

POLICE CIVILIAN REVIEW BOARD

Investigation Report

Internal Affairs Case Number S 2015-0001

Complainant: (Race/Gender)	C- James Barker (W/M) (Deceased)
Alleged Policy Violation:	Improper Use of Force: OIS (Fatality)
Subject Officer: (Race/Gender)	S- Off. Mathew Taylor (W/M)
Subject Officer's Years of Service:	S- 1 years
Date of Alleged Incident:	1/8/15
Date Investigation Requested:	1/8/15
Date Filed with Internal Affairs	1/8/15
Date Investigation Completed:	2/4/15
Panel Members:	Greg Bambo Dale Evans Xavier Gondra Tyson Carbaugh-Mason Ginger Fletcher
Date of Panel Meeting:	3/6/15
Interviews Conducted:	3

It should be noted that the narratives contained in this report are summaries that have been paraphrased from interviews. They should not be interpreted as verbatim transcripts. The narrative is intended to accurately communicate the substance of the major points in each interview.

Synopsis:

This matter has been widely reported upon with the true names of the participants stated in the various media involved in reporting upon it. Therefore, CRB will not redact the names as is generally done since the names involved are already known in the public sector. This OIS (Officer Involved Shooting) was investigated extensively by the District Attorney's (DA's) office using their established protocol for these matters. The following comes directly from the District Attorney's letter to the SLCPD and has been released publicly:

FACTS

The following facts were developed from the OICI protocol investigation. Should additional or different facts subsequently come to light, the opinions and conclusions contained in this letter may likewise be different.

On Monday, January 5, 2015 a resident who lived in the area of 2nd Avenue and I Street in Salt Lake City, Utah saw a person who he described as “suspicious.” Complainant R. H. called the Salt Lake City Police Department and said he saw a male looking into parked cars. In a subsequent interview with OCIC protocol investigators, R. H. said the male came over to R. H.’s residence and knocked on his window. The police arrived in the area a short time later but did not see anyone in the area.

On Thursday, January 8, 2015, R. H. said he saw the same male person as before, this time with a snow shovel walking east on 2nd Avenue. R. H. said that the male went to R. H.’s neighbor’s door; R. H. asked the male if he could help him. R. H. said the male replied that he was shoveling snow off walkways. R. H. said he told the male that the residents shovel their own sidewalks. R. H. said the male walked away. R. H. called the police and told them he was “ninety-five percent sure” that the male to whom he just talked was the same person about whom he called police three days earlier.

Office Taylor Interview

On January 8, 2015, SLCPD Officer Taylor³ was on duty working patrol in his police car and wearing his uniform. In a subsequent interview with OICI protocol investigators, Officer Taylor said he saw a dispatch assignment on his mobile computer. The dispatch log shows that R. H. had called about a “male walking around [possibly] the same guy who was looking on [sic] cars the other day.” Officer Taylor said he took the assignment and arrived in the area of 88 I Street.

Officer Taylor said he made contact with R. H. who pointed to the male across the street who was standing on the front porch of the home at 88 I Street. Officer Taylor said he walked across I Street and made contact with the person. Officer Taylor said he approached the individual subsequently identified as James Dudley Barker. Officer Taylor asked Mr. Barker what he was doing in the area. Officer Taylor said Mr. Barker had a snow shovel and explained he was shoveling snow in the area.

Officer Taylor said the encounter with Mr. Barker “went south” as Mr. Barker began to yell at him. Officer Taylor said he called for back-up officers to assist him. Officer Taylor said the encounter went from “zero to one hundred” as Mr. Barker yelled at him and stuck his finger in Officer Taylor’s face. Officer Taylor said he was surprised that Mr. Barker got “so upset” by Officer Taylor asking who Mr. Barker was and what he was doing in the area. Officer Taylor said he was going to go “hands on”⁴ with Mr. Barker and Mr. Barker backed up.

Officer Taylor said Mr. Barker took a “batter’s stance” with the snow shovel. Officer Taylor said as he (Officer Taylor) went to run off the porch, Mr. Baker hit him with the snow shovel.

Officer Taylor said he only felt one strike from the snow shovel.⁵ Officer Taylor said he fell off the porch and landed on his right side. Officer Taylor said that when he was on the ground on his side, he “knew something was wrong with his right arm” and that he was in a lot of pain. Officer Taylor said that he saw Mr. Barker come off the porch at him.

Officer Taylor said he grabbed his Taser, but feared it wouldn’t work “with his clothing but it was all [Officer Taylor] had available” because of the condition of Officer Taylor’s arm and Officer Taylor lying on his right side. Officer Taylor said Mr. Barker jumped on him and hit Officer Taylor’s Taser out of his hand. Officer Taylor said that when Mr. Barker knocked the Taser out of Officer Taylor’s hand, Officer Taylor “knew [he] was in a lot of trouble.”

Officer Taylor said he was especially concerned that Mr. Barker continued to fight with Officer Taylor. Officer Taylor said he had been in physical altercations in his career before, but suspects had fought with him to get away. Officer Taylor said that Mr. Barker did not flee after he hit Officer Taylor, but rather continued to fight Officer Taylor. Officer Taylor said he believed Mr. Barker didn’t want to escape.

Officer Taylor said he felt Mr. Barker grab his “gun or holster at least twice.” Officer Taylor said: “I know if he gets my gun he’s going to kill me.” Officer Taylor said Mr. Baker: “had knocked my Taser out, still coming at me, and anybody attacking me that hard, ... like I said, I’ve had guys fight me but they run away—when I got knocked off he had plenty of time to run away: he’s still coming, he’s grabbing for my gun his one goal was to try and kill me.”

Officer Taylor said that he pushed Mr. Barker off of him and drew his firearm. Officer Taylor estimated that Mr. Barker was a couple of feet away. Officer Taylor said he fired three shots and saw Mr. Barker go down. Officer Taylor said he evaluated Mr. Barker to make sure Mr. Barker stayed down. Officer Taylor called “shots fired” on the radio. Officer Taylor said he handcuffed Mr. Barker and retrieved his Taser. Officer Taylor said other police officers arrived as well as medical units who evaluated Mr. Barker and pronounced Mr. Barker deceased.

Officer Taylor described the injuries he sustained in the incident. Officer Taylor said he suffered a radial head fracture in his right arm at the elbow where the joint meets. Officer Taylor said his left foot was broken and tendon or ligament pulled in his left foot. He said his left arm was bruised from where he was hit with the snow shovel.

Other Witness Statements

Witness K. M. was driving north on I Street when she heard and saw Officer Taylor and Mr. Barker fighting. In a subsequent interview with OICI protocol investigators, K. M. said she realized one of the men in the fight was a police officer when she saw his uniform. K. M. told protocol investigators that she saw the police officer being hit by multiple strikes with the snow shovel. K. M. said that the officer was being “beat down the stairs,” and that the officer ended up in a “crouched position,” with his “arm up in a defensive position.” K. M. said the male was “beating [the officer] so hard,” and estimated that the officer was hit with the shovel seven to ten times. K. M. said it looked to her like the officer “was in real trouble.” K. M. said she saw the snow shovel break during the assault. K. M. said there was a pause during the assault and she saw the police officer shoot the male. She said she heard three shots.

Witness R. G. was driving south on I Street near 2nd Ave. In a subsequent interview with OICI protocol investigators, he said he was stopped at the intersection when he saw a person jump off a porch and land about ten feet from the porch. R. G. said he saw a second person jump on top of the first and tackled him. R. G. said the second person came down on the first person and “took him right down.” R. G. said he initially didn’t realize one of the men was a police officer. R. G. said both men wrestled on the ground for about ten seconds after which he heard gun shots. R. G. said that the person he eventually recognized as a police officer was on the ground when he fired his weapon.

³Officer Taylor is a Crisis Intervention Trained (“CIT”) police officer.

⁴Officer Taylor said he planned on “just getting [Mr. Barker] in cuffs” after Mr. Barker started yelling and put his finger in Officer Taylor’s face. Officer Taylor said he was continuing his investigation for Mr. Barker failing to give Officer Taylor his name. Officer Taylor said he was going to put Mr. Barker in “handcuffs because he was getting so agitated.”

⁵The statements of other witnesses and physical evidence recovered from the scene tend to indicate that Mr. Barker struck Officer Taylor numerous times with the snow shovel, as outlined in more detail below.

Evidence:

E1: Officer Taylor was wearing a body camera which was initiated upon his approach to Mr. Barker. This video has been publicly played numerous times and it captures the initial contact between the two men up until the time that Mr. Barker swings the snow shovel, separating the battery from the camera, resulting in the recording being stopped. A review of that video shows a rather mundane interaction up until the point wherein the officer asks Mr. Barker for his name, at which point Mr. Barker becomes verbally and visibly agitated, which proceeds to outright anger. As Officer Taylor reaches towards Mr. Barker, Mr. Barker assumes a “batter’s stance” with the shovel cocked behind him, such as would be seen by a person attempting to hit a baseball with a bat. This investigation froze the recording at that point and due to being back lit by the setting sun; Officer Taylor’s gun can be seen in outline in its holster, on his hip. Mr. Barker is seen swinging the snow shovel which struck Officer Taylor, not only disabling the body camera but causing the officer to fall from the porch onto the ground. The video remains on for a few seconds and then stops. *(Note: the camera remained upon the officer however the battery was found a short distance from the officer and this separation clearly caused the recording to stop.)*

E2: Photographs were made of the scene and in these photographs Mr. Barker is seen, deceased and lying face down with his hands cuffed behind his back. *(Note: handcuffing individuals is routinely done even after an OIS.)* The battery from Officer Taylor's body camera was photographed lying in the snow. Photographs were made of the spent shell casings lying on the ground. Photographs of a destroyed snow shovel were also captured with the shovel portion being blue in color, made of plastic, with a metal strip running the length of the lip of the shovel. The handle of this shovel appears to be made of aluminum with a black handle on top and it retained only the top portion of the shovel blade itself as the rest of the shovel blade, including the lip which had the metal strip still attached, was found broken, in pieces, within the yard. Photographs were made of blood droplets in the snow/yard but based on the photos alone, it is not known from whom the blood came from.

E3: Photographs were made of Officer Taylor prior to being treated at the hospital and they show dirt on his uniform as well as cuts to the uniform. It was noted that his duty weapon was worn on his right hip with his Taser on his left hip/side, confirming the analysis of the silhouetted gun was holstered as Mr. Barker began to swing at him.

E4: Autopsy photographs were taken of Mr. Barker.

E5: Photographs were made of the ballistic vest worn by Officer Taylor on the day in question and there is damage to the vest consistent with being struck by a sharp object. There is no way to know if this damage could have happened at another time but due to the objective of wearing a vest, officers generally inspect and replace their vest when they become damaged as they are less effective in stopping bullets when worn in a damaged state.

Allegations:

Due to the fact that this is an OIS, this case automatically is reviewed with the issue being; was Off. Taylor "within policy" or "not within policy" as it relates to his decision to fire his duty weapon.

Definitions

Unfounded: The reported incident did not occur.

Exonerated: The employee's actions were reasonable under the circumstances.

No determination is possible: There is insufficient evidence to support a conclusion as to whether or not the employee violated policy.

Sustained: The employee's action(s) are in violation of the policy or procedure of the Police department.

Analysis and Recommendation:

This OIS is a tragedy in that a citizen of Salt Lake City died during an interaction with an officer of the SLCPD. Many accounts in the media have praised Mr. Barker and it is truly tragic that he died as a result of this interaction. In reviewing Officer Taylor's actions, this investigation is examining his actions in light of the policy manual of the SLCPD and based upon what the

officer knew at the time that the encounter occurred. In a nutshell, the “Deadly Force” policy of the SLCPD, as well as the same policy covered by law in the State of Utah, states in part that an officer can use deadly force in defense of himself, or others, from the threat of death or serious bodily injury.

In examining the situation, it was shown that Officer Taylor was dispatched to a suspicious person call and made contact with another local resident who pointed out Mr. Barker as the involved party. Contact was made with Mr. Barker and it initially was a routine interaction, the type of which happens countless times a day across the city. After more than a minute, the officer asks Mr. Barker for his name which Mr. Barker refuses to provide for reasons unknown. The officer cites his legal reason for requesting his name, but this does not satisfy Mr. Barker, who continues to refuse to give his name. As the video shows, Mr. Barker points his finger directly into the officer’s face, raises his voice dramatically at which time the officer calls for assistance. Officer Taylor appears to reach towards Mr. Barker, as he explained to “go hands on” with him, with Mr. Barker backing away from him. *(Note: some speculation has been raised that the officer was reaching for the snow shovel, which could be gathered from only seeing the video, however the officer denies that stating he was going to physically grasp Mr. Barker.)* As the officer reached towards him, Mr. Barker assumes a “batters stance” with the snow shovel cocked behind him, followed quickly with a swing that made contact with the officer. There is no way to know exactly how many times Mr. Barker struck Officer Taylor but there were multiple strikes as related by the officer, evidence and witness statements. The officer fell from the porch, most likely a combination from being struck by the shovel and his effort to evade the shovel and during the struggle suffered a broken arm and foot.

Once off the porch, the officer and witnesses confirm Mr. Barker was following him and continuing the striking of the officer with the shovel. Evidence shows the shovel blade, which was made of plastic but had a metal strip the length of the lip of the shovel, was shattered in the yard. Officer Taylor recounts attempting to deploy his Taser, even though he believed it would not be effective due to the clothes being worn by Mr. Barker. In any case, the officer reported that the Taser was knocked out of his hands by Mr. Barker. The officer then reported that Mr. Barker attempted to gain control of his duty weapon, at which time the officer was able to push him away and fired his weapon in order to protect his own life.

Officer Taylor explained that in his experience, he has been in physical encounters with suspects but in every case when the suspect was able to gain separation from the officer, they fled. As the officer explained, Mr. Barker continued to assault him and attempted to gain control over the officer’s weapon. At this point, with all that had occurred, the officer felt that his life was in danger and that he was going to be shot, so he gained space from Mr. Barker, drew his weapon and shot him. Tragically, Mr. Barker died of his wounds.

In reviewing the facts, it was also noted that many public accounts relate that Mr. Barker was a peaceful and solid member of his community and this investigation believes that to be true. However, on the day in question, for reasons not understood, Mr. Barker was captured on videotape during this incident reacting in a highly agitated and aggressive manner. The videotape captures an enraged person who swung a snow shovel at an officer and as the fight unfolded, continued his assault upon the officer until the officer fired at him.

The issue at hand is rather straight forward; were the actions of Officer Taylor reasonable in that he used deadly force based upon his belief that his life was in threat of death, or serious bodily injury?

Panel Findings:

As to the allegation that Officer Taylor used his duty weapon to shoot and kill Mr. Barker, the Panel makes a finding of Within Policy.

The Panel makes a finding that this matter is in the public eye and therefore recommends that this report be made public.

Tyson Carbaugh-Mason
Panel Chair

Date 2/6/15