

POLICE CIVILIAN REVIEW BOARD

Investigation Report

Internal Affairs Case Number S 2020-0001

Complainant: (Race/Gender)	C- Tyler Webster (W/M)
Alleged Policy Violation:	Excessive Force: OIS
Subject Officer: (Race/Gender)	Off. Jordan Winegar (W/M)
Subject Officer's Years of Service:	4 years
Date of Alleged Incident:	1/8/20
Date Investigation Requested:	1/8/20
Date Filed with Internal Affairs	1/9/20
Date Investigation Completed:	9/18/20
Panel Members:	Turner Bitton Catalina Pilar Jessica Andrew Dennis Busch Ian Quiel
Date of Panel Meeting:	9/23/20
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:

This matter is an Officer Involved Shooting (OIS) case and as such, it was investigated under the Officer Involved Shooting protocols. In this case, the Unified Police Department (UPD) was the primary investigative agency and they worked hand-in-glove with the District Attorney's Office (DA). These entities provided a letter on this matter which details the facts involved in this OIS. Other than minor grammatical changes, the letter produced by the DA will be the basis of the factual review of what transpired and is not changed as it relates to content/intent.

This matter was well covered in the media and therefore, this report will use the actual names of the involved parties rather than CRB's general practice of redacting names. The following comes from the DA's report which was based upon the investigative report submitted by UPD under the OICI protocols:

SUMMARY OF FACTS AND FINDINGS

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 January 8, 2020, SLCPD Officer Winegar and his partner, SLCPD Officer Steven Hunter, were on patrol when they heard a police radio dispatcher broadcast a report of a car theft that had just occurred. Officer Winegar and Officer Hunter saw a vehicle matching the stolen car's description in the area of 1500 West, North Temple in Salt Lake City, Utah.

Officer Winegar turned on his overhead emergency lights to signal the stolen car to stop. Instead of stopping, the driver of the stolen car put the car in reverse gear and backed away from the police car. As he backed up, the driver went over the curb and up onto grass adjacent to the road where it stopped. Officer Winegar's patrol vehicle was "nose to nose" with the stolen car's front end.

Both Officer Winegar and Officer Hunter got out of the patrol vehicle and approached the driver of the stolen car, still sitting in the driver's seat. Officer Winegar walked to the passenger door and Officer Hunter went to the driver's side. Both officers ordered the man, later identified as Tyler Webster, to stop. Both the driver's and passenger's windows were down. Mr. Webster was revving the stolen car's engine.

Officer Winegar opened the passenger door, deployed his taser and fired it at Mr. Webster, but it appeared to have no effect. Instead of complying with the officers' orders to stop, Mr. Webster appeared to put the car in reverse and hit the gas. The car moved backward towards Officer Winegar who was hit by the open door and pushed backwards by the car towards a steel guardrail behind the car. Officer Winegar, sensing that he was about to be run over by the reversing car, fired his gun at Mr. Webster. Mr. Webster, hit with two bullets, stopped pressing on the accelerator and yelled: "You shot me!" Officer Winegar and Officer Hunter were able to take Mr. Webster into custody; officers started first aid until medical personnel arrived.

FACTS DEVELOPED DURING OICI INVESTIGATION

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 January 8, 2020, SLCPD Officer Winegar was driving his patrol vehicle. With him was an officer in training, SLCPD Officer Steven Hunter. Officer Hunter was

hired by SLCPD on July 7, 2019. Officer Winegar and Officer Hunter were on patrol when they heard a police radio dispatcher broadcast a report of a car theft that had just occurred. The dispatcher relayed that a red Ford Mustang had just been stolen not far from where Officer Winegar and Officer Hunter were patrolling.

A few minutes after the radio broadcast, Officer Winegar and Officer Hunter saw a red Ford Mustang matching the stolen car's description in the area of 1500 West, North Temple in Salt Lake City, Utah. The officers believed they had located the stolen car and decided to investigate. Officer Winegar drove his patrol vehicle towards the Mustang headed towards them and turned on his overhead emergency lights as a signal to the Mustang to stop. The patrol car and the Mustang were "nose to nose." Instead of stopping, the driver of the stolen car, later identified as Tyler Webster, put the Mustang in reverse gear and backed away from the police car. Officer Winegar drove his patrol vehicle towards the Mustang.

As he backed up, Mr. Webster went over a curb and up onto grass that was adjacent to the road. The Mustang stopped moving but the engine was still on. Officer Winegar drove his patrol vehicle towards the Mustang and again ended up "nose to nose" with the stolen car's front end.

Both Officer Winegar and Officer Hunter got out of the patrol vehicle and approached the Mustang. Mr. Webster was still sitting in the driver's seat. The officers ordered Mr. Webster to stop. Officer Winegar positioned himself at the passenger door and Officer Hunter went to the driver's side. Both the driver's and passenger's windows were down. The officers could hear Mr. Webster revving the stolen car's engine as though he were trying to flee.

Officer Winegar opened the passenger door, deployed his taser and fired it at Mr. Webster, but it appeared to have no effect. With the Mustang in reverse gear, Mr. Webster pressed on the accelerator and revved the engine. The car quickly moved backward towards Officer Winegar and the open passenger door hit Officer Winegar in his right hip and right arm. As the car reversed, the open passenger door pushed Officer Winegar back towards a steel guardrail behind the car.

In a subsequent interview with protocol investigators, Officer Winegar said he knew he only had one chance and a short time to stop the driver before he was run over by the car or crushed against the guardrail. Officer Winegar said he tried to move out of the way of the car, but he was unable to move away from the door as the force of the car dragged him along with the door. Officer Winegar said the driver's action put him at risk but also posed a threat to Officer Hunter and the public. Officer Winegar drew his handgun and fired it at Mr. Webster. Mr. Webster, hit with two bullets, stopped pressing on the accelerator and yelled: "You shot me!" Officer Winegar and Officer Hunter were able to take Mr. Webster into custody. Officers started first aid until medical personnel arrived.

Witness Statements

Officer Winegar

On January 13, 2020, OICI protocol investigators interviewed Officer Winegar with his attorney present. Officer Winegar said that he was on duty on January 8, 2020 and took Officer Hunter, a recently hired police officer, with him during his shift. Officer Winegar said he and Officer Hunter attended the daily briefing at the beginning of the shift and then responded to their first call for service, which was unrelated to the OICI events.

Officer Winegar said as they were clearing their first call for service, Officer Winegar decided to show Officer Hunter some of the areas known for their higher incidents of criminal activity. Officer Winegar said they were driving westbound on North Temple Street when police radio dispatchers broadcast a report of a vehicle theft. Officer Winegar said the report stated that a red Ford Mustang with black wheels had just been stolen. Officer Winegar said the vehicle theft occurred nearby. Officer Winegar said he drove towards the location of the theft.

Officer Winegar said as he and Officer Hunter traveled westbound on North Temple, they saw a red Ford Mustang with black wheels facing southbound on 1460 West at a stop light. Officer Winegar believed he had located the stolen car. Officer Winegar said he drove his police car towards the Mustang and positioned the police car, so it was nose to nose with the Mustang. Officer Winegar said the Mustang started to drive in reverse away from the patrol car. Officer Winegar said he followed the Mustang. Officer Winegar said it looked like the driver may not have known how to drive the Mustang.

Officer Winegar said the Mustang came to a stop by a parked car on the west side of 1460 West. Officer Winegar said he pulled his police vehicle up to the Mustang and was again nose to nose with the Mustang. Officer Winegar said he and Officer Hunter got out of the patrol vehicle, drew their handguns, and ordered the driver to stop and get out of the car.

Officer Winegar said he approached the Mustang's passenger side; Officer Winegar said he knew Officer Hunter was nearby, but he couldn't say exactly where Officer Hunter was positioned at that moment. Officer Winegar said he tried to open the Mustang's passenger door, but it was locked. Officer Winegar said he told the Mustang driver that if he drove away it would be considered deadly force. Officer Winegar said the driver leaned over and unlocked the passenger door.

Officer Winegar said he opened the passenger door and deployed his Taser. Officer Winegar said he fired the Taser, but it appeared to have no effect. Officer Winegar said the driver then put the Mustang into reverse while Officer Winegar stood with the open passenger door to his right. Officer Winegar said the Mustang moved backward and the open door hit him on his right side and pushed him towards a guardrail behind the car. Officer Winegar said he was "stuck on the door--I remember getting hit

by the door and I couldn't come off of that door." Officer Winegar said the driver was going in reverse with the open door. Officer Winegar said: "I'm pinned basically between the door, the guardrail and his car. With the momentum of the car, I just couldn't peel myself off of that door." Officer Winegar said: "there was no place for me to even go."

Officer Winegar said the car door knocked the Taser from his hands as he was getting pushed by the door and dragged by the car. Officer Winegar said he transitioned from his Taser to his handgun and fired several shots at the driver.

Officer Winegar said he was fearful that he would be dragged by the car into and under the guardrail or crushed against the car and the guardrail. Officer Winegar said he knew he only had one chance and a short time to stop the driver before he was run over by the car or crushed against the guardrail. Officer Winegar said he tried to move out of the way of the car, but he was unable to move away from the door as the force of the car dragged him along with the door. Officer Winegar said the driver's action put him at risk but also posed a threat to Officer Hunter and the public.

Officer Hunter

Protocol investigators interviewed Officer Hunter about the incident. Officer Hunter said he was on duty on January 8, 2020 and assigned to accompany Officer Winegar on patrol. Officer Hunter said he was sitting the front passenger seat of Officer Winegar's patrol vehicle and Officer Winegar was driving. Officer Hunter said he heard police radio dispatchers broadcast a report of a car theft that had just occurred. Officer Hunter said the dispatcher described the stolen car as a red Ford Mustang.

Officer Hunter said he and Officer Winegar were in the area of 1550 W. and North Temple when they saw a red Ford Mustang. Officer Hunter said the Mustang matched the description of the recently stolen vehicle and the theft had apparently occurred not far from their current location. Officer Hunter said Officer Winegar turned on the patrol vehicle's overhead red and blue lights to stop the vehicle and investigate. Officer Hunter said the patrol vehicle is a fully marked police car.

Instead of stopping, Mr. Webster put the Mustang in reverse gear and backed up the street he had driven down. Officer Hunter said Officer Winegar followed towards the Mustang. Officer Hunter said Mr. Webster backed over a curb and the Mustang went up on the grass adjacent to the street. Officer Hunter said Officer Winegar drove the police vehicle up to the front end of the Mustang, so the two vehicles were "nose to nose." Officer Hunter said the Mustang was now not able to pull forward.

Officer Hunter said he and Officer Winegar got out of the patrol vehicle and ordered Mr. Webster to stop. Officer Hunter said Officer Winegar went to the passenger side of the Mustang and he went to the driver's side. Officer Hunter said he realized the potential crossfire nature of the situation so he moved more towards the front of the Mustang.

Officer Hunter said both the driver's and passenger's windows were all the way down, and he believed Mr. Webster could hear the officers' commands. Officer Hunter said Mr. Webster kept revving the Mustang's engine as though he were trying to flee. Officer Hunter said he could hear the engine speed up and saw the tires spinning.

Officer Hunter said Officer Winegar drew his taser and fired it at Mr. Webster. Officer Hunter said the laser appeared to have no effect because Mr. Webster continued to rev the car's engine. Officer Hunter said as the car's engine revved, he heard gunshots from Officer Winegar. Officer Hunter said at the time Officer Winegar fired, his focus was not on Officer Winegar. Officer Hunter said he was looking at the front of the Mustang as he moved from the driver's side door towards the front of the car. Officer Hunter said that when Officer Winegar fired, the engine was revving, and the tires were spinning. Officer Hunter said that after Officer Winegar fired, he heard Mr. Webster say something to the effect of: "You shot me!"

Officer Hunter said he believed Mr. Webster had no regard for the lives of the officers and that Mr. Webster appeared to be trying to flee at all cost. Officer Hunter said he feared for his own safety and for Officer Winegar's life and safety, as well as the safety of the public, given Mr. Webster's behavior.

Witness K. W.

Protocol investigators interviewed a civilian witness we refer to as K. W. who said he was at a bus stop on North Temple when he saw a red Ford Mustang, driving quickly, followed by a police car that looked like it was pursuing the Mustang. K. W. said he saw the police car pull up to the Mustang, so they were nose to nose. K. W. said to him, it didn't look like the officer was being aggressive, just trying to prevent the Mustang from leaving.

K. W. said he could hear the Mustang's motor revving and saw the Mustang rocking back and forth. K. W. said that while the engine was revving, he heard the police officers yelling commands to the Mustang driver to stop and get out of the car. K. W. said he then heard about 5 to 6 gunshots but couldn't tell who was shooting.

Tyler Webster

Because Mr. Webster has been charged with criminal offenses allegedly related to the events of the OICI, any statement Mr. Webster may have provided is not set forth in this letter. All persons accused of wrongdoing are presumed innocent unless and until proven guilty in a court of law.

Protocol investigators examined photographs of Mr. Webster's injuries. Investigators determined Mr. Webster was shot in his right wrist and his right leg. Investigators noted evidence of an injury to Mr. Webster's head behind his right ear

caused by a Taser probe.

Physical Evidence

Weapon Download

Investigators downloaded and inspected Officer Winegar's Glock 17 9mm handgun. The handgun had one magazine in the weapon and Officer Winegar had two extra magazines on his exterior vest in a magazine holster. The magazine in the handgun contained twelve Speer Gold Dot 9mm cartridges and its capacity is seventeen cartridges. Protocol investigators asked Officer Winegar if he tops off the magazine fully and then has one round in the chamber, and he said "yes." Investigators explained this means the weapon initially contained eighteen 9mm cartridges; thus, investigators determined that Officer Winegar fired five shots. Protocol investigators noted they located five matching spent (empty) 9mm cartridge casings at the OICI scene.

Investigators also downloaded Officer Winegar's Taser. The download showed the Taser was deployed and the trigger pulled, whereupon the Taser cycled for five seconds as is it designed to do. The Taser download supports the Officer Winegar's testimony that he deployed and fired his Taser.

Body-Worn Camera Recording

Protocol investigators inspected and photographed the OICI scene where Mr. Webster was shot. Investigators also downloaded and reviewed body-worn camera footage from Officer Winegar's and Officer Hunter's body-worn camera.

Officer Winegar's body-worn camera recording begins as the Mustang's passenger door was open and Officer Winegar stood inside the door addressing Mr. Webster. The recording does not have sound for eight seconds the lack of audio is consistent with the buffered video recording captured before the camera is set to the "Record" function. While still silent, the recording captured the Mustang's reverse movement.

The recording shows the door moving into Officer Winegar. After eight seconds of video, the audio recording captured some of Officer Winegar's shots. The body-worn camera recording captured the Mustang's rear wheels spinning in reverse for a moment after the car's rear bumper impacted the steel guard rail.

Officer Hunter's body worn camera started recording before Officer Winegar's and recorded the Mustang reversing as the patrol car advanced towards it.

Officer Winegar's Injuries

During his interview, Officer Winegar said that immediately after the OICI, he

noticed his right hand and his right hip hurt. Officer Winegar said that the injury to his hip was caused by the impact from the Mustang's open passenger door. Officer Winegar said that following the OICI, he noticed his right arm was sore and he saw bruising on his right hip. Officer Winegar said medical personnel checked his injuries at the scene and then again later that day at the police station. Investigators photographed Officer Winegar's hands and right hip on the day of the OICI; investigators photographed his right hip again on January 15, 2020, at which time more bruising was evident.

Evidence:

- E: Body Camera footage from two officers was retained and is summarized above.
- E1: Photographs: Photographs were made of C and his wounds, along with other pictures.
- E2: The firearms training records of S were pulled and found to be within norms.

Allegations: Whenever an officer uses Deadly Force, an automatic review is triggered. In this case, the allegation is that Excessive Force was used in the form of gunfire.

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:

This case began as a stolen car case, with a pursuit involved. As such, it was a pure property crime and with only a property crime, use of force is not generally allowed. However, in the eyes of Off. Winegar, the situation changed from a straight property crime to a matter involving the threat of death or serious bodily injury.

The evidence available, including the statements of the two officers and the citizen witness, along with the body camera footage firmly show that Mr. Webster was driving the vehicle backwards, in an obvious attempt to escape. Since Off. Winegar had blocked in the Mustang from the front, the only direction Mr. Webster could go was in reverse. As the evidence shows, Mr. Webster had the Mustang at a high RPM with his tires spinning, and at least one rear wheel over the curb. Plainly, the Mustang was angling off of the road surface with the passenger's rear quarter headed toward the steel road barrier. This geometry created a "V"

shape that was closed, like a Capital A, due to the passenger side door being open. The open door struck Off. Winegar and the momentum of the backward traveling car combined with the open door had confined the officer into a shrinking space, at least initially. Had this movement continued, it is possible that the car would have aligned with the steel barrier, collapsing the available space into nothing. However, the body camera footage indicates that when Off. Winegar fired his weapon, he was clear of the door and the threat had passed.

There is no doubt that Off. Winegar used his Taser in an attempt to stop the cascading events. Why the Taser did not work is likely told by the fact that the minor head wound Mr. Webster suffered was caused by a Taser probe indicating at least one probe did not strike the target. Without both probes making a solid contact with the flesh, the electrical current does not form a loop and the Taser has no effect on the target.

In this matter, there may or may not have been an opportunity to avoid escalation, or to deescalate it. Although Mr. Webster opted to not be interviewed in this matter, there is no indication that he intended to harm either officer. All of his actions appear to be solely focused on escape and his lack of situational awareness of the officer being pinned against the guard rail, resulted in the life-threatening situation.

A vehicle is not routinely thought of as a weapon, but as shown herein, it clearly can be. That is not to say that Mr. Webster's intent was to use it as a weapon, but his reckless actions certainly made the 2,000 lb. object a dangerous weapon. Off. Winegar had no idea what was intended, instead he believed he was facing a rapidly diminishing set of options and needed to take action of some type. As he said in his interview, there was no manner of escape available to him. The officer felt his life was in danger of death or of serious bodily injury and acted with the last option available to him. The Panel believes that Off. Winegar had not exhausted all options when he fired his weapon.

The issue to be decided is were the actions of Off. Winegar in firing his weapon at Mr. Webster both *reasonable and necessary*.

Panel Findings:

As to the allegation that S used "Excessive Force/Deadly Force", the Panel makes a finding of "Sustained"

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

Catalina Pillar
Panel Chair
By Richard Rasmussen

9/23/20