

Report Finds BART Cop Accidentally Shot, Killed Fellow Officer On Duty

May 30, 2014 at 6:39 pm Filed Under: [Accident](#), [BART](#), [Detective](#), [District Attorney](#), [Investigation](#), [Killed](#), [Michael Maes](#), [Probation](#), [Report](#), [Sgt. Tom Smith](#), [Shot](#)



Detective Michael Maes has been identified as the officer who fatally shot Sgt. Tommy Smith during a probation search in Dublin. (BART Police)

DUBLIN (CBS/ AP) – A transit police detective [who shot and killed a fellow officer in January](#) accidentally mistook him for an armed assailant and won't be charged, California prosecutors said in a report released on Friday.

Bay Area Rapid Transit Detective Michael Maes shot BART police Sgt. Tom Smith on Jan. 21 as the two searched an apartment in Dublin for stolen items.

Alameda County deputy district attorney John Creighton wrote in the report that Maes fired once after he saw a shadowy figure with an upraised firearm suddenly come out of a dark walk-in closet area. Creighton said Smith's upraised arm could have obscured the identifying police markings on the front of his bullet-proof vest.

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“His decision to discharge his weapon was an objectively reasonable response to his perceived threat,” Creighton concluded. Maes participated with the investigation, Creighton said.

Smith, 42, was a 23-year veteran of the BART police force and Maes’ supervisor. Smith is survived by his wife, a fellow BART police officer, and a 6-year-old daughter. Two of Smith’s brothers are also police officers in other departments. The Smith family has said they also feel sorry for Maes and his family.

“Your heart goes out to that officer,” said Patrick Smith, an officer with the Newark Police Department, told television station KPIX-5 in a January interview. “We’re going to mourn the loss of our brother . but there’s someone else and another family affected by this, too. And I feel sorry for them.”

Smith was shot while authorities searched an apartment in Dublin for a smartphone, laptop bag and related items stolen during an armed holdup at a BART station in Oakland. Police believe the suspect committed several robberies on BART property. The man was in custody at the time of the search, but Smith thought he heard voices inside the apartment before police knocked on the door.

The report noted that there were two doors leading into a master bedroom where Maes shot Smith. Maes entered through the main door of the bedroom while Smith walked down a hall and entered through a door that opened into a walk-in closet that led into the same bedroom.

Maes told investigators he believed Smith was elsewhere in the apartment. Maes said he didn’t know the layout of the apartment and told investigators “the last thing on my mind was that there was some walk-through that to the bedroom,” according to the report.

Maes and Smith and three other BART detectives were in plainclothes while two uniformed BART officers and an Alameda County sheriff’s deputy were also aiding in the search. All officers were wearing bullet proof vests. The two uniformed BART officers were equipped with video cameras, but neither turned on the devices before the shooting.

Maes’ attorney David Mastagni didn’t immediately return a phone call.

The bullet went through a part of Smith’s chest that was not covered by the vest, the report said. He was the first officer killed in the line of duty in the transit agency’s 42-year history

BART Police Chief Kenton Rainey said his department is conducting an internal investigation. Rainey said the shooting prompted him to “begin the process of reviewing and updating our policies, procedures and training to ensure something like this never happens again.”

Rainey said all sergeants and officers were retrained in the use and activation of the lapel cameras that uniformed officers are required to wear.

Rainey also said the department’s deputy chief must now approve all residential probation and parole searches.

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