



Office of Inspector General

**OFFICER INVOLVED
SHOOTING REVIEW
Brittney Nicholls**

Incident Date
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Inspector General

Officer Involved Shooting Review

Brittney Nicholls

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INTRODUCTION

The Inspector General reviews certain critical incidents involving the Sacramento Sheriff's Department to evaluate the effectiveness of departmental policies, tactics, equipment, and training. These reviews result in the identification of lessons learned regarding the incidents and specific recommendations for the Sheriff's Department intended to enhance the safety of the community and officers. It is important to note that this review was conducted with the benefit of hindsight and the knowledge of all concurrent events. The ability to review reports, photographs, video, and audio allows for the critical review of the incident that is not available to officers and witnesses.

EXECUTIVE SUMMARY

This review concerns an incident where a Deputy used deadly force, the appropriateness or inappropriateness of that use of force, and the related departmental policies were reviewed and compared against best practices in policing. The review included crime reports, statements, evidence, video, audio, and applicable policies resulting in eight recommendations.

On October 22, 2016 at 3:19 a.m. Deputy Taylor was on routine patrol when he saw a male running on Long Canyon Drive at Winding Oak Drive. The male was immediately followed by a Mercedes driven by Brittney Nicholls and a female passenger. Deputy Taylor stopped both the male and Nicholls and learned that they knew each other. The male sat in the back seat of the Mercedes during the contact. During his investigation, Deputy Taylor determined that Nicholls did not have her driver's license and directed her to exit the car. After a delay Nicholls briefly stood but suddenly got back into the car. Deputy Taylor reached into the car and attempted to control Nicholls; however, she was able to shift the car in gear and started to drive off.

As the car accelerated Deputy Taylor was pulled forward a few feet before he could move away from the car. As the car fled the scene Deputy Taylor fired five rounds striking the car at least three times. Nicholls with her two passengers continued to flee but she was later arrested. None of the occupants reported injuries.

The available evidence supports that, at the time Deputy Taylor fired his weapon, there was not a reasonable basis to believe that Nicholls, or the occupants of the vehicle, posed a threat of serious bodily injury or death to Deputy Taylor or others, nor a reasonable belief that a delay in apprehension would pose an immediate threat of death or serious bodily injury. The use of deadly force against Nicholls was not reasonable or necessary and placed Nicholls and the two passengers at risk of serious injury or death.

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METHODOLOGY

The Inspector General, with cooperation from the Sacramento County Sheriff's Department, gathered, reviewed, and analyzed documents from many sources to develop an understanding of this shooting. Policies, procedures, and training related to the activities leading up to and including the shooting were reviewed and compared to accepted best practices in policing.

Document, Evidence, and Policy Review

To assist in the review, information was collected from the following:

- Documents related to the shooting including witness statements and crime scene diagrams.
- Photographs of the scene and dispatch audio.
- Review of videotaped interviews.
- Direct observation of the general area and shooting scene.
- Review of Sacramento County Sheriff's Department policies and applicable International Association of Chiefs of Police model policies.¹ Sheriff's policies include:
 - General Order 2/01 (Rev 6/13) Authorized Firearms and Ammunition
 - General Order 2/03 (Rev 5/08) Firearms Training and Qualification Special Weapon Training
 - General Order 2/05 (Rev 12/12 & Rev 9/17) Use of Firearms
 - General Order 2/06 (Rev 10/07) Officer-Involved Shooting Incidents
 - General Order 2/11 (Rev 4/16 & Rev 8/17) Use of Force Policy
 - General Order 2/16 (New 1/06) Weapons Discharge Reporting Incidents
 - General Order 2/17 (Rev 3/13) Use of Force – Tactical Review Board
 - General Order 10/10 (New 9/07) In-Car Camera Systems

INCIDENT SUMMARY

Deputy Taylor was working patrol in a marked SUV during the early morning hours of October 22, 2016. Just prior to 3:19 a.m., Deputy Taylor was driving north on Winding Oak Drive approaching Long Canyon Drive when he observed unusual activity at the intersection. A male, dressed in jeans and a long sleeve sweat shirt, was seen running west on the north sidewalk of Long Canyon Drive and continued running on the sidewalk as it curves north onto Winding Oak Drive. As Deputy Taylor approached a light-colored Mercedes, which was west on Long Canyon Drive abruptly stopped at the intersection with Winding Oak Drive. The male slowed down, turned and started walking toward the Mercedes making gestures as if he knew the people in the car.² Seeing this Deputy Taylor stopped his patrol vehicle and activated his overhead code-2

¹ <http://www.iacp.org/Model-Policies-for-Policing>

² Winding Oak Drive curves toward the west (left) as the roadway approaches Long Canyon Drive allowing the patrol vehicle headlights to fully illuminate the area. There is also a street light on the northeast corner that illuminated the area through a tree canopy.

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emergency lights and his spot lights. The male walked up to the passenger side of the Mercedes and appeared to be speaking with the front passenger as the driver, later identified as Brittney Nicholls, looked directly at the patrol car while smoking a cigarette, holding it in her right hand.

Deputy Taylor exited his patrol vehicle and immediately asked the male and occupants of the car “what are you kids doing? “What are you doing?”, as he approached the Mercedes.³ The male responded “huh?” as Taylor approached the rear of the Mercedes driver’s side. Nicholls, a female passenger seated in the front seat, and the male outside the car were all watching Taylor. Deputy Taylor, while speaking with the male over the top of the Mercedes walked around the rear of the Mercedes out of camera view. When Taylor was back in camera view he approached Nicholls as the male sat in the rear passenger seat. According to Deputy Taylor he requested identification from everyone in the car at which time the male told Deputy Taylor that he did not have his identification but that he would tell Taylor his information. The front passenger told Taylor that she did not have her identification with her. Nicholls said that she did not have identification but then said that she did and reached down and brought up papers that she looked through. After rifling through her papers, Nicholls handed them to Deputy Taylor. Taylor briefly looked through the papers as Nicholls continued to search through her purse which was on her lap.⁴

Nicholls continued searching in her purse for identification as Deputy Taylor returned to the rear of the car out of camera view. While at the back of the car Taylor noticed that there were paper plates on the vehicle and believed this was suspicious so he notified SSD dispatch that he was on a vehicle stop and that he was ok.⁵

Deputy Taylor then returned to the driver’s door as Nicholls put the car in park and took her foot off the brake. When he recontacted Nicholls, Taylor asked her for her driver’s license and she told him that she did not have one but that she did have an ID card. Deputy Taylor placed the papers that Nicholls had previously handed him on the roof, opened the driver’s door, and asked her to step out of the car so he could talk to her. Nicholls handed Taylor her identification card which he immediately placed on the roof of the car. Nicholls unbuckled her seat belt and turned toward the open door but did not exit the car. While seated in the car with both feet on the ground Nicholls dropped her cigarette and stood up next to the driver’s seat. Deputy Taylor, who is alongside the car, told Nicholls that she was not under arrest but that he was going to detain her. As he spoke with her he used his right hand and removed his handcuffs from a pouch in front of his handgun. In response Nicholls said, “oh hell no,” and immediately turned and quickly reentered the car. Before her body was completely inside the vehicle the brake light

³ While the in-car video system was active and captures the incident on video, Deputy Taylor was not wearing his body microphone and the only audio captured was from the microphone inside the patrol vehicle.

⁴ The papers were associated with an arrest/booking at the jail for someone other than Nicholls.

⁵ It was later reported to detectives that Nicholls told her front seat passenger, several times, that she was going to run.

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activated indicating her right foot was on the brake while her left foot was still on the ground outside the car. Deputy Taylor reached into the car, first with his left hand and then his right hand trying to grab Nicholls and gain control of her. During the struggle Taylor's left arm was seen mostly out of the car as though he had grabbed ahold of Nicholls and was pulling her out. The struggle lasted a few seconds before the brake light went off and Nicholls' right hand grabbed the steering wheel. The car then began to move forward with a portion of Deputy Taylor's arms still in the car trying to grab Nicholls.

As the car began to move, Deputy Taylor was able to free his left arm and after approximately 3-6 feet Taylor's upper body was out of the car but not completely clear of it. His torso was alongside the rear passenger door and the driver's door appeared partially closed with his left arm and shoulder blocking the door. It appeared that while Deputy Taylor was free from the interior of the car he used his right hand against the body of the car and rear door window to steady himself. Deputy Taylor was able to stay upright taking a couple stutter steps and a couple full steps before he was free of the car and no longer in danger of being run over. The distance he traveled before he was clear of the car and no longer in immediate danger was approximately 6-10 ft.⁶

Taylor maintained his balance while his momentum carried him forward as the Mercedes continued to accelerate north on Winding Oak Drive toward Madison Avenue. Deputy Taylor told detectives that he was fearful that Nicholls may turn around and run over him, or back up and run over him, so he drew his handgun and fired 5 rounds at the Mercedes, striking the vehicle at least three times. He continued to chase after the car on-foot for a short distance before broadcasting shots fired multiple times on the radio as he ran back to his patrol vehicle and began to chase after the Mercedes. Deputy Taylor was not able to find the Mercedes so he drove the patrol vehicle back to the scene of the shooting.

When the Mercedes was located, the back window of the vehicle was shattered with shards of glass scattered throughout the seats and floor. There was a bullet hole in the trunk of the car just above the left side of the license plate with the bullet recovered in the trunk. A bullet was recovered in the headliner at the front edge of the sunroof above the front passenger visor. Near the center of the windshield there was a sunburst shaped defect that appeared to be a bullet strike with a portion of a bullet recovered on the dashboard below the defect. A bullet was also recovered in the street at the shooting scene.

⁶ The distance is an estimate based on the in-car video.

RECOMMENDATIONS

The review resulted in eight recommendations within four areas; use of force, administrative review, value of video and audio, and general policy considerations.

Use of Force

Legal Issues - Background

The 4th and 14th amendments of the U.S. Constitution provide the foundation for deadly use of force policies in the United States. Federal court guidelines stem from the benchmark 1985 decision of the U.S. Supreme Court in *Tennessee v. Garner*. This ruling held that the Tennessee statute that permitted police officers to use deadly force in arresting non-dangerous fleeing felons was unconstitutional. This ruling sanctioned the use of deadly force only to “protect the officer and others from what is reasonably believed to be a threat of death or serious bodily harm,” (or) “if it is necessary to prevent the escape of a fleeing violent felon whom the officer has probable cause to believe will pose a significant threat of serious physical injury to the officer or others.”⁷

Incident Analysis

The available evidence supports that, at the time Deputy Taylor fired his weapon, there was not a reasonable basis to believe that Nicholls, or the occupants of the vehicle, posed a threat of serious bodily injury or death to Deputy Taylor or others, nor a reasonable belief that a delay in apprehension would pose an immediate threat of death or serious bodily injury. Deputy Taylor stated to detectives that he feared that Nicholls would return and run him over, or back-up and run him over. There was no evidence to suggest that either of these were reasonable possibilities at the time. If Nicholls’ intent was to run Taylor over a U-turn would have been required to return to his location. If Nicholls’ intent was to back-up and run over Taylor it would require stopping or slowing the vehicle in order to shift into reverse. The evidence supports that vehicle did not slow or brake, but rather was under heavy acceleration fleeing the area. If Nicholls had performed either of these maneuvers in an attempt to harm Taylor he would have had time to find a safe location out of the vehicle’s path.⁸

Based upon the evidence it appears Nicholls’ intent was to flee the scene, not to harm Deputy Taylor. Deputy Taylor had Nicholls’ identification and sufficient additional information that would eventually lead to Nicholls’ arrest. The use of deadly force against Nicholls was not reasonable or necessary and placed Nicholls and the two passengers at risk of serious injury or death.

⁷ https://cops.usdoj.gov/pdf/e10129513-Collaborative-Reform-Process_FINAL.pdf

⁸ General Order 2/05 states a department member threatened by an oncoming motor vehicle shall, where reasonable, consider moving out of the vehicle’s path to mitigate the threat.

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Administrative Review

The Sheriff's Department initiated an administrative investigation following the shooting. The final disposition of the administrative investigation has not been determined and the investigation was not part of the OIG review.

Recommendation

1. Based upon the facts of this incident an administrative investigation is appropriate and the Sheriff's Department should continue the investigation to determine possible violations of Department policy.

Value of Video and Audio

The thoroughness of this review was directly related to the availability of video recordings. The involved Sheriff's vehicle was equipped with in-car camera video and audio. The availability of video of the initial contact and the subsequent shooting assisted in the assessment of this incident. The Sheriff's Department requires that officers record, both video and audio, all traffic stops, vehicle pursuits, crimes in progress, or any situation or event that the officer through training and experience believes should be recorded.⁹ The video in Deputy Taylor's vehicle functioned as designed and the in-car audio microphone was active; however, Deputy Taylor was not wearing his body worn microphone.

Recommendations

2. The Sheriff's Department should revise General Order 10/10 (In-Car Camera Systems) to:¹⁰
 - 2.1. Require officers to wear and activate body worn microphones during all traffic stops, all vehicle pursuits, crimes in progress, and any situation or event that the officer through training and experience believes should be recorded.
 - 2.2. Ensure the requirements of General Order 10/10 are met during critical incident reviews.
 - 2.3. Establish a random audit of in-car camera video to ensure officers are complying with the provisions of General Order 10/10.
 - 2.4. Continue the evaluation of body worn cameras.

Decision Making Training

Law enforcement is a profession that requires officers to make decisions under rapidly changing conditions, with limited information, that potentially could result in serious injury or death. How officers respond in these situations is influenced by patterns formed through education, training, and experience.

⁹ Sheriff's Department, County of Sacramento, General Order, In-Car Camera Systems, 10/10 (NEW 9/07)

¹⁰ The Sheriff's Department has completed a review of the in-car camera audio system and identified the need to purchase additional equipment and is nearing completion of issuing new microphones to deputies in the field. Additionally, all field personnel have been reminded of the requirements of the General Order and are expected to fully comply with the order. It is anticipated that recommendations 2.1 – 2.3 will be completed soon after release of this report.

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Recommendations

3. The Sheriff's Department should review training curriculum to include when appropriate the use of Tactical Decision Games¹¹ that challenge participants to successfully resolve problems through quick effective decision making.
4. The Sheriff's Department should review training to ensure the following decisions are included in training sessions involving the use of force:
 - What crime was committed?
 - Who is the threat toward?
 - Who is the threat from?
 - Is the threat actual or potential?
 - What level of resistance is exhibited?
 - Is the subject suicidal or homicidal?

General Policy Considerations

Recommendation

5. Some of the policies reviewed in this report have not been revised in over three years. The Department should establish a policy review cycle that requires all policies be reviewed and reissued or revised on a cycle no longer than three years.

¹¹ Tactical Decision Games developed for the military have been used successfully in a variety of professions including law enforcement, fire service, and medicine.

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APPENDIX

Timeline of Events¹²

TIME	ACTION
3:19:13 a.m.	In-Car camera activated as Deputy Taylor drove North on Winding Oak Drive.
3:19:31 a.m.	As Deputy Taylor approached Long Canyon Drive a subject is seen running west on the north sidewalk of Long Canyon Drive as it curves north onto Winding Oak Drive.
3:19:33 a.m.	A vehicle came into view travelling west on Long Canyon Drive stopping abruptly at the stop sign at Winding Oak Drive.
3:19:35 a.m.	The runner turned back to the car making hand motions at the occupants. The runner was wearing street clothes and appeared to be male.
3:19:39 a.m.	The vehicle inched forward as the runner went to the passenger window and then to the rear passenger door. Both the driver and runner looked toward the patrol car.
3:19:43 a.m.	Deputy Taylor stopped the patrol vehicle, activated his code overhead lights, spot lights, and the interior vehicle microphone became active.
3:19:55 a.m.	Deputy Taylor exited his car and asked, "what are you guys doing?" "What are you doing?" as he walked toward the Mercedes in camera view. The occupants of the Mercedes and the male looked toward the deputy and the driver can be seen smoking a cigarette holding it in her right hand.
3:20:06 a.m.	Deputy Taylor contacted all the parties and the driver continued to smoke as Taylor spoke with the male.
3:20:26 a.m.	Deputy Taylor walked around the rear of the vehicle out of camera view.
3:20:37 a.m.	Deputy Taylor contacted the driver, later identified as Brittney Nicholls, as the male sat in the rear passenger seat.
3:20:46 a.m.	Nicholls reached down and brought up papers and looked through them
3:20:57 a.m.	Nicholls handed the papers to Deputy Taylor
3:21:08 a.m.	Nicholls looked down as if she was looking for something
3:21:36 a.m.	Deputy Taylor returned to the rear of the car and is out of camera view
3:21:45 a.m.	Deputy Taylor while out of camera view broadcasted the vehicle stop.
3:22:02 a.m.	Deputy Taylor walked back to the driver's door as Nicholls placed the car in park and took her foot off the brake.
3:22:26 a.m.	Deputy Taylor put the paper work that was in hand up on the roof of the car.
3:22:29 a.m.	Deputy Taylor opened the driver's door with his left hand
3:22:42 a.m.	Nicholls unbuckled her seat belt and turned but did not exit the car

¹² All times are approximate and based on In-Car camera time displays.

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3:22:48 a.m.	While seated in the car with both feet on the ground Nicholls dropped her cigarette on the ground and then stood up
3:22:50 a.m.	Nicholls turned and reentered the car. Before her body was completely inside the vehicle the brake light activated indicating her right foot was on the brake while her left foot was still on the ground outside the car.
3:22:52 a.m.	Deputy Taylor reached in with his left hand to grab Nicholls.
3:22:53 a.m.	Deputy Taylor's right hand followed into the car.
3:22:54 a.m.	Deputy Taylor's left arm was mostly out of the car as though he had grabbed ahold of something.
3:22:55 a.m.	The brake light went off and Nicholls' right hand grabbed the steering wheel. The car then began to move forward. Deputy Taylor had a portion of his arms in the car as the car was moving.
3:22:56 a.m.	The car moved approximately 3-6 feet and Deputy Taylor's upper body was out of the car but not clear of it. His torso was alongside the rear passenger door and the driver's door appeared partially closed with his left arm and shoulder blocking the door. It appeared that as Deputy Taylor was free from the interior of the car he used his right hand against the body of the car and rear door window to steady himself. He took a couple stutter steps and a couple full steps traveling approximately 6-10 feet.
3:22:57 a.m.	Deputy Taylor maintained his balance while his momentum carried him forward and he drew his weapon. The Mercedes was driving north on Winding Oak Drive toward Madison Avenue.
3:22:58 a.m.	Deputy Taylor pointed his weapon at the fleeing vehicle and began firing 5 rounds at the vehicle.
3:22:59 a.m.	Deputy Taylor ran toward the intersection of Winding Oak Drive and Madison Avenue.
3:23:02 a.m.	Deputy Taylor broadcasted "Shots fired" multiple times.
3:23:13 a.m.	Deputy Taylor ran back to his patrol vehicle and drove after Nicholls.
3:26:31 a.m.	Deputy Taylor returned to the scene.

Table 1 Timeline

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Image of the Area¹³

Stop Scene



¹³ The image of the area is provided for reference only and is not an image of the scene at the time of the shooting.

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Shooting Scene¹⁴



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