



JESSICA R. COOPER
Prosecutor

Paul T. Walton
Chief Assistant Prosecutor

March 29, 2018

D/Sgt. Sam Marzban
Oakland County Sheriff's Office
Special Investigations Unit
1200 N. Telegraph Road
Pontiac, MI 48341

Re: Officer Involved Shooting
232150 Avon Ave, Oak Park

Dear Sgt. Marzban:

On December 18, 2017, an Oak Park Department of Public Safety officer shot and killed a man who was wielding a hatchet. Because the shooting involved one of their officers, Oak Park asked that the Oakland County Sheriff's Office conduct an investigation into the circumstances of the shooting. Having been assigned to conduct that investigation, you presented the results to us for our review.

We reviewed the following materials:

- Oakland County Sheriff's Office(OCSO) Special Investigations Unit Report CR 17-230941
- Oak Park DPS Report CR 17-14064
- Oak Park DPS Dispatch Records regarding the incident
- OCSO Forensic Laboratory Report Lab # 17-3367 including associated reports, photographs, 3-D scan and scene sketch
- OCSO Computer Crimes Unit Forensic Examination Report
- Alliance Mobile Health Prehospital Report
- Oakland County Medical Examiner's Office(OCME) Autopsy Protocol including toxicology report
- Prior Police Contacts with Todd Stone
- LEIN/CCH Records for Todd Stone
- Digital Media including the following
 - Interview with PSO Eric Zarfl
 - Interview with PSO Jay Chwalek
 - Interviews with PSO Bruce Grundeil
 - Interview with Margie Stone and Donald Stone

- Interview with Lt. Ryan Bolton
- OCSO Forensic Laboratory Scene Photos
- OCSO Forensic Laboratory Clothing Photos
- OCME Autopsy Photos
- Oak Park DPS in-car videos for PSOs Zarfl, Chwalek and Grundei and Lt. Bolton
- Oak Park DPS 911 and Radio Traffic
- Flash drive containing OCSO Forensic Laboratory 3-D Scan of scene
- Flash drive containing OCSO Computer Crimes Unit report

A review of these materials reveals that a depressed, highly intoxicated and suicidal Todd Stone called the Oak Park DPS on December 18, 2017 at 6:23pm. Stone told the 911 operator that he was armed with “many weapons” including a hatchet and a gun and that he intended to “blow the whole street up.” Stone assured the operator that this was “[an] emergency situation” and he was “for real about to fuck some shit up.” He said that he was in the den and had “things lined up.” Stone also indicated that he “ain’t going to kill nobody but I would like to shoot up and ... it’s going to harm me, but that’s the point.” Just before he abruptly ended the call, Stone assured the officers that he would walk out of the house without weapons when they arrived.

In response to the 911 call, Oak Park DPS officers were sent to Stone’s home on Avon. They were told that the caller was armed and threatening to shoot up the block. Responding officers were advised that there were numerous contacts for the residence including medical and family trouble runs. Additionally, officers were told that the subject had an Officer Safety Caution.

When the officers arrived at the home, they made contact with Todd Stone’s mother, Margie Stone, who was inside the home. She was asked to step outside. Once outside, she tried to get Mr. Stone to come out of the house but he refused. Officers also asked Mr. Stone to come outside. He replied “No, but you guys can come in.”

The front door opened into a small vestibule which led into the living room and a hallway to the left leading to the bedrooms. The doorway and vestibule were only wide enough for one officer to move through at a time. Sgt. Vernier entered the home first, followed by Officers Grundei and Chwalek. Officer Zarfl followed them at some distance.

As the officers entered the home, Officers Grundei heard Mr. Stone say “Just kill me, I want to die.” Officer Chwalek heard Mr. Stone say “kill me, kill me.” All three officers say they heard Sgt. Vernier repeatedly give loud verbal commands to Mr. Stone to “stop” and “drop the hatchet.” Officer Grundei saw Sgt. Vernier shoot into the home down the hallway but because of where Officer Grundei was standing, he could not see who Sgt. Vernier was shooting at. The officers advanced into the home and found Mr. Stone on the floor at northwest end of the hallway. He had been shot three times in the chest.

Immediately after the shooting, the officers called for paramedics from Alliance Mobile Health to be sent to the home and began providing first aid to Mr. Stone. Efforts to revive Mr. Stone were unsuccessful and he was pronounced dead at the scene.

Oak Park DPS Lt. Ryan Bolton was at public safety headquarters preparing for his shift when he overheard radio traffic regarding the shooting at the Avon address. He drove to the home and was met at the front door by Sgt. Vernier. Sgt. Vernier told Lt. Bolton that he had responded to the scene and was aware that the subject may be armed. When he got to the home, Sgt. Vernier said he made voice contact with the subject inside but could not see him. Sgt. Vernier told Lt. Bolton that the subject refused to come out but stated "You guys can come in if you want."

Sgt. Vernier said that he was the first officer through the door, followed by the other officers. When Sgt. Vernier entered the home he was met by the male subject "wielding a hatchet." Sgt. Vernier told Lt. Bolton that he gave the man verbal commands to drop the hatchet but the man came at him in a threatening manner and he was forced to defend himself. Sgt. Vernier said that he believed that he had fired three shots. Sgt. Vernier said that after the shots were fired the subject fell to the ground, dropping the hatchet. The officers then secured the scene and provided medical aid.

Sgt. Vernier did not provide a statement or agree to be interviewed during the course of the sheriff's office investigation. An interview was requested but an attorney acting on Sgt. Vernier's behalf declined. The only direct statement from Sgt. Vernier about what happened was that given to Lt. Bolton.

The physical evidence found at the scene supports the conclusion that Mr. Stone appeared to attack Sgt. Vernier with the hatchet as he entered the home. Three fired 9mm shell casings were found in the home. One was found in the vestibule, one was found just inside the living room adjacent to the vestibule and one was found at Mr. Stone's feet. The location of the first two fired shell casings is consistent with having been ejected from Sgt. Vernier's pistol as he fired. The location of the third fired shell casing is consistent with either bouncing off the walls of the hallway or being kicked or otherwise projected down the hallway as the officers advanced into the home after the shooting.

The location of Mr. Stone's body also supports the conclusion that he appeared to attack Sgt. Vernier as he entered the home. The body was found at the north end of the hallway leading to the bedrooms about ten feet away from where Sgt. Vernier was standing when the shooting occurred.¹

¹ Officers at the scene reported finding Mr. Stone lying on his back, slightly propped against the wall. They moved him squarely onto the floor in order to perform CPR but otherwise did not move him after the shooting. Once Mr. Stone was declared dead, his body was left there for investigators.

OCSO Forensic Laboratory Specialist Rachel Grace recovered a hatchet found on the floor in the hallway leading to the back bedroom.² Dep. Grace determined, based upon the probable position of Sgt. Vernier at the time of the shooting and of the location where Mr. Stone's body was found, the hatchet was 3.5 feet from where Sgt. Vernier was standing and 4.3 feet from Mr. Stone's feet.

An autopsy was performed at the Oakland County Medical Examiner's Office by Chief Medical Examiner L.J. Dragovic. Dr. Dragovic found three gunshot wounds on Mr. Stone's body. The first was a grazing gunshot wound to the left upper arm which was directly correlated to and in continuity with an atypical gunshot wound to the outer part of the left chest. The wound path continued through the chest passing through the lung, heart, liver, right kidney and ended in the right diaphragm. A mushroomed, partly jacketed bullet was recovered from the end of the wound track, which was from left to right, slightly front to back and slightly downward.

The second gunshot wound entered the left upper chest, proceeded through the heart, diaphragm, abdominal aorta, damaging the vertebral column between the 11th and 12th thoracic vertebrae and ended in the 12th thoracic vertebrae. A mushroomed, partly jacketed bullet was recovered. The wound track was from front to back, slightly left to right and downward.

The third gunshot wound entered the left, upper quadrant of the belly and proceeded through the liver, small and large bowel and ended in the right upper buttock. A mushroomed, partly jacketed bullet was recovered. The wound track was from front to back, left to right and downward.

The bullets that were recovered on autopsy were examined by FLS Rachel Grace along with the fired shell casings recovered at the scene. She compared the fired bullets and fired shell casings and determined that they had been fired by Sgt. Vernier's department issued 9mm pistol.

In a discussion with Dr. Dragovic regarding his findings, he indicated that Mr. Stone's gunshot wounds were consistent with Mr. Stone being slightly bent over and leaning slightly to the left. This orientation would be consistent with Mr. Stone approaching Sgt. Vernier in the doorway from the bedroom hallway and would account for the position of the hatchet found in the hallway after the shooting. Dr. Dragovic's findings support the conclusion that Mr. Stone was approaching Sgt. Vernier's position in the hallway as the officers entered the home.

² According to Officer Zarfl, when he entered the home, he saw the hatchet on the floor in the hallway. As additional personnel entered the home, the hatchet was kicked. Officer Zarfl moved the hatchet out of the way and returned it to its original position once the scene itself was secured.

The toxicology report indicates that Mr. Stone had been drinking heavily and using central nervous system depressants and marijuana. Mr. Stone was found to have a blood alcohol concentration of .283. Diazepam and THC, the active ingredient in marijuana, were both found in his system.

The bullets recovered on autopsy were examined by Dep. Grace along with the fired shell casings recovered at the home and Sgt. Vernier's duty pistol. Dep. Grace determined that Sgt. Vernier's pistol fired the three shots which killed Mr. Stone.

An interview was conducted with Margie Stone. She told investigators that her son was bipolar, was drinking heavily and had recently been denied disability. On the night of the shooting she heard him talking to the police in the den. He said that he couldn't take it anymore and he was going to blow the whole block up.

When she last saw her son, he was sitting on the couch and had his hatchet in his hand.³ He was paranoid. She was speaking to her other son, Donald, on the phone who told her to get out of the house because it did not look good.

Mr. Stone intended to either attack the responding officers or at least to make them think that he was attacking them in order to force them to shoot him. As the officers entered the home, Mr. Stone was waiting in the hallway and moved toward Sgt. Vernier with the hatchet in his hand. Mr. Stone ignored Sgt. Vernier's repeated orders to stop and to drop the hatchet. Finally, Sgt. Vernier fired three shots from his pistol, killing Mr. Stone.

Michigan law provides that a person may use fatal force to protect himself or others where it is reasonable to do so. In determining whether someone acted in lawful self-defense or defense of others, the evidence must be considered according to how the circumstances appeared to the person at the time he acted.

First the person must have honestly and reasonably believed that he or someone else was in danger of being killed or seriously injured. Second, the apparent threat must be of death or serious physical injury. Third, at the time he acted, the person must honestly and reasonably believe that what he did was immediately necessary. See CJI 2nd 7.15 Use of Deadly Force in Self-Defense and CJI 2nd 7.21 Defense of Others – Deadly Force.

In this case, Mr. Stone called 911 and reported that he was armed and intended to "blow up the neighborhood." Responding officers entered the home to investigate having been invited in and were met with what appeared to be a sudden, unprovoked attack by Mr. Stone armed with a hatchet. Mr. Stone ignored Sgt. Vernier's repeated orders to stop and to drop his hatchet. Faced with the prospect of Mr. Stone's attack and his inability to

³ Margie Stone told investigators that she had purchased the hatchet for her son while they were at an army surplus store. She said that Mr. Stone wanted the hatchet for his protection.

quickly retreat because the other officers were piled up behind him in the small entryway, Sgt. Vernier must have honestly and reasonably believed that fatal force was immediately necessary to protect himself and his fellow officers from death or serious injury. Sgt. Vernier was therefore entitled to use deadly force and the resulting death of Mr. Stone constitutes justifiable homicide.

Conclusion

Sgt. Vernier was acting in lawful defense of himself and the other officers when he shot and killed Todd Stone who, armed with a hatchet and ignoring the officer's orders to stop and drop his weapon, presented an immediate threat of death or serious physical injury to the officers. Sgt. Vernier's actions were justifiable under the circumstances and will not result in criminal charges.

I am returning the investigative materials to you.

Respectfully,

Jason D. Pernick
Chief, Warrants Division

JDP/ad
cc: File

FOIA Appeals

Appeal of FOIA Denial. Denial of a FOIA request may be appealed to the head of the public body that denied the FOIA request. (i.e., a FOIA request denied by the FOIA Coordinator of an elected official may be appealed to the elected official responsible for that department.)

For appeals, the requestor should submit a written appeal that specifically states the word "appeal" and identifies the reason(s) for reversal. Within ten business days after receiving the appeal, the head of the public body will do one of the following: (1) reverse the denial (2) uphold the denial, (3) reverse the denial in part and uphold the denial in part, or (4) under unusual circumstances, issue a notice extending up to ten business days the period during which the department head will decide the written appeal. The head of the public body will not issue more than one extension per appeal.

A requestor may appeal a denial of a FOIA request by a FOIA Coordinator, or by the head of a public body, by commencing a civil action. You may begin a civil action in circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

You have the right to receive attorneys' fees and damages as provided in MCL 15.240 if, after judicial review, the court determines that the public body has not complied with MCL 15.235 and orders disclosure of all or a portion of a public record.

Appeal of FOIA Fee. The amount charged for a FOIA fee may be appealed to the head of the public body that requested the fee in response to the FOIA request. (i.e., a FOIA fee requested by the FOIA Coordinator of an elected official may be appealed to the elected official responsible for that department.)

- The requestor should submit a written appeal that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or FOIA. Within ten business days after receiving the appeal, the head of the public body will do one of the following: (1) waive the fee, (2) reduce the fee and issue a written determination to the requesting person indicating the specific basis under FOIA that supports the remaining fee; the determination will include a certification that the statements in the determination are accurate and that the reduced fee amount complies with these procedures and guidelines and FOIA, (3) uphold the fee and issue a written determination to the requesting person indicating the specific basis under FOIA that supports the fee; the determination will include a certification that the statements in the determination are accurate and that the fee amount complies with these procedures and guidelines and FOIA, (4) issue a notice extending up to ten business days the period during which the head of the public body must respond to the written appeal. The head of public body will not issue more than one extension per appeal.

A requester may appeal the decision regarding a FOIA fee by commencing a civil action. A requestor may not commence a civil action regarding a FOIA fee unless he or she first appealed the fee to the head of the public body.