



MEMO

Police Department

DATE: April 7, 2014
TO: SERGEANT DAN RUSSELL
FROM: DETECTIVE RICK COBB
RE: SUMMARY-OFFICER INVOLVED SHOOTING P13-186428

DATE OF INCIDENT: December 31, 2013
TIME OF INCIDENT: 1133 hours
LOCATION OF INCIDENT: 3860 Van Buren Blvd (Arlington Park)
Riverside CA
INVOLVED OFFICERS: Officer Nathan Asbury #1368
Unit Designator P45
POP Team NPC West
Officer Paul Miranda #1501
Unit Designator P45
POP Team NPC West
OFFICER INJURIES: Not injured
CIVILIAN WITNESSES: 
CIVILIAN INJURIES: N/A
SUSPECT: Dontae Daevon Lewis Hayes DOB: 04/27/1993
M/B/ 5'11"/14250/BLK/BRN
LKA: 5249 Quapaw Way, Riverside CA 92509

SUSPECT'S INJURIES: The suspect sustained three gunshot wounds. The suspect was pronounced dead at the scene. The suspect had two gunshot wounds to his left chest area and one gunshot wound to the left mastoid temporal area of his head.

PROPERTY DAMAGE: Playground equipment at the park sustained bullet strikes.

SUMMARY:

On Tuesday, December 31, 2013, at approximately 1133 hours, Officers Nathan Asbury and Paul Miranda were working a uniformed patrol assignment in a marked City of Riverside police vehicle.

Both officers were working West NPC Problem Oriented Policing Team (POP), Paul 45, wearing black BDU pants, black shirts and Department issued tactical vests with police markings on the front and back of the vest. The officers, as part of their regular duties, drove their police vehicle into Arlington Park near the playground equipment to conduct extra patrol regarding loitering in the park. While driving towards the center of the park the officers saw a male and female (later identified as S/ Dontae Hayes and W/ [REDACTED] sitting on a concrete bench near the playground. The officers parked their police vehicle near the playground equipment and exited the vehicle. As soon as they exited their vehicle, Officer Asbury smelled the strong odor of marijuana coming from the area the male and female were sitting at. The police vehicle was east of the playground equipment facing in a northwest direction.

Officer Asbury asked Hayes and [REDACTED] if they had any marijuana and Hayes held out a fast food wrapper containing marijuana and said "yeah, right here." Officer Miranda looked at the substance in the plastic bag and verified it was marijuana. Both officers began obtaining Hayes and [REDACTED] information in order to run them for wants and warrants on dispatch channel 2. Hayes and [REDACTED] both had calm demeanors and were cooperative with the officers. Hayes provided his twin brother [REDACTED] name to the officers during the stop and advised he may have had a warrant for traffic violations. Dispatch advised Hayes had a felony warrant for 496 P.C. and they were unable to obtain information on [REDACTED]

The officers believed [REDACTED] was providing false information and were not convinced Hayes was the subject the warrant came back to. Officers requested tattoo information on the subject with the warrant due to Hayes having tattoos on his arms. Dispatch advised there was no tattoo information available on the warrant. Hayes and [REDACTED] were still sitting on the bench at this point in the contact and Officer Miranda, after speaking with Officer Asbury, decided to check Cal ID photos on the police vehicle computer for further verification on Hayes. Officer Miranda walked over to the police vehicle and sat in the driver's seat of the unit to work on the vehicle computer. Officer Asbury stayed with Hayes and [REDACTED] who remained sitting on the bench while Officer Asbury stood facing them in a southern direction.

Officer Asbury decided to handcuff Hayes due to the possible felony warrant, so he asked Hayes to stand up and place his left hand behind his back. Hayes complied and Officer Asbury grabbed onto Hayes' left hand / wrist. Hayes and Officer Asbury were both standing and facing in a southeast direction and Officer Miranda was still seated in the driver's seat of the police vehicle. Officer Asbury told Hayes to place his right hand behind his back, but Hayes failed to comply and moved his right hand around in the area of his front waistband. Because he continued to move around, Officer Asbury believed Hayes was going to run.

Hayes took a small step to the right and at this point Officer Miranda, while sitting in the police unit, saw Hayes remove a handgun from his front waistband area. Hayes then turned to his left and pointed the handgun at Officer Asbury. Hayes was now facing Officer Asbury.

Officer Asbury saw Hayes' handgun pointing near his face and let go of Hayes' left hand while simultaneously attempting to block or push Hayes' handgun away with his left hand. Officer Miranda, who had exited the police vehicle prior to Officer Asbury cuffing Hayes, saw Hayes fire one round toward Officer Asbury. Officer Asbury saw muzzle flash coming from Hayes' gun and removed his handgun firing a quick round from the hip using one hand. This round struck Hayes in the chest. Officer Asbury then fired the next two rounds from a two handed position. The second round also struck Hayes in the chest and the third round struck him on the left side of his head. Officer Miranda fired simultaneous with Officer Asbury and Hayes fell to the ground. When Hayes fell to the ground he dropped his handgun near where he landed. Officer Asbury radioed shots fired and suspect down at their location, requested medical aid respond, then walked to Hayes who was still moving and kicked Hayes' handgun out of Hayes' reach. Officer Shea McMahon was the first officer to arrive and handcuffed Hayes without incident. Riverside Fire Department personnel along with AMR personnel responded to the scene and Hayes was pronounced deceased.

INVESTIGATION:

At approximately 1200 hours, on-duty Robbery/Homicide personnel and forensic technicians responded to Arlington Park located at 3860 Van Buren.

Detectives Rick Cobb and Ron Sanfilippo were assigned as the case agents. Detective Jim Brandt and Forensic Technician Sue Lane investigated the crime scene. Sergeant Dave Amador was the crime scene supervisor.

Officers Asbury and Miranda were transported to Riverside Police Department Magnolia Avenue Station to be interviewed. The case agents interviewed Officer Asbury and Miranda, separately, at the Magnolia Avenue Station Executive Conference Room. Attorney Saku Ethir (Law Office of Saku E. Ethir) represented both officers.

Three silver colored, .45 caliber expended shell casings, were located on the play area north of Hayes body. These rounds are believed to have been fired from Officer Asbury's weapon.

Seven .40 caliber expended shell casings were located around the front of unit #3620. Six casings were located on the ground and one casing was located on unit #3620 near the windshield wipers. These rounds are believed to have been fired from Officer Miranda's weapon.

One gold colored CCI brand .45 Auto caliber shell casing was located inside a baseball cap next to Hayes body. This casing was believed to have been fired from Hayes' weapon. The baseball cap belonged to Hayes. This casing is a match to the ammunition located in the magazine of Hayes' weapon.

One .45 caliber Colt semi-automatic handgun was recovered on the play area near Hayes' body. This weapon was kicked away from Hayes prior to handcuffing. The weapon came to rest approximately three feet from Hayes' head. The weapon had one round in the chamber and five rounds in the magazine.

The California Department of Justice Criminal Laboratory compared the CCI brand casing to the Colt .45 Auto handgun used by Hayes. They concluded the casing was fired from the handgun.

A white fast food wrapper containing possible marijuana was recovered from the park bench seating [REDACTED] and Hayes had been sitting at.

Suspect Weapon

The weapon in Hayes' possession was a Colt Model 1911 .45 caliber handgun, Serial # 305084C. A records check of the weapon showed one transaction on September 6, 1969 which is presumed to be the original purchase. The purchaser was Richard J. Tibbs who lived at [REDACTED]. The serial number was provided to ATF Agent Adam Rudolph who conducted a firearms trace. This report provided no additional information on the weapon.

Video/Audio/Recordings:

There was no Coban video of the actual shooting from any of the units on scene. Officers Asbury and Miranda were driving unit #3620 and did not have their Coban system turned on.

Officer Miranda activated his department issued audio recorder prior to the pedestrian check and had the audio recorder on throughout the incident. The audio recorder captured the shooting.

Weapon Charting Officer Asbury:

Officer Asbury was photographed in his police uniform and had his assigned duty weapon charted.

Officer Asbury's primary duty weapon is a department issued Springfield Armory .45 caliber handgun, serial Number 211076. The weapon had one round in the chamber and the magazine held 4 live rounds. His additional four magazines were each loaded to capacity with 7 live rounds. The charting confirmed that three rounds were fired.

Weapon Charting Officer Miranda:

Officer Miranda was photographed in his police uniform and had his assigned duty weapon charted.

Officer Miranda's primary duty weapon is a department issued Glock 22 .40 caliber handgun serial #FFY836. The weapon had one live round in the chamber and eight live rounds in the magazine. Officer Miranda's additional two magazines were each loaded to capacity at fifteen rounds. The charting confirmed that seven rounds were fired.

WITNESS AND OTHER PARTY INTERVIEWS:

Witness [REDACTED]

[REDACTED] was present at the officer involved shooting. After the shooting [REDACTED] was detained and ultimately transported to Magnolia Police Station. While at Magnolia Police Station [REDACTED] provided correct identifying information and after checking for wants and warrants it was learned that [REDACTED] was a reported runaway, RPD File # P12-093467. [REDACTED] was difficult to interview initially due to her being emotionally upset.

Detective Cobb asked ██████ in his second attempt to interview her, what had happened at the park. ██████ said Hayes pulled out a gun and she had tried to stop him from pulling the gun. After a brief respite, ██████ then said she knew Hayes had the gun and they were going to sell it and be rich. Despite numerous attempts, Detective Cobb had to conclude the interview due to ██████ emotional behavior.

Other Party Jeri Elliott:

Elliott sent an online email tip to RPD Chiefonline stating on 12/29/13 she was walking her dog in the area of Chestnut and 10th when she came across a black male adult in his twenties who started talking to her dog. During the conversation, the subject told her he was from the Lucerne Valley and was unable to get home. He said he was homeless, on parole and had to see his parole officer. The subject continued, saying he felt like doing something to get locked back up and when Elliott asked what he would do, the subject replied "just get them to do me like Tyeshia Miller." Elliott then requested a picture of Dontae Hayes to verify if it was the same Dontae she had met.

On 1/3/14, Detective Cobb contacted Elliott and verified the information she provided online to the Department. While on the phone with Elliott, Detective Cobb emailed Dontae Hayes' photo to her. When Elliott received the email, she opened the attachment photograph and positively identified Dontae Hayes as the subject she spoke with on 12/29/13.

INVOLVED OFFICER INTERVIEWS

Officer Asbury:

Officer Asbury was asked to describe what happened prior to, during, and after the shooting.

Officer Asbury said he was partners with Officer Miranda and they were assigned designator "Paul-45". He said they were patrolling Arlington Park as part of their regular duty.

Officer Asbury said he saw a male and female (later identified as Dontae Hayes and ██████), sitting on a bench near the playground. As he and Officer Miranda walked towards Hayes and ██████ he smelled Marijuana coming from the area where they were sitting. When they approached Hayes and ██████ he asked Hayes if they were smoking marijuana. Hayes told him they were not smoking marijuana, but he came to the park to roll it. He asked Hayes where the marijuana was, and Hayes held both of his hands open and showed him a white plastic bag, telling him the marijuana was in the bag. Hayes offered to throw the marijuana in the trash, but he told him not to do that. Hayes then put the bag on the bench.

Officer Asbury asked Hayes for his name and date of birth, which he provided. When he asked ██████ for her name and date of birth, she would not give him her date of birth. He believed ██████ may have been lying about her name and date of birth. ██████ then gave a date of birth in the year of 1995.

Officer Asbury said Hayes and ██████ were run through the computer for warrants and Hayes was found to have a felony warrant. Officer Asbury said that due to Hayes' calmness, he and Officer Miranda were not positive that Hayes did have a warrant. He said Dispatch advised that there were no tattoos listed in their warrant information, and Hayes had tattoos. Dispatch provided the California ID number from the warrant and Officer Miranda decided to check the computer in their police unit for a photo of the subject with the warrant. Officer Miranda started walking towards their police unit.

Officer Asbury said that when Officer Miranda started walking towards their unit, he decided to place Hayes in handcuffs. He told Hayes to stand up and put his hands behind his back. Hayes stood up and put his back to him and placed his left hand behind his back. Hayes was facing Magnolia Avenue. He grabbed Hayes' left hand with his left hand and secured it behind his back. Hayes would not put his right hand behind his back so he said he reached for Hayes' right hand which was in front of him. Hayes started to pull away from him and he said he did not have his handcuffs in his hand at the time.

Officer Asbury said he thought Hayes was going to run from him. Hayes then quickly took a step to his right and spun to his left, he then saw that Hayes had a handgun in his right hand. He let go of Hayes' hand and Hayes pointed the handgun right at his face. He said he tried to deflect the gun from his face with his left hand, but he did not remember if he was able to hit the gun. He began to draw his gun from his holster when Hayes shot at him. He was literally looking down the barrel when Hayes shot at him. He was scared to death, realizing that Hayes was trying to kill him.

Officer Asbury said that he then pulled his gun from his holster and disengaged the safety. He then fired one shot from his hip at Hayes' chest using one hand, he struck Hayes in the chest. Hayes was still standing with the gun in his hand so he continued to raise his gun with a two hand grip and fired another round at Hayes, hitting him again in the chest. Hayes was still standing with the gun in his hand, so he raised his gun towards Hayes' head and fired another round. He believes he shot Hayes in the head, adding all three shots were in quick succession. He is not sure if Hayes fired a second shot.

Officer Asbury said that when he was shooting, he heard Officer Miranda also shooting. He did not see Officer Miranda shoot, but heard it. He said that at some point, Hayes pointed his gun at Officer Miranda who was at the police unit. He said he did not remember exactly when this happened, but said Hayes did point his gun at Officer Miranda.

Officer Asbury said that after he fired three rounds, Hayes fell to the ground and dropped the gun. He did not shoot at Hayes while he was on the ground, and radioed "shots fired" and a suspect down and he requested medical aid.

Officer Asbury said that Hayes was still moving while he was on the ground, and the gun was next to his hand. For safety reasons he kicked the gun a few feet away from Hayes. Assisting officers then arrived.

Officer Miranda:

Officer Miranda was asked to describe what happened prior to, during, and after the shooting.

Officer Miranda is currently assigned to the POP Team and on 12-31-2013 he was assigned to ride with Officer Asbury. Officer Miranda said at approximately 1130 hours they decided to stop by Arlington Park to check on the homeless problem they have been encountering. Officer Miranda said he drove the police unit (#3620) into Arlington Park on a concrete walkway and stopped near the playground area. He observed a male and female sitting on a bench in this area. It appeared that the female (██████) was possibly vandalizing the bench she was seated on as they approached the two subjects (Hayes and ██████). He stood behind the bench as Officer Asbury made verbal contact to the front of the bench.

Officer Miranda said neither Hayes nor ██████ had any identification in their possession. Officer Asbury was given their names and date of births verbally by Hayes and ██████ and checked for wants and warrants with RPD Dispatch via channel 2. ██████ gave several different dates of births to Officer Asbury when he asked her. It was learned from RPD Dispatch that Hayes was wanted on an outstanding felony warrant and a misdemeanor warrant. They attempted to confirm that the subject (Hayes) they had was actually the wanted subject through tattoos but this info wasn't available to RPD Dispatch.

Officer Miranda said he walked over to his nearby parked police unit to pull up Hayes photo from Cal Photo adding that the entire time during the contact both Hayes and ██████ remained seated on the bench. He was sitting down in the driver's seat in order to access Cal Photo on the computer when his attention was diverted to his left (toward playground) and he observed Hayes standing facing south while Officer Asbury stood one foot behind him. He decided to exit the police unit due to the demeanor he observed by Dontae Hayes and he believes he was only seated in the police unit for 30 seconds to a minute. It appeared to him that Hayes was attempting to run off based on his observation of the contact between Officer Asbury and Hayes.

Officer Miranda said it appeared to him that Officer Asbury had begun the process of handcuffing Hayes. Officer Asbury had only one hand on Hayes under control, but he doesn't remember which hand this was. During the handcuffing process, Hayes stepped to his right and spun back around towards Officer Asbury while pulling out a handgun from his waistband. Hayes pointed the handgun directly at Officer Asbury who at this point created some distance to approximately three to four feet. Hayes then turned towards him and pointed the handgun at him. Officer Miranda said he ducked behind his opened unit driver's door, he was in "disbelief, I can't believe it just happened", "I felt helpless". Officer Miranda added that he "didn't see it coming, felt like I was gonna be shot". Officer Miranda said this all happened so fast, however, it appeared to be in slow motion.

Officer Miranda said Hayes then pointed the handgun back at Officer Asbury and he immediately heard a "pop" and was not sure who fired the shot. He (Miranda) stood up and cleared the driver's door and advanced on Hayes while firing five to six gunshots at him (Hayes). He was only focused on Hayes and was unsure if Officer Asbury fired his weapon. Officer Miranda believes he got as close as four feet from Hayes when he fired his last shot. He said ██████ was seated on the bench when the shooting took place. When Hayes went to the ground, his breathing was labored and his arms went out to his side. Hayes' handgun ended up on the ground a short distance from his head. For safety reasons Officer Asbury kicked the handgun a few feet away from Hayes reach. Officer Miranda added he kicked the cap that Hayes was wearing a few feet away when he observed a spent .45 casing inside the cap. He did this because ██████ had gone to the ground screaming and yelling and he didn't want her to tamper with the evidence (Hayes cap). He provided lethal cover on both Hayes and ██████ while Officer Asbury broadcasted the shooting on the radio. He observed a gunshot wound to the chest of Hayes and made sure AMR was notified. The interview concluded at 1520 hours.

AUTOPSY:

On January 2, 2014, Detective Ron Sanfilippo and Evidence Technician Liane Velin attended the autopsy for Hayes. Doctor McCormick was the attending pathologist. Dr. McCormick noted three gunshot wounds to Hayes' body. Two gunshot wounds to the left chest area and

one gunshot wound to the left mastoid temporal area of Hayes' head. All three gunshots were front to back and at a straight level path. No intact projectiles were collected, but several projectile fragments were located.

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