

POLICE CIVILIAN REVIEW BOARD

Investigation Report

Internal Affairs Case Number S 2016-0021

Complainant: (Race/Gender)	C- Jason Garcia (H/M)
Alleged Policy Violation:	Improper Use of Force: OIS
Subject Officer: (Race/Gender)	S- Off. Philip Cardon (W/M)
Subject Officer's Years of Service:	S- 10 years
Date of Alleged Incident:	10/1/16
Date Investigation Requested:	10/1/16
Date Filed with Internal Affairs	10/1/16
Date Investigation Completed:	4/11/17
Panel Members:	Kevin Parke Roger Sandack Brandon Myers Catalina Pilar Cardona Glen Greener
Date of Panel Meeting:	4/14/17
Interviews Conducted:	5

It should be noted that the narratives contained in this report are summaries that have been paraphrased from interviews. They should not be interpreted as verbatim transcripts. The narrative is intended to accurately communicate the substance of the major points in each interview.

Synopsis

The following investigative steps were completed by the SLCoDA's office and their Officer Involved Shooting team. The DA presented their opinion on the issue and the following is part of that letter, which has been made public therefore names will not be protected as they are already known:

FACTS

The following facts were developed from the OICI protocol investigation. Should additional or different facts subsequently come to light, the opinions and conclusions contained in this letter may likewise be different.

On October 1, 2016 a person called SLCPD to report a trespassing problem with transient person. SLCPD Officers Cardon and Wright responded to 1376 Jefferson St. in Salt Lake City, Utah. When they arrived, they found a man, subsequently identified as Jason Richard Garcia in the area. Mr. Garcia matched the physical description of the reportedly trespassing transient person. Officers walked up to Mr. Garcia.

Mr. Garcia put his hands in the pockets of his hoodie sweatshirt. Officer Cardon told Mr. Garcia to show his hands, but Mr. Garcia did not. Instead, Mr. Garcia said: "I'm not going back to prison," and walked away from the officers. The officers followed.

Officer Cardon ordered Mr. Garcia to stop. Mr. Garcia ran off; Officer Wright called out "foot pursuit" on the police radio. Both officers gave chase. Mr. Garcia stopped, turned and faced Officer Cardon, pulled an object out of his pocket in his hand and pointed it at Officer Cardon. In a subsequent interview with investigators, Officer Cardon said he believed Mr. Garcia pointed a gun at him and Officer Cardon said he expected to hear the "pop" of a gun shot at him.

Mr. Garcia continued to run, eventually coming to an area full of people. Officers continued to order Mr. Garcia to stop and show his hands but he did not. After following him to the sidewalk of 1300 South, officers and civilians saw Mr. Garcia pull an object out of his pockets and point it at police officers. Officer Cardon drew his weapon and fired one round at Mr. Garcia, who went down. Officers went to Mr. Garcia's aid but discovered that the bullet only traveled through Mr. Garcia's clothing and did not hit his body. Officers arrested Mr. Garcia and booked him into jail.

Jason Garcia, herein referred to as C, is the complainant and provided the following:

According to the DA's letter, the following occurred:

Jason Richard Garcia

OICI protocol investigators interviewed Mr. Garcia. Because Mr. Garcia has been charged with criminal offenses relating to this event, his statements are not set forth herein. Each person accused of criminal wrongdoing is presumed innocent unless and until proven guilty in a court of law.

Off. Philip Cardon, herein referred to as S, is the subject of this matter and provided the following:

S stated the following during his interview with the DA investigative team:

Officer Cardon

OICI protocol investigators interviewed Officer Philip Cardon with his attorney present. Officer Cardon said he was on duty and in uniform on October 1, 2016. Officer Cardon said he was dispatched to 1376 South Jefferson St. in Salt Lake City, Utah on a transient person problem. Officer Cardon said he and SLCPD Officer Wright arrived at the address at about 4:37 p.m. Officer Cardon said he and Officer Wright made contact with a male, later identified as Jason Richard Garcia. Officer Cardon said Mr. Garcia matched the physical description of the transient person they were looking for.

Officer Cardon said he contacted Mr. Garcia, and Mr. Garcia said to him: "I'm not going back to prison." Officer Cardon said he saw that Mr. Garcia had something in his hands. Officer Cardon said Mr. Garcia started running away. Officer Cardon said he radioed to police dispatchers that the male was running and had something in his hands. Officer Cardon said he yelled: "Stop!"

Officer Cardon said Mr. Garcia, stopped, turned towards Officer Cardon, raised his right arm and thrust his right hand forward with a black object in his hand and pointed it at Officer Cardon. Officer Cardon said he waited for the "pop" of a gun being fired, but nothing happened. Officer Cardon said Mr. Garcia turned away and continued running.

Officer Cardon said Mr. Garcia ran towards a UTA Trax train stopped and several cars waiting for the train near the UTA parking lot at 1300 South. Officer Cardon said he saw Mr. Garcia running towards people near the Trax train and platform at the 1300 South Trax stop. Officer Cardon said he saw Mr. Garcia reach the Trax parking lot at 1300 South and stop. Officer Cardon said Mr. Garcia had both of his hands in his pockets.

Officer Cardon said he took cover behind a vehicle in the Trax parking lot and shouted commands at Mr. Garcia. Officer Cardon said he repeatedly commanded Mr. Garcia to show his hands, but Mr. Garcia did not comply. Instead, Officer Cardon said Mr. Garcia ran eastbound on Lucy Ave. Officer Cardon said he saw a SLCPD bicycle officer cycling towards Mr. Garcia on Lucy Ave. Officer Cardon said Mr. Garcia turned and ran back through a grassy area to the south.

Officer Cardon said Mr. Garcia reached a small hill in the grassy area and stopped. Officer Cardon said Mr. Garcia pointed what Officer Cardon thought was a gun at Officer Cardon. Officer Cardon said he did not fire at Mr. Garcia due to concerns about the area in which he would be firing his weapon. Officer Cardon did not feel it was safe to fire at Mr. Garcia at the time.

Officer Cardon said Mr. Garcia started running again back towards 1300 South and reached the sidewalk on 1300 South. Officer Cardon said when Mr. Garcia reached 1300 South, he believed he was in a better position to fire at Mr. Garcia, so he drew his weapon and fired one round at Mr. Garcia. Officer Cardon said Mr. Garcia fell to the ground. Officer Cardon said he and other officers in the area took Mr. Garcia into custody.

Officer Cardon said he believed Mr. Garcia was armed with a gun and was pointing the gun at Officer Cardon; Officer Cardon said he believed he needed to use deadly force against Mr. Garcia to prevent Mr. Garcia from shooting and killing or wounding him or other people in the area.

OICI protocol investigators reviewed video recordings of the event; investigators observed that Officer Cardon issued the following commands to Mr. Garcia: “Stop!” “Stop right there!” “Stop right there or you’re going to get tazed!” “Show me your hands!” (11 times) “We need to talk;” and “I don’t know what you have in your pocket.”

“D.P.”, herein referred to as W is a witness and stated:

W stated the following in his DA interview:

Witness D.P.

OICI protocol investigators interviewed D.P., a man who works for a business on 1300 South. D.P. said he saw a man getting into an altercation with police officers. D.P. said the police officers were wearing uniforms. D.P. said he saw the male draw something like a firearm or a knife. D.P. said the object “looked like a ... gun.”

Other Witnesses

OICI protocol investigators interviewed nineteen other witnesses. These witnesses reported that the male suspect kept walking or running away from the officers. The witnesses reported that they heard the police repeatedly yelling commands to the man to “Stop!” Witnesses reported that they saw the man with something in his hand point something at the police officers.

Off. Benjamin Wright, herein referred to as W1, is a police officer, a witness and stated:

W1 stated the following in his DA interview:

Officer Wright

OICI protocol investigators interviewed SLCPD Officer Benjamin Wright. Officer Wright said he was on duty and wearing his standard uniform on October 1, 2016. Officer Wright said he and Officer Cardon responded on a report of a transient person trespassing. Officer Wright said when he and Officer Cardon arrived, he saw a male wearing a grey hoodie walking away from Officer Cardon.

Officer Wright said the male was not complying with Officer Cardon's commands: Officer Wright said the male put his hands in the hoodie pockets and walked away from Officer Cardon. Officer Wright said he heard the male say: "I'm not going back to prison." Officer Wright said the male started to run away.

Officer Wright said he called out "foot pursuit" on the police radio. Officer Wright said he saw the male stop and pull a black object out of his pocket that he held in his hand. Officer Wright said he couldn't see what the object was. Officer Wright said the male crossed 1300 South and ran through a Utah Transit Authority ("UTA") Trax parking lot at 1300 South, and continued northbound towards Lucy Ave. Officer Wright said he saw the male stop and face Officer Cardon. Officer Wright said he took cover behind a vehicle in the Trax parking lot. Officer Wright said he yelled at the male: "We don't want to hurt you!" Officer Wright said the male responded: "I'm not going back to prison, just shoot me!" Officer Wright said the male started running again; this time the male ran southbound through a grassy area towards 1300 South.

Officer Wright said the male was holding an object in his hand and pointing it at officers as though the object were a gun. Officer Wright said he feared for his own safety and the safety of others in the area because he believed the male was pointing a gun at people. Officer Wright said he heard a gunshot and saw the male fall to the ground.

Off. Matthew Armstrong, herein referred to as W2, is a police officer, a witness and stated:

W2 stated in his DA interview:

Officer Armstrong

OICI protocol investigators interviewed SLCPD Officer Matthew Armstrong. Officer Armstrong said he was on duty and in uniform on October 1, 2016. Officer Armstrong said he was on patrol in the area of 1800 South and Main Street when he heard other SLCPD officers on the radio asking for assistance with a male walking away from the officers and not obeying commands. Officer Armstrong said he headed towards the area.

Officer Armstrong said he was westbound on Lucy Ave. when he saw two SLCPD officers and a male suspect interacting with each other. Officer Armstrong said when the male reached the grassy area near 1300 South, the male reached into the pocket of his hoodie with his right hand. Officer Armstrong said he heard police officers yell: "Show me your hands!" Officer Armstrong said the suspect did not comply and walked away.

Officer Armstrong said when the male reached 1300 South, the male pulled a black object out of his pocket. Officer Armstrong said he heard one shot fired and saw the male go down. Officer Armstrong said he went to the suspect to

secure the male and render medical aid. Officer Armstrong said the male was handcuffed and searched, and Officer Armstrong said he kicked an object away from the male's hand.

Evidence:

E: Photographs were made of the incident scene and can be reviewed, if necessary, to determine the distances involved and the physical layout of the scene. C's sweatshirt was photographed and showed a bullet hole in it.

E1: Body Camera Footage: Multiple cameras captured portions of the incident with officers W2 and W3 being the best footage of what transpired. The video show that three officers, including S, were following C on foot and that each of these officers verbally responded to the dark, gun-shaped object, in C's hand. After the single shot was fired, this object was in C's hand and was kicked free by an officer. In looking at it, the object is black in color and has the general shape of a handgun. There is no doubt that C had it in his hand as it was still in his hand after the single round was fired at him.

Multiple and repeated commands for C to stop and to show his hands were made by all three officers. At no time did C stop or obey any of the commands given by the three officers who were chasing him. The body camera footage captured the officers repeatedly trying to get C to stop, warning him that by continuing, things could unravel and the officer's concern about the "backdrop" presented by C if the officers were to fire.

Once the single shot is fired, a bullet hole can be seen in C's sweatshirt, but he was not struck.

Allegations:

Definitions

Unfounded: The reported incident did not occur.

Exonerated: The employee's actions were reasonable under the circumstances.

No determination is possible: There is insufficient evidence to support a conclusion as to whether or not the employee violated policy.

Sustained: The employee's action(s) are in violation of the policy or procedure of the Police department.

Analysis and Recommendation:

As explained above in the DA's letter, C told S upon initial contact, or shortly thereafter, that he was not going to return to prison and that desire likely resulted in C's abnormal behavior. C was being followed/chased by three officers, including S, who gave him multiple commands to stop or to show his hands. Each officers made mention, on their body cameras, that C had something alarming in his hand. Citizen witnesses also reported seeing this object and in one body camera

segment, a black, roughly gun shaped object, was plainly seen in C's hand after S had taken a shot at him.

In viewing the object and the videos available, it is clear that the officers believed C was armed and it was crystal clear that C was not obeying their lawful orders to stop and raise his hands. Civilian witnesses confirm this perception as do the videotapes. C had an object which looked much like a handgun and he was fleeing officers in the direction of other uninvolved citizens when S fired a single round, not striking C. S's round did strike and pass through the sweatshirt of C but did not make contact with C or anyone else.

The policy issue in play is: Did S reasonably believe that his life, or the life of others, was in jeopardy of death or serious bodily injury.

Panel Findings:

As to the allegation that S fired his weapon, the Panel makes a finding that this shot was Within Policy.

The Panel makes a finding that this matter is in the public eye and therefore recommends that this report be made public.

Glen Greener
Panel Chair

4/14/17