

In-Custody Death of Deautry Ross

Torrance Police Department

Officer Brian McGee, #19320

Officer Lance Nelson, #21036

Officer Christopher Tomsic, #19938

Officer Daniel Vasquez, #17759

J.S.I.D. File #18-0004



JACKIE LACEY

District Attorney

Justice System Integrity Division

April 1, 2020

MEMORANDUM

TO: CHIEF EVE R. BERG
Torrance Police Department
3300 Civic Center Drive
Torrance, California 90503

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: In-Custody Death of Deautry Ross
J.S.I.D. File #18-0004
T.P.D. File #180000068

DATE: April 1, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 1, 2018, in-custody death of Deautry Ross involving Torrance Police Department (TPD) Officers Brian McGee, Lance Nelson, Christopher Tomsic, and Daniel Vasquez. It is our conclusion that the officers used reasonable force under the circumstances and are not criminally responsible for Ross' death.

The District Attorney's Command Center was notified of this in-custody death on January 1, 2018, at approximately 6:00 p.m. The District Attorney Response Team responded to the scene.

The following analysis is based on reports, recorded interviews, surveillance videos and photographs submitted to this office by TPD Detective Craig Marshall. The voluntary statements of the involved officers were also considered in this analysis.

FACTUAL ANALYSIS

On January 1, 2018, at approximately 2:31 p.m., TPD Communications Division (CD) detailed officers to respond to the Del Amo Fashion Center shopping mall. Christine C., a manager at Crate and Barrel, called 9-1-1 to report that a man, later identified as Deautry Ross, was walking in and out of the store with a knife talking to himself and throwing his property around the parking lot. As officers approached the scene, CD added that Ross was holding a crack pipe and that the employees of the store locked the doors.

Officers Nelson and Vazquez arrived at the scene in uniform and in a marked police vehicle. At 2:32 p.m. they drove around the mall for approximately seven minutes until they found Ross on the north side of the Crate and Barrel store. When the officers exited their vehicle, Nelson identified himself as a TPD officer and informed Ross he wanted to talk with him. Ross turned and immediately fled on foot, shouting something unintelligible as he left. The officers

followed. Nelson continued to give Ross verbal commands and Ross continued to ignore them, first walking and then running from the pursuing officers.

As the chase continued, Officers Tomsic and McGee joined. With the four officers running after him, Ross suddenly turned to confront them in a grassy area near a parking structure. When he turned to face them, Ross threw a collection of objects at them, including CDs, drumsticks and a plastic cigarette lighter.

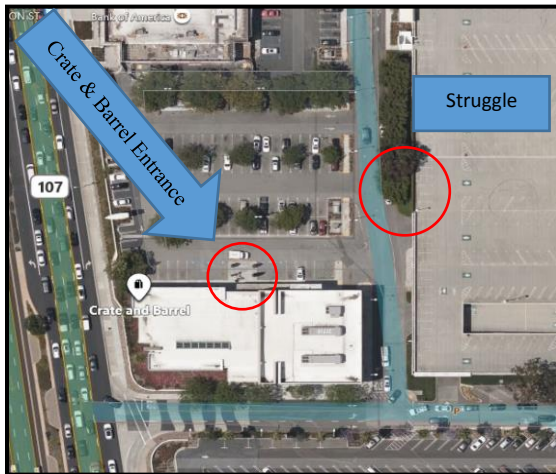


Figure 1 Crate and Barrel Store in Relation to Location Where Ross Struggled with the Officers

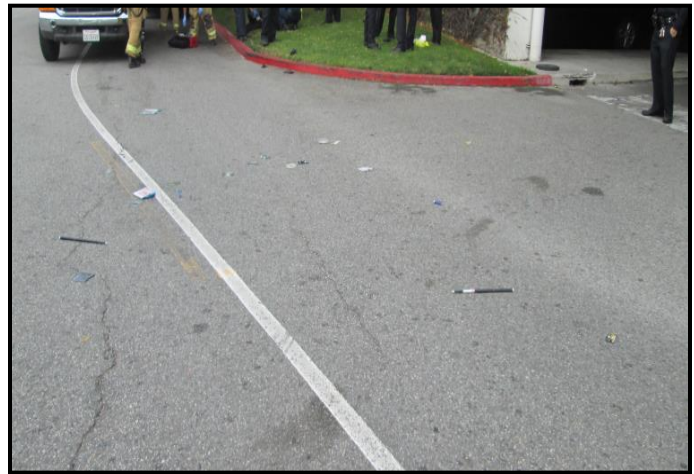


Figure 2 Items Ross Threw at the Officers During the Foot Pursuit

The officers ducked to avoid the debris Ross threw at them and continued the pursuit. Nelson grabbed Ross by the shirt and pulled him to the ground. Nelson attempted to gain control of Ross to handcuff him, but Ross fought back. Tomsic also helped tackle Ross and attempted to get hold of Ross' arms to handcuff him. Vasquez grabbed Ross' left arm and tried to control it.

During the scuffle, Tomsic felt a tug at his belt and looked down to see Ross' hand tugging at his holstered service weapon. Tomsic covered Ross' hand to keep his weapon holstered and shouted "Gun!" and "He's got my gun!" several times. Tomsic was able to wrestle Ross' hand from the weapon and pin it to the ground. He rolled onto his holster to protect his service weapon. Tomsic clung to Ross' hand and retained control until Ross was handcuffed.

As Nelson, Vasquez and Tomsic were on the ground struggling with Ross, McGee approached. McGee told investigators he heard Tomsic shout, "He has a gun." McGee feared his life and the lives of his colleagues were in imminent danger. He drew his service weapon and aimed it at Ross as Ross continued to struggle, but McGee held his fire. When Tomsic pried Ross' hand from his weapon and rolled onto his side, McGee holstered his firearm and drew his Taser. Ross, Nelson and Tomsic continued to wrestle on the ground. McGee aimed the Taser directly between Ross' shoulder blades and pulled the trigger. He did not hear any sound to indicate that the Taser had fired and Ross continued fighting as if nothing had happened. McGee repositioned the Taser to the small of Ross' back and pulled the trigger. Again, it appeared as if the Taser

failed to engage. McGee inspected the device and determined that the barbs were jammed in the cartridge, rendering it ineffective. He tossed the Taser on the ground and joined in the struggle to subdue Ross.

Even with all four officers grappling to control him, Ross continued to kick and fight. Officers Josh Burden and Joseph Craft arrived at the scene wearing full uniforms and driving in a marked black and white patrol vehicle. Upon their arrival, they saw officers struggling to control Ross. The officers were finally able to handcuff Ross, but he still actively resisted by rolling and twisting his body and kicking his legs. McGee and Vasquez tried to wrap Ross' legs to immobilize him according to their Total Appendage Restraint Procedure (TARP) training but, due to Ross' resistance, were unable to do so. Burden and Craft relieved Tomsic. As Ross lay on his stomach, Burden and Craft each knelt on one of Ross' shoulders to attempt to gain control.

Officers Kelli McCarthy and Alex Gonzales arrived at the scene in a marked police vehicle and in full uniform. Gonzales leapt from the vehicle, ran to the brawl and sat on Ross' legs. At this time, the officers were able to bind Ross' arms and legs with a hobble restraint.

As soon as he was restrained, the officers rolled Ross onto his side and checked to make sure he was breathing. McCarthy requested assistance from Torrance Fire Department. An ambulance arrived within four minutes of her request.

Officers Garrett Brinkley and Omar Alonso arrived as the officers completed restraining Ross. Brinkley and Alonso saw that the officers on the scene were panting, disheveled and excited from the struggle with Ross, so they told the other officers they would take charge of Ross. They noted he was grunting and appeared to be fighting against the restraints. Each officer checked Ross' pulse multiple times via his brachial and carotid arteries. Each officer observed Ross' chest rising and falling. Because the emergency call said Ross possessed a knife, the officers conducted a pat down search.

Torrance Fire Department (TFD) Firefighters Christopher Brooks, Rodney Stewart, Scott Wallevand, John Shiah, Mike Salcido and Joseph Aki responded to the officers' call for assistance along with TFD intern Ryan Brosamer. Brooks, Brosamer and Shiah told investigators that when they arrived, Ross was laying on his left side. When Brooks was asked a second time what position Ross was in when he arrived, Brooks said Ross was on his back, facing upwards. Brooks said the restraints were not compromising Ross' airway. Aki, Stewart and Wallevand reported that Ross was laying face-down and that the firefighters and officers turned him onto his side. Ross was handcuffed with his arms behind his back and his legs were also bound. Ross' breath was shallow. Shiah noticed Ross' pulse was weak and his blood pressure was low. The firefighters asked the officers to release the restraints so they could assess him. When Ross was released, the firefighters began an IV. Ross soon went into full cardiac arrest. The firefighters administered CPR, gave him two doses of epinephrine, and began

ventilating him. They placed Ross into the ambulance and transported him to Providence Little Company of Mary Hospital, where Dr. Bao Duong pronounced him dead at 3:43 p.m.

INVESTIGATION

Investigators found a folding knife locked in the open position in the driveway of the parking garage near where Ross was arrested.



Figure 3 Location Where Folding Knife was Found in Relation to Arrest Location

Officers also recovered a glass pipe amongst Ross' property.



Figure 4 Glass Pipe Recovered at the Crime Scene

Senior Forensic Identification Specialist Carrie Harris collected DNA swabs from the following items:

1. The holster and retention strap of Tomsic's duty belt;
2. Grips of Tomsic's service weapon;
3. The glass pipe found at the scene; and
4. The handle and blade of the folding knife recovered in the ramp of the parking garage.

Los Angeles County Sheriff's Department Scientific Services Bureau Senior Criminalist John Bockrath compared the samples taken from the above items to reference samples taken from Tomsic and Ross. He reached the following conclusions:

1. Tomsic was a distinct contributor to the DNA found on his holster and retention strap and Ross was a possible contributor. This result is consistent with Ross touching Tomsic's holster and retention strap.
2. Tomsic was a distinct contributor to the DNA found on the grips of his firearm and Ross was a possible contributor. This result is consistent with Ross touching the grips of Tomsic's holster.
3. A DNA profile was obtained from the glass pipe which was consistent with Ross. Tomsic was excluded.
4. The DNA profile taken from the handle and blade of the folding knife matched the profile from Ross and excluded Tomsic.

Autopsy

On January 6, 2018, Los Angeles County Coroner Senior Deputy Medical Examiner Dr. Yulai Wang performed an autopsy on Ross. In addition to reviewing his written report, District Attorney personnel conducted a follow-up interview of Dr. Wang. A forensic analysis of Ross' blood showed the presence of methamphetamine. Dr. Wang concluded that the cause of death was acute cardiopulmonary arrest, due to methamphetamine intoxication, struggling with the officers, and status post-restraint. Dr. Wang explained that Ross' ingestion of methamphetamine in combination with Ross' flight from and struggle with the police, increased his heart rate to such a dangerous rate that it induced a fatal heart attack.

Dr. Wang also found a puncture mark in Ross' lower back consistent with a Taser dart. Because there was only one puncture mark, the doctor concluded that the Taser was not effective.

LEGAL ANALYSIS

A police officer may use reasonable force in making an arrest, preventing an escape, or in overcoming resistance. Penal Code § 835a. Reasonableness is judged from the perspective of a reasonable officer at the scene considering the circumstances surrounding the use of force including: (1) whether the suspect poses an immediate threat to the safety of the officers or others, (2) whether the suspect is actively resisting arrest or attempting to evade arrest by flight, and (3) the severity of the crime at issue. Graham v. Connor (1989) 490 U.S. 386.

“[T]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” Graham, supra, at 396; see also, Scott v. Harris, (2007) 550 U.S. 372 (reaffirming the Graham reasonableness analysis for “use of force” cases in effectuating an arrest or “seizure” of a person). Finally, “[T]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.” Graham, supra at 396-397.

Courts have also held that placing a person wearing handcuffs in a prone position is reasonable where the person had violently resisted arrest. See, Mayard v. Hopkins (8th Cir. 1977) 105 F.3d 1226; Price v. County of San Diego (S.D. Cal. 1998) 990 F.Supp 1230.

The evidence presented in this investigation shows the officers used reasonable force in detaining Ross.

When the officers were called to the scene, they were informed Ross was behaving erratically and possessed a knife. Because witnesses told the 9-1-1 operator that Ross possessed a glass pipe, the officers had a basis to believe he was under the influence of narcotics. When Nelson initially made contact with Ross, Nelson was in full uniform and identified himself as an officer. Ross immediately fled, leading the officers on a foot pursuit. When Ross turned to confront the officers at the end of the pursuit, the officers did not use any weapons when they tackled him. None of the officers noticed Ross discard the knife.

None of the officers drew a weapon until Tomsic shouted that Ross had his gun. At that point, McGee drew his service weapon but did not fire it. Instead he chose to use a less lethal option—his Taser. When the Taser failed to activate, the officers did not escalate the level of force. The officers did not fire a gun, strike Ross with a weapon, or use personal weapon strikes in detaining him. They used the minimum amount of force possible to control Ross. The officers wrestled with Ross until they were able to immobilize him with handcuffs and a hobble restraint.

The force employed by the officers was objectively reasonable under the circumstances. Ross was acting erratically, under the influence of methamphetamine. He was openly carrying a knife which was locked in the open position, frightening the employees at Crate and Barrel. The officers responded to investigate, and clearly identified themselves as peace officers. Ross immediately fled. During the foot pursuit, Ross threw items at the officers. When the officers attempted to detain him, Ross tried to take Tomsic's service weapon. The officers continued to wrestle with Ross until they were able to effectively restrain him. As such, their use of force was objectively reasonable.

CONCLUSION

The force the officers used to detain Ross was objectively reasonable and they are not criminally responsible for Ross' death. We are closing our file and will take no further action in this matter.