

Office of Internal Oversight Review
Key Findings, Conclusions, and/or Recommendations of an Officer-Involved Shooting: Fatal
5999 Dean Martin Drive – February 3, 2021

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 February 3, 2021, at approximately 1248 hours, the LVMPD was involved in a critical incident under LVMPD Event LLV210200010572. The incident occurred outside of the business The Range 702, located at 5999 Dean Martin Drive, Las Vegas, Nevada 89118. This address is located within the LVMPD Spring Valley Area Command (SVAC); sector beat Paul-4 (P4).

The incident was an officer-involved shooting (OIS). SVAC Officer Andrew Nguyen was the involved officer who discharged his firearm at suspect Marvin Payton Jr., who was armed with a screwdriver and was using it to attack Officer Nguyen's partner. Payton was struck multiple times and was later pronounced deceased, on-scene, by medical units.

Prior to the OIS, Payton entered The Range 702 business and remained inside for approximately 20 minutes. During this time, a Concealed Carry Weapon (CCW) class was occurring inside the business. While the class was on break, Payton entered the classroom, sat in a chair, and began searching through a student's gun bag, which contained a firearm. When the owner of the gun bag returned from the break, he confronted Payton and advised an employee of the business. Payton was then escorted to the main lobby by The Range 702 employees.

An employee called 9-1-1 and reported an attempted grand larceny incident. LVMPD Communications was contacted a second time when Payton became verbally aggressive toward the manager of the business by threatening him. Payton was then escorted outside the business by four employees.

Officers Nguyen and his partner were dispatched to the incident and arrived at the business less than ten minutes later. Upon their arrival, the officers positioned their patrol vehicle near the front entrance where Payton and the employees of The Range 702 were located. As Officer Nguyen exited the vehicle on the passenger side, his partner exited on the driver side and immediately approached Payton while giving him verbal commands to move toward the patrol vehicle. Payton did not comply; instead, he backed away from the officers.

Officer Nguyen and his partner moved closer to Payton who retrieved a screwdriver from his pocket. As the officers attempted to control Payton with empty hand tactics, he used the screwdriver to strike Officer Nguyen's partner in the head and face causing her to fall to the ground. Three of the employees from The Range 702, who were outside witnessing the attack were also armed with firearms. Simultaneously, Officer Nguyen drew and discharged his firearm at Payton as the three employees immediately drew and discharged their firearms at Payton to protect the officer being attacked.

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Payton was struck multiple times and immediately fell to the ground. Medical personnel were requested, and as additional officers arrived, Payton was taken into custody. Upon the arrival of medical personnel, Payton was pronounced deceased at the 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 June 24, 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: Officer Andrew Nguyen

The board's finding was Administrative Approval for Officer Nguyen. 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.

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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.

Prior to officer arrival, there were 4 calls into 9-1-1 regarding the incident. The last two calls were received by the same call-taker and their Communication Training Officer (CTO), both of whom did not adequately familiarize themselves with the details of the two previous calls for the incident. The call-taker, and CTO, failed to accurately record and update information in the Computer Aided Dispatch (CAD) program and failed to read the details from previous 9-1-1.

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

All Department members worked together, shared pertinent information, and provided updates in a timely manner over the radio.

- The administrative review determined the 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.

Upon arrival, Officer Nguyen's partner parked their patrol vehicle near the front entrance where Payton and employees of The Range 702 were located. Both officers approached Payton and Officer Nguyen's partner gave verbal commands for Payton to move toward the patrol vehicle. Payton did not comply; instead, he backed away from the officers. Officer Nguyen and his partner moved closer to Payton and attempted to control him with empty hand tactics.

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

Upon the arrival of officers, Payton backed away as he disobeyed verbal commands to move toward the patrol vehicle. Officer Nguyen and his partner moved closer to utilize the empty hand tactics needed to gain control of Payton. The area of the event was open and did not provide adequate cover and concealment for the officers while contacting Payton.

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

Office of Internal Oversight Review
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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 Nguyen drew his firearm when he observed Payton retrieve a screwdriver from his pocket and strike Officer Nguyen's partner in the head and neck area.

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

At the time Officer Nguyen discharged his firearm, he was in an open-air parking lot with a backdrop of parked vehicles and a freeway to the east.

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

Officer Nguyen observed Payton with a screwdriver, striking his patrol partner in the head and face causing her to fall to the ground.

- The administrative review determined Officer Nguyen'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.

Office of Internal Oversight Review
Key Findings, Conclusions, and/or Recommendations of an Officer-Involved Shooting: Fatal
5999 Dean Martin Drive – February 3, 2021

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.

Immediately after hearing shots were fired, sergeants assigned themselves to the incident. One sergeant established the Command Post (CP) and took the role of incident commander. Another sergeant established the route to UMC for the injured officer and managed the scene. Additional officers were requested. All supervisors worked together with management of the OIS and the CP.

- The administrative review determined the supervisors' response to this incident and their management of the OIS and CP were within standardized LVMPD tactics, training, and policy.

Additional Key Findings, Conclusions, and/or Recommendations

Officer Nguyen immediately requested medical for Payton and his patrol partner after the OIS. Medical personnel arrived on scene and pronounced Payton deceased.

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

When he was assigned to the call, Officer Nguyen activated his Body Worn Camera (BWC) for six seconds, then deactivated it. Officer Nguyen's partner activated her BWC for seven seconds when assigned to the call, and then deactivated it. Both Officer Nguyen and his partner failed to reactivate their BWC's when they arrived and did not capture any footage of the attack by Payton, nor did they capture any footage of the OIS. After the OIS, Officer Nguyen and his partner reactivated their BWC and captured the custody phase.

- The administrative review determined Officer Nguyen and his partner's use of their BWC was not within standardized LVMPD tactics, training, and policy.