
January 18, 2023



**Iowa Attorney General's Review
of Officer Involved Death**

Incident of December 26, 2022
at 400 East McKinley, Des Moines, Iowa

Des Moines Police Department Officers Noah Bollinger,
Thomas Garcia, Zachary Duitscher, and Nicholas Howard

Subject Involved: T.J. (Age 16)

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AUTHORITY AND PROCESS

Pursuant to Iowa Code section 13.12, the Iowa Attorney General's Office provides the following review of an incident that occurred on December 26, 2022, shortly before 1:00 a.m. at 400 East McKinley Avenue, Des Moines, Iowa. The incident involved multiple law enforcement officers from the Des Moines Police Department who were responding to a 911 call reporting that a 16-year-old male was armed with a handgun.

The following review is conducted pursuant to Iowa Code section 13.12 which provides direct authority for the Iowa Attorney General to assess any officer involved death to determine whether a criminal charge is warranted.

The incident was investigated by the Iowa Division of Criminal Investigation (DCI). The investigation is complete, and this office has had a full opportunity to review the findings and discuss the investigation with the agent assigned. The DCI has collected numerous statements and other evidence. The pertinent portions of the DCI report have been provided to this office. All law enforcement reports including any audio or video recordings will be returned to DCI upon issuance of this document.

The subject referenced above will be referred to by his initials. Law enforcement will be referred to by their last name and others will be referenced by their relationship to the subject.

PERTINENT FACTS

On December 26, 2022, Des Moines police officers responded to 400 East McKinley Avenue at approximately 12:30 a.m. after an adult male, later determined to be the stepfather of T.J., called 911 at 12:27 a.m. to report that a 16-year-old male family member, later determined to be T.J., was armed with a handgun. 400 East McKinley Avenue is a complex of contiguous family dwellings. The stepfather stated in the 911 call, “Yeah...we’ve got a situation at 400 East McKinley, Apartment 8B with a kid that’s on the run by the name of [T.J.]...he’s been on the run from Woodward...got a gun that he just pulled on me...my name is [stepfather].” The stepfather informed police that [T.J.] was his wife’s son. The stepfather stated something needed to be done because [T.J.] had a gun in his hand. The stepfather also stated [T.J.] just “pulled” the gun on him and [T.J.] was outside his residence. The stepfather stated [T.J.] stayed two apartments down in an apartment with his grandmother. The stepfather again stated [T.J.] was “on the run” and should have a warrant. The stepfather confirmed [T.J.] was a black male who was wearing a black hooded sweatshirt, a “skull cap,” and black pants. The stepfather stated [T.J.] was armed with a black handgun that

looked like a Glock. All of this information would have been provided to responding officers by dispatch.

T.J. had been court ordered to the Woodward Academy by a Polk County judge. Prior to December 26, 2022, T.J. left the facility without authorization and made his way back to his residence in Des Moines on McKinley Avenue.

T.J.'s mother and stepfather resided in Apartment 8B. T.J. resided in Apartment 5B with his grandmother. The residences are very near each other in the McKinley Avenue complex.

Shortly after the 911 call was placed Des Moines Police Officers Noah Bollinger and Thomas Garcia were dispatched to the McKinley residence. The body worn cameras of both Bollinger and Garcia were activated prior to arriving at 400 East McKinley and remained activated after their arrival. Bollinger and Garcia responded together in the same squad car. After their arrival, Bollinger made contact with persons at the residential complex eventually making contact with T.J.'s stepfather and his wife who is T.J.'s mother. Both indicated that T.J. was not present at their residence at the time the officers contacted them. Garcia, who was in close proximity to Bollinger, observed T.J. just inside the north-facing door to Apartment 5B along with another person. This residence was occupied by T.J.'s grandmother. Officers entered the residence with Garcia in the lead followed closely by Bollinger. As the officers

entered a young man is briefly visible to the right of the officers. This man did not obstruct the officers and was later learned to be a friend or acquaintance of T.J. Body worn cameras were activated when officers entered the residence. When the officers entered T.J. can be observed with a handgun in his right hand. T.J.'s grandmother was seated on a couch just inside the living room.

Also responding to the 911 call were Officers Zachary Duitscher and Nicholas Howard. Both officers arrived in separate vehicles and entered apartment 5B through the rear entrance. The body worn cameras of Duitscher and Howard were activated prior to arriving at 400 East McKinley and remained activated after their arrival. In order to gain entry, Officer Duitscher had to break the glass of the rear entrance sliding door. The officers were required to enter the residence by force due to a "jam" restricting the opening of the door. When Duitscher and Howard entered the residence T.J. moved to his right and farther into the living room away from the rear door. At the moment Duitscher entered the residence it is observed on Duitscher's body worn camera that T.J. was pointing a firearm in Duitscher's direction. Howard moved into the residence and took a position to Duitscher's immediate right.

Body worn cameras from all four officers captured each of their movements, actions, location, and persons engaged while at 400 East McKinley. All body worn cameras appeared to be in proper

working order. It does not appear that any footage is missing or that the cameras were shut off during any relevant times from the moment officers arrived at 400 East McKinley until they were completely disengaged from the residence.

After Duitscher and Howard made entry into the residence four officers and T.J. were within three to four feet of each other. All officers sidearms were drawn and pointed at T.J. while they were in the residence. T.J. had a pistol in his hand and at various times during the confrontation it was pointed in different directions. All officers pleaded with T.J. to drop the firearm. T.J.'s grandmother and friend also pleaded with T.J. to drop the firearm. In the few minutes prior to the shooting T.J. was requested on more than 70 occasions to drop the firearm and end the situation peacefully. T.J. never complied.

Bollinger and Garcia were to the front and right side of T.J. Both officers appeared to have some cover by their position to T.J. and the staircase railing that was partially between them and T.J. Howard was the farthest to T.J.'s left. Duitscher was in front of T.J. and slightly to T.J.'s left. Neither Duitscher nor Howard had any physical cover. Duitscher appeared to be the officer physically closest to T.J.

At all times while officers were engaging T.J. in the residence, he was armed with a pistol which he was observed to be holding in his right hand. T.J. was also observed to have in his possession a cell phone which he was actively using while he was engaged with officers. T.J. appeared calm despite the fact four officers; his grandmother and friend were pleading with him to drop the gun.

The entire interaction with T.J. prior to the first shot that was fired lasted approximately four minutes and 20 seconds. During that time T.J. can be heard telling officers that he wanted them to turn off their flashlights. T.J. made a statement where he appeared to recognize Officer Bollinger. Officer Bollinger was acquainted with T.J. from a previous cordial encounter. During the interaction, T.J. made a statement that his brother just died. He made a statement that he would keep “the gun” and in the same sentence asked the officers to turn off their lights. T.J. can be heard stating that “I want to be with my brother” and “I am going to die”.¹ Officers responded to all of these statements by asking T.J. to drop the gun and informed him in various ways that they did not want to hurt him.

¹ Law enforcement confirmed later that T.J.’s sibling was killed in Arizona approximately two months prior to December 26, 2022. It is believed that is the person T.J. was referencing in his statement concerning his brother.

After officers entered the residence and before the first shot was fired, T.J. raised the gun above his waist on three occasions. The first occasion was when Officer Duitscher entered through the broken glass door. The gun appeared to be pointed directly at the officer. In addition to raising the gun on three occasions, T.J. moved the gun several times while the barrel was still pointed down.

During the interaction with the officers, T.J. appeared to be actively engaged with his cell phone since he was observed looking at the screen on several occasions. At the time of the issuance of this statement, it is unknown to investigators what T.J. was viewing or if he was communicating with any other person. It is important to note that after the shooting of T.J. a Des Moines officer attempted to gain access to T.J.'s cell phone pursuant to a requested search warrant for Snap Chat records. The warrant request was denied by the reviewing district court judge. Later, a DCI investigator was granted access through a subsequent search warrant request for information from the iCloud. The only way the information from the iCloud would be of any interest is if T.J. uploaded any conversation, to include Snap Chat, or other information into the iCloud. The judge authorized the warrant for the iCloud but limited the search to a 10-minute period before the 911 call was made by the stepfather.

The search warrant has not been returned. Statements T.J. made just before and at the time he engaged officers would be significant to determining T.J.'s mind set and intentions. This in turn would inform and potentially either corroborate or contradict officer's observations while they were in the residence with T.J. Although the information sought by the warrant would provide a more complete story of the incident, after a full review of all reports and video, T.J.'s phone information is not necessary in order to make a final determination.

At 12:40 a.m.² the first shot towards T.J. was fired by Officer Duitscher. Just before the first shot was fired T.J. abruptly raised the gun towards both Duitscher and Howard. There was a clear view of this particular moment from Duitscher's and Howard's body worn cameras. T. J. made the comment "I am going to die" approximately 40 seconds before raising the gun in this manner.

A total of 14 shots were fired at T.J. Three from Duitscher, eight from Garcia and three from Bollinger. Howard did not fire. T.J. was struck in the chest, abdomen and head. It is reasonable to believe that the shots to the head occurred as T.J. was falling to the ground. T.J. did not fire his pistol.

² The time stamps on all body worn cameras synchronized with each other. The exact time of the first shot is 12:40 and 27 seconds

T.J.'s grandmother was interviewed by officers shortly after the incident. She was understandably shocked and upset since she observed her grandson get shot and killed. However, there is nothing in her interview that contradicts the officers or is inconsistent with any evidence or other statement taken during the investigation.

Also interviewed was a person in the residence at the time of the shooting who gave a name believed to be false. This person was a friend of T.J. He was the person who can be observed on Bollinger's body worn camera just behind the front door when Garcia and Bollinger first entered the residence. He is also the same person that can be heard on the body worn camera footage pleading with T.J. to drop the gun. After the shooting he was uncooperative with law enforcement. He claimed to have no memory of the circumstances despite being in the same room where the shooting occurred.

An autopsy of T.J. was conducted by the Iowa State Medical Examiner's Office in Ankeny. The autopsy determined that T.J. was shot multiple times. There were no findings from autopsy that would contradict the footage captured by the body worn cameras of the officers, the officer's statements, or bystander's accounts.

APPLICABLE LAW

In order to be justified, the force used by the officers who fired the shots killing T.J. must have been reasonable. Reasonable force is that force which a reasonable person, in like circumstances, would judge necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another and it is reasonable to believe that such force is necessary to resist a like force or threat. Iowa Code §§ 704.1, 704.2 and 704.3.

In *Graham v. Connor*, 490 U.S. 386 (1989), the United States Supreme Court held that the use of deadly force by a police officer must be evaluated from the perspective of a reasonable police officer on the scene and in the same circumstances. Under *Graham*, reasonableness of police use of force cannot be evaluated from the perspective of a civilian nor can it be evaluated with a clearer vision afforded by 20/20 hindsight. The Court further stated that the fact law enforcement officers are often required to react quickly in tense, uncertain, and rapidly evolving situations are factors that must be considered in determining reasonableness. Since *Graham*, the Supreme Court has narrowed the analysis to focus on the exact moment that the force was applied.

ANALYSIS

The actions of the officers involved in the confrontation with T.J., including Officers Bollinger, Garcia, and Duitscher who fired their service weapons, were entirely legally justified. The decision to fire at T.J. was reasonable under the circumstances. T.J. put in motion the circumstances that brought about his death. Despite the intense efforts of the officer's involved T.J. provided them no choice but to shoot in order to defend themselves and others.

Also of concern for the officers on the scene were other bystanders who were placed in grave danger by T.J.'s behavior. Officers attempted to convince the grandmother to go upstairs and out of harm's way, however she refused to comply with the officer's requests. The grandmother stood right next to or just behind the officers during the entire incident. At all times while T.J. was armed with the gun and refusing to disarm himself, he presented a deadly threat not only to the officers but to the two bystanders. Due to the fact T.J. was armed with a fully loaded firearm, the officers and the bystanders were in constant life-threatening danger from the moment officers entered the residence until the first shot was fired.

In the nearly five minutes officers engaged T.J. they requested in excess of 70 separate times for T.J. to comply with officers and disarm himself. It is evident in the tone officers used that they were, on most occasions, pleading with him to disarm himself.

Officer Bollinger at one-point attempted to deescalate the confrontation by informing T.J. that he had previous personal contact with him and wanted him to put the gun down so they could talk. All efforts by law enforcement had no apparent effect on T.J. He never provided any indication that he would disarm himself.

The officers showed great restraint in not firing sooner. Although there were 14 shots fired at T.J., each officer had a simultaneous legal justification in firing their weapon. When T.J. refused to disarm himself and minimally at any moment when T.J. raised the gun in the direction of the officers, they would have been legally justified in using deadly force to defend themselves or others. Officers would have been justified to use deadly force at the moment Duitscher entered the residence since the gun was raised and pointed in his direction. From the moment T.J. armed himself to the moment the gun was raised just before the first shot was fired, T.J. represented a lethal threat to the officers and others near him. Prior to discharging any weapon toward T.J., officers were faced with a deadly threat solely created by T.J. Numerous attempts were made by officers to end the situation peacefully. T.J. was repeatedly given commands to disarm himself and he failed to comply with the officers. Instead, T.J. continued and escalated the deadly threat by refusing to disarm himself and pointed a handgun toward the officers.

CONCLUSION

Having determined the officers involved acted with legal justification the Iowa Attorney General's Office considers the criminal investigation into the officers' conduct closed. No criminal charges are warranted.