



ABRIDGED SUMMARY OF ON-DUTY DISCHARGE OF FIREARM INCIDENT
AND
FINDINGS BY THE OFFICE OF THE ONEIDA COUNTY DISTRICT ATTORNEY

DISTRICT ATTORNEY SCOTT D. MC NAMARA

Shooting Review Team : D.A. Case # 15219

Bureau Chief ADA Grant J. Garramone, Narcotics

Bureau Chief ADA Robert L. Bauer, GIVE

ADA Michael L. Nolan, GIVE

<u>AGENCY</u>	<u>DATE OF INCIDENT</u>	<u>ON(X) DUTY – OFF() DUTY</u>	<u>UNIFORM (Y)</u>
Utica Police	May 21, 2015	On-Duty Discharge of Firearm by MOS	

REASON FOR POLICE CONTACT

ERIC JACKSON was the subject of a narcotics Search Warrant execution at 1645 Howard Avenue in the City of Utica, County of Oneida. 1645 Howard Avenue had been the subject of numerous citizen complaints regarding drug related activity. A six (6) week investigation by the UPD METRO Unit was initiated. During the course of that investigation, police investigators conducted surveillances of 1645 Howard Avenue and were able to observe vehicular and pedestrian traffic consistent with individuals engaged in the sale and distribution of narcotics. A search warrant was secured from Utica City Court after ERIC JACKSON sold a quantity of heroin to a confidential informant working under the supervision and control of the UPD METRO Narcotics Unit.

<u>SUBJECT</u>	<u>DECEASED ()</u>	<u>WOUNDED (X)</u>	<u>NON-HIT ()</u>
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ERIC JACKSON - DOB: 12-26-1989 sustained an injury to the right foot. He was treated and released on May 21, 2015 by St. Elizabeth's with a referral for follow-up treatment by Orthopedic or Podiatric surgeon. No broken bones were indicated and a ricochet was noted as a possible cause of the injury which consisted of a metallic object in the right foot.

SUBJECT **DECEASED (X)** **WOUNDED ()** **NON-HIT ()**

Canine – Male Pit Bull Breed

OFFICE OF THE DISTRICT ATTORNEY REVIEW

This is an abridged summary provided for the purpose of enumerating salient points regarding this On-Duty Discharge of Firearm incident by the Utica Police Department and does not reflect the entirety of the extensive investigation completed by the Utica Police Department's Criminal Investigations Division and the Office of the Oneida County District Attorney.

THE INVOLVED MEMBER OF SERVICE (IMOS)

The IMOS is a former member of the U.S. Marine Corps who possesses a great deal of knowledge and training in the area of firearms and tactical operations. The IMOS served four (4) years in the United States Marine Corps attaining the rank of Sergeant. During his tenure in the Marine Corps, he was a member of the infantry and in 2000 was trained as, and was primarily assigned as a scout sniper. He also received other weapons training in the Marine Corps and was certified as a range coach and weapons instructor. The IMOS received an honorable discharge from the Marine Corps. He has been a member of the Utica Police Department since August of 2001 and since his appointment he has been assigned to a number of uniformed and non-uniformed assignments. He has been a narcotics officer assigned to the Oneida County Drug Enforcement Task Force and has been involved with the execution of numerous narcotics search warrants in the past. He has also acted as an undercover police officer and has purchased narcotics from drug traffickers in an undercover capacity on numerous occasions. He has also been a member of the Criminal Investigations Division and Warrants Division of the Utica Police Department. He has attended and completed numerous narcotics and weapons related trainings as part of his police functions. The IMOS is the principal firearms instructor and armorer for the Utica Police Department.

INCIDENT SUMMARY

On Thursday May 21, 2015 at approximately 05:30 hours, members of the Utica Police Department METRO Narcotics Unit, Utica Police Department Uniformed Division, New York State Police Community Narcotics Enforcement Team, U.S. Marshal's Service and the METRO SWAT Team convened to execute a no-knock narcotics search warrant issued by the City Court of Utica for a single-family premises located at 1645 Howard Avenue in the City of Utica, County of Oneida. During a six (6) week investigation, METRO investigators, prompted by numerous citizen complaints of possible narcotics activity, had conducted surveillances at 1645 Howard Avenue and observed both vehicular and pedestrian traffic that was consistent with individuals engaged in the sale and distribution of narcotics. During the course of the investigation, the subject subsequently identified as ERIC JACKSON sold a quantity of the narcotic drug heroin to a confidential informant working under the supervision and control of the UPD METRO Narcotics Unit. METRO Narcotics investigators had intelligence as a result of this six (6) week investigation to indicate that there would be a "large" and "aggressive canine" at the residence and that the canine was known to bite.

This investigation and the controlled purchase formed the basis of the application of the Utica Police METRO Narcotics Unit for the no-knock Search Warrant issued by the City Court of Utica for the premises at 1645 Howard Avenue and the person of "ERIC," who was later identified as ERIC JACKSON, a 25 year old male with a date of birth of December 26, 1989.

A review of ERIC JACKSON'S e-justice report indicates that he is originally from the New York City area. On the date of this incident he provided an address in the Bronx, although evidence was secured at the target location by the police to indicate that he was residing in Utica.

After a briefing at Utica Police Headquarters, the SWAT team departed and drove directly to the area of the target location and parked in the area of 1633/1635 Howard Avenue. The involved member of service who is the subject of this instant review was assigned as a member of the METRO SWAT team on May 21, 2015 as a "cover officer" and "grenadier." Due to the information obtained about the aggressive canine, The IMOS that is the subject of this inquiry was equipped with a "flash bang"/NFD device to distract the canine upon entry. Another Officer was equipped with a fire extinguisher as a possible tool to suppress any potential attack by the canine.

On scene it was determined that a breach was necessary to secure entrance into the target location. A battering ram was employed for the breach. After several attempts to breach the front door of the residence, entry was ultimately made by the SWAT officers.

Upon making physical entry into the target location, the subject canine, described by police as large and muscular, instantly showed aggression towards law enforcement by bearing and snapping its teeth, salivating and the hair on the back of its neck was raised.

SWAT officers located the target of the Search Warrant and directed him to show his hands to the police. This male attempted to elude the officers. The canine reacted by aggressively approaching the tactical operator that had been assigned to the "point" position and placed itself between the target male and the "point" officer. This interference by the canine provided the target male an opportunity to attempt to evade the executing officers, thereby placing said officers at an enhanced risk because the male was not under control.

The subject canine was at all times acting in an aggressive manner towards law enforcement. Due to the aggressive actions of the canine, the IMOS that is the subject of this review obtained a safe line of sight on the canine and fired six (6) rounds from his .45 caliber duty sidearm weapon into the canine to neutralize the threat the canine posed to law enforcement. Statements reviewed indicated that the Officer that had been in possession of the fire extinguisher was on a different level of the target location at the time of this encounter with the canine.

While stopping the canine, the male identified as ERIC JACKSON was heard by officers to yell and directed officers to an injury that he had sustained to his foot.

Ultimately SWAT secured the scene which was determined to be occupied by a total of five (5) adults and two (2) children.

A SWAT Medic rendered treatment to ERIC JACKSON at the scene and EMS personnel were requested to expedite a response to the scene.

The Utica Fire Department responded and rendered treatment to ERIC JACKSON who was subsequently transported to St. Elizabeth's Hospital. ERIC JACKSON would subsequently be treated and released by St. Elizabeth's hospital for the injury to the right foot.

INJURY SUSTAINED BY ERIC JACKSON

At St. Elizabeth's Hospital, ERIC JACKSON was treated by hospital personnel for an injury to the right foot. X-Rays revealed what appeared to be a .45 caliber projectile in the right foot. No broken bones were sustained by ERIC JACKSON was released shortly thereafter with instructions to follow up with an orthopedic or podiatric specialist on May 26, 2015. Indications are that the injury sustained was the result of a ricochet. Upon release from St. Elizabeth's Hospital, the target male was transported to Utica Police headquarters to be processed for criminal charges associated with the possession of the seized Heroin and later committed to the Oneida County Jail.

SEIZURE OF NARCOTICS AND U.S. CURRENCY

Pursuant to the no-knock search warrant, Utica Police METRO Narcotics officers secured ninety-six (96) glassine envelopes containing the narcotic drug heroin. A quantity of the seized substance was field-tested and was positive for heroin. U.S. Currency was seized from the pants pockets of the target male totaling one-thousand one-hundred and seventeen dollars (\$ 1117.00).

UTICA POLICE ADMINISTRATIVE RESPONSE

The Utica Police Department administration responded to this incident by initiating an immediate inquiry into the facts and circumstance of the discharge of the firearm by the IMOS pursuant to Utica Police policies and procedures.

The IMOS was placed on administrative leave with pay pursuant to UPD policy and was subsequently debriefed about the shooting incident whereupon he described the canine as a threat that required neutralization. His duty firearm and ammunition were secured per the policies and procedures of the police department.

All police personnel involved in the execution of the search warrant submitted written reports concerning the operation to the Utica Police Department. Such reports were provided to the District Attorney's Office for consideration as a part of this review.

All adults located at the target location that were not the targets of the warrant were deposed about the incident by the Utica Police Department and their depositions were promptly submitted to the District Attorney's Office as a part of this review.

Several neighbors in the vicinity of 1645 Howard Avenue, and other civilians, were also deposed by the Utica Police on the topic of the aggressive nature of the deceased canine. The depositions secured were promptly submitted to the District Attorney's Office as a part of this review.

DISTRICT ATTORNEY SHOOTING REVIEW TEAM FINDING

On May 21, 2015, upon being notified of the officer-involved shooting incident at 1645 Howard Avenue in the City of Utica, County of Oneida, District Attorney Scott D. McNamara convened senior staff members to discuss the incident and formulate a plan to review same. District Attorney McNamara assigned Bureau Chief ADA of Narcotics Grant J. Garramone, Bureau Chief of GIVE/Firearms Robert L. Bauer and ADA Michael L. Nolan to investigate and report on this shooting incident.

The District Attorney's Office had been advised that the Utica Police CSU was processing the scene and had photographed, recovered and collected evidence therein. As a first order of business, ADAs Garramone and Bauer responded to the shooting scene at 1645 Howard Avenue. Said location was

secured by yellow crime scene tape and was secured by a police officer that logged us into the location after we received permission to enter from the Utica Police Crime Scene Unit.

Immediately upon entry, it was apparent that the door had been breached as the door had visible damage and there was broken glass in the entryway. ADA Garramone noticed that the door was equipped with brackets to secure the bottom of the door with a board, but it did not appear that the brace was used at the time of the breach as there was no visible damage observed.

Upon entering the residence with the permission of the CSU, Investigators of the CSU were observed to be in the process of securing photographs of the location and collecting evidence. The deceased canine was observed to be lying on a white cloth sheet. It appeared to be a large dark in color pit bull type canine with a black spiked collar. Bullet holes were observed on the canine and a small pool of blood was seen in the area of the canine's back. We were directed to the fact that a total of six (6) spent shell casings were recovered and the CSU was in the process of securing any projectiles that could be located. We also observed a small amount of fecal matter on the floor believed to have come from the canine after the shooting. A large flat screen television screen was observed in a room directly to the right of the entryway and the name "ERIC JACKSON" was visible on the blue television screen.

The CSU investigators advised us that they had not been present for the shooting. As such, we requested that UPD direct that the "point" member of the SWAT team respond back to the location to assist the CSU with the documentation of the crime scene and the positions of the IMOS and other officers.

After being briefed on-scene by CSU, ADAs Garramone and Bauer then responded to UPD headquarters to meet with the Captain assigned to this investigation. The Captain had a team designated to investigate the facts and circumstances of the discharge of the firearm. The Captain advised us that the NAACP had been contacted by the UPD regarding the shooting incident.

Members of the Captain's team had deposed four (4) adults (excluding the target male) that had occupied the target location at the time of the search warrant execution.

The depositions were promptly supplied to members of this Office for review and each deposition was consistent in the description of the canine as being a mean, aggressive and dangerous animal that had attacked other animals and people as recently as the evening prior to the search warrant execution.

ADAs Garramone and Bauer requested that UPD conduct a canvass of the neighborhood to corroborate any aggressive actions or behavior of the canine by the neighbors of 1645 Howard Avenue. This was immediately ordered and depositions were secured from neighbors who consistently described the deceased canine as mean, aggressive and dangerous.

It was also learned through a deposition secured from a civilian, that a local delivery driver had been attacked by the subject canine in the past. That driver and his employer were subsequently identified by ADA Garramone. A conversation with the driver and employer revealed that the driver reported to his that employer on October 27, 2014 that he had been attacked by the subject canine at the target location while making a delivery. The driver described having been bitten on the hand by the canine after it ran from inside of the house on to the front porch of the target location where he had been standing. The driver did not sustain any puncture to his skin and did not require medical attention. The canine had to be pulled by the collar back into the location.

At ADA Garramone's request a member of the Utica Police Department secured a sworn statement from this driver that was reviewed as a part of this inquiry.

A Waiver was secured from the owner of the canine to remove same for a necropsy to be performed at Cornell University, where the deceased canine was later transported by members of the CSU unit. A necropsy report has been requested and is pending from Cornell University.

CONCLUSION

The District Attorney's Office Shooting Review Team finds that the shooting in this instance was justified and was not conducted in a manner that was violative of the laws of the State of New York. Due to the lawful no-knock Search Warrant issued by the Court, the IMOS was lawfully present at 1645 Howard Avenue when the discharge of the firearm occurred.

Further, based upon all of the information that was obtained from the investigation, the pit bull was a dangerous and aggressive animal and the IMOS actions were necessary to protect himself and other police officers at the scene from what was believed to be an imminent physical attack by this animal. Further, the actions were necessary to eliminate the obstruction that the animal created with regard to the police attempts to safely secure all of the parties in the location. Persons engaged in the sale and distribution of illicit narcotics will often possess dangerous dogs for the purpose of protection of themselves and their product and monies. It is for this reason that this Office believes that the actions of the IMOS are encompassed within the confines of **Article 35 of the New York State Penal Law**.

Based upon the reviews of the sworn statements of the civilians, and the reports of the police officers involved, it is clear that the dispatched pit-bull canine was aggressive towards the police officers who were engaged in the lawful execution of their sworn duties, and that said canine had a past history of being violent towards other animals and people. The shooting of the canine was necessary for the safety and security of the police officers executing the warrant.

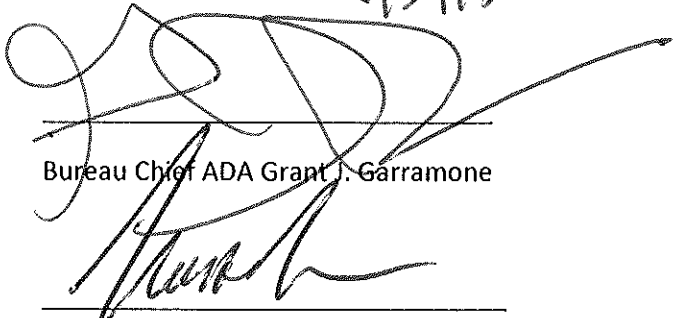
Pursuant to **New York State Agriculture and Markets Law Section 123-a (1)** *"If any dog shall, without justification, attack a person, or behaves in a manner which a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury to a person, when such person is peaceably conducting himself in a place where he may lawfully be, such person or any other person witnessing the attack or threatened attack may destroy such dog while so attacking, and no liability in damages or otherwise shall be incurred on account of such destruction."*

This target male was quickly treated by police, EMS and Fire, and transported to St. Elizabeth's Hospital whereupon he was quickly examined and released by medical personnel at St. Elizabeth's such that he was able to be criminally charged with the possession of the seized Heroin and committed to Oneida county Jail. The injury sustained by the target male was, in our view, purely accidental and was, based upon the lack of serious bone and tissue damage to the foot, the likely result of a ricochet occurring at the time of the suppression of the dangerous canine.

RECOMMENDATION

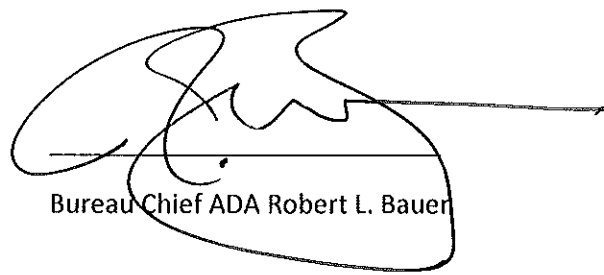
It is recommended by the shooting review committee that this inquiry be closed and that no referral to the Grand Jury be made as the Police Officer involved acted lawfully and in conformity with the policies and procedures of the Utica Police Department and the Laws of the State of New York.

Respectfully Submitted, 6/5/15



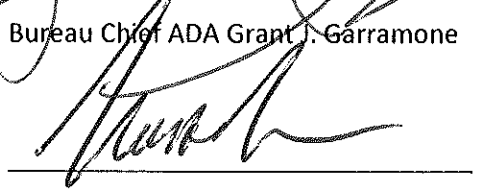
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Bureau Chief ADA Grant J. Garramone



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Bureau Chief ADA Robert L. Bauer



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ADA Michael R. Nolan

*** END OF REPORT ***
