AUSTIN POLICE DEPARTMENT

PEER REVIEW OF SEATTLE POLICE INVESTIGATION 2010-303528

BACKGROUND

In response to a request for an external review of the investigation into the fatal officer involved shooting of John Williams by Seattle Police Officer Ian Birk, the Seattle Police Department (SPD) requested the assistance of the Austin Police Department (APD).

INVESTIGATION REVIEW AGREEMENT

The Seattle Police Department and the Austin Police Department entered into an agreement that set forth the terms and parameters of this review. That agreement is attached to this report.

The agreement asked that APD "conduct a thorough review of the SPD investigation" and explicitly asked that APD not offer an opinion on the justification of the force used. The agreement also asked that if any potential or actual deficiencies related to thoroughness or completeness are identified, that APD would provide suggestions on how to remedy these deficiencies.

SEATTLE POLICE PRESENTATION

On November 30th, 2010 the Seattle Police Department Homicide Division conducted a scene presentation at the location of this shooting and explained the incident in detail to provide real world perspective. This was followed with an in-depth presentation of the case at Seattle Police Headquarters. The presentation given was the same as the presentation given to the SPD Firearms Review Board. This presentation included the delivery of a complete and un-redacted copy of the SPD investigation. This copy included all forms of media associated with this case such as in-car video, maps, crime scene photographs, audio recordings of witness interviews, and video clips from Northwest Laboratories who examined the knife collected from the crime scene. In addition, this copy also included a complete SPD report with all investigative supplements, correspondence, transcripts of all recorded interviews, statements from involved officers, King County Medical Examiner autopsy report, and a report from Northwest Laboratories.

INVESTIGATION REVIEW

A thorough review of any investigation conducted by a police department must first begin with a review of the procedures taken by the uniformed patrol officers who were present at the time of the incident and those who responded to the scene. In order to comply with the stated goal of the agreement mentioned above it is necessary to examine this case from start to finish and not focus solely on the actions of the investigative unit that possesses ownership of the case.

Uniformed Patrol Response

At 4:13pm, Officer Ian Birk made a self initiated stop based on his observations of Mr. Williams. Prior to approaching Mr. Williams, Officer Birk announced his intention over his radio to his dispatcher and provided his location. Immediately after the shooting occurred, Officer Birk announced on his radio, "Shots fired. Boren and Howell. Subject

wouldn't drop the knife". This announcement led to the response of several SPD officers who arrived within a matter of seconds.

The first officer to arrive was SPD Officer Leavitt whose video recorded the scene and the ensuing response by other SPD officer's. Officer Birk can be seen standing near an electrical box in what appears to be a defensive position. Other officers who arrived then formed a reactionary team and proceeded forward carefully to place Mr. Williams in handcuffs. At this time, all officers were only aware of the fact that Mr. Williams possessed a knife and was shot by Officer Birk. Therefore, caution was warranted given the known information at that time. Officer Leavitt observed the knife that is a pivotal piece of evidence in this case lying near Mr. Williams. Officer Leavitt stayed in that location to prevent the knife from being moved from its current location. Officers then proceeded to establish an inner and outer perimeter to prevent the contamination of the scene or the destruction of evidence. The patrol officers then diverted traffic away from the scene and detained known witnesses for later interviews.

Officer Clay, who is a Washington State certified EMT, checked Mr. Williams for vital signs but was unable to provide any type of treatment. A review of the computer aided dispatch (CAD) records revealed that the dispatcher requested assistance from the Seattle Fire Department (SFD) within seconds of Officer Birk's announcement that Mr. Williams had been shot. SFD arrived on scene a short time later and Mr. Williams was pronounced deceased.

The focus of a patrol officer's response to an officer involved shooting in which the person shot is deceased, should be directed towards officer and public safety, preservation of evidence and identifying witnesses. As evidenced by what was captured on Officer Leavitt's in car camera and documented in the offense report, the response by SPD patrol officers to this incident was professional and within accepted practices.

Investigation

The goal of any investigation is to answer all relevant questions in regards to an incident in order arrive at a clear and reasonable explanation of what occurred. Investigators seek to answer these relevant questions through the statements of those present at the time of an incident and physical evidence. A professional and proper investigation must be conducted objectively and with fairness to all parties concerned. No consideration should be given by an investigator as to whose actions were right or wrong and an investigator should guard against seeking to find evidence that supports his or her own opinion or theory. A complete and thorough investigation is one in which all relevant and available evidence is located, documented and analyzed to the fullest extent. This includes both physical evidence and eye witness accounts. Statements from people should be analyzed and reconciled with available physical evidence in order to ensure their accuracy. Once these tasks are accomplished then the intended audience can form a reasonable opinion as to what occurred based on facts and evidence supporting those facts.

The following examples highlight the efforts taken by the SPD to ensure a proper investigation.

Incident Scene

Upon being notified of this incident, the SPD Homicide division responded and set about interviewing witnesses that were detained by SPD patrol. These interviews were audio recorded and transcribed. A review of these interviews finds that the investigators allowed each witness to tell their story in their own words without asking leading or prejudicial questions. Simultaneously, the crime scene investigators responded and documented the scene in its current state and collected all available evidence in the manner in which was found. This included measurements of the scene in order to complete scale diagrams and maps. Additionally, they sought the assistance of the Seattle Fire Department who provided a lift truck to allow for elevated photographs that show the scene from the top down.

Officer and Witness Statements

In his statement given on the day of the shooting, Officer Birk said that Mr. Williams turned towards him in a counter-clockwise direction. However, based on the location of the entry wounds, it appears that he turned clockwise. This fact was noted by investigators who questioned Officer Birk by asking if Mr. Williams turned toward Howell Street or away from it. Officer Birk responded that Mr. Williams turned away from Howell Street thereby indicating that he did in fact turn clockwise.

Additionally, Officer Birk wrote in his statement that prior to his decision to shoot he observed actions from Mr. Williams that he perceived as a threat based on his training. The SPD compiled a synopsis on the type of training that an officer of Officer Birk's experience level would have received that is consistent with Officer Birk's statement.

At a later date the Homicide division returned to the scene and perspective photographs were taken from the location where each witness reported to be when the shooting occurred. Actors stood in place of Officer Birk and Mr. Williams in the same manner in which they were at the time of the shooting.

This type of scrutiny by investigators is important in a thorough investigation by ensuring that all statements are corroborated by facts and physical evidence.

Forensic Analysis

The folding knife that Officer Birk observed in Mr. Williams' possession that led to the shooting was found closed at the crime scene, despite the fact that Officer Birk stated it was open at the time of the incident. Research was conducted on this knife which indicated that it was not made by the manufacturer whose name appears on the handle and is therefore not made to that company's specification. This knife was sent to a private, third party lab in Seattle to be analyzed and its functionality tested and recorded. Those tests may serve to answer relevant questions that may be brought forth about this shooting. These tests were not required as part of this investigation and tend to show the lengths to which the SPD was willing to go in order to determine all facts.

Additional Witnesses

In the days following this shooting there were numerous requests made to the public for additional witnesses to come forward. As a result of this, multiple citizens called about this incident and were interviewed. This shows that the SPD was willing to continue to interview all people who may have had information and were not seeking to limit perspectives.

Firearms Review Board

SPD policy dictates that a Firearm Review Board (FRB) will be convened to review the facts surrounding an officer involved shooting. The FRB in this case was presented with a very detailed and complete account of this incident which included all relevant facts and evidence that had been obtained. In addition to various members of the department, this board also included citizen members, two of whom were present at the time of the shooting. This type of transparency serves to ensure that officers are not given preferential treatment due to their position and encourages honesty on the part of the investigators.

SUGGESTIONS

The importance of items of evidence and the extent to which they are analyzed varies depending on the facts of a case. What is important in one case may not be in another, and the relevance of the analysis of a particular item of evidence is not as crucial to some cases as to others. It is common that particular items of evidence that do not bear specific relevancy may be either overlooked or purposely not collected and analyzed because they do not serve to directly answer specific questions. When an investigation is scrutinized by people who are not involved in the actual case, and therefore do not have to make real world decisions while the case is active, it is reasonable that their opinion on what evidence is necessary may differ.

In this case, the knife that is central to this incident was processed for Mr. Williams' fingerprints and DNA after it was analyzed by Northwest labs. It is un-likely that these items would be obtained after extensive handling during laboratory testing. The SPD did not intend to process this knife for fingerprints and DNA due to the fact that the possession of this knife was not an issue in this case because of the video evidence and witness accounts. However, as a matter of practice we recommend processing all evidence, in which possession by a particular person is central to a case, for fingerprints and DNA within the department's capabilities. This practice would serve to ensure that similar investigations are handled in a consistent manner and prevent a situation in which the possession of an item was questioned at a later time and there was no evidence to support that fact.

Additionally, upon investigation of the scene and Mr. Williams' body it was discovered that Mr. Williams was wearing a small portable radio with ear buds. This presence of this radio could create a question as to whether or not Williams heard Officer Birk's command to drop the knife. Prior to this review, the radio was not evaluated and its status at the time of the shooting was not ascertained. It is our belief that in the interest

of diligence it was important to determine the status of the ear buds and radio at the time of this shooting.

It is important to note that these two suggestions do not detract from the overall professionalism of this particular investigation which is chronicled above. These items are merely suggestions that could serve to alleviate potential questions in future investigations.

CONCLUSION

Throughout this investigation there are numerous examples that show that the Seattle Police Department's goal in this case was to produce the most accurate and complete investigation possible. After reviewing all available case material provided by SPD, it is the belief of the Austin Police Department that both the immediate and follow-up investigation of the shooting of Mr. Williams by Officer Birk were professional, thorough, and objective.

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SEATTLE POLICE DEPARTMENT
INVESTIGATION REVIEW AGREEMENT

Participating in peer reviews of completed work products is always a useful mechanism in ensuring competence, confidence, and integrity in one's own work product. The Seattle Police Department is committed to availing itself of internal and external scrutiny of our processes in particular, to continue to maintain the highest degree of operational and administrative standards.

Thank you for agreeing to assist SPD with the review of investigation 10-303528, which entailed a SPD officer involved shooting incident with a resulting fatality. This investigation was completed by members of the Seattle Police Homicide and Crime Scene Units. The fundamental investigative steps taken are consistent with past SPD investigations of this type.

TERMS:
This is an agreement between the City of Seattle, a municipal corporation Police Department (hereinafter referred to as "SPD") and the City of Austin Police Department (herein after referred to as "Agency").

The agreement is effective upon the date of execution, by Agency and shall terminate upon the completion of the review by Agency.

SCOPE OF REVIEW:
Agency agrees to conduct a thorough review of the SPD investigation, to include: investigative documents, SPD processes and protocols, associated with SPD GO# 10-303528 only.

Agency agrees to conduct its review in accordance with the provisions set forth in this agreement.

Agency shall review unredacted investigative records associated with SPD GO#10-303528, which are not intended for disclosure; see provision below. The unredacted investigative records are intended for this review only and shall not be distributed beyond the team that is conducting the review.

The Seattle Police Department specifically does not want you to offer an opinion of 1) If the use of force was justified or non-justified, or 2) if the use of force constitutes a crime. No reference to these two issues should be noted in any materials related to this agreement.

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INTENDED OUTCOME OF REVIEW:
At the completion of the thorough review, Agency agrees to document its review, observations, and findings related to this investigation. If Agency identifies any potential or actual deficiencies, as it relates to thoroughness or completeness, SPD requests that the Agency provide suggestions and/or best practices as to how the Agency would recommend remedying those identified deficiencies in the future.

CURRENT STATUS OF SPD GO #10-303528:
As of October 15, 2010 the status of G0# 10-303528 is that the investigation is under review by the office of the King County prosecuting attorney and will be the subject of a public coroner's inquest, to be set at a date within the next 90 days. At the conclusion of this inquest, the prosecutor will make a determination as to whether criminal charges are appropriate. It is also anticipated that this investigation will be the subject of a civil action against the City of Seattle, SPD, and the individual officer.

City of Seattle will contest any attempt to involve the Agency in any civil litigation involving the review. If the Agency is required to participate in civil litigation SPD will bear the cost associated with the Agency's mandatory attendance.

NON-DISCLOSURE PROVISION:
Agency agrees, to the extent authorized by Texas law, to not disclose any records that SPD provides Agency with regard to this review agreement. Agency will make appropriate efforts to withhold all records related to this agreement under the law of the State of Texas, specifically its Public Information Act, Chapter 552, Texas Government code.

It is imperative that all materials regarding this investigation shall remain absolutely confidential, with no distribution outside the Agency's investigative review team without the express written consent of the Chief of the Seattle Police Department or his designee.

In light of the current status of G0#: 10-303528, Agency shall make no public statement of this agreement/request for review, other than to confirm that a review is under way.

Agency agrees that the results of the review shall not be made available to the public as it is essential to effective law enforcement that release be coordinated via the SPD Media Unit.

HOLD HARMLESS:
Agency and SPD each acknowledge that the other is self insured for some losses at the execution of this agreement. Agency has workers compensation coverage that would apply to the activities of its employees.
SPD shall not be liable for any claims, damages and attorney's fees arising from the negligent or illegal acts of Agency employees in relation to the activities under this agreement.
Agency shall not be liable for any claims, damages and attorney fees arising from the negligent or illegal acts of SPD employees in relation to this agreement.

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If both SPD and Agency are liable for any claims, damages or attorney fees arising from the negligent or illegal acts of Agency and SPD employees under this agreement, Agency and SPD shall be liable for the portion of the claims, damages and attorney fees that arise from the negligent or illegal acts of that party as determined by the court adjudicating the matter or as agreed in any settlement.

VENUE:
Agency agrees that the venue for any and all conflicts and resolution arising out of or related to this agreement shall be the State of Washington and the County of King and that the laws of Washington State shall apply.

SPD CONTACT INFORMATION:
The SPD contact for the Agency under this agreement is Captain Michael Washburn of the SPD Violent Crimes Section, who may be reached by telephone at 206-684-5551. In addition, Lieutenant Steve Wilske, Homicide Unit/Crime Scene Unit Commander is also available and may be reached by telephone at 206-423-1565.

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