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**MEMORANDUM**

TO: Chief Rick Scarbrough  
FROM: Dave Clark  
DATE: April 19, 2018  
RE: Officer Involved Shooting of Roger Raymond York, Jr.

**INTRODUCTION**

This memo will confirm my understanding of the events concerning the fatal shooting of Roger Raymond York, Jr. by a Clinton police officer on the evening of November 8, 2017 and my conclusions based upon all of the evidence and the investigation of the T.B.I.

On the evening of November 8, 2017 you contacted me to report that officers from your agency were involved in a fatal shooting minutes earlier. We agreed that under the circumstances it would be proper to contact the T.B.I. for an independent investigation. I immediately contacted the T.B.I. and responded to the scene where you and I awaited the arrival of the T.B.I. while insuring that the integrity of the scene was preserved and that witnesses were identified and separated for later interview. When the T.B.I. arrived with a group of field agents and an Assistant Special Agent in Charge, you relinquished the scene and the scene log to T.B.I. What follows is a report on the investigation that has now been completed.

**FINDING**

I have worked with the T.B.I. during the course of the investigation. When the original report was submitted, there were supplemental tasks that I requested of the T.B.I. to complete the original report. Those supplemental tasks have been completed and the investigation has been thoroughly reviewed. As a result of that review, I am satisfied that the investigation is complete and was comprehensively performed. The conclusion I draw from the investigation is that no criminal charges are appropriate against any of the officers involved. I have instructed the T.B.I. to close its file on this matter and this office will correspondingly close its file.

## INVESTIGATION

On November 8, 2017 Clinton Dispatch received a call from a citizen informant who had been previously asked by Clinton officers to alert Dispatch if a wanted subject named Roger Raymond York, Jr. or a vehicle he was believed to be driving were seen in the neighborhood. Clinton officers had, in prior days, developed information that York might be staying in a home in Clinton and that he had a warrant for his arrest for Violation of Probation issued out of Hardeman County, Tennessee.

Dispatch alerted officers on duty that they had been called for service to 1043 East Drive in Clinton where York was believed to be presently located. Clinton officers Sergeant Brandon Floyd, Sergeant Mike Jones and K-9 Handler Officer Matt Howell, along with Howell's K-9 partner responded to the scene. Officers parked their cars on an adjoining street and walked into the vicinity. Officers Floyd and Jones went to the front door and were met by a female occupant of the residence who allowed them in. Howell and his K-9 partner remained outside covering exits from the home.

Officers began searching the home and Jones encountered York in a bathroom where he was clothed, but in the tub. York refused to comply with verbal commands and slammed the bathroom door shut. Officers spoke to York through the bathroom door, but York refused to come out and declared that he was armed with a firearm and that officers would have to kill him. In response to the commotion, Howell and his K-9 partner entered the home. The officers forced open the bathroom door and attempted to deploy Howell's K-9 partner into the bathroom to engage York. As they were doing so, York was attempting to exit the bathroom through an exterior window. Officers Jones, Howell and Howell's K-9 partner exited the home and ran to the window from the outside to attempt to take York into custody as he was coming out of the window. Howell's K-9 partner engaged York as he was coming out of the window and dragged him out and to the ground. Jones and Howell then struggled to get York into custody as he was on the ground.

York was face down on the ground as Jones and Howell tried to get him under control and to grasp his arms to handcuff him. York was actively resisting while holding his hands and arms beneath his body and attempting to push up from the ground. York was able to push up to almost a kneeling position at one point in the struggle. Officers repeatedly yelled verbal commands to York to show them his hands and to drop the gun, but he refused to comply. York yelled to officers that he had a gun and comments to the effect that they would have to kill him. Floyd had then moved from the inside to the outside of the home. Howell advised Floyd that York had a gun and Floyd drew his weapon to cover Howell and Jones as they struggled with York. Howell had grasped York's left wrist but could not get control of York's right arm. Jones was struggling with York's legs to keep him from getting off of the ground. York fired a single shot from his weapon during this struggle. Floyd asked Howell if he had control of York and Howell responded that he did not have control. Floyd yelled "clear!" and Floyd then fired two shots from his service pistol that struck York in the rear of the head as he was positioned face down to the ground. York expired moments later. Officers immediately reported the incident to dispatch and requested a supervisor.

The T.B.I. conducted a thorough investigation that among other things included: photography of the scene, an autopsy by the Regional Forensics Center, ballistics testing, gunshot residue testing, audio and video recording review, witness interviews, police records reviews, scene diagramming and metal detecting. There were two witnesses located within the residence where York was found. In addition, there were a number of witnesses in the neighborhood where the events occurred.

The T.B.I. found that the scene and location of the body of Mr. York were consistent with the description given by the officers. A firearm was located underneath Mr. York's body. The witnesses inside the home indicated that York was aware that the police were trying to locate him, that he had said he was not going back to prison and that if police confronted him that he would commit suicide. The two witnesses in the home confirmed that they heard police giving York verbal commands to show them his hands and to drop the gun. They heard gunshots from the direction where the police described that the shooting occurred.

Witnesses located in the neighborhood but outside the home similarly corroborated the officers' account. Witnesses heard the officers struggling with York and giving him verbal commands. York was also heard saying that he had a gun and telling officers they would have to kill him.

The autopsy revealed that York died as the result of two gunshots entering the back of the head and exiting through the forehead. There was also evidence of K-9 bite marks on his upper back. Testing of York's hands was positive for gunshot residue.

The firearm located underneath York's body contained a single shell casing from a fired round inside the chamber. The shell casing had not ejected from the pistol as would be normally expected by a properly functioning semi-automatic pistol.

The recordings from the officers' body microphones are very difficult to hear. It is clear that the timing of events that the officers reported and the sequence of events are consistent with the recordings. Officers can be heard yelling, "drop the gun" at one point. Two gunshots are heard in the recording. Most of the other dialogue is unintelligible.

Clinton Dispatch recordings are consistent with the reported sequence of events. There are recordings of two callers reporting that York or the vehicle associated with him had been spotted in the area. Radio traffic with the officers reveals that they were contacted by Dispatch and sent to the area where York was reported to have been seen. They met on an adjoining street and proceeded to York's location. Officers reported shots fired to Dispatch and a request for a supervisor to the scene within the time frame that would be expected for the report they provided of the events.

The Clinton police cruisers were outfitted with video cameras. While the cruisers were parked on an adjoining street and thus do not show any of the interaction between the officers and York, there is no inconsistency revealed in the video recordings. Officers did appear to park their cars on an adjoining street and meet at the location they described. After the shooting, one of the officers reported that he ran back to his car and moved it to the scene of the shooting. Those events are depicted in the video just as described by the officer.

Floyd's service firearm was collected for examination. Notably, Floyd indicated he fired two rounds. Two rounds were found to have struck York. There were two rounds found to be missing from Floyd's firearm. All of these are consistent.

All of the officers denied having any animosity toward or prior difficulty with York. In fact, the officers indicated that they did not have any recollection of having prior contact with York. The officers' personnel files were reviewed without any finding that there had been any complaints filed by York against the officers or any record of prior conflict between any of the officers and York. There was a general awareness by the officers that York was a local criminal with a prior record of violence. However, there is no reason to believe that there was any animosity toward York that would have colored the officers judgment regarding use of force.

The officers were fully cooperative in the investigation. They were professional and non-defensive in their demeanor.

### **ISSUES THAT REQUIRED RESOLUTION**

As in any investigation, there are instances of incomplete information, differing eyewitness accounts and aspects of a case that require careful consideration. This one is no different.

The eyewitnesses were generally in agreement as to the number of shots. However, there was some minor disagreement. Gunshots can be startling and can come in quick succession. Multiple gunshots in quick succession can be heard as one or as fewer in number. In addition, when unexpected gunfire occurs, few are prepared to accurately count the number of shots. In this case, there is significant, but not complete agreement among the witnesses. Having collected and examined all four of the firearms present at the scene along with a count of the remaining ammunition and a search of the scene for bullets and shell casings, it appears clear that York fired his gun once and Floyd fired his gun twice. Neither Jones or Howell fired their weapons. No witness strongly disputes this conclusion.

In a related matter, some witnesses only heard two gunshots. In fact, the officers' audio feed only reveals two audible gunshots. This justifiably causes a further review of how this could be consistent with the officers' account that York fired first and Floyd then fired twice. The first and perhaps most important explanation is that the officers' audio recordings are very difficult to hear. The two shots that are heard are not as loud or as clear as one would expect. It is not difficult to imagine that a muffled, silenced or distant shot would not be picked up on the recording.

Secondly, it appears from the physical evidence that York fired his pistol. York was found to have gunshot residue on his hand. All three officers indicated that York said he had a gun, indicated he wanted to achieve suicide by cop, fired a gun and a gun was found beneath his body. Most notably, the officers indicated that the gun was beneath York when he fired it. This is corroborated by an examination of the gun. There is a spent cartridge located within the chamber. Normally, upon firing, that type of gun cycles thus causing the slide of the gun to move backwards and allowing the ejectors to remove the spent cartridge from the chamber and

eject it through the ejection port. In this instance, although the gun had been fired, the spent cartridge had not been ejected. This sort of failure could be caused by several things, but would include where something blocked or partially blocked the slide moving backward after the gun was fired.

Based on all the evidence, it appears that York had his gun between his body and the ground. When he fired the gun under these conditions, either the ground, his body or his clothing blocked or partially blocked the slide of the pistol from moving rearward and caused the ejection failure. If the gun were fired while sandwiched between York's body and the ground, the sound of the shot would be expected to be severely muffled. This likely prevented the sound of York's shot from being picked up on the officers' audio recording and may have prevented some of the witnesses from hearing the shot.

In another aspect, one of the officers referred to York's gun as a revolver in his interview. York's gun was not a revolver, but rather a semi-automatic pistol. It isn't clear that the officer ever actually saw York's firearm or ever claimed that he saw York's firearm. The firearm was underneath York's body at the scene. Thus, there may not have been an opportunity for the officer to have ever seen the gun. Alternatively, the officer may have correctly known the type of firearm that York had and simply mis-spoke. In any event, the error is of little consequence.

## CONCLUSION

The investigation in this matter was thorough. The evidence is consistent and reliable. This evidence corroborates the statements of the officers who were present. For these purposes, then the statements of the officers are corroborated and together with the other evidence form the backbone of the investigative findings. The remaining question is: given these investigative findings, were the Clinton officers acting in a criminal manner by using deadly force against York?

Officers are entitled to use force up to and including deadly force if the circumstances justify each level of force used. Officers are trained on a progressive "force continuum" and to use the minimum amount of force necessary while performing legally authorized police functions. When necessary, deadly force may be used to defend oneself or the third parties from an immediate threat of death. When circumstances require, officers may use force, but they should start with the least possible force for the circumstances and progress up through the force continuum until successful. It is not always possible or appropriate to use each available step on the force continuum.

In this instance, officers first used their physical presence as an initial effort on the force continuum. In response to their uniformed presence, it appears that York hid or was attempting to make an escape through a bathroom. Officers next gave verbal orders from a police officer that York refused to follow and orally indicated he would not follow. At that time, York notably told officers that he had a firearm and that they would have to kill him. As a result, not only were the prior techniques of armed and uniformed presence or verbal orders determined to be unsuccessful, but York forced officers to skip up the force continuum since he claimed to have a

firearm he would not surrender. Officers next deployed a K-9 to engage York. In response, York continued to disregard verbal orders and attempted to escape out of the window. Moments later, the K-9 engaged or bit York as he exited the window. The K-9 drug York to the ground, but York still did not comply with orders. Officers next made physical contact with York themselves in an attempt to get him into custody. In response, York continued to resist arrest, declared that he had a gun and then used deadly force himself by firing the gun. Officers had no way of knowing in those moments where the shot from York's gun was intended or actually went. When York chose to fire his gun, he also authorized officers to use deadly force against him to protect themselves and/or others who may have been seriously injured or killed by his gunfire.

Once deadly force is permitted, officers are not legally required to continue to attempt to use less than lethal force. Nevertheless, officers sometimes choose, with both good and bad results, to implement less than lethal force after deadly force is authorized. In this vein, one may ask, if Floyd could have tazed York, joined the struggle on the ground, struck York with a baton or sprayed him with a chemical agent and thereby disarmed him or gained his compliance resulting in an arrest without loss of life. The answer is that we will never know. Floyd also had no way of knowing that York's firearm had not cycled properly and was not immediately ready to fire another round. It appears that any use of non-lethal force by Floyd would have been unlikely to succeed quickly enough or surely enough to disarm York before he could fire another round if York's gun had cycled properly. But we do know that if whatever non-lethal action Floyd took was not successful, he would have to had to first holster his own firearm thereby giving up the immediate ability to use deadly force and York would still have had a firearm that he had demonstrated a willingness to use and may have used his next shots to kill or seriously injure someone else.

Accordingly, Floyd was authorized to use deadly force against York. His use of such force did not constitute a crime. In fact, Floyd had every reason to believe that there was no reasonable alternative to firing his service pistol and that his use of deadly force against York was calculated to protect or save innocent human life or spare others from serious bodily injury.