Wisconsin Department of Justice DCI

ACISS Memo to File 16-4472/69

Report Date: 09/29/2016

Primary Information

Description:	**Meeting with Austin Howard Sr.**
Reporting LEO:	**Taylor, Raymond L (Milwaukee Narcotics DCI / Wisconsin Department of Justice DCI)**
Approval Status:	**Approved**
Approved Date:	**10/04/2016**
Approved By:	**Klabunde, David R (DCI Milwaukee Field Office / Wisconsin Department of Justice DCI)**

Synopsis

On September 29, 2016, at approximately 1:02PM , S/A Raymond L. Taylor and S/A Ricardo Tijerino met with Austin Howrd Sr. regarding the Officer involved Death of Austin J. Howard. Prior to this meeting S/A Taylor was contacted by Austin Howard Sr. who requested an updated regarding the investigation.

S/A Taylor and S/A Tijerino travelled to Austin Howard's residence located at [redacted], Milwaukee, WI. Upon arrival at the residence Austin Howard Sr. allowed us inside of his residence and we met inside of the living room area.

During the course of the meeting with Austin Howard Sr. S/A Taylor gave him an update regarding the investigation. Austin Howard Sr. had numerous questions during the course of the meeting which S/A Taylor and S/A Tijerino attempted to answer. S/A Taylor and S/A Tijerino advised Austin Howard Sr. that he spoke with Milwaukee County Deputy District Attorney Kent Lovern regarding this case.

DDA Lovern indicated that he would be willing to meet with Austin Howard Sr. and explain the details his final decision regarding this incident. DDA Lovern indicated that he would be making a decision regarding the incidnet in a couple of weeks. Austin Howard Sr. indicated that he was interested in meeting with DDA Lovern and was exploring his legal options regarding this incident.

S/A Taylor explained to Austin Howard Sr. that he would contact him with a future date to meet with DDA Lovern.
At approximately 1:33pm the interview terminated.

Related Addresses

Address	Relationship
2554 N 5th St Residence #LOWER, MILWAUKEE, Wisconsin 53212	**Crime Scene**
[redacted] MILWAUKEE, Wisconsin 53223	**Interview Location**

Related Subjects

Name	Type	Sex	Race	DOB	Relationship
HOWARD, AUSTIN J	**Person**	**Male**	**Black**	[redacted]	**Deceased**
Howard, Austin Sr	**Person**	**Male**	**Black**		**Interviewed**

Record Status Information

Record Origination Operator:	**Taylor, Raymond L (Milwaukee Narcotics DCI / Wisconsin Department of Justice DCI)**
Record Origination Date:	**09/29/2016 15:16**
Last Update Operator:	**Klabunde, David R (DCI Milwaukee Field Office / Wisconsin Department of Justice DCI)**
Last Update Date:	**10/04/2016 14:06**

Reporting LEO	Date	Supervisor	Date
Taylor, Raymond L (Milwaukee Narcotics DCI / Wisconsin Department of Justice DCI)		**Klabunde, David R (DCI Milwaukee Field Office / Wisconsin Department of Justice DCI)**	**2/8/2017**

Wisconsin Department of Justice DCI

ACISS Case Closure 16-4472/70

Report Date: 01/20/2017

Primary Information	
Description:	**Request case Closure**
Occurence From:	**01/20/2017 00:00**
Occurence To:	**01/20/2017 00:00**
Reporting LEO:	**Taylor, Raymond L (Milwaukee Narcotics DCI / Wisconsin Department of Justice DCI)**
Backup LEO:	**Hale, Jeffrey J (Milwaukee Narcotics DCI / Wisconsin Department of Justice DCI)**
Approval Status:	**Approved**
Approved Date:	**01/23/2017**
Approved By:	**Klabunde, David R (DCI Milwaukee Field Office / Wisconsin Department of Justice DCI)**

Synopsis
Case Closure

Related Addresses	
Address	Relationship
2554 N 5th St Residence #LOWER, MILWAUKEE, Wisconsin 53212	**Crime Scene**

Related Subjects					
Name	Type	Sex	Race	DOB	Relationship
HOWARD, AUSTIN J	**Person**	**Male**	**Black**	[redacted]	**Deceased**

Record Status Information	
Record Origination Operator:	**Taylor, Raymond L (Milwaukee Narcotics DCI / Wisconsin Department of Justice DCI)**
Record Origination Date:	**01/20/2017 14:20**
Last Update Operator:	**Klabunde, David R (DCI Milwaukee Field Office / Wisconsin Department of Justice DCI)**
Last Update Date:	**01/23/2017 10:20**

Reporting LEO	Date	Supervisor	Date
Taylor, Raymond L (Milwaukee Narcotics DCI / Wisconsin Department of Justice DCI)		**Klabunde, David R (DCI Milwaukee Field Office / Wisconsin Department of Justice DCI)**	**2/8/2017**

Narrative begins on the following page.

On Saturday, July 23, 2016 at approximately 2:35AM, the Milwaukee Police Department contacted the WI DOJ-DCI Milwaukee field office regarding an OID (Officer involved shooting) that occurred at 2554 N. 5th St., Milwaukee. SAC McNichol was advised that Milwaukee PD was at 2554 N. 5th St. investigating a homicide with a suspect at large. While on scene at approximately 2:21am, the suspect returned to the scene armed with a large bladed knife and confronted officers in the street. The suspect was ordered to drop the knife and instead raised the knife and began to advance on the officers. Three Milwaukee Police Department Officer's and one Milwaukee Police Sergeant fired their duty weapons discharging multiple shots striking the suspect. Two additional officers deployed their Tasers at the same time. The suspect, later identified as Austin Howard, died as a result of multiple gunshot wounds.

On Friday, September 16, 2016 SAC David Klabunde turned over the completed investigative file to the Milwaukee County District Attorney's Office for review concerning the death of Howard.

On December 27, 2016, SAC Klabunde received a letter from Deputy District Attorney Kent Lovern indicating that the force used by Milwaukee Police Officers in this incident were privileged and justified under Wisconsin Law and deemed the matter concluded. (See Attached letter)

On January 3, 2017 S/A Taylor and S/A Ricardo Tijerino met with Howard family at the their residence and advised them of Deputy District Attorney's Lovern's final decision and provided them with a CD containing the reports and materials regarding the investigation.

S/A Taylor respectfully requests this case to be closed.

This document contains neither recommendations nor conclusions of the Division of Criminal Investigation. It is the property of this Division, and is loaned to your agency. Its contents are not to be distributed outside your agency.

OFFICE OF THE DISTRICT ATTORNEY

Milwaukee County

JOHN T. CHISHOLM • District Attorney

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Daniel G. Murphy
Joshua A. Dryak
Angela D. Cunningham
Jennifer Lindeke Tate

December 22, 2016

Chief Edward Flynn
Milwaukee Police Department
949 N. James Lovell Street
Milwaukee, WI 53233

Re: Use of Force Incident Involving Officers Michael Budziszewski, Jeffrey Kennedy, Bryan Miller, Sean Mahnke, Robert Crawley and Patrick Shannon

Dear Chief Flynn:

This letter summarizes the conclusions of this office regarding the July 23, 2016 use of force by Officers Michael Budziszewski, Jeffrey Kennedy, Bryan Miller, Sean Mahnke, Robert Crawley and Patrick Shannon, which resulted in death to Austin Howard. For the reasons indicated below, I find that Officers Budziszewski, Kennedy, Miller, Mahnke, Crawley and Shannon lawfully used deadly force in this incident.

The investigation of this matter determined that at approximately 9:30 p.m. on July 22, 2016, Milwaukee police officers responded to a strong-armed robbery at 2554 N. 5th Street. The complainant was a female named [redacted] who identified Austin Howard as her assailant. Howard had worked for [redacted] as a handyman on some of her properties and on July 22, Howard was demanding money or valuables from [redacted] in exchange for work performed. An argument ensued and Howard repeatedly struck [redacted] causing multiple visible bruises to her face. Willie Williams and others came to [redacted] aid, and Howard ultimately fled the scene. At approximately 12:15 a.m. on July 23, Howard returned to the residence at 2554 N. 5th Street, confronted Williams, and according to witnesses, fatally stabbed Williams multiple times with a knife. Howard again fled the scene as emergency responders arrived to treat Williams.

At approximately 2:20 a.m., Milwaukee police officers and detectives were again at this residence investigating the stabbing of Willie Williams. Howard returned to the scene armed with the knife believed to be the one used to stab Williams and verbally confronted officers in the middle of 5th Street. This encounter was captured on

SAFETY BLDG., RM. 405, 821 W. STATE STREET, MILWAUKEE, WI 53233-1485
PHONE: 414-278-4646 FAX: 414-223-1955

Milwaukee police body camera. The above-referenced uniformed police officers, with tasers and firearms drawn, repeatedly ordered Howard to drop the knife as he continued to walk toward them. Howard acknowledged the commands by shouting, "Or what?" Howard walked closer to the officers, ignoring their repeated commands to drop his weapon. Howard held the 10 inch knife in plain view and made sudden movements much closer to the officers, appearing to close within fifteen feet of some of them. Simultaneously, the officers deployed tasers and fired their service weapons. Officer Shannon and Sgt. Crawley deployed their tasers. Officer Budziszewski fired eleven shots, Officer Kennedy fired three shots, Officer Miller fired six shots, and Officer Mahnke fired eight shots. The officers backed up quickly as they discharged their weapons, indicating their concern about his movements toward them. Howard was struck numerous times and pronounced dead at the scene.

Several citizens observed this encounter and gave accounts consistent with the video recording. In fact, at least one citizen is heard on the video imploring Howard to drop the knife. It is also noteworthy that both officers employed both tasers and firearms against Howard, as it is customary for officers to provide lethal cover for other officers employing tasers in the event the taser proves ineffective.

[redacted]

Wisconsin Statutes Section 938.48(1) states as follows:

> A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

This is a two-part test, with subjective and objective components.

1) Did the officer have an actual subjective belief that deadly force was necessary to prevent imminent death or great bodily harm to himself or others?
2) Was that belief objectively reasonable?

See State v. Head, 2002 WI 99, 255 Wis. 2d 194, 648 N.W.2d 413.

The evidence in this case supports the use of force by the officers under these circumstances. Milwaukee police twice responded to this address within three hours to investigate crimes of violence committed by Howard. When Howard returned to

the residence at 2:20 a.m., the officers at that residence knew he was the identified assailant in a serious assault and a homicide, so they knew they were confronting a violent individual. Howard clearly was in possession of a deadly weapon, a ten-inch knife, so he posed an immediate threat to anyone around him, particularly given the violence he exhibited earlier that night. In light of his history, his refusal of repeated police commands to discard his weapon, and his continued advancing toward the officers, the officers made the lawful decision under these circumstances to use deadly force against Howard.

Therefore, this office finds that the force used by Officers Budziszewski, Kennedy, Miller, Mahnke, Crawley and Shannon is privileged in self-defense and justified under Wisconsin law. Our review of the matter is concluded.

Sincerely,

Kent Lovern

Kent Lovern
Chief Deputy District Attorney

cc: Asst. Chief Carianne Yerkes
Attorney Jaclyn Schwartz

Wisconsin Department of Justice DCI

ACISS Investigative 16-4472/71

Report Date: 01/23/2017

Primary Information

Description:	**Meeting with Howard Family**
Occurence From:	**01/03/2017 16:49**
Occurence To:	**01/03/2017 16:58**
Reporting LEO:	**Taylor, Raymond L (Milwaukee Narcotics DCI / Wisconsin Department of Justice DCI)**
Backup LEO:	**Tijerino, Ricardo E SA (Milwaukee Special Assignments DCI / Wisconsin Department of Justice DCI)**
Approval Status:	**Approved**
Approved Date:	**01/23/2017**
Approved By:	**Klabunde, David R (DCI Milwaukee Field Office / Wisconsin Department of Justice DCI)**

Synopsis

On January 3, 2017, 4:49PM S/A Taylor and S/A Ricardo Tijerino went to [redacted], Milwaukee, WI., to meet with Austin Howard Sr. Upon going to the residence S/A Taylor and S/A Tijerino met with Howard and advised him that no criminal charges will be filed against the officers in this incident. S/A Taylor also provided Howard with digital and paper reports regarding the investigation of this incident.

Related Addresses

Address	Relationship
2554 N 5th St Residence #LOWER, MILWAUKEE, Wisconsin 53212	**Crime Scene**
[redacted] MILWAUKEE, Wisconsin 53223	**Victim's Address**

Related Subjects

Name	Type	Sex	Race	DOB	Relationship
HOWARD, AUSTIN J	**Person**	**Male**	**Black**	[redacted]	**Deceased**
Howard, Austin Sr	**Person**	**Male**	**Black**	[redacted]	**Interviewed**

Record Status Information

Record Origination Operator:	**Taylor, Raymond L (Milwaukee Narcotics DCI / Wisconsin Department of Justice DCI)**
Record Origination Date:	**01/23/2017 09:45**
Last Update Operator:	**Klabunde, David R (DCI Milwaukee Field Office / Wisconsin Department of Justice DCI)**
Last Update Date:	**01/23/2017 10:23**

Reporting LEO	Date	Supervisor	Date
Taylor, Raymond L (Milwaukee Narcotics DCI / Wisconsin Department of Justice DCI)		**Klabunde, David R (DCI Milwaukee Field Office / Wisconsin Department of Justice DCI)**	**2/8/2017**

Narrative begins on the following page.

On January 3, 2017, 4:49PM S/A Taylor and S/A Ricardo Tijerino went to [redacted] Street, Milwaukee, WI., to meet with Austin Howard Sr. The purpose of this meeting was to advise Howard of the decision by the Milwaukee County District Attorney's Office regarding the Officer involved shooting of his so Austin Howard Jr. S/A Taylor and S/A Tijerino met with Howard and advised him that no criminal charges will be filed against the officers involved in this incident. S/A Taylor also provided Howard with digital and paper reports regarding the investigation. S/A Tijerino's provided Howard with contact information if he had any additional questions.

At approximately 4:58PM the contact was concluded.

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