

Office of Internal Oversight Review
Key Findings, Conclusions, and/or Recommendations of an Officer-Involved Shooting: Fatal
5116 Spanish Heights Drive – December 8, 2020

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. A variety of actions 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 December 8, 2020, at approximately 0120 hours, the Las Vegas Metropolitan Police Department (LVMPD) was involved in a critical incident under the LVMPD Event LLV201200031290. The incident occurred at 5116 Spanish Heights Drive, Las Vegas, NV 89148. This address was located within the LVMPD Summerlin Area Command (SAC); sector beat Robert Four (R4).

The incident was an officer-involved shooting (OIS). SAC Officers Malik Grego-Smith and Dustin Xaypanya were the involved officers who discharged their firearms at suspect Nathaniel Sironen, who was armed with a hammer. Sironen was struck multiple times and was later pronounced deceased, on-scene, by medical personnel.

Prior to the OIS, the LVMPD Communications received a call from 5116 Spanish Heights Drive. The person reporting (PR), who lived at the residence, advised the call-taker her house alarm went off and her husband went downstairs to check the residence.

During the call, the PR advised an unknown male was inside the residence with a hammer in his hand, standing behind her husband. The PR advised the call-taker that she yelled down to her husband and asked if he was okay and he said, "No." Moments later, the PR told the call-taker she had to go and disconnected. The call-taker attempted to recall the PR two additional times, but the calls went to voicemail.

Officers Grego-Smith and Xaypanya, along with another patrol officer, were dispatched to the burglary in progress incident. Officer Grego-Smith was the first officer to arrive at the entrance of the gated community and advised the security guard he was responding to the burglary call. Officer Grego-Smith entered the community and parked two houses north of the residence. Officer Xaypanya and another officer arrived a short time later and parked behind Officer Grego-Smith. The officers made the decision to approach the residence as an arrest team. While at the front door, Officer Grego-Smith observed Sironen through the locked glass front door and knocked several times until the PR unlocked the door, allowing officers to enter.

Officer Xaypanya and another patrol officer had their firearm drawn prior to entering the residence. Officer Grego-Smith drew his firearm after he entered the residence and was confronted by Sironen running toward him with a hammer. Sironen made a sudden turn to his left away from officers and headed toward the PR's husband. Sironen immediately raised the hammer in an attacking position with his left hand, while holding onto the PR's husband with his right hand.

The husband attempted to get away from Sironen as he raised both his hands to protect himself from the pending attack. Simultaneously, Officers Grego-Smith and Xaypanya discharged their firearms at Sironen, striking him multiple times. Sironen immediately fell to the ground.

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With the arrival of a sergeant and additional officers, a custody plan was developed. An officer approached Sironen and placed him in handcuffs. Sironen was then placed in the recovery position until medical arrived on scene. Once medical personnel arrived, Sironen was evaluated and pronounced deceased on scene.

The Criminal Investigation

The 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 and 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 the 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 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 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 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 of four 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 April 21, 2021. 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: Officers Malik Grego-Smith and Officer Dustin Xaypanya

The board's finding was Administrative Approval for both officers. 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.

During the call, the PR advised an unknown male was inside the residence with a hammer in his hand, standing behind her husband. The PR advised the call-taker that she yelled down to her husband and asked if he was okay and he said, "No." The call-taker did not recognize this incident as a Supervisor Tactic for Armed Subject Response (STAR) protocol which requires a supervisor response along with three additional officers when there is credible information the subject is armed with a firearm or dangerous weapon, and used in a manner that can cause death or serious bodily injury. Therefore, the incident was not updated as a STAR Protocol in the computer aided dispatch (CAD).

- The administrative review determined the call-taker was not within standardized LVMPD tactics, training, and policy.

Officer Grego-Smith arrived and spoke with a security guard at the entrance of the community. He learned Sironen was possibly a transient and advised the other officer with him of the information. The officers walked to the front of the residence and communicated with each other. They observed Sironen inside the residence and requested a Code Red over the radio. Officers Grego-Smith, Xaypanya and another officer made entry into the residence and confronted Sironen who was armed with a hammer. After Officers Grego-Smith and Xaypanya discharged their firearms, both officers broadcasted over the radio shots fired.

- The administrative review determined the officers' information sharing and radio traffic for this incident was 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.

Officers arrived on scene and did not communicate a plan or assign roles and responsibilities before approaching the residence. The officers did have the time to gather information, assemble resources, and slow the momentum by communicating a coordinated response before contacting Sironen.

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

Officer Grego-Smith arrived in the gated community and parked on the east side of the street, two houses north of the targeted residence. Officer Xaypanya and another officer arrived and parked behind Officer Grego-Smith. Officers observed Sironen inside the residence and recognized Sironen as a threat to the

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homeowners. Officer Grego-Smith knocked on the door to get the homeowners attention to gain access to the residence.

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

Officers communicated with each other regarding their contact and cover responsibilities when making entry into the residence. Officer Grego-Smith took the role of contact officer and knocked on the door to get the homeowners attention. When the door opened, Sironen ran toward the officers and then turned toward the homeowner. Officer Xaypanya and another officer took the role as cover officer after the OIS occurred.

- The administrative review determined the officers' contact and cover tactics were within standardized LVMPD tactics, training, and policy.

Upon the officers entering the residence, Sironen attempted to strike the PR's husband with a hammer. The officers had to close the distance and were not able to maintain a position of cover and concealment to stop Sironen's attack on the husband.

- The administrative review determined the officers' cover and concealment were 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.

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.

Officer Grego-Smith kept his firearm holstered while knocking on the front door to get the homeowner's attention. When the front door opened, Officer Grego-Smith took a step inside the residence and still had

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his firearm holstered. Officer Grego-Smith did not unholster his firearm until Sironen ran toward him with the hammer raised in his left hand.

- The administrative review determined Officer Grego-Smith's drawing of his firearm was not within standardized LVMPD tactics, training, and policy.

Officer Xaypanya drew his firearm when he observed Sironen through the glass door with a hammer in his left hand running towards the front door and then turned toward the homeowner.

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

Officers Grego-Smith and Xaypanya entered the residence and were confronted by Sironen with a hammer raised in his left hand with a backdrop of a wall and window.

- The administrative review determined Officer Grego-Smith and Xaypanya's assessment of backdrop, target identification and isolation were within standardized LVMPD tactics, training, and policy.

Officers Grego-Smith and Xaypanya observed Sironen with a hammer in his left hand, raised above his head, in a striking position. Sironen used his right hand to hold onto the PR's husband and refused to let go of the husband.

- The administrative review determined the officers' 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.

The sergeant on scene requested additional units, established a perimeter, slowed the momentum, organized a plan to take Sironen into custody, took the role of incident commander, and waited for a K9 Officer to clear the residence. Another sergeant arrived on scene and conducted the Public Safety Statement. Two LVMPD watch commanders arrived on scene and assisted with scene management.

- The administrative review determined the supervisory response along with management of the OIS and Command Post locations were within standardized LVMPD tactics, training, and policy.

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Additional Key Findings, Conclusions, and/or Recommendations

Officer Grego-Smith requested medical to the scene after the OIS and a short time later the sergeant on scene requested medical to expedite. While waiting for medical, Sironen was placed in the recovery position. Medical personnel arrived on scene and pronounced Sironen deceased.

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