



HILLAR C. MOORE, III

19TH JUDICIAL DISTRICT ATTORNEY

PARISH OF EAST BATON ROUGE

IN RE: CALVIN TONEY

The final report of the circumstances, the investigation, and the determination of criminal responsibility for the officer involved death of Calvin Toney on November 13, 2017.

ISSUED October 30, 2019

THIS IS A PUBLIC DOCUMENT ISSUED AND PUBLISHED ON www.ebrda.org ONLY AFTER THE DETERMINATION BY THE DISTRICT ATTORNEY THAT A CRIMINAL INVESTIGATION IS NO LONGER PENDING. THIS DOCUMENT DOES CONTAIN LINKS TO OTHER DOCUMENTS AND MEDIA ACCESSIBLE BY CLICKING ON THE [BLUE HYPERLINKS](#) IN THE DOCUMENT.

THIS REPORT ONLY IDENTIFIES THE DECEASED AND THOSE OFFICERS WHOSE NAMES HAVE BEEN PREVIOUSLY RELEASED BY THE AGENCY INVOLVED. THIS REPORT EXCLUDES FROM PUBLIC DISCLOSURE ANY MEDIA CONTAINING EXPLICIT IMAGES OF NUDITY, JUVENILES, VICTIMS OF CRIME, OR DEAD PERSONS.

TABLE OF CONTENTS

- I. INTRODUCTION
 - A. Role of the District Attorney
 - B. Summary
 - C. Death of Calvin Toney

- II. STATEMENT OF LAW
 - A. Murder
 - B. Justification
 - C. Retreat
 - D. Grand Jury
 - E. District Attorney

- III. DISCUSSION
 - A. Issues
 - B. Application of Law
 - C. Analysis
 - D. Conclusion

- IV. LISTING OF EVIDENCE
 - A. Dispatch and 911 Calls
 - B. Police Reports
 - C. Taser Report
 - D. Body Camera Footage
 - E. Body Camera Transcripts
 - F. Calvin Toney's Autopsy Report
 - G. Calvin Toney's Toxicology Report
 - H. Crime Lab Reports
 - I. EMS Report
 - J. Photos
 - K. Crime Scene Diagram
 - L. Video Compilation

I. INTRODUCTION

A. Role of the District Attorney

Under the Louisiana Constitution, the District Attorney is designated the Chief Prosecuting Officer in charge of every criminal prosecution in his district. He has the power to bring any state criminal charge and the power to dismiss any state criminal charge. He is assisted in his efforts by the Grand Jury which also exercises independent constitutional authority. Louisiana law requires the District Attorney to bring to the Grand Jury all charges whenever the District Attorney determines he needs to seek a life or death sentence. In Louisiana, only the Grand Jury may return an indictment for first or second degree murder in the event of an intentional and unjustified taking of a human life. Before the District Attorney may bring any charge before the Grand Jury, he must legally determine that he has sufficient evidence to warrant a conviction by trial where the standard of proof will be “beyond any reasonable doubt.”

For many years, the District Attorney has worked closely with local law enforcement agencies to address officer involved deaths. Local law enforcement agencies employ protocols that require immediate reporting to the District Attorney of any officer involved death and require the participation of the District Attorney in all stages of an investigation into the criminal responsibility for an officer involved death.

The role of the District Attorney in these investigations and in conducting this review is limited to determining whether a criminal violation of Louisiana law has occurred, whether any living person may be held criminally responsible, and whether such criminal responsibility can be proven beyond a reasonable doubt in a court of law. The District Attorney does not establish law enforcement agency policy, procedures, and training requirements. The District Attorney does not have any responsibility for determining disciplinary action or pursuing civil litigation in these matters.

B. Summary

On Monday, November 13, 2017, a social worker with the Department of Children and Family Services (DCFS) contacted the Baton Rouge Police Department (BRPD) asking for assistance while she interviewed Calvin Toney in reference to a child abuse investigation. BRPD Officer Darrell Carter, Jr. was dispatched to assist. Toney ran from Officer Carter and the DCFS social worker, shortly after they made initial contact with him at the Palms Apartments. Officer Carter attempted to stop Toney, but Toney continued to actively resist and fight Officer Carter. In an attempt to have Toney comply with his verbal commands, Officer Carter tased Toney twice. Both men eventually fell to the ground during this physical altercation. Officer Carter was on top of Toney with his taser still in his hand while they were on the ground. When Officer Carter felt Toney tug on his holstered firearm, he dropped his taser to secure his firearm. Toney then grabbed the taser and refused to release it. While still on the ground, Officer Carter unholstered his firearm and gave Toney verbal commands to release the taser. Toney then pointed the taser at Officer Carter, who subsequently jumped up and pointed his gun at Toney. Toney quickly stood up and lunged at Officer Carter. In response, Officer Carter fired one round at Toney, striking him. Toney briefly fell to the ground before getting up and running away. Officer Carter and the first BRPD officer to respond to the scene chased Toney. Toney tripped, fell to the ground, and then was handcuffed by the two officers. Additional BRPD officers arrived on scene and secured the area. EMS was notified and arrived at the apartment complex to render aid to Toney. Toney was later pronounced dead on scene. Following BRPD protocols at the time of the shooting, Louisiana State Police conducted the investigation into this officer involved shooting.

Although the incident was recorded on a body worn camera, visual footage of the shooting does not exist as the body camera fell off during the struggle. There is audio footage of the entire incident, including when the body camera was on the ground during the struggle. A surveillance camera in the apartment complex captured Toney running away after being shot and then being handcuffed. The surveillance video's timestamp is incorrect due to being slower than the actual time by a few minutes.

C. Death of Calvin Toney

On Saturday, November 11, 2017, the Baton Rouge Police Department (BRPD) [arrested](#) a resident of the Palms Apartments for second degree cruelty to juveniles. Additionally, the Department of Children and Family Services (DCFS) opened an investigation into the matter. During their investigation, a DCFS social worker learned that Calvin Toney lived with the arrestee. As per DCFS protocols, the social worker was requested to interview all members of the arrestee's household. While preparing to interview Toney, the social worker discovered that Toney had been previously [arrested](#) for cruelty to a juvenile in October 2012. Consequently, the social worker [called](#) BRPD on Monday, November 13, 2017, at 6:06:51 PM and asked for a BRPD officer to assist her while she interviewed Toney at the Palms Apartments. BRPD Officer Darrell Carter, Jr., radio call sign 4610, was [dispatched](#) to the complex to assist.

Officer Carter arrived at the Palms Apartment complex at approximately 6:30 PM, wearing a BRPD Class B uniform and duty belt which included his Glock 17 9mm pistol positioned on his right side and his taser positioned on his left side. The DCFS social worker stated in an interview that she briefly met with Officer Carter and informed him of the nature of the investigation. She also told Officer Carter about Toney's previous history with DCFS which resulted in criminal charges. The DCFS social worker and Officer Carter then went to the arrestee's apartment so she could interview Toney.

[Officer Carter's body camera](#)¹ began recording as Officer Carter and the DCFS social worker knocked on Toney's door at 6:31:04 PM. Initially, there is no audio when the video begins. The apartment door opens, and Toney and an unknown male can be seen standing inside the dimly lit front area. In her interview, the DCFS social worker stated that she identified herself and asked if she could speak with Calvin Toney inside the [apartment](#). Toney identified himself and invited them into the apartment. The body camera audio begins as the DCFS social worker stepped into the apartment. The unknown male can be seen leaving² as Officer Carter steps inside the apartment.

¹ The timestamps on the body camera and taser are set to Universal Time Coordinated (UTC), meaning they are six hours ahead of local time. The timestamps in this report have been calculated to correspond with Central Standard Time (CST).

² The apartment complex's [surveillance footage](#) shows the unknown male running through the complex after leaving Toney's apartment.

Seconds later, Toney is seen running through the open apartment door. Officer Carter is able to grab Toney's sweatshirt as he ran past, slowing Toney down. Toney collides with his neighbor's closed apartment door, which is directly across the hall from Toney's apartment. Officer Carter is seen struggling to keep his grip on Toney's sweatshirt as Toney begins to fight Officer Carter while still trying to run. Officer Carter repeatedly tells Toney to get down. Toney can be seen grabbing Officer Carter's arm, which is gripping Toney's sweatshirt, while swinging his other hand at Officer Carter. Toney's sweatshirt begins to come over his head as he is still backing away. Toney and Officer Carter travel down the hallway towards one of the parking lots in the apartment complex.

At this point, Officer Carter pulls out his [taser](#) and aims at Toney. The taser's red lights can be seen on Toney's back, shortly before the arcing sound of electricity is heard at 6:31:51 PM. Officer Carter tases Toney while continuing to tell him to get down. According to the [taser's event log](#)³, Officer Carter pulled the taser's trigger and the first cartridge (C1) deployed for the duration of five seconds. Toney's [sweatshirt](#) comes off in the struggle and Toney falls to the ground near the entrance to the [staircase](#). It appears the taser shock was not fully effective due to the lack of distance between the taser probes, thereby allowing Toney to recover within seconds and continue fighting Officer Carter. The DCFS social worker reported that Toney was punching and kicking Officer Carter and was still trying to get away from him, despite being tased. During this struggle, Officer Carter and Toney begin traveling down the hallway. Officer Carter's body camera falls off of his chest mount and lands on the floor at 6:31:58 PM. Visual footage ceases at this time, however, audio footage continues to capture the sound of this encounter.

Officer Carter tased Toney again at 6:31:59 PM, deploying the second cartridge (C2) for the duration of five seconds. Officer Carter noted in his interview that the taser was not completely successful on Toney, which allowed Toney to continue fighting after each incident, rather than being subdued. The small spread of the taser probes corroborates this statement; the taser's shock would not have been at full capacity due to the probes close proximity to each other. Officer Carter stated that he was able to get

³ The timestamps on the taser audit log were also set to UTC; however, the taser and the body camera systems were not synced to each other during this event due to the taser's firmware. The taser audit log has a thirty-five second delay from the body camera. The taser's older firmware is likely the cause of this time delay.

Toney prone on the ground after being tased the second time, despite Toney continuously resisting. Officer Carter attempted to handcuff Toney and gave him loud verbal commands to “put your hands behind your back.” Toney continued fighting Officer Carter. The DCFS social worker stated in an interview, “Even though the officer was kind of big and he was kind of small, [Toney] was kind of getting an advantage over the police officer.”⁴ Officer Carter radioed 4th district dispatch [requesting back up](#) at 6:32:26 PM saying, “4610: I need some units this way. Code 3, code 3. Send ‘em! Get ‘em here!” Officer Carter stated in his interview that he realized he needed back up because Toney was not going to stop being combative. Officer Carter also said that he did not know if Toney had any weapons on him; therefore, he did not want to release Toney and take the risk of Toney using a weapon against him. Officer Carter also stated that he realized the situation was getting dangerous due to increasing intensity of the confrontation. At 6:32:40 PM, Officer Carter [again radioed](#), “4610 to Headquarters: roll some units my way.” Officer Carter stated that Toney rolled over and was on his back, throwing punches trying to hit Officer Carter in the face. A civilian witness stated in an interview that Officer Carter was on top of Toney and was kneeling on Toney. The witness also stated that Toney was trying to get Officer Carter off of him. In Officer Carter’s body camera footage, Officer Carter can be heard telling Toney, “Get your hands off of me!” to which Toney responds, “I can’t breathe” at 6:32:55 PM. The civilian witness recalled hearing Toney say, “I can’t breathe;” but the witness was unsure of why Toney could not breathe. Officer Carter then tells Toney, “Roll over. Roll over!” and Toney responds, “I can’t.”

At 6:33:09 PM, Officer Carter requested back up again saying, “[4610: Get ‘em here!](#)” Officer Carter and Toney continued to fight on the ground, as they struggled for control of each other. During this physical altercation, the men transitioned to their feet and were then both standing and fighting. According to Officer Carter’s statement, they traveled down the hallway towards the edge of the building, where it intersected with the breezeway. Officer Carter was able to get Toney back on the ground and landed on top of him. Toney was lying on his back with Officer Carter straddling over him. Officer Carter, knowing the taser could be used as a pain compliance tool through a drive stun, still had the taser in his right hand despite having fired both cartridges. Officer Carter’s left hand was on Toney’s body, trying

⁴ Calvin Toney was 5’9” tall and weighed 128 pounds. Officer Darrell Carter, Jr. was 6’3” tall and weighed approximately 240 pounds at the time of this incident.

to keep him subdued. Toney began to lift his hips, raising Officer Carter's body, in an effort to escape from under Officer Carter. Simultaneously, Officer Carter felt Toney tug on his gun, which was in its [holster](#) on his right hip, as if Toney was trying to gain access to the gun. Officer Carter released his taser and placed his right hand on his gun, securing his weapon. Officer Carter stated in his interview that he knew he would be dead if Toney had control over his gun; therefore, he focused solely on securing his gun. Toney turned his attention to the taser on the ground and reached across his body for the taser. Officer Carter can be heard on the body cam footage saying, "You want me to go on and shoot you? Then, let go. Drop the taser." Officer Carter additionally tells Toney, "Stop. Don't move. Stop. Stop. Put your hands behind your back, bro. Put your hands behind your back. You reached for my taser. If you go for that taser again, I'm telling you, that's deadly force." Toney refused to listen to Officer Carter's commands and reached for the taser again.

An apartment resident can be heard on the body camera audio footage telling Toney to comply with Officer Carter. The resident states, "...Let that man [cuff you up](#), cuz'." A civilian witness stated in an interview that the civilian told Toney, "Son, please put your hands behind your back," however, this could not be heard on the body camera footage. Officer Carter stated in his interview that Toney grabbed the taser and brought the taser near Officer Carter's head while telling him, "Tell my momma and my sisters I love them." Two other nearby residents heard, "Tell my momma and my aunties I love them"; however, only the "Tell my momma..." portion can be understood from the body camera footage at 6:34:15 PM.

At 6:34:16 PM, a concerned apartment resident called [911](#) and told the dispatcher, "... A police officer is struggling; looks like for his life! He needs some help here." Thirty five seconds later, the DCFS social worker also called [911](#) because Officer Carter's backup had not arrived on scene after he had requested them two minutes earlier. In the background of the DCFS social worker's call to 911, Officer Carter can be heard yelling "stop" while Toney begins to yell "whoo!" Officer Carter stated in his interview that due to Toney ignoring commands, tugging on his gun, grabbing his taser, and screaming to tell his mother he loved her – he believed Toney was going to try to immobilize him with the taser and kill him. Officer Carter disengaged from Toney and jumped to his feet to create distance. He continued to tell Toney to stop as Toney stood up with Officer Carter's taser in hand. Officer Carter and Toney stood facing each other with only a few feet between them. Officer Carter had his department issued [Glock 17](#), 9mm

semiautomatic pistol in his right hand pointed at Toney and Toney had Officer Carter's taser gripped in his right hand. Toney then lunged at Officer Carter and pulled the trigger on the [taser](#) at 6:34:30 PM. Officer Carter fired one round at Toney, striking him in the left pectoral region of the chest. The gun shot can be heard in the background of both 911 calls. Additionally, in the body camera audio footage, the arcing electricity [sound](#) from the taser can be heard followed by the sound of one gunshot as the arcing electricity sound continues. According to the taser's event log, the taser's trigger was pulled for the duration of two seconds.

At 6:34:46 PM, Officer Carter radioed, "[Shots fired, shots fired;](#)" on the 3rd District talk channel instead of the 4th District dispatch channel. Unbeknownst to Officer Carter, his radio had changed to the different channel during the struggle with Toney, meaning the units en route were unaware that shots were fired.

After being shot, Toney dropped the taser, turned around, and ran down the [breezeway](#) towards the grass next to another building in the complex. Officer Carter holstered his gun, since Toney was no longer holding the taser, and chased Toney. The Palms Apartments' surveillance footage shows Toney as he was running from Officer Carter. Toney can be seen shirtless with his pants falling down as he is running from Officer Carter, who was close behind him. Additionally, the taser can be seen being dragged behind Toney due to the taser wires being connected to the probes in his back. The wires then break from the taser cartridge and the taser comes to rest on the concrete next to the breezeway. Officer Carter's first backup officer, BRPD Officer 1, can be seen running behind Officer Carter. Officer 1, radio call sign 4230, [radioed](#) that he was on scene at 6:34:52 PM. Toney appears to trip and fall face down as he is running, though he turns into a seated position. There is no sound in the surveillance footage, but Officer Carter's body camera picks up Officer Carter yelling at Toney saying, "Stay down. Don't move. Stay down;" followed by Officer 1 telling Toney, "Stay down!" Officer 1 turns his [body camera](#) on as Officer Carter is trying to handcuff Toney, who is now lying prone on the ground. Officer 1 assists him in handcuffing Toney, who appears to still be resisting and trying to roll over.

Officer Carter [requested Emergency Medical Services](#) (EMS) radioing, "Have EMS Code 3 this location," at 6:36:07 PM; but his radio was still on 3rd District talk channel. Officer 1 then [radioed](#) to 4th District dispatch, "Go ahead and roll EMS, Code 3, for me, headquarters, to this location," at

6:36:33 PM. While Officer 1 was watching Toney, Officer Carter walked back into the hallway, picked up his body camera, and reattached it to his chest mount, restoring visual footage. Officer Carter can be seen on his body camera footage picking up his taser as he is walking back toward Toney. Officer 1 briefly asks Officer Carter, “What happened? Did you fire a round?” and Officer Carter, while breathing heavily, replies that he fired one round. Officer 1 immediately leaves to rope off the crime scene and tells Officer Carter to stay with Toney. Once Officer Carter is alone with Toney, he begins to [talk to Toney](#) to keep him alert. Officer Carter asks Toney, “Hey, talk to me. What you was doing?” Toney responds, “Whoa. You the one that shot me?” Carter then asks Toney, “What you did that for? Why you point that taser at me? Talk to me.” Toney replies, “Man... you black.” Officer Carter prompts Toney to say more by telling him, “Talk to me!” Toney simply replies, “Man, I hate cops.”

Additional BRPD officers arrived on scene and began to assist with securing the crime scene and rendering aid to Toney. BRPD Officer 2, who was not wearing his body camera because it was charging at 4th District police station, rushed to the scene after hearing Officer Carter sounding “very winded” and “distressed” over the radio. When Officer 2 reached Officer Carter and Toney, he noted that Toney was sitting up and yelling at nearby officers to take his handcuffs off him. Officer 2 was unaware any shots had been fired, due to Officer Carter’s radio channel change, but he noticed what appeared to be a gunshot wound to Toney’s left pectoral muscle. As he was examining the wound, Officer Carter instructed Officer 2 to go retrieve a chest seal from his unit to apply to Toney. At 6:38:14 PM, Officer 3, who was wearing her body camera and had it turned on, arrived on scene. Officer 3 can be seen in the body camera footage grabbing Officer Carter’s taser and attempting to remove the cartridges. Meanwhile, Officer 2 comes back with the chest seal and applies it to Toney’s wound. Officer 3 attempts to take the cartridges out of the taser. At 6:42:00 PM, a supervisor comes get Officer Carter and removes him from the scene. Officer Carter’s weapon was taken, swabbed, and photographed. Additionally, photos were taken to document his [injuries](#). Toney begins to yell that he wants to sit up so Officer 2 and 3 help him up. Officer 2 begins to support Toney’s back to help him sit. Toney is still seen moving and talking. Officer 3 then rolls Toney to the side and Toney stays in that position until he rolls over a few minutes later.

EMS arrived on scene at 6:50:56 PM and reached Toney by 6:52:45 PM. The [EMS report](#) showed that Toney became unresponsive and stopped

breathing as EMS arrived. Toney's handcuffs were removed, and he was rolled to his back in order for EMS to render aid. After rendering aid for seven minutes, EMS contacted a physician at the Baton Rouge General and advised him of Toney's condition. The physician approved EMS's request to stop resuscitative efforts and Toney was pronounced deceased at 6:59:00 PM.

The [Louisiana State Police](#) (LSP) were called to investigate the officer involved shooting, as per the memorandum of understanding signed by BRPD. LSP Detectives arrived at the [Palms Apartments](#) at 7:16:00 PM to handle the investigation.

Later that night, Officer Carter was taken to an urgent care clinic where he diagnosed with a contusion to the [right hand](#), [right forearm](#), and a [contusion to his left knee](#). During Officer Carter's subsequent interview, LSP detectives noted swelling of his [right hand](#), [scratches](#) on his [arms](#), and a scab on his [knee](#).

The East Baton Rouge Parish Coroner's Officer performed Toney's [autopsy](#) on November 14, 2017. The autopsy report listed his manner of death as a homicide, meaning that the death was caused intentionally by another person. Toney's cause of death was determined to be from the gunshot wound to the chest with perforation of both lungs. The autopsy report described and noted the path of the wound when the body was in the anatomic position, meaning when the body was upright, facing directly forward with the arms at the side and feet on the ground. The final diagnosis of the wound to the left pectoral region of the chest was that the bullet traveled from left to right and front to back. The bullet was recovered from the right upper lung lobe. Additionally, the autopsy report notes the four metal probes from the taser in Toney's back and the other abrasions on his skin, likely from the fight. Toney had abrasions on his forehead, sacrum, back, shoulders, hip, knees, elbows, legs, chest, right arm, and left hand. As per the Coroner's Office standard protocol, the toxicology analysis was performed by NMS Labs. Toney's [toxicology](#) report showed positive findings for tetrahydrocannabinol (THC), amphetamines, and benzodiazepines. Additionally, traces of cannabinoids were found in his system at the time of his death.

LSP detectives submitted swabs from Officer Carter's taser and pistol along with reference DNA swabs from Toney, Officer Carter, and Officers 1-3 to analyze. The Louisiana State Police Crime Laboratory (LSP/CL) performed

the analysis. The [scientific analysis report of the taser](#) stated that the DNA profile obtained from the swab of the smooth surfaces of the taser was consistent with being a mixture from two contributors. Officer Carter was an assumed contributor to the profile. Calvin Toney was the other contributor to the DNA profile. The DNA profile obtained from the swab from the rough surfaces and trigger of the taser were consistent with being a mixture of DNA from two contributors; but no conclusions could be made due to the limited nature of the profile. Although a limited DNA profile was also obtained from the two spent taser cartridges, no conclusion could be due to the limited nature of the profile. The [scientific analysis report of the gun](#) stated that there was insufficient DNA on the swabs from the grip, trigger and slide of the pistol. A partial DNA profile was obtained from the swab taken from the holster, but no conclusions could be made due to the limited nature of the profile.

The copper jacketed bullet recovered from Toney's lung, the cartridge case from the scene, and Officer Carter's Glock model 17, 9mm pistol were submitted to the LSP/CL for [firearms analysis](#). Officer Carter's gun was test fired and the reference bullets and cartridge cases were microscopically compared to bullet from Toney and cartridge case from the scene. The cartridge case from the scene and the copper jacketed bullet recovered from Toney were determined to have been fired from Officer Carter's weapon.

The conclusion of LSP's investigation did not reveal anything which constituted probable cause for criminal charges against Officer Carter.

During the investigation, East Baton Rouge District Attorney Hillar C. Moore, III, two Assistant District Attorneys and two District Attorney Investigators responded to the scene and observed every critical step in the investigation, including the subsequent interviews of the officers involved.

II. STATEMENT OF LAW

A. Murder

Under Louisiana law, the intentional killing of another human being is defined as Second Degree Murder and is punishable by a mandatory sentence of life in prison. When this murder occurs during the perpetration of another crime, such as an armed robbery; against special classes of persons, such as children or the elderly; or involves the killing of more than one person; then the murder is defined as a First Degree Murder that can be punished by a sentence of death. If the District Attorney seeks to prosecute

either of these crimes, he is required to bring them before a Grand Jury for indictment. [LA CCRP 437](#)

B. Justification

Louisiana law provides each citizen with the right to defend themselves and to “meet force with force,” including deadly force to meet deadly force. This right to use deadly force, however, is limited only to circumstances in which human life is endangered. Deadly force may not be used to protect things and property. Police officers, just like any other citizen, are entitled to use deadly force when their life or the life of another citizen is threatened. [LA R.S. 14:20](#)

C. Retreat

The laws of Louisiana do not require any citizen to retreat when faced with deadly force. [LA R.S. 14:20](#)

D. Grand Jury

Since the founding of the United States, the Grand Jury has been a vital part of the many checks and balances in our criminal justice system. It is comprised of 12 citizens who sit for approximately six-month terms evaluating whether certain cases, particularly murder cases, proceed to trial. They examine all evidence in secret primarily for two reasons: to protect those testifying from others who have not yet been arrested, and to protect the reputations of those against whom criminal charges may not be brought. To serve as a check on all, the Grand Jury is an independent constitutional body that is independent from the courts, law enforcement, and the District Attorney. The District Attorney is designated as only a legal advisor to the Grand Jury, is required to be present at all proceedings before the Grand Jury but is excluded from the Grand Jury’s deliberations as they decide their verdict. The Grand Jury can return any one of three verdicts: A True Bill of Indictment (authorizing criminal charges), A No True Bill of Indictment (declining criminal charges), and A Pretermitted Matter. [LA CCRP 444](#) A Pretermitted Matter means that the Grand Jury members were unable reach a sufficient consensus (9 out of 12 votes) to render a verdict.

E. District Attorney

The District Attorney presents murder cases to the Grand Jury. In doing so, he is bound legally and ethically by certain standards. First, he must determine that the evidence he has to present “if unexplained and uncontradicted, warrants a conviction.” [LA CCRP 443](#) Second, under the Rules of Professional Conduct required of all prosecutors (Rule 3.8), he is

required to “refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.” [Rule 3.8](#)

III. DISCUSSION

A. Issues

Whether any person may be held criminally responsible for the death of Calvin Toney?

B. Application of Law

The death of any human being is a tragedy that all persons are legally required to avoid. When laws are broken and a death occurs, law enforcement agencies are called to respond and investigate the circumstances of the death and forward their reports to the District Attorney to determine whether any person is criminally responsible. When law enforcement is responsible for the death, they must immediately report the death to the District Attorney who will join them in all critical stages of the investigation. This is one of the most serious responsibilities of the District Attorney.

Second degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. [LA R.S. 14.30.1](#) A second degree murder is legally justified when committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself or another from that danger. [LA R.S. 14:20](#)

For a law enforcement officer, as with any other citizen, the law provides that the use of force must be reasonable. The United States Supreme Court specifically requires that the “reasonableness” of force by an officer be judged from the perspective of an officer at the scene, rather than judged with the benefit of hindsight. [Graham v. Connor](#), 490 U.S. 389 (1989).

C. Analysis

The evidence reviewed by the District Attorney, attached and made part of this report, substantiates that Calvin Toney was killed at the hands of others, specifically a Baton Rouge Police Department officer. This same evidence also demonstrates that his actions were justified. Specifically, the officer

was placed in an extremely dangerous situation and feared for his life. When faced with deadly force to themselves and others, no reasonable person, including other law enforcement officers, would have acted differently. The death of Calvin Toney was legally justified, and no criminal responsibility can be found for the officer involved as he was legally exercising his rights of self-defense and defense-of-others.

D. Conclusion

In accordance with my oath and duty to uphold the constitution and laws of both the United States and the State of Louisiana, as District Attorney for the 19th Judicial District, Parish of East Baton Rouge, I issue this final report into the circumstances and death of Calvin Toney. Calvin Toney was killed by a Baton Rouge Police Department officer in the course and scope of his employment as a law enforcement officer and under circumstances where the use of deadly force was legally justified. It is my determination as District Attorney that there is no probable cause of criminal responsibility to present to a Grand Jury in the matter of the death of Calvin Toney.

Signed: HCM III

Date: October 31, 2019

Hillar C. Moore, III

IV. LISTING OF EVIDENCE

- A. Dispatch and 911 Calls
 1. [DCFS Social Worker Call for Public Assistance](#)
 2. [BRPD Dispatch to Assist DCFS](#)
 3. [4th District Radio Traffic](#)
 4. [3rd District Talk Radio Traffic](#)

- B. Police Reports
 1. [LSP Case Report](#)
 2. [LSP Memorandum of Investigation Report](#)
 3. [BRPD Crime Scene Report](#)
 4. [BRPD 12-103514](#)
 5. [BRPD 17-116447](#)

- C. [Taser Report](#)

- D. Body Camera Footage
 1. [Officer Darrell Carter](#)
 2. [BRPD 1](#)

- E. Body Camera Transcripts
 1. [Officer Darrell Carter](#)
 2. [BRPD Officer 1](#)
 3. [BRPD Officer 3](#)

- F. [Calvin Toney's Autopsy Report](#)

- G. [Calvin Toney's Toxicology Report](#)

- H. Crime Lab Reports
 1. [Crime Lab Firearms Report](#)
 2. [Crime Lab DNA Report – Taser](#)
 3. [Crime Lab DNA Report – Gun](#)
 4. [Crime Scene Report](#)

- I. [EMS Report](#)

- J. Photos
 1. [Toney's Apartment Door](#)

2. [Apartment Hallway](#)
3. [Apartment Breezeway](#)
4. [Toney's Sweatshirt near Stairwell](#)
5. [Officer Carter's Taser](#)
6. [Officer Carter's Gun](#)
7. [Officer Carter's Holster](#)
8. [Cartridge Case](#)
9. [Injury to Officer Carter's Arm](#)
10. [Injury to Officer Carter's Hand](#)
11. [Injury to Officer Carter's Knee](#)
12. [Injury to Officer Carter's Elbow](#)

K. [Crime Scene Diagram](#)

L. [Video Compilation](#)