

INTRADPARTMENTAL CORRESPONDENCE

November 28, 2018  
3.2

**TO:** The Honorable Board of Police Commissioners

**FROM:** Chief of Police

**SUBJECT:** OFFICER INVOLVED SHOOTING FID NO. 009-18

Honorable Members:

The following is my review, analysis, and findings for Officer Involved Shooting (OIS), Force Investigation Division (FID) No. 009-18. A Use of Force Review Board (UOFRB) was convened on this matter on November 19, 2018. I have reviewed and adopted the recommendations from the UOFRB for this incident. I hereby submit my findings in accordance with Police Commission policy.

**SUMMARY**

On February 2, 2018, at approximately 1526 hours, Officers [REDACTED] Serial No. [REDACTED] and [REDACTED] Serial No. [REDACTED] Gang Enforcement Detail (GED), Harbor Area, were in full uniform, driving a marked black and white hybrid police vehicle, in the area of West Anaheim Street and Ronan Avenue.

According to Officer [REDACTED] was driving south on Ronan Avenue approaching Anaheim Street when [REDACTED] observed a white van, driven by the suspect, later identified as P. Gudino, east on Anaheim Street *crossing* Ronan Avenue. The vehicle was *speeding at approximately 40 to 45* miles per hour (MPH) in a 35 MPH zone in violation of California Vehicle Code 22350(a) – Speeding. Officer [REDACTED] advised his partner of the violation and decided to conduct a traffic stop on the vehicle (**Additional – Body Worn Video (BWV)**).

According to Officer [REDACTED] while waiting for oncoming traffic to *clear*, he observed Gudino turn north on Bay View Avenue *at a high rate of speed*, while *cutting off westbound traffic* on Anaheim Street, in violation of California Vehicle Code 21801(a) – Unsafe turn. Officer [REDACTED] then drove east on Anaheim Street and north on Bay View Avenue, where [REDACTED] observed Gudino, *two blocks north*, driving *over 50 MPH* in a *25 MPH residential* area.

According to Officer [REDACTED] Gudino then *ran the stop sign* while turning right onto West Opp Street in violation of California Vehicle Code 22450(a) – Failing to stop for a clearly posted stop sign. As Officer [REDACTED] negotiated a right turn onto West Opp Street, [REDACTED] observed Gudino

[REDACTED]

driving on the *wrong side of the road* into *oncoming traffic* in violation of California Vehicle Code 21650(a) – Driving on the wrong side of the road. Officer [REDACTED] activated [REDACTED] emergency lights and siren. Officer [REDACTED] advised Officer [REDACTED] to broadcast that they were in pursuit of a *reckless driver*.

According to Officer [REDACTED] when they attempted to get behind Gudino on Bay View Avenue, Gudino *took off at a high rate of speed* and turned right onto West Opp Street. Officer [REDACTED] was unable to identify the license plate of the van and they *agreed* that they were in *pursuit* of Gudino. Officer [REDACTED] *grabbed the mic and keyed it once*, when Gudino collided with another vehicle and came to an abrupt stop at West Opp Street and Fries Avenue. Officer [REDACTED] then advised Communications Division (CD) that they were *Code Six* and requested a *backup*.

According to Officer [REDACTED] Gudino collided with a vehicle traveling west on West Opp Street, before colliding head-on with a second vehicle at the intersection of West Opp Street and Fries Avenue. Officer [REDACTED] stopped [REDACTED] vehicle behind Gudino and *simultaneously* heard Officer [REDACTED] request a *backup (Debriefing Point No. 1)*.

According to Officer [REDACTED] because Gudino had *no regard for public safety*, [REDACTED] conducted a *high risk stop*. Officer [REDACTED] exited the vehicle, assumed a position of cover behind [REDACTED] driver's side ballistic door panel, and drew his service pistol. Officer [REDACTED] could not see Gudino's hands, so he *ordered* Gudino, "*Let me see your hands*," as [REDACTED] *moved* away from the driver's door in an attempt to obtain a better view of Gudino. Officer [REDACTED] then moved back to the door panel for cover (**Drawing/Exhibiting, Debriefing Point No. 2 and Additional – Profanity**).

According to Officer [REDACTED] due to Gudino's *reckless driving* and the vehicle *possibly being stolen*, they conducted a *felony stop*. Officer [REDACTED] exited the vehicle, assumed a position of cover behind [REDACTED] passenger side ballistic door panel, and drew [REDACTED] service pistol (**Drawing/Exhibiting**).

According to Officer [REDACTED] Gudino was *moving back and forth inside the vehicle*. Gudino then *reached* out of the driver's side window with his *right arm* and pointed a *black semi-automatic handgun* in [REDACTED] direction. Officer [REDACTED] recalled feeling *scared* because [REDACTED] believed [REDACTED] and Officer [REDACTED] lives were in *jeopardy*. Officer [REDACTED] yelled, "*Gun*," to alert [REDACTED] partner as Gudino pulled the handgun back inside the vehicle.

According to Officer [REDACTED] Gudino pointed the handgun out of the window at [REDACTED] a second time and [REDACTED] *observed two muzzle flashes*. Believing that [REDACTED] was going to be *killed*, Officer [REDACTED] *returned fire*, and believed [REDACTED] fired *three to six* rounds at Gudino from [REDACTED] service pistol to stop the lethal threat as [REDACTED] *redeployed to the back* of the police vehicle for cover (**Lethal Use of Force**).

**Note:** A review of Officer [REDACTED] and [REDACTED] Digital In-Car Video System (DICVS) and BWV captured Officer [REDACTED] fire a total of nine rounds from his service pistol after Gudino pointed the handgun out of the window the first time. While still seated inside the

vehicle, Gudino then pointed the handgun in the direction of Officer [REDACTED] two more times.

The investigation revealed that when Gudino pointed the handgun at [REDACTED] a third time, Gudino fired a round from [REDACTED] handgun.

According to Officer [REDACTED] while near the rear of the police vehicle [REDACTED] assessed and observed Gudino had *tucked his hand* back inside the driver side window. *A second or two after, Gudino jumped out of the driver's window while he turned, looked, and pointed the gun, underneath his stomach in Officer [REDACTED] direction. Believing [REDACTED] life was in danger, Officer [REDACTED] believed [REDACTED] fired six rounds from [REDACTED] service pistol at Gudino to stop the lethal threat as he re-deployed to the passenger side of the police vehicle (Lethal Use of Force).*

According to Officer [REDACTED] observed Gudino *fall to the ground* and then begin to *run on his hands and feet with the gun in his hand*. Officer [REDACTED] told Gudino to, *"Get down on the ground and drop the gun"* multiple times, but Gudino ignored his commands. Gudino *attempted to regain his footing and turn* towards the officers while armed with the handgun. In fear [REDACTED] life, Officer [REDACTED] positioned [REDACTED] behind the passenger side door of the police vehicle and believed [REDACTED] fired *three to five rounds from [REDACTED] service pistol at Gudino to stop the lethal threat (Lethal Use of Force)*.

**Note:** A review of Officer [REDACTED] and [REDACTED] Digital In-Car Video System (DICVS) and BWV revealed that Officer [REDACTED] discharged a total of eighteen rounds from [REDACTED] service pistol in two sequences of fire during the incident. Officer [REDACTED] fired nine rounds during the first sequence as he re-deployed to the rear of the police vehicle. Officer [REDACTED] then fired an additional nine rounds during the second sequence as [REDACTED] re-deployed from the rear of the police vehicle towards the front passenger door of the police vehicle.

Additionally, the investigation revealed that a citizen, later identified as I. Hernandez, was struck in his right upper thigh by a round fired by one of the officers. Hernandez was entering the front door of his second story apartment located on the northeast corner of Opp Street and Fries Avenue when he was struck by the round (**Additional Tactical Debrief Topics – Target Acquisition**).

According to Officer [REDACTED] heard *numerous shots* and believed [REDACTED] partner was *exchanging gunfire* with Gudino, but *initially* could not see what [REDACTED] partner saw. Officer [REDACTED] then observed Gudino *exit the vehicle holding a gun in his hand*. Believing Gudino was *going to turn and shoot [REDACTED] or [REDACTED] partner*, Officer [REDACTED] believed [REDACTED] fired *two rounds from [REDACTED] service pistol at Gudino to stop the lethal threat (Lethal Use of Force and Debriefing Point No. 2)*.

**Note:** According to the officers, they did not observe any pedestrians in their background at the time of the OIS.

The investigation revealed that Officer [REDACTED] discharged five rounds from [REDACTED] service pistol.

According to Officer [REDACTED] assessed and observed Gudino laying on his back with the handgun on the ground on his left side. Officer [REDACTED] then broadcasted a help call, shots fired to CD, and gave Gudino commands to, “Don’t move and keep your hands up” (Additional Tactical Debrief Topics – In Battery Speed Reload and Additional – Profanity).

According to Officer [REDACTED] observed Gudino fall on his back and drop the firearm on his left side. Officer [REDACTED] then continued to give Gudino orders while [REDACTED] completed an out of battery speed reload with [REDACTED] service pistol. Officer [REDACTED] requested a Rescue Ambulance (RA) for Gudino while waiting for additional units to arrive.

Sergeant [REDACTED], Serial No. [REDACTED] Harbor Patrol Division, responded and assumed the role of the Incident Commander (IC).

Additional personnel arrived at scene. Gudino was taken into custody without further incident (Additional Tactical Debrief Topics – Preservation of Evidence, Less-Lethal Force Options and Additional – Stepping on Limbs).

Sergeant [REDACTED] Serial No. [REDACTED] Harbor Patrol Division, responded to the incident. Manlove separated, monitored and obtained a Public Safety Statement (PSS) from Officer [REDACTED].

Sergeant [REDACTED] Serial No. [REDACTED] Harbor Patrol Division, responded to the incident. [REDACTED] separated, monitored and obtained a PSS from Officer [REDACTED].

Los Angeles Fire Department (LAFD) personnel responded to the incident. LAFD personnel transported Gudino to Harbor - University of California Los Angeles (UCLA) Medical Center where he was treated for gunshot wounds to his right upper chest, right lower back, and left shoulder.

LAFD personnel also transported Hernandez to Harbor – UCLA Medical Center where he was treated for a gunshot wound to his right upper thigh and later released

### FINDINGS

**Tactics** – Tactical Debrief, Sergeant [REDACTED] along with Officers [REDACTED] and [REDACTED]

**Drawing/Exhibiting** – In Policy, No Further Action, Officers [REDACTED] and [REDACTED]

**Lethal Use of Force** – In Policy, No Further Action, Officers [REDACTED] and [REDACTED]

## ANALYSIS

### **Detention**

While on patrol, the officers observed a vehicle driving approximately 40 to 45 MPH in a 35 MPH zone in violation of California Vehicle Code 22350(a) – Speeding. The suspect then committed several additional vehicle code violations. The officers initiated a vehicle pursuit for a Reckless Driver. At the termination of the pursuit, the suspect pointed a handgun in the officers' direction, resulting in an OIS. The officers' actions were appropriate and within Department policies and procedures.

### **Tactics**

*Department policy relative to Tactical Debriefs is: "The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance."*

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

### Tactical De-Escalation

*Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques).*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, the officers were faced with a rapidly unfolding tactical situation when the suspect collided with multiple vehicles at the termination of the pursuit. The officers attempted to verbalize with the suspect to comply in an effort to de-escalate the situation, get the suspect to surrender, and to resolve the situation peacefully without the use of force. The suspect then exhibited a handgun and pointed it at one of the officers.

Faced with an imminent threat of serious bodily injury or death, the officers utilized lethal force to stop the deadly threat.



During the review of the incident, the following Debriefing Topics were noted:

### **Debriefing Point No. 1 Tactical Vehicle Deployment**

*Officers must approach every contact with officer safety in mind. Complacency, overconfidence, poor planning or inappropriate positioning can leave officers vulnerable to attack (California Commission on Peace Officer Standards and Training, Learning Domain 21).*

Officer [REDACTED] stopped the police vehicle in close proximity to Gudino's vehicle after a vehicle pursuit.

The positioning of a police vehicle is critical in order to provide the officers a tactical advantage should the incident escalate.

In this case, during the vehicle pursuit, Gudino collided with multiple vehicles and came to an abrupt stop causing Officer [REDACTED] to have to stop [REDACTED] vehicle in close proximity to Gudino's vehicle. As a result, Officer [REDACTED] was not able to place [REDACTED] police vehicle in the optimal position, which placed [REDACTED] and [REDACTED] partner at a tactical disadvantage.

Based on the totality of the circumstances, the UOFRB determined, and I concur, that Officer [REDACTED] vehicle deployment was a substantial deviation, with justification, from approved Department tactical training. I will direct that this be a topic of discussion during the Tactical Debrief.

### **Debriefing Point No. 2 Utilization of Cover**

*Cover is defined as any object that will stop the opponent's bullets. Officers should attempt to seek cover when involved in any tactical situation and especially when there are weapons involved. Officers should be aware of what items in their surrounding areas can be used as cover and what type of cover is required to stop certain rounds (handgun, shotgun, or rifle rounds) (Los Angeles Police Department Basic Firearms Manual, January 2014).*

*Whenever possible, officers should place an object between themselves and the suspect as cover or a barrier. A barrier could be a chain link fence, wrought iron gate or any similar object that prevents the assailant from reaching the officer. If the suspect is contained and does not pose an immediate threat to officers, the public or himself/herself, time is our best tool. Time allows more opportunity to communicate with the suspect and helps to calm the situation (Training Bulletin, Volume XXXV, Issue 9, May 2003).*

Officers [REDACTED] and [REDACTED] left a position of cover when they moved from the protection of portions of their police vehicle.

The utilization of cover enables an officer to confront an armed suspect while simultaneously minimizing their exposure. As a result, the overall effectiveness of a tactical incident can be enhanced while also increasing an officer's tactical options.

In this case, upon exiting [redacted] police vehicle, Officer [redacted] moved away from [redacted] driver's door in an attempt to obtain a better view of the suspect. Officer [redacted] then quickly re-deployed back to [redacted] vehicle door and reassumed a position of cover.

Additionally, during the OIS, Officer [redacted] moved away from [redacted] vehicle's passenger door and deployed to the front passenger fender of [redacted] police vehicle. Officer [redacted] moved away from the front passenger fender momentarily, then quickly redeployed back to a position of cover at the front passenger fender of [redacted] police vehicle.

Based on the totality of the circumstances, the UOFRB determined, and I concur, the officer's actions were not a substantial deviation from approved Department tactical training. I will direct that this be a topic of discussion during the Tactical Debrief.

#### **Additional Tactical Debrief Topics**

**Target Acquisition** – The investigation revealed that one of the rounds fired by the officers during this incident struck a citizen on a second story apartment landing, rather than their intended target. The officers are reminded of the importance of target acquisition, background, sight alignment, and sight picture while firing their service pistols. I will direct that this topic be discussed during the Tactical Debrief.

**In-Battery Speed Reload** – The investigation revealed that Officer [redacted] conducted an In-Battery Speed Reload after the OIS, discarding a magazine containing 13 rounds. Officer [redacted] is reminded of the importance of retaining magazines containing significant numbers of cartridges during a tactical situation. I will direct that this be a topic of discussion during the Tactical Debrief.

**Preservation of Evidence** – The investigation revealed that as the arrest team approached Gudino to take him into custody, Officer [redacted] recovered the suspect's handgun from the ground and placed it on the hood of [redacted] police vehicle to prevent Gudino from re-arming himself. In this case, it is understandable Officer [redacted] moved the handgun because the risk of the suspect re-arming himself outweighed the benefits of leaving the evidence in place. While it was unavoidable in this case, Officer [redacted] is reminded that, whenever tactically feasible, it is preferable to leave evidence undisturbed until FID investigators can properly document and preserve the scene. I will direct that this be a topic of discussion during the Tactical Debrief.

Additionally, Sergeant [redacted] unloaded the suspect's handgun and placed it in a police vehicle trunk without donning latex gloves. Sergeant [redacted] is reminded of the importance of maintaining the integrity of evidence at the scene of a Categorical Use of Force. I will direct that this be a topic of discussion during the Tactical Debrief.

**Less-Lethal Force Options** – The investigation revealed that there were no designated less-lethal cover officers as part of the arrest team when approaching the suspect to take him into custody. I would have preferred that a less-lethal force option be deployed in the event the suspect posed a situation where the deployment of a less-lethal force option was appropriate. I will direct that this be a topic of discussion during the Tactical Debrief.

### **Command and Control**

Sergeant [REDACTED] responded and assumed the role of IC. [REDACTED] directed the officers to clear the suspect's vehicle for additional suspects and then ensured that Gudino was taken into custody. Additionally, a miscommunication occurred leading Sergeant [REDACTED] to believe the suspect shot himself and no OIS had occurred. Sergeant [REDACTED] determined an OIS had occurred shortly after and the protocols subsequent to a Categorical Use of Force were initiated.

Sergeant [REDACTED] responded to the incident. [REDACTED] separated, monitored and obtained a PSS from Officer [REDACTED].

Sergeant [REDACTED] responded to the incident. [REDACTED] separated, monitored and obtained a PSS from Officer [REDACTED].

The actions of these supervisors were consistent with Department supervisory training and met my expectations of a field supervisor during a critical incident.

### **Tactical Debrief**

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvements could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Therefore, I will direct that Sergeant [REDACTED] along with Officers [REDACTED] and [REDACTED] attend a Tactical Debrief and that the specific identified topics are discussed.

**Note:** Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.





### General Training Update (GTU)

On February 8, 2018, Officers [REDACTED] and [REDACTED] attended a GTU. All mandatory topics were covered.

### Drawing/Exhibiting

*Department policy relative to drawing and exhibiting a firearm is: "An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified" (Los Angeles Police Department Manual, Volume 1, Section 556.80).*

According to Officer [REDACTED] conducted a high risk stop because Gudino's actions indicated he had no regard for public safety. Officer [REDACTED] exited the police vehicle, assumed a position of cover behind [REDACTED] driver's side ballistic door panel, and drew [REDACTED] service pistol.

Officer [REDACTED] recalled,

*We treated it just like a high risk stop. We exhibited our firearms due to the suspect's hasty driving, his due regard for public safety, and the fact that school was just letting out - it was 3:30 in the afternoon. He had no due regard for pedestrians or anybody around.*

According to Officer [REDACTED] they conducted a felony stop due to Gudino's reckless driving and because the vehicle was possibly stolen. Officer [REDACTED] exited the vehicle, assumed a position of cover behind [REDACTED] passenger side ballistic door panel, and drew [REDACTED] service pistol.

Officer [REDACTED] recalled,

*Due to the suspect's actions and my inability to verify whether or not the vehicle was stolen, I exited the vehicle and deployed in a felony prone stance for a felony stop. Carjacking suspects are commonly armed, and his reckless driving led me to believe that he was running from us.*

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officers [REDACTED] and [REDACTED], while faced with similar circumstances, would reasonably believe that there was a substantial risk the situation may escalate to the point where deadly force may be justified.

Therefore, I find Officers [REDACTED] and [REDACTED] Drawing/Exhibiting to be In-Policy, No Further Action.

[REDACTED]

**Note:** In addition to the above listed employees, there were additional personnel that either drew or exhibited firearms during the incident. This Drawing/Exhibiting was appropriate and requires no specific findings or action in regard to these officers.

### Lethal Use of Force

*Law enforcement officers are authorized to use deadly force to:*

- *Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or,*
- *Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or,*
- *Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

**Officer** [REDACTED] – 9 mm, eighteen rounds, in two sequences of fire.

**First Sequence** – Nine rounds in an easterly direction, from an increasing distance of 28-36 feet.

According to Officer [REDACTED], Gudino pointed the handgun out of the window at [REDACTED] a second time and he observed two muzzle flashes.

Believing that he was going to be killed, Officer [REDACTED] returned fire, firing nine rounds at Gudino from [REDACTED] service pistol to stop the lethal threat as [REDACTED] redeployed to the back of the police vehicle for cover.

Officer [REDACTED] recalled,

*I'm thinking he's going to shoot me. He's going to try to kill me.*

*I first fired the second time he pointed the firearm in our -- in my direction. When he tucked it in -- when he brandished it the first time when I first observed the firearm, he pointed it in our direction for a second, I yelled out, "Gun." He tucked it back in. At that point is when I moved behind my door and then began to backpedal. At that point, simultaneously, he produced the firearm back out, pointed it in our direction, and I can see two muzzle flashes. And that's when I -- that's when I returned fire towards the suspect in the driver seat.* [REDACTED]

Second Sequence – Nine rounds, in a northeasterly direction, from a decreasing distance of 41-33 feet.

According to Officer [REDACTED], while near the rear of the police vehicle, [REDACTED] assessed and observed Gudino had tucked his hand back inside the driver side window. A second or two later, Gudino jumped out of the driver’s window while he turned, looked, and pointed the gun, underneath his stomach, in Officer [REDACTED] direction.

According to Officer [REDACTED], as [REDACTED] began to re-deploy to the passenger side of the police vehicle, he observed Gudino fall to the ground and then begin to run on his hands and feet with the gun in his hand. Officer [REDACTED] told Gudino to, “Get down on the ground and drop the gun” multiple times, but Gudino ignored his commands. Gudino then attempted to regain his footing and turn towards the officers while armed with the handgun.

In fear for [REDACTED] life, Officer [REDACTED] positioned [REDACTED] behind the passenger side door of the police vehicle as [REDACTED] fired nine rounds from [REDACTED] service pistol at Gudino to stop the lethal threat.

Officer [REDACTED] recalled,

*At that point, he tucked his hand back in the vehicle. I reassessed. Initially, I would say it was probably a second, to two seconds after that, he started jumping out of the driver door out of the driver window with the firearm in his hand pointed in my direction. And that’s when the second volley of shots that I fired at the suspect’s direction.*

*At that point the suspect came completely out of the vehicle. His full body came out of the vehicle, gun still in hand. Suspect attempted to run and gain his footing. In fear that he was going to gain footing and take a shooting stance and the fact that he was willing to shoot at officers and try to escape multiple times, I shot the suspect to stop his actions and he fell to the ground the third time [REDACTED]*

Officer [REDACTED] – 9 mm, 5 rounds in an easterly direction, from an increasing distance of 27-33 feet.

According to Officer [REDACTED] initially could not see what [REDACTED] partner saw, but [REDACTED] heard numerous shots and believed [REDACTED] partner was exchanging gunfire with Gudino. Officer [REDACTED] then observed Gudino exit the vehicle holding a gun in his hand.

Believing Gudino was going to turn and shoot [REDACTED] partner, Officer [REDACTED] fired five rounds from [REDACTED] service pistol at Gudino to stop the lethal threat.

[REDACTED]

Officer [REDACTED] recalled,

*...once I observed the suspect exit the vehicle, holding a gun in hand, I believed that the suspect was going to shoot my partner or myself, and I fired my rounds in order to stop the threat.*

*I believed that he was going to turn on us and shoot us.*

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officers [REDACTED] and [REDACTED] would reasonably believe that Gudino's actions presented an imminent threat of death or serious bodily injury and that the Use of Lethal Force would be objectively reasonable.

Therefore, I find Officers [REDACTED] and [REDACTED] Use of Lethal Force to be In Policy, No Further Action.

#### **Additional/Equipment**

**Body Worn Video** – The investigation revealed that Officers [REDACTED] and [REDACTED] did not activate their BWV as required when conducting a traffic stop or when engaged in a pursuit. Captain [REDACTED] Serial No. [REDACTED] Commanding Officer, Harbor Patrol Division, was advised and addressed this issue through divisional training and documented on a Comment Card. The commanding officers of Operations South Bureau (OSB) and Office of Operations (OO) concurred with this action. As such, I deem no further action necessary.

**Profanity** – The investigation revealed that Officers [REDACTED] and [REDACTED] utilized profanity while giving Gudino commands. Additionally, Officer [REDACTED] utilized profanity while directing an uninvolved community member to move away from the incident. This was brought to the attention of Captain [REDACTED] who addressed the issue with divisional training. The commanding officers of OSB and OO concurred with this action. As such, I deem no further action is necessary.

**Situational Awareness** – The investigation revealed that Officer [REDACTED] Serial No. [REDACTED] Harbor Patrol Division, responded to the help call and placed himself downrange from the incident. [REDACTED] then moved from [REDACTED] police vehicle to an electrical pole, exposing [REDACTED] to the suspect. This was brought to the attention of Captain [REDACTED] who addressed the issue through divisional training and documented on a Comment Card. The commanding officers of OSB and OO concurred with this action. As such, I deem no further action necessary.

**Stepping on Limbs** – The investigation revealed that while taking Gudino into custody, Officer [REDACTED] placed [REDACTED] foot on Gudino's right hand to prevent Gudino from re-arming himself with the handgun. Officer [REDACTED] actions were not a use of force as Gudino was not resisting at the time. This was brought to the attention of Captain [REDACTED] who addressed the issue with

[REDACTED]

divisional training. The commanding officers of OSB and OO concurred with this action. As such, I deem no further action is necessary.

**Audio/Video Recordings**

**DICVS/BWV** – Harbor Division vehicles were equipped with DICVS at the time of the incident. Officer [REDACTED] and [REDACTED] DICVS was activated during the incident and captured the OIS.

Harbor Division personnel were equipped with BWV at the time of the incident. Officers [REDACTED] and [REDACTED] BWV were activated after the OIS. However, due to the two-minute buffering, Officers [REDACTED] and [REDACTED] BWV recorded the OIS without any audio.

**Outside Video** – Surveillance cameras from an apartment building located at [REDACTED] West Opp Street captured the traffic collision, OIS, and Hernandez falling to the ground after being struck by a bullet.

Respectfully,



MICHAEL R. MOORE  
Chief of Police

11-28-18

Date: \_\_\_\_\_