

# CONFIDENTIAL

## ADMINISTRATIVE INVESTIGATION REPORT Vallejo Police Department Officer-Involved Shooting, June 1, 2020

June 2021

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## OVERVIEW OF INVESTIGATION:

On June 2, 2020, [REDACTED] of Vallejo Police Department (“VPD”) used deadly force in an encounter with a 22-year-old male named Sean Monterrosa. Soon after responding to reports of looting activity at a Walgreens location in Vallejo, [REDACTED] saw Mr. Monterrosa in the parking lot and later said that he believed Mr. Monterrosa had a gun and was about to shoot at him and/or his partners, [REDACTED]. [REDACTED] Aiming through the windshield of VPD pickup truck in which he was riding with the other [REDACTED] he rapidly fired five rounds toward Monterrosa with his Colt M4 Commando rifle.

Mr. Monterrosa, who had a hammer in his possession but no gun, was struck once in the back of the head; he died of his injuries.

In keeping with VPD’s standard protocols, a criminal investigation was immediately initiated. It was led by VPD detectives and accompanied by representatives of the Solano County District Attorney’s Office, who participated in the interviews with witnesses and involved personnel.

Although all three of the detectives in the pickup truck did not activate their body-worn cameras until after the shooting, the body-worn camera buffering feature captured video of the shooting (but not the audio). The respective angles and positioning did not provide for a clear view of activity outside the cab of the truck – including Mr. Monterrosa’s movements – in the critical seconds prior to and including the use of deadly force. In terms of other potential civilian witnesses who were in the Walgreens parking lot, some were later apprehended after a vehicle pursuit, but professed to have fled prior to the shooting in response to the lights and sirens of the arriving pickup. Another set of potential witnesses – in a black sedan that Mr. Monterrosa had reportedly approached in the seconds before the shooting – were not identified or located. Walgreens surveillance cameras were also inconclusive.

An [REDACTED] named [REDACTED] reportedly was monitoring looting activity via drone from his nearby work location at [REDACTED]. That individual professed to have seen relevant video from the drone in real time and gave statements to the criminal investigators as to his recollections of it.<sup>1</sup> However, the video itself was lost

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<sup>1</sup> Summaries of these statements – which were produced in separate interviews with the same individual – are included in the criminal investigation materials that are included as Attachment A to this investigation. He initially told investigators that, at the time of the shooting, he did not see in detail what the person who was shot was doing. VPD detectives reached out to him again at the end of July 2020, when it had become apparent that the drone recording itself was not retrievable. He offered additional observations about the incident in this second interview, including several new recollections about Mr. Monterrosa’s actions and a claim that he had

through a technological malfunction, and investigative efforts to retrieve it were unsuccessful.

This left the statements of the four VPD officers on scene as the primary evidence as to what had occurred. All four – the three detectives and [REDACTED], who was alone in a separate vehicle and participating in the quickly improvised response to the looting – gave voluntary interviews several hours after the shooting.

There was initial uncertainty as to which entity would be making the independent assessment as to the legality of the deadly force. The completed criminal investigation was eventually submitted to the Solano County District Attorney's office, but the formal review process as to legality has recently been taken over by the State Office of the Attorney General. At the time of this writing, the review is still pending.

Apart from that process, VPD's own administrative investigation into the officers' actions is the subject of a separate inquiry. In conjunction with the City of Vallejo, the Department delegated the responsibility for that investigation to OIR Group, an independent team of police practices experts that is located in southern California. Acting under the authority of the Chief of Police, OIR Group members Michael Gennaco and Stephen Connolly conducted the investigation that produced this Report.

## METHODOLOGY:

Investigators Gennaco and Connolly were provided with access to the complete criminal investigation file that was compiled by detectives from the Vallejo Department.<sup>2</sup> Apart from reviewing those materials, they interviewed [REDACTED] as witnesses. They also interviewed as subjects [REDACTED]. Finally, investigators interviewed subject [REDACTED]. All interviews were conducted remotely and recorded digitally.<sup>3</sup> The subject

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been listening to the police radio and had heard someone say, "Gun, gun, gun." This and other specific aspects of his supplemental statements were not corroborated by other evidence. However, his general description of Mr. Monterrosa running toward the car and then turning in the direction of [REDACTED] vehicle is consistent with the observations of involved VPD personnel.

Other colleagues of this person were also interviewed for the criminal case after it was learned they had been monitoring some of the drone camera activity at the relevant time, but this did not produce significant additional evidence about what had happened at the scene. Summaries of their interviews are included in the criminal investigative report.

<sup>2</sup> The detective investigative report and exhibits are attached to this report as Attachment A.

<sup>3</sup> The recordings of those interviews are attached to this report as Attachments B, C, D, E, F, and G.

interviews, and one of the witness interviews, were also transcribed by Cron & Associates Transcription, Inc.<sup>4</sup>

██████████ was also designated as a subject of the investigation. However, due to his ██████████ status, we were advised ██████████ that he was not available for a subject interview. Nonetheless, consistent with best practices and based on the available evidence, this Report includes an analysis of ██████████ actions in light of VPD Policy as it existed on the day of the incident.

## FACTUAL BACKGROUND:

On Monday, June 1, the Vallejo Police Department was one of many police agencies around the country dealing with a high level of civic protest and related unrest – including extensive vandalism and looting – that had emerged in the days following the murder of George Floyd in Minneapolis on May 25. Vallejo had experienced this directly, including a clash with protestors outside VPD headquarters on Saturday May 30. In preparing for anticipated needs as nightfall approached on June 1 (including intelligence about prospective organized looting), VPD activated a number of additional officers to supplement their staffing.

Among the officers called in to work were ██████████  
██████████  
██████████ who worked together in variety of targeted operations. All three were also assigned to the VPD SWAT unit as a collateral responsibility, and all three understood that they would be serving that night in a dual capacity, depending on the issues that arose as the night progressed.

The three rode together in ██████████ duty vehicle – an unmarked silver pickup truck equipped with lights and sirens – and responded to the field command post that had been established at the Best Buy parking lot. There, the officers (and other SWAT personnel) met with ██████████ to be briefed on their role. Unlike a traditional SWAT deployment, which is targeted on a specific objective and often pre-planned, the SWAT group of 8-10 people was divided and was serving in more of an “all hands on deck” bolstering of resources. Mutual aid officers from other agencies were also at the command post.

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<sup>4</sup> The transcripts of those interviews are also attached to this report as Attachments that align with the relevant recordings. However, the most accurate record of those interviews are the recordings themselves.

The [REDACTED] considered themselves to be performing in a hybrid function, with equipment and training that would allow them to respond in a flexible manner as needs arose. [REDACTED] goal was to group officers together for patrolling different “sectors” of the city in what he hoped would be a cohesive fashion, given the mix of personnel who were available.

While their later recollections varied as to when they left the briefing, they each recalled being in the field long enough to respond to a gun store out of concern for possible looting activity. Finding that location quiet, they moved toward a shopping district where looting had been reported earlier in the evening. By now it was after midnight on the morning of June 2.

They were driving – and nearby – when they heard [REDACTED], who had deployed into the field, put out via “air priority” radio traffic that he was observing active looting at the Walgreens location on Broadway and Redwood Street. They drove west several blocks and found him pulled over in his unmarked SUV on Redwood Street, with a vantage point to the Walgreens on the corner.

Pulling up along [REDACTED] driver’s side, the detectives had an exchange with him that lasted just long enough for [REDACTED] to advise detectives that he would head north on Broadway and pull into the Walgreens lot through a northeast entrance, and [REDACTED] vehicle would cross Broadway and enter the lot from the south. He then turned and headed up Broadway, and the detectives quickly drove forward toward their designated location in response.

There were two vehicles in the Walgreen lot and what [REDACTED] later estimated to be 10-12 people. [REDACTED] then broadcast: “They’re wearing all black. It looks like they’re armed; possibly armed.” All three detectives reported that this broadcast heightened their respective threat perceptions.

Meanwhile, the detectives were moving into the parking lot in a compressed timeline, and without further communication, other than [REDACTED] possible reference to a flashbang device he intended to utilize. He was in the passenger seat. [REDACTED] was driving, and [REDACTED] was centered in the back seat. He was carrying his Colt M4 Commando rifle, an automatic weapon which he was qualified to use in [REDACTED]/SWAT roles.

After hearing [REDACTED] over the radio, [REDACTED] turned on his lights and siren in order to clearly indicate their status as police officers. This prompted a reaction

from the various subjects in the lot. Some got into a gray pickup truck that left the scene through the northeast driveway.

That left a black sedan in the lot, and the subject in black, later identified as Sean Monterrosa, moved toward that vehicle. The officers were focused on Mr. Monterrosa in particular to different extents, and had slightly different perceptions of his interactions with that car. But each described it as driving away and leaving him in the lot. As it attempted to flee, the black sedan collided with [REDACTED] car with enough force to deploy the air bag, and then pushed past it and drove off.

According to [REDACTED] as this was occurring, Mr. Monterrosa turned in the direction of the officers and went into a kneeling position:

And then just out of nowhere the suspect from running perpendicular to our car towards his car or straight toward hi- car which is, you know, perpendicular to - to the line of sight of our car stops, turns towards me - turns towards our vehicle and gets down in what looked like a kneeling shooting position.

[REDACTED] then fired five rounds in rapid succession through the windshield of the pickup. Mr. Monterrosa was struck in the back of the head by one of the shots.

[REDACTED] finished exiting out the passenger side door, having exchanged his flashbang for his duty weapon, and ran out toward the street in an effort to track the black sedan. Seeing it drive away, he turned his attention to Mr. Monterrosa and saw that he was seriously wounded.

Meanwhile, [REDACTED] emerged from the driver's side of the truck, activated their body-worn cameras and also focused on the wounded Monterrosa. The audio portion [REDACTED] body-camera recording captured the following exchange:

[REDACTED] What did he point at us?

[REDACTED] I don't know, man.

[REDACTED] (to other officers): Hey, he pointed a gun at us.

The officers approached and attempted to render medical aid to Mr. Monterrosa until other officers and resources arrived.

# APPLICABLE POLICIES:

## 300.4 DE-ESCALATION

It is the policy of this Department that when all of the known circumstances indicate that it is reasonably safe, prudent and feasible to do so, an officer(s) shall attempt to slow down, reduce the intensity or stabilize the situation through de-escalation so that more time, options and/or resources may become immediately available for incident resolution.

De-escalation tactics and techniques are those actions undertaken by an officer(s) to avoid physical confrontations and to increase the likelihood of voluntary compliance or cooperation. Officers are expected to use de-escalation techniques before using force whenever practical, following department required training, unless force is immediately necessary to protect an individual, stop dangerous behavior, protect or prevent damage to property or stop a crime in progress in an effort to reduce or eliminate the need for varying levels of force.

De-escalation tactics and techniques include, but are not limited to the following:

- (a) Communicating with the suspect
- (b) Gathering information about the incident
- (c) Verifying information provided by dispatch
- (d) Assessing risks
- (e) Gathering resources (both personnel and equipment)
- (f) Using time, distance and cover
- (g) Using crisis intervention techniques
- (h) Communicating and coordinating with other responding officers

[...]

An officer's awareness of the above possibilities, when time and circumstances reasonably permit, shall then be balanced against the facts of the incident and which tactical options are the most appropriate to bring the situation to a safe resolution. A member is not expected to engage in force de-escalation measures that could jeopardize the safety of the community or of any employee.

Where circumstances and time reasonably permit, an officer shall take those reasonable and prudent actions which operate to mitigate the immediacy of the

threat thereby giving the officer time to call additional officers, utilize other tactics or request specialty assistance such as crisis negotiators.

### 300.5 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

[...]

#### 300.5.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit.

These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer (Penal Code § 835a).
- (e) The effects of drugs or alcohol.
- (f) The individual's apparent mental state or capacity (Penal Code § 835a).
- (g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).



- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
- (k) Seriousness of the suspected offense or reason for contact with the individual.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

### 300.6 DEADLY FORCE APPLICATIONS

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior

to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a)

#### 321.5.6 EFFICIENCY

(b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.

### 423 **PORTABLE AUDIO/VIDEO RECORDERS**

[...]

#### 423.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder, issued by the Department, and that the recorder is in good working order. [...]

#### 423.5 ACTIVATION OF THE PORTABLE RECORDER

Members shall activate their recorder whenever there is a reasonable expectation of an adversarial encounter, violence, inter-personal conflict, use of force, or display of weapons or any time the member believes it would be appropriate or valuable to record an incident.

In addition, the portable recorder shall be activated in any of the following situations:



technique, he responded that it could be – that de-escalation is to some extent situational, and that it could provide the sort of temporary advantage that would allow officers to neutralize a problem without significant force.

Moving to the particulars of the OIS incident, [REDACTED] was asked about the coordination between the two VPD vehicles and the tactic of entering the Walgreens parking lot from different directions. He considered this advantageous for a few reasons and called it “smart planning.”

He was then asked to comment on the information about the subjects being possibly armed, as put out by [REDACTED] over the radio, and how that information could or should influence tactics. He said that it would influence the mindset of the officers in terms of “priming” their threat perception – which could be either an advantage or a disadvantage. But he described [REDACTED] detectives, all of whom were also SWAT officers, as being particularly well-suited to respond in terms of their training and equipment.

Asked about the possible benefits of slowing things down in response to that information, he suggested that it would be beneficial to have additional communication and planning, but that coming in fast would still be a priority. He speculated that the three detectives would have been talking as they approached and mentioned the staging of the long rifle as a sound tactic for the situation. He added that the subjects’ ability to flee in vehicles would have added to the need for relatively quick movement rather than maintaining a safer distance.

The interview then turned to a discussion of the advantages and disadvantages of firing through a windshield. He described it as a way to “expedite the response to an armed subject or a dangerous situation,” whereas exiting the vehicle and establishing a stable shooting platform would obviously be time consuming. He also talked about the potential influence on accuracy that would occur when firing through a windshield, and the effect on visibility that the rounds would have in terms of the cracks to the glass and “frosted look” that could result. As for noise and the potential disorientation it could cause, he minimized the significance of this, particularly for weapons with suppressors. (After a later follow-up question, he explained that the rifles issued to SWAT operators have the threaded barrels that would allow for a suppressor to be added.)

He then was asked about an expression he had used earlier in the interview about the tactic of putting a “long eye” on a situation, and explained it as taking the opportunity to assess from a distance before engaging at a particular scene.

Asked about the benefits of waiting for additional resources in dealing with potentially armed subjects, he acknowledged the advantages that such an

approach would offer, but then cautioned that circumstances (such as an active shooter scenario) could create exigencies that outweighed the advisability of waiting. He further noted that, in terms of this specific case, the training and experience of the involved personnel would change the calculus and make waiting somewhat less needed.

The interview then returned to the question of waiting for backup resources and the advantages it potentially offered. He agreed that one benefit would be the ability to respond more effectively in a situation like the one that was ultimately presented here – namely, the ability to prevent or respond if subjects fled the scene in vehicles.

Returning to the issue of planning and communication prior to engagement at a given scene, he acknowledged that such steps are valuable, but that information is often limited in a call for service response, and that the timing doesn't always lend itself to ameliorating that. He did say that it would be important for all participants to be informed and on the same page to the extent possible. And, when asked, he specifically said that the potential use of a flashbang would be something that all on-scene officers should be aware of – even if that only takes the form of something like yelling “Device” before deployment.

The interview then turned to the issue of one officer serving in a designated lethal force role for this type of response, as with [REDACTED] and his rifle. He spoke of different schools of thought regarding this tactic – with one significant downside being that the sudden incapacity of that person would obviously make the overall deployment that much more vulnerable. But the availability of a long rifle would be an advantage, and would not preclude others from moving to their own deadly force options if necessary. He then spoke about the importance of communicating that choice so that everyone had the awareness, both to better understand the tactical situation and to ensure the safety of everyone inside the vehicle.

[REDACTED] again mentioned the experience and familiarity of [REDACTED] detectives in working as a team, and the assumptions he could make about their understanding of each other's roles. Asked about whether it would nonetheless be useful to provide verbal warning about a decision to fire, he said, “when there's time,” but cautioned that waiting to accomplish this could bring about its own disadvantages. He then responded to a question about the possibility of other officers not realizing what was happening – or even perceiving that they were being fired upon, and acknowledged that as a potential concern. He also cited the noise and disorientation as drawbacks that could be mitigated with a warning where possible, and agreed that providing partners with warning that a

subject is armed would also be helpful when feasible. He talked about the training that is given to communicate that threat, even in the form of yelling “gun.”

### ***Investigators’ Note***

██████████ statements are summarized above for the sake of completeness in recounting the administrative interviews that were conducted. However, there were limitations to their ultimate value in our analysis. Some of these were a function of gaps between his speculation about what may have occurred – given that he was not directly involved in the VPD response to the incident – and the facts as established.

For example, the detectives were admittedly not talking as they approached, and ██████████ commented on the inadvisability of pursuing in the unmarked truck; it was not pursuit rated. ██████████ comparison to an “active shooter” scenario was inapposite and the involved detectives also talked about how ideally it would have been better to approach the Walgreens situation more deliberately. The involved detectives all stated to varying degrees that coming in “fast” would not be an advantageous tactic.

Additionally, there were other places in which his tactical observations and conclusions did not seem supported by best practice or the particular circumstances of this incident. For example, while use of a flash bang might be considered as a less-lethal option, it would not be considered as a “de-escalation” technique as the term is commonly understood; it does not de-escalate anything. And as stated by the involved detectives themselves, the investigators did not consider ██████████ instructions to be “smart planning” in any sense of the word.

██████████

██████████ was interviewed remotely (by Zoom) on November 25, 2020. He was interviewed as a witness, based on his supervisory responsibilities on the night of the incident.<sup>6</sup>

He began by describing his ██████████ career with VPD and his responsibilities at the time of the incident. He was then ██████████, and among his areas of command was the Emergency Services Unit, which is comprised of three different groups: SWAT, Hostage Negotiations, Mobile Field Force, Tactical Dispatch, and the “Tech” team. He has ██████████ under him, and trusts them both from his personal confidence in them and his managerial philosophy. He

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<sup>6</sup> The recording of that interview is included as Attachment C.

sees his role as maintaining the “30,000 foot view” so as to stay able to focus on broader goals and objectives.

Asked about the circumstances in Vallejo at that time, he spoke of the unrest that had reached the area in the aftermath of the George Floyd case in Minneapolis. He said they had experienced issues dating over the weekend, and that by June 1 they were operating with specific intelligence about an organized looting group from the Bay Area that was purportedly targeting the city.

He said one response was to activate the SWAT team in a preparatory way, in anticipation of looting-related challenges. He described the team as 15-20 members; he called in as many as could respond. There was a heightened emphasis on safety, given the information that some of the looters were/had been armed in terms of activity that already occurred.

Asked about the activation of the SWAT officers and what it signified, he talked about the chain of supervision and the different components of potential SWAT response. He said they brought out some of the special equipment, such as the Bearcat vehicle. He said he chose the Best Buy parking lot as a command post, given its proximity to a lot of potential targets. It was left to [REDACTED] to deploy the available resources as he saw fit.

He was at the Best Buy, and that was the designated staging area, where fire and mutual aid and VPD officers were responding. He said [REDACTED] [REDACTED] were also at the command post. Asked about [REDACTED] being in the field, [REDACTED] described him as “self-deploying” into the field, while [REDACTED] stayed at Best Buy to provide more general command oversight.

He talked about the request for mutual aid resources as it grew dark out in the field; his sense was that the scope of activity was larger than they had anticipated. He says that specific assignments for the SWAT members was left to [REDACTED]. He regrets that they didn’t have the SWAT RV and a tactical dispatcher on scene to provide easier tracking of the overall deployments; instead, he was just scribbling notes as to where the different resources had been sent. It would have been better for the command and coordination to be more unified.

[REDACTED] was then asked about the specific role of the [REDACTED]. He described their role within the division, and said that there was a “hybrid” deployment of them that was intended to take advantage of their overlapping skills – the SWAT tactics but also the surveillance experience, active investigating in the field, etc. He says that the details of their specific mission were left to [REDACTED] discretion.

He was then asked about outreach to the National Guard, but said he did not recall that being considered as an option. As for the preparations that were taken, based on intelligence, in terms of reaching out to merchants and advising them on hardening their specific stores from vulnerability, he said it would have been a worthwhile step but that it was not taken. He said there had not been time to get that done.

Asked about “lessons learned” from the overall deployment experience of those days of unrest, he says that the Department did make subsequent adjustments. He said that the notion of an “After Action” review for the whole Department is something that they have considered, and has been incorporated into their application process for new lieutenants. [REDACTED] said that time constraints and other challenges have kept them from achieving a robust formal review.

He was then asked about the specific deadly force incident and his own response. He learned of the shooting and authorized the pursuit (of the gray subject vehicle) that ensued. He also responded to the scene itself, where he monitored the medical response and the initial investigative steps. He described learning of the [REDACTED] on scene who had been using a drone at the time of the incident. He gave direction for the drone to be retrieved and preserved.

He then ensured that involved officers were sequestered; he himself brought [REDACTED] back to the station.

Asked again about the ways that SWAT equipment and approach would differ from [REDACTED] responsibilities, he said that there definitely would have been different equipment and philosophy once they were activated at SWAT. He talked about “Containment, Overwatch, and React” as fundamental elements of a coordinated SWAT response that the officers would be very familiar with.

He said that, while SWAT is usually kept separate from patrol, the night of June 1 was distinctive, and that [REDACTED] in particular was serving a blended function – which potentially could have entailed bringing in additional units to respond to a particular scene or situation involving a possible containment or multiple subjects.

[REDACTED]

[REDACTED] was interviewed by Zoom on December 11, 2020.<sup>7</sup> He described his career with VPD, [REDACTED]. His current assignment is [REDACTED], but he was interviewed as a witness in capacity as the SWAT

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<sup>7</sup> The recording of that interview is included as Attachment D.



Commander, who had supervisory duties during the shift that included the officer-involved shooting on June 2.

██████████ also had direct familiarity with the ██████████ concept, having been given some responsibility for “re-imagining” the unit in 2016. He has served on the SWAT team for 8 or 9 years, and was a sergeant team leader before his promotion. He said the team’s size varies, with a maximum of 20 and 12 officers (at the time of the interview). He said the unit is “functioning” if not “thriving” in light of the resource demands.

Asked about the SWAT unit’s volume of work, he said it varies. He described the two basic kinds of SWAT incidents: Spontaneous events/emergency deployments that have dwindled in recent years to an average of 1 or 2, and pre-planned operations such as high-risk search warrants or high-risk apprehensions. He said it is not unusual for there to be hybrid operations involving SWAT ██████████ personnel (4 of whom actually serve in both capacities). He also described the annual training schedule, which has a goal of 20-24 training days per year and follows POST guidelines.

Discussing his recollections of the days leading up to the OIS, he described it as a fog in which everyone was at the Department quite a bit, attempting to adapt to circumstances that were evolving constantly. He did remember having multiple conversations with ██████████ about how best to make use of the SWAT team, given that “civil unrest” challenges were not part of their usual role. At the same time, it seemed urgent to have as many people and resources available as possible to meet whatever the needs might be.

He described some of the apprehension he felt about SWAT being used in ways that didn’t match their usual mission or function. However, he recognized the potential for them being utilized, so he made sure his team was ready in case they were in fact activated. As he described it, because SWAT falls under the “Emergency Services” umbrella, it was conceivable for them to be deployed in some sort of support capacity. He said that what’s they ultimately landed on: SWAT in a support or “force protection” role to assist as needed as the night unfolded.

He was not originally on duty on June 1, but he was called to activate the SWAT team, and he reported to work in the evening. He checked in at the station and then went to join ██████████ at the command post that had been established at the Best Buy parking lot. He was aware of the sporadic acts of looting that were a focal point of concern that day, and said the situation was already devolving in terms of the looting activity.

He made the decision to drive his own car to the Best Buy location. He chose not to bring out the SWAT RV (with its range of equipment and capabilities as a “mobile command post”) out of concern that it would be problematic to have it overrun if the rioting deteriorated. He acknowledged there were “pros and cons” to that decision.

Asked about his instructions to the SWAT officers, he said the initial directive was just to get gear and respond to the Best Buy, with further instructions to follow. This was unusual – command and control were already being handled, instead of SWAT taking over those functions upon arrival at the scene. He reiterated that the circumstances were very unusual. He said that, at the very least, and light of the idea that it is against good practice to have SWAT start to integrate into other functions, he wanted SWAT to be the consistent force to stay together, and maintain that internal cohesion for whatever the assignment ended up being.

His recollection is that [REDACTED] were not already on duty, but were called in along with others. He says he encountered them for the first time at the Best Buy location.

He recalled some dynamics that arose as he was on his way to the Best Buy lot – specifically, a couple of vehicle pursuits that had, among other things pulled ranking officers away from the command post. He said it was concerning to him to hear the level of activity over the radio, and asked for one of the pursuits to be terminated to preserve resources. This put him into temporary friction with [REDACTED], the Watch Commander at the time, but he thought it was the right decision – particularly when he arrived at the command post location and was the only ranking officer at the scene.

He described still speaking with [REDACTED] when his attention was pulled to a variety of mutual aid resources that were arriving at the scene. He got busy dealing with that – again in the absence of the captains and the other lieutenant. He described his sense that the notion of “unified command” had broken down a bit, between the uncertainty about the pursuit and the lack of direction as to the mutual aid assignments. Finally, he got [REDACTED] to return to the scene, and he was able to focus his attention on his SWAT officers as they arrived.

He recalled them arriving in a range of vehicles, and in somewhat improvised fashion. He said the [REDACTED] were there in blue jeans, with SWAT vests and driving in a [REDACTED] undercover vehicle. It was unorthodox, but he was mostly grateful to have the personnel there.

He said that, after discussing different deployment options with [REDACTED], the decision was to keep teams and agencies together to the extent possible, while breaking the city up into designated sectors. Again, it was somewhat hasty and lacking in a lot of definition – a verbal operational briefing. That said, he claimed that he felt reasonably good about what they had arrived at under the circumstances. He re-emphasized that his primary idea had been to keep SWAT members together for the sake of the cohesion that it would provide.

He had returned to the Best Buy area, when he heard [REDACTED] radio broadcast about the looting at the Walgreens on Redwood. That prompted him and others to being responding to the scene. He was en route when he heard the radio reference to subjects being possibly armed, and then the notification of the shooting.

Listening to the flurry of radio traffic that followed, he decided to engage with the pursuit of the gray truck that ended in Contra Costa County – the initial belief was that these subjects had been directly connected to the shooting incident (of which there were very few details at that point). He stayed with that operation, managing the scene after the subjects were taken into custody.

After establishing that overall narrative, the interview revisited specific issues. [REDACTED] recalled that the space of time between the original deployment and the shooting was only about 30 minutes to an hour. He then reiterated his mixed feelings about the non-traditional nature of the SWAT deployment that night, and seeing the [REDACTED] not dressed as they normally would be reinforced that. He said the officers themselves were uncertain as to what they were specifically supposed to be doing. He said that he did feel better after talking to [REDACTED] and developing a plan that would be a more “conservative” response in terms of staying together and being careful about deployment of resources. He considered it a supportive role, and felt like he had communicated that.

Asked specifically about the flashbang as a potential tool, he did not recall having specific conversations about it. But he said that the officers were trained in their use, and had access to them in both the SWAT [REDACTED] capacities.

[REDACTED] was then asked about whether the enforcement actions that led to the shooting were consistent with his vision about what they would be doing in the field. He said it did not seem outside the realm of possibility. Observing a looting crime and coming up with a plan to contain/apprehend, preferably via voluntary surrender, were all activities that were feasible in his view.

He then explained again that the idea was to divide the city into particular “sectors” and to have personnel from the same agency stick roughly together, for the cohesiveness that would create. He did not remember particulars about who was sent where, and did not recall there being any questions. He thinks the plan worked in the sense that [REDACTED] made observations about criminal activity and VPD officers responded to assist.

When asked about how the mutual aid and additional officers were meant to coordinate with the existing VPD patrol units, he again acknowledged a “disconnect” in terms of the overall command and control and coordination of these different resources. But he also thought none of it was insurmountable – logistical issues or confusions can often be addressed just through effective radio communications.

## Summary of SUBJECT INTERVIEWS:

[REDACTED]  
[REDACTED] was interviewed on June 2, 2020 by a VPD detective and a representative from the Solano County District Attorney’s Office. A summary and transcription of that interview is included within Attachment A (investigative case file and exhibits).

[REDACTED] was working outside his normal scope of duties when he began his shift at approximately 9:00, in response to the days of looting and vandalism activity that had been occurring in Vallejo and throughout the area. He described his position as being a roving patrol unit, and said he had assisted with multiple calls that night – including vehicle pursuits and an effort to find multiple suspects who had fled on foot. He was aware of a gun that had been found at that scene, and spoke of radio traffic relating to other “shots fired” incidents. He had also responded to different pharmacies (including an earlier visit to the same Walgreens) in an effort to address looting activity. [REDACTED] told investigators he was concerned for various reasons about the prevalence of firearms among the people engaged in criminal behavior.

Asked about the events that had preceded the use of deadly force by [REDACTED] [REDACTED] explained that he had self-deployed back to the Walgreens because of his sense that the looting activity was following a pattern, and that looters were likely to return to a scene once law enforcement had moved on. He put out the request for backup on the radio, and observed behavior that made him think the involved individuals were relatively sophisticated – including perhaps even having a police radio.

██████████ recalled that it was less than a minute before ██████████ officers arrived in their vehicle. He directed them to approach the Walgreens parking lot from one entrance while he went to the other. He estimated there were 10-12 subjects involved in the looting, and described the silver pickup and black sedan that were there as well.

He said that as he drove toward his self-selected entrance to the Walgreens parking lot, he became focused on the subject, dressed in black, who turned out to be Mr. Monterrosa. He noted something in this person's hand that led him to believe the man was armed with a gun. He said this caused him to change the angle of his vehicle's entry so as to put the engine block between himself and this person for safety purposes. In his interview, he recalled advising on the radio that this individual was "armed, possibly armed."<sup>8</sup>

At the moment where the shooting occurred, his attention had been diverted to the subject vehicles that were moving in his direction. He described the silver truck as going around his vehicle, but the black sedan collided with his SUV. ██████████ believed that his driver's door was open at the time of the collision, based in part on the pain in his left knee. He interpreted the crash as intentional, to help effectuate the suspects' escape, and the black car did leave the lot.

He had the impression that the collision occurred prior to the shots being fired. He described thinking that he had been rammed, and now "was being shot at." He was preparing for a gunfight as he got oriented, and decided to go around the back of his vehicle so he could use it as cover from the passenger side. That was when he observed the wounded person on the ground. He thought it was the same person whom he had been focused on previously, but could not be sure because of the way his attention had been on the moving suspect vehicles.

██████████

██████████ was interviewed on June 2, 2020 by a VPD detective and a representative from the Solano County District Attorney's Office. A summary and transcription of that interview is included within Attachment A (investigative case file and exhibits).

██████████ was interviewed as a subject of this administrative investigation on February 3, 2021. The interview was conducted remotely. A

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<sup>8</sup>The actual recorded transmission is "They're wearing all black. It looks like they're armed, possibly armed."

recording and transcript of that interview are included as Attachments E and E1. The following is a summary of that interview:

██████████ explained that his current assignment is as a member of the ██████████, and that he started in that role in May of 2020. He is also currently a member of the SWAT unit, as he was at the time of the incident. Talking about ██████████ he said that he usually works the same shift as ██████████; while they usually go out in separate vehicles, their activities are generally coordinated.

On Monday June 1, he was not originally scheduled to work; he recalled being notified in the early evening that he was being activated. He estimated that it was 8:30 pm before he actually reported. He met with his partners at ██████████ off-site facility, and they reported together to the command post location.

Asked about his understanding of their assignment for the night, ██████████ said he thought they were there to “protect the Department” in the event that there was protest activity directed there (as there had been over the weekend), and that there were meant to protect “high value” businesses such as pharmacies or gun shops that were likely targets of looting activity. They would also be available to respond if “something bigger” of any kind happened to unfold.

He described it as an unusual set of circumstances. Things were unpredictable, and they were prepared to “shift gears at any moment.” He estimated that it was approximately 30 minutes after they left the briefing that the shooting occurred. Asked about his understanding of how his team was meant to interact with other VRP personnel, he said he did not leave the briefing with specific expectations, but that they were used to overlap as a small department.

Returning to the unique dynamics of the night, ██████████ called it “unprecedented” in terms of the level of activity in the city. Monitoring the radio after being called in had given him a sense of large numbers of coordinated efforts to engage in looting behavior.

He remembered deploying to a gun store as their initial stop and making sure it was secure. Shortly after, he heard ██████████ get on the radio regarding the Walgreens. He said that ██████████ had not been at the briefing, but that he had heard him on the radio earlier, engaged in enforcement activity, and so knew that he was in the field. He said he did not specifically know what the ██████████ role was.

██████████ said they were less than a mile from the Walgreens and found ██████████ in his VPD vehicle. They pulled up next to him and had what he described as a brief interaction of "less than five seconds:"

I think all three that being me, ██████████ all kind of said something to him or interacted with him but ultimately he -- he said, you know, he, obviously, directed us to, hey, there's the Walgreens which we -- we knew, obviously, we were watching it and then he said, "Hey, guys. I'm going to go -- I'm going to right." Would mean north of Broadway. He goes, "You go -- you guys go this way." And then he -- he took off. (██████████ Administrative Interview at 16.)

██████████ explained that they didn't really have a detailed plan, and that ██████████ officers were left to "formulate something on the ride" to the Walgreens lot, where they were supposed to enter. He then recalled that they had turned into the lot when he heard ██████████ make reference over the radio to subjects being armed. He estimated that they were less than a hundred feet from the drive-thru of the Walgreens when this occurred.

That led to the following exchange in the interview:

CONNOLLY: And when he announced that people were armed and you were moving, did that affect your mindset at all or change your sense whether what was happening right now is a good idea, or whether tactically you should be doing something different than what you were doing?

██████████: Well, I mean, obviously, I -- I -- I had some concerns safety-wise. I mean we don't like to roll into an armed -- what potentially could be an -- an armed confrontation without a little bit more information or without a better planned tactics. So, I mean that was definitely -- I mean it's concerning.

Especially, given how quickly everything occurred and how kind of dynamic the entire night was. (██████████ Administrative Interview at 18.)

He said that there was no verbalization among the three in response to this information, but that he heard ██████████ statement and assumed the others did as well. Asked whether that new information led him or others to reconsider their approach, he said that there was "no time." With ██████████ in place at the other entrance, ██████████ said they were "committed to going."

At that point in the interview, [REDACTED] was asked clarifying questions about his time at the command post prior to deployment. He recalled approximately a dozen people being there, and did not have a specific recollection about officers from other agencies being present. He also did not recall any particulars about a briefing or directions the team may have received from [REDACTED]. (He was also asked later in the interview about the briefing, and he did not remember any reference to a “sector-based plan” or attempt to organize officers, geographically or otherwise.)

After reiterating his recollection about the criminal activity that he heard on the radio during his drive to work, he described their stop at the Triple A gun store, where they did not detect signs of a break-in.

The interview then re-focused on the exchange with [REDACTED] as the vehicles were adjacent to each other on Redwood Street. [REDACTED] provided more detail about the respective entrances ([REDACTED] on Broadway, [REDACTED] on Redwood) that they were going to use. Asked then about the “ultimate objective of the plan” as he understood it, [REDACTED] said the following:

[REDACTED] didn't articulate what his plan was. He just said I'm going to go this way and you go this way and I -- I -- I think our anticipation was to arrest somebody if we had the possibility or had the option to arrest somebody if we do that, but there was no discussion --

GENNACO: Okay, and --

[REDACTED] -- about, specifically, what we were going to be doing. ([REDACTED] Administrative Interview at 26.)

[REDACTED] then said that they were basing their sense of people breaking into the Walgreens on [REDACTED] radio traffic. In terms of his own observations, he said he saw a couple of vehicles in the lot, with various people moving around them. He explained that he understood [REDACTED] reference to “armed” as meaning firearms, and that this increased his threat perception as they got closer to the subjects around the vehicles.

Asked then whether stopping and engaging in further observation would have been feasible, he said he didn't think so. The specific timing did not lend itself to that ability to process and change their approach; moreover, he said that [REDACTED] commitment to entry also limited their options. In response to a question about whether things might have been different with more time or distance to reassess [REDACTED]



█████ said the following:

Well, I think if we had the option of -- of getting it -- of coordinating some resources and -- and being able to formulate a -- a different plan with more time and more distance between us and them, I think that would have, you know, that would be ideal. (█████ Administrative Interview at 29.)

Asked then about whether the possibility of the subjects attempting to flee in their vehicles had been considered, he said that they didn't have time to discuss it or weigh the value of waiting for additional resources – again because of the timeline dictated by █████ actions.

The interview then turned to questions about the flashbang device that █████ was holding at the time of the shooting. He had made reference to the flashbang in his earlier interview with the criminal investigators, describing it as “kind of a de-escalation technique” that could assist in the apprehension of looters. He said although they were authorized to carry them in both their SWAT █████ roles, it was usually deployed in the context of a pre-planned event. This night presented different circumstances that were outside their usual contexts, that might have merited using the device outside of their normal scenarios for doing so.

Asked about what he would have considered the ideal result of using it at the Walgreens scene, he said it would have been a distraction that potentially overwhelmed the subjects and made it easier to apprehend them without their “running, or fighting, or accessing a weapon.” He accordingly got the flashbang ready after they left █████. He was then asked what caused him to transition from the flashbang plan and to his firearm as he exited the truck, and he explained that “Mr. Monterrosa’s actions” in approaching the black car made it seem like they were more likely going to be in a foot chase or car chase. As he was re-appraising, the shooting occurred – he described it “kind of just one contemporaneous event” rather than a clearly defined sequence.

He said he dropped the flashbang as he exited the truck. He said he did not recall any discussion among █████ members as to whether █████ lack of awareness of the flashbang might render its use inadvisable, but acknowledged that it would be a “factor to consider.”

Returning to █████ vehicle’s approach into the Walgreens parking lot, █████ said he was able to maintain visual contact with the subjects as they drove from the meeting with █████ and then turned into the entrance. He said he was

focused on the subject who turned out to be Mr. Monterrosa. There were two vehicles, including a gray Nissan truck that was closer to them initially as they drove in, but which drove away (north, through the lot) in response to their arrival.

He then described his recollection of Mr. Monterrosa's movements, which involved approaching the black car that [REDACTED] believed was a Nissan. He recalled the car beginning to pull away as Monterrosa threw something into it, and then attempted to get into the rear door on the driver's side. That car continued forward, where it collided with [REDACTED] car before exiting around it. This all occurred within seconds, and the car was still relatively close to Mr. Monterrosa when the shooting occurred.

[REDACTED] was unaware of how many people were in the black car. His perception was that they had left Mr. Monterrosa behind, and his attention was focused on him. Asked about his observations at that point, he said the following:

GENNACO: Okay, and if you could just describe from your position in the -- in the passenger seat what you observed Monterrosa do prior to the shooting.

[REDACTED] Yeah. So, after he got left behind the second time, he spun to his left, fully faced us, faced our car, he was down on a knee or a knee -- a kneeling shooting type position, crouching, kind of down on one knee. I think he was down on his right knee and so, pivoted to his left, went down to his right knee and he had something in his right -- had something black in his right hand, which I thought was a gun. Kind of up by his chest. Kind of indexed like you would hold a firearm. ([REDACTED] Administrative Interview at 47.)

He went on to describe his observations in more detail, and his recollection that Mr. Monterrosa was in fact holding the item in his hand that he believed was a gun. He made this observation "a millisecond" before the shooting occurred. He said he was not previously aware that [REDACTED] was preparing to use deadly force, though he recognized the shots as coming from him when they were fired.

He said [REDACTED] had not said anything before firing. Though [REDACTED] acknowledged it was common practice to articulate such an observation if an officer sees a subject's weapon, he said there was "no time" in this instance. He said he did not experience and disorientation or impairment from the shots being fired inside the

truck, and in close proximity to him. He said he was in the process of exiting the truck to the right when the shooting occurred. He later said that his thought was just to get out of the car, establish his footing, and then “be ready for whatever happens next.” The shooting was taking place at what was effectively the same time.

He said that the truck was still moving slowly at the time the shots were fired. Asked if this made it more challenging, he said he had not been in that situation and wouldn’t know from experience. He did say he assumed it would make effectiveness more difficult. He was then asked what training he had received about firing through a windshield, and recalled learning that it affects the trajectory of rounds, but did not remember specific details or extensive coverage of the topic.

The interview then covered Mr. Monterrosa’s specific movements at the time of the shooting. [REDACTED] said that he was going down into what he described as a “one-knee shooting position,” and said he [REDACTED] had been trained in that position. He was then asked about whether Mr. Monterrosa’s actions were also consistent with surrendering, especially in light of the fact that he turned out not to have a gun. [REDACTED] said that the interpretation was plausible “in hindsight,” but that it was not his perception at the time.

Asked then about his actions after the shooting, he described going out toward the street to see if the black car (that had struck [REDACTED] vehicle) was disabled because of the collision, but that it drove off northbound. He then turned his attention back to Mr. Monterrosa and his partners.

He eventually approached Mr. Monterrosa. Describing his observations after handcuffing him, he recounted finding a pocketknife in his pocket, removing a hammer from his sweatshirt pocket, and seeing a cellphone next to him, which he surmised may have been the object he had interpreted as a gun.

He said he did not recall anything specific that was said by [REDACTED] in the ensuing commotion. He recalled broadcasting his belief that the subject had a gun, as he got on the radio to provide updates. He also recalled providing first aid to Mr. Monterrosa prior to the arrival of paramedics. He did not recall recognizing the specific nature of Mr. Monterrosa’s head wound, and did not know specifically how or why the entry wound would have been in the back of Mr. Monterrosa’s head. He said he recalled Mr. Monterrosa facing them, though he acknowledged losing sight of him very briefly as he exited the truck.

[REDACTED] then described his actions at the scene after the arrival of the

paramedics. He recalled participating in the security sweep of the inside of the Walgreens before returning to the station. He did not recall who transported him, or know what particularly happened to [REDACTED] truck.

The interview then turned to the topic of body-worn camera activation. After establishing that he had activated his camera after getting out of the vehicle, he was asked about why he had waited until this point in the incident. He provided the following response:

So, generally, I mean had we known that we were going to in right then and there and had formulated some sort of plan, I think we -- I would have activated it then and there. Became kind of rushed into it and then, you know, between talking to [REDACTED] and us getting into the parking lot and the shooting occurring, it's maybe 10 seconds or so. So, and in that timeframe, you know, I'm -- I'm prepping my flashbang, we get that new information about them possibly being armed. So, there was a lot of new information and a lot of things that caused me concern for my safety where my primary goal was to remain safe and keep [REDACTED] safe and [REDACTED] safe. So, I think it was just because it was so kind of dynamic and -- and -- and it kind of happened all, you know, very rapidly that I didn't get to activate it immediately. ([REDACTED] Administrative Interview at 66.)

He also expressed his belief that the relevant VPD policy regarding activation did not apply specifically to [REDACTED] but was patrol specific, although [REDACTED] are in fact equipped with the cameras and use them.

He said he did not recall what prompted him to turn his camera off.

Asked whether he had discussed the incident with his partners, he said that he had not on that night, but had done so subsequently. He said they were good friends and that the topic of the evening and their feelings about it had come up. He was specifically asked whether [REDACTED] had ever indicated what object he had mistaken for a gun, and [REDACTED] said he thought it had been the hammer -- a different impression than his own.

██████████

██████████ was interviewed on June 2, 2020 by a VPD detective and a representative from the Solano County District Attorney's Office. A summary and transcription of that interview is included within Attachment A (investigative case file and exhibits).

██████████ was interviewed as a subject of this administrative investigation on February 25, 2021. The interview was conducted remotely. A recording and transcript of that interview are included as Attachments F and F1. The following is a summary of that interview:

██████████ listed his tenure with both the ██████████ and SWAT (two years) at the time of the interview; he had both roles on the night of the deadly force incident. He then recalled his being brought in to work on the evening of June 1, 2020, in response to the continuing unrest in the city. This included concerns about a possible demonstration outside the police station, and reports of planned looting activity.

He explained that he initially thought he and his partners would be working in more of a surveillance role, consistent with ██████████ training, but that he later understood the focus to be more on SWAT and the potential need to protect the VPD headquarters from possible unrest. He got that impression at the briefing provided by ██████████ at the "staging area" in the Best Buy parking lot. He recalled the briefing as being directed at the 8 or 10 members of the SWAT unit who had responded. He said he understood protecting the station as the "main priority" should it become necessary. The secondary role would be to assist with patrol and addressing looting activity.

He described the transitioning between ██████████ SWAT, saying that his mindset was "not fixed" on one or the other and that he was familiar with both roles and their overlap. He also talked about his monitoring of the radio in the time between getting activated and actually deploying, and listed the volume and types of crimes he was hearing about.

██████████ said that he and his partners often deployed together, and that they just happened to choose his vehicle on this night – not because he was always the driver or had a special role in that regard. Asked about his recollections from the command post, he said he did observe mutual aid personnel from different agencies, but he did not recall special instructions about staying together or being in a specific area.

He recalled being in the field for four to six hours before responding to the Walgreens (a much longer time span than others had noted). He mentioned a particular response to

the Triple A gun store out of concern that it would be a likely target for looting. He said that his team had latitude to do what they considered most important, but that he was also cognizant of the potential need to coordinate with or assist other officers.

He said they were focusing their attention on an area where there were many of Vallejo's main businesses, and were nearby when they heard [REDACTED] over the radio asking for "air priority" traffic regarding his observation of looting activity at the Walgreens. This made an impression on him insofar as the priority nature of the call, and the unusual circumstance [REDACTED] being in the field. They responded directly to his location.

Asked about the exchange with [REDACTED] as the vehicles were next to each other, [REDACTED] estimated that it was 10 or 15 seconds in length, and that his partners were talking with [REDACTED] while he primarily focused on the Walgreens. He described [REDACTED] plan to enter the lot from different directions, and said his understanding was that they would be helping him with enforcement activity upon their mutual arrival.

He was then asked if he recalled mentioning at the time of his interview for the criminal case some element of "confusion" about [REDACTED] intentions. He did, and explained that he was uncertain as to who was going to go first. He considered [REDACTED] departure his signal to go. After he saw [REDACTED] move forward, they proceeded toward the subjects.

Asked about communication with his partners at that time, he recalled it being very minimal, though he remembered [REDACTED] saying that he had a "bang" (flashbang device). He said he had turned into the lot of the Walgreens when he heard [REDACTED] over the radio. He described him as "pretty elevated"<sup>9</sup> and was letting them know that one or more of the subjects were armed. He said this heightened his officer safety concerns, though he had come into the shift with a sense that many of the people they might be encountering could be armed.

[REDACTED] was then asked if this new information caused him to reconsider at all in terms of possibly stopping their approach or otherwise changing tactics. He answered that the timing was such that they were "pretty committed." He then added that he turned on his lights and sirens at that point, and that his intent was to make it clear to the looting suspects that they were police officers.

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<sup>9</sup>The relevant recording of [REDACTED] reference to "armed" subjects is part of the attached criminal investigation file. In listening to it, we did not perceive his affect and voice intonation as reflecting [REDACTED] recollection of an "elevated" state."

Asked about the particular focal points or responsibilities he had as the driver in that situation, he said there was distinctive decision-making involved in terms of potentially going into vehicle pursuit, and maneuvering the truck as needed to promote the safety of himself and his partners in response to threats.

Returning to the issue of the flashbang held by [REDACTED] confirmed that his belief was that [REDACTED] planned to deploy it, and that this seemed like a good idea to him under the circumstances: it would disorient the looters and presumably give the officers a temporary advantage. He said that additional articulation of the intent wasn't needed, and that their familiarity with each other and with the tactic meant that it was basically understood that the others were on notice.

[REDACTED] then described his observations of the subjects in the lot, and their movement toward the truck and the sedan that were the two vehicles there. He confirmed that his own intent all along was to use the lights and sirens to alert the subjects that they were law enforcement. He was then asked about calling for backup units, and answered that he assumed from the earlier radio traffic that other officers would be responding, since that would be standard in the aftermath of the kind of priority information [REDACTED] had provided.

He said he recognized at the time that a vehicle pursuit or a foot pursuit were certainly possibilities, and he acknowledged that more units would have potentially assisted in apprehending the black sedan when it ultimately fled the scene. But he said also that the speculation was "hindsight," and reiterated his assumption that other units were already on the way.

[REDACTED] was asked if he had concern about cross-fire in relation to [REDACTED] and he said he didn't, since it was something they were trained to be cognizant of and since the [REDACTED] vehicle was offset from theirs.

The interview then turned to issues of [REDACTED] body-camera recording. He acknowledged having viewed it prior to his initial interview for the criminal case, and then seeing it again in preparation for his administrative interview. He confirmed that, as the video shows, he activated the camera just after exiting the truck after the shooting. After some discussion of how and whether the relevant VPD policy applied to [REDACTED] he described his own practice of always using his when appropriate, and that he had a "steering wheel to steering wheel" mentality about when to activate and keep it on. He then said he believed that he was obliged under policy to activate in the context of this "enforcement stop," and that he eventually did, but that the compressed time frame and the prioritization of safety caused him to activate later than he otherwise would have.

That led to the following exchange:

CONNOLLY: ...Would you say, in terms of the intent of the policy, that your timing was consistent with the policy or a little later than the policy sort of intends in its guidance?

██████████ Yeah, I mean, it says you "should" and it doesn't say you "shall" but, you know, I think, my department wants me to be safe over being caught activating my body camera and, God forbid, getting shot worrying about that. So, I felt -- I felt like I was within policy because it said I should and I did, even during a, you know, I still remembered to turn it on during a -- a pretty serious situation. (██████████ Administrative Interview at 39-40.)

██████████ was then asked again about his observations of activity in the Walgreens lot prior to the shooting. He described seeing individual subjects in the act of carrying things, with arms up toward their chests, that he considered consistent with looting. As he entered the lot, and was processing ██████████ statement about people being armed, he said that the subjects he was observing at that point were not carrying items, but instead were more "holding their waistbands."

██████████ talked about the driver of the silver truck that was in the lot, and said that this individual had looked at them and then turned away – but that this was prior to activating the lights and sirens. He believed that the lights and sirens had a noticeable effect: that person got in the driver's seat, and other people appeared to be "startled" and suddenly intent on fleeing. He did not know whether ██████████ ever activated his own emergency lights.

██████████ described two people getting into the silver truck on the passenger side – these were the individuals whom he had first noticed holding their waistband areas as opposed to carrying items. That car then began to pull away, and he was focused on it because it was closest, and he was trying to decide about potentially pursuing it. That was the point at which the shooting occurred.

Turning to the deadly force itself, the interview turned to a couple of aspects of ██████████ original statement to the criminal investigators. He was asked about his stated perception that the person who turned out to be Mr. Monterrosa was heading to the driver's seat of the black sedan. He confirmed that he had assumed Mr. Monterrosa was the driver, since he was headed to that side of the car and later had even begun to lower himself into seat. That led to the following question and answer:

CONNOLLY: And tell us, if you can, again, what the aspects of his behavior that were attracting your attention, at that point?



██████████ He was running, holding his waistband, towards the driver's side of the vehicle, and when he was running, I could see what appeared to be a -- a black object protruding out of his sweatshirt, which I thought was a pistol magazine. (██████████ Administrative Interview at 51.)

██████████ recalled ██████████ saying something like "Watch out" before the shots were fired, and sensed him moving forward with his peripheral vision, but acknowledged being surprised by the shots themselves. He was then asked about his recollection of comments in the immediate aftermath, as he spoke with ██████████ and as recorded on the body-camera video. ██████████ had asked what the subject had pointed at them, and ██████████ had replied "I don't know, man."

He explained this now as a function of his attention being on the Nissan at the specific moment the shots were fired. He described himself as scanning back and forth, and that his eyes were not on Monterrosa when ██████████ fired. He said that he had not seen "Monterrosa specifically point anything at me."

██████████ was then asked more questions about his perceptions inside the truck as the shots were fired. He recalled that that truck was still moving, and said he had not been disoriented by the shots themselves, perhaps in part because of the suppressor with which the rifle was equipped. He was asked what he knew about firing through a windshield, and said that he had been trained that it could be done, and that bullet trajectory could be affected but that it could still be effective. Similarly, he said that shooting from a moving vehicle was not something he had gotten specific training about, but that it would depend on the comfort level of the individual person in terms of maintaining accuracy.

He was then asked about when he realized that Mr. Monterrosa had not been possessing a firearm when he was shot. He mentioned noting the brown handle of the hammer, which he had also observed earlier in the sequence and had taken to be the handle of a revolver. He had also earlier noted a black object in Mr. Monterrosa's possession, which he had surmised was a pistol magazine. Asked whether he saw anything on Mr. Monterrosa's person during handcuffing that would correspond to the black object, he did not think so; the cell phone that he did see was smaller than his earlier perception.

██████████ recalled hearing ██████████ say "Watch out" in a way that redirected his attention, and said he then observed Mr. Monterrosa "spinning around, kind of like in an athletic position, if you will, with his hands towards his waistband."

██████████

██████████ was interviewed on June 2, 2020 by a VPD detective and a representative from the Solano County District Attorney's Office. A summary and transcription of that interview is included within Attachment A (investigative case file and exhibits).

██████████ was interviewed as a subject of this administrative investigation on March 18, 2021. The interview was conducted remotely. A recording and transcript of that interview are included as Attachments G and G1. The following is a summary of that interview:

██████████ described his policing experience: ██████████ before coming to Vallejo ██████████. He has spent most of his time there as ██████████ and is also a member of SWAT.

He was not originally on duty on June 1, but remembered being notified by ██████████ supervisor that they were being activated to help out; that was at 5:00 or 6:00 PM. As he was coming in, there was discussion about the SWAT operators ██████████ staying together as a unit and serving in a "dual-purpose" role. He explained that this was familiar to him on some level insofar as the "lines cross often" between those responsibilities, and gave the example ██████████ search warrant that is served by SWAT.

He said that on this night, his understanding was that he and ██████████ were grouped together as SWAT members, but purposely deployed in an unmarked ██████████ vehicle so that they could also provide covert surveillance or other functions as needed. This was unusual in some respects, but he said "there was nothing standard" about the night in general in terms of the Department's needs.

He also drew distinctions between ██████████ and the regular SWAT operators in terms of the latitude and discretion they have because of their regular work responsibilities. This included a less narrow focus and an expectation that they could and would respond to a greater range of situations. He said that on this night, since they weren't working with a specific incident or location, ██████████ flexibility factored in more than it otherwise might have.

Talking about his drive into work, he said he was listening on the radio and was struck by the high level of activity in terms of pursuits, shots fired calls, and reports of large groups of cars seemingly working together. He said it was unlike anything in his prior experience.

Eventually he and his partners made their way to the command post at Best Buy. He remembered being there for approximately 30 minutes, 10 of which involved a briefing from [REDACTED]. His recollection was that [REDACTED] was concerned about the need for things to be more coordinated, and that SWAT could help with the organization and control. He was asked whether he remembered pursuits being expressed as a concern by [REDACTED] and he did, recalling the cancelling of a pursuit that was pulling officers out of the city.

He also mentioned the availability [REDACTED] in a surveillance role if necessary, and that potential "high value" targets such as gun stores should be a priority. Additionally, while he remembered officers from other agencies being present, he did not recall a standard briefing to the whole group; he said there was already a lot of criminal activity in progress, and no time to assemble everyone and do a larger session.

Asked about how long it was between leaving the command post and responding to the Walgreens where the shooting occurred, he said it was difficult to recall an exact timeline, but that he estimated it was about an hour.

Turning to their response to the Walgreens, [REDACTED] recalled [REDACTED] putting out priority radio traffic about people breaking into the store. [REDACTED] was just a short distance away. [REDACTED] said they pulled up alongside of [REDACTED] vehicle, and had a conversation that he described as follows:

And he says, "You go that way," pointing straight or maybe he said "straight" and, I think, he pointed, "I'll go this way," to the right, because there's two entrances. There's a -- call it a north entrance and then there's a west entrance. So, he points to the north entrance. He says, "I'll go that way." And then he just, literally, drives off. And, honestly, five seconds, 10 seconds? As long as it took to say that, and then he drove off and, I mean, that's not exaggeration. It was like, "You go that way. We'll go this way" and then just drove off. ([REDACTED])

Administrative Interview at 25.)

He expanded on this by saying there was no articulated plan or "stated intention," and that his assumption in the situation was that that were going to be taking some sort of enforcement action to stop the crime in progress. He said that his thought in initially driving to meet [REDACTED] was that they would be evaluating the situation and deciding how to respond after more deliberation. He described the usual [REDACTED] approach as not wanting to rush things, and to keep "time on our side" to the extent possible. However, the actions of [REDACTED] meant that they felt obligated to follow his lead. He described it this way:

Like he's going -- he's going to take some enforcement action. We have to help him. We don't -- you can't just leave people. And sometimes there's a time for a conversation but sometimes, like if the balls rolling, like there's no -- once the train's moving, you can't stop it sometimes. And that's not necessarily a good thing but, I mean, it's just the reality of it.

And so, you know, what I wanted or would have liked to happen, didn't happen, and that's just, you know, how it played out. (██████████ Administrative Interview at 28-29)

██████████ was then asked about the flashbang device that ██████████ had considered deploying. He said it was something ██████████ was authorized to carry, and that they had talked about it as a potential aid to a takedown without arriving at any specific decisions – in part because individual circumstances should dictate. He did have the sense that ██████████ would be the team member to use one if they were going to do it for any reason. He said he remembered that, as they drove toward the Walgreens lot, ██████████ mentioned something about the flashbang and that he himself – in the midst of processing a lot of different information, said “Don’t bang.” This was because he thought that ██████████ unawareness of its potential use could make the situation more chaotic in terms of his possible interpretations.

██████████ told us that based on the route they were instructed to take by the ██████████ they had farther to drive than ██████████ ██████████ said that as they were driving through the parking lot, he heard ██████████ say over the radio that the “guy in the black is armed.”

He then talked about the sequence in which he heard ██████████ over the radio making reference to subjects being “armed.” He said his rifle was already between his legs and that the radio traffic made him grab it in earnest. He said he attempted to crack the door in anticipation of getting out of the truck, but that he was not used to being in the back seat of ██████████ vehicle and had trouble with the lock. This meant, in his mind, that he was “stuck in the truck,” so he slid over to be in the middle of the seat and have a better vantage point.

Asked about how the information relating to one or more subjects being armed changed his mind set about the situation or planning, ██████████ said that in his view they were already committed, and that stopping abruptly could have been even more dangerous. He went on as follows:

So, it didn't, at that point, change the plan or in no way was there time to change

the plan. Again, don't hear me say that this was the best plan. I will concede that the planning portion wasn't there. But given what we were doing, and given that the train had already been -- was already going, you know, 80 miles an hour, there was no -- there wasn't time to broadcast anything, there wasn't time to ask anything, there wasn't time to say anything, I mean, it was, literally, hey, he's armed, 1000, 2000 -- shooting. That quickly. (█████ Administrative Interview at 34-35.)

█████ was then asked follow-up questions about what he could see of the Walgreens area as they were next to █████ and he talked about being able to discern activity consistent with what █████ had said regarding the burglary in progress. He was then asked whether he and his partners engaged in further discussion about their own intentions. He said they did not, and described his own sense that they were likely going to be engaging in a vehicle pursuit or a felony traffic stop, depending on the level of compliance from the subjects. He said the idea of a pursuit was concerning to him, since the truck was not "pursuit rated" in terms of its capabilities and handling.

Asked about whether he considered waiting for additional marked units that could potentially assist in a pursuit scenario, he said that █████ initial radio traffic would have summoned units to respond, and he assumed that was still happening. He said it did not cross his mind to get on the radio for that purpose, and reiterated that his main focus at that point was not leaving █████ "hanging out there" to confront people by himself.

He acknowledged the other options that might have been effective under different circumstances, including a surveillance-based plan that would have focused on the most significant vehicle and gotten assistance from patrol or an Air unit to follow and then arrest. He said his own preference and intention was to have "ducks in a row" to a greater extent. However, in his mind, that option was eliminated by █████ response to the scenario:

It did change when he took off. I mean, I think, that for me, was just -- first off, what is -- he just took off. Like he didn't wait for anything and, you know, he was a little excited, and I get it, you know, he's not normally in a street capacity. I do. I understand that and I understand it. I've been amped up myself before and, you know, it's a crazy night and it's not his normal function. And so, I don't -- I

don't hold that against him and, I think, he did a good job under the circumstances. It's just it changed it. Right? And there's, in my mind, no disputing that when he just took off, all our other options were gone. (██████████ Administrative Interview at 42-43.)

The interview then turned to the issue of body-worn camera activation. ██████████ talked about his familiarity with the policy. He reviewed the general requirements for activation, and talked about the exception that officers aren't expected to compromise safety in order to comply. He also mentioned the idea that the policy is directed at "uniform assignment" officers and may not be applicable in the same ways to detectives; at the same time, he recognized that having activated it earlier than he did in this scenario would have been helpful. He said the reason he did not turn it on sooner was simply that he was "processing too much information." He added that the time frame was compressed, and that he had arrived at the scene with the idea that they were initially going to be engaged in surveillance as opposed to enforcement. He said that ██████████ actions "yanked" them abruptly into a different mode, and that he remembered to activate his camera only after the OIS had occurred.

The interview then moved to the use of deadly force itself. ██████████ was asked about what made him specifically begin to focus on the individual who turned out to be Mr. Monterrosa, and he replied that it was ██████████ statement on the radio as they were entering the Walgreen's lot. He said he was hearing it imperfectly, and has since listened to the actual transmission, but that he recalls hearing it at the time as "The person in black was armed." He said that there was one person in the lot that was in black, and running, and he began to focus on that person.

Watching Mr. Monterrosa's movements at the time, ██████████ said he initially believed that he was getting in the black car, which had an open back door. He recalled Mr. Monterrosa running in a way that attracted his attention, by keeping his hands centered on his body as if he "had something on him" as opposed to a natural sprinting motion that would involve more arm movement. This heightened his sense that the individual was armed, in reinforcement of ██████████ comment. He described Mr. Monterrosa as partially entering the car at one point, and he assumed that there would be a pursuit.

When Mr. Monterrosa did not in fact get into the car, and instead turned in the direction of ██████████ vehicle, this was surprising to him. He described the following thought process that ensued:

In my mind, there was a reason he was not either fleeing or complying with -- with getting on the ground. And, in fact, I've had numerous people get on the

ground. People rarely get down and face you. They go away from you or run away from you, and he had already been running from us, so there was no, you know, there was a time that he could have laid down on the ground. [REDACTED] [REDACTED] had already given commands for him, you know, for these people to surrender. And so, by him not fleeing, and then turning, given that he was armed, and I saw him with the -- running like someone who would be armed, and coupled with the turning and seeing what was in his waistband, I immediately thought he's shooting at us so his friends can get away. That was just 100 percent and I don't know why I was able to process and I actually made that thought in my head. I made that link of he's shooting -- he's going to shoot at us so his friends can get away. And I remember just thinking that very distinctly, as he does that motion and grabs the object in his -- in his waistband. That's what's going through my mind. ([REDACTED] Administrative Interview at 53-54.)

[REDACTED] then described other factors in his assessment. He said it was clear that [REDACTED] vehicle and [REDACTED] were both police (and remembered being relieved when he confirmed that the police lights on [REDACTED] truck had been activated and he had a recollection of [REDACTED] out of his vehicle and giving commands. He believed Mr. Monterrosa would have had the time to get down on the ground if his intention had been to surrender.

He then expanded on this, offering other elements of his perception that Mr. Monterrosa had not been surrendering:

Specifically, why I thought he was fighting was the way he -- well, I mean, and again, I'm breaking down what I saw, basically, all at once, which is him turning around, not moving his hands up, they were -- his hands never were above his waist, ever. So, to be clear on that. Moving his hands towards his waist, physically grabbing an object in his waist, that I could see partial -- a partial, you know, a little bit of. I could see a couple inches. None of those things are consistent with surrender. Those are -- everyone of those things is, to me, was consistent with he's about to draw a firearm. And, again, a lot of this is predicated on [REDACTED] observation that he was armed. ([REDACTED])

██████████ went on to describe the way his threat level, which had already been at “orange,” advanced to “red” based on ██████████ statement, and then went to “whatever is like way beyond red alert” as a function of his observations. He said these culminated in Mr. Monterrosa’s grabbing at something in his waist area that appeared to him to be the butt of a firearm. He described processing this very quickly, and being uncertain as to whether his partners were even focusing on the same thing, thereby increasing his sense that they were potentially endangered as they both started exiting the vehicle. He asserted that he had a very strong impression that Mr. Monterrosa was about to shoot at them. He described an “immediacy” to the situation that made him feel compelled to fire through the windshield.

██████████ said as they drove to the drive-through area, he tried to crack open the back door but was unable to get the door open due to perhaps the child lock mechanism of the truck being activated. He was asked whether he had given any warning to his partners, and he responded that he “may have said something short” but did not have time to articulate anything detailed. He talked about moving forward to ensure he was between his partners and not endangering them, and said the suppressor would have lessened some of the noise produced by firing in the enclosed space.

Asked about firing through the windshield, ██████████ said he had gone through extensive training on doing so. He said he fired five rounds in quick succession, that he was aware that he had a clear backdrop, and that the close proximity of the rounds to each other meant that he had confidence in his original target even as the changes in the windshield obstructed his view at some point.<sup>10</sup> His plan was to “take several rapid shots, hope that I’m effective in this and then, once you have taken a reasonable amount of shots, then we’ll reassess what’s going on.” (██████████ Administrative Interview at 64).<sup>11</sup>

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<sup>10</sup> ██████████ similarly said in his criminal interview that his vision was obstructed during the firing sequence:

Yeah so my view was obstructed after my firing my rifle through the windshield. Uh, again there was some debris. There was glass blowback. Uh, there’s also gas blow-back ‘cause I run a suppressor on my rifle so there’s gas coming out of that and then there’s, uh, debris coming out of the windshield.

<sup>11</sup> In his interview with criminal investigators, ██████████ said: “[B]ullets can do crazy things when they hit glass.”



██████████ said he had a clear backdrop when he fired. ██████████ said because he was firing through glass, he did not feel it appropriate to fire one round and assess but that he needed to stop the threat. ██████████ said the truck had come to a complete stop by the time he fired. ██████████ said he got some glass and suppression gas blowback on his face as a result of him firing so close to the windshield. ██████████ said that all of the suspect vehicles were out of the parking lot when he fired his rifle.<sup>12</sup>

He was asked follow-up questions about this moment, and said his recollection was that the truck had stopped at that point. He mentioned the suppressor gas and that glass particles that had blown back into his face as impediments to his vision as the rounds were fired, and acknowledged that this interfered with his ability to see movements Mr. Monterrosa might have made while ██████████ was discharging the volley of rounds at Monterrosa.

██████████ was then asked about the comments made at the beginning of the audio in his body-worn camera recording, when he emerged from the truck and said, “What did he point at us?” followed by “He pointed a gun at us.” He acknowledged having reviewed the video and offered a lengthy description of the combination of thoughts that caused him to make those statements in succession. He explained the question (“What did he point at us?”) as in part a matter of seeking “validation” of his impressions, based on what had occurred, and in part an effort to determine his partners’ level of awareness of the things he had been focused on. He said he then changed it to more of a declarative statement so as to apprise them of what he had seen, especially in light of the fact that he wasn’t certain of Mr. Monterrosa’s status at that point.

Asked to respond to an interpretation of “What did he point at us?” as reflecting uncertainty on his part, ██████████ said that he felt that his perception had been a legitimate one but that he was unsure about whether it had been correct, insofar as they had not been shot at and had yet to approach Mr. Monterrosa. He acknowledged that there was “a level of uncertainty” that had informed the question, but reiterated his belief that “the evidence was there to act on it as a gun” at the moment he had shot.

He then described the search of Mr. Monterrosa once the officers had approached, and his realization that the object in his sweatshirt pocket had been a hammer. He was then asked about his comment, recorded on the video, in which he said, “Fucking stupid.”

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<sup>12</sup> As evidenced by ██████████ body-worn camera, not all of the vehicles were out of the parking lot at the time ██████████ shot and it is likely that one of the rounds he fired struck the fleeing truck, calling into question his representation that he had a clear backdrop.

██████████ said he was referring to Mr. Monterrosa. He offered a lengthy elaboration on what he was communicating, which essentially boiled down to frustration and emotion over the encounter not having needed to happen if Mr. Monterrosa had not been in the parking lot and reacting as he did to the police. ██████████ said that Mr. Monterrosa acted in a way that “forced” ██████████ to have to shoot him. In his criminal interview, ██████████ told VPD ██████████ that he was “pissed” that Monterrosa caused ██████████ to have to shoot him.

██████████ said in the de-brief for his third officer-involved shooting, he advised that his mistake was possibly waiting and putting himself at risk when he should not have because he was worried about a previous officer-involved shooting.

He then referenced another recorded comment of his (“I didn’t need this”) as admittedly seeming “cold-hearted” but arising from the same sense of frustration. He went on about how Mr. Monterrosa “made one of those decisions that forced me to do something and he doesn’t get a second chance on that and I don’t get a second chance on that, I’m not taking that action, and so you’re processing all that at once and you’re dealing with all those emotions because all those things are true. Like none of that needed to happen.” (██████████ Administrative Interview at 79.) ██████████ explained that his comment also stemmed in part from worry about the process by which his use of deadly force would be adjudged.

██████████ was then asked some follow-up questions about different aspects of the incident. He reiterated his impression that ██████████ – who had arrived in the parking lot before them – was attempting to hold the subjects at gun point, though it had not kept them from scattering. He was asked about his perceptions of any vehicles in the lot, and said he had noticed them in general when they first arrived at ██████████ ██████████ vehicle, and then noticed them leaving the scene in response to the arrival of the police. His impression was that any vehicles that had been there were gone or in the process of leaving the lot when the shots were fired.

Asked about his awareness of Mr. Monterrosa’s injuries, he said that one of the responding officers was also a medic and that he heard this person make reference to a gunshot wound near the ear or in the head. He then responded to a question about the coroner’s finding – that Mr. Monterrosa had been struck once “in the back of the head” by speculating that it was the possible result of Mr. Monterrosa turning away in reaction once the shots began. But he did not have any certain knowledge about this.

██████████ then recalled his conversation with ██████████ who was trying to calm him in the aftermath of the shooting. He acknowledged that he was beginning to

become upset at that point, and believed that [REDACTED] reference to [REDACTED] having “been through this before” was a reference to his own prior officer-involved shootings and the ensuing investigative process. [REDACTED] believed that it was an effort to reassure him that the system would be fair, and the process would play out in ways that would allow the facts to come forward.

[REDACTED] was then asked about his prior OIS cases, and whether his decision-making during this incident had been affected by those prior events. He said that, in one of his prior cases, he had hesitated too long before using deadly force because he was inhibited by having been in prior incidents. He explained that the experience had taught him that “you just have to deal with the situation as it’s happening” and let the circumstances dictate, as opposed to being influenced by concerns about perception or past events.

Asked if he had any final comments, [REDACTED] took the opportunity to share his sense that the process had been fair and that he appreciated the support he had gotten from within the Department. He continued:

You know, hindsight's always 20/20 and that doesn't mean that we don't learn from our mistakes. I'll be the first one to critique myself or to say what I could have done better. And even in this case, like things we could have done differently, after the fact, but like knowing what we knew, and given what we were working with and, especially, you know, with the shooting part, like I do think -- I do think I acted properly and did what I felt that I had to do... ([REDACTED] Administrative Interview at 89-90.)

## INVESTIGATIVE FINDINGS

### [REDACTED] Use of Deadly Force

The key issue in this administrative investigation is whether [REDACTED] use of deadly force against Mr. Monterossa complied with applicable Department policy at the time of the incident. The assessment of that question requires consideration of the “totality of the circumstances” that led to the use of deadly force. An accounting of those circumstances, with the state law’s added emphasis on evaluation of decision-making and tactics that lead up to a use of deadly force, indicates that [REDACTED] determination to use deadly force was not objectively reasonable. Significantly, to the

degree that any perception of threatening behavior by Mr. Monterrosa was presented to the responding officers, it was predicated on the tactically poor way in which they responded and their failure to deploy any de-escalation techniques. Because of these factors, the chances of a non-threatening – or even capitulating – movement by Mr. Monterrosa being misperceived as a deadly threat were greatly increased. This was compounded by [REDACTED] choice to fire rapidly through the windshield of the [REDACTED] vehicle, which by his own account inherently influenced accuracy and his ability to visualize possible threat dissipation.

The relevant definition, as set forth in VPD Policy 300.6, reads as follows:

***An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).***

Among the notable elements of this standard, which add to the steps of the factual analysis here, are the overt references to both the “totality of the circumstances” as a relevant concept and Penal Code § 835a – the California law governing the legality of deadly force use. Section 835a was amended in 2020, and it includes the following definition:

***“Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of force.*** [Emphasis added.] This is meant to incorporate the notion that the reasonableness inquiry should extend back from the moment of the deadly force itself in assessing the officer’s actions and decision-making.

VPD’s policy also notes that an important element in the totality of the circumstances review is:

***The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).***

VPD Policy 300.5 contains the following language regarding general principles of use of force:

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the

time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

## ANALYSIS

As stated above, VPD policy establishes that when evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. A consideration of those factors shows that [REDACTED] use of force was not objectively reasonable.

### **(a) The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).**

According to [REDACTED] the reason that he used deadly force on Mr. Monterrosa was his belief that Monterrosa was armed and was reaching for a firearm to harm him or his partner officers. As it turned out, Mr. Monterrosa did not have a firearm at the time of the shooting, but that does not end the inquiry of whether it was reasonable for the detective to believe he was an imminent threat. Instead, the question is whether the mistaken *perception* of an immediate and severe threat was objectively reasonable.

While there may be times that question might be answered in the affirmative, (such as a situation where the subject closes the distance and “forces” the confrontation) here it was the detectives that closed distance and increased their risk, at the same time decreasing their tactical options. As stated above, that approach increased the likelihood that actions consistent with surrendering could also be interpreted as acts of aggression and lead to the resulting application of unreasonable force.

[REDACTED] asserts that the reason he used deadly force on Mr. Monterrosa was his belief that Monterrosa was armed with a firearm and was reaching for it to harm him or his partner officers. In addition to ultimately being mistaken assumption, it was premised in large part on the manner in which the detectives’ approach left no margin for error, thereby subjecting Mr. Monterrosa to an unduly extreme interpretation of a movement that was ambiguous or even meant as surrender, as discussed immediately below.

**(b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.**

In this case, Mr. Monterrosa was located with a group of individuals believed to have been involved in a burglary of a commercial establishment and was perhaps armed with a gun based on [REDACTED] radio broadcast. Certainly, the fact that Mr. Monterrosa was observed with individuals suspected of being involved in felonious behavior was evidence of a potential threat to responding officers. More significantly, [REDACTED] broadcast about one individual being possibly armed also increased the threat level presented to the officers. And all cited to the unusual criminal activity of that night as contributing to the threat level present in the City that night. But, as admitted to varying degrees by the detectives, these indicia of threat should have been heeded as a reason not to approach without a plan; the officers' reckless approach was the most significant factor in increasing the level of threat presented to them.

With particular regard to the observations of the responding detectives, all recall Mr. Monterrosa moving in the direction of the black sedan as if to get in the vehicle and flee, consistent with the response of other subjects on scene who were seemingly involved in the looting activity and realized that police officer had arrived (per the emergency lights on [REDACTED] vehicle). According to the detectives, Mr. Monterrosa then abruptly changed course, pivoting away from the black car (which drove off) and toward [REDACTED] truck. He then allegedly crouched on to one or both knees while facing the officers in what they variously described as an "aggressive posture" and a "shooting stance" that raised their threat perception. But this interpretation proved to be objectively incorrect insofar as Mr. Monterrosa had nothing to shoot with. Importantly, it is further challenged by the extent to which the same conduct by Mr. Monterrosa was also potentially consistent with an intent to surrender – a theory reinforced by the reality that he did not in fact have a gun.

As detailed above, the fatal shot to Mr. Monterrosa entered the back of his head, inconsistent with the officers' statements that he was facing them in an aggressive shooting stance at the time [REDACTED] shot him. Assuming that Mr. Monterrosa was facing [REDACTED] prior to the use of deadly force, when the bullet that killed him was fired, his head was turned away from the detective, resulting in a significant dissipation of any threat perceived by [REDACTED]. However, because [REDACTED] fired as rapidly as he did and because the bullets, gas, glass, and fracturing of the windshield impacted his ability to continue to observe any threat, his method of using deadly force rendered him unable to discern that level of threat dissipation that occurred. In short, during the sequence of events, Mr. Monterrosa being turned away from the detectives was not

something that may have been observable due to [REDACTED] choice on the manner and method of his use of deadly force.

In evaluating the potential threat presented by Mr. Monterrosa, two other factors are also deserving of attention. First, as noted above, [REDACTED] question to his partner immediately after his use of deadly force (“what did he point at us?”) demonstrates significant uncertainty about what it was that Mr. Monterrosa had in his hands. Moreover, when [REDACTED] answered his own question: (“he pointed a gun at us”), his statement was not consistent with what he told VPD detectives and his administrative interview, in which he stated that he had not observed Mr. Monterrosa point an object at him or his partners.

Second, [REDACTED] statements about his learning from prior shootings that one should not hesitate when faced with a potential deadly threat admittedly impacted his decision-making on when deadly force is to be used.

The additional law enforcement witnesses to the incident also provided information about the threat level presented by the individuals outside the Walgreens generally and Mr. Monterrosa specifically. [REDACTED] told investigators that as he drove toward his self-selected entrance to the Walgreens parking lot, he became focused on the subject, dressed in black, who turned out to be Mr. Monterrosa. He noted something in this person’s hand that led him to believe the man was armed with a gun. He said this caused him to change the angle of his vehicle’s entry so as to put the engine block between himself and this person for safety purposes. In his interview, he recalled advising on the radio that this individual was “armed, possibly armed.” At the moment where the shooting occurred, his attention had been diverted to the subject vehicles that were moving in his direction – one of which collided with his SUV. Certainly, [REDACTED] broadcast of Mr. Monterrosa being armed, while incorrect, was a factor that [REDACTED] should have and did use in evaluating the threat level presented to him. However, unlike [REDACTED] who did make adjustments to his method of entry in order to reduce the threat presented, [REDACTED] did not do or say anything to change the approach of the detectives as they continued on and towards the threat.

[REDACTED] said that his perception was that Mr. Monterrosa had been “left behind” by the black car after attempting to enter it and had pivoted back toward them in what appeared to be a “one-knee shooting position,” while holding something in his hand and close to his chest. He told criminal investigators that he was “fully expecting” that Mr. Monterrosa would be shooting at them. And the object that [REDACTED] said he believed to be a gun was not the hammer handle that [REDACTED] said was what he believed to have been the gun but rather a cell phone. Most significantly,



despite his observations of Monterrosa being armed and signs of “aggression” toward them, [REDACTED] did not even unholster his handgun until after Mr. Monterrosa was felled by the gunfire of [REDACTED]

[REDACTED] said that he had observed Mr. Monterrosa moving toward the black car with his hands at his waist, and with the handle of something that was possibly a firearm protruding from a pocket. His belief was that Mr. Monterrosa had moved toward and entered the driver’s seat of the black car, and was thinking in terms of being the driver in a potential vehicle pursuit involving the silver truck as well as the black sedan. He was then surprised by the “quick and aggressive” movement of Mr. Monterrosa in turning toward them, and in his criminal interview stated his belief that he was going to be shot at. However, he did acknowledge in his administrative interview that he had not specifically seen Mr. Monterrosa pointing something in his direction, and said that his “I don’t know” response to [REDACTED] “What did he point at us” question was in part a function of his “scanning back and forth” in an effort to observe the vehicles. And most significantly, despite his narrative about Mr. Monterrosa’s being armed and acts of aggression toward them, [REDACTED] did not even unholster his weapon until Monterrosa had been felled by [REDACTED] gunfire.

While the two detectives differ amongst themselves and with [REDACTED] on specific details, they all incorrectly interpreted Mr. Monterrosa’s acts as aggression, all incorrectly believed they saw what they believed to have been a weapon on Monterrosa’s person, and none of them saw Monterrosa turn away during the shooting sequence. The overestimation of the threat level shared by [REDACTED] and the two detectives stemmed primarily from the way in which they decided to approach an individual whom they believed to be armed, abandoning principles of time and distance and placing themselves in a position whereby a greater range of actions could be interpreted as threatening. The difference between [REDACTED] and his partners was that they did not so much as withdraw their firearms despite their assertion of a threat to them until Monterrosa went down as a result of [REDACTED] application of deadly force.

The best explication for the disconnect between the response of [REDACTED] and his partners is that the incautious way in which the detectives chose to advance on a potentially armed subject caused the detectives to have placed themselves in a vulnerable situation where they would not be able to effectively respond to an individual intent on firing on them. And because [REDACTED] alone had decided to train his firearm on Mr. Monterrosa as they drove up to the drive-through area of the Walgreens, his inflated risk assessment resulted in the deployment of deadly force while the others did not.



**(c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).**

In this case, there were four officers dealing with multiple subjects initially with one being [REDACTED] rank and the others assigned to the Department's elite tactical team. All other sub-factors were not applicable or relevant to this analysis.

**(d) The conduct of the involved officer (Penal Code § 835a).**

As detailed below, [REDACTED] failure to deploy de-escalation techniques and tactical deficiencies contributed to the increased likelihood that this incident would result in the use of deadly force.

**(e) The effects of drugs or alcohol.**

Not a significantly salient factor in the decision-making of [REDACTED]

**(f) The individual's apparent mental state or capacity (Penal Code § 835a).**

Not a significantly salient factor in the decision-making of [REDACTED]

**(g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).**

There were no commands given by [REDACTED] officers prior to the use of deadly force. While [REDACTED] stated in his administrative interview that he had a recollection of [REDACTED] holding suspects at gunpoint and giving commands, this was not corroborated by other available evidence.

**(h) Proximity of weapons or dangerous improvised devices.**

While Mr. Monterrosa had a hammer at the time he was killed, the hammer did not present an imminent threat to the officers at the time deadly force was used. While [REDACTED] said in his interviews that he believed Mr. Monterrosa had a gun, his first remarks after he used deadly force expressed uncertainty about whether Mr. Monterrosa was, in fact, so armed.

- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.**

**Not applicable.**

- (j) The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).**

Here, the extremely rushed, unplanned, and aggressive nature of the VPD response to activity in the Walgreens parking lot is critical in evaluating whether other reasonable and feasible options existed.

#### Background Circumstances

██████████ were operating under unusual circumstances that night, as they were called into work from their respective days off in order to help VPD staffing in the face of widespread unrest. Though all three were members of the SWAT unit as well, and each spoke of overlaps in the relevant duties, equipment, and training, the dual or “hybrid” capacity in which they were asked to operate was clearly unconventional. In his interview, ██████████ expressed apprehension about the ways in which their activation differed from their usual planned, coordinated response to a particular operational need. And the officers themselves differed at times in their administrative interviews as they explained their respective understanding of their intended role. They also had differing recollections of the briefing they attended at Best Buy, and the directives they received from ██████████ in terms of their deployment responsibilities, the role of mutual aid officers from neighboring agencies, and any geographic focal points.

Meanwhile, ██████████ had developed the sense that coordination of resources had become an issue, as with a pursuit that he chose to cancel so that officers wouldn’t be pulled from the city limits. His vision was for a more conservative approach, and he talked with the ██████████ about adopting more “dialed in,” controlled responses where possible – in spite of (or perhaps because of) the scale of activity that the City was contending with. He saw them as being in a “support” capacity that had the potential to take on different forms.

Apart from these efforts at defining a role for the ██████████/SWAT officers in their blended capacity, and the officers’ own default strategies for working together, ██████████ request for assistance put them into a mode of more exigent reaction. This was very much compounded by ██████████ approach, which emphasized taking action at the expense of a more deliberate, coordinated, better-resourced response.

The chaotic nature of the night, the high volume of criminal activity that was reported to be organized, the numerous vehicle pursuits that had already occurred, and the reports of shots being fired – all these components were later described by the involved officers as putting them in a heightened state of alert. While this heightened state of alert is understandable, it simultaneously reinforces the extent to which their hasty engagement was misguided and blameworthy under the circumstances.

#### ██████████ “Plan”

As detailed above, ██████████ arrived at the Walgreen’s and radioed that looting was occurring. Hearing the radio transmission and being close by, the three detectives responded to the location, saw him at the side of the road on Redwood St., and pulled up to his driver’s side to speak with him through the open windows of the two vehicles.

By the accounts of the ██████████ (not all of whom could even fully hear or participate), their meeting with ██████████ was extremely brief – estimates ranged from less than 5 to 15 seconds. They shared a basic sense of its substance (and ██████████ framed the encounter in the same way): he told them he was going to go right on Broadway and enter the parking lot from that direction, and instructed them to go into the other entrance (off Redwood), with the apparent idea to contain the subjects between them. He then abruptly initiated his own drive onto Broadway, leaving the ██████████ to use that cue as their own impetus to begin driving toward the lot.

The inadequacy of this communication is reflected in the various critical features that were missing. There was no discussion between the four men of the objective of the approach, or what the officers would do upon arrival at the drive-through area of the store, or when or how the officers were meant to engage with the subjects milling around outside of the store. There was no discussion about what to do should the subjects get into vehicles and attempt to flee. There was no discussion about the advantage of waiting for marked units to arrive (who are better equipped to engage in vehicle pursuits), additional backup or Air Support, and whether they would then attempt to effectuate a felony stop. Finally, there was no discussion about whether officers would engage in foot pursuits should the subjects run, or any attempt to address issues such as possible cross-fire in light of their different angles of entrance into the lot.

Moreover, even if some of these topics had been covered, the approach belied the ██████████ ██████████ stated emphasis on surveillance and intelligence gathering. Each of the ██████████ expressed concern about the haste and lack of detail with which

they initiated their enforcement actions. [REDACTED] was particularly thorough in this regard. Among his different comments in his interview was the following:

We'll see if we can get Air overhead and then we'll do what we have to do. If we have to follow them and do a takedown or, you know, do a felony stop, or whatever's going to happen, but I know, my head always goes to [REDACTED] role for our team and our unit. So, I'm always thinking like we're going to do something -- we always do things very well planned. Like we don't -- we always have time on our side, in our unit. And that's one thing we kind pride ourselves on is like there's rarely a need to rush anything [REDACTED]. (Admin. Interview at 27.)

He reinforced this idea at a later point in the interview:

[W]e don't run-up on people. We don't run-up on cars. Very rarely and only if it's pre-planned. We like to be able to slow things down, as much as possible, and really assess things and have our distance and have our cover. (Admin. Interview at 40.)

Regardless of the hesitation they may have felt about the plan's shortcomings or limitations, the [REDACTED] gave comparable accounts of their sense that [REDACTED] choice to go had dictated their own immediate deployment but failed to explain why they could not have suggested to [REDACTED] an alternative approach. The short trip to the Walgreens parking lot did not involve significant additional communication within [REDACTED] vehicle. [REDACTED] mentioned the possible use of a flashbang by [REDACTED] as "about the extent" of the dialogue that occurred, given the significant visual information he was trying to process and the limited time.

But even this singular issue was not apparently clarified: there were discrepancies in their subsequent recollections as to how or even whether [REDACTED] expressed the idea that he later shared with investigators, which was that using the flashbang was not advisable given the confusion it might cause [REDACTED].<sup>13</sup> [REDACTED] believed that he said something to the effect of "Don't bang." However, [REDACTED] had the flashbang in his hand as he began to exit the truck, and switched to his own firearm after the shots had occurred; he did not later recall hearing a relevant admonition from [REDACTED] as they approached.

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<sup>13</sup> Whether it was advisable at all is another issue that merits consideration. Whatever the advantages of the device as a means of momentary distraction/disorientation, we are not familiar with its use as a form of "de-escalation."

██████████ radio communication about the subjects being “armed, possibly armed” created the next issue in terms of the plan’s inadvisability. He put this information out as he was driving up Broadway and later claimed to have been specifically concerned about the person later identified as Mr. Monterrosa. Indeed, he later stated that his apprehension about the possibility of gunfire was such that he chose to change the angle at which he approached, and he entered the lot in an effort to provide himself with additional cover in the form of his vehicle’s engine block. But it not cause him to stop, reassess, or – importantly – provide updated, safer instructions to the officers in the other vehicle.

As for the ██████████, each of them remembered hearing it (or some version of it), and later cited it as a specific factor in a heightened perception of threat. None, however, apparently considered it a basis for changing tactics. They cited various reasons for this.

██████████ said that ██████████ advised over the radio that the individuals were armed as they arrived in the parking lot and less than 100 feet from the drive through. He acknowledged the resulting safety concerns as follows:

I mean we don't like to roll into an armed -- what potentially could be an -- an armed confrontation without a little bit more information or without a better planned tactics. So, I mean that was definitely -- I mean it's concerning. Especially, given how quickly everything occurred and how kind of dynamic the entire night was. (Admin. Interview at 18.)

██████████ also said that, in retrospect, it would have been helpful to have marked units on scene as they drove up to the Walgreens. Nonetheless, he said that ██████████ said that despite these concerns they were “committed to going” at that point, given their proximity to the subjects and ██████████ presence in the lot already. to responding and the new information did not change their approach and tactics. ██████████ said in retrospect it would have been helpful to have marked units on scene as they drove up to the Walgreens.

██████████ expressed a view that because the “train was already rolling,” it was too late to safely stop and reconsider:

So, it didn't, at that point, change the plan or in no way was there time to change the plan. Again, don't hear me say that this was the best plan. I will concede that the planning portion wasn't there. But given what we were doing, and given that the train had already been -- was already going, you know, 80 miles an hour,

there was no -- there wasn't time to broadcast anything, there wasn't time to ask anything, there wasn't time to say anything, I mean, it was, literally, hey, he's armed, 1000, 2000 -- shooting. That quickly. (Admin. Interview at 34-35.)

As discussed above, the detectives recognized the deficiencies of the “plan”, and of the inadvisability of simply “rolling up” on people without discussion of tactics, yet they did not engage with [REDACTED] to suggest further consideration, thought, or refinement to the operation. While the officers were observing potential criminal activity in progress, the initial information was that the individuals were engaged only in property crimes, which was apparently rampant in the City that evening. Considering the “risk/reward” calculus that officers should always assess, the additional few seconds it would have taken for the Departmental experts to formulate a sensible, safe, and coordinated plan could have greatly reduced the need for the split-second assessment of Mr. Monterrosa’s intentions that ultimately occurred and would likely have resulted in a different outcome than the officer-involved shooting.

Nor did the officers manage to alleviate any of this during their own trip into the lot. Moreover, after the three detectives received the “plan” from [REDACTED] and as they approached the drive-through area of the Walgreens, there was no apparent discussion among the three of them about how they were going to execute their response; in fact, the only specific idea that was raised – relating to the flashbang – failed to produce a shared understanding. As a result, and as detailed above, there was no consensus on whether and when to deploy a flash bang as a distraction device.

Neither [REDACTED] nor [REDACTED] have any apparent knowledge that as they approached, [REDACTED] had placed his rifle in a firing position. There was no discussion about whether and when they would activate their emergency equipment, where they would stop their vehicle, and what they would do when the vehicle was stopped. And there was no discussion about whether they would use their truck to pursue a vehicle if it fled the scene. While there was not a lot of time to have such discussion considering the close distance between the staging area and the ultimate destination, the fact that the detectives had no discussion regarding tactics during that short trip resulted in a forfeited opportunity to create a more coordinated approach. While the opportunities were certainly limited by the compressed time frame, the uncertainty and lack of coordination presumably added to the overall vulnerability that [REDACTED] perceived on behalf of himself and his partners.

While the concern for leaving [REDACTED] alone was understandable, the fact that no effort whatsoever was made to change their “plan” in response to the updated information about “armed, possibly armed” subjects constituted another tactical flaw,

one that deviated from the detectives' training to evaluate and adapt to evolving situations. The detectives' decision to forge ahead despite this serious increased risk to their safety caused a significant rise in the officers' threat assessment and substantially increased the likelihood that the officers would perceive the need to deploy deadly force. In fact, as detailed above, this new information was a substantial factor in [REDACTED] decision to move to the middle of the truck and deploy his rifle in a shooting position. But the officers' tactics in putting themselves in harm's way were as much responsible for their increased sense of vulnerability as was the possibly armed status of any individual subject.

[REDACTED] bears a significant responsibility for this lapse of leadership from one of the highest ranks in the Department. But the three detectives under his command also shared a responsibility to convince [REDACTED] of the need to develop a plan of approach to a challenging situation that was sensible, well-communicated, thoughtful with a common objective and consistent with principles of officer safety.

At the end of the day, rank in an organization has the privilege of determining courses of action so long as they are consistent with policy and training. However, in this case, especially considering the detectives were the Departmental experts in coordinated field operations (as evidenced by their SWAT designation), they should have pushed back on [REDACTED] rash approach to the burglary activity at the Walgreens. The fact that the Department's tactical experts chose not to intercede and collaborate with the [REDACTED] to develop a sounder response to the situation caused a seriously flawed approach to proceed.

**(k) Seriousness of the suspected offense or reason for contact with the individual.**

While possibly engaging in a commercial burglary is a felony, there was no evidence that the potential criminal conduct at issue created significant safety issues for Vallejo's public.

**(l) Training and experience of the officer.**

[REDACTED] was assigned to the elite tactical unit for VPD.

**(m) Potential for injury to officers, suspects, and others**

[REDACTED] believed, though incorrectly, that at the time of the shooting that Mr. Monterrosa presented a high potential for injury to him and his partner detectives.

**(n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.**

██████████ believed, though incorrectly, that at the time of the shooting that Mr. Monterrosa was about to shoot at him and his partner detectives. As a result of the rushed and poorly considered approach to the drive through, the detectives were required to make observations of what they were facing as the truck continued to approach the subjects. The detectives had different and inconsistent perceptions about what caused them to believe that Mr. Monterrosa was armed immediately prior to ██████████ use of deadly force.

As detailed above, ██████████ said that it appeared to him as if Mr. Monterrosa tried to get into the car but got left behind. ██████████ said that he saw Monterrosa spin around and face the detectives while indexing a black object near his waistband. ██████████ said that the object he observed was not the hammer later found on Monterrosa but possibly a cell phone seen near to him. ██████████ however, said that the object he observed what appeared to be a black object protruding out of his sweatshirt, which he thought was a pistol magazine. ██████████ said that no object found near Monterrosa resembled what he had seen in his sweatshirt and speculated that he may have thrown in in the car before it sped away. And ██████████ said that it was the handle of the hammer that he observed Monterrosa carrying that he believed to be a gun. In sum, while all three detectives said during their interviews that they saw objects on Monterrosa's person that they believed to be firearms, what they saw were all different. And all three were wrong in their perception that Monterrosa was armed with a firearm.

██████████ both described Monterrosa going to one knee in a "shooting stance" immediately prior to ██████████ use of deadly force. However, the description of Monterrosa's action could just as easily been the beginning of an act of surrender by going to the ground. In essence, considering the risk the detectives had placed themselves in due to their tactically flawed approach toward a subject they believed to be armed, an unduly wide range of actions could have been interpreted as acts of aggression and subjected Mr. Monterrosa to deadly force. Indeed, while Mr. Monterrosa's actual intentions are unknowable, his lack of a firearm meant that assuming "a shooting stance" would be an unlikely choice.



**(o) The risk and reasonably foreseeable consequences of escape.**

Had Mr. Monterrosa escaped, a potential burglary suspect may have evaded apprehension.

**(p) The apparent need for immediate control of the subject or a prompt resolution of the situation.**

Other than preventing a potential burglary in progress, there was no apparent need for immediate control of the subject. And [REDACTED] acknowledged that additional surveillance would have been his preferred approach than the immediate action actually taken.

**(q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.**

As explained elsewhere, the method and manner in which [REDACTED] decided to deliver multiple rounds of deadly force precluded his ability to determine whether there was threat dissipation during that time. What is known is that the fatal round to Mr. Monterrosa struck the back of his head, suggesting that he had turned away from the detectives (and was less of a legitimately perceived threat) when he was fatally struck.

**(r) Prior contacts with the subject or awareness of any propensity for violence.**

Mr. Monterrosa's identity or any prior history was not known to [REDACTED] at the time deadly force was used.

**(s) Any other exigent circumstances.**

None identified.

**Other Issues with the Deadly Force Deployment**

The officers' precipitous entrance into the Walgreens parking lot prompted various reactions from the subjects who were there, including the departure of the two vehicles and Mr. Monterrosa's path to the black sedan, sudden pivot away from it, and crouching motion. Things were happening so quickly that [REDACTED] later said they were not aware that [REDACTED] had centered himself with his rifle in the

back seat, and both professed to being unaware that he was firing before the shots occurred.

There were several implications to the highly compressed timeline, proximity to the potentially armed subject, and lack of cover that resulted. Most importantly, these factors accelerated [REDACTED] need to assess the threat, under conditions that subjected Mr. Monterrosa's movements to heightened interpretations of aggression rather than any likely alternatives (including possible surrender).

Other issues – also attributable to the rushed entrance into the lot – contribute to concerns about the shooting and its adherence to policy, training and VPD expectations. Officers are trained that before using a firearm, they are to consider their backdrop to ensure that uninvolved individuals are not struck by errant rounds. While [REDACTED] maintained that he had no backdrop or “fields of fire” issues when he used deadly force against Monterrosa, the physical evidence indicates otherwise.

After the silver truck that was sighted at the Walgreens drive-through area was recovered (following an extended vehicle pursuit), it was found to have a hole resembling a bullet hole in the left driver's side of the vehicle. Moreover, a review of [REDACTED] body camera video footage shows a silver truck turning and leaving the scene at a point and in a direction that corresponded to the possibility of its being struck. The likelihood that one of [REDACTED] rounds struck the silver vehicle is further evidence of the concerns raised by the shooting, and is a further factor for a finding of unreasonableness.

A second question emerges from the fact that Mr. Monterrosa's fatal wound was to the back of his head. Accounting for this requires speculation that is necessarily inexact. But it does reinforce the idea that circumstances – and the threat perception created by Mr. Monterrosa's specific movements – changed during the very brief window of time in which the shots were fired. However, [REDACTED] was in less of a position than usual to reassess and adjust because of the realities of firing through the windshield. [REDACTED] cited his training in shooting through glass and the associated influences on round trajectory, accuracy, etc. One of the challenges, as he acknowledged in his different interviews, was the effect of the first round on the windshield and the resultant interference with the sight picture and target acquisition upon which officers generally rely. He explained that this influenced his decision to fire multiple rounds in succession, relying on his original sense of target. Combined with the fact that the vehicle was still moving, these limitations also weigh against an overall determination of reasonableness.

The unusual delivery of deadly force in this case by [REDACTED] is also noteworthy. As he sensed what he believed was a deadly threat, he did not communicate his observations to fellow detectives. Even when Mr. Monterrosa spun towards the detectives and assumed the “shooting stance” that prompted [REDACTED] to fire multiple rounds at Monterrosa, [REDACTED] did not yell “gun” or any other warning to his partners, contrary to training. Moreover, [REDACTED] both said the truck was still moving when [REDACTED] shot, making target acquisition particularly difficult.

[REDACTED] acknowledged that after he began shooting, his vision was compromised by the blowback of gas, debris from the shattered glass, and the crack in the windshield. He confirmed that he was not able to see Mr. Monterrosa once he began shooting as his vision was obstructed. [REDACTED] said he was not able to see what Monterrosa did after the first shot because he was concentrating on his sights and the windshield. And [REDACTED] did suggest that the fatal wound that entered Monterrosa from the back of the head may have resulted from Monterrosa turning away after the first volley.

If Monterrosa had turned away from [REDACTED] after the first shot, he would have presented significantly less of a threat to [REDACTED]. Yet as a result of [REDACTED] decision to shoot through the windshield, he would likely not have been able to see the threat level dissipate. And due to [REDACTED] decision to fire a burst of multiple shots, his subsequent shots would have been undertaken with no ability to sight the target. Officers are responsible for every bullet coming out of their firearm; in this case every shot after the first was essentially done with no target acquisition, which is contrary to training, and no reassessment of any threat presented, contrary to both training and policy.

In fact, [REDACTED] said that he actually recognized that after the first round fired through the windshield, his vision might be compromised and thus chose to fire a burst of rounds in quick succession. But this technique caused [REDACTED] to forfeit the ability to reevaluate the threat level until those rounds were delivered; making it impossible to detect whether Monterrosa turned away from the officers while the rounds were being fired.

[REDACTED] almost immediate “second guessing” of his decision, as articulated by his question to his partner (“What did he point at us?”), suggests significant uncertainty about whether the person he had just mortally shot was carrying a gun. While officers are not expected to be absolutely sure of a threat presented before using deadly force, the degree of uncertainty expressed here is further evidence of a tactically defective

approach in which an accurate threat assessment could not be made, leading to a and a premature decision to shoot by [REDACTED]

In sum, the fact that [REDACTED] misinterpreted the actual threat level presented by Mr. Monterrosa at the time of the use of deadly force was due to the “plan” he was part of, which was devoid of any efforts of de-escalation and tactically risky. As a result, any movement by Mr. Monterrosa could have been (and apparently was) interpreted as an act of aggression. Moreover, the decision to quickly shoot multiple rounds through the truck’s windshield eliminated any ability to detect threat dissipation such as Mr. Monterrosa turning away from the detectives.

And, based on [REDACTED] statements of uncertainty immediately after the shooting, he did not know whether a firearm had been pointed at the detectives prior to his use of deadly force and when interviewed, never claimed that Mr. Monterrosa had pointed an object at the detectives.

For the reasons stated herein, [REDACTED] use of deadly force resulting in the death of Mr. Monterrosa was in violation of VPD’s Policy 300 et seq.

## **Violations of De-escalation and Unsatisfactory Work Performance Policies**

As stated above, VPD’s de-escalation policy (300.4) requires that when it is reasonably safe, prudent and feasible to do so, an officer shall attempt to “slow down, reduce the intensity or stabilize the situation through de-escalation so that more time, options and/or resources may become immediately available for incident resolution.” The policy further expressly notes that: Officers are expected to use de-escalation techniques before using force whenever practical, following department required training, unless force is immediately necessary to protect an individual, stop dangerous behavior, protect or prevent damage to property or stop a crime in progress in an effort to reduce or eliminate the need for varying levels of force.<sup>14</sup>

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<sup>14</sup> The reasons that [REDACTED] violated VPD’s De-escalation Policy are also extremely relevant to the discussion regarding his violation of VPD’s Deadly Force Policy: As stated in VPD’s force policy, an express factor to consider in evaluating the reasonableness of any use of force is: “the availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a)”

De-escalation techniques set out in the policy include: “gathering information about the incident”, “assessing risks”, “gathering resources”, “using time, distance, and cover”, and “communicating and coordinating with other responding officers”.

The policy continues:

An officer's awareness of the above possibilities, when time and circumstances reasonably permit, shall then be balanced against the facts of the incident and which tactical options are the most appropriate to bring the situation to a safe resolution. A member is not expected to engage in force de-escalation measures that could jeopardize the safety of the community or of any employee.

Where circumstances and time reasonably permit, an officer shall take those reasonable and prudent actions which operate to mitigate the immediacy of the threat thereby giving the officer time to call additional officers, utilize other tactics or request specialty assistance such as crisis negotiators.

As set out above, [REDACTED] failed to effectively deploy the de-escalation techniques set out in VPD policy. While [REDACTED] initially did gather information about the incident while awaiting backup officers to arrive, those efforts were largely abandoned when detectives arrived, and he decided to immediately proceed to “enforcement mode.” As a result, any interest that the detectives expressed after the fact to conduct additional surveillance did not occur. Even when issues with [REDACTED] rushed, undefined response were further complicated by his communicated observation that the subjects may be armed, he failed to reconsider the officers’ approach and proceeded forward, a decision inconsistent with best tactical and de-escalation principles. This left the three detectives with insufficient time to evaluate the complex situation they were confronting and properly assess risk, and they did not take the initiative to ameliorate this problematic circumstance.

Nor did [REDACTED] consider the benefit in gathering additional resources. While [REDACTED] did wait until the three detectives arrived before responding to the Walgreens, both of the on-scene police vehicles were unmarked and not rated for vehicle pursuits, which the detectives acknowledged was a distinctly possible outcome. The three detectives recognized that marked units were likely in route as a result of the [REDACTED] initial radio transmission, yet made no inquiry to confirm this or request an expedited arrival. As a result, when the detectives and [REDACTED] made their approach, there were no marked cars on scene to provide assistance to the responding units.

██████████ and the three detectives also made no effort to use time, distance, or cover in their approach to the Walgreens. Instead, ██████████ hurriedly instructed the detectives in a few seconds conversation, and there was no effort to take time to plan a safe and effective response. No efforts were made to locate or seek cover when the officers' drove toward the Walgreens. And instead of taking advantage of whatever distance the officers did have, they intentionally drove closer, thereby increasing the risk presented to them. Significantly, this did not change even as new information heightened the advisability of using the safer tactical fundamentals.

Finally, ██████████ and the three detectives did not effectively coordinate and communicate their response with each other. In fact, as set out above, ██████████ claimed not to have even been able to hear the details of the conversation between ██████████ and the two other detectives. All three detectives were, in hindsight, critical of the "plan" devised by ██████████ yet did not communicate with ██████████ or suggest improving the plan when it could have mattered. Nor was there any effort to modify the approach once ██████████ made observations that significantly increased the risk to the responding officers.

Moreover, consistent with the detectives' statements during their administrative interviews, the time and circumstances faced by them at Walgreens reasonably permitted other approaches, such as additional surveillance or other tactical options to bring the situation to a safe resolution. And there was no indication that engaging in such force de-escalation members as set out in the policy would have jeopardized the safety of the community or of any employee. There were no indicia that the behavior of the individuals outside the Walgreens presented imminent jeopardy to the Vallejo community. Perforce, tactical options consistent with principles of force de-escalation would have reduced the risk and safety of the responding VPD officers significantly.

The de-escalation policy concludes as follows: *"Where circumstances and time reasonably permit, an officer shall take those reasonable and prudent actions which operate to mitigate the immediacy of the threat thereby giving the officer time to call additional officers, utilize other tactics or request specialty assistance such as crisis negotiators."* ██████████ failed in significant regards to follow the expectations of force de-escalation set out by VPD policy and each therefore violated that policy (De-escalation Policy 300.4).

Furthermore, VPD policy (321.5.6) provides sanctions for "unsatisfactory work performance." For the reasons set out in the above discussion relating to the de-

escalation policy, [REDACTED] each violated VPD policy relating to unsatisfactory work performance.<sup>15</sup>

## **[REDACTED] Delayed Activation of Body-Worn Camera**

As the recordings themselves indicate, and as each subject officer acknowledged in the context of his administrative interview, [REDACTED] each activated his own body-worn camera at a point after the shooting had already occurred. The buffering feature of the cameras did provide video that encompassed several seconds prior to the use of deadly force, but there was no audio accompanying this portion of the recordings.

In terms of timing, the officers are effectively situated the same way; as discussed below, there was slight variance in the explanations they offered and their respective understanding of the policy's requirements. The key questions, then, are whether the policy applied to them at all (given their assignment [REDACTED]), whether the point of activation was consistent with VPD expectations, and whether the policy's "officer safety" exception to the requirement was relevant to the finding.

As detailed above, VPD's policy in effect at the time of the incident<sup>16</sup> required that, "prior to going into service, each *uniformed member* will be responsible for making sure that he/she is equipped with a portable recorder." (Emphasis added.) In their administrative interviews, each of the detectives expressed some version of the idea that the policy did not directly apply to them by virtue of their assignment as detectives (as opposed to uniformed patrol officers):

- [REDACTED] "...my understanding is that the Body Camera Policy does not, specifically, apply to detectives." (Admin. Interview at 45.)
- [REDACTED] "I know as members of [REDACTED], I know, I believe, that we're exempt from requiring to activate them." (Admin. Interview at 38.). (but he walks it back)

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<sup>15</sup> As stated above, [REDACTED]. But, consistent with best practices, we make a tentative finding based on evidence currently available.

<sup>16</sup> Soon after beginning his tenure at VPD in the fall of 2019, Chief Williams had prioritized the strengthening of the relevant policy in order to ensure that more encounters would be recorded in their entirety. The new, more rigorous version of Policy 423 was in effect on June 2, 2020, and remains the standard at the time of this writing.

- [REDACTED] “It’s my understand that the -- the policies -- the policy is specific to uniform patrol.” (Admin. Interview at 67.)

While this concept makes sense on some level, and while many [REDACTED] and investigative functions would presumably be outside the intent of the policy (as with sworn officers in plain clothes, undercover, administrative or managerial positions, for example)<sup>17</sup>, the counterpoint to this is that the three officers had equipped themselves with cameras (as expressly allowed by the policy), were wearing their special assignment uniforms, and were serving in a capacity that involved enforcement activities directly covered by the policy.

Indeed, [REDACTED] referred to the possible exemption as only a “technical” point before going on to acknowledge the relevance and potential value of activation in the context of this incident. [REDACTED] similarly stated that “it definitely applied to me when we were coming into the lot,” and [REDACTED] also acknowledged that the cameras are something that they regularly use. Accordingly, the policy did apply to them during the incident in spite of their being assigned [REDACTED] instead of patrol.

Turning to the issue of whether, per policy, the cameras should have been activated at an earlier point than they were, the policy’s language is instructive in this regard:

*“Members shall activate their recorder whenever there is a reasonable expectation of an adversarial encounter, violence, inter-personal conflict, use of force, or display of weapons or any time the member believes it would be appropriate or valuable to record an incident.”*

In addition, VPD’s body-worn camera policy required that the recorder shall be activated in any of the following situations:

*“(a) Prior to arrival at dispatched or self-initiated responses to calls for service  
(b) All enforcement and investigative contacts including stops and field interview (FI) situations.”*

Though [REDACTED] asserted a belief in his interview that the policy categorizes the activation requirement as a “should” rather than the more demanding “shall,” this

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<sup>17</sup> We note that [REDACTED] wearing his uniform and self-deployed in the field in an enforcement role, was not wearing a body camera at the time of the incident. The question of whether he should have been, and/or his reasons for not doing so, is not addressed here – in part because of his unavailability to provide information on this issue.



was not the case in the new version of Policy 423 that VPD had adopted. And while he also described a personal understanding of a “steering wheel to steering wheel” practice for activation (meaning keeping the camera on from the time he exited the car on a stop to his return to it), this does not comport with the plain language of the policy, and was not reinforced by other officers. Instead, ██████████ stated that a belief that his camera ordinarily would have been activated “at the onset of the incident or something like that,” and ██████████ explained his position as follows:

I'm not trying to get around the fact that I know a body cam on at the beginning would be helpful and more helpful in this specific situation. I understand that. So, that's not my -- that's not my intent to argue about not having it on earlier.” (Admin. Interview at 46.)

Assuming then, that proper activation of the cameras would have occurred as early as their initial travel toward ██████████ in response to his radio alert about the Walgreens, and certainly as they moved toward the Walgreens parking lot after speaking with him, the remaining question is whether any other exception to the policy requirements is applicable.

Policy 423.5 does contain the following relevant language: *“At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder shall be activated in situations described above as soon as reasonably practicable.”*

In their administrative interviews, each of the three subject officers put the delayed timing of their respective activations into the context of the rapidly unfolding events:

- ██████████ “My plan was to do surveillance. Again, that all changed and once it started changing, I don't want to say the last thing on my mind was my camera, but it was not on my mind. It was what's going on? What are we doing? How's this going to play out...I was going in a straight surveillance/observation mode and it just got yanked into an enforcement mode. So, that was the cause for the lack of activation earlier on.” (Admin. Interview at 47.)
- ██████████ “...it was my intent to probably activate my camera sooner but then I had ██████████ saying, “Hey, they're all armed, they're all armed.” And although I know, you know, I still activated it. I just -- that wasn't my primary focus at the time. I don't want to be caught, you know, activating my body camera, you know, people are armed and with -- with firearms so I activated it, you know, once I felt, you know, I was able to -- safely.” (Admin.

Interview at 39.)

- [REDACTED] “I think it was just because it was so kind of dynamic and -- and – and it kind of happened all, you know, very rapidly that I didn't get to activate it immediately.” (Admin. Interview at 66.)

While [REDACTED] comes closest to matching his thought process to the specific safety-based exception articulated in the policy, the three detectives offered the same basic explanation for their timing: namely, that their body camera activation was not prioritized in the press of their rapid deployment into a potentially dangerous enforcement action.

But the preponderance of the evidence indicates that there was indeed time for each of the officers to safely start their recordings (or at least attempt to do so, through the press of the relevant button) between the onset of the policy obligation and their actual engagement of the cameras. And significantly, the delay had evidentiary significance, the failure of the detectives to timely activate their body camera prevented the collection of relevant information such as any conversations on the way to the drive through area of the Walgreens and most significantly, an audio capture of the actual shooting.

For the reasons stated above, the allegation of failure to comply with Policy 423.5 is SUSTAINED as to [REDACTED]

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