

Office of Internal Oversight Review
Key Findings, Conclusions, and/or Recommendations of an Officer-Involved Shooting: Fatal
3141 Bel Air Drive – May 14, 2019

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 May 14, 2019, at approximately 1729 hours, the Las Vegas Metropolitan Police Department (LVMPD) was involved in a critical incident under LVMPD Event LLV190500067775. The incident occurred near 3141 Bel Air Drive, Las Vegas, Nevada 89119. This address was located within the LVMPD South Central Area Command (SCAC); sector beat Nora 1 (N1).

The incident was an officer-involved shooting (OIS) and Officer Brendan Burbrink was the involved officer who discharged his firearm at suspect Alex Underdown, who was armed with a firearm (handgun). Underdown was struck multiple times and was later pronounced deceased by medical units on scene.

Prior to the OIS, Officer Burbrink responded to a call for a domestic disturbance involving Underdown who was standing in the courtyard with a firearm in his right hand. At the time Officer Burbrink fired, Underdown raised his firearm and pointed it at Officer Burbrink and other officers. Officer Burbrink fired four rounds, striking Underdown.

The Criminal Investigation

LVMPD Force Investigation Team (FIT) conducted the criminal investigation of this incident. Their 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.

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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 December 11, 2019. 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: Officer Brendan Burbrink

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 officer at the time." This finding acknowledges that the use of force was justified and within Department policy.

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 review of the computer aided dispatch (CAD) document showed all call-takers documented information they received correctly, and the updates were completed in a timely manner.

- The administrative review determined all LVMPD call-takers performed within standardized LVMPD tactics, training, and policy.

Officers, on scene, obtained information about Underdown having firearms inside the residence. However, Officers failed to broadcast this information to other officers arriving on the scene.

- The administrative review determined the officers' information sharing was not within standardized LVMPD tactics, training, and policy.

Officer Burbrink arrived on scene and deployed his rifle without advising dispatch. He also failed to give his position at the residence.

- The administrative review determined Officer Burbrink's radio traffic was not within standardized LVMPD tactics, training, and policy.

During the incident, officers on scene had concerns with crossfire and the officers failed to broadcast the potential crossfire concerns over the radio.

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- The administrative review determined the officers' radio traffic 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.

Officer Burbrink and two patrol officers took a position behind a block wall in a patio area adjacent to where Underdown located. Officers had several opportunities to move away from the block wall and create distance while providing containment.

- The administrative review determined Officer Burbrink and the two patrol officers cover and concealment were not within standardized LVMPD tactics, training, and policy.

Officer Burbrink and his partner self-dispatched to the incident and communicated to each other how they would approach the residence while en-route to the call. Officer Burbrink deployed his rifle and assigned another officer to be his observer.

- The administrative review determined Officer Burbrink and his partner's preplanning was within standardized LVMPD tactics, training, and policy.

An Officer approached Underdown's residence, stopped two houses to the east and on the same side of the residence. The officer backed up and turned around, stopping the patrol vehicle two houses to the west. This caused the officer to drive past the residence.

- The administrative review determined the officer's approach to the residence was not 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.

Underdown was inside the courtyard of his residence, walking around with a firearm in his right-hand making threats toward officers along with suicide threats. When Underdown raised his firearm at Officer Burbrink and other officers, Officer Burbrink fired his rifle at Underdown, striking him.

- The administrative review determined, Officer Burbrink's drawing of his firearm was within standardized LVMPD tactics, training, and policy.

Officer Burbrink was at an elevated position and had a wall as his backdrop when he fired his firearm.

- The administrative review determined, Officer Burbrink's assessment of backdrop, target identification, and isolation was within standardized LVMPD tactics, training, and policy.

Officer Burbrink and other officers saw Underdown with his firearm and pointed the firearm at him and other officers.

- The administrative review determined Officer Burbrink's threat assessment was 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.

In reviewing the supervisors' response, the supervisors' lack of communication, decision making, and lack of clearly defined roles caused confusion.

- The administrative review determined the supervisors' incident management was not within standardized LVMPD tactics, training, and policy.

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Additional Key Findings, Conclusions, and/or Recommendations

Medical was requested to treat the victim of the domestic violence call and was on scene prior to the OIS. Clark County Fire Department was immediately requested to the courtyard after the OIS.

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