

Office of the Kane County State's Attorney



JOSEPH H. McMAHON

State's Attorney

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April 26, 2019

Chief Kristin Ziman
Aurora Police Department
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Chief Robert Marshall
Naperville Police Department
1350 Aurora Avenue
Naperville, IL 60540
marshallr@naperville.il.us
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Re: Officer involved shooting – February 15, 2019

Dear Chief Ziman and Chief Marshall,

We have completed our review of the incident that occurred on February 15, 2019 at the Henry Pratt facility in Aurora, Illinois. Our review is pursuant to my statutory responsibility as set forth in the Police and Community Relations Improvement Act. My findings are reported below.

FACTS AND CIRCUMSTANCES OF DEADLY SHOOTING

On February 15, 2019, Gary Martin (hereafter Offender), an employee of Henry Pratt, located at 641 Archer Avenue in Aurora, Illinois, arrived for work at approximately 6:45 a.m. He encountered Vincente Juarez near the time clock and words were exchanged regarding an incident that the offender had on February 14, 2019, regarding safety glasses.

The offender spoke to a few employees that morning and was concerned that he may be fired for the safety violation. He stated to one employee "If I get fired, I'm going to kill every mother fucker in here." "I am going to blow police up." That employee did not report the statement to anyone because he believed that the offender was always making "off the wall" statements and therefore was not concerned. The same employee was aware that the offender carried a gun in his vehicle but had never seen him with a gun inside the building and was not aware the offender had a gun with him on February 15, 2019. It is believed that the offender brought the gun and ammunition into the plant that morning when he arrived for work as there is no video evidence of him returning to his car prior to the shooting.

At approximately 1:00 p.m., Tim Williams received a text message from Clayton Parks regarding a disciplinary meeting with the offender to address a write up for not wearing his safety glasses. Mr. Williams went upstairs to the meeting. Also present for the meeting were Russel Beyer, Clayton Parks, Josh Pinkard, and Trevor Wehner. Prior to the offender's arrival, the meeting was moved to a private office so that other employees could not hear the conversation.

Mr. Beyer spoke to the offender and told him to come upstairs for the meeting. The offender was seen walking over to his workstation to retrieve something and he also put on a hoody. He walked upstairs and was seen going into the bathroom prior to entering the office. Once the offender entered the office he was immediately presented with a written write up. He was then told by Mr. Parks that they would begin the termination process.

The offender began using profanity, and Mr. Pinkard said to him, "Ok, it's over." At which time the offender replied, "Yeah, it is over."

Mr. Williams started to get up and then he noticed rapid movement and heard gunshots. Mr. Williams ran toward the door and was shot in the wrist. He ran out of the room and down the stairs, yelling "Gary is shooting."

Employees on the first floor witnessed Mr. Williams fleeing down the steps and the offender chasing him with a gun in his hand. Employees yelled at the offender to stop. The offender continued to pursue Williams and eventually shot him twice more in the back.

The offender then went to the loading dock area and was seen by several people shooting Vincent Juarez. It is apparent from the evidence that he specifically targeted Mr. Juarez.

TIME LINE

1:24:07 – Dispatch Active shooter

1:28:19 – Officers Weaver, Cebulski, Zegar and Sheldon enter the building

1:30:14 – Officer Marco Gomez shot outside the building, in the parking lot

1:32:59 - Officer Cebulski shot inside the building

1:34:16 - Officer Renaldo Rivera shot outside the building

1:35:10 – Officers Adam Miller and James Zegar shot outside the building

2:59:08 – Suspect is down

Video surveillance recovered from inside the Pratt building shows offender positioning himself near a doorway, armed with a firearm prior to the arrival of law enforcement. The offender is observed walking up to a tinted glass doorway and looking outward in the direction of a parking

lot. As law enforcement officers arrive at the parking lot this offender is observed aiming and shooting through the glass doors in the direction of and specifically toward Aurora police officers.

Approximately six minutes after the 911 call was made Officer Marco Gomez arrives in the parking lot area adjacent to the Pratt building. As Officer Gomez exits his police vehicle and crosses the parking area on foot, offender shoots and strikes Officer Gomez. Over the course of the next several minutes offender fires additional shots at other Aurora Police Officers striking and injuring four additional police officers.

Officer Weaver of the Aurora Police Department was on duty on February 15, 2019 when he heard a call for an active shooter in the district he was assigned to during his shift. Officer Weaver responded to and arrived at the parking lot where the Henry Pratt business was located. He entered the building with Officers Zegar, Cebulski and Sheldon. After hearing gunshots and hearing someone say the shots came from door #14, Weaver and the group of officers made their way to the entrance they used to come into the building. Weaver and Cebulski went up the stairs to get in a position of elevation as they continued to look for the offender. While on the second floor Weaver and Cebulski moved down a hallway and then began to proceed down a staircase. As they were making their way down the steps they came under gunfire. Weaver yelled "Aurora Police" as more rounds were fired at him and Cebulski. Weaver started firing his weapon in a manner directed to stop the offender from shooting. Weaver believed he fired his weapon seven or eight times. Officer Cebulski was behind Officer Weaver and called out that he had been hit by a bullet. Both officers backed up and Officer Weaver covered the stairs. After approximately twenty minutes (Officer Weaver's estimate) other Aurora police officers arrived to assist Officers Weaver and Cebulski. Officer Cebulski had been struck in his kneecap by a bullet.

Officer Weaver was wearing his full Aurora Police uniform and yelled Aurora Police when he was taking fire because he could not see the shooter, and he did not want to fire on another police officer. The offender never responded verbally to Officer Weaver. Officer Weaver was range qualified with his weapon in July 2018.

Naperville Police Officer Shaun Moy is a member of the Naperville Special Response Team and is a Field Training Officer. Officer Moy was working his normal shift when he was notified about a shooting at the Henry Pratt facility. The decision was made to respond to the scene with the Naperville Police SWAT team to assist the Aurora Police Department. Upon arrival at the command post Officer Moy was given a description of the offender. Officer Moy entered the Henry Pratt facility with a team of officers and was assigned to carry a ballistic shield. When Officer Moy reached the second floor of the facility he observed two subjects laying in a room, who he believed were deceased. Officer Moy, along with Officer Ferguson (Naperville Police Dept.) and other Aurora Police personnel, made their way to the first floor of the warehouse and began clearing rows in the warehouse. Moving north through the building, Officer Moy's team joined with several other teams in clearing the warehouse.

Officer Moy approached an area he described as a workshop. This area was partially separated from the main warehouse by a partition wall. Officer Moy heard a noise that sounded like a piece of metal fall or roll around. Officer Moy stated that team members announced their presence by saying "police, show yourself." As the team advanced past the partition wall, Officer Moy observed the offender quickly pop up from behind some machinery and point a gun at him that was equipped with a green laser. Officer Moy believed the offender's gun was pointed directly at him and he observed the offender shoot at least four shots and observed muzzle flashes from the

offender's weapon. Officer Moy stated that he returned fire with his handgun. Officer Moy indicated that numerous flash bangs were deployed that allowed his team to retreat behind the partition wall.

Officer Moy stated that other officers moved further down a row in an attempt to engage the offender from over the wall. He did not join those officers. Officer Moy was later advised to advance on the offender and when he did, he observed that the offender appeared to be deceased.

Officer Moy was dressed wearing a SWAT vest, plates, SWAT helmet and a green military style uniform with police markings. He was armed with a Glock 22, .40 caliber pistol that he is range qualified with. This weapon was turned over to investigators.

Officer Shaun Ferguson is employed by the Naperville Police Department and was present at the Naperville Police Department on February 15, 2019 when he was informed of an active shooter in Aurora. Officer Ferguson was activated to assist the Aurora Police. Upon arriving at the incident scene Officer Ferguson along with Officer Moy were directed to enter the building to assist in locating the offender. Prior to entering the building he had been given a general description of the offender and knew that five Aurora Police officers had been shot. While in the warehouse, Officer Ferguson's team entered a shipping office and found a female hiding under a desk. The female provided Officer Ferguson with the name of the offender. While in the warehouse, Officer Ferguson also observed a victim on the loading dock who appeared to be deceased. As Officer Ferguson progressed through the warehouse, his and other SWAT teams gave multiple verbal commands identifying the officers as the police and advising the offender to come out with nothing in his hands. As Officer Ferguson's team came to a "T" intersection of the warehouse, the police came under fire from the offender. Officer Ferguson and two other officers began to climb racks to obtain high ground over the offender. From his position he observed the suspect sitting in a chair with a handgun in his right hand at his chest. Officer Ferguson observed the offender's hand slowly dropping from his chest down to his side. Officer Ferguson fired his weapon three times. Officer Ferguson was range qualified with his weapon in June 2018.

Detective Bosson is an Aurora Police Officer and was off duty on February 15, 2019 when he received a page to report to the station. He arrived at the Aurora Police Department, secured his gear and drove to the scene of the incident with other members of the Aurora Police Department. Detective Bosson is a member of the Aurora Special Response Team Unit as a sniper. Detective Bosson entered the building with other Aurora Police officers and a Naperville police officer. They began searching for the offender in the warehouse. Detective Bosson described the warehouse as huge with many rows of shelves and equipment. As the team pushed forward he heard multiple gun shots from what sounded like a pistol as opposed to a rifle. As teams fell back, Detective Bosson and a Naperville police officer checked down the last aisle and began climbing up a rack. Detective Bosson observed that there was a break in the wall that would give someone a view of what was on the other side. Detective Bosson, could see 4-5 sparks and initially thought that the offender was shooting. Detective Bosson moved himself into a position that allowed him to observe the offender. He saw the offender seated in a chair with a pistol in his right hand. It appeared that the offender was waiting for police to enter the area where the offender was located in order to ambush the police. It did not appear to Detective Bosson that the offender was injured as Detective Bosson did not observe any blood or trauma to the offender at a distance of approximately 20-25 yards. Detective Bosson fired his rifle twice at the offender. He believes that the first shot struck the offender in the chest and the second shot struck the offender

in the head. Detective Bosson observed the Naperville officer fire his weapon three times at the offender. Detective Bosson was range qualified with his weapon in January 2019.

Deputy McDevitt is a Kane County Sheriff's Deputy who is also a member of the Kane County Sheriff's SWAT team. On February 15, 2019, Deputy McDevitt answered a call out for SWAT team members and responded to the staging area at 732 Prairie St., Aurora. Deputy McDevitt entered the building occupied by the Henry Pratt business through loading dock door #14 with other SWAT team members. Once inside the main warehouse area Deputy McDevitt's team joined with other SWAT teams and began clearing the warehouse area working towards the northern end of the building. As they approached the northern area of the building Deputy McDevitt observed an open room with large machines and equipment. As his SWAT team broke the threshold of that room the offender began shooting at the SWAT team from a position in the northwest corner of the open room. Deputy McDevitt advised investigators there was a confrontation that involved more than one volley of gunfire. Deputy McDevitt is a licensed paramedic and after the gunfire ended, made his way to the offender who was later identified as the offender. Deputy McDevitt observed that the offender was unresponsive, apneic and pulseless upon assessment.

Deputy Wasson is a Kane County Sheriff's Deputy who shortly after 1:30pm on February 15, 2019, received a SWAT page to 732 Prairie Street, Aurora due to an active shooter incident at 641 Archer Ave., Aurora, IL. Upon his arrival at the staging area he was teamed with other members of the Kane County Sheriff's Office SWAT team who were then directed to enter the building to locate the offender. (Deputy Wasson was placed on the same SWAT team with Deputy McDevitt) Once inside the building Deputy Wasson's SWAT team joined other teams in the effort to clear the building and locate the offender. Deputy Wasson's team entered the main warehouse and began to work north. As Deputy Wasson's team reached the northern side of the warehouse he observed a large room containing large machines and equipment. The room was separated from the main warehouse by a brick wall that extended to the west but did not go all the way to the ceiling. There were pallet racks with supplies and equipment against the wall. As Deputy Wasson's team reached the area of the open room the offender began to shoot at the officers from the northwest corner of the room. Deputy Wasson and officers from other SWAT teams ran towards the other side of the wall in an attempt to flank the offender. Deputy Wasson assisted two other officers in climbing the pallet racks to look over the brick wall. Once those officers reached that position, Deputy Wasson heard a second exchange of gunfire. Deputy Wasson believes the offender was neutralized in this subsequent exchange of gunfire.

Officer Gartner of the Aurora Police Department was working as a school resource officer at Waubensee Valley High School when the call came in for an active shooter. He responded to Luigi's (an area restaurant used as a staging area near the incident location) and was assigned to an entry team. Officer Gartner made entry to the building and carried a shield. He was with several teams of officers as they approached the north end of the building and was present when the offender began to fire on officers inside the warehouse. Officer Gartner did not observe the offender shoot but did observe muzzle flashes from the offender's weapon. Officer Gartner fired his handgun at a mirror the offender was using to observe police as the officers advanced on the offender's position. After the offender had been neutralized he saw the offender's weapon on the floor adjacent to the offender who was slumped down in a chair.

FORENSIC PATHOLOGISTS FINDINGS

Dr. Mitra Kalelkar performed an autopsy on the offender on February 16, 2019. In her opinion the offender's cause of death was due to multiple gunshot wounds. The offender sustained six gunshot wounds labeled as follows by the doctor:

1. Gunshot wound number 1 was to the middle of the offender's forehead and its course was front to back.
2. Gunshot wound number 2 entered the offender's right jaw and fractured the suspect's skull. The bullet's course was upward. There was powder and soot surrounding the wound margin that indicates contact range of firing. (This is likely a self-inflicted wound.)
3. Gunshot wound number 3 was to the offender's left anterior chest. It perforated the left lung. Its course was front to back, right to left and there was no evidence of close range firing.
4. Gunshot wound number 4 was to the offender's right anterior chest. It lacerated the offender's heart. Its course was front to back, right to left and there was no evidence of close range firing.
5. Gunshot wound number 5 was to the offender's left anterior chest and perforated the left lung and heart. Its course was front to back, right to left and there was no evidence of close range firing.
6. Gunshot wound number 6 was to the middle of the offender's chest. It perforated the stomach, left lung and heart. Its course was front to back and right to left and there is no evidence of close range firing.

FIREARM, AMMUNITION AND MAGAZINES RECOVERED

A Smith and Wesson M & P 40 caliber semi-automatic handgun with a serial number of HRN8252 was recovered on the floor next to the chair in which the offender was seated. This weapon was loaded with one bullet chambered and six (6) bullets in the seated magazine, with the gun's hammer cocked. An additional magazine containing 10 .40 caliber bullets was located in the left pants pocket of the offender. The offender was armed with a folding knife in his right pants pocket. The Illinois State police crime lab has identified 64 fired cartridge casings, recovered at the scene, as being fired from the Smith and Wesson M & P 40 caliber semi-automatic handgun with a serial number of HRN8252. Additional magazines were recovered from the offenders' personal belongings.

Deceased Offender

Gary Martin (DOB 4/28/73)
1980 Selmarten Rd.
Aurora, Illinois 60506

Injured Police Officers

Officer Marco Gomez – Aurora Police Department
Officer James Zegar – Aurora Police Department
Officer Adam Miller – Aurora Police Department
Officer John Cebulski – Aurora Police Department
Officer Reynaldo Rivera – Aurora Police Department

Civilians Killed by the Offender

Russell Beyer
Vicente Juarez
Clayton Parks
Trevor Wehner
Josh Pinkard

Civilian injured by the Offender

Timothy Williams

APPLICABLE ILLINOIS LAW

The law of the State of Illinois as it applies to the use of force in this matter is set forth as follows:

720 ILCS 5/7-1 Use of force in defense of person

(a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

720 ILCS 5/7-5 Peace officer's use of force in making arrest

Peace officer's use of force in making arrest. (a) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily

harm to himself or such other person, or when he reasonably believes both that:

- (1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and
- (2) The person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

Crimes committed by the offender toward Police Officers

720 ILCS 5/9-1(a) Murder

720 ILCS 5/8-4 (a) Attempt

A person commits attempt murder, without lawful authority, he takes a substantial step toward the commission of the crime of First Degree Murder, by intentionally shooting another individual.

720 ILCS 5/12-1 Assault

A person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.

720 ILCS 5/12-2(b)(4.1) Aggravated Assault

A person commits aggravated assault when, in committing an assault, he or she knows the individual assaulted to be a peace officer, fireman, emergency management worker, or emergency medical personnel:

- (i) performing his or her official duties;
- (ii) assaulted to prevent performance of his or her official duties;
- or
- (iii) assaulted in retaliation for performing his or her official duties.

720 ILCS 5/12-3.05 (e)(2) Aggravated Battery with a Firearm

A person commits aggravated battery with a firearm when he discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to a person he or she knows to be a peace officer, community policing volunteer, person summoned by a police officer, fireman, private security officer, correctional institution employee, or emergency management worker:

- (i) performing his or her official duties;
- (ii) battered to prevent performance of his or her official duties; or
- (iii) battered in retaliation for performing his or her official duties.

720 ILCS 5/24-1.2 Aggravated Discharge of a Firearm

A person commits aggravated discharge of a firearm when he or she knowingly or intentionally:

- (2) Discharges a firearm in the direction of another person or in the direction of a vehicle he or she know or reasonably should know to be occupied by a person.

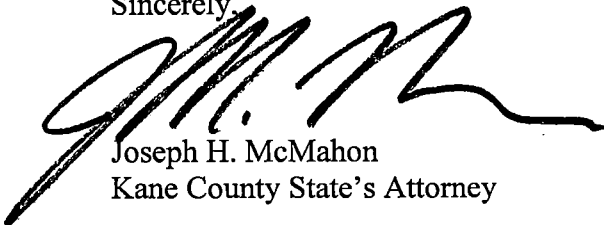
CONCLUSION

All peace officers who responded to the incident scene and fired their weapons at the offender were justified in doing so. The offender had just committed multiple acts of First Degree Murder and was still armed with a firearm and ammunition for the weapon. The offender fired multiple gunshots at police officers arriving at the location of the incident without provocation or legal justification. The offender fired on Officers Weaver and Cebulski without provocation and even after Officer Weaver announced their presence as police officers. The offender fired at multiple SWAT teams including Officer Moy and others. The offender did not respond to multiple verbal commands to cease his actions and surrender at any time during this incident. The offender positioned himself in the northwest corner of the building, providing cover for himself and used a mirror to monitor the advance of police on his position. As the police came into his line of fire, the offender's course of action was to shoot at the police with his handgun. This action forced the police to retreat to avoid being struck by the offender's gunfire. SWAT team members climbed to a position of height to obtain access to the offender to stop him from shooting at the police.

Based upon a review of the investigation, all officers at the scene of this incident had the reasonable belief that the deadly force they employed was necessary to prevent death or great bodily harm to themselves and other individuals as they attempted to locate and arrest the offender.

Our review of this matter pursuant to 50 ILCS 727/1-10 will be considered closed by this office regarding an officer(s) involved death. There is no evidence that any police officer committed any unlawful acts. Law enforcement reports may now be released pursuant to the Police and Community Relations Improvement Act.

Sincerely,



Joseph H. McMahon
Kane County State's Attorney