

POLICE CIVILIAN REVIEW BOARD

Investigation Report

Internal Affairs Case Number S 2019-0004

Complainant: (Race/Gender)	C- Michael Anthony Brand (W/M) (Deceased)
Alleged Policy Violation:	Excessive Force: OIS/Fatal
Subject Officer: (Race/Gender)	S- Det. Michael McKenna (W/M) S1- Off. Scott Robinson (W/M)
Subject Officer's Years of Service:	S- 8 years S1-3 years
Date of Alleged Incident:	7/15/19
Date Investigation Requested:	7/16/19
Date Filed with Internal Affairs	7/16/19
Date Investigation Completed:	4/27/20
Panel Members:	Turner Britton Dennis Busch Amber Liechty Sandy Walsh Teresa Garrett
Date of Panel Meeting:	5/1/20
Interviews Conducted:	6

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 is an Officer Involved Shooting wherein the citizen died of the injuries he sustained. This matter was investigated by the SLCoDA's Office along with the employees of UPD. The DA's letter was publicly released to the media and it contained the names of the involved individuals. Therefore, unlike other CRB reports, the names of the involved parties will not be redacted as is customary in CRB reports.

Since the DA/UPD letter has been released, most of this report will utilize that document in setting out the circumstances of the incident and for the statements of the involved parties.

The following comes from the DA's letter:

On July 15, 2019, police dispatchers received a call that a person (later identified as Michael Anthony Brand) was threatening staff at the Sunrise Metro Apartments² located at 580 South, 500 West in Salt Lake City, Utah. The caller told dispatchers that Mr. Brand, who had been diagnosed with psychiatric disorders, was more out of control than usual. Sunrise Metro staff requested CIT³ officers to respond. SLCPD dispatched CIT trained and certified Police Officers Shawn Bennett, Scott Robinson⁴ and Det. Mike McKenna.

When the officers arrived at the apartment complex, they met with the complainant, a staff member at Sunrise Metro. The staff member informed the officers that Mr. Brand was acting abnormally and being aggressive and threatening towards staff. The staff member told police that Mr. Brand was having a psychological problem.

The staff member accompanied the police officers to Mr. Brand's front door on the fourth floor of the apartment complex. Officer Robinson and Officer Bennett stood to the left of the door; Det. McKenna and the staff member stood to the right. Officer Robinson knocked on the door. Shortly thereafter, the front door opened and Mr. Brand stepped out, holding a raised gun, which he pointed at the staff member and then at Det. McKenna. Officer Robinson believed Mr. Brand was about to shoot and kill Det. McKenna, so Officer Robinson drew his firearm, pointed it at Mr. Brand and fired three times. In firing at Mr. Brand, Officer Robinson knew Det. McKenna was in the line of fire. Det. McKenna was hit by one of Officer Robinson's shots.

Officer Robinson handcuffed Mr. Brand and started first aid; Officer Robinson directed Officer Bennett to render first aid to Det. McKenna. As this was happening, a second male from inside the apartment appeared wearing a knife on his hip. Officer Robinson directed Officer Bennett to detain the second male which he did.

Mr. Brand died from his gunshot injuries; Det. McKenna was treated and survived and recovered from his gunshot injury.

FACTS DEVELOPED DURING OICI INVESTIGATION

As noted previously, following Officer Robinson's use of deadly force, SLCPD properly initiated the OICI protocol, *see* Utah Code Ann.

§ 76-2-408(2)-(3), and protocol investigators were called in to conduct an independent investigation of Officer Robinson's weapon discharge. After that, the protocol investigation's independent investigative findings were presented to the D. A.'s Office to screen for possible criminal charges.

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 July 15, 2019, SLCPD dispatchers received a call that a person (later identified as Michael Anthony Brand) was threatening staff at the Sunrise Metro Apartments located at 580 South, 500 West in Salt Lake City, Utah. The caller was a staff member who was familiar with Mr. Brand's mental health history and his behavior at the apartment complex. The staff member told dispatchers that Mr. Brand, who has been diagnosed with psychiatric disorders, was more out of control than usual and had threatened staff members. Because of Mr. Brand's mental health history and status, Sunrise Metro staff requested CIT officers to respond. SLCPD dispatched CIT trained and certified police officers Shawn Bennet, Scott Robinson and Det. Mike McKenna.

When the officers arrived at the apartment complex, they met with the staff member. The staff member informed the officers that Mr. Brand was acting abnormally (sic) and being aggressive and threatening towards staff. The staff member told police that Mr. Brand was having a psychological problem. Det. McKenna recounted that the staff member didn't seem overly concerned with the situation.

The staff member accompanied the police officers to Mr. Brand's front door on the fourth floor of the apartment complex. Officer Robinson and Officer Bennett stood to the left of the door; Det. McKenna and the staff member stood to the right. Officer Robinson knocked on the door and stepped to the side of the door. Shortly after knocking, the front door opened. Mr. Brand appeared in the doorway. He was holding a raised gun in his hand. Mr. Brand pointed the weapon at the staff member and then at Det. McKenna. Mr. Brand partly emerged from the apartment. The staff member turned and ran; Det. McKenna started to draw his gun. Officer Robinson, on the other side of the door, believed Det. McKenna was going to be shot and killed, so he drew his firearm, pointed it at Mr. Brand and fired three times. In firing at Mr. Brand, Officer Robinson knew Det. McKenna was in the line of fire. Det. McKenna was hit by one of Officer Robinson's shots.

Officer Robinson handcuffed Mr. Brand and started first aid; Officer Robinson directed Officer Bennett to render first aid to Det. McKenna. As this was happening, a second male from inside the apartment appeared wearing a knife on his hip. Officer Robinson directed Officer Bennett to detain the second male which he did.

Mr. Brand died from his gunshot injuries; Det. McKenna was treated and survived and recovered from his gunshot injury.

Witness Statements

Officer Robinson

On July 25, 2019, OICI protocol investigators interviewed Officer Robinson with his attorney present. Officer Robinson said that he was on duty on July 15, 2019; police dispatchers requested he respond to the Sunrise Metro Apartments. Officer Robinson said dispatchers told him a resident was having a psychological problem and threatening staff. Officer Robinson said that due to the nature of the call, he asked dispatchers⁸ to send CIT officers. Dispatchers started Det. McKenna, and Officer Bennett to respond to the call.

Officer Robinson said he, SLCPD Officer Bennett, and SLCPD Det. McKenna arrived at the apartment complex and met with the complainant, a staff member at Sunrise Metro. Officer Robinson said the staff member told the officers that a male resident (later identified as Michael Anthony Brand) was acting abnormal and being aggressive towards staff. Officer Robinson said he and the other three went to the fourth floor of the apartment complex to Mr. Brand's room.

Officer Robinson said that the group arrived at Mr. Brand's front door. The door opens to a hallway balcony bordered by a railing that's open to the outside. Officer Robinson said he and Officer Bennett lined up on the left side of the door and Det. McKenna and the staff member lined up on the right side of the door. Officer Robinson said the front door was closed.

Officer Robinson said he knocked on the front door. Officer Robinson said he didn't have time to announce "Police," when the door opened. Officer Robinson said the first thing he saw as the door opened was a gun extending out the open door. Officer Robinson said the gun was at shoulder height and canted. Officer Robinson said the man holding the gun (later identified as Mr. Brand) pointed the gun at the staff member and then at Det. McKenna. Officer Robinson said he saw the staff member cover her face with her hands.

Officer Robinson said he believed Det. McKenna was going to

be shot and killed by the gun. Officer Robinson said he knew Det. McKenna was in his line of fire, but Officer Robinson said he believed he needed to use deadly force against Mr. Brand to save Det. McKenna's life. Officer Robinson said he fired his own handgun three times at Mr. Brand. Officer Robinson said he knew he had shot Det. McKenna and said to him: "that was me [who shot you] sorry, I thought [Mr. Brand] was going to kill you."

Officer Robinson said Mr. Brand was on the ground, having been hit by Officer Robinson's rounds. Officer Robinson said he placed Mr. Brand in handcuffs and started first aid. Officer Robinson said as he did so, another male inside the apartment came to the front door. Officer Robinson said he saw the man was wearing a knife on his hip. Officer Robinson said he instructed other police officers who had arrived to secure the second male. Officer Robinson said a SLCPD sergeant arrived and escorted Officer Robinson from the scene.

Det. McKenna

On July 25, 2019, protocol investigators interviewed Det. McKenna. Det. McKenna said that on July 15, 2019, he responded to the Sunrise Metro Apartments on a call to assist a psychiatric problem. Det. McKenna said he was asked to respond because he was a CIT certified police officer. Det. McKenna said he arrived about the same time at Officer Robinson and Officer Bennett.

Det. McKenna said they met with the complainant, a Sunrise Metro staff member, in the lobby of the apartment complex. Det. McKenna said that, to him, the staff member did not seem overly concerned about the situation. Det. McKenna said he and the other three went to the apartment where the male resident lived.

Det. McKenna said when the group arrived at the front door, he and the staff member stood to the right of the door, and Officer Robinson and Officer Bennett stood to the left. Det. McKenna said Officer Robinson knocked on the front door and then stepped to the side. Det. McKenna said a couple of seconds passed and the door opened. Det. McKenna said when the door opened, a man came out with a black handgun held up in his hand. Det. McKenna said the male came out aggressively and the gun was raised. Det. McKenna said he did not remember seeing the man point the weapon at anyone.

Det. McKenna said he immediately went to draw his weapon and he heard three gunshots ring out. Det. McKenna said he felt a pain in his left arm. Det. McKenna said he remembered being scared and

thought to himself: "oh crap, this is real."

Det. McKenna said he saw the man with the gun fall down. Det. McKenna said he heard Officer Robinson say: "Mike, it was me, I'm sorry, I had no other choice, the guy's glm was pointed right at your head." Det. McKenna said he knew he had been shot. Det. McKenna said when the man came out from the apartment with a raised gun in his hand, he believed the man was going to shoot one of them.

Officer Bennett

On July 25, 2019, protocol investigators interviewed Officer Bennett. Officer Bennett said that on July 15, 2019, he responded to the Sunrise Metro Apartments on a call to assist with a man threatening staff at the complex. Officer Bennett said that he arrived with Officer Robinson and Det. McKenna and met with a female staff member who briefed the officers on the situation. Officer Bennett said the staff member told the officers that the man was schizophrenic and was making threats and being aggressive.

Officer Bennett said the three officers and the staff member made their way to the fourth floor where the man lived. Officer Bennett said the staff member showed the officers in which apartment the man lived. Officer Bennett said he and Officer Robinson stood to one side of the door and Det. McKenna and the staff member stood to the other side. Officer Bennett said Officer Robinson knocked on the door.

Officer Bennett said the door opened and he heard someone say: "Whoa!" Officer Bennett said he saw Det. McKenna and the staff member step back from the door. Officer Bennett said he saw a black pistol come from behind the door and point at Det. McKenna and the staff member. Officer Bennett said he heard Officer Robinson yell: "gun, gun, gun!" Officer Bennett said he heard several shots fired but couldn't say for sure how many. Officer Bennett said he saw the man with the gun drop to the ground and start yelling.

Officer Bennett said he became aware that Det. McKenna was shot and he started first aid on Det. McKenna. Officer Bennett said Officer Robinson stayed with the man who was down and he, Officer Bennett went downstairs with Det. McKenna.

Witness B. P.

Protocol investigators interviewed a woman we refer to as B. P.

who was a staff member at the Sunrise Metro Apartments. B. P. said she was working as a case manager at the facility.

B. P. said on July 15, 2019, she had been dealing with Michael Brand, a resident who B. P. described as "distraught" that morning. B. P. said Mr. Brand had been "ranting," and he was mostly incoherent. B. P. said Mr. Brand had been crying, hugging people, and upset. B. P. said another staff member, the senior case manager at the time, called the SLCPD non-emergency number to report the problem.

B. P. said that after the senior case manager had called the police, Mr. Brand had gone up to his apartment. B. P. said the police officers arrived a few minutes after Mr. Brand went to his apartment. B. P. said she told the police officers about Mr. Brand and the problem. B. P. said she went with the three officers to show them where Mr. Brand's apartment was.

B. P. said that one of the officers knocked on Mr. Brand's apartment door. B. P. said Mr. Brand opened the door holding a gun which he pointed right at her face. B. P. said she quickly moved out of the way and heard gunshots. B. P. said she didn't know which officer fired his gun and which officer had been shot.

When asked about whether she had information to help explain why Mr. Brand was having a problem that morning and why he might have done what he did with police, B. P. said Mr. Brand's friend had died a week before the OICI and that Mr. Brand seemed distraught over the death. B. P. said she thought Mr. Brand might have been attempting what she called a "murder-suicide" with the police. B. P. said, in the past, Mr. Brand has drunk alcohol and used methamphetamines, and has become violent and destructive, breaking things in the apartment complex.

Witness Z. K.

Protocol investigators interviewed a man we refer to as Z. K. who had been in Utah for about 36 hours prior to the OICI, having hitchhiked from Las Vegas. Z. K. said he met a man he referred to as "Mike," who was Mr. Brand, about 24 hours prior to the OICI. Z. K. said he and Mr. Brand had been drinking vodka during the morning of July 15, 2019.

Z. K. said earlier in the day, Mr. Brand had been hugging people in the apartment building lobby but denied that Mr. Brand was acting aggressively. Z. K. said he and Mr. Brand left the lobby and went back to Mr. Brand's apartment.

Z. K. said he and Mr. Brand were sitting in the apartment and Mr. Brand was playing with a black paintball gun. Z. K. said there was a knock at the front door, but it didn't sound like a "police knock." Z. K. said Mr. Brand opened the front door with the paintball gun in his hand. Z. K. said he didn't see Mr. Brand point the gun at anyone. Z. K. said he heard two, maybe three gunshots and heard someone say: "Sorry Mike, that was me!" Z. K. said he opened the front door and walked out and was taken into custody.

Witness M. G.

Protocol investigators interviewed a man we refer to as M. G. who lived in an apartment down the hallway from Mr. Brand. M. G. said that, on July 15, 2019, he heard someone knocking on a door and looked to see three police officers standing in front of Mr. Brand's door.

M. G. said he saw Mr. Brand come out of the front door holding a "black object" that looked to him like a gun. M. G. said he has been in Mr. Brand's apartment before and has seen Mr. Brand with a black paintball gun. M. G. said he believed Mr. Brand was holding this paintball gun when he came out of his front door. M. G. said he believes the police officers would not have known it was a paintball gun when Mr. Brand held it.

Physical Evidence

Protocol investigators inspected and photographed the OICI scene. Investigators reviewed video recordings made by the officers' body-worn cameras. The body-worn camera recordings are consistent with the officer's statements and appear to corroborate the timeline of events as outlined in witness statements.

Recent Medical/Mental Health History

Protocol investigators obtained and reviewed Mr. Brand's medical records, including a hospitalization on June 10, 2019 for a psychiatric episode. Notes from the hospitalization reflect that Mr. Brand was reportedly losing touch with reality, and that he was scared that he will "end up dead or kill someone." The notes reflect suicidal ideation, an intent to harm himself and others, and auditory hallucinations with instructions to "kill self." While it doesn't appear that Officer Robinson was aware of these specific aspects of Mr.

Brand's condition, and therefore didn't base his decision to use deadly force on July 15, 2019 on them, we include the information obtained by protocol investigators to give some context to Mr. Brand's apparent actions prior to and perhaps during the OICI.

Evidence:

E: Photographs: photos were made of the scene and captured the expended shell casings from Off. Robinson's weapon. His uniform was also photographed.

E1: Body Camera footage: all three officers present activated their body cameras and the images/audio captured by those cameras is noted above and will not be repeated herein.

E2: Two camera from the apartment complex captured portions of the incident and were discussed above and will not be repeated herein.

E3 Off. Robinson's firearms records were retrieved and available for review. No issues were noted in those records.

Allegations:

Since this is an OIS, an automatic review is triggered to determine if Off. Robinson and/or Off. McKenna used Excessive Force during this incident.

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:

As is the case in OISs, this is a tragic situation that resulted in the death of a human being. Mr. Brand was suffering from mental illness, a situation he had been dealing with for a significant part of his life. As also mentioned by a witness, Mr. Brand had recently lost a friend and this likely added to his overall discomfort and mental instability. The officers did not know the specifics of his illness, but they were aware that he was acting irrationally and causing staff and residents of the apartment to feel threatened.

Unlike many OISs, the officers did not have to time to interact with the subject, Mr. Brand, as he answered the door brandishing an object that was universally identified as a black handgun. The staff member who was present at the door and had the weapon pointed at her can be heard to gasp

as she immediately ran from “the threat”, the black handgun. In fact, this was a paint ball gun, but there was no way anyone present could have reasonably known that fact, at that time.

Both Officer Robinson and Det. McKenna began to draw their own sidearms, an indication that both feared for their lives and the lives of others. It appears that their actions were instinctive as there was no time to contemplate what to do as events were unfolding so quickly.

One of Off. Robinson’s rounds struck Off. McKenna in the arm due to the crossfire situation that was present from the minute Mr. Brand answered the door. With the officers bracketing the door and the employee in front of the door, this was a poor tactical situation, but one forced upon them due to their desire to deescalate the situation with a resident undergoing a mental crisis. It may be worthy of reassessing the tactical approach in similar situations in the future but in this case, the officers were positioned in a position to best assist a person rather than in a purely tactical position associated with arresting a person.

Panel Findings:

As to the allegation that Off. Robinson used “Excessive Force”, the Panel makes a finding of “Exonerated”

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

Dennis Busch by Rick Rasmussen
Panel Chair

5/1/20