



KEYPOINT
GOVERNMENT SOLUTIONS

**REPORT ON THE
INDEPENDENT REVIEW OF THE
OFFICER INVOLVED SHOOTING
OF MAY 11, 2009**

Prepared for
**Office of the Police Monitor
for the City of Austin**

PREPARED BY:

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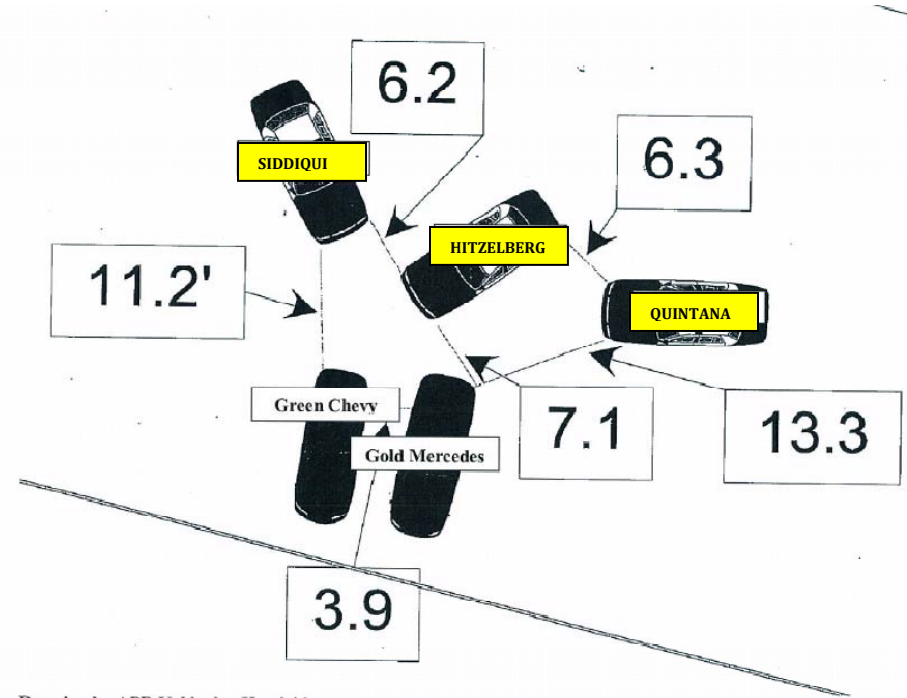
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Figure 1 - Aerial view of Walnut Creek Apartments



Drawing by APD Vehicular Homicide

Figure 2 - Area of Detail from Fig. 1 - Position of Vehicles at Time of OIS

Introduction

The police hold symbolic positions in our society. They are the most visible component of the criminal justice system and they are charged not only to promote and preserve civil order, but also to protect constitutional guarantees. To accomplish these fundamental responsibilities, the police have been granted tremendous discretion and power. The core of this power is the police prerogative to detain, search, arrest and use force without first seeking approval from a neutral magistrate, or even from their own supervisors. It is this great weight of power that causes community apprehension and may lead to community distrust. Yet, in order for any police department to be effective, it must exercise these extraordinary but essential powers with the trust and support of the community that they serve. Police authorities must work to gain and then maintain the public confidence that they are fair, unbiased and professional.

Police officers are a community's front line in dealing with non-compliant, resistive, mentally ill, and violent subjects. Because these situations are almost always fluid, dynamic, and unique, there are no predetermined steps that may be applied in every case to achieve a desired result and it is impossible to specifically prepare a police officer for every imaginable field situation. There are, however, predictable types of behavior and reasonable tactical strategies that allow officers to avoid placing themselves and others at a substantial risk of injury and to decrease the need to impose significant levels of force to resolve the situation. And while police officers are granted discretion to exercise deadly force, their decisions must be based upon reasonably objective criteria and must be consistent with the training and experience of a reasonable police officer.

It is regular practice for local authorities to formally review all officer-involved deadly force incidents to determine whether criminal laws of the jurisdiction were violated by the use of such force, and whether administrative policies and

procedures of the department were violated. While these types of internal investigations are conducted by police departments across the country every day, there are some cases where independent outside entities are called upon to review the investigative process and their findings to ensure accountability and enhance community trust. Such is the case here. KeyPoint Government Solutions (KeyPoint) was asked by the City of Austin to conduct an independent review of the officer-involved shooting that occurred in the City of Austin on May 11, 2009 that resulted in the death of one and the wounding of another.

No doubt, there are strong feelings about how this matter should be resolved: There is no hiding the fact that the involved officers were well respected members of the Department and that the victims each had criminal records. Yet, it should be recognized that neither these strong feelings nor the reputations of those involved should in and of itself influence the determination of whether the actions of the officers violated police policy.

Our review has been unburdened by knowing any of the participants, by having any bias for or against either the involved officers or Mr. Sanders or Mr. Smith, or by exposure to any milieu surrounding police-community relations. In short, our review has been conducted based solely on applying the rules and regulations of the Austin Police Department to the evidence, without fear of or favor for any particular interest.

Background and Scope of Assignment

The incident began at approximately 5:00 am on the morning of May 11, 2009, when Officer Leonardo Quintana observed a late 1990's model Mercedes station wagon enter and then park in the Walnut Creek Apartment complex. Officer Quintana believed the car to have been associated with a string of robberies and decided to initiate contact with the vehicle. Officer Alex Hitzelberg and Officer Mohammad

Siddiqui responded to assist Officer Quintana and arrived in the apartment complex within a couple of minutes of the initial contact. Officers Hitzelberg and Siddiqui also knew that the Mercedes was suspected of being associated with several armed robberies. Additionally, they all believed that any of occupants of the Mercedes might be the suspects involved in those robberies which resulted in two people being pistol-whipped and one person being shot. They also suspected that any individuals occupying the Mercedes were also wanted for discharging firearms into the air in the same apartment complex only two days before.

Within a minute after the initiation of contact, and just prior to Officers Hitzelberg and Siddiqui's arrival at the scene, Officer Quintana observed the driver of the Mercedes, Michael Franklin, exit the vehicle. Officer Quintana approached and arrested him. Mr. Franklin was handcuffed and then seated in the back seat of Officer Quintana's patrol vehicle. At the time of Mr. Franklin's arrest and Officer Hitzelberg's arrival, two other individuals were asleep in the Mercedes: Sir Smith in the front passenger seat and Nathaniel Sanders II in the driver's side rear seat of the vehicle.

As Officer Quintana tried to wake Mr. Sanders he saw that Mr. Sanders had a handgun in his waistband. Officer Quintana attempted to take the handgun, but Mr. Sanders woke suddenly and a struggle ensued. Officer Quintana retreated from the driver's side of the Mercedes, and back-pedaled behind the Mercedes toward the passenger side. From a position behind the Mercedes, Officer Quintana fired his handgun through the rear window of the Mercedes at what Officer Quintana believed to be the silhouette of Mr. Sanders. Mr. Sanders was struck by two of Officer Quintana's rounds and he died at the scene. The sounds of the gunfire apparently woke Mr. Smith who exited the front passenger side of the Mercedes and began to move in the direction of Officer Quintana. By this time, Officer Quintana had crossed behind the Mercedes and was behind the Chevrolet Cavalier that was

parked along the passenger side of the Mercedes. Officer Quintana fired two shots at Mr. Smith striking him once in the chest. Mr. Smith survived his wounds.

As is the case in all Officer Involved Shootings (OIS), the Homicide Unit of the Austin Police Department conducted a criminal investigation. Evidence from that investigation was presented to a Travis County Grand Jury, which voted “No Bill,” thereby declining to indict Officer Quintana for any crime pertaining to the shooting. Following the criminal investigation, an administrative investigation, conducted by the Internal Affairs Division (IAD) of the Austin Police Department was launched in order to determine whether policies or procedures of the Austin Police Department had been violated. IAD’s investigation and its conclusions are contained in a “Summary Report” which was produced. In short, the report concluded that Officers Quintana and Siddiqui failed to activate their MVRs, that Officer Quintana failed to identify himself as a police officer and that Officer Quintana used poor tactics during the incident. The report also found that Officer Quintana was justified in his use of deadly force toward Mr. Sanders and Mr. Smith.¹


<p>On May 11, 2009, Officer Leonardo Quintana confronted and attempted to arrest three potential armed suspects in a vehicle at the Walnut Creek Apartments located at 6409 Springdale Road. Officers John Hitzelberg and Mohammad Siddiqui responded as backup officers. During this incident, Officer Quintana shot and killed Nathaniel Sanders, and shot and wounded Sir Valaurence Smith. During this incident all three officers may have failed to follow standardized department training, tactics, and policy. With respect to Officer Quintana, he may have violated the Department's Response to Resistance policy. In addition, Officer Quintana and Officer Siddiqui failed to activate their in-car MVR equipment during this incident.</p> <p>This complaint is my request that Internal Affairs open an administrative investigation in order to determine if any violations of Department Policy, the Civil Service Rules, or State law has been committed by one or more of these officers.</p> <p> #1113 Signature of Complainant</p> <p>5/15/09 Date</p>

Figure 3- Complaint against the involved officers

¹ The specific final charges against the involved officers have yet to be drawn, which will happen at least 48 hours prior to meeting with the Chief of Police for his determination of what discipline, if any, is appropriate for those specified charges. The IA investigation was based upon the complaint shown in Figure 3 above, and IA was tasked with investigating all potential charges growing out of the incident. In addition, as evidenced by a series of Memoranda from the IA investigators, the report that was prepared and delivered to the Chief did not represent a unanimous consensus of the IA investigators.

KeyPoint was retained by the City of Austin to conduct an independent review of the OIS of Mr. Sanders and Mr. Smith and to independently adjudicate the administrative charges resulting from the OIS. This adjudication was to be made, if possible, by a review of the evidence gathered by both the Homicide Unit and the Internal Affairs Unit of the Department, to be supplemented by independent fact gathering, if necessary. Therefore, as a by-product of conducting the review, it was necessary for KeyPoint to review the quality of the investigations by both the Homicide Unit and IAD, in order to determine if independent fact gathering was required. While we had very significant problems with the quality of the Internal Affairs investigation, we nonetheless concluded that the underlying evidence, that is the witness statements, photographs, videos, crime scene analyses, and scientific evidence including the autopsy report were sufficient to allow for independent conclusions to be reached without resort to a first-party investigation.

Any review of the adequacy and appropriateness of the Department's policies and procedures, or of the Department's officer training regarding the use of deadly force and tactics which can be employed to minimize the need for the use of deadly force was limited to the extent that such review was necessary to make a determination as to a potential administrative charge against the involved officers². The scope of the assignment does not call for the making of any recommendation relative to specific discipline. The discipline to be imposed for any violation of departmental policy is ultimately in the sole discretion of the Chief of Police. We do believe that any discipline imposed should appropriately take into account the seriousness of any breach of departmental policies and procedures, as well as the result or

² On December 23, 2008 the Civil Rights Division of the U.S. Department of Justice (DOJ) prepared a report addressing deficiencies of the Austin Police Department's policies and procedures particularly as they relate to use of force and Internal Affairs investigations. Many of the findings of the Department of Justice have applicability to the circumstances of this Officer Involved Shooting. We urge the APD to quickly move toward the full adoption of the recommendations contained in the DOJ letter.

consequences of such breach. In addition it is necessary in determining discipline to take into account an officer's full service record.

Principal Findings

After completing our review, our principal findings are as follows:

1. Officer Quintana and Officer Siddiqui violated Austin Police Department policy by failing to activate their Mobile Video Recorders.
2. Officer Quintana violated Austin Police Department policy by failing to adequately identify himself as a police officer.
3. Officer Quintana, Officer Siddiqui and Officer Hitzelberg violated Austin Police Department policy by failing to follow standardized Department training and tactics.
4. Officer Quintana violated Austin Police Department policy in his use of deadly physical force against Mr. Sanders.
5. Officer Quintana violated Austin Police Department policy in his use of deadly force against Mr. Smith.³

Incidental Findings

In addition to our resolution of the charges against the involved officers we make the following findings which are incidental and necessary to our primary findings.

1. We found that the investigation by the Homicide detectives was competent and conducted in a reasonable manner although there were some substantive deficiencies.

³ Our findings address the charges as presented in the IA Summary Report. As noted, these charges and the exact wording thereof are not necessarily the charges that will ultimately be reviewed by the Chief of Police.

2. We found the investigation by Internal Affairs to be biased toward the involved officers in a way which undermines the credibility of its investigation and the confidence which the Department and public have placed in them. Notwithstanding this bias, we found the facts as developed by the IA investigation combined with those developed by the homicide investigation to be such that our independent investigation did not need to resort to a first-party reinvestigation of those facts.
3. We found significant deficiencies in the quality of documentation relating to training of APD officers.

Team Members

Jeff Schlanger, Project Executive and Coordinator

Jeff Schlanger is President and CEO of KeyPoint Government Solutions (KeyPoint). KeyPoint was, prior to its sale to Veritas Capital, known as Kroll Government Services, which Mr. Schlanger founded and has led since its inception, and which was the unit of Kroll which was ultimately responsible for all work being performed by Kroll for local, state and the federal government and for all monitoring assignments, including the recently concluded monitoring of the Los Angeles which included extensive review of officer involved shootings.

In addition, Mr. Schlanger has served as Project Executive and Coordinator in a variety of police action reviews including those for the Tennessee Highway Patrol, the San Francisco Police Department and a prior review for the Austin Police Department.

Mr. Schlanger is a product of the New York County District Attorney's Office, where he served for 12 years as both Senior Investigative Counsel and Senior Trial Counsel

to District Attorney Robert M. Morgenthau. His career in the District Attorney's Office began in the Trial Division, where Mr. Schlanger was a homicide prosecutor and ended in the Rackets Bureau where he investigated Organized Crime. Mr. Schlanger's investigations focused on homicides committed by the members of both traditional and non-traditional organized crime, other forms of labor racketeering, including extortion, loan sharking, bribery, kickbacks, no-show jobs, bid-rigging and wage violations, and police and political corruption. It was Mr. Schlanger's investigation of the Westies, a notorious Irish gang from the West Side of Manhattan, its ties to the Gambino crime family, and the development of cooperating witnesses from those groups, that directly led to the State's prosecution of John Gotti and others for the shooting of a Carpenters' Union official. In connection with his investigative and prosecutorial roles, Mr. Schlanger was cross-designated as a Special Assistant United States Attorney in both the Southern and Eastern Districts of New York.

From 1990 to March of 1998, Mr. Schlanger was in private law practice and headed his own private investigation firm. In 1998 Mr. Schlanger's private investigation firm was purchased by Kroll. Mr. Schlanger holds a BA degree (with honors) from the State University of New York at Binghamton and a JD from The New York University School of Law.

Jeff Noble

Jeff Noble has over 25 years of law enforcement experience. He is currently a commander with the Irvine Police Department, Irvine, California. Commander Noble earned his bachelor's degree in Criminal Justice from California State University, Long Beach, and he earned a juris doctorate from Western State University College of Law where he graduated with honors in 1993.

Commander Noble has consulted for many Southern California police agencies and several major cities. Most notably, Commander Noble was part of an outside team of police experts who reviewed the City of San Francisco's Office of Citizen Complaints (OCC) investigation into what was widely reported as the "Fajitagate" case involving the indictment of seven command staff members and three line personnel of the San Francisco Police Department. Commander Noble has served as an expert for the City of Chicago on cases involving Lieutenant Jon Burge and alleged confessions by torture that resulted in the pardon of several death row inmates; for the City of Miami in a case involving Jerry Townsend who had served over fifteen years on death row before DNA evidence proved his innocence; and as an expert witness in many cases across the nation.

Commander Noble, along with Geoffrey Alpert, Ph.D., has written a textbook on Internal Affairs Investigations that was published by Waveland Press in 2009.

John Lenoir

John Lenoir has over 25 years experience as a criminal prosecutor in both state and federal courts. As an Assistant District Attorney in New York County (Manhattan), Mr. Lenoir led investigations and prosecutions of homicides and other violent crimes. As a federal prosecutor in the Southern District of Texas, Mr. Lenoir led one of the first multi-agency task forces targeting money laundering enterprises, and was chief of the Civil Rights Division. He directed numerous investigations involving confidential informants, using undercover agents and sophisticated electronic surveillance techniques. These investigations led to the successful prosecution of corrupt public officials and one of the most significant civil rights prosecutions involving police brutality in South Texas. Mr. Lenoir developed the first comprehensive training program for the Southern District of Texas U.S. Attorney's Office legal and support staff, and developed training in federal law and procedures for local police and sheriff departments of South Texas. Mr. Lenoir worked with

Houston Police Department officials in the design of a web-based delivery of training programs, was a regular lecturer on civil rights at the Houston Police Academy, and investigated civil rights allegations within the U.S. Department of Justice.

In 2001-2002, Mr. Lenoir was on special assignment in Washington, DC as Counsel to the Director of the U.S. Marshals Service, and was later named Administrative Assistant U.S. Attorney for the Eastern District of New York. Mr. Lenoir joined Kroll Government Services (now KeyPoint) as Managing Director in July 2007.

He graduated from American University in Washington, D.C. with a degree in Political Science, and went on to earn a Master's and Ph.D. in Cultural Anthropology at the Graduate Faculty, New School for Social Research in New York. While serving as a full-time member of the faculty of John Jay College of Criminal Justice at the City University of New York as Assistant Professor of Anthropology, Lenoir earned a law degree at Rutgers University School of Law.

Methodology

Each of the team members has reviewed all of the materials provided. These materials are listed in Appendix A, and aggregate to thousands of pages and hundreds of photographic and video exhibits. While there was discussion among the team during the analysis phase of the materials provided, each member was urged to form his own opinion on the thoroughness and conclusions of the IAD investigation. This report reflects the consensus of the team.

The IAD investigation focused on five administrative charges:

1. That Officers Quintana and Siddiqui failed to activate their Mobile Video Recorders (MVRs) during the incident.

2. That Officer Quintana failed to identify himself as a police officer.
3. That the tactics employed by Officers Quintana, Hitzelberg and Siddiqui were deficient.
4. That the use of deadly force against Mr. Sanders was unreasonable.
5. That the use of deadly force against Mr. Smith was unreasonable.

In our review of these charges we employed the standard of proof for an administrative investigation, “preponderance of the evidence.” The standard of proof is the level of certainty and the degree of evidence necessary to meet the Department's burden of establishing that policies or procedures of the Department were violated. The preponderance of the evidence standard requires that evidence simply be of greater weight or more convincing than the evidence that is offered in opposition to it; in other words that the standard is met when it is more likely than not that the individual engaged in the misconduct charged by the department.

Findings of Facts

Any evaluation concerning possible violations of policy must be grounded in a set of facts, found and established through all available evidence. In order to apply the policies and procedures of the Department in this case we first had to determine the relevant facts. In many cases there is conflict with respect to certain facts and in other cases there may be no conflict with respect to the facts. In this case, the majority of the facts are undisputed. In our findings detailed below, we present the facts which we are crediting and upon which we are relying in order to adjudicate this matter. Where there is a dispute with respect to any particular fact, we have indicated what facts are in dispute and how we have resolved such dispute.

Information Known to Officers before the Contact

There was a substantial amount of information concerning the Mercedes station wagon and its possible occupants known to, or believed by the involved officers before the incident. In fact, it was this information which Officer Quintana acted upon which set the events in motion which led to the OIS. According to Officer Quintana's statement, he had been briefed on a robbery that occurred on March 2, 2009. Part of the briefing included the fact that during that robbery, the suspects, described as two male blacks, who were driving a white van with rust spots on the roof, pistol-whipped their victim.

Officer Quintana also indicated that he knew that on April 28, 2009, a taxi driver was robbed at gunpoint and the suspects stole the cab and that on May 1, 2009 another taxi driver was robbed. In the second robbery, Officer Quintana knew that the victim was pistol-whipped and that one of the suspects put a gun into the victim's mouth, and made him beg for his life. The suspects fled the area driving a white van with a rusty top. Investigators believed that the same suspects committed both of these robberies. This belief was known to Officer Quintana.

On March 14, 2009, Officer Quintana saw a vehicle that matched the van's description and he made a car stop to investigate. Officer Quintana spoke with the driver whom he determined through his investigation might have been the uncle of one of the suspects involved in the crimes. Officer Quintana believed that the van he stopped was the vehicle involved in the robbery. Officer Quintana advised the robbery detectives of his beliefs and he wrote a supplemental report documenting his actions.

Officer Quintana stated that on May 9th, two days before the OIS, he heard a robbery being dispatched on the police radio where the victim was shot in the face. The description of the suspect vehicle matched that of the white van he had stopped and

a partial plate was provided by a witness at the scene. Officer Quintana checked his report and discovered that the partial plate matched the plate of the van he had previously investigated. He provided that information to the detectives handling the case and made efforts to locate the van himself. Indeed, Officer Quintana later did locate the van parked at the Walnut Creek Apartments. He observed several individuals walking away from the van as he approached, but they were able to get into the apartment complex before he arrived. Officer Quintana spoke with Sergeant De La Santos who told him that he was going to have some plainclothes officers watch the van to see if the suspects came back. Officer Quintana said that he, along with several other officers, waited in the general area to assist if the suspects came back to the vehicle. While he was waiting he heard multiple gunshots from the area of the apartment complex. At that point the decision was made to impound the van for investigation rather than to remain in the apartment complex.

Officer Quintana stated that he believed he knew which apartment the suspects went to so he went to that apartment and spoke with someone who told him that the van belonged to Kenneth Hunt, but that he was no longer living at that apartment. Officer Quintana believed this information might be accurate because Mr. Hunt was one of the nephews of the man whom he had stopped in the van several days earlier, and Mr. Hunt had an outstanding felony warrant.

While Officer Quintana was in the apartment obtaining this information, he received a police radio broadcast stating that someone had called the police department stating the subjects whom the police were looking for in the apartment complex had just left the complex driving a gold colored station wagon.

Officer Hitzelberg had also responded to the apartment complex during the investigation. Officer Hitzelberg wrote in his affidavit that in speaking with witnesses it was learned that the occupants of the white van had transferred weapons to a champagne, brown or gold colored, 90's model Mercedes station

wagon. The neighbors also complained of frequent shots being fired in the apartment complex and that they believed the shots were related to the subjects in the Mercedes and to the residents in apartment number 126.

On May 10th, Officer Quintana had a conversation with Corporal Bonilla who stated that while he was in the apartment complex the night before he was flagged down by a citizen and told that the guys who had been driving the white van left in a gold colored station wagon. Officer Quintana and Corporal Bonilla came to the conclusion that the individuals who left in the station wagon were responsible for the taxicab robberies, and the firing of guns in the air at the apartment complex and a robbery at a Valero gas station.

Officer Quintana stated that the information that led him to the brown or gold colored Mercedes station wagon the night of the OIS was based on this information and the information provided by Officer Hitzelberg. Officer Quintana did not have a license plate number of the Mercedes and the only other information that he possessed was that the suspects were black males.

The Walnut Creek Apartment Complex

Officer Quintana said that it is very rare that he enters the Walnut Creek Apartment complex. Although he was not questioned directly on his number of responses to that apartment complex, he did state in another part of his interview that the apartment complex is in Charlie sector and he works in Edward sector which may explain the limited number of responses. Officer Quintana said that on eight out of ten stops that he did make in that apartment complex that someone would try to interfere usually by heckling or making loud comments. Officer Quintana described the residents as being very "anti-police." Officer Quintana said that he always had to

be more cautious while in that apartment complex. Officers Hitzelberg and Siddiqui echoed Officer Quintana's concerns.

The Initial Contact

On May 11, 2009, at approximately 5:07 a.m., Officer Quintana was parked at the Auto Zone at 6400 Springdale Road. He chose that location because he had a report to write and because from that position he could see the Walnut Creek Apartment complex and was hoping that he might see the Mercedes. While he was parked at that location, Officer Quintana saw the Mercedes traveling on Springdale. Officer Quintana followed the vehicle as it entered the Walnut Creek Apartment complex. Although Officer Quintana could not see the individuals inside the vehicle because the windows were tinted, he believed that this was the vehicle that he was looking for and he believed that the individuals inside the vehicle were wanted. He also believed there was a "strong possibility" that they were armed. As he was following the vehicle, Officer Quintana radioed Officer Hitzelberg asking about the vehicle information and Officer Hitzelberg confirmed the wanted vehicle was an early 90's Mercedes station wagon, brown or champagne in color and that the suspects were wanted for armed robbery.

Officer Quintana advised dispatch that he was out on the vehicle at 6409 Springdale Road. Officer Hitzelberg and Officer Siddiqui who both overheard the radio traffic decided to respond to the location in order to back up Officer Quintana. The driver of the Mercedes pulled into a parking space and Officer Quintana drove past the vehicle intending to wait for his backup officers before making contact with the driver. Officer Quintana said that it was his experience that individuals will frequently just stay in their vehicle and watch the police if they think they are going to be contacted and that it was his plan to wait for Officer Hitzelberg to arrive and then order the driver out at gunpoint.

Officer Quintana made a u-turn and saw the driver, who was later identified as Mr. Franklin, exit the vehicle and begin walking away toward the apartment complex. Officer Quintana said that he did not want the suspects to get away as they had two nights before, so he decided to contact Mr. Franklin. He knew that there was a barbed-wire fence in front of them and that the only avenue of escape was to go into the apartment complex. He therefore pulled his car behind the Mercedes to prevent any occupants from fleeing.

The Detention of Mr. Franklin

Officer Quintana initially said he was not sure if he turned on his overhead lights and later in his interview he said that he did not turn his lights on to effect the detention of Mr. Franklin. As Mr. Franklin was exiting his car Officer Quintana quickly pulled his radio car up to the back left of the Mercedes, and as he exited his car Officer Quintana drew his handgun from its holster and held his handgun at a “low-ready” position. Officer Quintana stated that he could see Mr. Franklin grabbing something in his pockets, so Officer Quintana ordered Mr. Franklin to remove his hands and place the objects on the ground.⁴

Officer Quintana stated that Mr. Franklin told him that the car did not belong to him. As Officer Quintana was speaking with Mr. Franklin, he noticed a subject later identified as Mr. Smith apparently sleeping in the front passenger seat. Officer Quintana asked Mr. Franklin if Mr. Smith was the only person in the car and Mr. Franklin stated he was. Officer Quintana said he did not use his flashlight to look

⁴ There is contradictory information on what happened next. In his reenactment for SIU, Officer Quintana demonstrated walking Mr. Franklin back to the Mercedes and having him place his hands on top of the car, directly in front of the rear driver’s side passenger window, where Mr. Sanders was seated. In his interview with Internal Affairs, Officer Quintana stated that he met Mr. Franklin between the Mercedes and his police car and had Mr. Franklin place the items on the ground. In Mr. Franklin’s statement to SIU, Mr. Franklin stated that his hands were on the car. Mr. Franklin’s cell phone was later recovered on the roof of the Mercedes indicating he was frisked at that location. In his SIU interview, Officer Quintana described shutting the driver’s door of the Mercedes after frisking Mr. Franklin, which would also place Officer Quintana next to the Mercedes.

inside the car because he was busy with Mr. Franklin. According to Officer Quintana, Mr. Franklin said something like, "Say, man," or "Hey, man," and Officer Quintana believed that Mr. Franklin was trying to wake up Mr. Smith. Officer Quintana told Mr. Franklin not to try to wake Mr. Smith, as he only wanted to deal with one person at a time. Officer Quintana asked Mr. Franklin if there were any guns in the car. Mr. Franklin told him there were not, but Officer Quintana felt Mr. Franklin was acting suspiciously and did not believe him.

Officer Quintana radioed a record check request for Mr. Franklin and discovered that he had a warrant for failing to appear in court, but the warrant could only be served Monday through Friday. Although Officer Quintana could not arrest Mr. Franklin for the warrant, he decided to arrest Mr. Franklin for operating a motor vehicle without a license. Officer Quintana handcuffed Mr. Franklin and placed him in the backseat of his police vehicle.

During this time, Officer Quintana could see that five to ten people were watching his activities from across the street and after Mr. Franklin was handcuffed, Mr. Franklin yelled out to the crowd asking someone to call his sister to let her know that he had been arrested.

Officer Hitzelberg's and Officer Siddiqui's Arrival

Officer Hitzelberg started toward Officer Quintana's location after Officer Quintana radioed that he had stopped the vehicle. While en route, Officer Hitzelberg heard Officer Quintana run a warrant check on Mr. Franklin. Upon entering the complex, Officer Hitzelberg turned off all his lights except for his driving lights to avoid backlighting Officer Quintana. As he arrived on scene, Officer Hitzelberg observed Officer Quintana placing Mr. Franklin in the backseat of Officer Quintana's vehicle. Officer Hitzelberg parked his marked police car to the passenger side of Officer Quintana's vehicle.

Officer Hitzelberg's intentions had been to assist Officer Quintana in placing Mr. Franklin in the backseat of Officer Quintana's vehicle until Officer Quintana told him that there were other people inside the Mercedes. Officer Hitzelberg saw that Officer Quintana's spotlight was shining on the driver's door of the Mercedes and the light was reflecting off of the tinted window making it very difficult to see inside the vehicle. Officer Hitzelberg described the lighting conditions as poor and it wasn't until he began to approach the vehicle on the driver's side and used his flashlight that he saw a person in the front passenger seat and another seated in the rear driver's side seat.

Officer Hitzelberg believed the Mercedes to be the vehicle wanted for the armed robberies because he has not seen too many tan Mercedes station wagons on the road. Officer Hitzelberg stated that he believed the two occupants of the vehicle were suspects in robberies and a shooting and he felt that both subjects might be armed with firearms.

Officer Siddiqui stated that he heard Officer Quintana ask Officer Hitzelberg for some information on the police radio and then he heard Officer Quintana say that he would be out with the vehicle at 6409 Springdale. Officer Siddiqui radioed dispatch and advised that he would be en route to back up Officer Quintana. Officer Siddiqui arrived immediately after Officer Hitzelberg and parked his marked police car to the right of Officer Hitzelberg's car. Officer Siddiqui had entered the South entrance of the complex and turned off his lights except for his parking lights to avoid illuminating Officers Quintana and Hitzelberg.

When Officer Siddiqui exited his vehicle, Mr. Franklin had already been seated in the back of Officer Quintana's vehicle. Officer Siddiqui stated that he saw four bystanders standing to the east of his position. Officer Siddiqui asked Officer Quintana what he had and Officer Quintana told him something to the effect that

there were still other individuals in the Mercedes. Officer Siddiqui did not remember if Officer Quintana said that there were one or two people in the car, but he did recall that Officer Quintana said that the subjects might be asleep.

The Vehicle Approach

Officer Siddiqui stated that he approached the Mercedes on the passenger side and that as he began to shine his flashlight into the car he saw two people in the vehicle. He stated that he did not have his handgun out because he was told that the subjects were sleeping and opted to not draw his firearm even though he knew the subjects might have been involved in robberies and might be armed. One of the subjects was seated in the front passenger seat and the other was seated in the rear seat behind the driver's seat. Officer Siddiqui then began to scan the interior of the Mercedes looking for weapons, contraband or anything that might have been in plain view. Officer Siddiqui asked Officer Quintana who he wanted to deal with first. Officer Siddiqui stated he did not recall hearing a response to his question, but that it was obvious that Officer Quintana opted to contact the sleeping passenger in the rear seat first.

Officer Hitzelberg approached the Mercedes at about the same time that Officer Siddiqui and he too did a visual inspection of the interior of the vehicle using his flashlight for illumination. He saw that there were two people in the car, one in the front passenger seat and the other in the rear driver's side seat. Officer Hitzelberg stated in his affidavit that he believed that because these subjects were possibly involved in aggravated robberies and a shooting, that they both might be armed with firearms. Officer Hitzelberg can be heard on his MVR saying, "you got – you got two. You got one here and one here. You've got one here and one there. Which one do you want to do?" It was only at that point that Officer Quintana became aware that there were two people in the Mercedes, with one person seated asleep in the rear seat behind the driver's seat. Officer Quintana said that when Officer Hitzelberg

made this announcement he was standing at the front passenger door with Officer Siddiqui.

Officer Quintana said that he told Officer Siddiqui to watch the subject in the front passenger seat, Mr. Smith, and that he walked around the car to contact the subject seated in the rear driver's side seat who was later identified as Mr. Sanders. Officer Quintana did not offer a reason for leaving Officer Siddiqui and dealing with Mr. Sanders first and only stated that he went to the driver's side to work with Officer Hitzelberg. Officer Quintana stated that his decision was not based on any issue with Officer Siddiqui, but it was because he simply felt more comfortable with Officer Hitzelberg because they work together frequently.

The Contact with Mr. Sanders and Mr. Smith and the Use of Deadly Force

Officer Quintana

When questioned, Officer Quintana acknowledged that he did not develop any type of plan for approaching the vehicle with Officer Hitzelberg or Siddiqui. Further, there was no communication of any plan as Officer Quintana approached the driver's side of the vehicle before he made contact with Mr. Sanders. When he approached the rear driver's side passenger door, Officer Quintana said that he did not have his gun drawn and neither did either of the other officers. Officer Quintana also said that none of the officers had their Taser drawn.

When Officer Quintana approached the driver's side rear door he used his flashlight to illuminate the interior of the vehicle to look for any possible weapons that might be in plain sight within the vehicle. Officer Quintana did not see any weapons and it was his plan to wake Mr. Sanders up, identify himself as a police officer and direct Mr. Sanders out of the car. If Mr. Sanders were to cooperate, Officer Quintana's

intention was to allow him to exit the vehicle and then perform a pat-down search for weapons. If Mr. Sanders did not cooperate, Officer Quintana's intention was to place a control hold on Mr. Sanders and escort him out of the car with the assistance of Officer Hitzelberg. Although Officer Quintana had formulated a plan in his mind, he never communicated it to the other officers.

Officer Quintana said that he opened the car door and saw Mr. Sanders' head was resting on his left shoulder. Officer Quintana raised Mr. Sanders' head two or three times trying to wake him up and each time Mr. Sanders dropped his head back down. Officer Quintana said that he hit Mr. Sanders on the chest or around the shoulder and said, "Hey man, wake up," but Mr. Sanders did not appear to wake up. Officer Quintana then reached into the vehicle and used his right knuckles to rub Mr. Sanders' sternum in an attempt to wake him up. Mr. Sanders woke up suddenly and grabbed at Officer Quintana's hand. Officer Quintana yanked his hand back and watched Mr. Sanders for a second, but it appeared that he was still not awake. Officer Quintana reached in to do a second chest rub and at the same time he grabbed at Mr. Sanders' shirt and lifted the shirt up. Officer Quintana stated that when he lifted Mr. Sanders' shirt he saw a handgun in Mr. Sanders' waistband with the butt of the gun pointing forward. Officer Quintana was not aware of Officer Hitzelberg's exact position at this point, but he said that when he lifted Mr. Sanders' shirt that both he and Mr. Sanders, who was suddenly awake and alert, tried to grab the gun. Officer Quintana does not know if he put his hand on the gun first or if Mr. Sanders did but he does remember that he immediately yelled out "32...32" to warn the other officers.

Officer Quintana said that his goal at this point was to take control of the gun. Mr. Sanders grabbed and squeezed Officer Quintana's hand and Officer Quintana pulled away. Officer Quintana said that as he pulled back he was able to break free of Mr. Sanders' grip. Mr. Sanders then dove over toward the rear passenger side of the vehicle out of the reach of Officer Quintana. As Mr. Sanders moved, Officer Quintana

saw Mr. Sanders begin to pull the gun from his waistband. Officer Quintana said he never saw the barrel of the gun, nor did he see Mr. Sanders pull the gun completely out of his waistband. Officer Quintana said in retrospect, he believes that Mr. Sanders was only pretending to be asleep while he was in the car. Officer Quintana based this belief on how quickly Mr. Sanders reacted in going for the gun that Officer Quintana was attempting to remove.

Officer Quintana then tried to get away from the vehicle by backing away as fast as he could. Officer Quintana said he probably brushed into Officer Hitzelberg, but he is not sure and he doesn't remember making contact with him. Officer Quintana said he did not know exactly where Officer Hitzelberg and Officer Siddiqui were, but he knew they were not in his line of fire. Officer Quintana said that he feared that Mr. Sanders would exit the vehicle and shoot at him, so he fired at Mr. Sanders' silhouette through the rear window. Officer Quintana said that his first shot went through the vehicle's rear window and a piece of glass flew back and struck him in the arm. At the time, Officer Quintana said that he believed that Mr. Sanders had shot him and that he was hit in the arm. It was not until after the shooting had concluded that Officer Quintana could check his arm and see that he was not shot but that a piece of glass had hit his arm.

Officer Quintana fired an additional shot at the back of the vehicle in Mr. Sanders' direction. At the same time, Officer Quintana was continuing to move backwards. As he moved backwards he bumped into the front of a patrol car. Officer Quintana said that he hit the car "pretty hard" and that the impact caused his head to snap back. Officer Quintana continued to move and fired a third shot because he believed that Mr. Sanders was still trying to exit the vehicle. Officer Quintana never saw Mr. Sanders put his hands up or make any attempt to surrender. In his first interview with the SIU detectives, Officer Quintana believed that he had only fired two rounds at this point. However, Officer Quintana was able to review the ballistics trajectory

video prior to his Internal Affairs interview and based on that information, Officer Quintana now believes that he fired three shots.

Officer Quintana stated that immediately after he shot at Mr. Sanders, the front passenger door open “very fast” and Mr. Smith exited the vehicle. Officer Quintana described Mr. Smith as running at him in a crouched position with his hands out in front of him. The ballistics evidence as developed in the Bevel report, contradicts the statement of Officer Quintana relative to the position of Mr. Smith and his hands.⁵ Officer Quintana said that Mr. Smith’s head was up and Mr. Smith was looking directly at him. Officer Quintana fired two rounds at Mr. Smith causing Mr. Smith to fall to the ground. Officer Quintana’s statements were gleaned from his statements to the Homicide detectives as Internal Affairs never asked Officer Quintana why he shot Mr. Smith.⁶

Officer Hitzelberg

Officer Hitzelberg stated that he heard Officer Quintana call out that Mr. Sanders had a gun. Officer Hitzelberg said that he and Officer Quintana retreated to the rear of the station wagon and that they drew their firearms as they moved. As Officer Hitzelberg reached the rear bumper of the Mercedes he heard two shots and felt glass fragments from the Mercedes’ rear window strike his face. Officer Hitzelberg believed that Mr. Sanders had fired through the rear window and that officer Quintana was returning fire. Officer Hitzelberg positioned himself at the driver’s side rear bumper with his gun drawn and pointed at the rear passenger door expecting Mr. Sanders to try to exit the vehicle. Officer Hitzelberg said that he did not fire his gun during his retreat from the door because Officer Quintana was in front of him and because he had not seen a gun at that point.

⁵ A full discussion of the resolution of this disputed fact appears below.

⁶ The failure to ask this critical question of Officer Quintana is a serious omission in the Internal Affairs investigation.

Officer Hitzelberg stated that he saw Mr. Smith, who was seated in the front passenger seat “coming down the side of the vehicle and then running directly at” Officer Quintana. Officer Hitzelberg stated that he could not see the position of Mr. Smith’s hands at the time. Officer Hitzelberg heard a single shot and saw Mr. Smith fall to the ground. Officer Quintana and Officer Siddiqui approached Mr. Smith and then, according to Officer Hitzelberg, Officer Quintana joined Officer Hitzelberg and they proceeded to the rear driver’s side door of the vehicle. Officer Hitzelberg said that Mr. Sanders head was tilted toward his chest and his hands were in his lap. Officer Hitzelberg pulled Mr. Sanders out of the vehicle and laid him on the ground. Officer Hitzelberg looked back inside the vehicle and saw a handgun on the seat where Mr. Sanders had been sitting.

Officer Siddiqui

Officer Siddiqui said that Officer Quintana opened the driver’s side rear door and tried to wake up Mr. Sanders by speaking in a loud voice. Officer Siddiqui stated that Officer Hitzelberg was standing behind Officer Quintana and although he recalls seeing Officer Quintana rubbing Mr. Sanders on the chest, his attention was focused primarily on Mr. Smith. Officer Siddiqui said that as his attention was focused on Mr. Smith he heard some type of struggle in the backseat and then saw Officer Quintana quickly backing away from the car.

Officer Siddiqui then heard gunshots and believed that the shots came from Mr. Sanders. Officer Siddiqui said he dove to the ground and drew his firearm. Officer Siddiqui attempted to gain some cover by crawling on the ground and trying to get behind a green Chevrolet Cavalier that was parked next to the Mercedes. As he got behind the car and came to his feet, Officer Siddiqui saw Mr. Smith heading toward Officer Quintana. Officer Siddiqui held his position for a moment and then saw that Officer Quintana was holding Mr. Smith on the ground at gunpoint. Officer Siddiqui

said it was he who went to assist Officer Hitzelberg, not Officer Quintana, and that Officer Hitzelberg pulled Mr. Sanders out of the backseat of the vehicle and onto the ground. (Officer Hitzelberg's car video confirmed that Officer Siddiqui, not Officer Quintana, assisted Officer Hitzelberg in removing Mr. Sanders from the Mercedes.)

Officer Siddiqui later stated that he knew Mr. Smith, but he did not recognize him at the scene. Officer Siddiqui stated that three or four years ago he competed in a USA boxing championship and he shared a hotel room with another boxer for two days. That boxer was Mr. Smith. Officer Siddiqui said that was the only contact that he had ever had with Mr. Smith and he did not realize that it was Mr. Smith who was in the front seat of the vehicle until someone mentioned his unique first name of "Sir" after the shooting.

The Witnesses' Observations

Michael Franklin

Mr. Franklin stated that at 3 or 4 a.m. he went to the club Ozone to meet Mr. Smith. When he arrived he eventually located Mr. Smith asleep in the driver's seat of his vehicle along with another subject whom he only knew as "Slick" who was asleep in the backseat of the car. Mr. Franklin stated that he was able to arouse Mr. Smith who moved to the front passenger seat so Mr. Franklin could drive them home. Mr. Franklin called "Slick's" girlfriend who lives in the Walnut Creek Apartments and she said to bring him to her apartment. Mr. Franklin planned to stay at his brother's apartment which is also in the Walnut Creek Apartments and he was going to see if his brother would let Mr. Smith stay there as well. As Mr. Franklin was driving to the apartment complex he drove past the Auto Zone and saw a police car. Mr. Franklin noticed that the police car began to follow him.

Mr. Franklin parked in the apartment complex, exited his car and was getting the key out for his brother's apartment when the officer pulled up and parked 6 – 10 feet away from his vehicle. Mr. Franklin heard the officer say, "Don't move," or "Put your hands on the car." Mr. Franklin said that the officer had put his spotlight on him, as well as his flashlight and he believed that officer was pointing his Taser at him. Mr. Franklin said he immediately put his hands up, displaying his keys in one hand and a cell phone in the other. Mr. Franklin dropped both his keys and his cell phone to the ground and the officer came up to him, grabbed both of his hands putting his hands behind his back and then the officer patted him down and searched his pockets. The officer then handcuffed Mr. Franklin and told him that he was not under arrest, but that he was going to place Mr. Franklin in the backseat of his car until he woke up the passengers and found out what was going on. The officer did ask Mr. Franklin if there were any guns or weapons in the car and Mr. Franklin said not to his knowledge as he had just entered the car and the passengers were asleep when he entered.

Mr. Franklin said the officer then walked up to the rear driver's side door where "Slick" was seated. A second officer arrived and he walked up to the front passenger side where Mr. Smith was seated. Mr. Franklin saw the first officer grab "Slick" with his right hand and he believes that the officer was holding something with his left hand (a Taser, gun or flashlight). The officer began to tug at "Slick" and according to Mr. Franklin, "Slick's" body was jerking from side to side, but it looked like dead weight. Then suddenly "Slick" jumped, like he woke up or was startled and pulled his body toward the passenger side of the vehicle. Mr. Franklin said he immediately heard one gunshot and then another about five seconds later. After the first gunshot Mr. Franklin ducked down into the car. When he looked up he saw three officers surrounding the car with their guns drawn and one of the officers shot in the direction where Mr. Smith had been sitting. Mr. Smith came out of the car and fell to the ground as though he had been shot.

Sir Lawrence Smith

Mr. Smith said that he was at the club Ozone and that he had taken a Xanax. Mr. Smith said he became sleepy and went to sleep in his car. Mr. Smith remembers Mr. Franklin getting in the car and that Mr. Franklin was going to drive him home, but he does not recall anyone else being in the car. Mr. Smith said he was asleep in the car when he heard a shot and woke up. Mr. Smith said that he is from the neighborhood and when he heard the shot his reaction was to open the door get out of the car and run. Mr. Smith had no idea who shot him, but he believed it may have been one of the police officers.

Dorie Houston

Ms. Houston was at the club Ozone and she saw Mr. Franklin, Mr. Smith and Mr. Sanders at the club. Mr. Sanders told her that he was getting sleepy because he had taken some “planks” which she knew to be codeine. About an hour later, Ms. Houston walked into the parking lot and she saw Mr. Smith and Mr. Sanders sleeping in the car. Ms. Houston said she told Mr. Franklin to drive them home, and then she went to the Walnut Creek Apartments. Ms. Houston said that she, Precious, Persephony, Aaron and Johnnie were at the apartment complex when she saw Mr. Smith’s car pull into the driveway. Immediately after Mr. Smith’s car entered the complex a police car drove into the parking lot. The officer drove past Mr. Smith’s car, made a u-turn and then parked behind Mr. Smith’s car.

As the officer was making the u-turn, Mr. Franklin was getting out of the car. Ms. Houston said it appeared that Mr. Franklin was trying to get rid of something, but she wasn’t sure. As the officer walked toward Mr. Franklin, Ms. Houston saw Mr. Franklin drop his keys and “stuff” on the ground. The officer asked Mr. Franklin if anyone else was in the car and Mr. Franklin replied, “Yea, my brothers are in there

asleep.” Ms. Houston heard Mr. Franklin tell Mr. Smith and Mr. Sanders to wake up. The officer then closed the car door, put Mr. Franklin up against the car and handcuffed him. The officer then walked Mr. Franklin to his police car and placed him in the backseat.

At about this time, two more officers arrived. The officers spoke briefly, then one officer went to the driver’s side of the car and the other two went to the passenger side. Ms. Houston said one of the officers opened the front passenger door and began to shake Mr. Smith to wake him up. Another officer began to search Mr. Sanders and she saw the officer lift Mr. Sanders’ shirt. The officer suddenly reacted like he saw a gun and dropped his flashlight. Ms. Houston believes that the officer saw a gun because Mr. Sanders always carries a gun. Mr. Sanders woke up and raised his hands.⁷ Ms. Houston said she doesn’t know if the officer thought Mr. Sanders was pulling the gun, but he yelled, “Fire, fire!” Ms. Houston said that the officer on the other side of the car shot his gun at Mr. Sanders.⁸ After that officer fired, the officer who had been searching Mr. Sanders fired two rounds at Mr. Sanders through the open door.⁹

Ms. Houston said the officer on the other side of the car fired another round and she believes that one of the rounds missed Mr. Sanders and hit Mr. Smith because he

⁷ While we credit the statement of Dorie Houston relative to Mr. Sanders raising his hands, as it is corroborated by the statement of Persephony Felder, there is no evidence that Officer Quintana saw Mr. Sanders raise his hands.

⁸ We do not credit the statement that someone other than Officer Quintana fired his gun. There is no evidence to support his allegation, and in fact, much evidence that indicates that such was not the case.

⁹ Again, there is no evidence that Officer Quintana fired through the open door. In fact, there is significant evidence that he did not do so, but rather fired through the rear window of the Mercedes and then through the side window of the Mercedes. We therefore do not credit this aspect of the statement.

exited the car and began to run.¹⁰ Once Mr. Smith began to run, one of the officers shot him again and he fell to the ground.

Persephony Felder

Ms. Felder stated that she was Mr. Sanders' girlfriend and that she went to the club Ozone because she did not believe Mr. Franklin when he told her that Mr. Sanders and Mr. Smith were sleeping in Mr. Smith's car. Ms. Felder went to the club and discovered that they were sleeping, so she told Mr. Franklin to bring them to her home at the Walnut Creek Apartments. As Mr. Franklin was arriving, he called Ms. Felder on her cell phone and she then saw him pulling into the parking lot.

Ms. Felder said she saw Mr. Franklin exit the car and begin to walk toward his brother's apartment, which is located directly across from where he parked. Ms. Felder said she saw a police car pull into the apartment complex, drive by Mr. Smith's car, make a u-turn, then put his spotlight on Mr. Franklin. Ms. Felder said she saw the officer exit his car and tell Mr. Franklin to put his hands on the Mercedes. The officer then searched and handcuffed Mr. Franklin and began walking him toward the police car. As Mr. Franklin was walking toward the police car, Ms. Felder began to walk toward him. Mr. Franklin told Ms. Felder to wake his "bro" up and she believed that he was talking about Mr. Sanders. Ms. Felder saw two more police cars enter the parking lot so she just stayed where she was.

Ms. Felder saw the officers begin to look into the car and tell Mr. Sanders to wake up. Ms. Felder said she saw Mr. Sanders wake up and put his hands in the air. Ms. Felder does not know if an officer told Mr. Sanders to put his hands in the air or whether he just did. Ms. Felder said it looked like the officer became frightened because he dropped his flashlight then he shot into the car. Ms. Felder said she

¹⁰ There is no evidence that any other officer fired his weapon during this incident.

heard four shots and then another two and believed that at least two officers were shooting.¹¹ She then saw the front passenger door open and saw Mr. Smith holding his side and saying that he had been shot.¹² Mr. Smith fell to the ground and the officers ran up and handcuffed him. As Mr. Smith was falling out of the car one of the officers ran around the car and shot into the car again.¹³

Precious Felder

Ms. Felder was in the parking lot of the Walnut Creek Apartment complex along with her sister Persephony, “Pig,” and “Tine.” She said they were leaning against a car that belongs to “Shay,” but “Shay” was not present. Ms. Felder saw a gold colored Mercedes pull into the parking lot. Ms. Felder did not know the driver, but Mr. Smith was in the front passenger seat and Mr. Sanders was in the backseat. Ms. Felder said that the car was parked for about five minutes before the driver yelled out the window to Persephony telling her to come get Mr. Sanders and Mr. Smith out of the car as they were sleeping. Ms. Felder said the car was parked for about 10 to 20 minutes before the police arrived.¹⁴

Ms. Felder said a police car pulled into the parking lot and passed by Mr. Smith’s car and turned down a side street. The police car then backed up in reverse and pulled behind Mr. Smith’s car. The officer exited his car and the driver, Mr. Franklin exited his car. The two met up between the cars and the officer patted Mr. Franklin down next to the rear driver’s side of Mr. Smith’s car. The officer handcuffed Mr. Franklin

¹¹ We find that a total of five not six shots were fired, all by Officer Quintana.

¹² We do not credit the assertion that Mr. Smith was shot while inside of the car.

¹³ We do not credit this part of the statement. There is no evidence of any other officer firing his weapon or that any shot was fired into the car after Mr. Smith was shot.

¹⁴ Because of serious discrepancies relative to timing and sequencing of events we do not credit the bulk of the statement of Precious Felder.

and began to walk him toward the police car. Ms. Felder said that she, “Pig” and “Tine” walked toward the police car to see what was happening.

Ms. Felder said the officer then walked back to Mr. Smith’s car and opened the rear driver’s side door. The officer put his hand on Mr. Sanders’ shoulder and began to rock him back and forth in an attempt to wake him up. As the officer was trying to wake Mr. Sanders another officer arrived in the parking lot. Ms. Felder said she saw that Mr. Sanders woke up and when he did he immediately put his hands up.¹⁵ She saw the officer drop his flashlight and begin to shoot at Mr. Sanders. Ms. Felder said that Mr. Sanders’ hands were in the air the entire time that the officer was shooting. Ms. Felder said the second officer, who was standing near the driver’s side rear of the vehicle fired at least three rounds into the car.¹⁶

Destiny Robinson (“Pig”)

Ms. Robinson said she was in the parking lot of the Walnut Creek Apartment complex with Persephony, Precious, her brother Johnnie, Aaron and Dorie waiting for Mr. Franklin, Mr. Smith and Mr. Sanders to arrive. Ms. Robinson said that she had just seen the three men about an hour ago in the parking lot of the Ozone club and that Mr. Sanders and Mr. Smith were sleeping at that time. Ms. Robinson said that they were waiting next to a Red Pontiac that belongs to a friend of hers, “Shea.”

Ms. Robinson noticed Mr. Smith’s car pull into a parking space in the parking lot next to a dumpster. She saw a police car enter the parking lot as well. The police car drove past Mr. Smith’s car, then turned around and parked at an angle behind Mr. Smith’s car. Ms. Robinson said that she was about fifteen feet away from the officer.

¹⁵ Because of the corroboration of two other witnesses we do credit that portion of Precious Felder’s statement relative to Mr. Sanders raising his hands.

¹⁶ Because of conflicting physical evidence as well as the statements of all involved officers, we do not credit the statement of Precious Felder relative to any other officer firing his weapon.

She saw that as Mr. Franklin was getting out of the car, the officer shined his flashlight on Mr. Franklin and asked, "What are you doing?" Mr. Franklin replied, "Did I do something wrong?" "What did you stop me for?" The officer told Mr. Franklin to turn around and face the car. The officer then searched and placed handcuffs on Mr. Franklin.

Ms. Robinson said the officer began to walk Mr. Franklin back to his car as another police car was arriving. As they were walking toward the police car, Ms. Robinson heard Mr. Franklin say, "My brothers are in the back seat asleep." After Mr. Franklin was placed in the backseat of the police car, the officers walked back to Mr. Smith's car and one opened the rear driver's side door while another officer opened the front passenger door. Ms. Robinson heard an officer yell, "They're asleep," she then saw an officer try to wake Mr. Sanders by tapping him on the shoulder. Ms. Robinson said she heard Mr. Sanders say, "Hey man, what you all doing?" And the officer said, "Hey!" The officer then fired one round into the car. Ms. Robinson said she heard Mr. Smith yell, "I'm shot! I'm shot!" She said that she heard the officer yelled "Fire," as he fired four more rounds into the car.¹⁷

Ms. Robinson said she ran behind the first officer's car to get a better look and could see the tall officer talking on his radio. She heard Johnnie say that Mr. Sanders was probably dead and that Mr. Smith was shot as well. Ms. Robinson said she was very upset and "pretty out of it" from that point on.

Johnnie Williams ("Teni" pronounced Teenie)

Mr. Williams said that he had been at club Ozone and that he had seen Mr. Sanders and Mr. Smith asleep inside Mr. Smith's car. Mr. Williams was with Persephony, who is Mr. Sanders' girlfriend, and she told Mr. Franklin to drive the men to her

¹⁷ We do not credit the sequence of events as relative to the firing of shots which is contradicted by both the video and physical evidence.

house. Mr. Williams said that they left first and that he, Persephony, Aaron, “Pig” and Dorie all waited at the apartment complex for about an hour for the men to arrive. When he saw Mr. Smith’s car arrive, he and Persephony started walking to where Mr. Franklin has parked and ended up on a sidewalk across the street from the car.

Mr. Williams said a police car pulled into the parking lot behind Mr. Smith’s Mercedes. The police car drove by Mr. Smith’s car, then made a u-turn and parked behind the car. The officer walked up near the driver’s door and had Mr. Franklin place his hands on the roof of the car. The officer patted Mr. Franklin down and put him in handcuffs. Mr. Williams said that at some point, he heard Mr. Franklin say, “My brother is in there asleep.” The officer then walked Mr. Franklin to his police car and put him in the backseat.

A second police car arrived at about this time and one officer walked to the right front of the vehicle while the other officer walked to the driver’s side rear of the vehicle. One officer opened the front passenger door and it appeared that he was trying to wake the person in the front passenger seat. Mr. Williams said he could not hear what the officers were saying or if anyone in the vehicle was saying anything. Mr. Williams said that all of the sudden he heard a gunshot and heard Mr. Smith yell that he had been shot. Mr. Smith exited the car and was holding his side as though he was hurt and an officer shot Mr. Smith a second time. Mr. Smith fell to the ground and he could hear an officer yelling for him to stay down or something similar.

After Mr. Smith was on the ground, Mr. Williams heard a third shot and then approximately two more shots.¹⁸ After the first shot, Mr. Williams ran straight back toward the apartment building. He stopped and looked back and then heard the

¹⁸ We do not credit the sequence of events as relative to the firing of shots which is contradicted by both the video and physical evidence.

second shot. He ran a distance further, stopped and looked back and then he heard the third shot. Mr. Williams said there were only two officers on the scene at the time of the shooting.¹⁹

Kim Luckey

Ms. Luckey has resided in the Walnut Creek Apartments for the last two years and has casually known Mr. Sanders, whom she only knows as "Slick." Ms. Luckey stated that before the shooting, Mr. Sanders and his "crew" had been speaking freely and making it known that they have been involved in recent robberies. Ms. Luckey said that she personally had seen Mr. Sanders and his associates with guns and that she had seen them fire those guns in the apartment complex.

Ms. Luckey said that she was aware of a shooting in the apartment complex on May 6th where Mr. Sanders shot at another subject because he had discussed his plans to commit a robbery and this other subject had committed the robbery before Mr. Sanders had the opportunity to do so.

Ms. Luckey said that Mr. Sanders "crew" consists of Mr. Sanders, Tim Phillips, "Pudda" (spelled "Putta," or "Puda" in different portions of the reports), and Mr. Smith. According to Ms. Luckey, "Pudda" is Mr. Sanders' brother whom she understands to be wanted for robberies at a jewelry store in Highland Mall and at a Valero gas station.

Ms. Luckey said that Mr. Sanders fired shots in the apartment complex on May 9th. Ms. Luckey said that she did not witness the event, but that a friend told her that Mr. Sanders fired shots out of an open window of Mr. Smith's Mercedes and that Mr. Smith was driving the Mercedes at the time.

¹⁹ We do not credit this portion of Mr. Williams' statement.

Chris McKinney

Mr. McKinney is Mr. Sanders' older step-brother. Mr. McKinney said that at about 4 a.m. "Sally" came to the apartment where he was staying and asked him to come outside for a "social gathering." Mr. McKinney said that "Sally" is Mr. Sanders' girlfriend (Mr. McKinney identified "Sally" as Mr. Sanders' girlfriend and Persephony Felder stated that she was Mr. Sanders' girlfriend). Mr. McKinney went outside to the parking lot and saw Mr. Smith's vehicle and he saw that Mr. Sanders was asleep in the backseat behind the driver's seat. Mr. McKinney knew that Mr. Sanders was sleepy because he knew that Mr. Sanders had taken five "planks" that day and the pills usually made him drowsy. Mr. McKinney said that "planks" were Xanax. Mr. Smith decided to move his car²⁰ and Mr. McKinney saw the car being driven over toward the fence that separates the Walnut Creek Apartments from the Spring Creek apartments. Mr. McKinney did not know who was driving the vehicle.

Mr. McKinney said he returned to his apartment and was only there for a few minutes when "Big Stuff" came to get him. "Big Stuff" told Mr. McKinney that the police had his brother. Mr. McKinney said he grabbed his gun and went outside. Mr. McKinney said he saw an officer open up the driver's door of the Mercedes and put his fingers to his lips as if to tell Mr. Franklin to be quiet. Mr. McKinney said that he saw the officer drop his flashlight and then put Mr. Franklin in the backseat of his police car. Mr. McKinney said another officer arrived and he saw an officer begin to search the backseat of the car where his brother was sleeping. Mr. McKinney became distracted because he was trying to convince a girl to hold his gun when he heard about five gunshots. Mr. McKinney saw Mr. Smith holding the lower part of

²⁰ There is no evidence to indicate that the Mercedes was parked anywhere other than in the spot it was ultimately seen by Officer Quintana pulling into. We do not credit his statement with respect to such.

his body and say, "I'm hit." Mr. McKinney said that Mr. Smith was shot again and that he fell to the ground.

Mr. McKinney said he did not hear the police say anything prior to the shooting and that even if they had said something he was too far away to hear. Mr. McKinney said he tried to get closer to the scene to see what was going on, but an officer told him to stay back or he would shoot him. Mr. McKinney said he thought the officer who threatened him was frightened.

Desmond Williams ("Putta," "Pudda," or "Puda")

Mr. Desmond denied seeing the shooting and stated that he was inside his apartment when the shooting occurred. After he heard the shots, he went outside and saw Mr. Sanders lying on the ground behind Mr. Smith's Mercedes. Mr. Desmond acknowledged that he knew Mr. Sanders and Mr. Smith, but he would not provide any additional information.

Christina Crawford

Ms. Crawford heard the gunshots and she heard someone screaming so she called the police. Ms. Crawford said it is not unusual to hear gunshots as she hears them in her complex every other night, but she called the police on this occasion because someone was screaming and she believed that someone had been shot. Ms. Crawford walked outside and saw Mr. Sanders and Mr. Smith lying on the ground. She said she did not recognize Mr. Smith until he was placed on a gurney because the police cars were blocking her view. Ms. Crawford did not witness the shooting, nor did she have any information directly relating to the incident.²¹

²¹ Ms. Crawford said that she knows Officer Quintana because he has been involved in some incidents in the St. Johns area with her family. Ms. Crawford believes that Officer Quintana is a racist. Ms. Crawford gave an example of Officer Quintana stopping her cousin's boyfriend when Officer Quintana believed that the subject had drugs on his person. Officer Quintana made the subject open his mouth

Marc Bell

Mr. Bell said that he was inside his apartment (#109) when he heard gunshots. He looked out the window and saw two officers holding their guns on someone. Mr. Bell went outside and heard four more shots, so he ran back inside the house. After the shooting he could hear someone moaning, so he looked out of his window again. Mr. Bell said that he saw one subject outside the door of the Mercedes and the other was on the ground and appeared to be crawling. Mr. Bell was not able to add any further relevant information.²²

Sterling Bunton

Mr. Bunton stated he was in the apartment complex smoking marijuana when he saw a police car driving into the parking lot. Mr. Bunton said that he ran to the stairway of his aunt's apartment and when he realized that the officers were not after him he walked back toward the parking the parking lot. At that point, Mr. Bunton heard shots, a short pause, then more shots. Mr. Bunton said he looked between the buildings and saw Mr. Smith exiting a green car and being shot.²³

and when he did not find any drugs, Officer Quintana punched the subject in the mouth four times. Ms. Crawford claimed there was a videotape of the incident and she also had photographs of the injuries. Ms. Crawford said the incident occurred around March and it happened at St. John's on Blessing Avenue.

Ms. Crawford gave another example of what she believed were racist actions by Officer Quintana. Officer Quintana was in foot pursuit of Ms. Crawford's cousin and she alleged that he injured his finger while jumping a fence, but he charged her cousin Michael Allen with the injury. She claimed that Officer Quintana also beat her cousin during his arrest because of his race.

There is no indication that these allegations have formed the basis of any formal complaint with or investigation by the APD. Nor is there any recommendation contained within the IA Summary Report that they become the subject of an investigation.

²² Mr. Bell's testimony is not credited as it is contradicted by a number of witnesses, physical evidence and the video.

²³ We do not credit the statement of Mr. Bunton. His statement is contradicted by the statements of others, the physical evidence and the video.

Summary of Witnesses Statements

We do not believe that there is a material dispute relative to the facts of the officers' actions in this matter. It is understandable that the witnesses may not have been able to perceive or accurately recall all of the events of this incident with complete accuracy. At the same time, while we may question the reliability of many of their statements, we do not feel that they were intentionally trying to mislead investigators. However, the physical evidence including the MVR video refutes their statements in the areas indicated. There is one area of significant deviation from Officer Quintana's statement. Specifically, two witnesses indicated that they observed Mr. Sanders' hands in the air as Officer Quintana was moving away from the back seat of the Mercedes. While there is no indication that Officer Quintana saw this, this is still a potential material factual discrepancy which should have been carefully examined in the IA report.

Officer Hitzelberg's Mobile Video Recorder

Officer Hitzelberg activated his MVR prior to arriving at the Walnut Creek Apartments. Once his car was parked, the MVR provided audio of the incident and a view of the rear of the Chevrolet Cavalier that was parked immediately to the passenger side of the Mercedes.

The following is a chronology of the events captured by the MVR:

- 05:06:33 Video of Officer Hitzelberg driving on roadway en route to the apartment complex.
- 05:06:57 Officer Hitzelberg enters the Walnut Creek Apartment complex parking lot.
- 05:06:59 Radio traffic "23."
- 05:07:02 Officer Quintana can be heard on the police radio, "Go ahead."

05:07:03 Police dispatch radios, "ID not cleared, expired in 08. Showing an I and I for a failure to appear Monday through Friday only."

05:07:15 Officer Quintana radios, "Ten-four."

05:07:17 The video shows a group of people on the left side on the video screen that would correspond to the opposite side of the driveway and behind the Officer Quintana's vehicle.

05:07:21 Officer Hitzelberg turns off his headlights.

05:07:33 Officer Hitzelberg drives his car past Officer Quintana's vehicle and then parks his car next to the passenger side of Officer Quintana's vehicle.

05:07:44 The sound of a car door shutting can be heard. It is unclear if the sound is associated with Officer Hitzelberg closing his door, or Officer Quintana closing his door after placing Mr. Franklin in the back seat.

05:07:48 It sounds like Officer Hitzelberg makes a radio transmission.

05:08:00 Officer Hitzelberg states, "You got – you got two. You got one here and one here. You got one here and one there. Which do you want to do?"

05:08:06 Above comments by Officer Hitzelberg conclude.

05:08:07 Officer Siddiqui approaches the passenger side of the Mercedes. He is holding his flashlight and it is turned on.

05:08:14 Officer Hitzelberg states, "Watch that guy in the front passenger seat."

05:08:15 Officer Hitzelberg states, "You got one here and I can't tell if there's anything in his hands or anything else."

05:08:18 Above comments by Officer Hitzelberg conclude.

05:08:24 Officer Quintana states, "We'll take that one first."

05:08:27 Officer Hitzelberg states, "Keep an eye on him."

05:08:47 Officer Hitzelberg states, "See anything at all?"

05:08:56 Officer Hitzelberg states, "Hey man."

05:09:02 Officer Quintana states, "Wake up man."

05:09:04 Officer Quintana states, "Hello."

05:09:08 Officer Quintana states, "Oh, pistol, 32! 32!"

- 05:09:10 Unintelligible. ²⁴
- 05:09:12 Two gunshots.
- 05:09:13 Officer Hitzelberg's car is bumped into by Officer Quintana and the camera shows slight motion.
- 05:09:14 One gunshot.
- 05:09:14 Officer Siddiqui can be seen crawling toward the driver's side rear bumper of the Chevrolet Cavalier.
- 05:09:15 Two gunshots.
- 05:09:15 Officer Siddiqui moves from the driver's side rear bumper to the passenger side rear bumper crawling on his hands and knees.
- 05:09:16 The video shows Mr. Smith staggering and making moaning sounds as he falls to the ground on his stomach.
- 05:09:16 Officer Siddiqui rolls behind the passenger side of the Chevrolet cavalier for cover.
- 05:09:20 Officer Quintana moves behind the rear passenger side of the Chevrolet Cavalier and aims his firearm at the Mercedes.
- 05:09:38 Officer Siddiqui moves to assist Officer Hitzelberg by the Mercedes.

Ballistics findings

Greg Karim is a firearms examiner with the Austin Police Department. Mr. Karim conducted an examination of the firearm which was found in the rear seat of the Mercedes after the shooting. Mr. Karim found that weapon, a .45 caliber Taurus semi-automatic pistol, to have a magazine capable of holding 10 rounds, but only one round was in the magazine. There was no round in the chamber and the safety

²⁴ Officer Quintana indicated in his statement that he had at this point said, "Police Freeze". Two seconds later Officer Quintana fired at the silhouette of Mr. Sanders.

on the gun was in the safe position. Thus, the weapon could not have been fired without first chambering the round and moving the safety to the “firing” position.²⁵

Both Mr. Karim and Bevel Gardener Associates (Bevel), a private forensics firm hired by the City of Austin to conduct an independent analysis of the ballistics evidence, conducted a trajectory analysis of the rounds fired by Officer Quintana. Both analyses concluded that a total of five shots were fired, all by Officer Quintana.

Based on the combined analyses of both Mr. Karim and Bevel we find it most likely that the first shot fired went through the left side rear hatch window of the Mercedes, travelled through a headrest in the vehicle and into the Mr. Sanders’ shoulder. (See Austin PD re-enactment photos in Figures 4 and 5 below)²⁶



Figure 4 - Shows trajectory of first round from outside vehicle

²⁵ There is no indication whatsoever that Officer Quintana knew that no round was chambered or that the gun’s safety was in the safe position.

²⁶ It should be noted that in the re-enactment Mr. Smith is seen exiting the vehicle simultaneously with the first shot that is fired. We credit Mr. Smith’s statement that he exited the vehicle upon hearing the shot but we believe that some reaction time would have been necessary for Mr. Smith to begin his movement out of the vehicle.



Figure 5 - Shows trajectory of first round and where it struck Mr. Sanders

Both the Bevel report and Mr. Karim concluded that the second shot went through the right side of the rear window and lodged in the instrument cluster in the Mercedes. (See Austin PD re-enactment photos in Figure 6 below). It should be noted that we find that this photo does not accurately depict the position of Mr. Smith at the time of the firing of the second shot.



Figure 6 - Shows trajectory of second shot from outside the vehicle

The third shot went through the rear passenger-side side window of the Mercedes, through a headrest and struck Mr. Sanders in the rear of his head. Again, we find that the photo does not accurately depict the position of Sir Smith at the time of the firing of the second shot. (See Austin PD re-enactment photos in Figures 7 and 8 below).

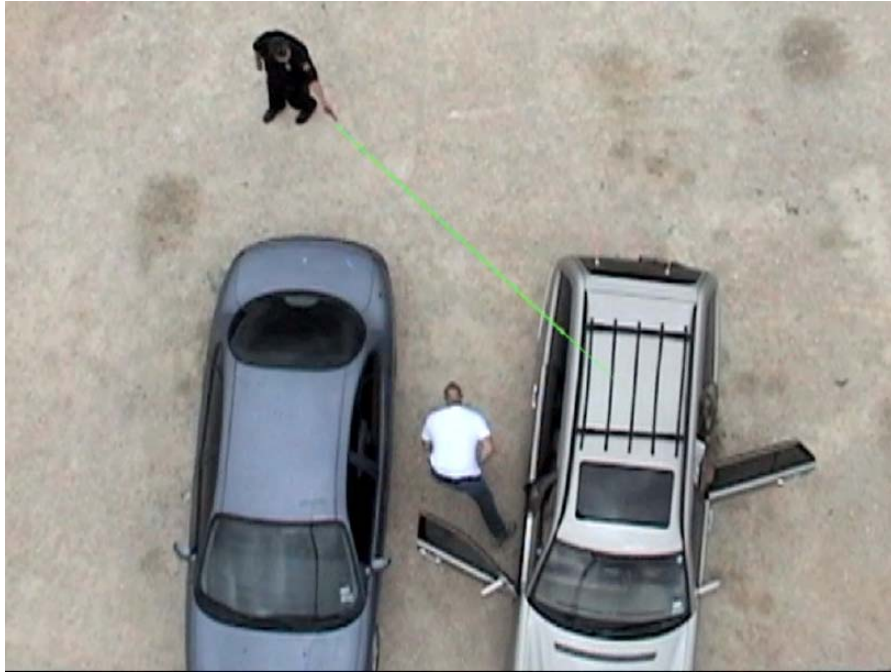


Figure 7 - Shows trajectory of third round from outside of vehicle

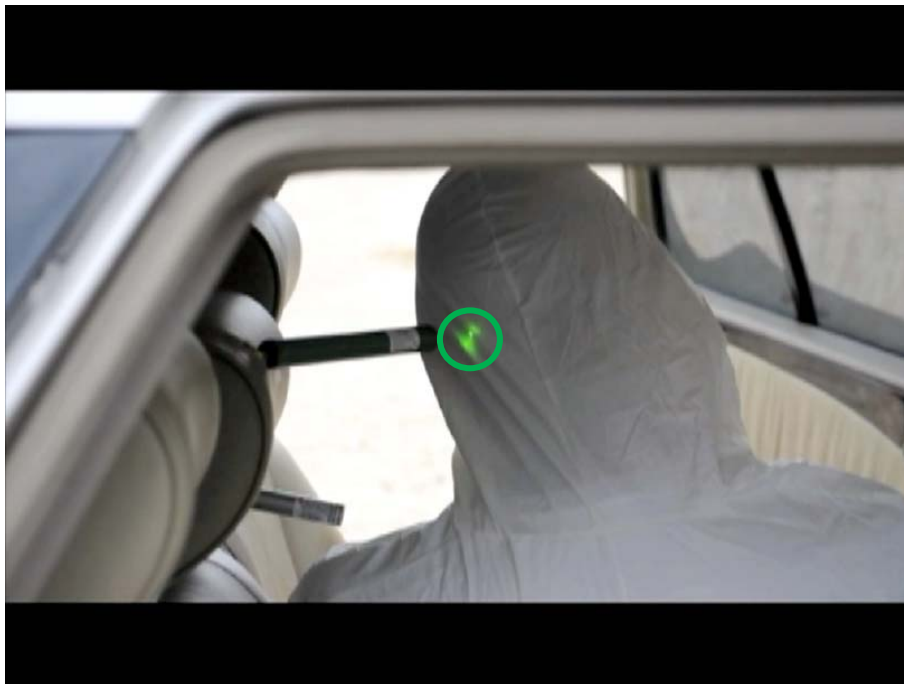


Figure 8 - Shows trajectory of third round from inside of vehicle and where it struck Mr. Sanders

The fourth shot hit Mr. Smith as he was exiting the Mercedes.²⁷ (See Austin PD re-enactment photos in Figure 9 below)



Figure 9 - Shows trajectory of fourth shot and where it hit Mr. Smith

The fifth shot struck the Green Cavalier in the trunk with the main portion of the bullet entering the trunk of the Cavalier and two fragments missed Mr. Smith and struck the Mercedes. (See Austin PD re-enactment photos in Figures 9 and 10 below).

²⁷ We do not believe that Figure 9 accurately depicts the position of Mr. Smith at the moment he was hit with the gunshot. Specifically, we find that Mr. Smith had just exited the vehicle at the time. The bullet which struck Mr. Smith apparently exited Mr. Smith's body and was caught in his clothing. The bullet was recovered on the ground behind the Cavalier where Mr. Smith fell and was ultimately treated by paramedics.



Figure 10 - Shows trajectory of fifth shot as it strikes and enters the trunk of the Cavalier

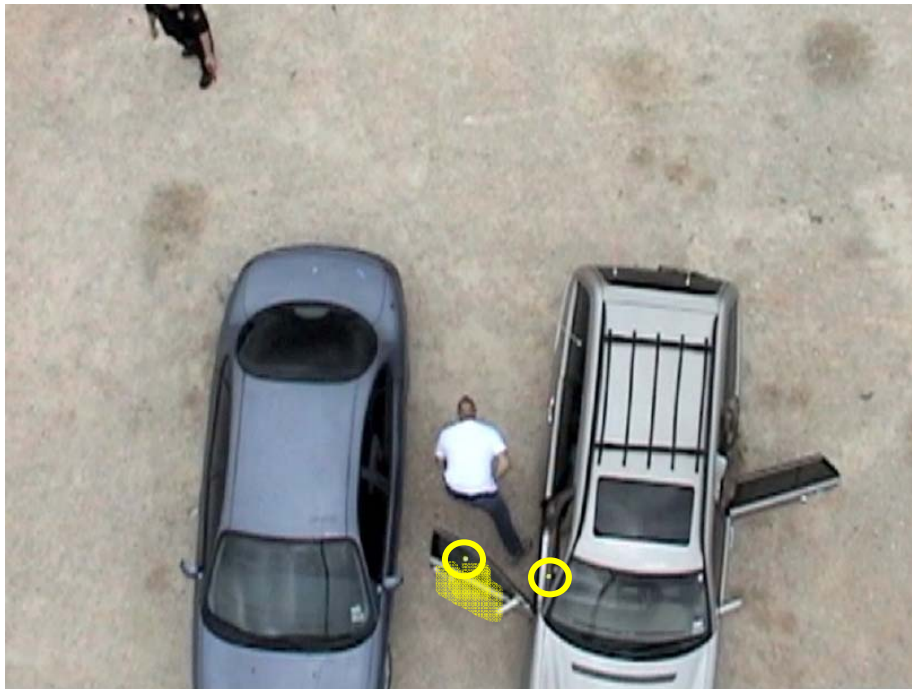


Figure 11 - Shows the points of impact on the Mercedes of the fragments from the fifth shot

Summary of Ballistics Evidence

Based on all of the available evidence we find that a total of five shots were fired all by Officer Quintana. We find that the first shot was fired through the rear hatch window of the Mercedes and struck Mr. Sanders in the shoulder. We find that the second shot was fired through the rear hatch of the Mercedes to the right of the first shot and that this shot lodged in the instrument panel of the car. We find that the third shot was fired through the rear side window of the Mercedes and struck Mr. Sanders in the back of his head. We find that the fourth shot was fired at Mr. Smith just after he had exited the front passenger seat of the Mercedes and as he planted his feet and began moving toward the rear of the Mercedes. We find that the fifth shot was fired as Mr. Smith was continuing to move away from the door of the Mercedes and in the direction of Officer Quintana, and that the shot hit and penetrated the trunk of the Cavalier and that two fragments from that bullet struck the Mercedes.

The Medical Examiner's Report

Satish Chundru, the Deputy Chief Medical Examiner, conducted the autopsy on Mr. Sanders on May 11, 2009. Dr. Chundru documented two gunshot wounds on Mr. Sanders' body. The first was a penetrating gunshot wound to the head.²⁸ Recovered within the entrance wound is a spongy tan piece of foreign matter that is bloody. The bullet was recovered under the scalp²⁹

²⁸ The wound was described as an irregular entrance-type defect just left of the posterior midline of the scalp 4 ¼ inches below the top of the head and ½ inch to the left of the posterior midline. The wound defect was approximately 1.1 centimeters in diameter and had stellate lacerations at the 12 o'clock, 1 o'clock, 3 o'clock, and 9 o'clock positions. The longest laceration was at the 12 o'clock position (1.5 centimeters). The defect had an abrasion ring; the abrasion was widest at the 9 o'clock position (0.3 centimeters). Soot and stippling were not visible. The wound was covered by thin short scalp hair.

²⁹ The recovery of the bullet was 3 ¾ inches below the top of the head and 3 inches superior and ½ inch anterior to the center of the right external auditory canal.

The second penetrating gunshot wound was to Mr. Sanders' left should and chest.³⁰ The bullet was recovered underneath the skin along the posterior midline 14 $\frac{3}{4}$ inches below the top of the head.

The toxicology report indicated that cocaine, cocaine metabolites, alprazolam, cannabinoids, benzoylecgonine and benzodiazepine was contained in Mr. Sanders' blood and urine.

It was Dr. Chundru's opinion that Mr. Sanders died as a result of the gunshot wounds.

DNA Evidence

DNA swabs were taken from the rough area of the grip, from the trigger and trigger guard, from the sides of the slide, ejector and safety, inside the barrel and the muzzle, and from the top loading area of the magazine that was inserted into the handgun that was found in the backseat of the Mercedes. All of the DNA profiles were consistent with Mr. Sanders and inconsistent with Mr. Franklin, Mr. Smith, Officers Quintana, Hitzelberg and Siddiqui.

³⁰ This wound was described as an entrance type defect on the anterolateral left shoulder 2 inches below the top of the left shoulder, 12 $\frac{1}{2}$ inches below the top of the head and 6 $\frac{1}{4}$ inches to the left of the anterior midline. The wound defect is 2 x 1.5 centimeters and has an irregular, dark red, dry abrasion ring. The abrasion is least in width at the 12 o'clock position (0.1 centimeters) and is widest from the 3 o'clock to 4:30 o'clock positions (1.3 centimeters). From the 3 o'clock to 4 o'clock position beyond the abrasion ring is a 1.2 x 0.8 centimeter dark red abrasion that is in continuity with the abrasion ring; lateral to this abrasion is a 1.1 x 0.3 centimeter red abrasion. Surrounding the wound predominantly on the medial aspect is a 5 x 4 centimeter area of light purple ecchymosis. Soot and stippling are not visible.

Applicable Statutes and APD Regulations

Policies and Statutes Governing IAD Investigations

U.S. Constitution - The Requirement to Conduct Separate Criminal and Administrative Investigations - The Garrity Procedures

On the surface, investigations of the potential of criminal misconduct by police officers appear to be quite analogous to all other administrative investigations with the exception that there will be a concurrent criminal investigation. There is, however, a significant conflict between the administrative and criminal investigations. The conflict revolves around the ability of the administrative investigators to compel statements from the subject officer and the impact of those statements on the criminal investigation. To appreciate this conflict one needs to understand the 1967 United States Supreme Court decision in *Garrity v. New Jersey* (385 U.S. 493 (1967)).

Edward Garrity, the Chief of Police of Bellmawr, New Jersey and other officers were suspected of fixing traffic tickets. The Supreme Court of New Jersey ordered the state Attorney General to conduct an investigation into the alleged misconduct which, if found to be true, would have been a criminal violation of New Jersey law. As part of that investigation, the deputy attorney general conducted interviews of the subject officers and before initiating the interrogation, the officers were advised of a state statute that required the officers to answer the questions. The officers were told that if they refused to answer questions that they may lose their jobs and their pensions. After receiving this admonition, all of the officers answered the questions posed by the deputy attorney general.

The statements made by the officers during that interview were later used by local

prosecutors in the prosecution of the officers. The incriminating statements were offered into evidence at the officers' trial to show the officers' guilt of the criminal violations and based in part on that evidence, the officers were convicted. After their conviction, the officers appealed claiming that the use of these statements that were compelled under the threat of termination violated their constitutional rights.

In *Garrity*, and as further defined in subsequent cases, the officers' compelled statements were deemed as immunized and thus inadmissible under the Fifth Amendment privilege. The Court reasoned that the option given to the officers to either forfeit their jobs or to incriminate themselves in a criminal matter was inherently coercive. The *Garrity* case essentially held that although employers may compel statements from public employees by threatening job termination, and although these statements may be used in the administrative context where they were elicited, the statements may not be used in a later criminal prosecution.

The Courts' treatment of police officers' compelled statements as immunized is significant because of the restrictions imposed on the prosecutorial use of such testimony. The restriction prohibits far more than the statements of the officer alone. Indeed, any evidence derived from the officers' statements cannot be used, nor can the statements be used to impeach the officer if the officer testifies differently during the criminal proceedings. Further, the prosecution is barred from using witnesses whose testimony has been shaped, altered, or affected by the defendant's earlier immunized testimony. This prohibition extends to any communication with the witness where investigators employed information gained from an immunized statement to aid the witness to refresh their memory, focus their thoughts, organize their testimony, or alter their prior statements. Essentially, any use of the compelled statements in any manner will have a significant impact on the prosecution of the criminal matter.

The *Garrity* concern vests when the subject officers are compelled to make

statements. Officer Quintana, Officer Hitzelberg and Officer Siddiqui all provided statements to the department's homicide investigators; however none of those statements were compelled.

The first compelled statement was obtained from Officer Siddiqui on June 22, 2009. A compelled statement was taken from Officer Hitzelberg on June 30th and Officer Quintana provided a compelled statement to the Internal Affairs investigators on July 1st. These compelled statements were obtained after the homicide investigators had concluded their investigation and after the Travis County Grand Jury had completed their proceedings. The Grand Jury did not indict Officer Quintana effectively ending the criminal investigation.

The Garrity procedures employed by the Austin Police Department were appropriate in this matter. Indeed, the Austin Police Department has incorporated specific Garrity procedures into their department policy to address Garrity concerns under department policy section A109.07.

Austin Police Department Policies

The policies and procedures which guide internal investigations are contained within A109 of the General Orders, Policies and Procedures of the APD. These policies designate IAD as the unit within the Department responsible for investigating Officer Involved Shootings (OIS's) and provides general guidelines to those investigations. Section .11 of A109 provides for the standard of proof to be employed and the classification of dispositions of complaint investigations:

Classifications of Complaints

The standard of proof used to arrive at a final classification is a "preponderance of the evidence." Complaints can be classified as:

- A. Unfounded – Allegation is false or not factual.
- B. Exonerated – Incident complained of occurred, but was within Departmental policy.
- C. Inconclusive – Insufficient evidence either to prove or disprove the allegation(s).
- D. Sustained – The allegation, and/or acts of misconduct discovered during the investigation which were not alleged in the complaint, is supported by sufficient evidence.

Policies Governing Police Tactics

All APD officers are required by Section A201.01C (2) of the APD General Orders Section to abide by the policies, rules, regulations, procedures and directives of the Austin Police Department. Section .01 of the Patrol SOP (2006) states, "It is entirely possible that officers will find themselves in situations not absolutely and specifically addressed in this manual. In those cases, officers should be reminded to use common sense and good judgment." The failure then to use common sense and good judgment in the performance of an officer's duty is actionable.

Policies and Statutes Governing the Use of Deadly Force

There is both federal and state law which specifies those situations in which a law enforcement officer may use deadly force in connection with the making of an arrest. In addition there are state statutes, which define when ordinary citizens are permitted by law to use deadly force. In terms of criminal proceedings then, it is necessary to determine whether, under the circumstances, an involved officer was authorized to utilize deadly force as either a police officer or as an ordinary citizen. APD policy makes a violation of any criminal statute likewise violative of APD policy. In addition, APD policy administratively defines when APD officers may use deadly force. It is this policy which one must examine to determine whether an involved officer was permitted under Department policy to utilize deadly force.

U.S. Constitution

The U.S. Supreme Court in *Graham v. Connor* (490 U.S. 386 (1989)) held that the use of excessive force during an arrest, an investigatory stop, or any other seizure of a person is judged by Fourth Amendment standards. In making its decision, the Court recognized that the right of an officer to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat of force. The Court reasoned that the task then becomes to balance the "nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing government interests at stake." This balancing test is achieved by the application of what the Court labeled the objective reasonableness test.

This type of balancing test is not capable of precise definition or mechanical application, but requires careful attention to the facts and circumstances of each particular case. The factors to be considered include:

1. The severity of the crime,
2. Whether the suspect poses an immediate threat to the safety of the officers or others, and
3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

The Court added three important factors in the analysis of the objective reasonableness test. First, the court stated that the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. Second, the Court found that the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation. And finally, the Court looked at the underlying intent or

motivation of the officer applying the force and found that an officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.

The Fourth Amendment analysis rests strongly on the concept of "reasonableness." That is, the determination of whether an officer's use of force is reasonable, given all the current and past circumstances known to the law enforcement agent when he took action. This standard is determined from the perspective of a reasonable officer on the scene of the crime. For example, suppose an officer confronts a man with a weapon in the middle of a robbery. The officer commands him to drop the weapon. The man turns toward the officer and points the gun in the officer's direction. The officer shoots and kills the man. It is then discovered that the weapon was really a well-constructed toy model of a gun. If this event is not placed in the proper contextual framework of a reasonable perception standard, this officer theoretically would be guilty of shooting an unarmed man. The only "solution" to this problem would be to let the perpetrator shoot first so the officer can verify that he or she is being challenged with a "real" gun. Obviously, such an alternative is not viable.

Violation of any law of the United States is made a violation of APD policy through Section A 201 .01 (C) of APD's General Orders which requires all employees to "obey the laws of the United States, the State of Texas, and the ordinances of the City of Austin or any other local jurisdiction in which they may be present..."

Texas Penal Code

Chapter 9 of the Texas Penal law contains those situations in which force may be used thereby providing a justification defense against a charge involving assault or homicide.

With respect to the use of force by peace officers in the performance of an arrest or search, Section 9.51 provides the following:

§ 9.51. ARREST AND SEARCH.

(a) A peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:

- (1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and
- (2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

(b) A person other than a peace officer (or one acting at his direction) is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making a lawful arrest, or to prevent or assist in preventing escape after lawful arrest if, before using force, the actor manifests his purpose to and the reason for the arrest or reasonably believes his purpose and the reason are already known by cannot reasonably be made known to the person to be arrested.

(c) A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use of force would have been justified under Subsection (a) and:

- (1) the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or
- (2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.

(d) A person other than a peace officer acting in a peace officer's presence

and at his direction is justified in using deadly force against another when and to the degree the person reasonably believes the deadly force is immediately necessary to make a lawful arrest, or to prevent escape after a lawful arrest, if the use of force would have been justified under Subsection (b) and:

(1) the actor reasonably believes the felony or offense against the public peace for which arrest is authorized included the use or attempted use of deadly force; or

(3) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to another if the arrest is delayed.

(e) There is no duty to retreat before using deadly force justified by Subsection (c) or (d).

(f) Nothing in this section relating to the actor's manifestation of purpose or identity shall be construed as conflicting with any other law relating to the issuance, service, and execution of an arrest or search warrant either under the laws of this state or the United States.

(g) Deadly force may only be used under the circumstances enumerated in Subsections (c) and (d).

With respect to when ordinary physical force can be used by both ordinary citizens and police officers who, by virtue of the circumstances are not authorized to use force to effect an arrest or execute a search warrant, Section 9.31 specifies those circumstances in which ordinary physical force can be used:

§ 9.31. SELF-DEFENSE. (a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force. The actor's belief that the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c);

(3) if the actor consented to the exact force used or attempted by the other;

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor; or

(5) if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was:

(A) carrying a weapon in violation of Section 46.02; or

(B) possessing or transporting a weapon in violation of Section 46.05.

(c) The use of force to resist an arrest or search is justified:

(1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

(d) The use of deadly force is not justified under this subchapter except as provided in Sections 9.32, 9.33, and 9.34.

(e) A person who has a right to be present at the location where the force is used, who has not provoked the person against whom the force is used, and who is not engaged in criminal activity at the time the force is used is not required to retreat before using force as described by this section.

(f) For purposes of Subsection (a), in determining whether an actor described by Subsection (e) reasonably believed that the use of force was necessary, a finder of fact may not consider whether the actor failed to retreat.

Lastly Section 9.32 specifies when an ordinary citizen can use deadly force against another:

§ 9.32. DEADLY FORCE IN DEFENSE OF PERSON.

(a) A person is justified in using deadly force against another:

(1) if the actor would be justified in using force against the other under Section 9.31; and

(2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:

(A) to protect the actor against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

(b) The actor's belief under Subsection (a)(2) that the deadly force was immediately necessary as described by that subdivision is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the deadly force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit an offense described by Subsection (a)(2)(B);

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(c) A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force as described by this section.

Violation of any law of the State of Texas is made a violation of APD policy through Section A 201 .01 (C) of APD's General Orders, which requires all employees to "obey the laws of the United States, the State of Texas, and the ordinances of the City of Austin or any other local jurisdiction in which they may be present..."

Relevant APD Policies

Use of Force Policy

The Austin Police Department Use of Force policy states:

B101A – Response to Resistance

The Austin Police Department (APD) values human dignity, life, and legal protections. The use of force by members of law enforcement in response to a subject's resistance to the lawful exercise of police authority is a matter of critical concern both to the public and department. It is recognized that some individuals will not comply with the law or submit to lawful control unless compelled to do so by the appropriate use of force. Officers who fail to respond to resistance when appropriate may endanger the community, victims, bystanders, themselves, and fellow officers.

This document establishes departmental directives regarding the use of force by APD employees. This policy is more restrictive than state and federal laws that govern the use of force. Violation of this order may result in administrative discipline of an officer, up to and including indefinite suspension. This order does not create a higher standard of care for criminal or civil liability.

An officer's duty is to protect life and property. Employees shall use no greater force than is objectively reasonable to accomplish lawful objectives. When a situation has been brought under control, continuing force is no longer reasonable. Employees who use unreasonable force degrade the confidence of the community we serve, expose the Department and officers to legal and physical hazards, and violate the rights of individuals against whom unreasonable force was used. This policy is written in terms to apply to sworn officers. In incidents where civilian employees are authorized to use force, they are subject to the same policies and procedures as officers, but the test of reasonableness is judged from the perspective of a reasonable civilian employee.

.01 Definitions

For the purpose of the policy:

A. Force – Any physical contact with a person by an employee using the body or any object, device, or weapon, not including escorting or handcuffing a person with no

or minimal resistance. Any complaint by a subject that an employee caused pain or injury will be treated as a use of force, except complaints of minor discomfort from un-resisted handcuffing.

B. Excessive Force – Force that is not objectively reasonable.

C. Physical or Bodily Injury – A complaint of pain, apparent injury, or subsequent claim of injury by an individual caused by an employee's use of force. The temporary discomfort associated with the initial arrest procedure does not constitute a complaint of injury.

D. Reasonable Belief – The facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent officer to act or think in a similar way under similar circumstances.

E. Serious Physical or Bodily Injury – A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement, or results in long-term loss or impairment of the functioning of any bodily member or organ.

.02 Use of Objectively Reasonable Force

A. Officers may use only that amount of force to achieve lawful law enforcement objectives that is objectively reasonable based on the totality of the circumstances they confront. This test of objective reasonableness embodies allowance for the fact that officers often are forced to make split second judgments about the amount of force that is necessary in circumstances that are tense, uncertain, and rapidly evolving. “Reasonableness” is judged from the perspective of a reasonable officer, not with the 20/20 vision of hindsight. This test of reasonableness is not capable of precise definition or mechanical application – it requires careful attention to the circumstances of the particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether the suspect is actively resisting or attempting to evade arrest by flight

or concealment.

B. Officers must be able to articulate the facts and circumstances that made the use of force objectively reasonable. Factors that may be considered in determining whether a use of force is objectively reasonable may include, but are not limited to:

1. Information reported to the officer;
2. Opportunity for de-escalation;
3. Opportunity to develop a coordinated plan or approach;
4. The subject's response or lack of response to police commands;
5. Actions of the subject, including the degree of resistance by the subject;
6. Statements of intent by the subject;
7. Availability and utility of lesser force options;
8. The severity of any crime at issue;
9. The degree and immediacy of any threat posed by the subject;
10. The potential for injury to the officer, subject, bystanders, or other persons;
11. Risks posed by escape of the subject;
12. Physical differences between the subject and the officer that may affect the level of threat posed (including age, size, strength, skills, injuries, level of exhaustion);
13. Influence of drugs or alcohol on a subject;
14. Possession or proximity of weapons;
15. Experience and skill level of the officer;
16. Relative numbers of subjects and officers; or
17. Any exigent circumstances.

C. This policy provides guidance on specific situations, and the use of specific techniques and weapons, the violation of which may result in discipline. The department recognizes, however, that unusual or unanticipated circumstances do occur. **The ultimate test is whether the use of force was objectively reasonable.**

.03 Use of Deadly Force in Response to Resistance

A. Deadly force may only be used when the officer has an objectively reasonable belief that lethal force is reasonably necessary to defend the officer's or another's life that is in imminent danger of serious physical injury or death, based on the totality of the circumstances. This test applies to all situations including those in which the subject is attacking and when the subject is fleeing but still presents an imminent danger of serious physical injury or death to the officer or another.

B. Verbal Warning to Subject: A verbal warning to submit to police authority shall be given prior to using lethal force if reasonable and if the warning will not significantly increase the danger to the officer or another.

Mobile Video Recorder (MVR) Policy

General Order A306b – Mobile Video Operation

The use of the Mobile Video/Audio Recording (MVR) equipment provides an unbiased recording of events that officers' encounter. These recordings can be useful for the documentation of evidence, the preparation of offense reports, and future court testimony. These recordings can also protect officer from false allegations of misconduct and be of use when debriefing incidents or evaluating performance.

.01 Operation of Police Vehicles Equipped with Mobile Video/Audio Recording equipment

- E. Officers driving MVR equipped vehicles will record all:
 - 1. Traffic stops;

2. Pedestrian stop;
3. Sobriety tests; and
4. Pursuits, until completion of enforcement action.

Policy Requiring Officers to Identify Themselves

General Orders: B204a – Interviews, Stops and Arrest,

.02 Explanation to Persons

- A. officers shall act with as much restraint and courtesy toward persons interviewed, stopped or arrested as is possible under the circumstances.
- B. The initiating officer shall explain the reason for the contact and, when practical, the purpose of anticipated police action.
- C. Officers shall identify themselves when they initiate a duty-related contact with a person, unless their identity is obvious.”

The Administrative Investigation

In order for our independent investigation to proceed it was necessary to determine whether the facts as developed through Internal Affairs Division were reliable enough for us to rely upon.

The primary purpose of an administrative investigation is to explore the allegations of employee misconduct by gathering and examining evidence, identifying the elements of the alleged offense, and determining whether misconduct was committed. A secondary purpose of administrative investigations is to determine whether there are additional instances of possible misconduct that would justify broadening the scope of the investigation beyond the initial allegations or beyond those against whom the complaint was initially made. Administrative investigations provide valuable information to the organization beyond the identification of

potential misconduct in specific cases. They can identify the comprehensiveness of the agency's policies and procedures, supervisory control, and the identification of training needs. All investigations should produce reliable documentation that can be used to support management decisions and actions.

In order to determine whether the facts as developed during the Internal Affairs investigation could be relied on for our independent inquiry it was necessary to resolve the following questions.

1.) *Was the investigation adequate, reasonable, thorough, and conducted to determine the truth?*

Investigations into allegations of administrative misconduct are often complex and must be designed to promote fairness, a sense of justice, and administrative accountability. To fulfill these goals, the investigator needs to be thoughtful, objective, and very organized. Entering into an administrative investigation differs significantly from a criminal investigation, with which police officers are most familiar. Most criminal investigations are conducted in the field with little opportunity for preparation. Officers and detectives acquire skills through practice and gain experience that allows them to conduct interviews and interrogations with very little information, almost no specific planning, and seldom any time to reflect on the facts before taking the next investigatory step.

Conversely, administrative investigations offer the investigator reasonable periods of time to plan, inspect evidence, and to prepare for interviews and interrogations. Investigators may use the time to consult with more experienced investigators, attorneys, and experts to delineate suitable areas of inquiry and ensure that all reasonable investigatory steps are completed prior to arriving at a determination or conclusion. The luxury of time both allows and demands very thorough and systematic investigations.

In order to determine the adequacy of the Internal Affairs investigation we sought the answers to the following questions:

Were all reasonable efforts made to identify, locate, and interview potential witnesses?

The Homicide investigators interviewed all of the witnesses at the scene and they made efforts to locate some additional witnesses. For example, an individual with the moniker of “Big Stuff” was identified by Chris McKinney as the person who came to his apartment to tell him about the shooting. Homicide detectives made reasonable efforts to identify “Big Stuff,” but they were not successful. Homicide detectives also traced the handgun located in the Mercedes back to the original owner. The detectives located and interviewed the original owner and discovered that the firearm was sold at a gun show to an unknown party.

Was an area canvass conducted to locate witnesses and evidence?

Although the efforts of Homicide to locate witnesses were generally reasonable, they did fail to make an area canvass of the apartment complex to identify potential witnesses. We recognize that an area canvass the morning of the shooting was simply not possible as an unruly crowd gathered. When the crowd began to throw bottles and other objects at the officers, the officers appropriately withdrew determining that their presence at the scene served as a potential flash point for additional violence. One detective reported that the scene was cleared much more quickly than normal for an officer involved shooting scene, but there is no indication that the quick withdrawal harmed the investigative efforts. While it was reasonable for the detective to omit the area canvass that morning, efforts should have been made within the next few days.

The Homicide detectives did generate a flyer in both Spanish and English, but they relied on apartment management to distribute the flyer to the residents. It was discovered that the flyers had not been delivered and more flyers were prepared,

but it was unclear if the flyers were ever actually distributed at the two adjacent apartment complexes. The detectives were able to make recorded telephone calls to the residents by use of an automated telephone system managed by a local utility company, but this should not have served as a substitute for walking door-to-door and interacting with residents face-to-face.

Finally, there are photographs of the scene that show a residential building on the opposite side of the fence from the incident. There are two residential buildings depicted that both have second story windows that overlook the scene, yet there was no indication that any efforts were made to contact the residents of those units.

Was the incident scene secured, inspected and documented?

Reports prepared by the first responding officers indicate that they secured the crime scene by surrounding it with crime scene tape and posting officers to prevent the entry of those who did not have a legitimate investigative purpose. The officers prepared a crime scene log and documented the entry of everyone who entered the scene. Officers also reported that they had to make efforts to prevent members of Mr. Sanders' family from entering the scene. When a crowd developed and became unruly, additional officers responded to maintain control of the scene.

Crime scene investigators responded and documented the scene with photographs and by preparing a diagram with the use of a Theodolite measuring system, typically used by surveyors or engineers to measure horizontal and vertical angles. Theodolite measurements allow detectives to create very accurate diagrams of incident scenes.

Was evidence identified, secured, inspected, and maintained appropriately?

It appears based on the Crime Scene Investigators' reports that the scene was

processed appropriately and that all evidence items were identified, secured, inspected and maintained in accordance with generally accepted police procedures. Investigator Ceballos collected Mr. Sanders' clothing and items on his person at the autopsy and he took photographs of the interior of the Mercedes for blood splatter evidence. Investigator Farrell documented that he checked out evidence from the property and evidence room for inspection by Greg Karim and took the gunshot residue (GSR) evidence to the Crime Lab.

Investigator Gibbens documented bloodstain evidence. Investigator Hernandez took photographs and collected evidence at the scene of the shooting. Investigator Hernandez secured the evidence at the Central Evidence lockers, and he processed the gun and the tally sheet for fingerprints. Investigator Vasquez took photographs of the Mercedes and the Cavalier and collected evidence items from inside the Mercedes. She also took a buccal swab from Mr. Smith and processed Mr. Smith for GSR. Investigator Welch assisted with the scene evidence collection. Investigator Aquirre videotaped a follow up search of the Mercedes after Mr. Smith alleged that there was \$3,000 hidden in the vehicle – no money was found.

All of the MVR tapes for all of the responding officers were collected. Mr. Sanders, Mr. Smith, Mr. Franklin and all three officers submitted to GSR tests and DNA samples were collected. Detectives obtained subpoenas to determine subscriber and toll information for the collected cellular telephones. The handgun, the baggie containing the marijuana and the tally sheet were all subjected to fingerprint analysis.

Were all witnesses interviewed and all subject officers interrogated?

Homicide detectives conducted in-person interviews with Mr. Smith, Mr. Franklin, Ms. Houston, Ms. Persephony Felder, Ms. Precious Felder, Ms. Robinson, Mr. Williams, Ms. Luckey, Mr. McKinney, and Mr. Williams. The detectives conducted

telephone interviews with Ms. Crawford and Mr. Bell. The detectives conducted telephone interviews with the EMS personnel: Mr. Green, Ms. Rima, Mr. Finkelstein, Mr. LeClere and Ms. Foree. Telephone interviews were conducted with Fire personnel including: Mr. Sheehan, Mr. Mayo, Mr. Garee and Mr. Coggin. All of these interviews were recorded.

Homicide detectives interviewed Officers Quintana, Hitzelberg and Siddiqui and they also participated in a scene walk through with the officers.

Internal Affairs detectives interviewed the officers who were on scene of the shooting: Sgt. Orten, Sgt. Zumwalt, Sgt. Hernandez, Officers Jones, Guise, Barrick, Figueroa, Graham, Flanery and Deputy Koether. All of these interviews were recorded and all of the officers were given a "Do Not Discuss" order.

Internal Affairs interviewed Officers Ortiz, Holmstrom and Jensen who were all trainees of Officer Quintana. Officer Narciso provided a memorandum and Corporal Bonilla was interviewed about their involvement with the call on May 9th at the Walnut Creek Apartments. All of the interviews were recorded and all of the officers were given a "Do Not Discuss" order.

Internal Affairs interviewed the following officers who were all instructors for the Austin Police Department: Detectives Floyd, Hallas, Lee and Garrett; Sergeants Harrison, Meisse, and Mutchler; Officers Stinson and McCurley; and Corporal Jones. All of the interviews were recorded.

Internal Affairs interviewed the involved officers, Officers Quintana, Hitzelberg and Siddiqui. All of the officers were provided with their rights and were allowed representation. All of the interviews were recorded.

In sum, we believe that all known witnesses and involved officers were interviewed,

although some of these interviews showed bias and were inappropriately leading.

Were all reasonable leads followed to their logical conclusion?

The criminal investigators pursued their investigation diligently. For example, there was significant investigation into the origins of the handgun located in the Mercedes. Detectives traced the gun to its original owner. They located the owner and discovered that he had sold the gun lawfully at a gun show; unfortunately, the original owner had lost his receipt and the detectives were not able to trace the gun after its sale at the gun show.

The detectives also made efforts to determine the translucence of the window tinting on the Mercedes and found the front doors to be 28 percent and the rear doors were 18 percent. These percentages refer to the amount of light that may be transmitted through the tint and the lower percentage number equates to a darker tint. Although there were efforts to determine the level of tinting, the detectives did not make an assessment of the ability to see through the windows under the conditions that confronted the officers at the scene.

Did the investigator assign priority to the most important issues of the investigation, or did they focus on minor concerns?

All of the priority investigative procedures were conducted in an appropriate manner. The scene was secured and completely processed the day of the incident. Although there was some information that the detectives would have normally taken more time at the scene, the scene investigation was concluded due to an agitated crowd that had formed in response to the shooting. Although the detectives noted that they may have routinely taken more time at the scene there was no indication that the investigation was compromised in any manner. It appears that all of the appropriate resources were committed to this investigation.

Did the Investigator's examine all reasonable theories of the case?

We are concerned that more attention was not given by either the Homicide and Internal Affairs detectives regarding the analysis of the position of Mr. Smith when he was shot. The Bevel report concludes that Mr. Smith's hands were clear of the trajectory of the bullet and the entry and exit wounds and that Mr. Smith was leaning forward at the time he was hit by Officer Quintana's gunfire. (See the figure below reproduced from the Bevel report). This physical evidence and analysis at least on the face of it appears to be in direct contradiction to the statements of Officer Quintana.



Figure 20 Animation model depicting possible posture consistent with Smith's gunshot wound. Images by Iris Dalley.

Figure 12 - Bevel Report animation of the position that Mr. Smith's body needed to be in at the time he was shot

According to Internal Affairs, "In the reenactment Quintana conducted for SIU, he demonstrated Smith's posture as he exited the vehicle and ran at him as leaning forward, with his upper torso almost parallel to the ground, and his hands clasped together in the front at his waistline." (pg. 58).

As noted above, we believe that it is much more likely, and therefore find, that Mr. Smith was shot as he exited the Mercedes. Mr. Smith stated that he heard the first

gunshots and he immediately exited the car and tried to run from the area. Mr. Smith stated that he grew up in the “neighborhood” and was reasonably familiar with the sound of gunshots. Mr. Smith is a young man and a championship level boxer. It is reasonable to believe that he exited the Mercedes very quickly by placing his left hand on the car door and his right hand on the car body to sprint away from the vehicle. Such a position would create the same position as reported by Bevel. Mr. Smith’s body would be leaning forward and his hands would be in the air.

The position of Mr. Smith when he was shot is significant and both Internal Affairs and Homicide should have addressed these inconsistencies in their investigations.

We are also concerned about the lack of attention to the statements of the civilian witnesses who indicated that Mr. Sanders’ hands were raised after being awakened by Officer Quintana. While there is no evidence that Officer Quintana observed Mr. Sanders hands in a raised position, and it is unclear as to exactly what was meant by the witnesses in terms of their observations, this is certainly a fact that needed to be probed more deeply.

2.) Were the interviews and interrogations conducted appropriately?

Interviews and interrogations are a critical function for most investigations. The initial interviews of witnesses form the foundation of the investigations. Generally, these initial interviews are non-accusatory; their purpose is to gain basic and relevant facts to help the investigator proceed with the investigation. Interviews may be conducted in a variety of environments and generally appear free flowing and relatively unstructured. However, the interviewer must have a plan to elicit information on a variety of topics in order to learn specific information that is relevant to their investigation.

Interrogations are very different from interviews. While interviews form the basis for the investigation, interrogations are used to obtain information that the person would not otherwise willingly disclose. The purpose of an interrogation is not to obtain a confession but to learn the truth of the matter being investigated.

Our review of the interviews and interrogations conducted by both the Homicide and Internal Affairs detectives is as follows:

Did the investigators ask questions properly (open-ended and non-leading)?

Leading questions tend to suggest the desired answer as part of the question. If leading questions are used during the interview of a witness, it may create the appearance that the investigator was either trying to hinder the investigation against the officer or that he was trying to create additional evidence to the officer's detriment. In an interrogation of an officer, leading questions can create the perception that the investigator was trying to help the subject officer to couch his or her response or that the interrogator was trying to lessen the degree of culpability on part of the officer.

The Internal Affairs interrogators asked a number of leading questions that created the perception that the investigators were attempting to lead the officers to a particular response that would tend to justify the officer's conduct or to minimize the officers' misconduct. The following are several examples:

Det. Harkin – "Did you feel it was your duty to get out and go ahead and do your job, identify this guy or just let him walk past and – and deal with the car that may not be occupied? Or did you know the car had any additional people in it?"

Ofc. Quintana – "I didn't know."

Det. Harkin – “So basically you felt it was your duty to go ahead and act?”

Ofc. Quintana – “Yes sir.”

Det. Harkin – “Okay. And you felt safe in your officer safety to confront this guy being he’s exited the car? You can see his hands? Um, had you turned your spotlight on- spotlight on at that time and lighted him up?” (IA interview of Officer Quintana lines 3316 – 3328).

* * *

Det. Harkin – “So what you just said, were you in fear of death or serious bodily injury?”

Ofc. Quintana – “Absolutely.”

Det. Harkin – “At the hands of the back passenger?”

Ofc. Quintana – “Absolutely.”

Det. Harkin – “So in that case, you – you determined that deadly force was the – the only option?”

Ofc. Quintana – “At this particular moment, yes sir.”

Det. Dunn – “Did you fear for – fear for the safety of your partners also?”

Ofc. Quintana – “Absolutely.”

Det. Dunn – “Did you fear for the safety of the – the general public that was out there?”

Ofc. Quintana – “Yes sir” (IA interview of Officer Quintana lines 5533 – 5558).

* * *

Det. Dunn – “So do you think on a priority scale having to get out of the car and get your feet on the ground as you well explained earlier before the suspect does, which would be the higher priority? Turning your camera on or illuminating your target?”

Ofc. Quintana – “Illuminating may target and getting out of the car.”
(IA interview of Officer Quintana lines 6374 – 6379).

* * *

Det. Harkin – “Is it common for officers to forget (to use their MVR)?”

Ofc. Hitzelberg – “It’s very common.”

Det. Harkin – “Um, I – I’ve often heard that Officer Quintana overuses his cameras, can you add anything to that?”

Ofc. Hitzelberg – “Um, I would say that he uses it more than we are required by the general orders to do so, if that’s an overuse, then yes.”
(IA interview of Officer Hitzelberg lines 1355 – 1363).

Did the investigators ask appropriate follow up questions and complete follow-up investigation when warranted?

Generally the officers did seek all relevant information and follow up investigation was conducted specifically in reference the origins of the handgun and the efforts made through Mr. Karim and the Bevel report to explain the trajectory of the bullets. There was no indication that any follow up investigation was conducted regarding Ms. Crawford’s allegations that Officer Quintana was a racist.

Did the investigators conduct follow up interviews when necessary?

Internal Affairs questioned Officer Quintana about his decision to use deadly force against Mr. Sanders, but they failed to adequately inquire as to Officer Quintana’s belief of the necessity to use deadly force. Officer Quintana stated that after his brief struggle with Mr. Sanders, that Mr. Sanders was able to move toward the passenger side of the vehicle away from Officer Quintana’s grasp. Officer Quintana said that he saw Mr. Sanders drawing the firearm from his waistband, but that he never saw the barrel of the gun, nor did he ever state that the gun was pointed at him or anyone

else in a threatening manner. Officer Quintana then stated that he fired at Mr. Sanders' silhouette through the back window of the Mercedes and again there were no specific questions asked about the threat perceived by Officer Quintana.

Additionally, Internal Affairs never questioned Officer Quintana at all about the reasons that he opted to use deadly force against Mr. Smith. The lack of inquiry on these two critical areas of the investigation significantly undermines the reliability and thoroughness of the Internal Affairs investigation.³¹

Internal Affairs did conduct a follow up interview with Officer Quintana for additional details on his use of the mobile video equipment.

There is no evidence that a follow up interview was conducted with Ms. Crawford regarding her allegation that Officer Quintana is a racist.

Were the interviews recorded?

All of the interviews were recorded.

Were the interviews conducted in-person when possible?

The majority of the interviews were conducted in-person. Although Mr. Bell and Ms. Crawford did have brief interviews in the field with officers, Homicide detectives conducted the follow up interviews over the telephone. Both of these interviews should, in our opinion, have been conducted in-person and at a minimum the interview with Ms Crawford should have been followed up with an in-person

³¹ For the purposes of our independent investigation, it is assumed that Officer Quintana would have indicated that he was in fear for his life when he fired his weapon. The ultimate question, however, which we resolve below, is whether such fear and use of deadly force was objectively reasonable.

interview due to the serious allegations of racism that she made against Officer Quintana.

The interviews of the EMS and Fire personnel were all conducted over the telephone.

Were the witnesses separated and interviewed individually?

All of the Homicide and Internal Affairs interviews show that the officers and witnesses were separated during their interviews. There is no evidence to show that witnesses were interviewed as a group or were somehow prompted in their responses by other witnesses.

Were all witnesses and subject officers treated with dignity and respect?

We saw no evidence that the officers or witnesses were treated unprofessionally.

We are unaware of any complaints emanating from the treatment of any of the witnesses in this matter.

Were all relevant areas of inquiry addressed?

It is important, particularly in administrative interrogations where the investigators have the time to prepare an outline of questions and potential issues, that all areas of relevant inquiry are addressed. In this case, the detectives did prepare an outline of questions prior to their interrogation of Officer Quintana, but ultimately many areas were left unaddressed. The most significant of which was why Officer Quintana felt that Mr. Smith was an imminent threat to his life or the life of another. This would be troubling in any case, but more so here as the department's legal advisor, Mr. Michael Cronig, prepared a list of interrogation questions that were

apparently ignored by the detectives. The following list is some of those questions:

- Where were the other officers coming from?
- Why didn't you activate your emergency lights to let the suspects know you were a police officer?
- Why didn't you activate your spotlight and shine it into the vehicle to see the inside better and to blind the suspects?
- Would you agree armed robbery suspects constitute a high risk apprehension?
- Would you agree this is a situation in which a felony stop would be appropriate?
- If yes, why didn't you follow your training and conduct a felony stop rather than approaching the vehicle without any backup?
- When you made the decision to approach the vehicle how far away was your backup?
- What communications did you have with your backup officers before you approached the car initially?
- What information did you provide to the dispatcher before you approached the car and after you removed the first suspect?
- Who was watching the other suspects when you handcuffed the first one?
- Did you know if any of these suspects was actually armed when you first approached the vehicle?
- What if they had been and shooting started?
- When you handcuffed the first suspect your backup had not yet arrived and was not out of the car with you yet.
- When you walked the first suspect back to your squad car who was watching the other 2 suspects?
- If these are armed robbery suspects why are you turning your back to them when you walked the handcuffed prisoner back to your squad car?

- Who took custody of the suspect in handcuffs?
- Why didn't you conduct a felony stop when you made the decision to remove the other 2 suspects from the vehicle?
- Did you have your weapon drawn when you went back to the car to get the other 2 suspects out?
- Why would you reach inside a car with a potentially armed suspect?
- What if the suspect pulled a weapon or tried to pull you into the car?
- How did the suspect know you were an officer if he was asleep and you woke him up?
- In your experience have you ever woken someone up and that person became startled?
- Are you familiar with the Julie Schroeder shooting?
- Are you aware that one of the issues in that case was her failure to conduct a felony stop on a vehicle she suspected had just been involved in a felony drug deal?
- Are you familiar with the Michael Olsen shooting?
- Are you aware that one of the issues in that case was his failure to wait on a sufficient number of officers before confronting a potentially armed suspect?
- What were the exigent circumstances that you had to approach that car a second time without conducting a felony stop?
- Why did you run to the rear of the suspect vehicle rather than another direction?
- Did you ever see the other suspect with a weapon at the time you began firing?
- When you opened fire wasn't there the possibility that you could strike the other occupant?
- Don't you think the second suspect may have been startled by the gunfire and was running to get away rather than attacking you?

- Do you believe the second suspect was attacking you and if so what did he do other than run in your direction that leads you to believe that?
- When you made the decision to shoot the suspect who got out of the car what facts can you articulate that he was directing deadly force or using deadly force at you that justified your using deadly force?
- What training have you received on the APD use of force policy?
- What other deadly force encounters have you been involved in?

The areas of inquiry contained in this list of questions provided by the legal advisor are clearly areas which needed answers. The failure to ask these questions is a serious failure of the IA investigation itself.

3.) Was the investigation conducted with fairness?

Fairness is a particularly important criterion for administrative investigations. Both the public and the subject officers are entitled to an investigation that is legitimately pursued, honest and free of bias.

To achieve these goals, we reviewed the following:

Was there evidence of bias against the complainant or victim?

Internal Affairs investigations bring a number of challenges to any police organization. It is the responsibility and the duty of a police department to investigate their own, but with this responsibility brings legitimate community concern that the police department may be biased against the complainant in an effort to protect their officers. Therefore, administrative investigations must be designed to promote fairness, a sense of justice, and administrative accountability and they must be conducted in a manner that shows no bias or preconceived ideas, but fairly and objectively focus on facts.

To achieve these important interests, internal affairs investigations should not generally provide character evidence of the officer, the complainant, the victim, or any witnesses unless that information directly impacts the credibility of a statement made by a witness, or the credibility of a specific piece of evidence. Character evidence of an officer may appropriately be addressed when making a disciplinary recommendation. The officer's good character may play a role in the mitigation of discipline, just as prior bad acts may serve to aggravate the amount of discipline imposed.

The Internal Affairs report in this matter contained a significant amount of positive character evidence of all of the involved officers and negative character evidence of Mr. Franklin, Mr. Smith and Mr. Sanders. The report provides information on all of the officers' backgrounds including information on where they grew up, where they went to school, their previous employment, their military service and even community outreach activities. In contrast, the report only offers information on Mr. Franklin, Mr. Smith, and Mr. Sanders regarding their criminal history and gang affiliations.

Throughout the report, Internal Affairs noted comments particularly regarding the character of the shooting officer, Officer Quintana. The following examples were prominent in the report:

Corporal Jones stated that he is not an acquaintance of Officer Quintana's and that he only knows him as a student who attended the Basic SWAT School in 2008 and the Tactical Police Officer course in April of 2009. When questioned about Officer Quintana's performance in those schools, Corporal Jones stated, "as far as I can tell, he's very – what we would call, squared away officer. He makes tactical decision – tactically sound decisions, he's very calm, he's not overly excitable, um, and he – he gets it very fast. He gets it very quickly, he very smart, sharp guy."

Officer McCurley stated that he does recall teaching Officer Quintana during SWAT School, as well as the Tactical Police Officer course. Officer McCurley stated he recalled Officer Quintana being a good shot and, "he's just a natural cop, so I mean his decision making has always been sound."

Retired Officer Elaine Garrett was one of Officer Quintana's academy instructors and she recalled that Officer Quintana "actually stood out as one of the better, you know, soon to be officers."

Detective Lee trained Officer Quintana as a cadet and stated that he remembered Officer Quintana because "he was a very excellent cadet" and "a step above your average cadet." Detective Lee also worked with Officer Quintana in Patrol and stated, "I - I'm telling he's got a great reputation. The - that - that kid is phenomenal. I mean he just has like a sixth sense about him."

Officer Stinson was an academy instructor and stated that Officer Quintana "had a seasoned uh, attitude, demeanor about him. Uh, not cocky or anything like that, but he had a seasoned - he knew - he knew about people and about dealing with people."

Sergeant Zumwalt commented on the character of Officer Quintana and then about Officer Hitzelberg and Officer Siddiqui by stating, "He probably has had - he's probably one of the best officers I've seen as far as a street officer uh, he's just kinda got a sixth sense about things, great memory and he works 100% of the time, all the time. Um, Hitzelberg is uh, probably the - the most loyal, he's always at work never calls in sick, um, and he's a real hard worker, never um, has caused any - any flack compared to all - anybody I've ever supervised - he's probably the easiest one I've ever supervised. And then um, Siddiqui came over uh, just after um, he got off his riding period he was in David sector and they sent him up to me and he's had a great

attitude and – and wants to learn and um, has hardly taken off. He’s a – he’s a good guy.”

Sergeant Orten was familiar with Officer Quintana and has backed him up on calls. Sergeant Orten said Officer Quintana was “very conscientious and very safe as far as his practices.”

Again, we note that such character evidence should not generally play a role in the fact finding portion of an investigation, unless it becomes necessary to resolve a dispute in credibility of witnesses. Such was not the case here. Further, although Internal Affairs made note of the many positive attributes of the officers, they made no mention of the volume or type of complaints made against the officers or their disciplinary history except by making a notation on the officers’ background page that the officers’ Internal Affairs history was included in an attachment to the report. Obviously, a fair and balanced report would include both sides of the equation.

Indeed, there is a significant history of complaints against Officer Quintana. Officer Quintana’s Internal Affairs history includes a total of fourteen different complaints and nine different allegations of excessive force. The majority of these allegations were determined to be unfounded or exonerated, but Officer Quintana’s action in a domestic violence incident between himself and his girlfriend, who was also an Austin Police officer, was sustained. In that case, Officer Quintana was alleged to have committed a domestic battery by forcing his way into her residence, then grabbing her by the upper arms and pushing her to the side as he exited the residence. Further, Officer Quintana admitted that he spoke with his girlfriend about the Internal Affairs investigation after they had both been given a written and verbal order not to discuss the case. It is not clear from the limited record that was provided if Officer Quintana was charged with insubordination for failing to obey a direct and lawful order, and if he was, whether that allegation was sustained. The

Internal Affairs records show that Officer Quintana was given a fifteen-day suspension, but that the suspension was reduced to a letter of reprimand after Officer Quintana entered into a settlement agreement with the Department.³²

Internal Affairs sustained another excessive force allegation against Officer Quintana for allegedly using a Taser on a handcuffed arrestee. That finding was overturned by Officer Quintana's chain-of-command to exonerated, but the reports do not indicate the reason for this change in finding.

Officer Quintana had five additional complaints lodged against him that were generally for rudeness or a lack of courtesy. None of those complaints were sustained. Although the complaint was not sustained, Officer Quintana was counseled on one occasion for his failing to synch his microphone with his mobile video equipment. The error was discovered when a complaint was made and a supervisor tried to use the recording to address the complainant. Officer Quintana stated that he had an early call and that he did not have time to synch the equipment.

Officer Hitzelberg had received a total of six complaints. Only one of those complaints was for excessive force and that complaint was unfounded. Officer Hitzelberg was given a letter of reprimand for failing to qualify at the range.

Officer Siddiqui had a total of two complaints. Officer Siddiqui was dispatched to a home for a disturbance complaint and the complainant was upset that an officer was sent to his home. That complaint has not yet been adjudicated. In the other complaint, the complainant alleged that Officer Siddiqui told him to shut up.

³² The settlement required Officer Quintana to get psychological counseling and to attend anger management training if deemed warranted. There is no indication as to whether Officer Quintana got psychological counseling or whether anger management training was deemed to be warranted.

Although the statements about Officer Quintana's character and the information on the officers' background compared to the suspects' are certainly evidence of bias, they do not compare to an egregious email that was sent by Detective Dunn to Detective Harkin. That email is reproduced in Figure 13 below:

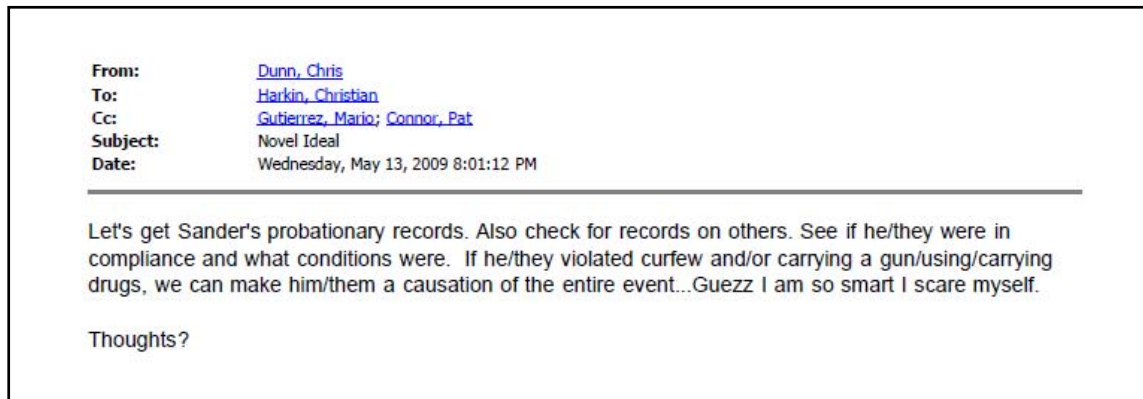


Figure 13 - Email from Chris Dunn to Christian Harkin

The implication of this email is clear. It appears that irrespective of what the true causation of the event was, Detective Dunn was prepared (and apparently proud) to manufacture a causation for the shootings from the backgrounds of the individuals in the vehicle. The idea that a lead Internal Affairs investigator would engage in such conduct clearly designed to exonerate the officers' actions at the expense of the suspects is extremely troubling.

We believe that because of the above, the IA report which was produced shows bias in favor of the involved officers and against Mr. Smith and Mr. Sanders. As stated at the outset of our report, we have determined that the facts as presented have not been significantly impacted by this bias and we have been able to make our findings and reach our conclusions based on the facts without bias for or against any of the parties involved, and without preconceived opinions about the justification or lack thereof for the shootings.

Was there evidence of bias against the officer?

There was no evidence of bias against the subject officers.

Did the investigator suppress or minimize statements unfavorable to the subject officer?

There was no evidence to suggest that any of the statements were suppressed or minimized that might have been unfavorable to the subject officers.

Did the investigators selectively only interview witnesses who favored the officers?

There was no evidence of avoiding witnesses that might have disputed the officers' account of the incident.

Were subject officers allowed representation during interrogation and advised of applicable rights?

All of the officers were advised by Internal Affairs that they were being compelled to provide a statement, that they were required to cooperate with the investigation and that they were required to provide full and accurate information regarding the incident under investigation. In each of the interviews two detectives from Internal Affairs were present, along with a representative from the police monitor's office, and a representative for the officer.

Did the investigators allow the subject officers to review evidence or witness statements prior to the subject officer's interrogation?

Statements made by Officer Quintana indicate that he had watched his interview with SIU and that he had viewed the MVR videotape of the incident prior to his interview by Internal Affairs. There was no evidence that would indicate that the officers were allowed to review the statements of other witnesses before their Internal Affairs interview.

Was there evidence that the investigators conspired with the subject officer to lessen the subject officer's culpability?

There was no evidence that would suggest that the investigators actively conspired to lessen the evidence against any of the officers.

4.) Was the investigation properly documented?

All internal investigations of complaints whether they are internally or externally generated must be thoroughly documented in a written report. The purpose of the written report is to provide a summary of the complaint, the identification of the complainant, the identification of all witnesses and subject officers, the identification of the specific allegations, the policy or procedure sections that were allegedly violated and finally a comprehensive narrative discussing all aspects of the investigation.

The effectiveness and competency of an investigation are judged generally by the quality of the reports that are produced. A poorly written report will cast doubt even on the most thorough investigation. Although all portions of the report need to be composed in a complete, accurate and comprehensive manner, the narrative portion of the report forms the report's true substance. When judging the quality of reports, any reviewer, including supervisors, managers, auditors, media or members of the public will closely examine the narrative portion because it contains the detail of the investigation. The narrative must address the: who, what, why, where, when and how of the investigation. The narrative needs to contain all of the information necessary for a commanding officer to be able to draw reasonable and fair conclusions and determine the findings and possible discipline.

The report needs to be sufficiently detailed not only to provide all of the relevant information to command staff members as a basis for their findings and disciplinary decision-making, but reports also serve to help refresh the investigator's memory

about the investigation if the case should eventually go to mediation or court. The court process may be months or even years after the original report was completed and the investigator may have worked on literally dozens of other cases during that time period. Although the facts of the case are very clear in the investigator's mind as the investigation is concluded, time will only serve to diminish the investigator's memory, but by reviewing the written work, investigators may recall the process used and information generated.

Was the report well written and generally free of grammatical errors?

The Homicide and Internal Affairs reports were generally free of grammatical errors. A recommendation for a summary report as part of the Homicide report is made in the following category. The overall composition of the Internal Affairs report will be discussed in the conclusion of this part of the review.

Did the report detail a chronological account of events?

The report written by the Homicide detectives was very comprehensive and contained supplemental reports from every officer who had any involvement in the case. These supplemental reports are very valuable as they serve to remind the individual officers of their actions at a later time particularly as they may prepare for court what could be years later. The difficulty with the Homicide Report is that the lead detective did not prepare a report that summarized all of the statements, evidence and investigatory steps that were taken in a chronological order. Such a summary is valuable as it serves as a roadmap for anyone reviewing the report to gain a better understanding of the case. Although we made this recommendation in a prior review for the City of Austin, the Homicide detectives have apparently opted not to prepare summaries for major investigations. We would again encourage the Homicide detectives to reconsider their procedures and include reports that summarize all of the component parts of the investigation. Such reports can be helpful not only to prosecute a case, but for the Homicide detective as they review

all of the investigative reports to ensure that all reasonable investigative steps have been completed.

We recognize that Detective Shirley did complete an Inquiry Summary of the incident. The report, prepared in bullet point fashion did provide a chronological accounting of the events, but only offered Detective Shirley's conclusion and did not offer supporting evidence. A summary report on the other hand should incorporate all of the facts, circumstances, witness statements and evidence in a chronological order that would allow the reader to understand the event from beginning to end.

Was the report prepared in a logical format?

The Homicide report was an accumulation of supplemental reports created by individual officers as those portions of the reports were completed. As we suggested above, in our opinion these reports should be reviewed and summarized by the primary detective in a way which would allow the entire event to be understood without requiring the readers to develop a chronological timeline on their own.

Was the report factual, or did it contain conclusory statements?

Both the Homicide and the Internal Affairs reports were factual.

Did the report clearly identify exculpatory as well as inculpatory evidence?

The Homicide report was thorough and included all of the relevant information necessary. As discussed above, some of the leading questions by Internal Affairs created the appearance of developing exculpatory information that would tend to lessen the culpability of the officers particularly as it relates to their failure to activate their MVRs.

Were all reference documents attached?

Both investigations referenced and attached all necessary documents.

Were all witnesses, officers and involved parties identified (name, address and phone number)?

All identifying information was clearly listed in the reports.

Was there evidence of bias, embellishments, exaggerations, or false statements?

The evidence of bias is discussed above in this report. There was no evidence of embellishments, exaggerations, or false statements.

Were credibility assessments supported with evidence?

There were no credibility assessments made in either the Homicide or the Internal Affairs reports. In fact, there are very few disputed facts in this investigation.³³ While the perception of various witnesses differed in varying degrees as to chronology and sequencing, the variances are deemed by us to be problems of perception rather than intentional prevarication and have been resolved by us through the use of the video and scientific evidence. Notwithstanding the fact that no credibility determinations were required, IA did provide information in their report that tended to enhance the credibility of the officers and to diminish the credibility of Mr. Sanders, Mr. Smith and Mr. Franklin.

Did the report provide a clear, defensible basis for all conclusions?

The Internal Affairs report provided a discussion of their rationale for their conclusions, but failed to examine the administrative charges to specifically determine which elements of the administrative charges were not proven by a preponderance of the evidence. Specifically, the report fails to adequately address the question of reasonableness instead summarily concluding that the actions of

³³ The issue of whether Mr. Sanders' hands were raised after he struggled with Officer Quintana is one area of potential credibility dispute. The second area is the position of Mr. Smith when he was shot. For the purpose of our investigation we have made findings of fact with respect to each of these issues. We have found that although Mr. Sanders' hands may have been raised there is no indication that Officer Quintana observed this. With respect to the position of Mr. Smith's body when he was shot, we have found that Mr. Smith was shot just as he was getting out of the Mercedes.

Officer Quintana were reasonable both with respect to the shooting of Mr. Sanders and Mr. Smith. With respect to the shooting of Mr. Sanders the question of reasonableness is addressed only tangentially:

Officer Quintana stated that, as he was attempting to awaken Nathan Sanders, he observed a handgun in Sanders's waistband. As Officer Quintana attempted to take control of the firearm, Sanders struggled to maintain control of the weapon. As Quintana lost control of the weapon, he observed Sanders drawing the weapon from his waistband. Officer Quintana believed that lethal force was reasonably necessary to defend his own life and the life of his fellow officers. Officer Quintana believed he was in imminent and immediate danger. It was not reasonable for Officer Quintana to give any type of verbal warning prior to using lethal force. If Officer Quintana had entered the vehicle or stopped to give verbal commands Sanders may have seriously injured or killed him or the other officers present.

Figure 14 - Excerpt from IA Summary Report

The question of the reasonableness of the beliefs of Officer Quintana are simply not adequately explored. Was it reasonable to believe Mr. Sanders was about to use deadly force? Was it necessary to use deadly force to protect himself or, given the circumstances, should Officer Quintana instead have taken cover behind the Mercedes?

It should be noted, however, that the report does rightly conclude that but for the woeful failure of tactics in this case, the use of deadly force might very well have been avoided:

As described in the conclusion to Allegation #3, Quintana's choice of tactics and his approach to Sanders contributed directly to the chain of events that followed, which ultimately led to Quintana using deadly force against Sanders. If different tactics had been employed, the necessity to use deadly force may have been avoided entirely. However, for the purpose of examining this allegation, the use of force against Sanders is treated separately, outside of the larger situational context.

Figure 15 - Excerpt from IA Summary report

Did the report provide alternative interpretations based on conflicting but credible evidence?

The Internal affairs report did not discuss the conflicting evidence of Mr. Smith's

position when he was shot or on the discrepancy of civilian witnesses observing Mr. Sanders' hands in the air at the time he was shot. In addition, on the issue of the reasonableness of Officer Quintana's use of deadly force, each of the seventeen factors listed in Department policy as relevant to the determination of the reasonableness should have been addressed with regard to the shooting of both Mr. Sanders and Mr. Smith.

5.) Was the investigation and report prepared in a timely manner?

One of the most serious problems in administrative investigations is the delay in the completion of the investigation and the final report. Lengthy delays create a sense of injustice to those who have been wronged, sends a message to other employees that the organization does not take allegations of misconduct seriously and allows the subject officer to continue to work without the benefit of corrective action or training if necessary allowing the possibility of future similar transgressions.

Was the investigation, and report completed in an appropriate time period?

Both the Homicide and the Internal Affairs report were completed in a reasonable period of time.

Conclusions Regarding the Homicide and Administrative Investigations

While, as detailed below, we had some minor issues with the Homicide investigation and much more significant issues with the IA investigation, we were, nonetheless, able to reach our independent conclusions as to the appropriate adjudication of the charges against the involved officers, based on these investigations, without resort to independent first party investigation.

a.) Homicide Investigation

We believe that the overall quality of the Homicide investigation and report was competent.

The areas of criticism are:

- The Homicide investigation failed to conduct an area canvass for witnesses. Their reliance on flyers, that may or may not have been distributed, and a computerized phone call back system was less than fully adequate.
- There should have been a summary report. A summary report that puts all of the pieces together in a chronological order is helpful for the detective (they can readily see what has been accomplished, what has been missed, and what needs additional work), for the prosecutor as they are able to gain a sense of the case much easier, for police supervision and for Internal Affairs in their investigations. We made this same recommendation in our 2007 report and we believe that this is one of the steps that the Homicide Unit can take to move their investigations and reports from good to great.
- There should have been a discussion regarding the inconsistencies between Officer Quintana's statements and the analysis of the Bevel report.

b.) Internal Affairs Investigation

Unfortunately, we do not believe that the Internal Affairs was performed in an appropriate manner. While this report is much improved over the report that we reviewed in 2007, the significant failures listed below demonstrate that this report falls below a reasonable standard for an Internal Affairs investigation. In addition, there is a strong indication the investigation was biased in a way which may have compromised its findings.

The areas of criticism are as follows:

- One of the lead Internal Affairs detectives exchanged an email seeking information on the probationary status of the suspects suggesting that if they were not in compliance with the conditions of probation or parole that they could assign the blame for the event on the suspects.
- The Internal Affairs investigators asked leading questions of the officers. These questions suggest the answer to the officer and tended to minimize the officers actions.
- The Internal Affairs investigators displayed bias in their report by listing positive character evidence for the officer, ignoring negative character evidence of the officers and by providing only negative character evidence of the suspects.
- The Internal Affairs investigators failed to ask Officer Quintana about his decision to use deadly force against Mr. Smith.
- The Internal Affairs investigators did not raise the inconsistencies between the Officer Quintana's statements and the analysis of the Bevel report.
- With regard to the ultimate recommendations for adjudication of the charges against Officer Quintana on his use of deadly force against both Mr. Sanders and Mr. Smith, there was not a clear analysis of the ultimate question of the reasonableness of the actions of Officer Quintana.

As we noted above, during our review process we received several memoranda from the Internal Affairs detectives and their supervisors regarding the findings in this matter. Unfortunately, these memorandum, serve to further our concern

relative to whether bias may have played a role in reaching the conclusions reached in this investigation.

For example:

Detective Dunn stated, "Officer Quintana is perhaps one of the most trained officers on the streets. He constantly seeks any training, specifically tactical training. Additionally, as a known "go-getter," Officer Quintana has placed himself in numerous situations where he employed that training on a regular basis."

In justifying Officer Quintana past failures in activating his MVR, Detective Dunn stated, "Because of his 'go-getter' attitude he will certainly have a higher rate of activity so these numbers could be considered low in population but still clearly in violation."

Detective Dunn attempted to place the blame for the shooting on Mr. Sanders by stating, "We often fail to place any blame on the subject, who was armed, who was a felon, on probation and in violation of that probation, with a violent history, with other known felons, and had potentially committed other crimes not solved. Sanders put Officer Quintana in a situation where he was forced to use deadly force. I believe the officers acted in good faith, employed sound judgment in their decision of approach. The approach fit the situation and though not trained specifically in that tactic or was there a specific tactic trained; it was an option that would work. Perhaps in a different time, different place and different situation perhaps Sanders would have woken up and surrendered."

Detective Westbrook concluded that, "In closing sir, I feel that Officer Quintana conducted himself in a very professional manner in this case, and his actions were that of a very motivated officer that brought credit to our profession. Officer Quintana is an officer with the desire to better his community through his daily and

tirelessly efforts to combat crime and protect the citizens of Austin. This is evident through his countless commendations, medals and officer of the year awards.”

In addition, it is clear that at least Detective Dunn came to a conclusion during the very early stages of the investigation and his conclusions undermined his ability to complete a full, fair and accurate investigation by writing that based on his scene walk through with the Homicide detectives that he believed this incident to be a “clean shoot.” Detective Dunn also stated that he “knew this could be a politically volatile case regardless of how clean the shooting appeared.” Detective Dunn apparently came to this conclusion without conducting a single interview, without examining the wounds to Mr. Sanders or Mr. Smith, without seeking any witnesses and without conducting any meaningful investigation.

Finally, we are concerned with Detective Dunn’s statement that he and Detective Harkin volunteered to be the lead investigators on this matter because they had been newly assigned to Internal Affairs. Certainly, we applaud the detectives’ willingness to lead a complex investigation, but we do question the supervisors and managers of Internal Affairs in their decision to allow inexperienced IA investigators to be assigned as the primary detectives in a fatal OIS.

Notwithstanding the above criticism, we commend IA for pointing out an significant problem in locating accurate lesson plans/outlines on training classes of officers involved in this matter. Internal Affairs determined that the records retention policy used by the Department allowed lesson plans to be deleted or destroyed. They pointed out that it is important that all lesson plans be archived so accessibility to those records can be made long after the officer has attended the training. This allows the information to be available to the Department for all any administrative, criminal or civil requirements. Additionally, Internal Affairs reported that there is no set method on how new or improved tactics are disseminated to officers throughout the Department.

Our Findings

Our findings detailed below result from the application of the relevant statutes and policies to the facts surrounding the events of early morning of May 11th, 2009. We have tracked the allegations as contained in the IAD Summary. As noted, these may not be the final charges considered by the Chief of Police.

Allegation #1 – Officers Quintana’s and Siddiqui’s Failure to Activate Mobile Video Recorder

It is alleged that on May 11, 2009, Officers Quintana and Siddiqui failed to activate their in-car MVR when they arrived at the Walnut Creek Apartments to attempt to take into custody potentially armed suspects.

The Austin Police Department’s policy requires that all officers driving MVR equipped vehicles shall record all traffic stops and all pedestrian stops. The stated purpose of the policy is that the “use of the Mobile Video/Audio Recording (MVR) equipment provides an unbiased recording of events that officer’s encounter. These recordings can be useful for the documentation of evidence, the preparation of offense reports, and future court testimony. These recordings can also protect officers from false allegations of misconduct and be of use when debriefing incidents or evaluating performance.”

Officer Quintana and Officer Siddiqui were driving vehicles that were equipped with MVRs. Officer Quintana’s MVR was never turned on and Officer Siddiqui’s MVR was turned on while he was responding, but it was turned off prior to his arrival at the scene. Officer Siddiqui stated that he did not remember activating his MVR, nor does he recall turning it off. Officer Siddiqui stated that when he arrived at the scene he believed the Mercedes was unoccupied and therefore believed that he did not need to activate his MVR.

Internal Affairs recommends that this allegation against Officer Quintana and Officer Siddiqui be sustained.³⁴ We agree, but we believe there are aggravating circumstances that should be considered when making a disciplinary decision that were not adequately highlighted by Internal Affairs.

In their conclusion to allegation #1, Internal Affairs writes that “[w]hen Officer Quintana was confronted with having to quickly exit his patrol vehicle to detain the driver he inadvertently failed to activate his MVR.” The report continues, “[i]t should be noted that Quintana’s assertion that suspects are tipped off by seeing the red ‘record’ light on police units raises a possible equipment-related issue that may deserve consideration by the Department.” (The MVR camera is attached to the front windshield of the police cars and the red “record” light is a small LED light affixed to the MVR camera. When the MVR camera is activated the LED light is illuminated and is visible from outside the police vehicle.) “However, Quintana clearly stated during his IA interview that he believed that Franklin knew that the police were following him (B2-B, line 4331) and expected that he was going to be pulled over (B2-B, line 4342). That being the case, there should not have been any reason for Quintana not to activate his camera earlier. Even if there were, it would not absolve Quintana of the responsibility for activating his MVR once contact was initiated with the suspects.”

Simply put, this is not a case where Officer Quintana “inadvertently” failed to activate his MVR as described by Internal Affairs. Officer Quintana knew once he saw the vehicle that he was going to make contact with the occupants. Indeed, it is clear from Officer Quintana’s statement that he consciously opted to violate department policy because he allegedly did not want the red record light to turn on

³⁴ On September 18th, 2009 we were provided with memoranda from IAD detailing the findings of each individual investigator who worked on the case highlighting the fact that there exist differences of opinion relative to the findings among the detectives who worked on the case.

even though it was apparent that the driver knew he was behind him and Officer Quintana was aware of a department policy that mandated that he activate the equipment. Officer Quintana drove by the vehicle as it parked and made a u-turn still knowing that he was about to contact these subjects whom he believed may be armed and dangerous, yet he still chose to not activate his MVR alleging fear that the red recording light might be seen.

In his interview, Detective Dunn asked Officer Quintana a leading question apparently attempting to lessen Officer Quintana's culpability for failing to obey department policy by stating, "[s]o do you think on a priority scale having to get out of the car and get your feet on the ground as you well explained earlier before the suspect does, which would be the higher priority? Turning your camera on or Illuminating your target." While it is unclear exactly what the Detective meant by illuminating the target (which the red recording light clearly does not do), the question suggested the obvious answer to Officer Quintana who responded that it was more important to exit his vehicle.

An investigation was conducted to determine if Officer Quintana frequently failed to activate his MVR. In a memorandum prepared by Samuel Krieder dated July 29, 2009, it was discovered that of the 851 calls that Officer Quintana responded 258 had no video. The memorandum does not make it clear if these 258 were out-of-policy, or whether they conformed to department policy. Of the 593 remaining calls, 174 required a MVR activation. In 13 of those cases the MVR was not activated. Officer Quintana was the subject of an Internal Affairs interrogation regarding those 13 failures to activate his MVR.

In some of the cases, Officer Quintana said he forgot, he blamed his trainee partner who was driving the vehicle, he claimed he was making a consensual encounter, or he activated it late but did activate it remotely. Interestingly, in two of the cases (09-90817 and 09-750758) Officer Quintana stated that he had put himself and

other officers out on a subject stop when they were actually taking a meal break. Officer Quintana took this action to avoid responding to dispatched calls during the time he was eating, and he tried to rationalize his misconduct by stating that he was still available for emergency calls. Officer Quintana said that this action was necessary because more senior officers were able to eat earlier in the shift. Officer Quintana did not state that he was not allowed to eat during his shift and it appears that he simply wanted to eat at a specific time that was convenient for him and by placing himself and other officers out on a subject stop he was able to eat when he wanted and with the officers whom he chose. There is no indication that Internal Affairs made any additional allegations of misconduct for Officer Quintana, Officer Hitzelberg, or Officer Duprey who all engaged in this apparent misconduct.

Contrary to the conclusions of Internal Affairs, Officer Quintana did not violate Department policy by exercising common officer safety principles by exiting his vehicle quickly, he violated department policy by intentionally choosing not to activate his MVR when he knew he would be making contact with the occupants of the car. Compounding Officer Quintana's intentional failure to record the incident is the incident's consequences. The stated purpose of the Austin Police Department MVR policy is that the recordings will provide an unbiased recording of the events. These recordings are not necessary for routine events where there is no question of the officers' actions. The video recordings are made to provide a level of transparency to the community of the officer's actions particularly when officers exercise their authority and use force. In this case, there is legitimate intense scrutiny of the officers' actions that resulted in the death of one person and a serious injury to another. Had the MVR been recording additional evidence may have been obtained. Such evidence may have served to better determine issues of fact which are directly involved in this case including the exact position of Mr. Smith when he was shot and whether or not Mr. Sanders' hands were raised at the time he was shot. The failure of the officers to activate their recorders may add to skepticism of the community and the fear of a police cover-up, particularly when Officer Siddiqui's

vehicle was positioned in a way that the MVR would have captured the entire event.³⁵

Allegation #2 - Officer Quintana's Failure to Identify Himself as a Police Officer

It is alleged that on May 11, 2009, Officer Quintana failed to identify himself when he initiated contact with a potentially armed suspect at the Walnut Creek Apartments.

The Austin Police Department policy requires that officers shall identify themselves when they initiate a duty-related contact with a person, unless their identity is obvious.

We agree with the findings of Internal Affairs that this allegation should be sustained against Officer Quintana.³⁶ The policy requires officers to identify themselves when initiating a duty-related contact with a person unless their identity

³⁵ In one of the IA memorandum which we received on September 18th, 2009, Detective Westbrook expressed concern that Officer Siddiqui may have been confused whether or not he should have activated his MVR, we believe that the policy of the Austin Police Department clearly requires officers who are driving MVR equipped vehicles to record all traffic stops and pedestrian stops. The intent of the policy is to provide an unbiased recording of the event and as we stated above Officer Siddiqui's failure to activate his MVR defeated the intent of the policy.

³⁶ It appears from the September 18th memoranda that Detective Harkin, Detective Dunn, Detective Westbrook, Sergeant Connor, and Lieutenant Rodriguez disagreed with the sustained finding. We disagree with the arguments of Sergeant Connor and Lieutenant Rodriguez that Mr. Sanders made eye contact with Officer Quintana and therefore knew he was a police officer. Looking at Officer Quintana's eyes would not alert anyone that he was an officer. Mr. Sanders would have to look at this uniform and there is no evidence that he did so. The point of this policy is not to assume or guess if the person knew Officer Quintana, but to have a reasonable assurance that he knew. Officer Quintana could have easily identified himself by giving verbal commands.

Detective Harkin and Detective Dunn believe that Officer Quintana did give an order that identified himself as a police officer. After Officer Quintana disengaged from his struggle with Mr. Sanders, Officer Quintana can be heard on the MVR to say something, but the statement is unintelligible on the recording. Detective Dunn may be correct and Officer Quintana could have said "Police" or something similar, but no one from Internal Affairs asked Officer Quintana or the other officers to listen to the recording and identify what was said. Although this is a significant investigative error, it would not change our findings. The concern here is Officer Quintana's failure to identify himself before the struggle for the gun, not after.

is obvious. What constitutes “obvious” will depend on a number of factors such as the officer’s attire, the lighting conditions, and the physical and mental conditions of the person being contacted. Officer Quintana was aware that he was going to contact two passengers in a vehicle and that both of the subjects were sleeping. The contact occurred at 5:00 a.m., the ambient lighting was poor, the officers were wearing dark colored uniforms and the officers were shining bright flashlights into the eyes of the vehicle’s occupants that would obviously impact the occupants’ vision. No reasonable police officer in these circumstances would believe that their identity would be obvious.

Officer Quintana acknowledged that he was aware of the Department policy and that he was familiar with an Internal Affairs case that involved Officer Gary Griffin in which a critical issue was Officer Griffin’s failure to identify himself before engaging with a sleeping, intoxicated subject

We agree with the analysis of Internal Affairs that the issue of Officer Quintana’s failure to identify himself has a direct bearing on whether Mr. Sanders’ actions can reasonably be interpreted as those of a individual who intentionally took armed, aggressive action against someone whom he knew to be a police officer, or the instinctive defensive reaction of someone, awakened from a sound sleep, in response to feeling someone grabbing his gun. A possible startled reaction is something that Officer Quintana should have anticipated and could have possibly prevented by verbally identifying himself as a police officer.

Allegation #3 – Relating to the Tactics Employed by the Officers

It is alleged that on May 11, 2009, Officers Quintana, Hitzelberg, and Siddiqui were present at a deadly force encounter at the Walnut Creek Apartment, during which the officers may have failed to follow standardized department training and tactics if it was objectively reasonable to do so, and may have

failed to employ sound judgment, in their decision to confront and attempt to take into custody potentially armed suspects.

The Austin Police Department policy requires its officers to follow Department standardized training and tactics when it is reasonable to do so. In their report, Internal Affairs sustained this allegation against Officer Quintana, but felt the level of culpability for Officers Hitzelberg and Siddiqui did not rise to that of Officer Quintana's. Internal Affairs reasoned that Officers Hitzelberg and Siddiqui lacked the information Officer Quintana possessed and they were following his lead. While Internal Affairs felt their tactics were unsafe at times, they concluded that Officers Hitzelberg's and Siddiqui's actions – based on the information available to them at the time – were not unduly unreasonable. Thus, Internal Affairs recommended that this allegation be exonerated for Officers Hitzelberg and Siddiqui.³⁷

We agree that this allegation should be sustained against Officer Quintana. We disagree with the assessment of Internal Affairs regarding Officers Hitzelberg and Siddiqui. Although Officer Quintana may be more culpable, his actions do not relieve Officers Hitzelberg and Siddiqui from their responsibility to perform their duties in a tactically sound manner consistent with their training and to attempt to have other officers with whom they might be working do the same. Therefore, for the reasons elaborated below, we conclude that this allegation should be sustained against all three officers.

1. General Observations Relative to Tactics

Austin Police officers are mandated to utilize common sense and good judgment in

³⁷ In the memoranda received on September 18th, Detective Harkin, Detective Dunn, Detective Westbrook and Sergeant Connor disagree with the sustained to this allegation. In addition, Lieutenant Rodriguez indicates that she was not sure that sustained was the correct finding. For the reasons stated in this section, we disagree with their rationale and conclusions.

the exercise of their duties. Nowhere is this mandate more important than in an officer's determination of what tactics to employ in a given situation. "Tactics" are methods, maneuvers or techniques used to achieve policing objectives. Evaluation of any use of force incident must include an assessment of the tactics used by the involved officers. Because police officers may encounter an almost infinite variety of scenarios in the field, it is generally impossible to pre-determine the tactics that should be used. Rather, officers must apply general principles and methods to situations that are fluid, dynamic and uncertain. Sound tactical performance thus relies upon officers' ability to evaluate scenarios they encounter, and to make appropriate tactical decisions as to how the scenario should be managed in order to meet the relevant policing objectives.

When considering tactics used in any given scenario, the following three questions should be considered:

- 1) What was the scenario?
- 2) What was the policing objective?
- 3) To what extent did the tactics applied to the scenario serve the policing objective?

Because of the typical complexity of operational policing, single incidents usually encapsulate multiple scenarios and objectives. As such, it is likely that a reviewer will need to repeatedly consider the above three questions in the course of conducting an evaluation.

Police officers have a duty to perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others. Sound tactical decision-making enables officers to avoid unnecessarily placing themselves and their fellow officers in harm's way, to avoid undue risks to public safety, and to minimize the need for

officers to resort to serious uses of force to achieve their objectives. Understanding that officers may need to balance the safety of different actors in a scenario (e.g., officer shoots suspect to prevent suspect from shooting officer; officer exposes himself to risk of being shot in order to rescue civilian from imminent danger), safety should be considered as an important objective in all police operations.

There are few "bright lines" regarding tactics officers must not use. For instance, the Austin Police Department policy dictates that firearms shall not be discharged as a warning under any circumstances. However, the vast majority of tactical issues are not so clear-cut. Instead, officers have the discretion to select options from the "tool bag" of tactics they have acquired through their training and experience. As such, an evaluation of tactical performance comprises an evaluation of officers' demonstrated knowledge and decision-making.

2. Planning, Approach and Initial Contact

Whenever police officers have the opportunity to formulate a plan before taking action they should do so. Depending on the characteristics of a scenario, officers may have weeks to plan, or no more than a few seconds. In order to plan effectively, officers should:

- 1.) Gather as much information about the scenario as is feasibly possible.

The more information officers possess about a scenario, the better their capacity to plan tactics that will fit that scenario. The information-gathering stage of the planning process could range from an officer waiting for the results of a license-plate check before initiating a stop of a suspicious vehicle, to a team conducting surveillance of a building being used by organized criminal in advance of a search warrant execution.

Officer Quintana had a great deal of information available to him prior to his contact.

He knew that the vehicle was associated with the white van that he had stopped and believed was involved in a series of violent armed robberies. He had received information that the suspects who had been in the white van two nights before had abandoned the van and entered a gold colored late 1990's Mercedes station wagon. He had information that these subjects had discharged gunfire into the air when they entered the Mercedes and he knew that this had all occurred in the Walnut Creek Apartment complex.

Officer Quintana confirmed his memory of the want on the vehicle immediately prior to the contact by speaking with Officer Hitzelberg on the police radio. Although in his Internal Affairs interview, Officer Quintana said that he chose to write his report at the Auto Zone across from the Walnut Creek Apartment hoping that he would see the Mercedes, he asked Officer Hitzelberg after seeing the Mercedes, "Was there something about a station wagon, a Mercedes station wagon you can tell me about?" Officer Hitzelberg responded, "It was a brown or champaign colored early 90's model Mercedes station wagon," to which Officer Quintana replied, "What about it 'cause I got it over here." Officer Hitzelberg stated, "The guys involved in the robbery were supposed to (unintelligible) from the van into that vehicle." Officer Quintana responded, "Ten-four, 6409 Springdale, I'll be out on it."

Officer Quintana had the opportunity to develop additional information and at a minimum provide other officers with more information by reading off the license plate of the Mercedes to police dispatch, but he failed to do so. Through license plate information, Officer Quintana might have discovered that the vehicle was registered to Mr. Smith and he may have had the opportunity to learn of Mr. Smith's prior criminal history and gang affiliation prior to his contact.

Although it is unclear whether such additional information would have made any difference to the officers in tactics which they would utilize, it is clear that such information would have been useful.

2.) Take account of risk factors.

All risk factors known to be involved in a scenario, as well as those that should be considered as a matter of routine should be accounted for in a plan to the extent possible. Risk factors include anything that may threaten harm to an officer, civilian or suspect. Commonly encountered risk factors that should be considered in the planning process include the likelihood that a person will be armed, that a vicious dog may be encountered, or that a person is mentally ill.

The unique description of the vehicle combined with the fact that it was entering the Walnut Creek Apartments where it had been seen two days prior would create a reasonable belief for a reasonable officer that the vehicle followed by Officer Quintana was the vehicle believed to be associated with the violent felonies. The subjects wanted for the robberies had pistol-whipped two victims, and were suspected of shooting a victim in the face during a robbery.

Officer Quintana believed that the subjects in the Mercedes fired rounds into the air while at the Walnut Creek Apartments two days earlier on May 9th, and he even had a conversation with Corporal Bonilla where they concluded that these subjects were probably responsible for the Valero robbery and the taxicab robbery.

Officer Hitzelberg was in the Walnut Creek Apartment complex on May 9th and participated in the investigation. It was Officer Hitzelberg who developed the information that the suspects abandoned the van and left the complex in the Mercedes. It was also Officer Hitzelberg whom Officer Quintana radioed to confirm the information immediately prior to the contact; it was Officer Hitzelberg who stated on the police radio that the vehicle might be related to the suspects in the robberies.

Officer Siddiqui was not involved in the investigation on the 9th, but he was familiar with the robberies and the activities of the other officers that night. Officer Siddiqui stated that he heard the radio conversation between Officer Quintana and Officer Hitzelberg and based on that conversation he knew the subjects in the Mercedes may be wanted for the robberies. Indeed, Officer Siddiqui self-dispatched himself to follow up Officer Quintana after hearing the radio conversation recognizing that additional help may be required.

Notwithstanding these obvious risk factors, no efforts were made to have the occupants of the vehicle exit while officers were in a position of safety, or to call for additional backup and be prepared for the use of less lethal alternatives.

3.) Assemble sufficient police resources before taking action.

Absent exigent circumstances, a plan of action should include the assembly of appropriate police resources. In practice, this means that a sufficient number of officers and supervisors should be assembled, that they should be appropriately equipped, and that the assistance of specialized units (e.g., Air Support, K-9, SWAT) should be sought when appropriate.

All of the officers knew of the risks imposed by making contact with subjects who were suspected of being involved in violent criminal activity, yet none of them made any efforts to assemble the proper police resources prior to initiating contact. Strikingly, even though Officer Quintana was aware of the risks posed by the occupants of the Mercedes, he never even asked for a follow up officer to assist him on the stop. The radio traffic indicates that both Officer Hitzelberg and Officer Siddiqui self-dispatched themselves and that neither of the officers stated that they were en route to the stop on the police radio. Although these officers happened to be available and diligently responded, it was just as likely that they might not have been available or they might not have heard the radio traffic. It was Officer

Quintana's responsibility to ask for assistance for this contact and to ensure that follow up officer were available and en route.

Recognizing the interests of Officer Quintana in that he did not want these suspects to elude him like they did two nights prior, it may have been reasonable to attempt to make contact with Mr. Franklin before the follow up officers arrived. But any attempt to make such a contact should have been at a distance, using cover, and requesting Code-3 assistance for immediate help.

Recognizing the risks associated with this contact, it was inexcusable to fail to request additional police resources. The officers should have immediately requested a supervisor, sought more officers, a K-9 and considered the use of a tactical unit if the suspects failed to comply after being given orders. These additional resources create a safer environment for the officers, the suspects, and onlookers who were gathered on the sidewalk directly across from the suspects.

4.) Use available time.

Officers should take the time available to plan before taking action. Moreover, they should avoid taking action that may unduly limit planning opportunities (e.g., alerting suspects to a police presence before it is appropriate to do so.)

The officers failed to take advantage of the time that was afforded to them. Officer Quintana was confronted with Mr. Franklin leaving the vehicle, which did require him to make a quick assessment of his next action. But it appeared that Officer Quintana was more motivated by his fear that the suspects may elude him for the second time than for his responsibility to act in a sound manner. Yet, even if the analysis excluded Officer Quintana's poor tactics in his contact with Mr. Franklin, he should have recognized the need to take advantage of the substantial amount of available time that he had before confronting the sleeping subjects.

After the arrest of Mr. Franklin, Officer Quintana had an even greater level of knowledge about the risk of making contact at the vehicle. Officer Quintana asked Mr. Franklin if there were guns in the car and although Mr. Franklin denied that there were guns in the car, his manner in making this denial made Officer Quintana suspicious and aroused his belief that guns were indeed located inside the Mercedes.

Officer Quintana believed at this point that there was only one subject asleep in the car, allowing Officer Quintana more than sufficient time to plan his action and assemble appropriate resources. When the officers approached the Mercedes, they saw that there were two people in the car and they knew that they only had three officers to confront the suspects and they also had to be aware of a small group of people in an apartment complex that they believed to be hostile to the police. These individuals were all at the officers' back while they were making contact at the Mercedes and there was no one left to guard Mr. Franklin who was secured inside a police car. This was yet another lost opportunity for the officers to slow down, gain cover, develop a plan and wait for additional resources.

Not only did the officers fail to use the available time, but also they acted in such haste that they did not even communicate among themselves. Officer Hitzelberg's MVR shows that he arrived at 05:07:21. One minute and thirty-nine seconds later, Officer Hitzelberg is already at the driver's side of the Mercedes alerting Officers Quintana and Siddiqui that he has two people inside the car and he asks Officer Quintana what he wants to do. At 05:08:24, Officer Quintana states, "We'll take that one first," and the first gunshot is heard at 05:09:12. Officer Hitzelberg was on scene for two minutes and three seconds before the shooting of a man who was asleep and woken by the officers after Officer Hitzelberg arrived. Officer Siddiqui arrived seconds before he is seen in the video at 05:08:07. Officer Siddiqui was on scene for about one minute prior to the shooting.

5.) Develop and Communicate the Plan

Officers should develop and communicate their plan of action based on the specific scenario that they are confronted with.

The officers never formulated any type of plan and there was almost no communication between the officers. Officer Quintana said that if Officer Hitzelberg arrived he was just going to tell him, "Let's go out on them" and that they would have pulled the subjects out at gunpoint. Yet, Officer Hitzelberg did arrive and Officer Quintana never said anything to him other than there was someone else in the car. Officer Quintana added that he and Officer Hitzelberg work together frequently and they just know what each other are going to do without verbal communication. Such a belief is unreasonable and no reasonable police officer would fail to communicate with his or her fellow officer based on the belief that they just know what each other is going to do in a high-risk contact particularly when another officer was present who lacked the same experience from prior contacts. In this situation, planning and coordination was required to involve all of the officers.

Officer Hitzelberg said that not only did they not discuss any options to approach the vehicle, but that he did not have any thoughts of other options that might be available. It is difficult to believe that an officer with Officer Hitzelberg's experience would not believe that waiting behind cover, requesting additional officers and a supervisor, holding the suspects of violent crimes involving firearms at gunpoint, seeking less-lethal alternatives, developing some type of a plan and communicating the plan to all of the officers on scene might be a better option than making an unsafe approach without cover and without even drawing his firearm.

Officer Siddiqui said that Officer Quintana and Officer Hitzelberg made their way up to the vehicle so he went up to the vehicle as well. Officer Siddiqui reasoned that

Officer Quintana knew that the subjects were asleep in the car because he commented on that, but that no one communicated any type of plan before the approach. Officer Siddiqui was told to watch Mr. Smith when Officers Quintana and Hitzelberg made contact with Mr. Sanders, but that was the extent of any communicated plan.

3. Cover/Concealment

Cover is any material or object behind which officers can position themselves for protection from gunfire or threats. The use of cover is a basic tactic that officers can use to shield themselves from the threats posed by armed or potentially armed suspects, as well as from threats such as moving vehicles or thrown missiles.

Concealment, as the term suggests, involves an officer concealing him/herself from the view of the suspect. Unlike cover, concealment does not necessarily provide a physical barrier to the threat itself (e.g., bullet, car). However, concealment reduces opportunities for a suspect to aim a weapon or otherwise direct a threat towards an officer.

It is generally unwise for an officer to leave a position of cover before a threat has been stopped. Officers should abandon cover (and thus exposes themselves to the threat) only when such action is justified by exigent circumstances. Whether it is tactically sound for an officer to leave a position of concealment will depend upon the overall advantages and risks that will result from such action, versus the advantages and risks associated with remaining concealed.

In this case, there was cover available for the officers' use. The officers had their vehicles, which provided cover and blocked the suspects from gaining their sole access of escape. There was a Chevrolet Cavalier that afforded the officers cover as they approached the Mercedes on the passenger side, yet this option was not used.

Officer Quintana could have used the cover of his vehicle on his first approach of Mr. Franklin. Instead of remaining behind cover and calling Mr. Franklin toward him, Officer Quintana immediately surrendered his cover and approached Mr. Franklin. The evidence shows that Officer Quintana conducted a pat-down search and handcuffed Mr. Franklin by having Mr. Franklin put his hands on the driver's side roof of the Mercedes. And although Officer Quintana was standing immediately adjacent to the Mercedes, he never saw Mr. Sanders in the backseat of the vehicle.

When the officers made their approach to the Mercedes after the arrest of Mr. Franklin, they again abandoned their cover and stood next to the Mercedes seeking to contact two subjects whom they all believed may be armed and whom they believed had committed several violent crimes with firearms as recently as two days before their contact.

When Officer Quintana saw the handgun and alerted the other officers, Officer Hitzelberg immediately went to the ground and took cover behind the Mercedes. Officer Siddiqui went to the ground and took cover behind the Chevrolet Cavalier. Only Officer Quintana remained standing and retreated from the Mercedes either failing to recognize the availability of cover behind the Mercedes or behind the police cars, or consciously disregarding that alternative course of action.

4. Training

Police officers are trained how to evaluate and manage potentially violent field situations and how to apply tactics to minimize the danger of risk to themselves and others. Officers are trained to formulate a plan whenever possible by gathering information, considering risk factors, assembling sufficient resources, communicating with other officers, and using available time to their advantage. Officers understand the value of cover and concealment, contact and cover strategies, and calm and effective negotiation skills. They are well-versed in

containing scenes, setting perimeters, isolating suspects, and evacuating those in harm's way. Modern police officers are also provided a wide range of tools (including less lethal options like pepper spray, Tasers, and impact projectiles) to minimize the necessity of using serious or deadly force. Police officers are taught tactics in the police academy and through continuing professional training throughout their careers. Supervisors debrief tactical situations with their officers and apply lessons to real-life situations. Police tactics are routinely discussed, emphasized, and reviewed at all levels of a police organization. This focus on officer safety stems from the recognition that when officers perform poorly an officer, a community member, or a suspect may suffer a severe or fatal injury.

All three officers have received training on how to perform a high-risk vehicle stop. And although the officers did not actually stop the car in the traditional sense, they were still dealing with a high-risk situation where the suspects were inside a car and any reasonable police officer would have applied the same training. The basic concept taught to officers for conducting a high-risk car stop is to remain behind cover, keeping the suspects at gunpoint, order the suspects to come out of the car and back toward the officers in a very specific manner where the officers can take the suspects into custody. A main component was that all officers involved in the stop would have clearly communicated roles and areas of responsibility to prevent confusion in the event action was required.

All of the officers stated that they were familiar with the "Felony/High-Risk" concepts and had either used them or seen them in use while an Austin Police officer. In the High-Risk training, students are taught the importance of planning, timing, and coordination, and the division of critical tasks among officers. None of these factors were discussed by the officers prior to the beginning of their approach. There was no discussion between the officers of tactics, roles and responsibilities, or contingencies should the need to take action arise, nor did the officers discuss any alternatives for handling the situation.

Officers Quintana and Hitzelberg attended a 20-hour course in Basic Defensive Tactics. Officer Quintana had attended the 30-hour course on Lethal Force Encounters/Critical Incident – The Law, a 60-hour Basic SWAT school and a 30-hour Tactical Patrol Officer –SWAT course all within the last two years.

We agree with Internal Affairs that these officers had never seen this exact scenario addressed in any part of their prior training and that there should never be an expectation that training will provide officers with specific direction on how to deal with every potential situation they might face in their jobs. Rather, training is designed to provide officers with tools that, combined with common sense, experience, and good judgment, can be applied to a variety of situations, as the circumstances dictate. We also agree with Internal Affairs that the officers were equipped with adequate “tools in their toolbox” to handle this situation.

5. Conclusion Regarding Tactics and Training

Officers Quintana observed a Mercedes driving next to the Walnut Creek Apartment complex that he reasonably believed contained individuals who may have been involved in several violent robberies where two people were pistol whipped, and another was shot in the face. Officer Quintana knew that a vehicle fitting the unique description of this vehicle was seen at the Walnut Creek Apartment complex two days before and the occupants of that vehicle may have fired gunshots into the air. Officer Quintana confirmed his suspicions with Officer Hitzelberg before making contact. Officer Hitzelberg was at the Walnut Creek Apartment complex two days before, he was involved in the investigation, and he knew about the information regarding the Mercedes. Officer Siddiqui overheard the radio communication between Officer Quintana and Officer Hitzelberg and gained enough information to reasonably know that any contact with the individuals in the Mercedes would be a high-risk contact.

Yet, armed with all of this information, Officer Quintana failed to notify dispatch of the vehicle's license plate or seek any information from the dispatchers regarding the plate. The failure to notify communications of the license plate number of the Mercedes has added significance in that no one knew the plate number prior to Officer Quintana's contact. Officer Quintana made contact with the driver of the Mercedes by himself before any of his follow up officers arrived, without calling for appropriate backup. Officer Quintana abandoned his cover and approached Mr. Franklin at the vehicle and conducted a pat-down search with Mr. Franklin's hands on the roof of the car. During this time, Officer Quintana saw Mr. Smith sitting in the front passenger seat, but he did not see Mr. Sanders who was seated in the rear driver's seat. Officer Quintana handcuffed Mr. Franklin and placed him in the backseat of his police car without waiting for Officer Hitzelberg or Officer Siddiqui who were both only a couple of minutes away.

The officers then all approached the Mercedes without developing or communicating any type of a plan. Although they all believed that the passengers may be armed, a suspicion that was heightened when Officer Quintana questioned Mr. Franklin, none of the officers had their guns or any less-lethal force option drawn and in a ready position.

The extent of the planning between the officers was Officer Quintana stating that he would deal with Mr. Sanders first and Officer Siddiqui being told to watch Mr. Smith. Officer Quintana then reached into the vehicle and tried to wake Mr. Sanders when he saw that Mr. Sanders had a handgun in his waistband. Mr. Sanders woke suddenly and a struggle ensued between Officer Quintana and Mr. Sanders. When Mr. Sanders struggled toward the passenger side of the car, Officer Quintana disengaged, drew his firearm and ultimately shot both Mr. Sanders and Mr. Smith.

There was much discussion by the Internal Affairs detectives who disagreed with

the sustained finding to this allegation of their concern that the department did not sufficiently train the officers for the circumstances that they were confronted with. Internal Affairs interviewed the department instructors on high-risk cars stops and discovered that although the instructors told their students that the techniques could be used in this type of circumstance that they never actually provided scenario training on this specific situation. We believe that Internal Affairs gave too great a focus on the high-risk car stop issue and specific training for these specific circumstances. These officers were confronting individuals whom they believed to be armed and who had committed a series of violent crimes. It makes little difference if the suspects were standing in the street, sitting on a park bench or in a vehicle. Police officers are trained to use reasonable officer safety tactics when they are approaching someone who may be armed. Walking up to the suspects without any planning, without requesting assistance, without drawing their guns, without identifying themselves, without giving the suspects any orders, without seeking any cover, without any less-lethal options is simply not reasonable and certainly the standardized training of the Austin Police Department would teach officers not to act in this manner.

Unsound decisions in the face of predictable violent behavior sometimes set a series of events into motion that can result in tragedy. The degree of tragedy is magnified when the police have the opportunity to plan, to summon resources, and to respond in a tactically sound manner, but fail to do so through incompetence, laziness, bravado or expediency. It was just this type of tactical failure by Officers Quintana, Hitzelberg and Siddiqui that forced the officers to extricate themselves from a dangerous position that they created and which resulted in the death of Mr. Sanders and the injuries to Mr. Smith.

We believe the actions taken by Officer Quintana were well beyond merely careless or negligent. We believe his actions, based on his knowledge of the circumstances, his training – particularly with his attendance in the SWAT course and Patrol

Tactical course, his experience as a veteran police officer and his status as a field training officer were reckless to the point that he needlessly endangered himself, his fellow officers, the suspects and the onlookers.

We characterize Officer Quintana's tactics as reckless mindful of the legal import of the term. Reckless conduct can be criminal if it involves taking actions knowing that they are likely to yield a particular result but the actor does so despite the risk. The difference between recklessness and criminal negligence as a culpable mental state in Texas revolves around whether the subject knew, or whether he *ought to have known* the substantial and unjustifiable risks of his actions and acted anyway.

A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint. Texas Penal Code Section 6.03 (c)

The Travis County Grand Jury and District Attorney have considered and rejected criminal charges, and it is not within the scope of our review to render opinions regarding possible criminal conduct. We place our findings against the backdrop of the Texas Penal Code to emphasize the gravity of this sustained allegation against Officer Quintana. It is not a long stretch between finding that Officer Quintana disregarded standardized Department training and tactics in confronting potentially armed suspects resulting in his killing one and wounding the other, and finding that he disregarded the substantial and unjustifiable risk that he would lose control of the volatile situation resulting in having to use deadly force.

As we mentioned at the outset, we also believe that the instant allegation should be sustained against Officers Hitzelberg and Siddiqui. The fact that Officer Quintana

had more knowledge, was more senior and was the handling officer, does not relieve Officer Hitzelberg or Officer Siddiqui of their duty to act responsibly and to attempt to the best of their ability to have other officers do so as well. Officer Hitzelberg knew why the Mercedes was wanted and he radioed the information to Officer Quintana just prior to the contact. Officer Hitzelberg could have chosen to speak out when he recognized the tactics were unreasonable and reckless based on the circumstances, but he failed to intervene and acted just as recklessly as Officer Quintana by failing to plan and failing to even unholster his weapon.

Officer Siddiqui also knew why they were contacting the Mercedes. Consideration should be given to any disciplinary action given to Officer Siddiqui due to his lack of field experience, his lack of advanced tactical training and the fact that he was only on scene for less than a minute before the shooting. He should however, be held accountable for failing to exercise even the most basic officer safety strategy of unholstering his firearm and using cover when attempting to contact individuals whom any reasonable police officer would believe to be armed.

Allegation #4 - Relating to the Use of Deadly Force Against Mr. Sanders

It is alleged that on May 11, 2009, Officer Quintana was present at a deadly force encounter at the Walnut Creek Apartments, during which he may have failed to follow standardized department training and tactics if it was objectively reasonable to do so, and may have failed to employ sound judgment, in his decision to confront and attempt to take into custody potentially armed suspects. This allegation relates to whether or not the use of deadly force against Mr. Sanders was objectively reasonable and within the policies of the Austin Police Department.³⁸

³⁸ This Allegation tracks the language in the IA Summary Report. It is clear however from the report, that this allegation was treated as an allegation relative to whether the use of deadly force against Mr. Sanders was appropriate.

We disagree with the conclusions of Internal Affairs; it is our belief that this allegation against Officer Quintana should be sustained. First, we believe that Internal Affairs' analysis is flawed by examining this allegation separate from the events that led up to Officer Quintana's use of deadly force. Indeed, the allegation itself contemplates the determination of the failure to follow training and tactics and whether Officer Quintana's actions "employ[ed] sound judgment". As noted above we believe that Officer Quintana's tactics were reckless and that if Officer Quintana employed even the most basic officer safety tactics in this situation as he had been trained, the necessity to use deadly force may very well have been avoided.

Totality of the Circumstances

We believe that the totality of the circumstances must be reviewed in assessing Officer Quintana's use of deadly force, not just the "final frame" or the instant before the force was used.³⁹ Indeed, we are mandated to do so by the policies of the Austin Police Department. The department acknowledges that its use of force policy is "more restrictive than state and federal laws that govern the use of force." Among the factors that must be considered in determining whether the use of force is objectively reasonable may include: information known to the officer; the opportunity for de-escalation; and the opportunity to develop a coordinated plan or approach.

³⁹ Detective Todd Bircher of the Austin Police Department prepared a memorandum outlining the difference between liability and accountability for the police use of force regarding this matter. Detective Bircher concluded that even if an officer is not criminally or civilly liable for their use of force the police department can still hold the officer accountable for their actions particularly because the Austin Police Department has a policy that mandates that officers take tactical considerations into account prior to using force. Detective Bircher concludes that police management must be able to critique an officer's tactics and administer discipline when poor or negligent choices are made and that the ultimate test must consider the "totality of the circumstances" in determining whether the force used was objectively reasonable. At the same time Detective Bircher urges management to consider that officers engage in "split-second decision" making and that officers must be able to do their job without fear of politically motivated and/or arbitrary decisions.

In this case the totality of circumstances include the fact that Officer Quintana had sufficient information prior to making contact with the occupants of the Mercedes that would cause a reasonable officer to have a reasonable belief that the occupants of the Mercedes were armed and dangerous and that reasonable police tactics should be implemented to protect the community, the officers and the suspects. Not only did the officers fail to implement reasonable police tactics to address the contact, instead they acted recklessly and their actions provoked an officer-involved shooting that otherwise may not have been necessary. We believe that based on Officer Quintana's reckless tactical decisions that this allegation should be sustained.

Split-Second Decision Making

It is important to address the concern that officers should not be held accountable for difficult split-second decision-making. We reach our conclusion with respect to this charge not unmindful that officers are often called upon to make split-second decisions and where those decisions are difficult and capable of reasonable differing courses of action, that deference should be paid to the decision maker. There are clearly sound policy reasons for being deferential to the tactical decisions of police officers who are confronted with resistance and little time to consider alternatives. Indeed, the law and department policy should not be so strict that it creates a hesitancy for officers to act in the face of immediate danger (thereby increasing the likelihood of injury to the officers), or worse, the unwillingness of officers to act at all (thereby placing the community at risk). Police officers who make split-second decisions in dangerous situations should be provided with a fairly wide zone of protection in close cases even if there is a plausible claim that the situation could have been handled better or differently. However, when a situation does not require a split-second decision and instead evolves at a pace where reasonable alternatives may be considered and implemented, the law and department policy should encourage, and indeed ensure as best it can, that officers avoid acting in

reckless ways which all too often lead to death or serious injury. In fact, officers should be trained and encouraged, whenever possible, to reduce the need for making split-second decisions by slowing down the pace of an encounter rather than intensifying it.

The idea that police officers will only make key decisions in most potentially violent confrontations at the last instant under acute time stress, known as the *split-second syndrome*, overlooks the thought process of officers in advance of any decision to use force. Indeed, most situations offer police officers three frames of analysis to aid in their decision-making process. These three frames include activities prior to any contact with the suspect, when the officer makes contact with the suspect, and finally the decision to use force that causes the injury.

In the first frame of analysis, Officer Quintana knew that the Mercedes and the subjects inside might be associated with a series of violent crimes the most recent of which occurred two days earlier. These suspects were wanted for pistol-whipping two victims, and shooting one victim in the face during three successive robberies. The officers had information that the suspects inside the car fired rounds from a handgun into the air while at the Walnut Creek Apartments two days earlier. Finally, Officer Quintana questioned Mr. Franklin and Mr. Franklin's responses heightened Officer Quintana's belief that there were firearms in the car.

In the second frame of analysis, one reviews the officers' tactics in making contact with the suspects. In this case, the suspects were believed to be asleep, and even if they were feigning to be asleep as suggested by Officer Quintana, they were not making any threatening moves toward the officers. This should have been apparent to Officer Quintana who had just searched and handcuffed Mr. Franklin standing at the driver's side door of the Mercedes directly in front of Mr. Sanders sitting in the rear driver's side seat. Yet, Officer Quintana approached the Mercedes without a plan, without requesting additional police resources, without making any effort to

seek available cover and without drawing his firearm and holding it in a ready position. Officer Quintana placed himself between two vehicles in an awkward unstable position and reached into the Mercedes rubbing Mr. Sanders' chest trying to wake him. All of the officers' actions were hurried when the circumstances begged for patience. Indeed, the shooting occurred less than three minutes after the arrival of Officer Hitzelberg and less than one minute after Officer Siddiqui's arrival. The tactics employed by the officers in contacting Mr. Sanders and Mr. Smith were reckless, particularly when one considers the knowledge of the officers before making contact and the availability of time that should have allowed the officers to make better decisions.

The third frame of the analysis reviews the "final frame" of the incident, or the moment that Officer Quintana made the decision to use deadly force. Officer Quintana stated that he lifted Mr. Sanders' shirt, saw a handgun in waistband, and a brief struggle for the gun ensued. According to Officer Quintana, Mr. Sanders was able to lunge toward the rear passenger side of the car away from Officer Quintana's grasp. Officer Quintana said that he never actually saw Mr. Sanders draw the handgun from his waistband and that he never saw the barrel of the gun. Officer Quintana retreated from the rear driver's side door toward the rear of the Mercedes and drew his handgun as he moved. Officer Quintana then crossed behind the Mercedes and fired through the rear window at Mr. Sanders' silhouette.

Officer Quintana fired at Mr. Sanders because he was armed with a gun. Officer Quintana never saw Mr. Sanders actually remove the gun from his waistband, nor did he see Mr. Sanders point the gun at anyone. He did not know that the gun was operable, or as was the case, that the gun had only one round and that that round was not in the chamber and that the safety of the gun was on. Officer Quintana said that all he saw was Mr. Sanders' silhouette through the back window and he fired at that silhouette. This process of Officer Quintana struggling with Mr. Sanders,

retreating from the vehicle, drawing his firearm, making his decision to fire and firing at Mr. Sanders took three to four seconds.

The three frames of analysis of this incident that form the foundation of Officer Quintana's decision to use deadly force reveals that Officer Quintana actually had a significant amount of time to know, understand and process the information prior to his decision to use deadly force. This is not a situation where an officer was suddenly confronted with a life and death decision, but rather an event that evolved over time. As we have already discussed, time and distance are allies of police tactics and Officer Quintana's reckless judgment in rushing and eliminating the safety of distance are the primary factors that caused these tragic consequences. We do not believe that Officer Quintana was forced to make critical split second decisions and therefore we do not believe that decision-making time frame, even if Officer Quintana's actions at that point were arguably reasonable (which we don't believe), should serve as mitigation for his acts. Instead, we believe that he had sufficient time to recognize and understand the issues presented and that a reasonable officer would have employed reasonable tactics to address to risk presented by this situation.

Reasonableness

Indeed, even under consideration of only the last frame of the analysis, we find that Officer Quintana's decision to use deadly force was a violation of department policy in that a reasonable police officer in such situation would not have employed deadly force by shooting at a silhouette knowing only that the individual was armed with a gun, especially under circumstances where cover was readily available. Put simply, we believe that Officer Quintana's actions in shooting Mr. Sanders were not objectively reasonable. While Officer Quintana reasonably believed that Mr. Sanders was armed with a handgun, Mr. Sanders never threatened Officer Quintana or

anyone else with the gun. Officer Quintana acknowledged that he never saw Mr. Sanders draw the gun from his waistband. Officer Quintana never stated that he saw Mr. Sanders point the gun at him or anyone else. Officer Quintana never said that he saw Mr. Sanders' arms, hands or the gun above the backseat in a position where he could have shot at Officer Quintana, instead Officer Quintana retreated from the car, moved to the rear of the car, and fired at the silhouette of the back of Mr. Sanders' head.

In order to find Officer Quintana's actions in shooting Mr. Sanders reasonable, Mr. Sanders would have had to reasonably believe that Mr. Sanders posed a significant and immediate threat of death or serious bodily injury to either Officer Quintana or others. It is our opinion that the evidence simply does not support the reasonableness of such a conclusion that Mr. Sanders posed such a threat.

Allegation #5 - Relating to the Use of Deadly Force Against Mr. Smith

It is alleged that on May 11, 2009, Officer Quintana was present at a deadly force encounter at the Walnut Creek Apartments, during which he may have failed to follow standardized department training and tactics if it was objectively reasonable to do so, and may have failed to employ sound judgment, in his decision to confront and attempt to take into custody potentially armed suspects. This allegation relates to whether or not the use of deadly force against Mr. Smith was objectively reasonable and within the policies of the Austin Police Department.⁴⁰

⁴⁰ This Allegation tracks the language in the IA Summary Report. It is clear however from the report, that this allegation was treated as an allegation relative to whether the use of deadly force against Mr. Smith was appropriate.

Internal Affairs concluded that Officer Quintana's use of deadly force against Mr. Smith should be exonerated.⁴¹ Internal Affairs reasoned that Officer Quintana had a reasonable belief that the occupants of the vehicle were armed, that Mr. Smith exited the vehicle, that he ran at Officer Quintana with his hands near his waistband and that the physical evidence of Mr. Smith's wounds were consistent with Officer Quintana's version of the events. Internal Affairs found that Officer Quintana had a reasonable belief that he had to use deadly force because his life was in imminent danger. We disagree and believe that this charge too should be sustained.

Totality of the Circumstances

It is again important to note that the allegation as drawn requires a review of the totality of the circumstance. As we have discussed, Officer Quintana's disregard of proper tactics was the catalyst through which a dangerous police encounter became a shooting incident. Based on Officer Quintana's reckless tactics alone, we believe that this allegation should be sustained.

Reasonableness

Further, we do not believe that the physical evidence comports with Officer Quintana's version of the events. According to Officer Quintana, Mr. Smith was running at him in a crouched position with his hands near his front waistband. It

⁴¹ Detective Harkin agrees with the Internal Affairs finding of exonerated to this allegation.

Detective Dunn stated the second threat appeared as Sir Smith exited the vehicle. Mr. Smith was dressed in baggy clothes, he was bent over and his hands were not in view as he approached Officer Quintana. Detective Dunn stated that Mr. Smith was shot in the clavicle area, the bullet traveled along his chest and exited from his thigh, supporting Officer Quintana's version of events. Detective Dunn believes this allegation should be exonerated.

Detective Westbrook, Sergeant Connor and Lieutenant Rodriguez all agreed with Internal Affairs' findings, but provided no analysis for their conclusions.

was this action by Mr. Smith that Officer Quintana suggests caused him to fear for his safety. Yet, the scientific evidence contained in the Bevel report contradicts Officer Quintana's explanation. The video shows that Officer Quintana fired two rounds at Mr. Smith when Officer Quintana was behind the Cavalier and Mr. Smith was out of the camera's view somewhere between the passenger side of the Mercedes and the driver's side of the Cavalier. When Mr. Smith appears in the video frame his right hand is toward his stomach, but he was also moaning in pain at that point and he was still standing upright.

The Bevel report concludes that Mr. Smith's hands were out of the line of the trajectory at the time that he was shot and that he was bent forward. We believe that it is more likely that Mr. Smith was shot as he was exiting the Mercedes as he began to stand, than it is that Mr. Smith was shot as he ran toward Officer Quintana.

We find that Officer Quintana saw the front passenger door open suddenly and Mr. Smith was trying to run from the vehicle to get away from the gunshots. When one considers that it takes some time to perceive, react, decide and fire his handgun and because of the timing of the shots and the time that it took for Mr. Smith to be visible in the video at the back of the Cavalier, it is reasonable to believe that Mr. Smith was shot just after he exited the Mercedes and the decision to shoot was in reaction to the car door opening suddenly. Based on this reasoning, Officer Quintana could not have made his decision to use deadly force due to Mr. Smith's hand placement, but more logically Officer Quintana made his decision to use deadly force when Mr. Smith suddenly opened the car door.

The Independent Review Process

We recognize that in an incident like this that there will be a wide range of community perception and reaction. We understand that some may perceive police misconduct simply because an officer shot two young black men, who were asleep in

a car. There will also be those who will believe that the shootings were justified because the police were confronting suspects, one of whom was armed, who had criminal histories and suspected gang affiliations. Such preemptory conclusions are not based on full knowledge of the events of that early morning or on dispassionate consideration of those facts. Each view, serves only to undermine the desired confidence in the City's Police Department by the community it serves.

The determination of whether or not a particular use of force was justified can only be made after a thorough and complete investigation that is designed to promote fairness, a sense of justice, and administrative accountability. This officer-involved shooting is undergoing such a process. It has been investigated criminally by the District Attorney's Office with evidence presented to a Grand Jury which determined that the officers did not engage in criminal misconduct. This Report is part of the administrative investigative procedure, and will be considered by the Chief of Police in addition to the Internal Affairs investigation in reaching conclusions in his administrative investigation which will ultimately determine what discipline, if any, should be imposed for any violations of Department policy which he finds to be sustained. Simply put, justice can only be achieved through a process of full and fair dispassionate investigation rather than by any rush to judgment.

We do believe, and have stressed throughout this report, that the consequences of any failure to follow APD policy, including the exercise of common sense and good judgment on the part of the involved officers should be considered in determining the severity of the punishment to be rendered. This case clearly involved the most serious of consequences: the taking of the life.

Observations

Our investigation has raised several questions regarding training of the Austin Police Department. Our questions in many ways mirror those raised by the U.S.

Department of Justice⁴² and while beyond the scope of our investigation, we make this observation in order to again bring them to the attention of the City with the hope that they will be addressed. , our investigation and that of Internal Affairs revealed a lack of training and in one other notable instance we saw that training existed but the technique employed to remediate poor performance was disturbing.

⁴² In a December 23, 2008 letter to Chief Acevado, the Civil Rights Division of the U.S. Department of Justice discussed some of their concerns regarding the department's training. First, they were concerned with the training offered to the internal affairs investigators and their supervisors. The letter stated, "According to APD personnel we interviewed, the only training that they ever received was 'on the job.' Moreover, we learned that supervisors and managers have never received any advanced level training regarding supervising and managing internal affairs units." Second, the Department of Justice made specific recommendations regarding the ongoing training for Austin police officers:

"One of the most frequent comments we received from APD personnel was the need for in-service training. We were advised repeatedly that officers and supervisors had not received training on perishable skills and use-of-force scenarios in many years. The APD also identified the need for training to address issues with officers' driving and frequency of traffic collisions. In conversations with APD command staff, our expert consultants have stressed the APD's need to focus training on low frequency but high liability practices, e.g., use of firearms. Use of force and pursuit driving are such areas of high liability.

We recommend that APD's training for firearm qualification not focus only on skills in shooting. That training time also should include review of applicable case law. A frequent comment we received from many citizens was a perceived poor communication between citizens and APD officers leading to escalation and, ultimately, use of force. Accordingly, we recommend that the APD ensure that its officers are trained in verbal de-escalation (e.g., verbal judo). We received positive comments on the APD's prior street tactics class in particular. We were informed, however, that only one third of the APD's officers received this training. Reinstating this training on perishable skills that affect use of force will benefit APD.

Like the street tactics course that the APD had previously begun, we also encourage the APD to bring to fruition its plans to use current field training officers ("FTOs") as adjunct trainers for their units. The APD had not fully developed, but should, the concept of using its corporals as trained trainers, as well. These adjunct trainers should utilize standardized lesson plans. Also, the APD units who work together should have the benefit of training together. Training with the unit should be the standard whether training occurs informally through adjunct trainers, or through more formalized classes.

We also recommend that APD retain, as needed, consultation for the review of policy and curriculum to further develop the APD's ongoing in-service training. When engaging in this process, we recommend that the APD seek the input from its commanders, as well as rank and file, in assessing the needs for in-service training."

Finally, it became evident that there is no formal process to retain training curriculum materials or accurate records exists.

One specific training method employed by the Austin Police Department of which we became aware is the inappropriate use of physical punishment when students made mistakes during defensive tactics training.

The belief that physically punishing cadets by mandating students to do pushups would somehow be a physical memory enhancer is nonsensical. The only muscle memory that a student can learn from doing pushups is how to do a pushup, not how to evaluate a threat or to increase their range accuracy. Further, punishing an entire group of students for one student's errors only leads students to become reluctant to attend training offered by the department and may encourage officers to act improperly to avoid punishment rather than to take advantage of a learning opportunity. Similarly, there is no recognized value in placing a police officer in "no win" training situations. Such a situation only reinforces the idea that the officer will suffer an injury in the field and that they should respond with significant force regardless of the situation to avoid harm.

Officer Quintana made mention of the "punishment" during his interview by the Homicide detectives and that he wanted to ensure that he was aware of potential multiple threats. We have no evidence that the use of "punishment" in Officer Quintana's training played a role in this matter, but we are concerned that it was worthy of note by Officer Quintana as he discussed his decision-making process in using deadly force against Mr. Smith.

These officers discussed other aspects of Austin Police Department training:

Officer Lee stated that he requested, "to be sent to any outside training to obtain the latest updates and information" on tactical

training, but that he was denied. Officer Lee stated that, “we really need to work a lot harder on our training.”

Sergeant Mutchler stated that new tactics or procedures are not taught to officers on patrol and that, “it’s usually taught to the cadet class and we hope when line officers see these different tactics they will be kind of picked up by them (patrol officers) and cascade through the department. It’s not always the case obviously.”

Sergeant Harrison could not explain why the Training Academy does not have copies of the original Felony Car Stop curriculum or outlines.

We recommend that the Austin Police Department make strong efforts to review its training division for the use of “punishment” during training, rather than positive reinforcement and adult learning techniques that are generally accepted training methods in policing across the country. We are also concerned with the inability of Internal Affairs to locate accurate lesson plans and outlines on training classes attended by officers involved in this incident and the department policy that allowed these outlines to be destroyed. We encourage the Department to seek external training for its instructors and Internal Affairs investigators to enhance their skills, knowledge and abilities in these critical areas. Finally, we agree with Internal Affairs that the Austin Police Department must make efforts to develop Department-wide tactical training that is standardized throughout the department.

Conclusion

We recognize the importance of our review of this matter to the community, to those involved and to the administrative process. The community needs reasonable assurance that their guardians are performing to the best of their ability and that their local government officials are taking reasonable steps to ensure that their police are well-trained, capable and make reasonable decisions when they exercise their ultimate authority in using deadly force. Moreover, the community needs to be

able to rest assured that someone is guarding the guardians with the ability to conduct internal investigations in a fair and unbiased way.

It is for these reasons that this matter has undergone such an intense level of scrutiny. Homicide detectives concurrently with officials from the Travis County District Attorney's Office reviewed the facts and circumstances of this case. Based on their investigation, the facts were presented to a Grand Jury which determined that criminal charges should not be levied against the officers. The Austin Police Department initiated an administrative investigation to determine if the officers' actions violated Department policy and finally this review has been conducted by KeyPoint to assess the investigations conducted by Homicide and Internal Affairs and to make independent findings relative to actions of the involved officers relative to the policies of the Austin Police Department.

Certainly there will be some who will question this level of scrutiny for an incident that occurred under field conditions, in the middle of the night. Indeed, discretionary decision-making is an inherent part of police work. There is simply no reasonable alternative to granting significant discretionary abilities to police officers. It would be neither practical nor prudent to attempt to establish a specific policy or procedure to address every situation that an officer may face. Police officers are expected to properly assess situations and to exercise judgment as to when and how they should use their power. The ability to make responsible choices based on training and experience is the distinguishing feature that makes a police officer a professional. Yet, the idea of discretion is that while some are empowered to make decisions – those decisions are not beyond review, and, in fact, need to be, reviewed for the good of all. Discretionary decision-making in general, and the decision to use deadly force in particular, must be subject to intense review and poor or reckless decisions must result in legal and/or disciplinary consequences.

We have expressed our great concern at the bias evidenced in the IA investigation. The existence of the email uncovered in our investigation points to potential significant problems within that unit which should be addressed at the earliest opportunity. In addition, the recommendations of the Department of Justice relative to IA should be carefully reviewed and considered for implementation.

We have also expressed our concern regarding the ongoing training of police officers within the Austin Police Department. Our concern was first brought to the attention of the Department almost two years ago in our analysis of the Kevin Brown shooting. That concern has now been shared by the Department of Justice and again in our investigation into this matter. We strongly encourage the Austin Police Department to make concerted efforts to improve the ongoing professional training of its officers.

Ultimately it is our finding that significant tactical errors that rose to the level of recklessness were made by the involved officers, and that but for this recklessness the use of deadly physical force might very well have been avoided. While we have also found that the use of deadly physical force by Office Quintana was not justified, as any belief that there was an imminent danger to himself or others was not objectively reasonable, it was ultimately the reckless tactics employed by Officer Quintana in the first place that directly led to his use of deadly force and ultimately the taking of the life of one individual and seriously wounding of another.

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2005 MVR Manual.doc

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2008 12-21-08 MOBILE VIDEO RECORDING.ppt
2008-3020502.pdf
2009-0605 Guice short.WMA
2009-0605_0609-egarrett-2009-0605_20090612.doc
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235pm.WMA
238pm.WMA
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909am.WMA
911 call 091290466 Trans 1.pdf
911 call 091290466 Trans 2.pdf
911 call cad 091290466.pdf
911 Call trans 091290477.pdf
911 call trans 091290532.pdf
911 call trans 091290645.pdf
A306b MVR Operation 100508.doc
Aaron Binion photo.PDF
Administrative paperwork.PDF
Aerial_4thShot_Final.mov
Aerial_5thShot_Final.mov
AFD reports.PDF
Another Training Information Request- Officer Involved Shooting 09-0605.msg
APD Air Ops.PDF
APD Approved Firearms.pdf
April 2009.PDF
Apts overview w veh positions.pdf
Assistance in 09-0605.msg
ATT163898.htm
Attorney Sir Smith property request.PDF
Audit Summary Memo.PDF
Austin PD Documents Reviewed for Investigation

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B102 Emergency Operation of Vehicles 060109.doc
B2-A Quintana SIU interview transcript.PDF
B2-B Ofc. Quintana interview transcript.PDF
B2-C Quintana mic after shooting.PDF
Barrick DND .PDF
Barrick interview.WMA
Barrick Questions.pdf
Base Line Measurments.pdf
Basic DT.doc
Basic Police Marksmanship Course of Fire - Skills.PDF
BEK TEK Enhanced AudioTranscript.pdf
BEK TEK lab report.pdf
BGA09-29_Report.pdf
Bircher DND.doc
Bircher Memo Liability.pdf
Bircher Memo Police ID.pdf
Bircher Memo Unarmed Subjects.pdf
Bircher questions.doc
Bonilla DND.pdf
Breeze Quintana.JPG
Breeze+Mobile+Video+WITHOUT.ppt
Bryan Green Trans.PDF
C2-A Hitzelberg Affidavit.PDF
C2-B Hitzelberg interview transcript.PDF
Cabin Lights.msg
CAD 091290477.pdf
Cad 091290532.pdf
CAD 091310302.htm
Cadet Evaluation.PDF
Cadet Grade Average.PDF
Cadet Schedule.PDF
Chris McKinney SIU interview.VOB
Chronicle img-710112608-0001.pdf
Cocaine Half Life.pdf

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Commendation Hitzelberg.PDF
Commendation Siddiqui.PDF
Commendations Quintana.PDF
Copy of 1301989.jpg
Crime Scene Report Aquirre.pdf
Crime Scene Report Aquirre1.pdf
Crime Scene Report Ceballos.pdf
Crime Scene Report Ceballos1.pdf
Crime Scene Report Farrell1.pdf
Crime Scene Report Farrell2.pdf
Crime Scene Report Gibbens.pdf
Crime Scene Report Hernandez.pdf
Crime Scene Report Hernandez1.pdf
Crime Scene Report Hernandez2.pdf
Crime Scene Report Hernandez3.pdf
Crime Scene Report Vasquez.pdf
Crime Scene Report Vasquez1.pdf
Crime Scene Report Welch.pdf
Crumrine DND.pdf
Cumins cad msgs (1).PDF
Cumins memo.PDF
D. Robinson Mug.PDF
D2-A Siddiqui Affidavit.pdf
D2-BSiddiqui interview transcript.PDF
December 2008.PDF
Defect D.pdf
Defect E 3.bmp
Defect E.pdf
Defect F.pdf
Defects A B C.pdf
Desmond Williams transcript.pdf
Destiny Robinson Dia.pdf
Detective Shane Lee Interview.WMA
Detective Westbrook IAD Case Notes.PDF

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Detective Westbrook IAD Case Notes.PDF
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DND Siddiqui.WMA
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DOC013.PDF
DOC014.PDF
DOC015.PDF
DOC016.PDF
DOJ letter.PDF
Driving Evaluation.PDF
Drug Half Life.msg

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E1 SGT Zumwalt trans.pdf
E11-A PPO Holmstrom Transcript.pdf
E12-A PPO Jensen Transcript.doc.pdf
E13-A Officer Narciso Memo.PDF
E14-APPO Ortiz Transcript.pdf
E15-A Pete Bonilla aff.PDF
E15-B Pete Bonilla Statement.PDF
E201.pdf
E201a Binder.pdf
E201a.pdf
E2-A Ofc. Guice Interview Transcript .PDF
E5-A Figueroa Transcript.pdf
Eells Complaint.PDF
E-Mail Internal Affairs Request on officers work assignments- 2009-0605 Officer Involved Shooting.htm
E-Mail on Quintana Case.txt

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Emailing Persephony Felder Summary doc.msg
Emailing Questions witness officer doc.msg
Eric Miesse Statement.PDF
Eric Miesse Statement.WMA
Executive Briefing - High Risk and Tactical training.msg
F2-A Michael Franklin Affidavit.PDF
F3- A Sir Lawrence Smith.PDF
F4-A1 Dorie Houston Aff.PDF
F4-A2 Dorie Houston interview transcript.PDF
F4-B1 Persephony Felder Affidavit.pdf
F4-B2 Persephony Felder Interview Transcript.pdf
F4-C1 Precious Felder Affidavit.PDF
F4-C2 Precious Felder interview transcript.pdf
F4-D1 Destiny Robinson Affidavit.PDF
F4-D2 D. Robinson interview transcript.PDF
F4-E1Johnnie Williams Aff.PDF
F4-E2 Johnnie Williams SIU transcribed interview.PDF
F4-E3 Williams interview transcript.pDF
F4-F1 Kim Luckey Interview Transcript.pdf
F4-G1 McKinney Aff.pdf
F4-G2 Chris McKinney SIU interview trans.PDF
F4-G3 McKinney Det. Lee Interview Transcript.pdf
F4-I C. Crawford interview transcript.PDF
F4-J1 Marc Bell interview transcript.PDF
February 2009.PDF
Figueroa DND.PDF
Figueroa Interview .WMA
Figueroa Questions.PDF
Final DNA Report.pdf
finalrpt3.pdf
Finkelstein interview transcript.PDF
Firearm and Toolmark Report.pdf
Firearm and Toolmark Report1.pdf
Firearms trace.PDF

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Firearms Trace1.pdf
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Flanery Interview.WMA
Flanery questions.pdf
Forensic Analysis request.PDF
Forensic Chem Report.pdf
Franklin APD Involvement.pdf
Franklin CCH.pdf
Franklin CCH1.pdf
Franklin DL.pdf
Franklin mug history.pdf
FRANKLIN.MICHAEL-FRONT.jpg
Franklin.msg
FTO Evaluation Week One.PDF
FTO Evaluation Week Two.PDF
FTO Evaluation.PDF
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FW Independent witnesses to Quintana shooting .msg
FW .msg
FW Assistance in 09-0605.msg
FW Association Chart.msg
FW Audio Analysis.msg
FW Caselaw Updates Lesson Plan doc.msg
FW CRP Presentation .msg
FW Emailing IncidentReport htm.msg
FW GPS information (10).msg
FW GPS information (13).msg
FW GPS information (14).msg
FW GPS information (4).msg
FW GPS information (5).msg
FW GPS information (9).msg
FW GPS information.msg
FW Internal Affairs - High-Risk Traffic Stops.msg
FW Internal Affairs - Verbal ID and Emergency Lights Activation (11).msg

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FW Internal Affairs - Verbal ID and Emergency Lights Activation (5).msg
FW Internal Affairs - Verbal ID and Emergency Lights Activation.msg
FW Internal Affairs Case 09-0605 - Officer Involved Shooting.msg
FW Internal Affairs Request on - 2009-0605 Officer Involved Shooting.msg
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FW MVR Training Material.msg
FW MVR Training Material.msg
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FW Quintana (2).msg
FW Quintana (4).msg
FW Quintana (3).msg
FW Quintana (8).msg
FW Quintana (9).msg
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FW Quintana.msg
FW Quintano Memo.msg
FW Quintna Direct Orders.msg
FW Quintna Direct Orders.msg
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FW Steroid Test.msg
FW Tabs.msg
FW Tentative review interview schedule.msg
FW Training Based Questions doc.msg
FW Training Records.msg
FW Transcription of BEK TEK Enhanced Audio.msg
FW UPDATE - Officer-involved shooting and Riot.msg
FW UPDATE - Officer-involved shooting and Riot.msg
FW Video's - 09-0605.msg
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Fwd Quintana Shooting.msg
G2-A Transcript Radio Traffic 091310302 full.pdf

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Garrett DND.doc
Garrett Statement.PDF
Garrett.WMA
Gaslin memo.pdf
General Orders B204a 02 C.msg
Godeaux DND.pdf
GPS information.msg
GPS.zip
Graham DND.PDF
Graham interview Part1.WMA
Graham part 2.WMA
Grahamquestion.pdf
Guice DND.PDF
Guice Interview.WMA
Guice questions.pdf
H-1 09-1310275 CAD DWLS.PDF
H-2 09-1310275 Versadex DWLS.pdf
H-3 Search Warrant.PDF
H-4 Southside 72 hour hold request.PDF
H-5 Video Logs.PDF
Half Life Marijuana.doc
Half Life Xanax.doc
Handgun Qualification Course.PDF
Harkin-Investigator's Notes.doc
Harrison Statement.PDF
Henderson Memo Complete.pdf
Hernandez interview questions.PDF
High Risk Stop from Patrol SOPs.doc
HIGH RISK TRAFFIC STOPS(REV305).doc
High Risk TS.Dusty Revised.102708.ppt
HITZELBERG 5-12-09.pdf
HITZELBERG APPROVED WEAPONS 5-14-09.doc
hitzelberg breeze history.JPG
Hitzelberg DND.PDF

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Hitzelberg Fluid Consent.PDF
Hitzelberg IA History.PDF
Hitzelberg interview questions.PDF
Hitzelberg Interview.WMA
HITZELBERG J QUAL HISTORY 5-14-09.xls
Hitzelberg MVR mic Short .WMA
Hitzelberg RtoR.pdf
Hitzelberg Signed TCLEOSE Roster Basic Defensive Tactics.PDF
Hitzelberg Training Records.PDF
Hitzelberg in car Transcript Full.pdf
Hitzelberg in car Transcript multi officer.pdf
Hitzelberg.mpg
Holmstrom ADORS.pdf
Holmstrom.WMA
Hr Records.msg
IAD # 09-0605.msg
IAD case # 09-0605 - Radio and 911 call.msg
IAD case # 09-0605 - Video tapes.msg
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Info Request2 .msg
Info Request3 .msg
Internal Affairs - High-Risk Traffic Stops.htm
Internal Affairs - Verbal ID and Emergency Lights Activation.htm
Internal Affairs Case 09-0605 - Officer Involved Shooting.msg
Internal Affairs Request on - 2009-0605 Officer Involved Shooting.msg
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Interview w Garrett.msg
Interview.msg
Interviews.msg
Introduction doc.msg
J. Williams APD history.pdf

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J. Williams mug.pdf
Jail Cover.msg
Jail Mail.pdf
James Garee Trans.pdf
January 2009.PDF
Jason Mutchler Statement.PDF
Jensen ADORS.pdf
Jensen.WMA
Joe Stinson Interview.WMA
Jones DND .PDF
Jones SWAT.WMA
Just in case your reading.msg
KLBJ AM Interview.msg
Koether interview questions.pdf
Koether interview transcript.pdf
LABSYS108167-Key switch safety OFF position.JPG
LABSYS108168-Left side safety Lever OFF position.JPG
LABSYS108169-Left side safety Lever ON position.JPG
LABSYS108170-Left side Slide details.JPG
LABSYS108171-Live 45 auto Cartridge RNL with index marks.JPG
LABSYS108172-Magazine Base Plate close up.JPG
LABSYS108173-Muzzle close up.JPG
LABSYS108174-Packaging and Chain of Custody.JPG
LABSYS108175-Packaging details.JPG
LABSYS108176-Right side details.JPG
LABSYS108177-Serial Number NAO 61553.JPG
LABSYS108178-Taurus Pistol Left side view.JPG
LABSYS108179-Taurus Pistol Right side view.JPG
LABSYS108180-Winchester 45 auto Headstamp.JPG
LABSYS108230-Lab 18 Tent 13 Taurus Pistol location and position.JPG
LABSYS108240-Lab 18 Tent 13 Taurus Pistol position wide view.JPG
LABSYS108241-Lab 18 Tent 13 Taurus Pistol safety position.JPG
LABSYS108242-Lab 18 Tent 13 Taurus Pistol empty chamber.JPG
LABSYS108741-Officer Quintana's two Secondary Magazines unloaded configuration.JPG

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LABSYS108744-Officer Quintana's Primary Firearm and two Secondary Magazines view II.JPG
LABSYS108745-Officer Quintana's Primary Firearm and two Secondary Magazines.JPG
LABSYS108749-Officer Quintana's Primary Firearm with Primary Magazine removed.JPG
LABSYS108751-Officer Quintana's Primary Firearm unloaded configuration.JPG
LABSYS108754-Officer Quintana's Primary Firearm Serial Number
LABSYS108755-Item 50 Glock Pistol Round from Chamber (Item #53) and Chain of Custody.JPG
LABSYS108756-Item 51 Primary Magazine with ammo & Item 52 Secondary Magazines with ammo Packaging.JPG
LABSYS108757-Item 50 field stripped view laser recoil spring and guide.JPG
LABSYS108758-Item 50 left side laser switch view.JPG
LABSYS108759-Item 50 Muzzle view.JPG
LABSYS108760-Item 50 right side laser switch view.JPG
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LABSYS108762-Item 50 view laser recoil spring and guide in slide.JPG
LABSYS108765-Items 1 2 3 4 5 Speer 40sw Headstamps.JPG
LABSYS108766-Items 1 2 3 4 5 Chain of Custody.JPG
LABSYS108767-Items 1 2 3 4 5 inner Packaging and Contents.JPG
LABSYS108768-Items 1 2 3 4 5 Packaging.JPG
LABSYS108769-Items 9 39 41 63 64 inner Packaging.JPG
LABSYS108770-Items 9 39 41 63 64 Chain of Custody.JPG
LABSYS108771-Items 9 39 41 63 64 Contents view reverse sides.JPG
LABSYS108772-Items 9 39 41 63 64 Contents view.JPG
LABSYS109008-Item 1 vs Item 50 TF FPdrag 30x.JPG
LABSYS109009-Item 2 vs Item 50 TF class side by side 6x.JPG
LABSYS109010-Item 2 vs Item 50 TF ejector impress 60x.JPG
LABSYS109011-Item 3 vs Item 50 TF BFM 30x.JPG
LABSYS109012-Item 4 vs Item 50 TF ApShearing 15x.JPG
LABSYS109013-Item 5 vs Item 50 TF ApShearing 30x.JPG
LABSYS109363-Item 9 Projectile from parking lot 40x Ogive.JPG
LABSYS109364-Item 9 Projectile from parking lot 6x fibers.JPG
LABSYS109365-Item 9 Projectile from parking lot 6x Ogive.JPG
LABSYS109366-Item 9 Projectile from parking lot 6x.JPG
LABSYS109367-Item 9 Projectile from parking lot 10x fibers.JPG
LABSYS109368-Item 9 Projectile from parking lot 15x fibers.JPG
LABSYS109369-Item 9 Projectile from parking lot 20x fibers II.JPG

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LABSYS109370-Item 9 Projectile from parking lot 20x fibers.JPG
LABSYS109371-Item 9 Projectile from parking lot 30x Ogive.JPG
LABSYS109372-Item 39 Projectile upper mid back during autopsy 30x red fibers.JPG
LABSYS109373-Item 39 Projectile upper mid back during autopsy 6x red fibers.JPG
LABSYS109374-Item 39 Projectile upper mid back during autopsy 6x side view.JPG
LABSYS109375-Item 39 Projectile upper mid back during autopsy 30x red fibers Ogive.JPG
LABSYS109376-Item 41 Projectile from right side of scalp during autopsy 4x side view.JPG
LABSYS109377-Item 41 Projectile from right side of scalp during autopsy 4x base side view.JPG
LABSYS109378-Item 41 Projectile from right side of scalp during autopsy 4x base view.JPG
LABSYS109379-Item 41 Projectile from right side of scalp during autopsy 4x side view II.JPG
LABSYS109436-Hitzeberg HK USP 45 loaded with two secondary magazines.JPG
LABSYS109437-Hitzeberg HK secondary magazines and ammo.JPG
LABSYS109438-Hitzeberg HK USP 45 left side view.JPG
LABSYS109439-Hitzeberg HK USP 45 Serial Number 25-036100.JPG
LABSYS109440-Hitzeberg HK USP 45 right side view.JPG
LABSYS109441-Hitzeberg HK USP 45 unloaded one plus twelve.JPG
LABSYS109512-Siddiui GLOCK secondary magazines and ammo.JPG
LABSYS109513-Siddiui GLOCK left side view.JPG
LABSYS109514-Siddiui GLOCK model 35 loaded with two secondary magazines.JPG
LABSYS109515-Siddiui GLOCK model 35 unloaded one plus fourteen.JPG
LABSYS109516-Siddiui GLOCK right side view SERIAL Numbers KNC177.JPG
LABSYS110797-Item 41 vs Item 50 TF class 6x.JPG
LABSYS110798-Item 63 vs Item 50 TF 30x.JPG
LABSYS110799-Item 64 vs Item 50 TF class 10x.JPG
LABSYS110800-Item 39 vs Item 50 TF class 10x.JPG
LABSYS110801-Item 39 vs Lab Speer GD 165gr base view 6x.JPG
LABSYS110802-Item 39 vs Lab Speer GD 165gr side view 6x.JPG
LABSYS110803-Item 41 vs Item 50 TF 20x.JPG
LABSYS110902-Item 9 vs Item 50 TF at 20x.JPG
LABSYS110903-Item 9 vs Item 50 TF at 40x.JPG
LABSYS111430-2009-1310302 M.E. report.PDF
LABSYS111431-2009-1310302 Brackenridge Report pages.PDF
LABSYS111432-vehicle positions at the scene with front passenger door open.JPG
LABSYS111433-at the scene viewing easterly.JPG

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LABSYS111434-Chevy LGR-909 rear view in parking space.JPG
LABSYS111435-close up without scale strike on tint film from exterior side.JPG
LABSYS111436-front right tire position of Mercedes at the scene.JPG
LABSYS111437-left rear Hatch window Defect A at the scene.JPG
LABSYS111438-Mercedes at the scene with three defects visible.JPG
LABSYS111439-Mercedes NJX-375 rear view in parking space.JPG
LABSYS111440-Police vehicle positions.JPG
LABSYS111441-right rear Hatch window Defect B at the scene.JPG
LABSYS111442-right rear side window Defect C at the scene.JPG
LABSYS111443-vehicle positions at the scene front side view.JPG
LABSYS111444-vehicle positions at the scene rear side view.JPG
Latent Print Report.pdf
LAW 210 - FORCE OPTIONS - LEGAL ISSUES OFFICE 2003.ppt
LAW 210 - Force Options - Legal Issues.pdf
LeCere Foree interview transcript.PDF
Look at this General Order.msg
LP Cover Sheet.doc
LSU Courses 2000-Current.xls
M Franklin TDC card.PDF
M. Franklin dia.pdf
M. Franklin warrant info.pdf
March 2009.PDF
Matt Jones Interview .WMA
May 2009.PDF
Mayo Interview Transcript .pdf
McCurley SWAT.WMA
McKinney Mug History.pdf
ME Investigator's pdf.pdf
ME report.pdf
Measurement Data Log.pdf
Meeting W Acevedo.msg
Memo Request to Brian Narciso doc.msg
Memo Request to Narciso with questions.PDF
Mike Graham(2nd Part) Interview.WMA

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Mobile Video Lesson Plan.doc
Mobile Video Training in 2000.PDF
Monday's Meeting.msg
Monday's Meeting.msg
Msg left with Bobby Taylor (1).WMA
Msg left with Bobby Taylor (2).WMA
MVR 100th Cadet Class.ppt
MVR IA Memo Chris Hallas.doc
N. Hernandez DND.pdf
N. Hernandez transcribed IA Statement.pdf
N. Sanders Robbery Warrant.PDF
N2-A LAW 210 - Force Options - Legal Issues.doc
N2-B Officer Performance in Lethal Force Encounters.ppt
N2-C LAW 211 - CRITICAL INCIDENT - UOF.ppt
N3-A Basic Defensive Tactics.PDF
N3-B Basic Police Marksmanship.PDF
N3-E 2004 PERF Report.PDF
Nathaniel Sanders.doc
Nathaniel Sanders.doc
NOA Quintana.WMA
Novel Ideal.msg
Ofc Hitzelberg.doc
Ofc M. Jones questions.pdf
Ofc Quintana.doc
Ofc Siddiqui.doc
Ofc. Barrick interview transcript.PDF
Ofc. Flanery Interview Transcript.PDF
Ofc. Graham interview transcript.PDF
Ofc. Hitzelberg NOA.PDF
Ofc. M. Jones Interview Transcript.PDF
Off Duty Contract Detective Jim Scott.PDF
Officer Involved Shooting (2).doc
Officer Narciso Example Call.PDF
Officer Narciso Provided Document on his call history.PDF

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Officer Q's two week time sheet.PDF
Officers' DND.pdf
Olsen Showup briefing.doc
Orten interview questions.PDF
Ortiz ADORS.pdf
Ortiz.WMA
Our needs.msg
Part 1 Siddiqui interview.WMA
Part 2 Siddiqui interview.WMA
PasleyPowerpoint.PDF
Patrol SOP year 2000 (41.1.2).doc
Patrol SOP year 2000 (41.1.2).doc
Peer Support Overview - 2008.ppt
Persephony Felder map.PDF
Persephony Felder.jpg
Personnel Crime Log.PDF
Pete Bonilla.WMA
Pharmacology Drug Half Life.doc
Police ID Excerpt.pdf
Police Responses to Officer.doc
PPO Jensen Transcript.doc
Precious Felder Aerial.PDF
Precious Felder APD History.pdf
Precious Felder SIU Docs.pdf
Precious Monee Felder.jpg
Probation Documentation.PDF
Pursely DND.pdf
Q's interview questions.PDF
Questions Elaine Garrett.doc
Questions for Hitzelberg and Quintana doc.msg
Questions FTO.doc
Questions FTO.doc
Questions FTO.doc
Quintan still 2.jpg

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Quintana .msg
Quintana Academy Training Records.PDF
Quintana and Hitzelberg Old TCLEOSE Records.PDF
QUINTANA APPROVED WEAPONS 5-14-09.doc
Quintana Cad Msgs.pdf
Quintana complain memo .msg
Quintana Dia.PDF
Quintana DL.pdf
Quintana done.msg
quintana drug test.pdf
Quintana emergency notification.pdf
Quintana eval 2006.pdf
Quintana Eval 2007.pdf
Quintana Eval 2008.pdf
Quintana IA History.pdf
Quintana IAD history Summary.PDF
Quintana in-car.WMA
Quintana interview transcript.PDF
QUINTANA L #4426 COMM.doc
QUINTANA L 5-12-09.pdf
QUINTANA L QUAL HISTORY 5-14-09.xls
Quintana mdt msg.PDF
Quintana mdt msg.pdf
Quintana NOA.PDF
Quintana NOA.pdf
Quintana NOA1.PDF
Quintana R to Resistance history.PDF
Quintana response to resistance report.PDF
Quintana Restrict Duty Psych Eval Dir Orders.pdf
Quintana Robbery Work.pdf
QUINTANA SHOOTING QUESTIONS doc.msg
QUINTANA SHOOTING QUESTIONS doc.msg
Quintana Shooting.msg
Quintana Signed TCLEOSE Roster Basic Ground Fighting.PDF

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Quintana Signed TCLEOSE Roster Ground Fighting.PDF
Quintana Signed TCLEOSE Roster Tactical Patrol Officer.PDF
Quintana still 1 .jpg
Quintana still 3.jpg
Quintana still 4.jpg
Quintana TCLEOSE Rosters Justifiable Homicide Use of Force Law.PDF
Quintana TCLEOSE Signed Roster Class.PDF
Quintana TCLEOSE Signed Roster SWAT School.PDF
Quintana use of force.pdf
Quintana Video Audit.pdf
Quintana.msg
Quintana.msg
R-1 Quintana.pdf
R-2 Hitzelberg.PDF
Radio traffic - E201.msg
Radio Traffic 091290025.wav"PCM""8.00 kHz""1 (Mono)""16 bit""128kbps""0:54:37'
radio traffic for 09-1310302.msg
radio traffic for 09-1310302.msg
RE (10).msg
RE (1).msg
Re .msg
Re Independent witnesses to Quintana shooting.msg
RE .msg
RE .msg
RE 09-0253.msg
RE 09-1310302 (6).msg
RE 09-1310302.msg
RE a thought.msg
RE Aerial photo from DPS.msg
RE Association Chart.msg
RE Audio evidence.msg
RE BOLO request.msg
RE BOLO request.msg
RE Bonilla 06 -Administrative Do Not Discuss Order_PD0089 doc.msg

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RE Chris Mckinney.msg
RE Deputy Koether.msg
RE Document related to support officer.msg
RE ER doctor - 09-0605 (6).msg
RE ER doctor - 09-0605.msg
RE Format.msg
RE GPS information (12).msg
RE GPS information.msg
RE GPS vs CAD time.msg
Re Hernandez DND.msg
RE Hr Records.msg
RE IAD # 09-0605 (10).msg
RE IAD # 09-0605.msg
RE IAD case # 09-0605 - Radio and 911 call.msg
RE I'll just send what I have on the intro .msg
Re Interview Officer Noriega.msg
Re Interviews.msg
Re Jail calls (3).msg
Re Jail calls.msg
RE McKinney interview.msg
RE Mckinney.msg
RE MVR Usage in NE Command.msg
RE New (7).msg
RE New (8).msg
RE New .msg
RE Noriega 06 -Administrative Do Not Discuss Order_PD0089 doc (7).msg
RE Noriega 06 -Administrative Do Not Discuss Order_PD0089 doc.msg
RE not sure if you got my run-down.msg
Re Note.msg
RE Order Inquiry (2009-0605).msg
RE Quintana (1).msg
RE Quintana .msg
RE Quintana Shooting (2).msg
RE Quintana Shooting .msg

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RE Quintana Shooting.msg
RE Quintana videos.msg
Re Quintana.msg
RE Robbery Bolos.msg
RE status on other in-car .msg
RE thought.msg
RE Training Records.msg
RE Training.msg
RE Transcription.msg
RE VIDEO REQUEST Officer Erin Woodward #5868 C406 08VT07778.msg
read the highlighted areas .msg
Request from Internal Affairs 09-0605.msg
Response to Resistance Reports 1 doc.msg
Rima interview transcript .pdf
Robinson APD history.pdf
Roger Floyd Interview.WMA
Roger Floyd Statement.PDF
S. Smith Mug history.PDF
Sanders APD Involvement.pdf
Sanders CCH.pdf
Sanders DL.pdf
Sanders Front Page APD History .pdf
SANDERS.NATHANIEL-FRONT.jpg
Scheduled Interviews.msg
scribble.PDF
Sean Coggin Trans.PDF
SGT Hernandez.WMA
SGT Mutchler Interview.WMA
SGT Orten DND.pdf
SGT Orten Transcription.pdf
SGT Orten.WMA
SGT Zumwalt.WMA
Shane Lee Statement.PDF
Sheehan interview transcript.pdf

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shortenhanced hitzelberg.WMA
Shotgun Robberies pdf - Adobe Reader.msg
Shotgun Robberies.pdf
Shreadsheet.pdf
Siddiqui DND.pdf
Siddique in-car audio.WMA
SIDDIQUI APPROVED WEAPONS 5-14-09.doc
siddiqui breeze history.JPG
Siddiqui Commendations.PDF
Siddiqui DNA request.pdf
Siddiqui DND.PDF
Siddiqui Fluid Consent.PDF
Siddiqui IA history.pdf
Siddiqui IA History.PDF
Siddiqui in-car mic transcript.PDF
Siddiqui interview questions Dunn doc.msg
Siddiqui interview questions.pdf
SIDDIQUI M TCLEOSE.pdf
Siddiqui NOA.PDF
SIDDIQUI QUAL HISTORY 5-14-09.xls
Siddiqui review interview.msg
Siddiqui RtoR.pdf
Siddiqui.msg
Sir Smith attorney's property request.pdf
SIU board 1iu.jpg
SIU board 2.jpg
SIU board 3.jpg
SIU board.jpg
SIU Receipt1.PDF
SIU Receipt2.pdf
SIU Receipt4.pdf
SIU Receipt5.pdf
SIU Receipt6.pdf
SIU received docs.PDF

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SIU Received.pdf
SIU request for leads flyer.PDF
SIU Summary.PDF
SIU veh in crime scene note.PDF
Smith APD Involvement.pdf
Smith CCH.pdf
Smith DL.pdf
Smith ID.pdf
SMITH.SIR-FRONT.jpg
Spreadsheet2.pdf
Stephens memo.PDF
Steve Jones SWAT.PDF
Steven McCurley SWAT.PDF
Stop ID Decker Loyola Taxi Robs pdf - Adobe Reader.msg
Stop ID Decker Loyola Taxi Robs.pdf
Subjects names provided by Robbery.PDF
Summary 09-0605.PDF
Summary doc.msg
Supplement Notes.pdf
Suspicious Activity.msg
SWAT Questions Quintana shooting doc.msg
Table of Contents.PDF
TAC 107 & 207 - Vehicle Extraction.doc
TCLEOSE Hitzelberg.PDF
TCLEOSE Quintana.PDF
TCLEOSE Siddiqui.PDF
TCSO Deputy Koether.WMA
Timelines 051509 Spreadsheet.PDF
Tint Report.pdf
Todd Harrison Interview.WMA
Tox Report.pdf
TPO lesson plan 5_18.doc
TPO Roster.xls
TPO Roster.xls

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Tracy Robinson.jpg
Training Article Found Harkin.PDF
Training Bulletin-Mobile Video Recorders.doc
Training Bulletin-Video Procedures.doc
Training Instructors Summary.doc
Training Records.msg
Training response.msg
Training Summary Quintana 09-0605.doc
Trajectory Report.pdf
Transcrip for Dorie Houston.msg
Transcript 091290644.doc
Transcription of BEK TEK Enhanced Audio.msg
Unarmed Subjects Excerpt.pdf
Untitled (1).msg
Untitled (11).msg
Untitled (15).msg
Untitled (2).msg
Untitled (3).msg
Untitled (4).msg
Untitled (5).msg
Untitled (8).msg
Untitled (9).msg
Untitled.msg
Update on Quintana.msg
Update.msg
Veh positions.PDF
Vehicle Extraction.ppt
Versadex riot 091310703.pdf
Video's - 09-0605.msg
Walk thru Log.pdf
White Van BOLO.PDF
wording being used in the complaint .msg
WS310015.WMA
WS310016.WMA

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WS310017.WMA
WS310018.WMA
WS310019.WMA
WS310020.WMA
WS310021.WMA
You should have received 11 transcriptions Please call me if you have not received all of them .msg
Zumwalt DND .PDF
Zumwalt interview questions.pdf
Zumwalt MVR Audio.PDF