

Report
Of
June 15, 2016
In the Matter Re:
**Estate of Tony Robinson, Jr., v. The City of Madison, WI and
Officer Matthew Kenny**
(US District Court, Western District of Wisconsin, No. 3:15-CV-502)
16-0321
Prepared For
The Law Office of Loevy & Loevy
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By
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The following report does not preclude the modification or supplementation of results and/or opinions based upon the development of additional data or investigative information. Detailed supplements pertaining to specific testing or documentation may be submitted under separate cover. The observations and opinions expressed in this report are made in the context of firearms identification, crime scene reconstruction to include bloodstain pattern documentation, and law enforcement firearms instruction.

Case Overview

On March 6, 2015 at approximately 6:30 PM, Officer Matthew Kenny with the Madison, WI Police Department responded to a disturbance call arriving at 1125 Williamson Street, Apartment #2, in the City of Madison. While assessing the situation Officer Kenny proceeded to the exterior porch of the building and entered a stairwell leading upward to the apartment units. While entering the stairwell, Officer Kenney states that he drew his service weapon; a Glock, model 17, semiautomatic pistol and assumed a high ready position. According to Officer Kenny, upon reaching the top of the stairs he was immediately assaulted from his left side by a then unknown party (later identified as Tony Robinson, Jr.) who struck him on the left side of the head and continued to swing, pushing Kenny rearward down the stairs. Officer Kenny further claims to have fired his service pistol two to three times at Mr. Robinson prior to making his way down the stairs in an unknown fashion (Officer Kenny states that he was unsure about the manner in which he and Robinson descended the stairwell) before scrambling to his feet. According to Officer Kenny, Mr. Robinson came to rest at the bottom of the stairs in a seated position possibly slouching against the steps. Officer Kenny then fired an additional four times and claims that the decedent



was continuing to aggress toward him. Following the second string of fire, medical aid was provided to Mr. Robinson before being transported to the hospital where he pronounced dead at approximately 7:12 PM.

Materials Reviewed and Observations

- Wisconsin DCI 1-1493_15-1188 Case File
- Transcript of the video deposition of Matthew Kenny dated May 12, 2016
- Autopsy Presentation prepared by Dr. V. Tranchida, M.D., Chief Medical Examiner, Dane County, WI
- Video recording from Officer Kenny's vehicle with synchronized audio from a secondary video source
- Wisconsin DCI Crime Scene photographs
- Additional Wisconsin DCI photographs depicting the decedent in the emergency room and of a black Police duty belt
- Report of Consultation prepared by Dr. Jonathan L. Arden, M.D.

Crime Scene Documentation:

- Wisconsin DCI Crime Scene photographs
 - Wisconsin DCI Crime Scene Report dated March 10, 2015
 - Wisconsin State Patrol Technical Reconstruction Report Supplement including scene diagrams dated March 23, 2015
 - Kenny Interview Exhibits 161 and 162
- Evaluation of the crime scene materials disclosed the documentation, collection, and preservation of firearm and apparent bloodstain evidence including seven (7) fired cartridge cases, three (3) fired bullets, and at least two (2) apparent bullet defects. Of the fired cartridge cases, two (2) were found on the landing at the bottom of the stairwell while four (4) were located outside of the building. One apparent bullet defect said to be approximately 30-34 inches above the tenth step to the left wall (used hereafter) of the stairway as looking upward (Item 9a), bears the general physical appearance of a low angle ricochet mark. Fired bullets were recovered from the west wall of the apartment hallway (Item 11), from a shoe on the left edge of the tenth step (Item 10), and from the stairway landing (Item 12). High volume bloodstains and pooling were present on the lower landing of the stairwell in addition to the adjacent left wall. No chemical tests for the potential presence of blood, lead, copper, or gunshot residues were conducted.

Firearms Identification:

- Firearms Examination Report dated April 2, 2015
- The firearms Identification work in this case focused on the examination of Officer Kenny's duty pistol (Laboratory Item N), the seven (7) fired cartridge cases from the crime scene (Laboratory Items C through I), six (6) fired jacketed hollow-point bullets also from the crime scene (Laboratory Items J, K, M, Q, R, and S), and one (1) fired bullet jacket fragment (Laboratory Item P1). The report

discloses that Officer Kenny's duty pistol is a functional firearm capable of causing serious bodily injury or death. Microscopic examination and comparison of the fired cartridge cases of Items C through I were compared with test-fired cartridge cases from Item N and were found to have been fired in that firearm. The fired bullets of Items J, K, M, Q, R, S, and P1 were likewise compared to test-fired bullets fired from the pistol of Item N and were found to correspond in class characteristics with J and K being identified as having been fired from the Item N pistol. No bench notes or photographs outlining the presence of trace evidence or the general condition of each Item were provided.

Autopsy Findings:

-Autopsy Presentation prepared by Dr. V. Tranchida, M.D

-Report of Consultation prepared by Dr. Jonathan L. Arden, M.D.

The autopsy of Mr. Robinson disclosed that he received a total of seven (7) gunshot wounds during the incident identified as wounds A through G with wounds C, D, E, and F each bearing stippling. With the exception of wound G, which perforated the right index finger, each gunshot wound followed a downward trajectory to some degree and was found to be above the nipple line of the decedent. Wounds A, B and C were found to be non-fatal as they did not impact vital organs. No distance determination examinations have been conducted by the WI Department of Justice or Madison Police Department during the course of the investigation of this case.

Audio/Video Documentation:

-Video recording from Officer Kenny's vehicle with synchronized audio from a secondary video source

Review of the video from Officer Kenny's vehicle (which was synchronized with the audio from another recording) shows Officer Kenny entering the building at time stamp 18:38:21. At 18:38:42-43, three (3) apparent gunshots fired in rapid succession can be heard, with an additional four shots being fired at 18:38:44-45 as he is egressing from the building by walking rearward the last of which can be seen made with a downward trajectory. The foot of Mr. Robinson can be seen in the doorway as Officer Kenny emerges from the stairwell ¹.

Summary and Conclusions

The reconstruction of shooting incidents draws upon all of the available information collected during the scope of an investigation. The following opinions are based upon the examination of the above referenced sources, my education and experience, and objective consideration of the facts at hand. Given the general nature of the crime scene documentation, approximations or other broad statements may be used when speaking about apparent bullet defects, their position, and the condition of evidence. Bullet paths determined through autopsy will be relied upon as an accurate representation of intermediate or terminal trajectories and have been coupled with those from the scene.

¹Times are approximate.

The defect of Item 9a is a low-angle perforating ricochet near the top of the stairs. This defect is consistent in appearance with the passage of a fired bullet, with no apparent gunshot residues absent the potential for bullet wipe, and corresponds with a shot of some distance, likely from the bottom of the stairs. This defect is more likely than not associated with gunshot wound G given the mobility of the extremities; however, the potential that it is an element of a bullet path independent of the body of the decedent cannot be ruled out.

According to statements made by Officer Kenny he was at or near the top of the stairs during what is being referred to as the first string of fire or the initial three gunshots heard in the recording. And that he was firing from a position below Mr. Robinson. This is problematic given the downward trajectories of gunshot wounds A through F. Officer Kenny states that the impetus to use deadly force was the fact that he was being attacked (punched in the head) and aggressively approached. The decedent would likely have approached from a standing position in order to threaten serious bodily injury or death. In order to achieve bullet impacts with a downward trajectory with the target in a standing position, the muzzle of the firearm would have been elevated given the differences in height between the two men (Robinson 6'3/ Kenny 5'10") and not in the stated position of the firearm as close to the chest. Officer Kenny also makes no mention of a struggle for his firearm during the alleged attack, nullifying the need to present his weapon from an awkward angle. This angular discrepancy would only be increased the further Officer Kenny was below Mr. Robinson during the first string of fire.

In other words, Officer Kenny's testimony about what occurred, with Mr. Robinson above him and in an upright and attacking position while he had his gun at chest level, is contradicted by the trajectories and entrance points of the gunshots. His testimony that Robinson was still swinging at him and attacking at the time he fired the first string of shots is also contradicted by the lack of stippling on gunshot wounds A, B and G (the shots most likely to have been fired in the first string, as set forth below), suggesting distance of two feet or more between the two men.

Another possibility is that during the initial string of fire Officer Kenny was above Mr. Robinson. There is no clear evidence to support this notion, is inconsistent with the video, and contradicts statements made by Officer Kenny.

A more plausible potential scenario is set forth below: First, the most likely sequence of events as outlined by the evidence presented is that all seven shots were fired from the bottom of the stairs. This is supported for the following reasons:

- The concentration of fired cartridge cases at the bottom of the stairs and the lack of the same elsewhere in the scene indicates that the shots were fired closer to the bottom of the stairs

-A period of only three to four seconds elapses during the entire shooting event, with Officer Kenny's body appearing in the entrance to the stairwell even as the first string of three shots is finishing. Sufficient time does not elapse to support Officer Kenny's story that the initial shots occurred upstairs, and then they traveled down the stairs before the next volley. The synchronized audio/video recordings show that all seven shots were fired in close succession. Officer Kenny's proximity to the body of Mr. Robinson and the change in downward muzzle angle while moving rearward also support this contention.

Simply, the statements of Officer Kenny are inconsistent with the evidence presented, which indicates that the totality of the shooting event took place at or near the bottom of the stairs. The evidence also indicates that the shots were fired from staggered distances and from multiple downward angles.

Second, gunshot wounds A, B and G are most likely to have been the first three shots fired. This is because it is apparent from the video that shots 4-6 were fired in very close proximity to Mr. Robinson, and therefore highly likely to cause stippling. In addition, given the closer proximity of gunshot wounds C, D, E and F to Officer Kenny's stated high center mass target, they are more likely to have been fired at close distance, at someone standing or sitting still and not during the course of a dynamic event. That is consistent with what the video shows for the second string of shots, in which Officer Kenny appears to be above and in very close proximity to Mr. Robinson, who appears to be lying on the floor based on the posing of his feet and legs in the video.

Third, the most likely scenario with regard to Mr. Robinson's positioning during the shots is that at some point shots are fired upward, from the bottom of the stairs (as discussed above), at a target (Mr. Robinson) that is above Officer Kenny. This would most likely be the first string of shots, since Officer Kenny's body positioning during the second string of shots (lunging forward and down) would not be consistent with shooting upward. This scenario would explain the existence of the apparent bullet defects at and near the top of the stairwell. For the shots fired up the stairs to create downward trajectories (like those in gunshot wounds A and B), it is most likely that the decedent was bent far forward with his chest more parallel to the axis of the bore of the firearm. This would be consistent with a scenario in which Mr. Robinson was falling during one or more of the first three shots. If in fact Mr. Robinson were falling down the stairs during the first three shots, and then on the ground at the bottom of the stairs during the second string of four shots, this would not only explain the downward trajectories and the gunshot defects, it is also consistent with the sequencing discussed above and would explain the evidence regarding the deposition of gunpowder particles. This is supported by the nature of the gunshot wounds caused by shots 4-7 with wound E, having the appearance of a close contact wound bearing a muzzle imprint, and wounds C, D, and F showing the deposition of gunpowder

particles due to their proximity the target; and the first three shots being wounds A, B, and G, which demonstrate the lack of the presence of stippling or soot.

The other possible scenario to consider is that upon coming to rest at the bottom of the stairs, three shots were fired in close proximity to Mr. Robinson followed by the second sting of fire as the muzzle to target distance was increasing. This could be squared with the nature of the gunshot wounds, but is hard to square with the existence of gunshot defects near the top of the stairs.

Finally, from the onset of his response, escalation of the use of force continuum is made through Officer Kenny's drawing of his service pistol. By approaching in "Position Sul", a form of high ready, he is forced to focus on the management of his firearm rather than less lethal options. In addition, when faced with an attacker while the firearm is in the high ready position, the firearm became the primary means through which to stop the threat. Other tools may have been employed in this situation such as the baton, taser, and pepper spray in order to preoccupy the subject while creating distance from the threat. Officer Kenny is seen in egress from the building during the shooting event.

Additional Testing

Additional testing is warranted in this case to include; examination of the crime scene and entrance video, bloodstain pattern reconstruction, ejection pattern documentation, muzzle to target distance determination, and additional firearm, fired cartridge component, and clothing examinations.

Signed,

A handwritten signature in black ink, appearing to read 'Samuel A. Marso', written in a cursive style.

Samuel A. Marso