

POLICE CIVILIAN REVIEW BOARD

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Investigation Report

AUG 19 2016

Internal Affairs Case Number S2016-0016 (OIS)

SLCPD
CHIEF'S OFFICE

Complainant: (Race/Gender)	No citizen filed a complaint, but the involved party is REDACTED and will be annotated as C when necessary
Alleged Policy Violation:	Improper Use of Force: Use of Deadly Force
Subject Officer: (Race/Gender)	S- Off. Kory Checketts (W/M) S1- Off. Jordan Winegar (W/M)
Subject Officer's Years of Service:	S- 12 years S1-12 years
Date of Alleged Incident:	2/27/16
Date Investigation Requested:	2/27/16
Date Filed with Internal Affairs	2/27/16
Date Investigation Completed:	8/18/16
Panel Members:	Brandon Myers Kevin Parke Glen Greener Sandy Walsh Tyson Mason-Carbaugh
Date of Panel Meeting:	8/19/16
Interviews Conducted:	9

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 is a brief summary of the facts of the case as determined by the OICI (Officer Involved Critical Incident) investigative team. This team concept was established by the District Attorney's (DA) Office and includes outside investigators from a different agency, different from the involved officer's parent agency, and investigators from the DA's office. In this matter, the lead OICI investigative agency was the Salt Lake County Sheriff's (SLCSO). Also of note was

that the citizen involved in this matter has been publicly named in media accounts covering this incident. The person, annotated either by his name or the letter C in this report is a juvenile, male. PCRB generally redacts the names of all involved parties, but due to the extensive media coverage on this matter, most names have been publicly released. C, a juvenile, would not normally be identified by name in this report but since his family publicly identified him in the media, there is no need to attempt to maintain discretion about his identify. In this case, an adult male interacted with C and W1 (Witness 1) and he has not been publicly identified. Due to the passion within the community, this critically involved person will not be identified herein and instead will be listed as KM in this report and his involvement is identified as both K.M. and/or "victim" in the DA's report.

There are multiple video recordings of the incident including body camera footage from the involved officers, S and SI, both of which have been publicly identified in the media. The DA's office considers these recordings evidence for upcoming criminal trials and has publicly asked for them to not be released. This decision is a public policy matter, not one that PCRB is involved with, and therefore PCRB will not take a stand in support, or in disagreement with the DA's policy. In order to allow PCRB Board members the ability to arrive at a conclusion on the actions of the officers, as they relate to the SLCPD policy manual, PCRB Panel members will view the videos and be provided a summary of what those videos show. But in an effort to comply with the current policy of the DA's office, this report will not be considered a "public document" until such time any pending related cases have been resolved, so as to not compromise the integrity of any subsequent legal actions undertaken by the DA's office.

The following is a summary of the events on the night in question, as determined by the exhaustive investigation undertaken by the OICI team:

76-2-404 Peace officer's use of deadly force.

- (1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:
 - (a) The officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5(3) or (4);
 - (b) Effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and
 - (i) The officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or
 - (ii) The officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or another person.

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 February 27, 2016, a man referred to herein as K.M. (sometimes identified by witnesses as the "victim") was in the area of the Road Home homeless shelter located at

210 South Rio Grande Street in Salt Lake City, Utah. K.M. was in the area to allegedly purchase drugs. K.M. rode his bicycle up to a juvenile male and allegedly asked the juvenile if K.M. could purchase a marijuana cigarette for \$1.10. The juvenile male allegedly said he only had methamphetamine but demanded K.M. give the juvenile the \$1.10 anyway. K.M. initially refused and offered the juvenile a metal broom handle K.M. recently found and said "take this."

The juvenile allegedly took the metal broom handle from K.M. and began hitting K.M. with it. The juvenile and another male pursued K.M. down the street as SLCPD officers who saw and heard the disturbance headed that way.

SLCPD Officers Checketts and Winegar saw two men, each of whom held a long, slender metallic object pursuing K.M. The officers repeatedly ordered the men to drop their objects and stop. One of the men complied and dropped his object and walked off. The juvenile did not comply and continued to pursue K.M. while still holding his long, slender metallic object. As the juvenile closed the distance between himself and K.M., the officers saw the juvenile move his arm as though he were about to raise up the metallic object. The officers said they feared the juvenile was about to strike K.M. again and fired their weapons. The officers shot the juvenile who went down. SLCPD and other law enforcement agencies responded to the area because the crowd who gathered became unruly and hostile which delayed medical personnel's response to the scene and ability to provide medical attention to the juvenile.

REDACTED herein referred to as C, is the involved party:

C is a juvenile who was shot by the officers during this incident. He was badly wounded and spent extensive time in the hospital recovering from his wounds. Although C gave a number of media interviews, he was not interviewed by the OICI investigative team nor was he interviewed by the SLCPD IA unit.

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

S stated the following in his OICI interview which was recorded and transcribed:

Officer Checketts

OICI protocol investigators interviewed SLCPD Officer Kory Checketts with his attorney present. Officer Checketts said he was on duty on February 27, 2016 in Salt Lake City, Utah. Officer Checketts said he was wearing his uniform and his department issued equipment.

Officer Checketts said during the evening hours of February 27, 2016, he and SLCPD Officer Winegar were at the homeless shelter on Rio Grande Street investigating a report of a stolen cell phone. Officer Checketts said he and Officer Winegar were with two security guards from the shelter. Officer Checketts said he, Officer Winegar and the two security guards stepped outside the building during their investigation of the stolen phone. Officer Checketts said as he stepped outside, he saw that there were people to the north and south of him all along the east side of Rio Grande Street.

Officer Checketts said in his training and experience, homeless individuals using the shelter usually stay on the east side of Rio Grande Street. Officer Checketts said in his training and experience, there are sometimes individuals who are not transient and who prey upon the homeless population; Officer Checketts said in his experience, those who prey upon the transient population often have weapons and violently victimize the homeless population near the shelter.

Officer Checketts said as he and Officer Winegar left the shelter, he turned right to go south along the west sidewalk when he heard yelling or a disturbance and looked south east towards the east side of Rio Grande Street. Officer Checketts said he saw something (an object or a pile of things) in the roadway. Officer Checketts said he saw three people who caught his attention. Officer Checketts said he saw two males wearing dark clothing and one male with light clothing (subsequently identified as a person referenced herein as "K.M.") During his interview, for ease of identification, Officer Checketts referred to the two men wearing dark clothing as suspects, and the man wearing light colored clothing (K.M.) as the victim. Officer Checketts said he had a feeling that he needed to focus his attention on these three males and deal with the stolen cell phone later.

Officer Checketts said he saw one of the suspects hit the victim with a long slender metallic object in the suspect's hands. Officer Checketts said he saw the victim stumble backwards several steps. Officer Checketts said he saw both suspects walk around towards the victim as the victim stumbled backwards.

Officer Checketts said he turned his flashlight on to get a better view of what was going on. Officer Checketts said he used the strobe function of his flashlight to notify the three men that police were present. Officer Checketts said there was no reaction to his flashlight and strobe from any of the three people. Officer Checketts said he saw both suspects had shiny, long objects. Officer Checketts said he saw both suspects drag their poles on the ground; Officer Checketts said the objects dragging on the ground made metallic sounds. Officer Checketts said he thought: "oh my gosh, they have swords."

Officer Checketts said he yelled to the suspects: "Stop, police! Drop the weapon!" Officer Checketts said he drew his firearm because he believed the suspects had metal objects (like swords or pipes) and Officer Checketts said he could see the suspects were advancing on the victim.

Officer Checketts said that he drew his handgun from the holster because he believed the suspects had metal objects which could inflict death or serious bodily injury on the victim. Officer Checketts said he started running towards the suspects and continued to yell: "Police, drop the weapon!" Officer Checketts said for the first few moments, neither suspect acknowledged his commands. Officer Checketts said he continued to order the suspects to stop and drop their weapons. Officer Checketts said as he was getting closer to the suspects, one of the suspects stopped, turned, dropped his weapon (which Officer Checketts believed was a metal pipe) and turned and ran. Officer Checketts said he heard a metallic sound when the suspect dropped his weapon.

Officer Checketts said that the other suspect continued to advance towards the victim as the victim was walking backwards with his hands up in the air. Officer Checketts said this suspect was the same person who hit the victim with the long metallic object earlier. Officer Checketts said he saw the suspect closing the distance between the suspect and

the victim; Officer Checketts said he continued to run towards the suspect to protect the victim. Officer Checketts said he continued to yell commands at the suspect.

Officer Checketts said the suspect was getting closer to the victim and the victim continued to retreat with his hands up. Officer Checketts said he saw the suspect raise the "pipe" up, in close proximity to the victim. Officer Checketts said he had seen this suspect strike the victim with the "pipe" previously.

Officer Checketts said he was trying to get ahead of the victim to provide better protection to the victim. Officer Checketts said as he saw the suspect start to raise the metal object, he decided that he needed to use deadly force needed to stop the suspect and protect the victim. Officer Checketts said he took a fraction of a second to look at the victim and ensure he was not in the line of fire and there were no other people in Officer Checketts' backdrop. Officer Checketts said as he decided to pull the trigger, he "heard two bangs." Officer Checketts said he fired his weapon at the suspect.

Officer Checketts said he saw the suspect go down and saw the victim turn towards Officer Checketts. Officer Checketts said he told the victim to get down on the ground. Officer Checketts said he could see that the suspect's metal object had landed far enough from the suspect so as not to be a threat.

Officer Checketts said he called out on the radio: "shots fired" and gave the address. Officer Checketts said he looked around to ensure people were ok. Officer Checketts said that he saw between what he estimated were twenty-five to thirty-five people who seemed angry and were advancing towards the officers. Officer Checketts said he ordered the people to get back. Officer Checketts said the people were not complying and had their hands in their pockets and continued to advance on the police. Officer Checketts said as additional police officers arrived, he said the crowd was eventually contained and moved back so medical personnel could attend to the suspect and the victim.

Officer Checketts said he knew he and other officers needed to get medical attention to the suspect, but he knew that the crowd presented a dangerous situation to those responding to provide medical care to the juvenile.

During his interview, OICI protocol investigators asked Officer Checketts why he didn't use his Taser on the suspect. Officer Checketts said that he felt like he had to use means more reliable than a Taser to protect the victim. Officer Checketts said that to him, a Taser is better employed for someone who is suicidal to prevent injury to himself, or someone who is passively or active resisting arrest or commands. Officer Checketts said that the effective use of a Taser is not 100% guaranteed. Officer Checketts said he felt he couldn't take the chance to have the two prongs of the Taser go different directions, and he felt he didn't have time to re-holster his firearm. Officer Checketts said that to use the Taser, he would have to get closer and stay closer (within striking range) to the suspect. Officer Checketts said that given the suspect's serious actions and his distance to the victim, the Taser was not the necessary weapon to prevent the victim's death or serious bodily injury. Officer Checketts said the suspect was going straight for the victim with a metal pipe or pole and the situation was too dynamic and the victim too close to the suspect with the weapon for the Taser to be a viable option.

Off. Jordan Winegar, herein referred to as S1, is the subject of this matter and provided the following:

S1 stated the following in his OICI interview which was recorded and transcribed:

Officer Winegar

OICI protocol investigators interviewed SLCPD Officer Jordan Winegar with his attorney present. Officer Winegar said he was on duty on February 27, 2016 and in uniform when he and SLCPD Officer Checketts responded to the homeless shelter on Rio Grande Street to investigate a stole cell phone.

Officer Winegar said he and Officer Checketts spent some time in the homeless shelter looking for the stolen phone when they decided to step outside the building to look for the phone. Officer Winegar said as he and Officer Checketts stepped outside the building, a female told Officer Winegar that there was "some kind of problem outside."

Officer Winegar said as he stepped out of the shelter's front door, he heard a loud "pop" that he compared to a long fluorescent lightbulb popping. Officer Winegar said he saw a long "weapon" held above the suspects head. Officer Winegar said he though "it was a sword or a pipe." Officer Winegar said he thought: Oh my gosh, they are attacking this guy." Officer Winegar said he saw the victim (subsequently identified as K.M.) in a defensive position and was being attacked. Officer Winegar said he could see the suspect's long object was reflecting light and Office Winegar said he could see it was hard metal.

Officer Winegar said he and officer Checketts were on the west side of Rio Grande Street, and the two suspects and victim were closer to the east side of Rio Grande and south east of the officer's location. Officer Winegar said he estimated the suspects were perhaps several car lengths away from his initial location.

Officer Winegar said he and Officer Checketts started running towards the suspects and victim and yelled: "Stop, stop!" Officer Winegar said he saw both the suspects had long metal objects in their hands and he said he was very concerned that one of the suspects may hit the victim. Officer Winegar said he believed that "one blow's just gonna kill (the victim.)"

Officer Winegar said he remembered the sound of metal as one of the suspects dragged a "pipe" on the ground. Officer Winegar said as one of the suspects dragged the metal object on the ground, the suspect seemed focused on pursuing the victim. Officer Winegar said he ran towards the suspects and the victim and continued to yell: "Police, stop!" Officer Winegar said as he started running towards the suspect and victim, he drew his handgun. Officer Winegar said one of the suspects stopped and dropped his "pipe" on the ground. Officer Winegar said his focus switched to the other suspect who was still advancing on the victim.

Officer Winegar said the suspect and the victim were walking perpendicular to Officer Winegar. Officer Winegar said it appeared that the suspect was intent on going after the victim and that there "was nothing stopping him." Officer Winegar said the victim appeared helpless as he walked backwards away from the suspect. Officer Winegar said the suspect was pursuing the victim and closing the distance between the suspect and the

victim. Officer Winegar said he continued to yell: "Police! Stop! Drop it!" Officer Winegar said the suspect did not acknowledge his commands and did not comply.

Officer Winegar said the suspect continued to advance on the victim with a "slow, methodical rage, and he's like, on a mission" and Officer Winegar said he believed the suspect was going to kill the victim. Officer Winegar said he thought to himself that there was "only one thing (he) could do to stop the threat" and help the victim and that was to shoot the suspect. Officer Winegar said the victim was backing up and had his hands up and "clearly just could not protect himself," and that Officer Winegar said he "knew (he, Officer Winegar) was the only one that was going to be able to protect (the victim.)"

Officer Winegar said that he saw the suspect "making a movement that, I felt like, if I don't act now, this is going to be a strike, and he's going to end up killing this guy." Officer Winegar said he saw the suspect moving "his hand from down and he started bringing the pipe up." Officer Winegar said he made a decision to shoot the suspect. Officer Winegar said as he decided to shoot, he moved his trigger finger from the weapon's slide to the trigger and fired his weapon. Officer Winegar said he used his firearm because he knew he needed to act swiftly because he was worried about the victim's life "at this second." Officer Winegar said he believed his decision to use deadly force saved the victim's life.

Officer Winegar said he saw the suspect fall to the ground. Officer Winegar said he looked at the victim on the ground who was crying. Officer Winegar said he asked the victim if he needed medical or he needed help. Officer Winegar said he noticed that the crowd encircled the officers and he heard Officer Checketts calling police radio dispatchers calling shots fired and asking for assistance. Officer Winegar said he also called "shots fired." Officer Winegar said he couldn't provide care for the injured suspect because of the crowd's anger. Officer Winegar said he expected someone in the crowd to start shooting at the officers given the anger in the crowd. Officer Winegar said he continued to yell at the crowd for people to get back. Officer Winegar said other officers started to arrive and were able to get the crowd back and medical to arrive. Officer Winegar said he stayed close to the suspect because he didn't know the nature of the suspect's injuries but wanted to provide assistance. Officer Winegar said other officers arrived and pulled him and Officer Checketts away from the scene.

KM, herein referred to as KM is a witness and stated:

KM is not being identified in this report as he was not identified in the DA's letter. This is a sound strategy as it is possible he may be subject to retaliation from various entities if he is identified and due to the nature of his participation in the underlying incident. KM provided the following information during his interview with the OICI investigators:

K.M.

On February 28, 2016, OICI protocol investigators interviewed K.M. K.M. said that on February 27, 2016, he went to the homeless shelter on Rio Grande Street to find something to eat. K.M. said that while he was near the shelter, a young man (subsequently identified as the juvenile referenced herein) approached him and wanted to sell "speed" or "meth". K.M. said he told the young man K.M. had \$1.10 on him and K.M. said he wanted to buy a "joint." K.M. said he showed the young man the money

and said he just wanted to buy a "J" and go home. K.M. said the young man said to K.M.: "let me show you my stuff." K.M. said he told the young man "that's ok."

K.M. said the young man said "give me your \$1.25." K.M. said he told the young man "I can't give you my money." K.M. said the young man said to him "let me have your money and I'll get it for you." K.M. said he told the young man he wasn't going to give the young man his money. K.M. said he told the young man that the money was his last dollar.

K.M. said he (K.M.) had a metal rake handle K.M. had just got out of a garbage can. K.M. said he told the young man, referring to the rake handle: "you can have this." K.M. said that this appeared to really agitate the young man. K.M. said the young man hit him with the rake handle several times. During the interview with the protocol investigators, K.M. showed the investigators what K.M. said were his injuries. Protocol investigators noted a large welt on the back of K.M.'s right arm, bruised welts on K.M.'s forearms and a red mark on K.M.'s back. K.M. said that both of his legs hurt; K.M. said he wasn't sure whether the young man hit K.M. on the legs.

K.M. said that after the young man hit him with the rake handle, a person who appeared to be a friend of the young man came towards K.M. with an object that K.M. said looked like a thick, metal stick. K.M. said this man was bigger than the young man who had hit K.M. with the rake handle. K.M. said the bigger male told K.M. he was going to "jack up" K.M. K.M. said a woman told K.M. to give up his money for "being stupid." K.M. said that he thought at the time that if he went down, several people would start attacking him.

K.M. said he dropped his bicycle and ran. K.M. said he heard police yelling "stop, Police, don't move, put it down!" K.M. said he saw the police officers had their guns drawn. When he was asked by protocol investigators whether K.M. knew why the police had their guns drawn, K.M. replied because he was being pursued by two men with "giant pipes." K.M. said the police were yelling loudly at the suspects to stop and drop their weapons, but neither suspect looked at the police or complied with the officers' commands.

K.M. said that when he realized the police were chasing the suspects, he thanked god because he believed the police were there to protect him. K.M. said he heard "pop, pop, pop" and believed one of the officers fired his weapon at the smaller, young man. Protocol investigators asked K.M. to estimate the distance between the officer who fired his gun and the young man. K.M. believed the distance was about ten feet.

Protocol investigators asked K.M. what he felt when the two men pursued him with their pipes. K.M. said he believed the two men were trying to rob him and take his money. K.M. said he believed the young man would have killed K.M. "very easily." K.M. said the young man had a "look of determination on his face" like "he wanted to blast (K.M.) and hit a homerun." Protocol investigators asked K.M. if he was fearful of being hit with the pipe. K.M. replied that he was fearful of being killed by the pipe. K.M. said he believed the officers saved his life and that the officers put themselves in jeopardy to protect him.

REDACTED herein referred to as W1 is a witness and stated:

W1 was the second young man who approached KM with a metal object in his hand. He responded to the first command to "drop it" by the responding police officers by dropping his bar, which was metallic and had one end threaded as if it fit into another section of pipe, or a handle, and melted into the gathering crowd not to be seen again during the incident. W1 was not interviewed by the OICI team nor by the SLCPD IA unit and therefore, did not add to this review.

REDACTED , herein referred to as W2 is a witness and stated:

W2 was fully interviewed on this matter with the interview being retained on various media for future use, if needed. Based upon the evidence present from other sources, especially the various recordings of the incident, this statement will not be included herein as it does not add to the facts that are already available. The following is **REDACTED**'s statement to the OICI investigators:

Witness **REDACTED**

REDACTED said he knew the juvenile and had been with him a couple of times before the incident. **REDACTED** said he was in the area of the shelter the night of the incident and saw the juvenile at the shelter.

REDACTED said he saw a white man (likely the same person as K.M.) walk up to the juvenile and the juvenile try to get away. **REDACTED** said he saw the white man "antagonizing" the juvenile, and the juvenile wanted to get away from the white man. **REDACTED** said he saw the juvenile pick up a stick to "defend himself." **REDACTED** said he saw police officers running up to the juvenile with their guns drawn.

REDACTED said he heard the police yell: "drop it," and "as soon as" the juvenile turned around, "maybe (to) see what was going on" the police shot the juvenile. **REDACTED** said that it appeared that the juvenile "was about to hit" the white man when one of the police officers fired at the juvenile.

REDACTED herein referred to as W3 is a witness and stated:

W3 was fully interviewed on this matter with the interview being retained on various media for future use, if needed. Based upon the evidence present from other sources, especially the various recordings of the incident, this statement will not be included herein as it does not add to the facts that are already available. W3 provided the following to OICI investigators:

Witness **REDACTED**

REDACTED said he was near the shelter on Rio Grande Street when he saw two men fighting. **REDACTED** said he saw that one person had an object in his hands. **REDACTED** said he saw two police officers run past him yelling: "Put it down, put it down!" **REDACTED** said he heard two gunshots but did not look back to see what was occurring.

OICI protocol investigators interviewed several other police officers who responded and civilian witnesses. The recordings and notes of these interviews are part of the OICI protocol investigators' file, but are not set forth here.

REDACTED , herein referred to as W4 is a witness and stated:

W4 was fully interviewed on this matter with the interview being retained on various media for future use, if needed. Based upon the evidence present from other sources, especially the various recordings of the incident, this statement will not be included herein as it does not add to the facts that are already available. W4 made the following statement to the OICI investigators:

Witness REDACTED

OICI protocol investigators interviewed witness REDACTED REDACTED said she was on the sidewalk when she saw the juvenile (who she knows) shaking a broom stick as he chased another man. REDACTED said she heard someone yell: "Get him!" REDACTED said she heard police officers yell: "Drop the weapon!" REDACTED said she heard two gunshots.

REDACTED , herein referred to as W5 is a witness and stated:

W5 was fully interviewed on this matter with the interview being retained on various media for future use, if needed. Based upon the evidence present from other sources, especially the various recordings of the incident, this statement will not be included herein as it does not add to the facts that are already available.

Evidence:

E: Numerous photographs were made of the scene and they included the 42", slender, metal, bent, mop handle that was carried by C. Also photographed was the metal object being carried by W1 which appears to more sturdy in structure, with a threaded end where it appears it was capable of being screwed into a corresponding receiving length of pipe or perhaps a handle of an object. The handle being carried by C, which both officers saw at the time of the interaction, is bent and does not look very sturdy, in the photographs. However, it must be remembered that the officers saw this object in the hand of C, at night, in an area of poor lighting, and had witnessed it being used to strike KM. It is also important to recall that the officers knew that the object being held and dragged by W1 made a metallic sound as it scrapped along the ground and it was noted in the officer body camera footage that when W1 dropped his metal cylinder, at the first command from the officers, that it makes a noticeable metallic sound as it hit the ground.

The following is a recap of the footage captured by the body cameras of the two involved officers. The DA considers this footage to be evidence in possible upcoming legal actions and therefore, until such time as the DA releases this footage publicly, all descriptions of what were seen must remain confidential:

E1: S1's body camera footage lasts 12 minutes and 1 second and where necessary in the body below, this will be annotated the following way (12:01) indicating the minute and second that a described action appears in the recording.

S1's camera begins as he is walking down the street, near the shelter, but the audio does not commence until (0:30) S1 begins to run across the street, following S, who is using his flashlight, in the strobe mode, to illuminate a poorly captured scene involving multiple individuals. (0:28) As S1 approaches the disturbance, W1 is briefly seen, closest to the arriving officers, and although there is no audio on this recording yet, W1 reacts to the presence of the officers, and likely the commands they are giving as he drops the metal pole he had in his hands to the ground

and quickly turns, and is not seen again during this recording. *(Note: although the audio has not commenced, it is obvious that verbal commands were being issued by one or both officers as W1 reacts quickly by dropping his pole and leaving the scene.)*

The audio clicks on with repeated verbal commands being given by both officers to C, to “drop it”, who can be seen advancing slowly towards KM, who is retreating at the same pace that C is advancing upon him. (0:34) KM is seen more clearly with his hands raised, above his shoulders. *(Note: it is not until later, when both officers are giving a brief recap to an arriving Sergeant that they both said that they saw C strike KM with the metallic pole, which is later seen on this videotape. It was evidently this first strike(s) that drew them from across the street to the confrontation between C and W1 against KM. The also noted later on this video that they heard the sound made by C dragging his pole against the ground that told them it was made of metal.)*

After repeated commands from both officers for C to drop the metal pole, both officers fire, nearly simultaneously, at C. (0:36) *(Note: the investigation determined that S fired a single round while S1 fired three rounds. During various portions of this recording, S1 was not sure how many rounds he fired, which is typical in an OIS due to the stress levels present and what the mind remembers.)* C is seen falling to the ground, on his stomach, and as he lifts his head to look around, he is given more commands by both officers.

S then is heard giving a radio call that is a “shots fired” call, (0:46) with S1 making a more urgent call, (0:56) calling a “9-1” need for assistance call due to the growing crowd. The officers can both be heard commanding the growing crowd to stay back and they both retreat due to the size of the crowd and the motion forward by them. C remains on the ground, wounded with at least some of the crowd coming as close as a couple of feet from him.

S1 then describes briefly what has transpired to a responding officer telling him that he saw C hitting KM with a “pipe”. (2:04) As other officers arrive and deploy, the crowd is moved back away from the scene. S1 is heard telling KM to stay still, he is seen on the ground, near the officers, in the street, on his stomach, and S1 confirms with KM what had transpired by saying “...he was hitting you with the pipe, right?” (2:33)

More officers continue to arrive, but the ambulance has not. Officers begin to treat C, (5:08) and as S1’s camera scans the area, the metallic pole is seen on the ground, roughly a short distance from where C is lying.

A Sergeant arrives and interacts with both officers, at 6:07. S1 provides him with a brief recap and it appears as if S says he is unsure if he fired by saying he was unsure if “...I pulled the trigger...” while S1 seems to say that he fired two or three times. An officer tells the Sergeant that C was striking KM with “the pipe”. S1 referred to the metal object he saw in C’s hands as a pipe while explaining the situation to the Sergeant while S adds that he knew it was made of metal as he heard the noise it made as C dragged it along the ground.

At 12 minutes and 1 second, S1’s recording ends.

E2: S’s body camera footage:

S’s body camera is on while he is inside of the shelter, conducting an investigation involving a stolen cell phone. S is the primary officer on this call and so is in the lead, the front, of the two officers as they proceed throughout the entire event. As the matter goes outside, S is in the front

with S1 to his rear. When the confrontation occurs with C, S is on the right of S1, more to the north on the street.

The officers exit the homeless shelter and begin to walk northbound, on the east side of the street. (2:30) The video shows that S observes a disturbance to the north of them, across the street and illuminates it with his flashlight in the strobe mode. (2:47) S then yells "put it down" and begins to run across the street towards the commotion. (2:51)

Both officers give multiple and repeated commands to the unseen person including "put it down" and "Police". These commands are virtually non-stop and from the two officers come out rapidly. S has drawn and is pointing his weapon at someone. "Drop it and put it down" are repeatedly said. (2:58)

A B/M can be seen advancing towards a W/M, who is walking backwards, away from this advancing person. *(Note: the advancing B/M is later identified as C while the W/M is identified as KM, but neither are known to the officers at the time of the incident.)* C can be seen advancing with an object in his hand. (3:06) *(Note: the object is seen later on videotape and is later recovered. It is a bent pole, crudely shaped like a bow, and when viewing it, it appears to be over three feet in length. Later in this video tape, S stated that he knew it was metal as he saw it being dragged and felt that it was either a metal pole or possibly a sword. However, S also describes this object to a responding officer as a "stick" a number of times.)* When viewing the recording, it can be seen that C is advancing upon KM, who is retreating from him. However, there does not seem to be much urgency on either's part. In other words, C is advancing at a leisurely pace while KM is retreating at the same pace. At no time is KM heard pleading to C to stop, nor does KM turn and run away from C. This lackadaisical approach and retreat is very confusing to watch. KM can be seen backing away from C, with his hands raised above his shoulders but the camera on S does not show the advancing C, nor the referred to raising of the metal object that S speaks about in his interview. *(Note: the officer videos are very helpful but due to the camera angle, some items reported, are not captured on videotape.)*

Very quickly thereafter, shots are heard from S1 with S firing a single shot. His muzzle flash is very well seen at the 3 minute and 8 second mark. (3:08) These rounds are fired almost simultaneously by both officers. *(Note: these near simultaneous shots demonstrated that both officers independently perceived the situation as becoming dire and also eliminate the possibility of "sympathetic fire", a situation wherein one officer opens fire solely because he hears his partner firing his weapon.)*

S then took control of KM and put him on the ground. (3:12) S makes the "shots fired" call while C can be seen on the ground, lying face down, with his head raised as if looking at the officer or the area. (3:17) C then rolls onto his back (3:26) and S1 can be heard yelling at the swelling crowd to "get back." The metal pole is clearly seen lying on the ground, roughly five yards where C is lying, but actually closer to a person who is sleeping on the sidewalk, in a sleeping bag, and who has put his hands above his head. This person is seen in the background during and after the incident and he never moves. (3:33)

Three members of the crowd approach and one touches C, despite being told to stay back. (4:02) Other officer's sirens can be loudly heard and arrive on the scene. (4:43) S briefs one of the arriving officers about what had occurred and refers to the object used by C as a "stick", on a couple of occasions. (5:51) S continues to explain the situation and states that both he and S1 fired but shortly thereafter is unsure if he fired. (6:10) S1 is heard in the background explaining to this same officer that KM was "attacked" by C who was using "this pipe". (6:58)

S approaches C and lifts his shirt, revealing a gunshot wound to his chest and with other officers, rolls C onto his side, revealing blood on the ground and a possible exit wound in C's back. (7:45) S tells the third officer that he is not sure if he "pulled the trigger" while S1 can be heard in the background saying "I know I did." (8:43) S points out that there is "one more stick" over there. (9:09)

At 11 minutes, 50 seconds, an arriving Sergeant asks the officers for a "basic synopsis". S explains that there was a B/M, dragging a "metal pipe" saying it was obviously metal and perhaps was a sword. S explained that he believed C was going to strike KM again and so he fired. S1 added that he had seen C strike KM earlier in the incident.

E3: Pelco Export video tape: A video recording made from across the street from the incident was recovered. The camera is affixed upon the roof of the business, but it does capture the disturbance between C and KM, as well as the responding officers. Due to the distance, no real details can be seen, other than KM begins to retreat with C and W1 walking towards him. The recording is so grainy that it is not easy to discern if blows occurred, but based upon body language, actions and other accounts, this video tends to confirm the initial observations of the officers that C had struck KM prior to their intervention. *(Note: it is assumed that if this recording was enhanced, it could shed additional light about the onset of the incident, but it would have little if any value about the shots fired confrontation beyond what the officers' cameras captured.)* Other video footage was gathered from the Shelter but those were of little or no value.

Allegations:

C had not filed a complaint on this matter but since it was an Officer Involved Shooting, an automatic review has been triggered to determine if the officers' actions are "Within" or "Not Within" policy.

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:

The DA's office engaged a subject matter expert to provide his input on the events that occurred. The following comes from the DA's letter on this matter:

Expert Witness

The District Attorney's Office retained Martinelli and Associates, Justice and Forensic Consulting, Inc. to assist the D.A.'s Office with the review of this matter. Given the community

interest in the matter, the D.A.'s Office chose to seek the assistance of an outside expert opinion as part of the D.A.'s review. Dr. Ron Martinelli provided a report to the D.A.'s Office. The following is a relevant portion of the report containing his opinions and conclusions:

The forensic evidence provided by the body cameras worn by Officers Winegar and Checketts documents that both officers ran across the street to intercept (the juvenile) who had walked from the street and stepped up onto the sidewalk while holding a bent metal pole in his right hand, which was approximately four feet in length. The body cam videos document that (the juvenile) aggressively approached the male subject "K.M." Victim "K.M." is observed to have both of his hands up in submission and is backing away from (the juvenile.) (Bodycam video PO Winegar, time stamps: 00:25 – 00:33; Bodycam video PO Checketts, time stamps: 03:00 – 03:06; Evidence photo #1)

At this point in the incident and based upon Officer Winegar's and Checketts' statements of their observations, it would have been objectively reasonable for the officers to believe that (the juvenile) was an armed aggressor engaging another citizen with a bludgeon capable of inflicting serious bodily injury or death.

The SLCPD Policy Manual says the following on the use of Deadly Force:

Authority to Use Deadly Force

Peace officer's use of deadly force:

A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

- The officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death.
- Effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and
 - The officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; and
 - The officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed.
- The officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.

If feasible, a verbal warning should be given by the officer prior to any use of deadly force.

Considerations in Use of Deadly Force

Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impractical. Officers should consider:

- Other methods of effecting an arrest.
- The direction in which the firearm is to be discharged because of the possibility that innocent persons or property may be struck.
- The age of the suspect and the offense committed.
- Light conditions (extreme caution must be used at night or when other conditions obscure the officer's vision).
- The danger of firing while running or jumping.

Police Departments may be more restrictive in their own Deadly Force Policies, as compared to State Law, but they cannot be less restrictive. The SLCPD's policy, directly above, is an example of this Department adding additional restrictions, or considerations, to the Utah State "Deadly Force Policy", which is attached earlier in this report.

The statements of the officers clearly demonstrate their concern for the safety of KM, who had been attacked, and struck, with a metal pole. The fact that the pole was later found to be hollow and of thin metal construction, has no bearing on this matter as the officers did not, and reasonably could not, have known that during this incident. The fact that the pole is bent, a great indication that it was hollow, is easily discerned when viewing the videos but was not noted by either officer, nor is that unusual due to the nighttime conditions, poor lighting, and extremely quick time spans involved in this matter.

Using the time stamp on S's video tape, the officers reacted to the initial confrontation between KM and C at the 2 min 47 sec point and open fire at the 3 min 08 sec point. That is a total of roughly 21 seconds, give or take a few seconds for this author to stop and note the sequence timing. The officers had seen C strike KM earlier, and as they approached, C was clearly the aggressor while KM was retreating with his hands up.

The officer videos absolutely confirm that they gave C multiple, repeated commands to drop the pole and stop his attack. Not only do the videos confirm this, the actions of W1, a co-assailant, reacted almost immediately to their very earliest commands by dropping his pole and disappearing into the crowd. Even considering the normal din that occurs on that street, the distances involved and the use of the strobe flashlight are convincing that C was aware of the approach of the two officers and that it is almost impossible to believe that he was unaware of their presence and commands. So, at this point, the officers both stated they believed that C was attacking KM, he did not stop the attack despite their commands to do so, and so they feared that the life of KM was in danger of death, or serious bodily injury, as the law states must be present.

When examining the officer's actions as it relates to their own Department Policy, the following item is the one most in play:

Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impractical. Officers should consider:

- Other methods of effecting an arrest.
- The direction in which the firearm is to be discharged because of the possibility that innocent persons or property may be struck.
- The age of the suspect and the offense committed.
- Light conditions (extreme caution must be used at night or when other conditions obscure the officer's vision).

The danger of firing while running or jumping

In the officer videos, C can be seen approaching KM with the metal pole in his hand. KM is retreating from him, hands raised in a sign of surrender. The officers both stated that they believed C was readying for another attack, and all those statements seem reasonable and accurate. However, it was noted that neither C nor KM were showing any sense of urgency in this last confrontation. C did not noticeably increase his speed towards KM, and KM did not appear to increase his rate of retreat. KM's actions can be explained as he said he provided the mop handle to C, at the onset of the incident, and therefore knew it was hollow. Additionally, he had been struck with it earlier and did not suffer significant injuries, so his apparent lack of

urgency can be attributed to his desire to not interact with the police due to his attempted drug purchase. It is also likely that KM was aware of the approaching police as well and was matching his retreat speed to the speed of the approaching C.

Others may infer from SLCPD's policy that the officers had not exhausted all reasonable alternatives and instead could have simply tackled C, or used a Taser or OC gas on C. That point of view holds much greater weight if the officers could have known that the pole C was attacking with, was a hollow, mop handle, other than the solid metal bar, or sword, that they perceived it to be. Although S, initially referred to the pole as a "stick", he was very clear describing what he felt it was when he discussed the situation with the Sergeant who asked for a "basic synopsis" of what had transpired. Understanding that both officers felt it was a metal bar, possibly a sword, then the tackling idea is not an option as it exposes both officers to being struck, disarmed, and possibly seriously injured, if not killed. The use of OC gas, from a small personal size canister, is not effective at the ranges involved as the pole was roughly four feet in length. Tasers, often thought of as a panacea by the public, are a superb device at close distances and especially so when the weather means people will be lightly clad as bulky clothes routinely defeat the prongs. This event took place in February, so officers likely recognized that their Tasers were not nearly as effective as they are in say, June. At ranges much further than a few yards, it is possible that one of the two fired prongs will not make contact with the target making the device totally ineffective. The issue becomes had the officers used another of the tools commonly carried by officers, and it was defeated or was ineffective, did they expose the victim to death or seriously bodily injury by not stopping the attack? Their job is to ensure that attacks are stopped so as to protect the victim from death or serious injury.

In summary, it is clear that C attacked KM, and did so with a metal object in his hand. His partner, W1, in the earliest stages of this incident heeded the commands of the police and dropped his pole and left the scene. C did not respond to these same commands and continued his attack despite countless verbal commands and the use of a strobe flashlight. The responding officers had witnessed an attack on a person, for reasons unknown, with a metal object that they both knew to be metallic in composition. The officers stated they felt C was raising his pole to strike at KM once again, which is not clearly seen on the videos, but C striding forward would result in the pole being raised and lowered as his hands moved in a normal manner associated with walking. There was no increased urgency, in this last attack, discernible on the recordings but it should also be noted that at no time did C respond to any command to stop, or to drop the object.

Panel Findings:

As to the allegation that S and/or S1 used "Deadly Force" in this incident, the Panel makes a finding that their actions were "Not Within" policy.

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

Kevin Parke
Panel Chair

8/19/16