

**Office of Internal Oversight Review**  
**Key Findings, Conclusions, and/or Recommendations of an Officer-Involved Shooting: Fatal**  
**3400 South Jones Boulevard—October 15, 2015**

**Purpose**

The purpose of this report is to publish key findings, conclusions, and/or recommendations of the Las Vegas Metropolitan Police Department's (LVMPD) internal review of this incident. There are a variety of actions that can be taken administratively in response to the Department's review of a deadly force incident. The review may reveal no action is required or determine additional training is appropriate for all officers in the workforce, or only for the involved officer(s). The review may reveal the need for changes in Department policies, procedures, or rules. Where Departmental rules have been violated, formal discipline may be appropriate. The goal of the review is to improve both individual and Department performance.

**Synopsis of Event**

On October 15, 2015, at approximately 0836 hours, the Las Vegas Metropolitan Police Department (LVMPD) was involved in a critical incident under LVMPD Event LLV151015001058. The incident occurred near 3400 South Jones Boulevard Las Vegas, Nevada 89146. This address was located within the LVMPD Enterprise Area Command (EAC); sector beat Paul 4 (P4).

The incident was an officer-involved shooting (OIS) and Special Weapons and Tactics (SWAT) officers Zachary Adam, Jair Brown, Dewane Ferrin, and William Marx were the involved officers who discharged their firearms at suspect Linda Lush, who was armed with a firearm (handgun). Lush was struck multiple times and was pronounced deceased, on-scene, by medical units.

Prior to the OIS, officers observed Lush's vehicle traveling at a high rate of speed on Desert Inn Road near Valley View Boulevard. A record check on the vehicle's license plate returned an embezzled vehicle hit and listed Lush as the suspect. Officers attempted a vehicle stop northbound on Rainbow Boulevard, but Lush did not stop. Instead, Lush sped away and officers stopped following her.

While Lush was stopped at a red light at the intersection of Jones Boulevard and Sahara Avenue, another officer saw Lush's vehicle. The officer observed Lush point a silver handgun at the inside roof of her vehicle. As the officer broadcast this information over the radio, the light turned green and Lush drove southbound on Jones Boulevard.

Lush then sped into the parking lot of the Mountain View Plaza strip mall at 3400 South Jones Boulevard and drove to the southeast corner of the parking lot almost striking a pedestrian. As the pedestrian confronted Lush, she pointed a handgun at him and told him to leave. Lush then positioned her vehicle in the center of the parking lot.

Containment was established by patrol supervisors/officers around Lush and her vehicle. LVMPD SWAT was notified, responded, took over the inner perimeter around Lush and attempted to communicate with her. After approximately an hour with Lush refusing to exit her vehicle, it was feared Lush would attempt to drive her vehicle out of the parking lot. Two armored SWAT vehicles approached Lush's vehicle from the front and back to "pinch" Lush's vehicle and prevent it from becoming mobile. As the armored vehicles approached, Lush fired her weapon through the windshield of her vehicle at the approaching armored vehicles.

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Lush also pointed and discharged multiple rounds from her firearm, in a westerly direction, toward officers and civilians in the surrounding area. At that time, SWAT officers discharged their firearms, striking Lush. Lush died on scene as a result of multiple gunshot wounds.

### **The Criminal Investigation**

LVMPD's Force Investigation Team (FIT) conducted the criminal investigation of this incident. The investigation was submitted to the District Attorney's Office for review. The District Attorney's Office determined that, "no criminal prosecution of the officer or officers involved in the referenced case is appropriate."

For additional information related to the investigation of this incident, please refer to LVMPD's FIT Report and the Clark County District Attorney's Legal Analysis Report and/or the Clark County District Attorney's Decision document.

### **LVMPD Administrative Review and Critical Incident Review Process**

It is the policy of this Department to provide both the LVMPD and the community with a thorough review of incidents wherein deadly force was used by Department members. The Critical Incident Review Process (CIRP), includes the participation of citizen board members who reside within the LVMPD jurisdiction, who are not personally affiliated with the Department, who are not related to any of its members, and who have not had prior law enforcement experience.

The CIRP is comprised of two (2) related boards whose sole purpose is to conduct comprehensive administrative review of the tactics utilized by involved Department members as well as decision-making, Department policy, training, supervision, and the use of deadly force.

The Use of Force Review Board (UFRB) consists of both commissioned and citizen members. The Critical Incident Review Team (CIRT) presents the facts related to the use of deadly force. The board issues findings regarding the actions of Department members who used, directly ordered, or directly influenced the use of deadly force, whether such force resulted in death or serious injury. The UFRB may choose from one (1) of four (4) findings after hearing the presentation of facts from CIRT. The findings are Administrative Approval, Tactics/Decision-Making, Policy/Training Failure or Administrative Disapproval.

The Tactical Review Board (TRB) reviews CIRT conclusions. The TRB can validate, overturn, or modify the conclusions regarding the actions of Department members.

The matter was heard by the UFRB and TRB on November 3, 2016. Below are the key findings, conclusions, and/or recommendations from the CIRP determined by the UFRB and TRB members and approved by the Sheriff.

### **Use of Force Review Board**

#### **UFRB: SWAT Officers Zachary Adam, Jair Brown, Dewane Ferrin, and William Marx**

The Board's finding was Administrative Approval. Administrative Approval is defined as: "objectively reasonable force was used under the circumstances based on the information available to the officers at the time. This finding acknowledges that the use of force was justified and within Department policy."

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## **Tactical Review Board**

### **Communication**

Communication can be verbal or non-verbal. It includes electronic transmission or in-person. A review of these recordings can provide valuable evidence of the circumstances surrounding a particular event.

The initial dispatcher handled the entire call. There were minor updates that were not completed in the computer aided dispatch (CAD) document, but none of the omissions had an impact on the outcome.

- The administrative review determined the dispatcher's performance was within standardized LVMPD tactics, training, and policy.

Another dispatcher monitored the incident and updated information in CAD.

- The administrative review determined the dispatcher's performance was within standardized LVMPD tactics, training, and policy.

The radio traffic for this incident was clear and concise.

- The administrative review determined the radio traffic involving all LVMPD personnel was within standardized LVMPD tactics, training, and policy.

During this incident, information was shared between dispatchers, patrol officers, detectives, supervisors, the Incident Commander, and SWAT officers. The information provided was detailed and updated as the incident progressed. SWAT officers and Crisis Negotiation Team (CNT) members received a briefing when they arrived at the Command Post.

- The administrative review determined the information sharing among the various units was within standardized LVMPD tactics, training, and policy.

As SWAT snipers arrived and positioned themselves to relay real time intelligence on the suspect's actions, SWAT and patrol leadership established a plan to use the SWAT armored vehicles to contain Lush. CNT members were placed inside the armored vehicle to begin negotiations with Lush and a less lethal plan with an arrest team was formed. When the plan was initiated, there was no communication to confirm the sniper's location or if they were set and ready for the armored vehicles to be deployed to contain the suspect's vehicle.

- The administrative review determined the lack of communication between the snipers regarding their locations and by SWAT leadership to ensure the snipers were set up when the plan was initiated was not within standardized LVMPD tactics, training, and policy.

Officers Ferrin and Marx were senior snipers within SWAT and set up a position together directly to the west of the target location. When the armored vehicles moved toward the target location, they were both on gun and spotting with their rifles. They had very little communication with each other regarding their specific roles.

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- The administrative review determined the communication between Officers Ferrin and Marx was not within standardized LVMPD tactics, training, and policy.

#### **De-escalation**

Policing requires that at times an officer must exercise control of a violent or resisting subject to make an arrest or to protect the officer, other officers, or members of the community from risk of harm. Clearly, not every potential violent confrontation can be de-escalated, but officers do have the ability to impact the direction and the outcome of many situations based on their decision-making and the tactics they choose to employ. As a strategy to diminish the likelihood and the severity of force, officers will attempt to de-escalate confrontations.

The initial detectives and patrol officers who responded to this incident did so in a safe manner and maintained their distance until additional officers arrived to initiate contact.

- The administrative review determined that the preplanning by detectives, patrol officers, and supervisors and the continued planning as the incident unfolded was within standardized LVMPD tactics, training, and policy.

A detective and the patrol officers who responded to the initial vehicle stop did not contact Lush until sufficient officers were present to conduct a High-Risk Vehicle Stop. After the suspect failed to yield, patrol officers backed off and let the Air Unit continue to track the vehicle.

As the suspect pulled into the parking lot of 3400 Jones Boulevard, officers established a perimeter and created two immediate action teams. An officer attempted to speak with Lush to get her to surrender, while a patrol sergeant requested SWAT.

- The administrative review determined the officers' approach to this incident was within standardized LVMPD tactics, training, and policy.

The SWAT Assistant Team Leader (ATL) formulated a plan to utilize two armored vehicles to contain the suspect's vehicle. This plan was briefed to SWAT leadership, who approved the plan.

- The administrative review determined SWAT's approach with the armored vehicles was within standardized LVMPD tactics, training, and policy.

#### **Use of Deadly Force**

It is the policy of this Department that officers hold the highest regard for the dignity and liberty of all persons and place minimal reliance upon the use of force. The Department respects the sanctity of every human life, and the application of deadly force is a measure to be employed in the most extreme circumstances where lesser means of force have failed or could not be reasonably considered.

The Department seeks to manage use of force beyond the *Graham v. Connor* (1989) standard and its minimum requirements by establishing further parameters for the application of force and to offer explicit direction to officers. Sound judgment, the appropriate exercise of discretion, and the adherence to Department policy will always be the foundation of officer decision-making in the broad range of possible use of force situations.

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Officers will only use a level of force that is objectively reasonable to bring an incident or persons under control and to safely accomplish a lawful purpose. An officer's use of force must balance against the level of resistance exhibited by the subject. The level of force administered by an officer must be carefully controlled and should not be more than objectively reasonable to overcome the physical harm threatened.

In a confrontation, an officer will continuously reassess their response and adjust any use of force accordingly based upon the level of resistance encountered. Failure to reassess each application of force can lead to a violation of law and/or policy. The use of force by an officer must be within Department Policy which may be more restrictive than the U.S. Constitution.

Officers Adam, Brown, Ferrin and Marx were in a position with tactical advantage using their sniper rifle optics to observe Lush's actions, both in distance and cover. Officers Adam, Brown, Ferrin and Marx observed Lush as an armed barricaded suspect who aimed her weapon in the direction of SWAT officers and citizens in the area.

- The administrative review determined Officers Adam, Brown, Ferrin, and Marx's exhibiting of their firearms was within standardized LVMPD tactics, training, and policy.

Officers Adam, Brown, Ferrin, and Marx were aware of their backdrop from their respective positions around Lush.

- The administrative review determined Officer Adam, Brown, Ferrin, and Marx's assessment of their backdrop, target identification and isolation were within standardized LVMPD tactics, training, and policy.

Officers Adam, Brown, Ferrin and Marx observed Lush fire a handgun while pointing it in the direction of other officers and citizens in the area.

- The administrative review determined Officer Adam, Brown, Ferrin, and Marx's threat assessment were within standardized LVMPD tactics, training, and policy.

**Incident Management**

Supervisors will possess a thorough knowledge of tactics and ensure that officers under their supervision perform to a standard (in accordance with LVMPD policy and training). The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of the overall response to a potentially violent encounter by coordinating officers' tactical actions.

Supervisors will acknowledge and respond to incidents in a timely manner when officer use of reportable force is probable. Supervisors will also manage the deployment of resources and equipment. In dynamic and highly-charged incidents, supervisors will provide clear direction and communication to officers regarding their positioning and roles. Upon observing substandard officer approaches or flaws in tactical decisions, the supervisor will promptly act to correct any deficiencies.

During this incident, the exact location of the SWAT snipers was not known to SWAT leadership at the time the SWAT armored vehicles were deployed to contain the suspect.

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- The administrative review determined the communication between a SWAT lieutenant, SWAT sergeant, and SWAT ATL was not within standardized LVMPD tactics, training, and policy.

A patrol sergeant immediately advised he was monitoring the call when patrol officers made initial contact with the suspect vehicle. A patrol sergeant heard the incident broadcasted over his area command and responded to assist with the perimeter. As the suspect pulled into 3400 S. Jones Boulevard, multiple patrol sergeants worked together to establish a perimeter and command post. A patrol lieutenant responded as the Watch Commander (WC) and made the decision to take over Incident Command.

- The administrative review determined the management of this incident by patrol supervisors was within standardized LVMPD tactics, training, and policy.

**Additional Key Findings, Conclusions, and/or Recommendations**

Medical was requested early on in this incident to respond and stage at the staging area located adjacent to the command post. After shots were fired, an LVMPD tactical medic responded with SWAT and conducted an initial assessment of Lush. The LVMPD tactical medic determined Lush was deceased and determined she did not need to be transported to a hospital.

- The administrative review determined the medical response was within standardized LVMPD tactics, training, and policy.

Officers Adam, Brown, Ferrin, and Marx did not have an intermediate force option available during the incident.

- The administrative review determined the failure to carry a less lethal force option was not within standardized LVMPD tactics, training and policy.