

**OFFICE OF ATTORNEY GENERAL
INVESTIGATION AND REPORT
OFFICER INVOLVED SHOOTING
(O.G.C., 4-24-2007)**

The South Dakota Division of Criminal Investigation (DCI) received a request in the early morning hours of April 24, 2007, from the Rapid City Police Department (RCPD) to conduct an inquiry into an officer involved shooting which occurred in Rapid City, South Dakota, at approximately 1:50 a.m. on April 24, 2007. The DCI began an investigation immediately. The incident involved multiple crime scenes. DCI Officers, working in conjunction with the Pennington County Sheriff's Office, took control of two scenes, recovered a weapon from the involved officer, secured a blood sample, interviewed the officers involved, the participants and other eyes witnesses. Multiple scenes were processed for evidence and multiple photographs were taken. The evidence gathered at this point indicates the following;

SUMMARY

At approximately 12:11 a.m. on April 24, 2007, the RCPD received a call from Dan Hankins who complained that someone had entered his home at 1024 Wood Avenue earlier in the evening. The burglar(s) took two sets of car keys to Hankins' Pontiac Grand Am, then left the home and stole the Grand Am. Hankins reported he was also missing other items from his home. The description of the stolen vehicle, including the license plate

number, was relayed to all of the Rapid City Police Department units that were currently on duty.

Shortly before 1:49 a.m., RCPD Officer Fred Baxter was patrolling in west Rapid City and traveling south on Jackson Boulevard. He observed two vehicles traveling north on Jackson Boulevard and turning east onto West Fulton Street. As he passed West Fulton Street he noticed that the two vehicles he had previously seen were stopped together with a third vehicle at the end of a cul-de-sac on West Fulton Street. Because of the lateness of the evening and because the street dead ends in the cul-de-sac, the area is generally unoccupied. Officer Baxter thought the conduct was suspicious and merited investigation so he turned his patrol vehicle around and proceeded on West Fulton toward the three vehicles. Vehicle #1 was a maroon Impala facing east. Ahead (east) of the Impala and also facing east was vehicle #2, a red Pontiac Grand Am. The front edge of the Grand Am was located at approximately the entry point to the cul-de-sac. The third vehicle was a white Blazer which had turned around in the cul-de-sac and was now facing west. All three vehicles were running and their lights were on. Baxter stopped his patrol vehicle behind the Impala in approximately the center of the street. Baxter activated the rear amber lights on his patrol vehicle, then got out of his patrol car and walked toward the parked vehicles. Baxter checked the license plate on the Grand Am (vehicle #2) and

recognized it as the vehicle that had been reported stolen earlier in the evening. Baxter then radioed in and told the dispatch center that he had located the stolen vehicle and requested more police units sent to his location. Baxter also observed that the driver of the Impala was wearing red bandanas around his face and his forehead. He saw a red bandana in the Grand Am. In addition, the driver of the Blazer had a dark colored bandana across his forehead and a second dark colored bandana around his neck. Baxter reports that he then drew his service weapon. He was dealing with a suspect from a first degree burglary and a grand theft. He was also concerned because the drivers of all three vehicles were wearing bandanas which is suggestive of gang type activity. Baxter was equipped with a body mic which he activated and ordered the occupants of the vehicles to "turn it off!" The activation of the body mic also automatically activated the video camera and audio recording device in Baxter's vehicle. The tape shows that activation began at 49 minutes and 38 seconds after 1:00 a.m. on April 24th. When the camera was activated, Baxter was standing on the north shoulder of West Fulton roughly straight north of the rear of the red Grand Am. The Blazer was located about two or three car lengths east of Baxter and facing west toward Baxter. The sequence of events as disclosed on the video tape was as follows:

1:49:38 - Tape starts.

:39 - Baxter ordered occupants of vehicles to "turn it off!"

:40 - Baxter stepped off curb towards the Grand Am.

:41 - Baxter observed the driver of the Blazer pull his neck bandana up around his nose so that only his eyes are visible.

:43 - Baxter took another step towards the Grand Am. At virtually the same time the Blazer began accelerating towards Baxter.

:44 - Baxter aimed weapon at the Blazer. Blazer continued toward Baxter.

:45 - Baxter fired first shot which entered the windshield of the Blazer slightly to the driver's side and near the middle of the wind shield and struck the driver's door.

:46 - Baxter fired again as he stepped back to avoid being struck by the Blazer. The second shot entered the Blazer on the passenger side, passed through the passenger side head rest, hit the driver in the right side under the shoulder, exited near the driver's right shoulder blade, and lodged in the driver's left arm. The Blazer continued west on West Fulton to Jackson Boulevard where the Blazer turned north.

Other Rapid City PD units were enroute to the scene, observed the white Blazer moving north on Jackson Boulevard and gave chase. The white Blazer attempted to elude the police

units at high speeds through downtown Rapid City. The Blazer proceeded east through town on Main Street and St. Joe. The Blazer attempted to turn north at the intersection of First Street and St. Joe, but was unable to make the turn and hit a light pole. The driver was taken into custody at that location. He suffered a broken leg in the collision. He was transported to Rapid City Regional Hospital where he was treated for his injuries. None of his injuries were life threatening.

Subsequent investigation disclosed that vehicle #1, the blue Impala, was being driven by a juvenile, C.L.T. Vehicle #2, the Grand Am, was being driven by a juvenile, M.J.J. Vehicle #3, the Blazer, was being driven by a juvenile, O.G.C. The three juveniles had attended a movie earlier in the evening. After the movie, all three went to 1024 Wood Avenue. At least one juvenile entered the home, took the keys to vehicle #2 and stole vehicle #2. All three juveniles left 1024 Wood Avenue in vehicle #2. They then traveled to Wal-Mart where one juvenile entered the business and bought several bandanas. The three juveniles then traveled together to 2411 Cameron Street. All three juveniles entered the home at 2411 Cameron. They stole the keys to vehicle #1 and vehicle #3. They also stole firearms, alcoholic beverages and electronic equipment. Vehicles #1 and #3 are registered to Allen and Vicky Nord of Rapid City, South Dakota. The Nord burglary had been unreported at the time of the shooting.

Investigators recovered two .40 caliber shell casings at the scene in locations consistent with the firing by Baxter of his service weapon as related in the video tape. Baxter was tested for the presence of alcohol and that test was negative. Bodily substances from the driver of the Blazer were also tested for the presence of drugs and alcohol. The alcohol test was negative. The test for marijuana was positive. The driver of the Blazer insisted that he had not attempted to overrun the officer.

CONCLUSION

The South Dakota Attorney General's Office concludes that Officer Baxter acted appropriately in the discharge of his weapon. Baxter arrived at a scene involving a recently reported stolen vehicle and a residential burglary. Baxter attempted to take charge of the situation and restrained all of the individuals present. O.G.C. (driving vehicle #3), rather than turning off the vehicle as directed, pulled a bandana over his nose to form a mask and then drove the vehicle toward Baxter. Baxter stated that he was in fear of his life and he thought the driver was trying to run him over. The video tape clearly demonstrates that Baxter's interpretation of the driver's intent was reasonable. Baxter acted upon a reasonable belief that he probably would have been killed or he would have been seriously injured had he not used lethal force. Although shots at or from a moving vehicle are ordinarily prohibited, the

officer is always allowed to use deadly force to protect himself or a citizen from extreme bodily injury or death. If the juvenile O.G.C. had shut down the vehicle as he was instructed to do, the evening would have led to a very different result.

Respectfully submitted,

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ATTORNEY GENERAL

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