



**DOMINIC WILLIAM SMITH
OFFICER-INVOLVED DEATH
PUBLIC REPORT**

Case Type: IN-CUSTODY DEATH

CPRC Case No. 16-012

RPD Case No. P16-237976

April 2, 2018

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Date of Incident: December 29, 2016 – 2128 Hours

Location: Washington Park, 2769 Mary Street, Riverside, CA

Decedent: Dominic William Smith

Involved Officer(s): Sergeant Chad Milby #1336
Sergeant Edward Collins #574
Officer Kevin Feimer #1001
Officer Officer Shadee Hunt #1680
Officer Vincente De La Torre #1222
Officer Chris Tonetti #1334

I. Preamble:

The finding of the Community Police Review Commission (“Commission”) as stated in this report is based solely on the information presented to the Commission by the Riverside Police Department (“RPD”) criminal investigation case files, and follow-up investigative report submitted by CPRC Independent Investigator, Mike Bumcrot of “Mike Bumcrot Consulting,” Norco, California. The Commission reserves the ability to render a separate, modified, or additional finding based on its review of the Internal Affairs Administrative Investigation. Because the Administrative Investigation contains peace officer personnel information, it is confidential under State law, pursuant to CPC §832.7. Any additional finding made by the Commission that is based on the administrative investigation is also deemed confidential, and therefore cannot be made public.

II. Finding:

On February 28, 2018, by a vote of 8 to 0 (1 absent), the Commission found that the officer’s use of force was consistent with RPD policy (Section 4.30 – Use of Force Policy), based on the objective facts and circumstances determined through the Commission’s review and investigation.

Adams	Smith	Jackson	Ybarra	Huerta	Ortiz	Evans	Kurkoske	Timmons
✓	Absent	✓	✓	✓	✓	✓	✓	✓

III. Standard of Proof for Finding:

In coming to a finding, the Commission applies a standard of proof known as the “Preponderance of Evidence.” Preponderance generally means “more likely than not,” or may be considered as just the amount necessary to tip the scale. The Commission need not have certainty in their findings, nor do they need to support their finding “beyond a reasonable doubt.” The Preponderance of Evidence standard of proof is the same standard applied in most civil court proceedings.

IV. Incident Summary:

On December 29, 2016, at approximately 1855 hours, RPD Officers Hunt, Feimer and De La Torre responded to the Stater Brothers Market, 2841 Mary Street, in regard to the report of an adult male white subject, later identified as Dominic Smith, in the parking lot “acting strangely” and swinging nunchuks. The reporting party was a uniformed Stater Brothers security guard, later identified as Douglas Brown.

Officers Feimer, Hunt and De La Torre all arrived on the scene at the same time. They met with Witness Brown who informed them that he was alerted to the presence of Smith in the parking lot by a customer who told him that the subject was swinging nunchuks around and talking nonsense. Brown looked for the subject and located him in the west parking lot. Smith began to walk south toward Washington Park, located adjacent to Stater Brothers, and was followed there by Brown. Brown told the officers that Smith went into the park and laid down on the lawn. Brown then directed the officers to the park and pointed to where Smith was lying on the lawn. The officers then drove to the park and exited their police vehicles.

Officers Feimer, Hunt and De La Torre then went into the park to make contact with Smith. As the officers entered the park, they were joined by Sergeant Collins who also responded to the call. The officers walked up to where Smith was lying on the ground and Officer Feimer told him to roll over onto his stomach. Smith complied with Officer Feimer’s request but continued to move around and not lay still. The officers then noticed that Smith had a rather large knife in a sheath attached to his belt. They did not initially see the nunchuks. The officers approached Smith in order to place handcuffs on him so they could control and prevent him from injuring himself or the officers. When Smith was handcuffed, Sergeant Milby and Officer Tonetti arrived on the scene.

The officers began asking Smith questions. Smith identified himself by providing his name, date of birth and home address which was on nearby Peppertree Street. While conversing with Smith, the officers noticed that he was acting “bizarre,” and appeared to be under the influence of stimulants. In addition, Smith was sweating profusely. Smith admitted to the officers that he had used methamphetamine earlier. Based upon observations of Smith during this initial contact, Sergeant Collins felt he may need medical attention and summoned for paramedics to respond.

Within a few minutes of waiting for medical aid, Smith yelled that the officers were trying to kill him. He then began to roll around on the ground and kick his feet. In order to keep Smith contained and controlled, Officers Hunt and De La Torre took hold of his upper back and shoulder area, and Feimer took control of his legs to prevent him from kicking. Smith struggled briefly before his body went limp and he was unconscious. The officers checked Smith’s breathing and pulse and found he had neither so they immediately began life saving procedures through applying CPR. Paramedics arrived and took over life-saving methods. Smith was transported to Riverside Community Hospital for treatment however he passed away while there.

A search of the area where Smith was located in the park revealed the nunchuks. They nunchuks were taken as evidence.

The autopsy and toxicology reports from the Coroner's office revealed that Smith suffered no traumatic injuries and succumbed to a combined overdose of methamphetamine and heroin. His death was listed as "Accidental."

V. CPRC Follow-Up:

The Commission requested a cover to cover review of the Criminal Casebook by CPRC Independent Investigator Mike Bumcrot of Bumcrot Consulting, located in Norco, California. Mr. Bumcrot is a nationally recognized expert in homicide and Officer Involved Death cases. The purpose of this review is for Mr. Bumcrot to provide the CPRC with his findings based upon his experience and expertise. Mr. Bumcrot felt that the investigation conducted by the Riverside Police Department was thorough and all evidence collected and preserved was completed accordingly.

VI. Evidence:

The relevant evidence in this case evaluation consisted primarily of testimony of the six officers involved and one witness. In addition, a Deputy Coroner investigation and report, along with police reports and photographs, involved weapons, forensic examination results and a report by the independent CPRC investigator.

VII. Applicable RPD Policy(s); Penal Codes and Case Law:

RPD – Policy Manual, Policy 300

USE OF FORCE

- Policy 300.1.1, Deadly Force

Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

- Policy 300.3, Use of Force

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time...

- Policy 300.3.2, Use of Force Factors

(a) Immediacy and severity of the threat to officers and others; (b) conduct of the individual being confronted; (c) suspect's mental state or capacity; (d) proximity to weapons; (e) potential injury to officers, suspects and others; (f) whether person appears to be resisting, evading, or attacking; (g) risk and reasonable foreseeable consequences of escape; (h) any other exigent circumstances.

California Penal Code § 835a states:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”

People v. Turner, 2 Cal.App.3d 632 (1969), the right of police officer to assure his own safety during the course of an investigation is not limited to disarming the person immediately before him. The officer may do anything reasonably necessary to neutralize the threat of physical harm.

Graham v. Connor, 490 U.S. 396 (1989), considered the reasonableness of a police officer’s use of force, and instructed that the reasonableness must be judged from the perspective of a reasonable officer on scene.

VIII. Rationale for Finding – Within Policy:

The RPD officers involved in this incident responded to a call at the Stater Brothers Market parking lot, 2841 Mary Street, of an adult male subject, later identified as Dominic Smith, acting in an irrational manner and swinging nunchuks while walking around in the parking lot. A store customer reported Smith to a uniformed Security officer who located Smith in the parking lot and followed him into adjacent, Washington Park, 2769 Mary Street, where Smith laid down on the lawn. The officers arrived at the scene and were directed to where Smith was laying on the ground by the security officer, later identified as Douglas Brown.

Based on the information provided by Witness Douglas, the officers proceeded to make contact with Smith in order to further investigate his activity and behavior. Upon contact with Smith, the officers found that he was sweating profusely and that he appeared to be under the influence of a stimulant. In addition, he was acting in a “bizarre” fashion. Although they did not initially see the nunchuks, the officers noticed that Smith had a large knife in a sheath attached to his belt. (The nunchuks were later located in the park near where Smith was located by the officers).

For the safety of the officers and Smith, he was directed to roll over onto his stomach into a position where they could restrain him while they further investigate his behavior and activities. Smith complied with the officers’ request to rollover onto his stomach however he continued to move around and would not lay still. Smith did not resist the officers when he was handcuffed.

The Commission felt that the actions of the officers up to the point of restraint and control were necessary and reasonable based upon the information provided by witnesses and the observations of the officers. When the officers made contact with Smith, Sergeant Collins felt that his physical condition necessitated medical aid and therefore requested paramedics to be sent to evaluate him. It was at this point that Smith suddenly yelled that the officers were trying to kill him and he began to roll around on the ground and kick his feet. Once again, in order to prevent any injury to the officers or Smith, the officers took physical control of him by taking a hold of his upper back and shoulder, as well as his legs. As the officers tried to restrain and control Smith, he (Smith) went limp and became unconscious. At this point, Sergeant Collins told the officers to remove the handcuffs from Smith in order for them to apply medical aid.

The officers checked Smith's pulse and breathing. When there was no response to either, the officers began life saving techniques by applying CPR. Paramedics arrived and took over the life saving tactics from the officers. Smith was transported by ambulance to the Riverside Community Hospital where he was later pronounced deceased. The Coroner found no evidence of trauma on Smith's body and listed his death as "Accidental" as a result of acute intoxication of Methamphetamine and Heroin.

Based on the totality of the circumstances, including witness statements, statements by the officers; and physical evidence, we conclude that the officers acted in compliance with Riverside Police Department's Policies, and that their minimal restraint of Smith and use of force was necessary and reasonable. Smith's death did not occur as a result of any actions on the part of the officers, but as the result of an accident brought on by Smith's acute methamphetamine and heroin intoxication. In addition, Smith's father and sister both described Smith as a heavy drug user and addict. Smith's father also reported that he saw Smith acting irrational on the date of this incident.

IX. Recommendations:

None.

X. Closing:

The Commission offers its empathy to the community members, police officers, and City employees who were impacted by the outcome of this incident, as any loss of life is tragic, regardless of the circumstances.

APPENDIX

Press-Enterprise Articles	Section A
Mike Bumcrot Consulting Report of Investigation	Section B
RPD Policy 4.8 (Rev. 6, 5/26/11): Investigations of Officer Involved Shootings and Incidents Where Death or Serious Likelihood of Death Results	Section C
RPD Policy 4.30, (Rev. 9, 4/8/11): Use of Force Policy	Section D

Section A



Death of man in handcuffs to be reviewed by Riverside police watchdog

Dominic Smith, 37, was screaming and armed with nunchucks at a Stater Bros.' before his arrest, police say.

By ALI TADAYON / STAFF WRITER

Published: Jan. 17, 2017 Updated: Jan. 18, 2017 6:27 p.m.



COURTESY OF RIVERSIDE COMMUNITY POLICE REVIEW COMMISSION

Clarification: The public portion of the commission meeting will begin at 5:30 p.m. Jan. 26.

A Riverside police watchdog agency will be briefed next week on the death of a 37-year-old man who was causing a disturbance at a grocery store, was detained at a nearby park and, while handcuffed, began to have trouble breathing.

The official cause of Dominic Smith's death Dec. 29 has not been determined, according to a report compiled by Riverside police Capt. Larry Gonzalez for the Community Police Review Commission.

Police believe Smith was under the influence of drugs when he was arrested, but the Riverside County Coroner's Office is still awaiting the results of a toxicology test.

Police had not previously publicly disclosed Smith's death. Gonzalez's report was contained in the agenda for the commission's Jan. 25 meeting.

The commission – which is independent from the Police Department and made up of volunteers – will review the case and make recommendations to the Police Department regarding policy and procedure. The recommendations are nonbinding.

Police responded just before 7 p.m. Dec. 29 to the Stater Bros. at 2841 Mary St., near Victoria Avenue, after the store's security guard reported that a man in the parking lot was "screaming and armed with a set of nunchucks," according to Gonzalez's report.

Officers later found Smith at Washington Park, which is next to the grocery store. He was no longer armed with the nunchucks.

At first, the report said, Smith was following the officers' commands. But when the officers approached to handcuff him, "Smith became uncooperative."

"The officers used open-hand control techniques and their body weight to control Smith," the report said.

Gonzalez said in a phone interview that the tactics the officers used were not out of the ordinary.

"They just used body weight – there were no punches, no kicks, no Taser, nothing like that," Gonzalez said.

While placing Smith in handcuffs, officers found a 6.5-inch knife in a sheath on his belt.

After Smith was detained, the officers noticed that Smith was having trouble breathing and his muscles were twitching, the report said. The officers removed the handcuffs and began life-saving measures until paramedics arrived. Smith was taken to the hospital, where he died.

Afterward, detectives interviewed Smith's father, who confirmed Smith had a history of drug use said his son had been "acting strange and swinging the nunchucks" earlier in the evening.

Smith's behavior was consistent with being under the influence of drugs, said the report, which also noted he had been arrested several times in the past for drug-related crimes.

Officer Ryan Railsback, a Police Department spokesman, said officials didn't think at the time that the incident warranted a news release or other public notification.

"We don't necessarily put a press release out on everything that occurs," Railsback said. "This happened to be one of those that we didn't put a press release out on. We're definitely not hiding

anything and, not to downplay or minimize someone's death, but this is one of those things that happened so quickly."

Gonzalez, in the phone interview, added that nobody from the media inquired about Smith's death.

The death occurred as Riverside police were involved in another high-profile case in which a driver rammed two vehicles along Interstate 215, then tried to sexually assault them. Riverside detectives and a SWAT team made an arrest in that case less than eight hours after Smith's arrest.

Also at the Jan. 25 meeting, the commission will review reports on the Feb. 23, 2015 death of Steven Lewis. Police say he committed suicide after trading gunfire with officers who were responding to reports of an argument.

The meeting begins at 4:30 p.m. at Riverside City Hall, while the portion open to the public is set to start at 5:30 p.m.

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Section B

MIKE BUMCROT CONSULTING

REPORT OF INVESTIGATION

DATE: January 28, 2017

SUBJECT: In Custody Death of Dominic Smith which occurred on December 29, 2016

CASE: Riverside Police Department File #P16237976

LOCATION: 2769 Mary Street, Riverside, Washington Park

On January 6, 2017, I was advised of the in custody death of Dominic Smith. I was asked by Frank Hauptmann, Manager of the Community Police Review Commission, to conduct a neighborhood canvass of the location to search for potential witnesses who had not been located by Riverside Police Officers on the night of the incident. If I identified any witnesses who had not been interviewed previously, I was asked to conduct a thorough interview and provide a copy to Riverside Police Investigators.

On January 9, 2017, I responded to the intersection of Mary Street and Lincoln Avenue, The Victoria Village Shopping Center, which consists of a CVS Pharmacy and a Stater Bros. Market. I was aware that the incident began at the market when Mr. Smith created a disturbance and police were called. Prior to police arriving, Mr. Smith had walked along the side of the market, towards the rear, where Washington Park is located. The park shares a parking lot with the shopping center and consists of swing sets, restrooms, and an open grass area.

I contacted several people in the shopping center parking lot over a 2-½ hour span but was unable to locate any witnesses to the incident. I walked to Washington Park,



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MIKE BUMCROT CONSULTING

directly behind Stater Bros. Market, and found the park to be empty with the exception of a maintenance crew who knew nothing of the incident.

On January 25, 2017, I attended the CPRC Briefing of the in custody death, conducted by Captain Gonzales. I learned that Mr. Smith had an extensive arrest record consisting mostly of drug crimes. On the evening of the incident, a security guard for Stater Bros. observed Mr. Smith with nunchuks and called the police. Mr. Smith left the market and walked to the park and when officers arrived at around 1855, Mr. Smith was located on the grass of the dark park. Officers had Mr. Smith lay on the ground and as they began to handcuff him, to further their investigation, they noticed he was having difficulty breathing and CPR was administered until paramedics arrived on scene. Mr. Smith was transported to the hospital where he was pronounced dead. I also learned the incident was captured on police video.

I will review the in custody death of Dominic Smith when the Riverside Police Department provides me access to their files.




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Section C

Effective Date: 10/84
Revision 1 Date: 10/06/97
Revision 2 Date: 01/30/02
Revision 3 Date: 04/05/02
Revision 4 Date: 05/09/05
Revision 5 Date: 10/20/08
Revision 6 Date: 05/26/11
Approval:


Sergio G. Diaz
Chief of Police

4.8 **INVESTIGATIONS OF OFFICER INVOLVED SHOOTINGS AND INCIDENTS WHERE DEATH OR SERIOUS LIKELIHOOD OF DEATH RESULTS:**

A. **POLICY:**

The following procedures shall be followed when a member of this Department, whether on or off duty, or any member of any law enforcement agency, uses, or attempts to use, deadly force through the intentional or accidental use of a firearm or any other instrument in the performance of his/her duties or is otherwise involved as a principal in an incident where death or serious likelihood of death results. A member is considered a principal for the purposes of this policy if he/she participates in and/or is otherwise physically involved in the incident. Such incidents include, but are not limited to:

1. Intentional and accidental shootings;
2. Intentional and accidental use of any other deadly or dangerous weapon;
3. Attempts to affect an arrest or otherwise gain physical control over a person for a law enforcement purpose; and,
4. Deaths of persons while in police custody or under police control following a use of force.

B. **PROCEDURES:**

1. Whenever an employee of this Department uses, or attempts to use, deadly force through the intentional or accidental use of a firearm or any other instrument in the performance of his/her duties, or is otherwise involved in an incident where death or serious likelihood of death results as defined above, he/she shall immediately notify his/her supervising officer.
2. The supervisor shall notify the Watch Commander without unreasonable delay.
3. The Watch Commander shall notify the on-call Centralized Investigations Sergeant. The on-call Centralized Investigations Sergeant shall notify the Centralized Investigations Lieutenant (or Captain in his/her absence). The Centralized Investigations Lieutenant will determine if a response by the Officer Involved Shooting Team (OIS Team) is necessary. If so, the Centralized Investigations Lieutenant will notify the Robbery/Homicide Sergeant who will respond the OIS Team.
4. If an employee discharges a firearm, or uses other deadly force, or is otherwise involved in an incident where death or serious likelihood of death results outside the Riverside City limits, the employee shall immediately notify the local law enforcement agency having jurisdiction where the incident occurred. As soon as

possible, the employee shall notify the Riverside Police Department Watch Commander. The Watch Commander will notify the on-call Centralized Investigations Sergeant and other personnel as designated in this policy. The on-call Centralized Investigations Sergeant shall make the notification as above in B3. If the incident occurs within Riverside County, the use of deadly force shall be investigated pursuant to the Riverside County Law Enforcement Administrator's protocol. In those cases outside the City of Riverside, the involved employee shall notify the Riverside Police Department Watch Commander as soon as possible and a written memorandum shall be filed with the Watch Commander without delay.

C. ROLES AND RESPONSIBILITIES

Personnel responding to an officer involved shooting or other deadly use of force incident or officer involved incident where death or serious likelihood of death results should recognize and adhere to the roles and responsibilities as listed below.

1. Roles:

- a. The Centralized Investigations Bureau will focus on all criminal aspects of the incident.
- b. The Riverside County District Attorney may be present to oversee the focus on all criminal aspects of the investigation and may conduct a parallel investigation.
- c. The Riverside Police Office of Internal Affairs may be present to review training, procedural, and policy matters connected with the incident.
- d. The Riverside City Attorney may respond to the scene to review the case with regard to any potential civil liability to the City of Riverside and its officers.
- e. Peer Support Officers shall be called to provide employee(s) support and assistance in understanding the investigative process and to attend to the officer(s)' personal needs. The Watch Commander or Centralized Investigations Lieutenant will determine the appropriate time and place for peer support to respond. Although confidentiality within the Peer Support Program is provided under the Evidence Code, and the Riverside Police Department will not require Peer Support Officers to reveal confidential conversations with involved employees, Peer Support Officers are cautioned that a court may determine no privilege exists regarding immunity or communication between the Peer Support Counselor and the involved employee(s).
- f. Psychological Services shall be called to assist the employee(s) involved with information on coping with psychological changes which can occur as a result of being involved in a critical incident. A licensed mental health professional afforded psychotherapist-patient privilege under the Evidence Code shall interview the officers involved. The Watch Commander or Centralized Investigations Lieutenant will determine the appropriate time and place for post-incident psychological counseling.

Involved employees may decline to discuss the specific facts of the critical incident with the psychological counselor.

- g. The Press Information Officer shall be summoned to the scene if necessary to act as a single source of information to the news media. The Investigations Lieutenant or his/her designee will brief the PIO as to information deemed appropriate for release. The PIO shall provide regular updates and a written press release to the news media when appropriate.
- h. The Riverside Police Officers Association (RPOA) shall be notified of the critical incident whenever the ensuing investigation is handled by this department and the incident involves a member of the RPOA. In such cases, notification will be made by the Centralized Investigations Sergeant at the following RPOA telephone number: (951) 403-4657. Representative(s) of the RPOA will be permitted access to the involved officers at the scene and at the Centralized Investigations Bureau. RPOA will designate which representative(s) will respond. RPOA Representatives on duty shall be relieved of further duty with pay unless they are witnesses to or directly involved in the critical incident. RPOA Representatives will not unreasonably be denied access to the officers they are representing. No report will be required of RPOA Representatives. While the Police Department will not require RPOA Representatives to reveal communications with member officers they are representing, a court may determine that no privilege exists in criminal matters. Accordingly, officers are encouraged to obtain legal representation.

2. Responsibilities:

a. Involved/Witnessing Employee Shall:

- 1. Provide care for all injured persons.
- 2. Request supervision and suitable assistance.
- 3. Secure the scene of the incident and protect it from alteration and contamination.
- 4. Apprehend offenders.
- 5. Brief the responding supervisor, providing a public safety statement to assist in identifying and/or locating the suspect, number of rounds fired, trajectory of rounds fired, information necessary to protect the crime scene, or information to protect the public and other officers from continuing harm of a fleeing suspect.
- 6. Ensure witnesses and/or other involved persons (including police personnel) do not discuss the incident prior to being interviewed by the OIS Team.

7. Prepare an accurate and complete police report of the incident and have it approved by a supervisor. The report may be prepared by the involved employee(s) by dictating the report for transcription, furnishing a complete and accurate statement to police investigators, or by submitting a complete and accurate written report. Such report should be prepared as soon as possible after the incident unless the employee is injured or emotionally unable to promptly make a police report. The Investigations Lieutenant will determine when the report will be prepared or the employee interviewed. When making their reports, involved officers shall not be considered as having waived their rights under the Public Safety Officers Procedural Bill of Rights Act, the federal and California Constitutions, and other relevant statutory protections.
8. Unless approval is granted by the Chief of Police or his/her designee, the involved employee(s) shall not talk to the news media or anyone else regarding the incident or investigation until the entire criminal investigation is completed. Exceptions are: the interviewing detective and/or supervision from the OIS Team, legal representatives, RPOA representative, Peer Counselor, a member of the clergy, or a psychological services provider.
9. Involved employee(s) will provide a blood sample, when in accordance with law, when administratively compelled, or when in compliance with the department's alcohol and drug testing policy.

b. Field Supervision Shall:

1. Provide medical aid to any injured parties.
2. Take immediate charge of the scene. Establish a crime scene perimeter with a single point of entry and exit. Assign an officer to restrict access only to necessary police and/or medical personnel and to maintain a log of persons entering and exiting the crime scene.
3. Ensure preservation of the scene for investigators. Supervise Field Operations personnel and ensure they carry out assigned duties.
4. Make immediate inquiry into issues of public safety and scene security, i.e., including number of rounds fired, trajectories of rounds after discharge, and the description, location, or direction of travel of any outstanding suspects. No further questions will be asked of the involved employee(s).
5. Ensure that no items of evidence are handled or moved unless contamination or loss of evidence is imminent. If contamination or loss of evidence is likely, notation (or preferably a photograph) must be made of its location and condition before it is moved. Photographs will only be taken upon the express direction of a member of the shooting team or the Field Supervisor.

6. Assign an officer to accompany any injured persons to the hospital to:
 - a. Recover and secure any item of physical evidence.
 - b. Place suspect in custody if appropriate.
 - c. Record any spontaneous or other unsolicited statements.
 - d. Record information regarding medical condition and personnel treating the injured person.
7. Notify the Watch Commander.
8. Establish an appropriate command post.
9. Ensure that the weapons used are not handled by anyone at the scene. Safety should be paramount. Weapons in possession of the involved employee(s) should be left with the employee(s) until requested by the OIS Team.
10. Transportation of the involved employee(s) from the scene to the Investigations station shall be arranged using uninvolved, on-duty personnel or peer counselors.
11. Assign an on-duty, non-involved officer to accompany the involved and/or witness employee(s) to the station to ensure that they are not allowed to discuss the incident with other officers or employees. Involved officer(s) shall be sequestered until such time as they meet with the assigned detectives and/or supervisors assigned to the OIS Team for the purposes of providing an interview. Exceptions are: legal representatives, RPOA representative, Peer Counselor, a member of the clergy, or a psychological services provider.
12. All witnesses should be located and documented, including hostile witnesses.
13. Ensure that each employee present, excluding those directly involved in the incident, peer officers and RPOA representatives, completes a supplemental report before the end of shift. The report should include the employee's name, identification number, unit number, and specific actions at the scene. The completed report is to be submitted directly to the Officer Involved Shooting Team Supervisor.
14. Brief the responding OIS Team.
15. Notify the Press Information Officer if necessary. Provide an initial press release to the news media present if necessary. The information released shall be brief and generalized with absolutely no names released or confirmed. The PIO shall also prepare a written press release covering the same information previously

released. Any subsequent media contact shall be the responsibility of the PIO or Investigations Lieutenant or his/her designee.

c. **Watch Commander Shall:**

1. Notify the Centralized Investigations on-call Sergeant.
2. Notify the employee's Division Commander.
3. Notify the Deputy Chief of Operations
4. Notify on-call Peer Support personnel and RPOA representative, and coordinate the response of the Psychological Services provider with the Centralized Investigations Lieutenant.
5. Ensure the presence of sufficient personnel to control the scene and to allow adequate police services for the remainder of the city.
6. Maintain or cause to be maintained an accurate account of police personnel involved in the incident and any employee(s) called to assist in providing basic police services.
7. Unless directed otherwise, conduct a debriefing of the incident and prepare the after action report as required by Riverside Police Department Manual of Policy and Procedures Section 4.58, Debriefing of Critical Incidents.
8. Ensure that the necessary reports are completed in compliance with Riverside Police Department Manual of Policy and Procedures Section 4.30, Use of Force.

d. **Centralized Investigations Lieutenant Shall:**

1. Notify and assign Robbery/Homicide Sergeant(s) to the investigation.
2. Notify the Investigations Division Commander of the investigation.
3. Notify the City Attorney.
4. Notify the Internal Affairs Lieutenant or appropriate Internal Affairs Sergeant in his/her absence.
5. Respond to the scene to assume command of the investigation and serve as liaison with Area Commanders, Division Commanders, Office of Internal Affairs, City Attorney, and the District Attorney's Office.
6. Provide the Press Information Officer with updated information that can be released to the media. In the absence of the PIO, the Investigations Lieutenant or his/her designee shall be the single

release point for all press information and be responsible for preparing and distributing the written press release.

7. Ensure that public information concerning the findings and conclusions of the criminal investigation are not disclosed until the involved employee(s) have been first notified.
8. Schedule a debriefing at the conclusion of the initial investigation to ensure all aspects have been covered and to discuss considerations for improvement.
9. Submit the completed investigation to the District Attorney's Office and attend the DA staffing of the investigation with the OIS Sergeant and the case agent.
10. Ensure that the involved employee(s) meets with the Psychological Services provider.
11. Ensure that the OIS Team, including supervisors, complies with this Policy and that involved officers are afforded their procedural rights under the Public Safety Officers Procedural Bill of Rights and related laws.

e. Officer Involved Shooting Team Shall:

1. Conduct a thorough and accurate criminal investigation of the incident, including:
 - a. Documenting, photographing, and collecting all evidence at the scene. Photographs taken after the arrival of the shooting team will be at their direction only.
 - b. Interviewing all victims, witnesses, suspects, or other involved persons. All interviews will be tape recorded unless impractical or the circumstances prevent it.
 - c. Advise the involved employee(s) of their Constitutional rights if there is a possibility of a criminal violation on the part of the employee(s) and when it is anticipated the case will be submitted to the District Attorney's Office for filing. Rights advisals are not required for employees who are solely witnesses and criminal prosecution will not occur.
 - d. If the involved employee(s) is advised of his/her Constitutional rights prior to writing or dictating a report or being questioned, and the employee declines to waive those rights, no further questioning will occur.
 - e. Advise the involved or witness employee(s) that they may consult with a department representative or attorney prior to the interview taking place, and this department representative or attorney may be present during the interview.

- f.** No administratively compelled statement(s) will be provided to any criminal investigators.
- g.** Involved employee(s) may be ordered to provide samples of blood when objective symptoms consistent with the use of alcohol, a drug or narcotic are exhibited by the involved employee(s), or when reasonable suspicion exists to believe an employee(s) is under the influence of alcohol, a drug or narcotic. All blood samples will be retained by the Riverside Police Department. All blood results will be sent directly to the Centralized Investigations Sergeant overseeing the OIS Team. Blood results will then be forwarded to the OIS case agent.
- h.** Interviews or questioning of involved officers shall whenever possible take place in an office or room not regularly used to interview suspects or civilian witnesses. Officers shall not be interviewed in a suspect interview room or a room equipped to remotely monitor (audio and/or video) interviews. Injured officers shall not be interviewed at a hospital or medical care center unless circumstances require an emergency interview before the officer is released.
- i.** Notify and consult with the Deputy District Attorney concerning legal issues connected to the investigation.
- j.** Ensure all reports have been written and submitted in a timely manner.
- k.** Take custody of involved employee's weapon(s) for submission to DOJ and range inspection.
- l.** Ensure involved employee(s) have replacement weapons.
- m.** The Officer Involved Shooting Team Sergeant will complete a synopsis of the incident, forwarding a copy to the affected Division Commander and Chief of Police within twenty-four hours of the incident.
- n.** Ensure the investigation is completed in a timely manner and submitted to the Centralized Investigations Lieutenant for review.
- o.** Attend the District Attorney's Office staffing of the investigation with the OIS Sergeant and Centralized Investigations Lieutenant. Staffing to be arranged by the Lieutenant.
- p.** The OIS case agent and investigations supervisor will be responsible for the collection of all police reports and related documents. These documents will remain under

their control until the investigation concludes and is submitted to the Centralized Investigations Lieutenant.

q. Prior to the conclusion of the investigation, police reports, photographs, and other related documents will be released only with the approval of the Centralized Investigations Lieutenant.

2. No employee shall ever threaten, coerce, intimidate, or harass an involved officer or his representative for: 1) exercising their rights under this Policy, the Public Safety Officers Procedural Bill of Rights Act, and any other protections afforded peace officers under the law; or 2) choosing to write or dictate a report rather than being interviewed. Violations of such rights or failing to comply with or afford the officer his rights and elections under this Policy shall be grounds for disciplinary action.

f. **Internal Affairs Shall:**

1. The Internal Affairs Lieutenant shall be responsible for conducting an independent administrative investigation.
2. Inform the Chief of Police or his/her designee with regard to the information obtained in the course of their investigation.
3. All Internal Affairs Investigations shall be separate from the investigation conducted by the Officer Involved Shooting Team. Information obtained from the Officer Involved Shooting Team will be used to aid the Internal Affairs investigation. No information obtained from a compelled interview will be disclosed to the Officer Involved Shooting Team.
4. Interviews with witnesses, suspect(s) or involved employee(s) will not be conducted until after they have been interviewed by the Officer Involved Shooting Team, or a determination made that the officer will not be interviewed, or the officer declines to make a voluntary statement.

g. **Public Information Officer and Press Releases:**

1. Refer to the Riverside Police Department Policy and Procedures Manual Section 5.4, News Release and Media Relations and Access Policy.

D. RELIEF FROM DUTY

1. In the best interest of the community, the Department and the involved employee(s), the employee(s) shall, as soon as practical, be relieved from active duty by the Watch or Division Commander. The involved employee(s) may be placed on paid Administrative Leave status for a minimum of one day, during which time he/she shall be provided full salary and benefits. The involved employee(s) shall not be returned to full duty until such time as the Personnel Services Bureau has received a "clearance for return to full duty" from the

department's contracted psychological services provider. Once the clearance notification is received, the Personnel Services Bureau Lieutenant shall communicate this information to the Bureau Commander overseeing the employee's bureau or assignment.

2. At the discretion of the Chief of Police or his/her designee, those employees who witnessed the traumatic incident or otherwise assisted the involved employee(s) may also be placed on paid Administrative Leave status as described above.

Section D

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Revision 9 Date: 04/08/11
Approval:


Sergio G. Diaz
Chief of Police

4.30 USE OF FORCE POLICY:

A. PURPOSE:

The purpose of this policy is to provide officers of this department with guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

B. PHILOSOPHY:

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may use force that is objectively reasonable to defend themselves; defend others; effect an arrest or detention; prevent escape; or, overcome resistance in order to carry out their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use objectively reasonable force to protect the public welfare requires a careful balance of all interests.

C. SERIOUS BODILY INJURY:

For the purposes of this policy, the definition for serious bodily injury shall coincide with California Penal Code Section 243(f)(4) as including, but not limited to: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and, serious disfigurement.

D. POLICY:

It is the policy of this Department that officers shall use only that amount of force that is objectively reasonable, given the facts and circumstances perceived by the officer at the time of the event to defend themselves; defend others; effect an arrest or detention; prevent escape; or, overcome resistance. Objective reasonableness must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any interpretation of reasonableness must allow for the fact that police officers are often forced to make split-second decisions about the amount of force that is necessary in a particular situation in circumstances that are tense, uncertain and rapidly evolving (*Tennessee v. Garner*, 471 U.S. 1 (1985); *Graham v. Connor*, 490 U.S. 386, 397 (1989); and, *Scott v. Harris*, 550 U.S. 372 (2007)).

Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved,

nothing in this policy requires an officer to sustain or risk physical injury before applying reasonable force.

It is recognized that officers are expected to make split-second decisions and that the amount of time an officer has available to evaluate and respond to changing circumstances may impact his/her decision. While various degrees of force exist, each officer is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

Circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the standard tools, weapons or methods provided by the Department. Officers may find it more effective or practical to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree reasonably necessary to accomplish a legitimate law enforcement purpose.

E. FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE:

When determining whether or not to apply force and/or evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

1. The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
2. Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers vs. subjects).
3. Influence of drugs/alcohol (mental capacity).
4. Proximity of weapons.
5. The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
6. Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances).
7. Seriousness of the suspected offense or reason for contact with the individual.
8. Training and experience of the officer.
9. Potential for injury to citizens, officers and suspects.
10. Risk of escape.
11. Other exigent circumstances.

F. USE OF FORCE TO EFFECT AN ARREST:

Any peace officer that has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance of the person being arrested; nor shall such officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape

or to overcome resistance (California Penal Code § 835a).

G. COMPLIANCE TECHNIQUES:

Compliance techniques may be very effective in controlling a passive or an actively resisting individual. Officers should only apply those compliance techniques for which they reasonably believe the use of such a technique appears necessary to further a legitimate law enforcement purpose. The application of any compliance technique shall be discontinued once the officer determines that compliance has been achieved.

H. LESS LETHAL FORCE:

Each officer is provided with equipment, training and skills to assist in the apprehension and control of suspects as well as protection of officers and the public. To do this, non-deadly force applications should be considered by officers. These may include, but are not limited to, chemical irritants, electronic control devices, less lethal munitions, and canine deployment as described in the Riverside Police Department Policy Manual §§ 3.23, 4.43, 4.49, and 8.1 respectively.

I. CAROTID RESTRAINT:

Only officers who have successfully completed Department approved training on the use of the carotid restraint hold and the Department Use of Force Policy are authorized to use this technique. After initial training, officers shall complete periodic training on the use of the carotid restraint hold as prescribed by the Training Unit. Newly hired police officers are restricted from the use of this technique until successfully completing this training.

After the application of any carotid restraint hold, the officer shall ensure the following steps occur:

1. Any individual who has had the carotid restraint hold applied, regardless of whether he/she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel.
2. The officer shall inform any person receiving custody of, or any person placed in apposition of providing care for, that the individual has been subjected to the carotid restraint hold and whether the subject lost consciousness as a result.
3. Any officer applying the carotid restraint shall promptly notify a supervisor of the use or attempted use of such a hold.
4. The use or attempted use of the carotid restraint shall be thoroughly documented by the officer in the related criminal report.

J. DEADLY FORCE:

Officers are authorized the use of deadly force to: protect themselves or others from an immediate threat of death or serious bodily injury; or prevent a crime where the suspect's actions place persons in jeopardy of death or serious bodily injury; or, to apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is a substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed. Officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.

1. Drawing or exhibiting Firearm: Officers shall only draw or exhibit a firearm when there is a reasonable likelihood of danger to the officer or other persons.

2. **Discharge of Firearm:** In addition to life-threatening situations as described, officers may discharge a firearm or use any other type of deadly force in the performance of their duties, under the following circumstances:
 - a. To kill a dangerous animal that is attacking the officer or another person(s), or which if allowed to escape, presents a danger to the public.
 - b. When humanity requires the destruction of an animal to save it from further suffering, and other disposition is not possible.
 - c. To give an alarm or call assistance for an important purpose when no other means are available.
 - d. Generally, a member of the Department shall not discharge a firearm as a warning shot.
 - e. Generally, a member of the Department should not discharge a firearm at or from a moving vehicle unless in the necessary defense of human life in accordance with this policy.

K. REPORTING USE OF FORCE INCIDENTS:

Any use of force shall be reported to a supervisor as soon as practical if any of the following conditions exist:

1. The application of force by the officer appears to have caused physical injury to the suspect or required medical assistance.
2. The application of force by the officer included a chemical irritant, electronic control device, carotid restraint, baton, or firearm.
3. The application of force by the officer appears to have rendered the suspect unconscious.

L. EMPLOYEE RESPONSIBILITIES:

Any member of the Department involved in reporting a use of force application shall:

1. Summon medical aid, as needed.
2. Immediately notify a supervisor.
3. Adhere to the provisions of section 4.8 of the Riverside Police Department Policy and Procedure Manual if the application of force caused serious bodily injury or death.
4. Report the full details of the application of force in the related Department criminal report.
5. If off duty, notify the on duty Watch Commander immediately.

M. SUPERVISOR RESPONSIBILITIES:

A supervisor shall respond to an incident in which there has been a reported application of force. The supervisor is expected to:

1. Ensure that any injured parties are examined and treated.

2. Obtain the basic facts from the involved officer(s). Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
3. Ensure proper documentation of statements made by the suspect(s) upon whom force was applied under the following guidelines:
 - a. Spontaneous statements by the suspect(s) should be incorporated into the related criminal report.
 - b. Supervisors may use their discretion when deciding whether or not to interview the suspect(s) or a witness.
 - c. If a Supervisor decides to interview the suspect(s), a voluntarily Miranda waiver must be obtained and the suspect(s) statement shall be included in the related criminal report.
4. Ensure that photographs have been taken of any areas involving visible injury and complaint of pain as well as overall photographs of uninjured areas.
5. Identify witnesses not already included in related criminal reports.
6. Review and/or approve all related criminal reports, video and audio recordings.
7. Complete and submit the Supervisor Administrative Review/Investigation Report and the related criminal reports within 5-days via the chain of command.

The Watch Commander, after reviewing all available information, shall make appropriate notification to the Internal Affairs Unit as soon as practical, if he or she believes an application of force has violated department policy.

The Internal Affairs Unit shall be responsible for conducting all administrative investigations involving the application of force.