

INTEROFFICE MEMORANDUM

DATE: August 1, 2012 **PHONE:** 760-243-8600

FROM: Carrie R. Halgrimson
Deputy District Attorney
Victorville Office



TO: Dennis Christy
Assistant District Attorney

Gary Roth
Chief Deputy District Attorney

SUBJECT: Fatal Officer-Involved Shooting

Involved Officer: Deputy Michael Cleary
San Bernardino County Sheriff Department
Hesperia Station
Deceased: Ray Blajos, DOB 1/12/1992
Incident: December 19, 2010, 1246 Hours
17982 Lemon Street, Hesperia, California
Investigator: Detective Lucas Niles
San Bernardino County Sheriff Department
Homicide Division
Agency Report: DR191009783
H#110-10
STAR: 2011-00-0009398

SUMMARY

Source of Information

The Summary provided in this matter is based on the investigation and submitted reports of the San Bernardino County Sheriff Department Homicide Team assigned to the matter. Those reports include statements of all involved deputies including Deputy Michael Cleary, civilian eyewitnesses, photographs, a radio traffic recording, recorded 911 calls and their corresponding call logs.

December 19, 2010 Events Leading up to Shooting

On December 19, 2010, at approximately 12:40 p.m., Ina K. and her sister, Geraldine F., were sitting in the living room of her residence, located in the area of Timberlane Avenue and Verde Street, in Hesperia, CA. Ina K. heard the rear door of her residence close and thought it was one of her grandchildren. However, she looked up and saw an unknown male, later identified as Ray Blajos, standing in the doorway of her kitchen. Blajos demanded she give him the keys to her car. Ina K. yelled at Blajos to get out of her home and he went out the door. Ina K. immediately ran toward her son's residence, which is on the same property, to get help. Geraldine F. followed Blajos to the front of the property where she observed him jump the fence. Geraldine saw her nephew, Robert K. in the front yard and told him what happened.

Off-duty San Bernardino County Deputy Sheriff, Robert K., was at his residence with his wife and children, on the above date and time, when he heard yelling coming from the rear area of his property. Robert K. looked out the window and observed his aunt running down the driveway toward his residence. Robert K. learned that an unknown male had entered his mother's residence on the back part of his property and demanded her car keys. Robert K. immediately got into his vehicle and began to follow the suspect he saw fleeing. Robert K. intended to keep observation on the suspect, later identified as Blajos, until uniformed personnel arrived on the scene. He kept an open line with Sheriff's dispatch as he followed Blajos.

Robert K. watched as Blajos ran through yards and over fences. He located Blajos in the back yard of a nearby residence and advised dispatch of his location. Blajos then began to walk toward Robert K. as he sat in his vehicle. Robert K. then recognized Blajos as someone he made contact with approximately one month prior while on duty. Based on the circumstances of his prior contact with Blajos, Robert K. believed he could safely talk to him.

Robert K. exited his vehicle and walked toward Blajos while telling him to sit on the ground. When Robert K. got within approximately ten feet of him, Blajos produced a long shank, later determined to be a screw driver, from his waist band. Blajos raised the screw driver above his head in a stabbing motion and charged at Robert K. knocking him to the ground. Robert K. fell on his back and began to kick his legs in a bicycle pedaling motion to defend himself against Blajos. Blajos continued his assault on Robert K., stabbing him twice in the chest with the screw driver. The audio portion of this incident was recorded on the open Sheriff's dispatch line. The incident was observed by the mother, wife, and children of Robert K. through the front window of their home. It was also observed by another resident of the area, Floyd H.

Floyd H. had previously seen Blajos in his own back yard, located near Lemon St and Timberlane Ave, in Hesperia, CA, a little earlier that day. He had confronted Blajos who was holding a baseball bat that belonged to Floyd H. and had been lying on the ground near his shed. Floyd H. starting yelling at Blajos and in response Blajos faced him and began walking toward him. Floyd H. then became frightened and shut his door and went into his house to retrieve his pistol. When back outside, Floyd H. observed Blajos walking on the road and yelled at him to drop his bat. Blajos continued walking through the neighborhood. Floyd H. got in his truck and backed out of his driveway, but lost sight of Blajos. As Floyd H. was driving around, he observed Blajos rush towards Robert K. with what he thought was a knife in his hand. He observed Blajos stab Robert K. in the center of his body with the knife like object. Floyd H. exited his vehicle and fired a single shot from his 9 mm pistol, hoping to scare Blajos and prevent him from continuing to injure Robert. K.

After Floyd H. fired the shot, Blajos turned toward him. Floyd H. told him to get on the ground, but Blajos took off running with the knife like object still in his hand. Floyd H. attempted to follow Blajos, but he disappeared amongst the residences on the south side of Mauna Loa St, east of Timberlane Ave. Floyd H. returned to Robert K. to check on his condition. Robert K. told him he was okay and Floyd H. got into his vehicle and went down the street to try to cut the suspect off. Floyd H. made contact with Blajos a couple of times and attempted to detain him for law enforcement, but his attempts were unsuccessful. During this time, Sheriff's dispatch was receiving calls of shots fired in the area and advising deputies.

When Floyd H. saw a uniform Deputy Sheriff arrive, he noticed Blajos in the back yard of the residence where the deputy was. He thought it looked like Blajos was moving into a position to ambush the deputy, so he tried to yell at the deputy to warn him, but he was parked too far away to be heard. Floyd H. phoned 911 at that time, hoping to get word to the deputy that Blajos was dangerous and the deputy was possibly walking into a trap.

December 19, 2010 Shooting Incident

Deputy Michael Cleary was on duty on patrol in the city of Hesperia when he heard Sheriff's dispatch broadcast information regarding a priority PC 602.5 call (aggravated trespass) and started making his way toward the area of the call for service. Deputy Cleary was driving a marked Sheriff's patrol unit and dressed in a Sheriff's Class "A" uniform. Sheriff's dispatch further advised that someone was chasing the suspect (Blajos) through several back yards. Additional information was provided by dispatch that the reporting party was an off-duty deputy and that Blajos had entered his home and stabbed him. Dispatch further advised about reports of shots being fired. All information provided by dispatch was recorded as part of radio traffic between dispatch and the deputies involved.

When Deputy Cleary arrived at the location, he made contact with Robert K. who was holding his chest and told Deputy Cleary that Blajos had been in his house and stabbed him with what he thought was an ice pick. Robert K. said he did not know the whereabouts of the weapon used. Robert K. said Blajos was wearing all black clothing and had long black hair pulled back into a ponytail. Robert K. told Deputy Cleary he believed he and another deputy had prior contact with Blajos. Robert K. provided Deputy Cleary with the suspect's direction of travel and Deputy Cleary updated dispatch. When Deputy Cleary set out in the reported direction of Blajos he still was not sure of who had fired a weapon.

Deputy Cleary heard a radio broadcast from the California Highway Patrol helicopter (H80) saying they had spotted Blajos on the north side of a residence in the area of Lemon Street and Cactus Avenue. Deputy Cleary parked his patrol unit along a fence on the side of the residence the helicopter directed him to. Deputy Cleary was advised that Blajos was hiding under the patio on the north side of the residence he was at. Fearing that Blajos may still be armed, Deputy Cleary armed himself with his hand gun and started running toward the rear of the residence.

When Deputy Cleary reached the north-east corner of the residence, he saw a male, matching the description previously given to him, dressed in all black with long black hair in a ponytail. Deputy Cleary could hear the helicopter making PA announcements to Blajos. They were ordering Blajos to give up and get on the ground and advising he was surrounded. Deputy Cleary also started giving commands to Blajos. He told him to stop, turn around and show his

hands. Blajos ignored all commands and continued walking away. Deputy Cleary was closing the distance and continuing commands. When he was within approximately seven feet, Blajos turned toward him. Blajos ignored further commands to put his hands up and kept his hands around his waist. As Deputy Cleary pointed his gun at him, Blajos lunged at Deputy Cleary and grabbed his gun with both hands. Blajos' left hand was atop the slide at the rear of the gun and his right hand was wrapped around the slide and barrel. Blajos held the gun tightly, preventing him from pulling away. Deputy Cleary feared Blajos would take his gun from him and use it to shoot and kill him. Deputy Cleary took a step back and yanked his weapon free from Blajos and fired his weapon six times.

Three Officers with the California Highway Patrol were in the helicopter that directed Deputy Cleary to the location of Blajos and observed this incident. Officer James Dann was assigned as an observer in H80. From approximately 400 feet in the air, he observed Deputy Cleary get out of his patrol car and follow Blajos with his gun out. Officer Dann saw Blajos reach out and grab Deputy Cleary's gun. He saw Deputy Cleary step back and he saw the muzzle flash, but could not hear the shots. Officer Shane Panto was a flight officer/paramedic in H80. Officer Panto observed Deputy Cleary get out of his vehicle and follow Blajos. Officer Panto said he could tell Deputy Cleary was yelling commands and Blajos was not complying. Officer Panto then saw Blajos turn around, face the deputy and lunge at the Deputy. Officer Panto could not tell if Blajos actually grabbed Deputy Cleary's gun, but he saw Deputy Cleary fire. Officer Ralph Steele was a pilot on H80. He saw Deputy Cleary approach Blajos with his gun drawn. Officer Steele observed Blajos walk "with a purpose" towards Deputy Cleary and then try to grab Deputy Cleary's gun and then fall down.

There were also several civilian witnesses to this incident:

- Stephen J. witnessed the incident from outside his residence. Stephen J. said that he heard commands coming from the helicopter over the loud speaker for Blajos to give up and he was surrounded. Steven J. also heard Deputy Cleary giving commands to Blajos to put his hands in the air several times. However, he didn't see Deputy Cleary or Blajos at the time of the shooting because there were weeds, bushes and trees obstructing his view.

Dolores G. witnessed the incident from inside her residence. Dolores G. stated she heard a single gunshot earlier and then heard the helicopter in the area. She saw Blajos walking on the east side of her yard. She saw Blajos make contact with someone in a truck (Floyd H.). She then saw Deputy Cleary pull his vehicle in between the houses across the street and get out. She saw Deputy Cleary began to chase Blajos, while yelling at him to put his hands up. She saw Blajos lunge towards Deputy Cleary with his hands extended outward at chest level. She heard Deputy Cleary yelling repeatedly at Blajos about his hands and seeing his hands. After Blajos lunged at Deputy Cleary she heard five consecutive gunshots.

Jamey S. was driving eastbound on Lemon Street when he saw Deputy Cleary run into the front yard of a residence on Lemon Street with his gun out. Jamey S. saw Blajos lunge at Deputy Cleary and grab his gun. Jamey S. said he heard at least four gun shots at that point.

Marcus B. was the passenger in Jamey's vehicle. He also saw Deputy Cleary running through the front yard of a residence with his gun out. He saw Blajos turn on Deputy Cleary and run up and grab his gun. Marcus B. believed Deputy Cleary's gun went off two times while the suspect was holding on to it and then two more times as Blajos was going down.

Brian L. witnessed the incident from his residence. He saw Blajos run into his backyard. He then saw deputies arrive. He saw Deputy Cleary run into the front yard of the residence with his gun out. He heard Deputy Cleary giving Blajos several commands to show his hand and get down on the ground. Blajos did not comply. Brian L. stated he saw Blajos ball up his hands into fists and though he saw some type of weapon in his right hand. However, he was unsure of what it was. Brian then saw Blajos lunge at Deputy Cleary and grab his gun. It was at this time that Brian L. heard several gun shots and saw Blajos fall to the ground.

Deputy Cleary thought his first few rounds hit Blajos, but Blajos was not reacting. Deputy Cleary continued firing until he felt the suspect no longer posed a threat to him, at which time Blajos went to his knees and said something to the effect of "ok stop". Deputy Cleary lost sight of Blajos' hands when he went to the ground, so he held him at gun point until other deputies arrived. When Deputies Scott Nobles and John Clough arrived at the incident location, they rolled Blajos over to determine he was no longer a threat and called medical aid. Blajos was pronounced dead at the scene by Hesperia Fire Department paramedics.

ADDITIONAL INFORMATION

Contact with Valerie L.

Valerie L. is the mother of Ray Blajos. On December 19, 2010, she had requested a deputy come to her residence because she wanted to report Blajos missing. She informed Detective Neal Rodriguez that her son suffered from schizophrenia and had been off his medications for about three months prior to this incident. She informed Detective Rodriguez that her son's behavior had declined since being off his medication and that he had not slept in days and had been acting strangely.

On the day of the incident, Valerie L. had made an appointment at a walk-in clinic for Blajos. At first he agreed to go, but when Valerie L.'s sister arrived to drive them to the appointment, Blajos became angry and took off. That was the last time she had seen or heard from Blajos.

Items Recovered

Recovered from the shooting incident location were 6 fired cartridge casings and a kitchen knife that was located just to the northwest of where Blajos body was.

A screwdriver was also recovered by a fence in front of a residence on Timberline Ave. The Phillips-head screwdriver was dropped by Blajos according to witness Michael L.

A flathead screwdriver and string backpack were recovered from the back yard of Robert K. These items were located by witness Geraldine F.

A metal bat not belonging to anyone at the residence was recovered from the passenger seat of Ina K's vehicle.

Autopsy

Riverside County Coroner Joanna Rice, M.D., performed the autopsy on Ray Blajos. The cause of death was multiple gunshot wounds. Toxicology results indicated that the presence of cannabinoids were detected in Blajos' blood, urine, vitreous, brain and liver.

APPLICABLE LEGAL STANDARDS

Arrest or Detention – Use of Reasonable Force – Duty to Submit

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. **(California Penal Code Section 835a).**

Self-Defense/Defense of Others

The (*officer*) acted in lawful self-defense or defense of another if:

1. The (*officer*) reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;
2. The (*officer*) reasonably believed that the immediate use of deadly force was necessary to defend against that danger; AND
3. The (*officer*) used no more force than was reasonably necessary to defend against that danger.

CALCRIM 505. Modified.

When deciding whether the (*officer's*) beliefs were reasonable, consider all the circumstances as they were known to and appeared to the (*officer*) and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the (*officer's*) beliefs were reasonable, the danger does not need to have actually existed.

It is appropriate to consider previous assaults by the aggressor against someone else or threats received by the (*officer*) from a third party that the (*officer*) reasonably associated with the aggressor. (See *People v. Pena* (1984) 151 Cal.App.3d 462, 475; *People v. Minifie* (1996) 13 Cal.4th 1055, 1065, 1068.

ANALYSIS AND CONCLUSION

Decedent, Ray Blajos, put into motion this series of events by committing a residential burglary at the home of Ina K. and then an assault with a deadly weapon on off-duty deputy Robert K. The assault with the deadly weapon was observed by Floyd H. who fired a single shot from his 9 mm pistol, hoping to scare Blajos and prevent him from continuing to injure Robert K. Floyd H. attempted to follow and detain Blajos until law enforcement got there, but Blajos attempted to escape and hide in the yards of various residences in the area.

Upon arrival on scene, Deputy Cleary had information that Blajos had entered into the home of Ina K. and later stabbed Robert K. with possibly a screwdriver or ice pick. The whereabouts of the weapon used were unknown. Deputy Cleary had information of shots fired during this time in the area and the identity of the shooter was unknown.

When Deputy Cleary observed an individual matching the description of the suspect, he pursued him. Believing that Blajos was potentially armed and dangerous and was acting with disregard for human life, he pursued Blajos with his gun drawn. CHP helicopter officers were giving commands for Blajos to get on the ground and advising him he was surrounded. Blajos ignored the commands. Deputy Cleary also gave several commands for Blajos to put his hands in the air and stop. Blajos ignored the commands.

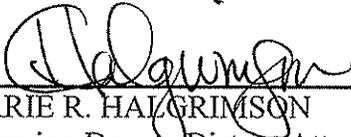
When Deputy Cleary got within seven feet of him, Blajos turned around, lunged at Deputy Cleary and attempted to take his gun with both hands. Blajos' left hand was atop the slide at the rear of the gun and his right hand was wrapped around the slide and barrel. Blajos held the gun tightly, preventing Deputy Cleary from pulling away. The fact that Blajos grabbed Deputy Cleary's gun at this point was corroborated by two CHP helicopter officers and four civilian witnesses.

Deputy Cleary feared Blajos would take his gun from him and use it to shoot and kill him. His fear of death or great bodily injury was reasonable based on the totality of the circumstances. The immediate use of deadly force was necessary to defend against the danger.

It is the opinion of this Deputy District Attorney that **the shooting was justifiable in self-defense and the defense of others and no criminal liability attaches to the conduct of Deputy Michael Cleary.**

Respectfully Submitted,

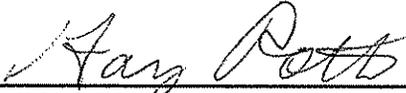
MICHAEL A. RAMOS
District Attorney



CARRIE R. HALGRIMSON
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8/2/12

Date



GARY ROTH
Chief Deputy District Attorney

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Date



DENNIS CHRISTY
Assistant District Attorney

8-10-12

Date