing their weapons at Luther as well.

At one point during the gunbattle, Officer Feimer informed dispatch and other officers via police radio that the suspect (Luther) was lying on the ground and appeared to have been hit. Rescue efforts took place to provide aid to the downed officers. One of the officers, Andre Moyer Jr., who was the initial officer struck by gunfire, was airlifted to a hospital by the RPD Air Unit due to extensive injuries and being unconscious. Officers converged on Luther as he lay wounded on the ground and place him under arrest.

Officer Moyer succumbed to his injuries at the hospital. Three other CHP officers were wounded and transported to the hospital in patrol units. Fire/Paramedics responded and transported Aaron Luther to the hospital where he succumbed to injuries from gunshots.

The incident began when Officer Moyer, a CHP motorcycle officer, initiated a routine traffic stop on a white pick-up truck on the I-215 south at the Eastridge Street overpass. Moyer was in the process of impounding the white pick-up truck and allowed the driver, Aaron

Luther, to remove some of his belongings from the truck. Another CHP officer arrived at the scene to determine if Moyer needed any assistance. While Moyer was filling out the impound paperwork, unbeknownst to him, Luther had retrieved an assault rifle from the truck and fired several rounds at Moyer who was struck multiple times.

The other officer that had arrived to assist Moyer, was also fired upon by Luther and struck multiple times. He returned fire as Luther continued firing his rifle in a fully automatic mode. As the initial shots were fired by Luther, the surviving CHP officer called for assistance via police radio and informed dispatch of the gunbattle with two officers hit.

As additional officers arrived at the scene, they were also fired upon by Luther. Two additional responding officers were also struck by gunfire. There were numerous vehicles on the freeway at the time, and occupants found themselves stranded in their vehicles. As more and more officers arrived in the area, they assisted motorists in getting out of their vehicles and over to a safe location.

Since the location of the shooting was within the City of Riverside's jurisdiction, RPD handled the investigation with the assistance of RSO, CHP and the District Attorney's office. CSI personnel responded to assist with evidence collection at the crime scene, as well as videos, diagrams and photographs. All reports submitted by officers and civilian CSI workers were included in the Criminal Casebook. A great deal of time and work went into the process of this investigation.

Although multiple police officers exchanged gunfire with Luther, Officer Feimer was the only City of Riverside police officer that fired a weapon at Luther. It is for this reason that the CPRC only reviewed and assessed Officer Feimer's involvement.

V. CPRC Follow-Up:

The CPRC consultant, Frank Hauptmann, conducted a cover-to-cover review of the Criminal Casebook, including reports submitted by the Riverside County Sheriff's Department. This investigation was extremely lengthy and required hours of in-depth review of reports, videos, digital audios, photographs and evidence. Based on his extensive training, education and experience in policing for over 40-years, that includes homicide investigation and commander in charge of investigations, the consultant found that the investigation of this murder of a police officer, and subsequent shooting and use of deadly force incident by Officer Feimer was thorough, and that all evidence collected and preserved was completed accordingly, and within best practices of homicide investigation.

The consultant provided specific directions to members of the CPRC in order for them to review the applicable reports, videos and audios that were relevant to Officer Feimer's involvement, and subsequent use of deadly force against Mr. Aaron Luther. The consultant found that Aaron Luther initiated the overall altercation by knowingly and willingly retrieving a loaded AR-15 style assault rifle from his vehicle while CHP Officer

Moye was writing up an impound sheet, unaware of Luther's intentions. There was another CHP officer that arrived at the location prior to the shooting to see if Moye needed any assistance. Luther then knowingly and willingly fired his assault rifle directly at Officer Moye, demonstrating his intent to kill or seriously wound Moye and the other CHP officer. Moye was struck multiple times and was unable to respond or react before he fell to the ground. The other CHP officer was seriously wounded and returned fire as he was attempting to retreat from the gunfire from Luther. Several other responding officers were shot at by Luther as they arrived to assist the wounded officers. Two additional CHP officers were wounded while attempting to assist the other who was wounded, along with Moye.

According to Officer Feimer, he fired his weapon at Aaron Luther in order to stop the threat of further harm to officers at the scene, as well as himself. It was determined in the investigation that Feimer fired 3-rounds at Luther. Luther was actively firing his fully automatic assault rifle at officers when Feimer and other officers returned fire. After being struck by gunfire, Luther collapsed in front of his truck and was rendered unconscious. Medical aid was provided to Luther prior to transportation to the hospital. Luther succumbed to his wounds at the hospital as a result of being shot multiple times. According to the Riverside County Coroner's office, the examination of Luther's body revealed that the cause of death was a result of multiple gunshot wounds.

The Riverside County District Attorney's Office reviewed the entire investigation and found no evidence of criminal culpability on behalf of Officer Feimer, as well as the other officers that fired their weapons.

VI. Evidence and Methodology:

The relevant evidence in this case evaluation consisted of a complete review of the Riverside Police Department Criminal Casebook, as well as supplemental reports prepared by members of RPD and RSO. This review included statements from witnesses, statements from the officers involved in the shooting, a Deputy Coroner investigation and autopsy report, along with police reports, photographs and forensic examination results.

Members of the CPRC discussed and deliberated over the reports and evidence presented in this case in open session at CPRC meetings. A member of the Commission requested clarification of one of the videos from Officer Feimer by the consultant. The issue raised was clarified and no further information was requested. Another Commissioner requested additional information on the communication aspects of a multi-agency response. This information was clarified by RPD Captain Payne who was the incident commander at the scene. Both clarifications were brought up to the Commissioners during open session deliberations.

There were no other requests for additional information concerning the shooting incident.

VII. Applicable RPD Policy(s); Penal Codes and Case Law:

RPD – Policy Manual, Policy 300

USE OF FORCE

Policy 300.3, Use of Force

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time...

Policy 300.3.2, Use of Force Factors

(a) Immediacy and severity of the threat to officers and others; (b) conduct of the individual being confronted; (c) suspect's mental state or capacity; (d) proximity to weapons; (e) potential injury to officers, suspects and others; (f) whether person appears to be resisting, evading, or attacking; (g) risk and reasonable foreseeable consequences of escape; (h) any other exigent circumstances

Policy 300.4 – Use of Deadly Force

300.4 DEADLY FORCE APPLICATIONS

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Penal Code § 835a): (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person. (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Officers shall not use deadly force against a person based on the danger that person poses to him/ herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a). An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.

Other Applicable RPD Policy(s): (Refer to RPD Policy Manual)

307 Investigation of officer Involved Shootings and Incidents Where a Death or Serious likelihood of Death Results

California Penal Code § 835a states:

“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 effect 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.”

People v. Turner, 2 Cal.App.3d 632 (1969), the right of police officer to assure his own safety during the course of an investigation is not limited to disarming the person immediately before him. The officer may do anything reasonably necessary to neutralize the threat of physical harm.

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:

Upon review, analysis and deliberations of this incident, the Commission concluded that the use of deadly force by the officers involved was within the RPD Policy on Use of Force/Deadly Force, as well as within the Penal Code laws in the State of California and case law under the Graham v. Conner court decision (490 U.S 396 1989).

Officer Feimer responded to assist the California Highway Patrol on an active shooter incident where two officers were down, one of them still engaged in an active gun battle with the suspect, who was later identified as Aaron Luther. When Officer Feimer arrived on the scene, Luther was standing in front of his white pick-up truck, firing at the downed officers as well as other officers that responded to assist. Officer Feimer took cover behind stopped vehicles and upon doing so, fired three gunshots at Luther with his Department issued long rifle. Other officers at the scene were also actively engaged in a gun-battle with Luther. After Feimer fired the three shots, he found that Luther was lying on the ground in front of his truck, disabled from firing any more gunshots at officers. Mr. Luther was subsequently taken into custody by other responding officers. The Commission found that Officer Feimer fired his firearm at Luther to stop any further threat of harm to officers and civilians who became trapped in their vehicles due to the gun-battle.

IX. Recommendations:

None.

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 Policy 300 / Policy 300.3, Use of Force; **Policy 300.3.2**, Use of Force Factors; **Policy 300.4**; **Policy 307** Investigation of officer Involved Shootings and Incidents Where a Death or Serious likelihood of Death Results

Section B