

**Office of Attorney General:
Investigation and Report on Officer-
Involved Shooting
(Allan F. Liberty 4/18/03)**

On 4/18/03 at approximately 3:00 a.m., RCPD Officer SPENCER O'BRYAN got off duty from his normal police shift. O'Bryan was wearing his full RCPD uniform including a reflective badge, nametag, and collar brass. He was also wearing a full duty belt and an unzipped, unmarked black raid jacket over his uniform shirt. The raid jacket flapped openly. While Officer O'BRYAN was backing his personal vehicle into his garage, he observed an adult male acting suspiciously, walking in the area of East Elk and Anaconda, and looking into cars. O'BRYAN approached the man, who was carrying a mag light (flashlight), and a pair of binoculars.

O'BRYAN thought the man may have wanted to break into a car. He also was on alert because the man had to have seen him back his truck into the driveway/garage. The man then walked northbound on the sidewalk out of O'BRYAN's view.

O'BRYAN walked out on his driveway to investigate, turned on his flashlight and saw the man crouched and hiding behind a decorative 'L' shaped fence. As O'BRYAN was shining his flashlight, the man stood up and stated, "I have one of those too", turned on his flashlight and shined it in O'BRYAN's eyes. At this point, O'BRYAN drew his firearm and said, "I have a gun and I'm a cop". Officer O'BRYAN then maintained a ready position with his firearm. The man would have been able to see the Officer's handgun pointed at him. The man stepped out from behind the fence onto the sidewalk and moved toward O'BRYAN who then yelled several times at the man to get on the ground and drop whatever he had in his hands. Eventually, the man did get down on the sidewalk but was making comments that made no sense to the officer. He then said something about having a gun on his hip. O'BRYAN asked him, "You have what on your right hip?" and the subject clearly said, "A gun".

Meanwhile, O'BRYAN was calling in for help, first on his radio, which had run low on batteries, and then on his cell phone. Dispatchers heard him yelling that he had a suspect at gunpoint and needed immediate backup.

At this point, the man disobeyed orders, got up from the sidewalk and advanced on the officer. O'BRYAN repeatedly ordered him to stop, and to get back down on the ground. The man ignored the orders, continued to move toward O'BRYAN and started to draw the silver automatic from his hip. O'BRYAN immediately recognized that the man was attempting to draw a handgun.

O'BRYAN dropped his cell phone and fired five times from a range of about 7 to 10 feet. All five shots struck the man. EMTs arrived within a few minutes, but the man was dead.

The man was identified as Allan F. Liberty, dob 7/26/76. Just north of his body, was a Browning Arms 9MM handgun with eight rounds in the clip and none in the chamber. This was the gun Liberty had been wearing on his hip. Investigation revealed that Liberty borrowed the 9 mm from his friend Mike Neumiller. Shortly after the shooting, Neumiller called police to ask about Liberty. Liberty reportedly left Neumiller's house at about 1:30 AM, and Neumiller suspected that he might have gotten into trouble with the borrowed weapon. Neumiller told police that Liberty had recently been transporting drugs for Neumiller, and carried Neumiller's gun when making drug deliveries. A few hours before his death, Liberty and Neumiller had been smoking marijuana at Neumiller's house about 2.5 blocks away from the scene of the shooting. Investigators also observed a gun holster in an 'at the ready' position on Liberty's hip.

At the scene, investigators also found a Glock Magazine from O'BRYAN's duty weapon lying on the ground containing ten (10) rounds. It holds 15 at full capacity. Investigators also located O'BRYAN's five (5) spent casings in the area of the officer's driveway. Per standard law enforcement training, O'Bryan had ejected the clip after firing five rounds, and inserted a full clip.

The autopsy disclosed that LIBERTY had five gunshot entry wounds namely, two (2) shots to the right hand area; two (2) shots to the upper right chest area; and one (1) shot to the left side of the head. None of the wounds had stippling or gunpowder residue, suggesting that the shots were not fired at point blank or contact range.

Some of the wounds appear to have been primary wounds and others were probably secondary, i.e., a bullet passing through a hand or arm and then into the body. However, all are consistent with the firing of five shots by the officer.

Liberty's toxicology report was positive for amphetamines, cocaine, and marijuana. The levels are unknown at this time. Test results for other drugs have not been received. A complete drug screen on O'BRYAN was negative.

Liberty's family reported that he was on a downward spiral for some time because of drug use. On 4/10/03, his family refused to bond Liberty out of jail in the belief that he would only get into more trouble. Liberty told them that he would kill himself if they did not bond him out.

Liberty was at another friends' home at about 8:00 PM on 4/17/03 and displayed a 9 mm handgun. Liberty made a comment to this friend that he (Liberty) was out to kill someone.

Liberty's girlfriend reported that about 2 weeks prior to his death, Liberty told her that he had called 911 and reported an armed man (himself) at a local park. Liberty said he would die because he would pull his gun and they (the police) would shoot him...because he didn't "have the b- - - to do it myself." Also about a week prior to his death, Liberty left a suicide note at his girlfriend's house. The note said "don't ever forget me, my life is almost over." The note contained a laundry list of pills that he had apparently taken.

O'Bryan and Liberty did not know each other. The reason Liberty was in the area of the officer's house is not apparent.

Law enforcement has found no record of substantiated use of force complaints against Officer O'BRYAN.

Another friend of Liberty advised that he cautioned Liberty against carrying a weapon, in light of his prior conviction for Rape. Liberty responded that he wanted to kill someone. This comment, and other evidence suggest that Liberty was seeking an armed confrontation with someone. This other evidence includes, Liberty's verbal and written threats of suicide; downward spiraling hard drug use (one friend thought they were "jacking" or injecting meth;) split-up with his girlfriend and statement to her that his child would soon be "daddy-less"; recent re-arrest and statement to a friend that he would not go back to the penitentiary alive; the reported call to police to get them to come to a park to force them to shoot him; dramatic weight loss suggesting steady methamphetamine use; and marked personality changes in recent months, believed by family to be associated with drug use.

Although the officer was just getting off work, he performed just as he should have if on duty. He investigated a suspicious individual who hid from him, first obeyed then disobeyed police commands, behaved aggressively and advanced on the officer while drawing a weapon. While Officer O'BRYAN did not know the full history of Liberty at the moment of confrontation, his training and instincts told him that the man was disobedient, irrational, aggressive, and determined to "shoot it out" with the officer.

This office concludes that Officer O'BRYAN acted appropriately. He investigated the man's suspicious activities; informed him that O'BRYAN was an officer; ordered him to the ground; and called for immediate backup. When Liberty got up, moved towards the officer, disobeyed further orders to get down, and started to draw his weapon to shoot the uniformed officer, O'BRYAN was confronted with a real threat to his own life. The situation did not allow for armchair quarterbacking. The officer was forced into a split-second decision that almost certainly saved his own life. Backup had been called but Liberty's actions took place before backup could arrive.

Liberty predicted that his daughter would soon be "daddy-less" and that he "would not go back to the pen alive." Liberty was a young man heavily influenced by drug use, looking for a showdown of some kind. Had Liberty taken the drug treatment that his family encouraged, he might be alive today.