



**DONTAE DAEVON LEWIS HAYES
OFFICER-INVOLVED DEATH
PUBLIC REPORT**

CPRC Case No. 13-040

RPD Case No. P13-186428

Approved on
December 9, 2015

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Date of Incident: December 31, 2013 at 1133 Hours

Location: Arlington Park, 3860 Van Buren Avenue, Riverside

Decedent: Dontae Daevon Lewis Hayes

Involved Officers: Officer Nathan Asbury, #1368
Officer Paul Miranda, #1501

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 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. Since 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 August 26, 2015, by a vote of 8 to 0 (1 absentee), the Commission found that the officers' use of deadly force was consistent with RPD Policy 300 – Use of Force, based on the objective facts and circumstances determined through the Commission’s review and investigation.

Rotker	Hawkins	Ybarra	Huerta	Smith	Jackson	Roberts	Andres	Adams
✓	✓	Absent	✓	✓	✓	✓	✓	✓

III. Standard of Proof for Finding:

In coming to a finding, the Commission applies a standard of proof of “Preponderance of Evidence.” Preponderance generally means “more likely than not,” or may be considered as just the amount necessary to tip a scale. This also means that the Commission is not required to have certainty in their findings, nor are they required to reach a finding as “beyond a reasonable doubt” which is necessary in criminal cases.

The Preponderance of Evidence standard of proof is the same standard applied in most civil court proceedings.

IV. Incident Summary:

On Tuesday, December 31, 2013, at 1133 hours, Officers Nathan Asbury and Paul Miranda were working uniformed patrol in a marked RPD vehicle. The officers were working a “problem oriented policing” (POP) team wearing black “BDU” pants, and black shirts with Department tactical vests with police markings on the front and back.

As part of their duties on the “POP” team, they went to conduct a park check at Arlington Park due to loitering issues. They drove into Arlington Park near the center of it where the playground equipment was located. They saw a male and female sitting on a concrete bench near the playground. The male was later identified as Dontae Hayes and the female identified as a juvenile. Due to purposes of confidentiality concerning the juvenile, her name is not listed in this public report. She will therefore be referred to as “Jane Doe” in this narrative.

The officers parked their marked police vehicle near the playground equipment and exited it. Upon exiting their police vehicle, Officer Asbury detected a strong odor of marijuana coming from the area where Hayes and Jane Doe were sitting. The officers approached Hayes and Jane Doe and asked if they had any marijuana. Hayes held out a fast food wrapper containing marijuana and replied, “Yes, right here.” Miranda looked at the substance in the fast food baggie and verified that it was marijuana. Both Asbury and Miranda began to obtain identity information from Hayes and Jane Doe in order to check if they had any outstanding wants or warrants. During this time period, Hayes and Jane Doe remained calm and cooperative with the officers.

Decedent Hayes initially provided the identifying information of his twin brother and told the officers that he may have traffic warrants. A wants and warrants check revealed a felony warrant for possession / receiving stolen property in the name provided by Hayes. The officers were unable to obtain any further identifying information on Jane Doe with the information she provided. The officers believed that Jane Doe was providing false information and they were also not convinced that Hayes was the subject who the warrant was issued for. The officers requested tattoo information on the warrant since Hayes had tattoos, but none were listed on the warrant. Miranda elected to go back to the police vehicle and check the CAL ID database for a photograph to further determine if Hayes was who he claimed he was. Miranda sat in the driver’s seat while working on the computer. Hayes and Jane Doe remained seated on the bench while Asbury stood by them.

Officer Asbury decided to handcuff Hayes due to the possible felony warrant, so he asked him to stand up and place his left hand behind his back. Hayes complied with the request and placed his left hand behind his back where Asbury took hold of it. Officer Asbury then told Hayes to place his right hand behind his back, but he failed to comply and instead moved his right hand down around the area of his front waistband. Officer Asbury thought that Hayes was about to run. Hayes took a small step to his right and removed a handgun from his waistband area and then turned to his left and pointed the handgun at Asbury’s face. Asbury simultaneously let go of Hayes’ left hand and attempted to block or push Hayes’ hand with his (Asbury’s) left hand. Asbury saw a muzzle flash from Hayes’

handgun and removed his own handgun and fired one round from his (Asbury's) hip position with one hand. This round struck Hayes in the chest. Asbury then fired two more rounds with a two-handed position. The second round hit Hayes in the chest and the third hit him on the left side of his head. Hayes then fell to the ground.

Officer Miranda was sitting in the driver's seat of the police vehicle when Officer Asbury began to handcuff Hayes. Miranda saw Hayes remove a handgun from his front waistband, turn to his left and point it at Asbury. At this point, Miranda exited his vehicle and saw Hayes fire a round at Asbury. Miranda ran toward Asbury and Hayes while at the same time firing his sidearm at Hayes. Miranda then saw Hayes fall to the ground. The officers requested medical aid and additional assistance from RPD officers. Hayes was handcuffed and secured as the first officer arrived. Medical assistance arrived and determined that Hayes was deceased at the scene.

Ms. Jeri Elliot became aware of the incident and reported to police that she had encountered Hayes on December 29, 2013, as she was walking her dog near Chestnut and 10th Street. Hayes told Elliot that he was homeless and on parole and felt like doing something "Just to get them to do me like Tyisha Miller." The female juvenile that was with Hayes admitted that she knew he was in possession of the handgun and that they had planned to sell it.

The crime scene investigation revealed (7) shell casings from where Miranda had been firing his weapon. Three casings from Asbury's weapon were found where he fired his handgun and one expended casing from Hayes' handgun was found where he (Hayes) fired his weapon.

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 Commission 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, including that of one civilian juvenile witness, the involved officers, and a Deputy Coroner. Other evidence included police reports and photographs, involved weapons, forensic examination results and a report by the Commission's independent investigator.

VII. Applicable RPD Policies:

All policies are from the RPD Policy & Procedures Manual.

- Use of Force Policy, Section 4.30.

The United States Supreme Court has ruled on one case that has particular relevance to the use of force in this incident. All decisions by the United States Supreme Court are law throughout the United States. The case is incorporated into the Use of Force Policy of the RPD.

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 Commission found that Hayes pointed a gun directly at Officer Asbury and fired a round, nearly striking him in the face. Hayes was in close proximity to Asbury when he fired his weapon and gave Asbury no avenue of escape. Hayes gave the officers no choice but to respond in the defense of their own lives. Hayes chose the course of action that would ultimately lead to his death. It was only after Hayes drew a concealed handgun and fired upon Officer Asbury that both officers fired their weapons in response.

The Commission concluded that Officers Asbury and Miranda acted in compliance with the Riverside Police Department's Policy on Use of Force that allows force that "is objectively reasonable, given the facts and circumstances perceived by the officer at the time of the event to defend themselves." During the interview of Officer Asbury, he made statements that he was "scared to death," and realized that Hayes was "trying to kill me. I remember seeing smoke and flame flash in my face. It scared me to say the least." Based on the actions of Hayes, Asbury's and Miranda's use of deadly force was reasonable given the facts and circumstances perceived by the officers at the time they defended themselves and each other.

IX. Recommendations:

None.

I. 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

RPD Press Release / Press-Enterprise Articles	Section A
Fact Sheet	Section B
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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 D
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Section A

RPD Press Release

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Press-Enterprise Articles





City of Arts & Innovation

# PRESS RELEASE

**Police Department**  
**SERGIO G. DIAZ**  
**Chief of Police**

## FOR IMMEDIATE RELEASE

December 31, 2013

Contact:  
Daniel Russell  
Sergeant  
drussell@riversideca.gov  
(951) 353-7106

## OFFICER INVOLVED SHOOTING

**RIVERSIDE, CA** – On Tuesday, December 31, 2013, at approximately 1130 hours, officers from the Riverside Police Department Problem Oriented Policing (POP) Team were conducting a pedestrian check on two individuals at Arlington Park located at 3860 Van Buren Boulevard. While speaking with the subjects, it was determined the male subject would be handcuffed. As one of the officers attempted to make contact with the male subject he pulled a handgun and an officer involved shooting occurred.

Personnel from the Riverside Fire Department and American Medical Response responded to the scene to render medical aid and pronounced the suspect deceased.

Detectives from the Robbery/Homicide Unit responded to the scene and were assisted in their investigation by personnel from the Forensic Evidence Unit.

The name of the deceased subject will be released by the Coroner's Office pending notification to next of kin.

Anyone with information is asked to contact Detective Rick Cobb at (951) 353-7135 or Detective Ron Sanfilippo at (951) 353-7105.

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## **RIVERSIDE: Police kill man who pulled gun on officers (UPDATE)**

DECEMBER 31, 2013 BY [BRIAN ROKOS](#)



**Riverside police investigate the shooting of a man who officers say pulled a gun on them at Arlington Park on Dec. 31. — BRIAN ROKOS/STAFF**

*Updates with identity, background of deceased man*

Riverside police shot to death a wanted 20-year-old man who they said pulled a gun on them late Tuesday morning, Dec. 31, at Arlington Park.

About 11:30 a.m., two officers with the Problem Oriented Policing team were questioning two people in the park on Van Buren Boulevard near Magnolia Avenue, a news release said. When

police tried to handcuff Dontae Hayes, of Riverside, he pulled out a handgun and one or both officers fired, killing him.

No officers were injured, Officer Javier Cabrera said.

Court records show that a warrant for Hayes' arrest was issued in Riverside County on March 14, apparently after he failed to show up for a felony settlement conference. Hayes had been charged with receiving stolen property, a felony, in connection with a Sept. 1, 2012 incident.

Hayes' body lay on the playground chest down, with his head tilted to the side and his hands handcuffed behind his back. Police Chief Sergio Diaz said that when an officer shoots a suspect, the next arriving officer handcuffs the suspect for officer safety until paramedics arrive.

Paramedics pronounced Hayes dead at the scene.

The park was closed and surrounded by yellow crime scene tape.

More than a dozen police investigators were at the park early Tuesday afternoon.

This was the second officer-involved shooting for Riverside in 60 hours. Just after midnight Sunday, two officers fired at a car that had tried to run them over. The driver and a passenger were shot.

The driver, Remijio Madriles Jr., 35, has three convictions for recklessly evading police and was on supervised probation despite pleading guilty to grand theft auto and being a repeat auto thief in July.

Ron Martinelli, a police training consultant in Temecula, has said December is the most violent time of the year for officers. He said in a 2012 interview that people who don't have families or who are disenfranchised from loved ones, or have some other emotional trauma in their lives, become even more depressed as the holidays approach, and others' spirits soar.

When Diaz was asked Tuesday whether he feared more for officers' safety during the holidays, he talked about the early release from jail of what are categorized as non-violent offenders that results from a court order to decrease the prison population.

"The biggest threat for me," Diaz said, "is the large numbers of people who should be in jail except for the so-called reforms. We need to go by what they (criminals) do and not what they say."

## **RIVERSIDE: Wrongful-death claim filed in fatal shooting by officer**

JULY 7, 2014 BY [BRIAN ROKOS](#)



The mother of a man who Riverside police shot to death in Arlington Park on Dec. 31, 2013, is seeking at least \$25,000 from the city.

Taffy Hayes, mother of Dontae Daveon Lewis Hayes, has filed a claim for damages with the city that alleges wrongful death and violation of civil rights.

Officer Nathan Asbury was trying to arrest Hayes on a felony warrant when the shooting happened, Riverside Assistant Police Chief Chris Vicino told the Community Police Review Commission in January. As Asbury began to handcuff Hayes, Hayes put his left hand behind his back, but then used his free right hand to pull a .45-caliber gun from his waistband.

Hayes fired, but Asbury ducked. Asbury then fired three times at Hayes, hitting him three times and killing him, Vicino said.

Taffy Hayes is represented by William Rehwald, of Woodland Hills-based Rehwald Glasner & Chaleff.

According to a friend of Hayes who witnessed the incident, Hayes never fired a gun, Rehwald said.

# Section B

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## Fact Sheet



HAYES OID FACT SHEET  
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**Date Occurred:** December 31, 2013  
**Time of Occurrence:** 1133 Hours  
**Decedent:** Dontae Daveon Lewis Hayes  
**Location:** Arlington Park, 3860 Van Buren Blvd., Riverside

**Officer(s) Involved:** Officer Nathan Asbury #1368  
Officer Paul Miranda #1501

**Officer Witness(s):** None

**Civilian Witnesses:** Female juvenile – Name redacted due to witness being a minor

**Officer Injuries:** None

**Suspect's Injuries:**

Decedent Hayes sustained three gunshot wounds, (2) to the left chest area and (1) to the left mastoid area of the head. Hayes was pronounced deceased at the scene.

**Gunshots Fired by Officers Asbury and Miranda:**

The duty weapons of each officer were examined by a forensic specialist at the California State Department of Justice. The examiner found that all weapons functioned properly during the examination. The following evidence is based upon the charting of each officer's duty weapon by RPD Detective Rowe.

A total of 10 rounds were fired between the two officers.

- **Officer Nathan Asbury fired (3) rounds**  
Springfield Armory .45 Cal. One round was found in the chamber and four rounds were found in the magazine which holds a capacity of seven rounds. Four additional magazines were found loaded to the capacity of seven rounds.
- **Officer Paul Miranda fired (6) rounds**  
Glock 22 .40 Cal. One round was found in the chamber and nine rounds were found in the magazine. Two additional magazines were loaded to the full capacity of 15 rounds.

**Gunshots Fired by Decedent Hayes:**

- **Dontae Daveon Lewis Hayes fired (1) round**  
Colt Model 911 .45 Cal semi-automatic.

# HAYES OID FACT SHEET

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### FACT SHEET

The fact sheet is numbered and designed to point you to important factual information located in the criminal case book that will help guide you in your review process. It is not designed to take the place of a cover to cover review. It is up to you to review the “fact sheet” data before or after a cover to cover review. Each point of reference is preceded by a TAB number followed by a page number and paragraph number.

**TAB 1 – OID Summary, Pages 1 – 8:** OID Summary by Detective Rick Cobb, Lead Investigator. The summary provides a detailed overview of the incident.

**TAB 3 – Original Report, Page 1 Narrative:** Detective Rick Cobb. Took the initial crime report listing the crime as PC 664-187, Attempted Murder of a Peace Officer. File #P13-186428. Detective Cobb wrote in the narrative that he responded to Arlington Park in regard to an officer-involved shooting. All subsequent reports in this investigation are “supplemental reports.” Officers Asbury and Miranda were listed as victims and decedent Hayes as the suspect. Neither officer was injured. (Decedent fired a shot at Officer Asbury’s face at near point blank range. Asbury was able to deflect Hayes’ gun hand as Hayes fired his gun at Officer Asbury’s face. It is for this reason that an Attempted Murder of a Peace Officer crime report was taken.)

**TAB 4 – Supplemental Report, Pages 1 – 2 Narrative:** Sgt. McCarthy. Upon arrival, he took a “Public Safety” statement from Officer Asbury to determine if there were any outstanding suspects, the direction of gunfire, witnesses and establish the crime scene. (This is a brief statement obtained from peace officers involved in a shooting without going into detail so the officer’s rights are not violated. The officer is required to provide certain details that include any outstanding suspects, direction of gunfire, witnesses and establish the crime scene. A detailed interview is taken by a detective at a later time.) Asbury stated he was standing behind Hayes and attempting to place handcuffs on him subsequent to a felony warrant. Hayes suddenly produced a handgun and fired one round from over his shoulder toward Asbury’s head. Asbury then unholstered his sidearm and fired rounds at Hayes from a close distance.

**TAB 5 – Supplemental Report, Page 1:** Sgt. Collins. Upon arrival, he took a “public safety” statement from Officer Miranda. Miranda stated that he and Officer Asbury contacted Hayes at Arlington Park and Hayes produced a handgun and fired it at him (Miranda) and Asbury. Miranda then fired his weapon at Hayes. Miranda believed at the time that he fired five rounds.

**TAB 8 – Supplemental Report, Pages 1 – 2:** Officer Espinoza. He arrived at the scene of the shooting and assisted in the handcuffing of Hayes for safety purposes. He turned Hayes over on to his stomach and placed the handcuffs on him. Espinoza saw a semi-auto pistol lying on the ground approximately 3’ from where Hayes fell. He was then tasked with establishing a crime scene log.

**TAB 9 – Supplemental Report, Pages 1 – 2:** Officer Fast. Fast was assigned a perimeter position at Hayes and Van Buren. While there, he saw a subject sitting on a park bench. Fast activated his recorder and asked the subject, Manuel Carranto, if he saw what happened.

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Carranto saw an officer talking to two subjects in the park, but did not see the shooting, what caused it, and did not hear what was being said. Carranto heard gunshots and saw an officer pointing his gun at a subject who fell to the ground. Carranto identified himself as a homeless person and could not provide an address.

**TAB 10 – Supplemental Report, Pages 1 – 2:** Officer J. Cruz. Cruz responded to the scene and was directed to assist in closing the park. He located a potential witness, Manuel Benavante, sitting on a mountain bike looking at the shooting scene. Benavante said he did not see the shooting or what prompted it. Benavante said he drove past the park and saw a male and female arguing. The male, later identified as Hayes, was pulling on the female. He saw officers arrive and he then rode off. After he turned onto Hayes Street he heard gunshots. He returned to the park and saw Hayes lying on the ground. Benavante became uncooperative and provided no additional information.

**TAB 12 – Supplemental Report, Page 1 Narrative:** Officer Glover. Glover arrived at the crime scene and was directed to search the area of the shooting for unaccounted shell casings. In doing so, he located the casings lying on the ground next to the police vehicle used by Asbury and Miranda.

**TAB 13 – Supplemental Report, Page 1:** Officer Allison. Allison arrived at the crime scene and was directed to canvass the area for possible witnesses. He spoke to a couple of nearby residents who did not see anything. One heard popping sounds and another thought it was fireworks.

**TAB 14 – Supplemental Report, Pages 1 – 2:** Officer McMahon. Officer McMahon arrived at the scene to assist. McMahon initially contacted Asbury and ensured he was okay. He saw Hayes lying on the ground with a gunshot wound to the head. He searched and handcuffed Hayes with the assistance of Officer Espinoza. McMahon saw a cocked semi-auto pistol lying on the ground next to Hayes. He located (9) shell casings and marked them with a piece of paper as evidence.

**TAB 19 – Supplemental Report, Page 1 Narrative:** Officer Cupido. Monitored RFD paramedics assess Hayes' injuries and status. RFD firefighter / paramedic Foy pronounced Hayes deceased at the scene at 1149 hours.

**TAB 20 – Supplemental Report, Page 1 Narrative:** Officer G. Hirdler. Officer Hirdler was tasked with checking the exterior of buildings on Magnolia since it was alleged that Hayes fired a weapon in the direction. Nothing was found.

**TAB 35 – Supplemental Report, Page 2:** Officer Navar. Officers Navar and Soria responded to the scene to assist. Upon arrival, Navar saw Asbury and Miranda standing up and pointing their sidearms at Hayes who was lying on the ground. Also saw a female lying on her stomach approximately 4' away from Hayes. For safety purposes, Navar and Soria took control of the female and placed her in a police vehicle pending further investigation. The female was handcuffed since her role in the incident was not known. Navar and Soria were tasked with

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transporting the female to the police station for an interview. The female was placed in an interview room pending arrival of detectives. While the female was in the room, she was crying, yelling, and blaming herself. She was loud and belligerent. It was determined that the female was a witness and with Hayes when the shooting occurred. Neither officer took any further action with this witness. The witness was a minor and was later released to her mother.

**TAB 37 – Supplemental Report, Pages 1 – 2:** Officer Hammer. Hammer was tasked with canvassing the neighborhood for potential witnesses. Contact was made with three separate residents on Van Buren. None of them saw anything. Two out of three said they heard what sounded like firecrackers. No further information was provided.

**TAB 38 – Supplemental Report, Pages 1 – 2:** Officer Lindgren. Upon arrival, he was assigned a perimeter position in the park. While doing so, he spoke with three landscapers that had been working in the park at the time of the shooting. Two of the three were mowing and edging and did not see or hear anything. One was seated in a truck, but did not see anything. He heard what sounded like firecrackers.

**TAB 40 – Supplemental Report, Page 2, last paragraph & all of Page 3:** Detective Rick Cobb. Summary of the interview with Officer Asbury followed by the interview transcript. Asbury had run a wants and warrants check on Hayes with the information he provided that revealed a felony warrant. Asbury noted that Hayes had several tattoos and according to the warrant he had none. Miranda then went to the police unit to try and obtain a photograph of Hayes to verify they had the right person.

As Miranda walked to the police vehicle, Asbury asked Hayes to stand up and place his hands behind his back. Hayes began to comply as he stood up and turned away from Asbury, placing his left hand behind his back. Hayes then refused to put his right hand behind his back and kept it in front of him. Asbury tried to grab Hayes' right hand as Hayes stepped forward and to his right. At the same time he spun to his left. Hayes had a gun in his right hand and pointed it directly at Asbury's face. Asbury tried to deflect the gun away from his face while at the same time Hayes shot at him. Asbury stated, "I remember seeing smoke and a flash in my face. It scared me to say the least." Asbury said he thought he had been shot in the face and was "scared to death."

Asbury said he realized that Hayes was trying to kill him. Asbury removed his sidearm and fired a shot at Hayes' chest, striking him in the chest. Hayes was still standing and Asbury fired a second round into Hayes' chest. Hayes was still standing while Asbury fired a third shot at his head, striking him in the head. Asbury said he fired the three rounds in quick succession. He was uncertain if Hayes fired a second round at him.

Asbury recalled that at some point during the shooting, Hayes pointed his handgun at Miranda. He heard Miranda firing his sidearm as well. Hayes then fell to the ground along with his handgun. Asbury noticed that Hayes was still moving after he fell to the ground so he (Asbury) kicked the gun out of Hayes' reach.

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**TAB 41 – Supplemental Report, Pages 1 – 2 Narrative:** Detective Sanfilippo. Summary of the interview with Officer Miranda followed by the interview transcript. Officer Miranda said that Asbury had run a wants and warrants check on Hayes with the information provided by Hayes and his juvenile female friend. Hayes came back with both a felony and misdemeanor warrant. Asbury attempted to have dispatch check for tattoos on Hayes, but that information was not available to dispatch. Miranda then elected to walk back to their police vehicle and check for a Cal ID photograph in order to verify if Hayes was the right person on the warrant.

Officer Miranda was working on the computer in an attempt to obtain Hayes' photograph when his attention was diverted to where Asbury and Hayes were located. Miranda estimated that he was in the vehicle for approximately 30-seconds. He saw that Asbury was standing behind Hayes. It looked as though Asbury was in the process of handcuffing Hayes. Due to Hayes' demeanor, Miranda exited the patrol car. It looked as though Hayes was going to try to run. Asbury had one of Hayes' hands behind his back. Hayes stepped to his right and spun back toward Asbury while at the same time pulling a handgun out of his waistband. Hayes pointed the gun at Asbury who at that point created some distance between himself and Hayes.

Officer Miranda saw Hayes point his gun at him (Miranda) so he ducked behind the open driver side door of the patrol vehicle. Miranda said that he was "in disbelief, I can't believe it just happened. I felt helpless." Miranda said that he did not see it coming and thought he was going to be shot. Miranda then saw Hayes point the gun at Asbury and immediately heard a "pop." He did not know who fired the shot. Miranda stood up and advanced toward Hayes while at the same time firing his handgun at Hayes. Miranda said he continued firing while advancing on Hayes and was approximately 4' away when he fired his last round. During this time, Miranda said that he was only focused on Hayes and did not know if Asbury had fired his weapon or not.

Officer Miranda saw Hayes fall to the ground and his gun fell within a few feet of him. Asbury kicked the gun away from Hayes' reach. Miranda saw Hayes' ball cap lying on the ground next to him. Miranda noticed that the female subject that was with Hayes was lying on the ground near Hayes and in order to prevent her from tampering with evidence by touching the cap he kicked it away. When Miranda kicked the ball cap he saw a shell casing fall out of it. He then waited for other assistance to arrive.

**TAB 42 – Supplemental Report, Page 2:** Detective Rick Cobb. Conducted a recorded interview with the juvenile female that was with Hayes at the time of the shooting. She was crying and hysterical while Cobb tried to interview her. The female kept asking if her boyfriend was dead and Cobb finally told her that he was. She then became more hysterical. Cobb asked her if she could tell him what happened at the park. The female said Hayes pulled out a gun and she tried to stop him. She knew he had it with him. They were going to sell it and get rich. Cobb was unable to continue with the interview since the female was much too upset. Her guardian had been notified and she was released.

**TAB 43 – Supplemental Report, Page 2:** Detective Rick Cobb. On January 3, 2014, Cobb received an email via the "chiefonline" site. A female whose name was redacted from the public report for her protection, claimed that on December 29, 2013, she spoke to a black male on the

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street who told her that he “felt like doing something to get locked back up.” When asked what he was thinking about doing the subject said, “just get them to do me like Tyisha Miller.” The female claimed she could identify the person if she saw him again. Cobb sent her a photograph of Hayes and she confirmed that he was the person that she spoke to. The female claimed that she made the contact at the RPD 'chiefonline' after reading about the shooting in the newspaper.

**TAB 44 – Supplemental Report, Page 2:** Detective Rick Cobb. Cobb requested a “Touch DNA” test on the gun used by Hayes. The forensic staff refused to do the DNA test for two reasons. One, there was other evidence that linked the gun to Hayes. Secondly, there was blood on the gun and any DNA found would be attributed to the blood.

**TAB 46 – Gunshot Residue test results from the Los Angeles County Department of Medical Examiner-Coroner, Page 1.** A gunshot residue test was conducted on Hayes and this test showed positive for gunshot residue on Hayes’ hand(s). (NOTE: This would be indicative that he fired a gun.)

**TAB 47 – Supplemental Report, Pages 2 – 6:** Detective Jim Brandt. This tab includes the processing of the crime scene by detectives, the Coroner’s office, and forensic technicians. The crime scene was described and photographed. Evidence was located, identified, and photographed. Brandt was assisted in the processing of the crime scene by the following personnel: Sgt. Amador, Sgt. Russell, Detective Cobb, Detective Sanfilippo, Detective Medici, Detective Rowe, ID Tech Susan Lane, ID Tech Selena McKay-Davis and Deputy Coroner N. Rissi. The Deputy Coroner processed Hayes’ body for transportation to the Coroner’s office pending an autopsy. The report consists of the following sections: Scene Description, Scene Processing / Evidence Collected, Weapon Information and Dontae Hayes (body and clothing description).

Deputy Coroner Rissi conducted a GSR collection and took fingernail scrapings from Hayes and gave it to FST Lane for booking. In order to ensure the collection of all possible shell casings, two members of the Riverside Treasure Hunter’s Club assisted by using metal detectors.

**TAB 48 – Supplemental Report, Pages 1 – 2:** FST S. Lane. Crime scene evidence processing, measurements, and collection. Pages 3 – 5 consist of the evidence log indicating what was collected and booked.

**TAB 49 – Supplemental Report, Pages 2 – 4:** Detective Rowe & Sr. Forensic Tech McKay-Davis. Charting of the officers' weapons. The officers that fired weapons in this incident are Asbury and Miranda.

|                        |                                                            |
|------------------------|------------------------------------------------------------|
| <b>Officer Asbury</b>  | Fired (3) rounds; Springfield Model 1911 .45 Cal Semi-Auto |
| <b>Officer Miranda</b> | Fired (6) rounds; Glock Model 22 .40 Cal Semi-Auto         |

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**TAB 50 – Supplemental Report, Page 2 Narrative:** Sr. Forensic Tech McKay-Davis. Reported on evidence collection, photographs of evidence, and charting of Officer Asbury's and Miranda's weapons.

**TAB 51 – Department of Justice Weapons Examination Reports, Pages 1 – 2:** Sr. Criminalist Richard Takenaga. Analysis of weapons and shell casing comparisons. Reported that both Officer Asbury's and Officer Miranda's weapons functioned properly in the analysis.

**TAB 52 – Supplemental Report, Pages 1 – 2:** Detective Sanfilippo. Det. Sanfilippo attended the autopsy of Hayes and reported the examination. The autopsy was conducted by Dr. McCormick and Coroner Techs C. Clark and B. Franco. Also present was RPD Forensic Tech L. Velin. Dr. McCormick determined that Hayes sustained three gunshot wounds, two to the chest and one to the head. Two gunshots went in a front to back trajectory to the left chest. One went front to back through the left mastoid temporal. Page 3 is the property report listing items seized as evidence during the autopsy.

**TAB 53 – Supplemental Report, Page 1 Narrative:** Sr. Forensic Tech McKay-Davis. Reported on evidence collected from the body of Hayes during the autopsy. Page 2 contains a property report on these items. Page 3 is a photo log of the autopsy.

**TAB 54 – Autopsy Protocol Report, Pages 1 – 11.** Forensic Pathologist Dr. M. Scott McCormick. The autopsy was conducted by Dr. McCormick on January 2, 2014. The cause of death was listed as "Multiple Gunshot Wounds." The report provides specific detail as to each gunshot. Lab reports are included.

**TAB 56 – Thumbnail Photos / DVD Photos:** P13186428 Item10; P13186428 LV; P13186428SL; P13186428MD. Click on each of the P numbers for access to the photographs.

**TAB 57 – Audio Log, Page 1:** In order to hear the dialogue between Officer Asbury, Officer Miranda, Decedent Hayes and his juvenile girlfriend click on "1501PM 12\_31\_2013 11\_29 AM."

**TAB 63 – Riverside County D. A. Staffing Review Letters:** Letters from the Office of the District Attorney, Riverside County, to RPD Chief Sergio Diaz, dated May 6, 2015, reporting that upon review of this officer-involved shooting, there is no criminal culpability on behalf of any of the two officers involved.

By Frank Hauptmann, CPRC Manager



# Section C

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Mike Bumcrot Consulting

Report of  
Investigation



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## REPORT OF INVESTIGATION

**DATE:** January 9, 2014

**CASE:** Riverside Police Department File #P13186428, CPRC #13-040

**SUBJECT:** Officer Involved Shooting Death of Dontae Hayes which occurred on December 31, 2013

**LOCATION:** 3860 Van Buren Boulevard, Riverside

On January 2, 2014, I received a written request from Frank Hauptmann, Manager of the Community Police Review Commission, to conduct a neighborhood canvass at the location of the officer involved shooting death of Dontae Hayes which occurred on December 31, 2013. The purpose of the canvass was to search for potential witnesses who had not been located by Riverside Police Department on the day of the incident. If any witnesses were identified, I was asked to conduct a thorough interview and provide a copy of said interview to Riverside Police Department.

On January 2, 2014, I responded to Arlington Park, 3860 Van Buren Blvd., Riverside. I observed the park to be on the west side of Van Buren Blvd. with Hayes St. to the north, Roosevelt St. to the west, and Miller St. to the south. I attempted contact of all residents on the streets bordering the park but was unable to identify any witnesses. Most of the people that I talked to were very hesitant to say anything other than the fact "gangsters" run the park. While walking around the park, I observed four young adult males and a young adult female sitting on a bench between the tennis courts and swings, near the park office. I approached this group and identified myself, asking if they had witnessed the incident. The group immediately became hostile and I was told, in no uncertain terms, that I was not welcome in the park.



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I noted gang style graffiti on objects in and around the park and as I drove from the location, west on Magnolia Ave., just one block from the park, I observed several business owners painting over what appeared to be fresh graffiti on their walls.

On January 9, 2014, I attended the Officer Involved Death Briefing regarding this incident conducted by Riverside Police Department investigators.

I will review the Officer Involved Shooting investigation when Riverside Police Department provides me with access to their files.



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## REPORT OF INVESTIGATION

**DATE:** June 22, 2015

**SUBJECT:** Officer Involved Shooting Death of Dontae Hayes which occurred on December 31, 2013 at 1133 Hours

**CASE:** Riverside Police Department File #P13186428, CPRC #13-040

**LOCATION:** 3860 Van Buren Boulevard (Arlington Park), Riverside

On June 16, 2015, I was asked by Frank Hauptmann, Manager of the Community Police Review Commission, to review the circumstances surrounding the officer involved shooting death of Dontae Hayes by members of the Riverside Police Department, Officers Nathan Asbury and Paul Miranda. I was also asked to provide my expert opinion in a written report on the manner in which detectives of the Riverside Police Department investigated this case.

I received several hundred pages of police reports, photographs, recordings, and other documents contained in the presentation by detectives to the Police Review Commission. I also researched legal issues and responded to the location to better understand the police reports, although the photographs taken by Riverside Police Department Lab technicians right after the incident were exceptional and I referred to them several times during this review. I incorporated Riverside Police crime lab photos in this report. See photos.

It is my conclusion that both Officers Asbury and Miranda acted in lawful self-defense and defense of others at the time they fired their handguns at Mr. Hayes, who not only



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brandished a loaded .45 pistol at the officers, but also actually fired one shot at the face of Officer Asbury.

The following analysis is based upon investigative reports, analyzed evidence reports, audio recordings, and statements taken during the investigation.

## **FACTUAL ANALYSIS**

On December 31, 2013, at approximately 1130, Riverside uniformed Police Officers Nathan Asbury and Paul Miranda were working a special problems team regarding homeless persons loitering in certain areas. They drove their marked black and white police car into Arlington Park and observed a male and female seated on a concrete bench near the children's playground. It appeared as if the female subject was vandalizing the bench. The officers exited their police vehicle and Officer Asbury immediately smelled the odor of marijuana. Officer Asbury asked Mr. Hayes if they had marijuana and he said, "Yeah right here", holding up a plastic bag containing a green leafy substance. Mr. Hayes said that they weren't smoking the marijuana, they were just rolling it into cigarettes. He also volunteered to throw it in a nearby trashcan.

See the following photographs depicting the benches next to the playground.

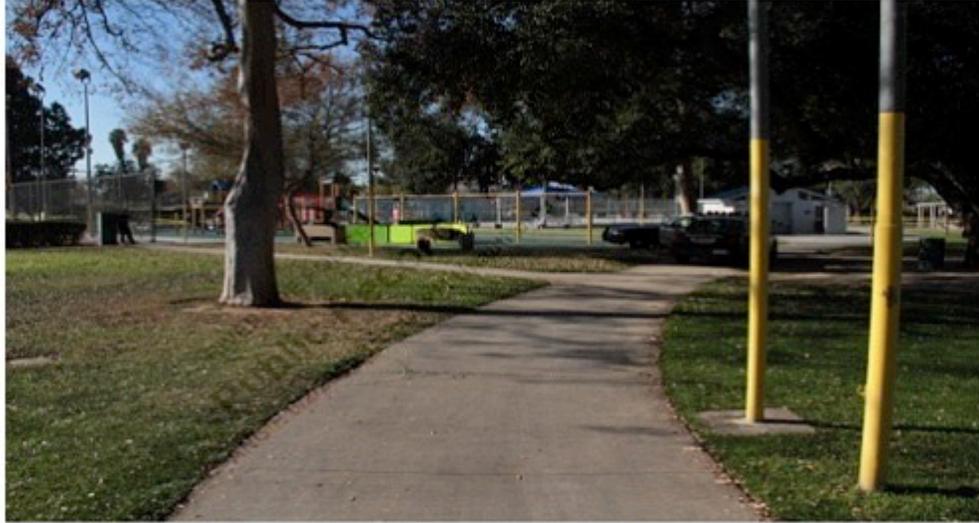


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P13186428SL: DCV53832



P13186428SL: DCV53833



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The officers asked both subjects for their names and dates of birth in order to run them through police systems for wants or warrants. Mr. Hayes provided a name, that detectives would later learn, was his twin brother's name. The female provided a name but would not give a date of birth.

Police dispatch reported that Mr. Hayes had a felony warrant out for his arrest charging him with 496 P.C., receiving stolen property.

Both subjects appeared to be calm. Detectives would later learn that the female was a reported juvenile runaway. The officers believed that the female was providing false information and Mr. Hayes was not the subject with the warrant because he had numerous tattoos on his arms while the warrant subject had no tattoos listed.

As Officer Asbury kept the subjects seated on the park bench, Officer Miranda walked to his police vehicle to check for CAL-ID photos on the computer in the police car.

As Officer Miranda sat in the driver's seat, Officer Asbury decided to handcuff Mr. Hayes due to the possible felony warrant. Mr. Hayes was asked to stand and place his hands behind his back. Officer Asbury grabbed the subject's left hand and could feel Mr. Hayes "moving around" and thought the subject was about to run. The officer reached his right hand around the subject to grasp his right hand. Mr. Hayes reached into his right front waistband and spun around, facing Officer Asbury and holding a pistol. Mr. Hayes pointed the weapon directly at Officer Asbury's face. The officer's reaction was to deflect the pistol, as it fired, with his left hand while drawing his own weapon with his right hand. Mr. Hayes glanced in the direction of Officer Miranda, who had observed the armed encounter and exited the police car.

See the following photographs which depict where the police car was parked and where Mr. Hayes fell (hidden by short barricades).



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P13186428SL: DCV53836



P13186428SL: DCV53837



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As Mr. Hayes turned his attention back to Officer Asbury the officer fired one shot from the hip, striking Mr. Hayes in the chest. The officer continued to bring his weapon up to a two handed stance and fired, striking Mr. Hayes in the chest again. Mr. Hayes remained standing and holding his firearm. Following his firearms training of shooting two shots to the chest, then one to the head, Officer Asbury shot Mr. Hayes in the head and the subject went down. It should be noted that during the confrontation between Mr. Hayes and Officer Asbury, Officer Miranda was running towards the altercation and fired seven rounds from his firearm in the direction of the subject. Medical aid was then summoned. Officer Asbury would later tell detectives "I was literally looking down the barrel" when Mr. Hayes shot at him. He was "scared to death" and realized Mr. Hayes was "trying to kill me". "I remember seeing smoke and flame flash in my face. It scared me to say the least".

Officer Miranda would later tell detectives that at the time of the shooting "I was in disbelief. I can't believe it just happened", and he added he "didn't see it coming. I felt like I was going to be shot".

## **WITNESS**

Witness Jeri Elliott told detectives that on December 29, 2013, she was walking her dog in the area of Chestnut Avenue and 10<sup>th</sup> Street when a black male adult stopped her and began to talk to her dog. This male said he was homeless and on parole and felt like doing something to get locked up. When Ms. Elliott asked what he would do, he replied "Just get them to do me like Tyeshia Miller". She was shown a photograph of Mr. Hayes and positively identified him as being the same male who approached her on December 29, 2013.

## **EXPERT QUALIFICATIONS**

I was employed as a peace officer for the Los Angeles Sheriff's Department for 34 years. I worked as a jail deputy, 18 months as a patrol officer, and four years assigned to the Special Enforcement Bureau (SWAT team). My last 27 years on the department, I was assigned to the Detective Division, including over 22 years assigned to the



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Homicide Bureau. I investigated over 450 homicides and suspicious deaths and over 100 Officer Involved Shootings, including the murders of ten police officers.

In 1994, I assisted in writing the LASD Homicide Bureau Investigative Manual. I was also selected to be a member of the Joint LASD/LAPD Crime Lab Development Committee as well as the JET Committee to develop Homicide Bureau job standards and selection criteria. In 1995, I was selected as California's Deputy Sheriff of the Year by the California Organization of Police and Sheriffs (COPS) for the investigation, arrest, and conviction of a suspect in the murders of two local policemen.

For over 15 years, I have taught "High Profile Murder Investigations", "Homicide Scene Management", and Officer Involved Shooting Investigations" for the Robert Presley Institute of Criminal Investigation, police academies, advanced training classes, supervisor training, college classes, Homicide School, and in-service training. I am currently on staff with the Police Policy Studies Council where I teach and consult nationally on officer involved shooting, homicide, and suspicious death investigations. I am currently the investigator for the Riverside Police Review Commission. Although I retired from LASD in 2002, I was immediately signed to a contract to train newly assigned homicide detectives. In 2006, I was also assigned to the LASD Cold Case team where I have reviewed over one thousand unsolved murders and specifically work the unsolved DNA and latent print cases.

## **INVESTIGATION AND REVIEW**

The investigation into the officer involved shooting death of Dontae Hayes was conducted by the Riverside Police Department and the Riverside County District Attorney's Office. I reviewed all the reports submitted to the Community Police Review Commission and researched deadly force legal issues. The District Attorney found there was no criminal liability.



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## LEGAL ANALYSIS

California law permits the use of deadly force in self-defense if it reasonable appears to the person claiming the right of self-defense that he actually and reasonably believed he was in imminent danger of great bodily injury or death. The belief in the need to defend oneself must be both actual and reasonable.

“The rule is well established that one who, without fault, is placed under circumstances sufficient to excite the fears of a reasonable man that another designs to commit a felony or some great bodily injury and to afford grounds for a reasonable belief of imminent danger, may act upon those fears alone and may slay his assailant and be justified by appearances.” People v. Mercer (1962) 210 Cal.App.2<sup>nd</sup> 153, 161

“Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.” People v. Collins (1961) 189 Cal.App.2<sup>nd</sup> 575

The test of whether the officer’s actions were objectively reasonable is “highly deferential to the police officer’s need to protect himself and others.” Mundz v. City of Union City (2004) 120 Cal.App. 4<sup>th</sup> 1077, 1102

The Fourth Amendment reasonable test is, “An objective one: the question is whether the officer’s actions are objectively reasonable in light of the facts and circumstances confronting them.” Graham v. Conner (1989) 490 U.S. 396.

## CONCLUSION

The evidence examined in this investigation reveals that Dontae Hayes was sitting in Arlington Park, armed with a .45 pistol, and in possession of marijuana. He was also in the presence of a runaway female juvenile.

Riverside Police Officers Nathan Asbury and Paul Miranda made contact with Mr. Hayes and were conducting a legal and reasonable investigation. When Mr. Hayes was



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asked to place his hands behind his back to be handcuffed and detained for possibly having a felony warrant for his arrest, Mr. Hayes chose to not only pull a handgun from his waistband but to also discharge his firearm in the face of Officer Asbury. There is little doubt that Officer Asbury would have been seriously injured or killed if he hadn't deflected Mr. Hayes weapon as it fired.

In listening to the audio recording of the entire incident, Mr. Hayes and the officers appeared to be calm and conversing in a normal manner. Suddenly there is a rustling sound that apparently is Mr. Hayes and Officer Asbury wrestling. Gunshots are heard, followed by the incoherent screams of the female juvenile.

The actions of Dontae Hayes and the fact that he not only pointed his weapon at both Officers Asbury and Miranda, but also actually fired his weapon at Officer Asbury, reasonably created a fear of imminent death or serious bodily injury. Once the officers perceived that Mr. Hayes posed a lethal threat, their response with deadly force was justified.

It should not go unnoticed that not only was Mr. Hayes in possession of marijuana, the Coroner's Toxicology Report indicates that marijuana was in his system.

I find that the investigation into the officer involved shooting death of Dontae Hayes was completed in a fair and impartial manner and met or exceeded POST standards of practice.

It should be noted that, although it was very obvious what had occurred during the incident, the detectives asked the Department of Justice to check Mr. Hayes' weapon for touch DNA. This request was denied. They also asked the Los Angeles County Coroner's Office lab to analyze the gunshot residue test taken on samples from Mr. Hayes' hands. This test revealed gunshot residue on both of Mr. Hayes' hands. This is an example of investigators doing a thorough job to corroborate statements.



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# Section D

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RPD Policy 4.8  
(Rev. 6, 5/26/11)

Investigations of  
Officer-Involved Shootings  
& Incidents Where Death  
or Serious Likelihood of  
Death Results



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 E

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RPD Policy 4.30  
(Rev. 9, 4/8/11)

Use of Force Policy



Effective Date: 8/93  
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Revision 8 Date: 04/16/09  
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 a position 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 personal body weapons, 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 voluntary 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.

In such cases, the Internal Affairs Unit shall be responsible for conducting all administrative investigations involving the application of force.