



INCIDENT REVIEW REPORT

Offender Name Randall Lee Hall		Offender DOC # 896861	Report Date 6-14-17 Critical Incident Review #
Name of Initiator Mac Pevey	Team Leaders Scott Shapiro		Team Members Brent Martin

INCIDENT	
Date and Time: 06-28-16	Location: 3402 I Street NE Auburn, WA
Brief Description of Incident: In June of 2016, Special Agents (SAs) and Task Force Officers (TFOs) with the Bureau Alcohol, Tobacco, Firearms, and Explosives were conducting a surveillance and arrest operation for Randall Hall, who had an active warrant for his arrest for [REDACTED] 17 (Bellevue PO, #BC193090, \$3000 bail). Agents and TFOs knew Hall had eight prior felony convictions (VUCSA, Threats to Kill/ Harassment, Robbery 2nd, Theft 1st, three for Theft 2nd and ID Theft) in the State of Washington and was prohibited from possessing firearms. Additionally, they knew that there was ballistic information linking Hall to ten shooting scenes and in April 2016, a firearm was recovered from a vehicle registered in Hall's name. SAs and TFOs located credit/utility listings showing Hall's residence as 3402 I Street NE #T304, Auburn A (Bye the Green Apartments). SAs and TFO's also located Facebook.com associations between Hall and the listed renter of the apartment, Alonzo King. During the week of 6/20/16, SAs and TFOs located a rental vehicle in the parking lot of 3402 I Street NE that they were able to determine had been rented by Hall (a 2016 grey Dodge Challenger, CA 7NEW231). On 6/28/16, SAs and TFOs conducted surveillance in the parking lot of the Bye the Green apartments. SAs and TFOs again saw the grey Challenger parked in front of the I building. Later on the same date, SAs and TFOs saw a black female (later identified as Hall's female companion, Deandre) and two small children exit #T304. They then observed someone else close the door from the inside. They suspected this person was Hall. Later, SAs and TFOs saw Hall exit apartment #T304. This time, agents followed Hall to a nearby parking lot. SAs and TFOs approached Hall wearing vests and other equipment that was clearly marked police. As Hall was getting into the Challenger, SAs and TFOs yelled "Police!" and gave verbal commands to the suspect. Hall was not compliant, produced a firearm (a black pistol) and exchanged gunfire with SAs and TFOs. In the exchange of gunfire TFO Kris Rongen was shot in the leg and injured. TFOs and SAs returned fire. A Taser was also deployed in an attempt to apprehend Hall. Hall was shot, injured and taken into custody.	
Name, Title, and Address of All Employees Involved: John Conaty Community Corrections Specialist Kris Rongen Community Corrections Specialist ATF Agents/TFO G Tomlinson, SA E Jackson	
Name, DOC Numbers of All Offenders Involved: Randall Lee Hall 896861	
Location and Description of Property Damaged: 3402 I Street NE Auburn, WA Dodge Challenger with multiple bullet holes	

REVIEW
Chronological Summary of Facts/Events: Incident Review: On 05/04/17, I CRU CCS Martin along with EOU S Shapiro met with Specialist Conaty and then Specialist Rongen and conducted an interview specifically focusing on the operation plan, tactics, and officer perspectives and identify any improvements policy, training, note gaps identified.

Distribution: ORIGINAL-Risk Management Office

COPY-Appointing Authority, Assistant Secretary/Initiator

DOC 18-022 (Rev. 05/26/16)

Page 1
DOC 400.110
[4-4225-1]

Summary of Witness Statements (Include Name of Each Witness): John Conaty, Kris Rongen

Summary of Facts: Brief background of incident

The ATF Gun task force which is a multi-agency task force to include DOC CRU Specialist Conaty as a TFO and CRU Specialist Rongen who reportedly assisted the Task Force with ATF Operations (he did not currently have ATF credentials) were conducting surveillance of a wanted subject Randy HALL who had a [REDACTED] 17 [REDACTED] warrant.

The overall plan for the ATF TF was "Members of the Puget Sound Regional Crime Gun Task Force (PSRCGTF) will conduct surveillance to attempt to locate HALL. Once HALL is located, he will be arrested on his active warrant".

It was reported that ATF TF was working a case/information on HALL, suspect for possessing firearms and being involved in a drive by shooting.

Officers had briefed the case prior during week/days. On 6/28/16, Officers converged on the target apartment complex, located the apartment and the vehicle. Set up surveillance units around the complex and vehicle.

Established and arrest team for when offender exited and/or went to vehicle. (They decided at the time due to location and kids in residence and area to let Hall get to his vehicle). The arrest team observed Hall leave the apartment complex and walk over to his vehicle.

The arrest team consisted of four officers located in one vehicle. Conaty was the driver, Rongen front passenger, ATF Jackson back driver seat, TFO Tomlinson back passenger seat, drove and positioned the officer vehicle at the back of target HALL's vehicle.

Officers got out of vehicle (clearly marked as police officers and lights on vehicle) 3 officers Conaty, Jackson, Tomlinson obtained covered positions to call out HALL, while Rongen pushed forward to the passenger door of HALL's vehicle.

Rongen moved from his position on the passenger side of HALL vehicle around the back side of the vehicle, in front of the Officers covered positions, moving to driver side of HALL vehicle, to go hands on with HALL and place into restraints.

Rongen deployed his Taser and HALL discharged a firearm shooting Rongen in the leg/knee. (Varying reports about which was done first).

Rongen went down, Officers returned fire, Rongen was moved from that area, Officers stopped the threat, aid was called, and aid was rendered to Rongen and HALL when safe to do so.

Scene was secured, local PD called to assist and conduct investigation.

Scope:

What was the ops plan going in?

It appears that there was a general operation plan/briefing on HALL. The brief consisted of what HALL was wanted for [REDACTED] 17 [REDACTED]. Hall was also a suspect in drive by shootings and a vehicle associated with Hall was seized with guns in it. Hall was considered armed and dangerous. That is the general brief. It appears that the tactics or actual plan for that day was based on the groups training. There was no meeting of all personnel that day with a specific tactical plan.

The plan was made as the situation evolved. They had perimeter units and established an arrest team. They changed the plan to arrest at vehicle since they observed kids in the home and area.

*** problem with not meeting with officers and going over specific plan, tactics and assigning roles and responsibilities is that things get missed, like who's going to call local police, hospital, what vehicle tactics are we using.***** however this happens with dynamic cases and again these teams train together so their tactics are rehearsed. And they can assign roles/responsibilities via radio which is I'm guessing how things went. *****

****Here is the biggest concern with that... Rongen via his own words chose to not go to/participate in the ATF trainings. Conaty confirmed that ATF had trained vehicle tactics and he attended and that Rongen had not. Rongen stated that he did not go to the ATF trainings prior and that some of it was because they didn't give him credentials. This is a big problem and a contributing factor in why he assaulted the vehicle vs. doing a call out process.

Another issue is that Rongen does not have ATF credentials and HALL is not active DOC, therefore the group and Rongen allowed himself to be put in a roll in which he is:

1. Not trained with group
2. His lack of authority on HALL without a federal commission.

What were the individual and team tactics utilized during the incident?

It appears that the team tactics were supposed to be to step out of vehicle, obtain the best covered position available, cover your section of vehicle and give verbal's to HALL. Utilizing space and time, since Hall was suspected to be armed.

***at some point if HALL did not comply with the team call out tactics...they would have to change/modify the call out tactics if they were not working. I am not sure who would have done that since it appeared to me that one of issues there was no clear team lead during the arrest, or within the arrest team. ***

Ideally when team takes a vehicle either call out or takedown there is a team lead who directs the movement and tactic of the group.

The rest of arrest team stayed back and Rongen moved forward. Assaulting the vehicle. Overall sometime things like this happen...the biggest issue is not that Rongen got out and pushed forward to the front passenger door/window/post. He can use that as cover, have a good visual of what's going on.

It's not ideal but it is a dynamic environment. The problem comes when he didn't realize what the rest of team was doing. They were doing something different and nobody communicated to each other, like, hey get cover or pull back, once things went down. That is because nobody stepped up to lead nor did they have a team leader.

Rongen went to his level/experience of training, to assault the vehicle. Rongen even stated that he is aggressive and that is what he and Conaty have done in the past.

The overall team tactic of calling the offender out using time and space was good. There was no set plan on how they would proceed if this did not work.

They should have talked about the exact plan/tactics of arrest team within the vehicle. They had plenty of time to do that.

** Here is the biggest tactical error. ****

Rongen ran forward, it happens, other officers were in ok positions to cover him and he wasn't in the worst possible position. Again the problem is nobody was communicating within the team. But the biggest problem was when Rongen left his position on the passenger side of HALL's vehicle, went around the back of Hall's vehicle, in front of the covering officers to the driver's door to engage HALL.

Once he did that, Rongen left his area of responsibility, made it so officers were not able to provide lethal coverage and put himself in crossfire situation. This is not a trained team or individual tactic. This is poor choice by Officer Rongen. A choice which placed himself and other officers in danger and created a tactically unsound situation.

Additionally when Rongen left his position went behind vehicle to go hands on with HALL, he transitioned to his Taser when HALL is suspected to be armed. By moving to where he did Rongen was blocking his lethal cover. Not a trained or supported tactic.

Perspectives:

Conaty stated that he and the team were shocked about Rongen moving forward on the vehicle and then moving around behind the vehicle in front of them.

Conaty stated that Rongen had not attended any quarterly ATF training, which included vehicle tactics.

Rongen stated that he went forward because that is his mindset and that is how he and Conaty have done it in the Past.

Rongen also said that he went around to engage HALL because HALL wasn't complying and nobody else was doing anything and he didn't want HALL to get in the vehicle and drive forward.

Rongen stated that he and Conaty had done vehicle takedowns many times before and had moved up on the vehicle. Rongen stated that he is aggressive and did not want HALL to get into the vehicle with the possibility of moving forward in the vehicle.

Tactics continued:

Typically with vehicle take downs the goal is to pin the vehicle front and rear or at least try mitigate the vehicles ability to move. One option the group could have done if the position of the vehicle wasn't ideal was to wait until Hall got in the vehicle. Let Hall drive out of the area and perform a vehicle block with two vehicles.

Rongen's reasons for going forward, his base of training, his failure to attend ATF group training, the groups failure to assign roles and communicate what they were going to do. Rongen either didn't hear the plan which caused him to use tactics previously used with other teams.

There is no tactical reasoning behind Rongen's choice to leave his position. Rongen's explanation for leaving his position was that he is aggressive and that nothing was happening. He explained he is always a hands on guy.

The tactics used by the group were consistent with their training, except Rongen. They did not have an exact tactical plan for that arrest. They all knew the offender information and the general plan to arrest when he got to vehicle, using their arrest team vehicle, perimeter units would then move in.

The failure was the arrest team in the vehicle,:

1. Rongen should not have been on the arrest team since he didn't train with them and wasn't did not have a federal commission.
2. They did not clearly communicate the vehicle contact plan and other contingencies that might arise.

One thing to mention is that Conaty did not pin the back of the vehicle and left a gap between his vehicle and Hall's vehicle. Conaty said that he normally does pin the vehicle.

He should have at the least touched the bumper.

LIST OF APPLICABLE RCWs/WACs/DOC POLICIES AND PROCEDURES

DOC 410.215 ELECTRONIC CONTROL DEVICES COMMUNITY CORRECTIONS

DOC 410.220 FIREARMS FOR COMMUNITY CORRECTIONS

DOC 410.920 USE OF FORCE

DOC 410.930 USE OF FORCE TRAINING

DOC 420.390 ARREST AND SEARCH

DOC 370.380 COMMUNITY RESPONSE UNIT

RECOMMENDATIONS

Improvements

Were the tactics safe?

The overall plan utilized enough personnel to arrest this offender. Safe.

They had assigned a four person arrest team which initially is sound because more officers were standing by to move in. Safe.

They blocked back of vehicle. No vehicles were used in the front or side to pin Hall's vehicle. This would have alleviated concerns that Hall could drive away.

The arrest team could have waited until Hall's vehicle was mobile then pinned, if set on vehicle takedown. Option.

The act of the arrest team exiting the vehicle and taking cover while utilizing call out tactics. This allowed the team to utilize time, distance, and presence. Safe.

***if they would have all assaulted the vehicle as a team that is another tactics utilizing speed and overwhelming force/presence. I do not think best tactic since this guy only had a [REDACTED] 17 warrant. So that could be a good reason to utilize call out and distance.

Overall the initial plan and group tactics were safe.

It became unsafe when Rongen left his position, ran behind and around to the driver's door of the vehicle. This placed Rongen in front of covering officers. Rongen did this so that he could go hands on with the offender. Rongen did not communicate his intentions to the arrest team.

Recommendations:

If CRU Officers are part of a Task Force or consistently work with a Task Force they must train with the task force.

All CRU staff must get up to date vehicle tactics training and equipment for vehicle takedowns before participating in these type of arrest.

Rongen and other task force officers need to train together prior to doing any further operations. It is probably important that if working a non DOC case staff has a commission or special commission.

Conaty would like to see a quicker return to work. Conaty reported that the ATF agents involved were returned to their positions within one week. Conaty was out for approximately 3 months.

Overall there was a communication problem within the arrest team. The overall plan was adequate but the team should have slowed down and planned for contingencies. It is essential to make sure all areas of notification are covered and that the tactical portion of the plan was clear. The biggest breakdown was with the arrest team didn't have a leader, they did not communicate the plan clearly nor communicate when they stepped out of the vehicle. When Rongen when left his position and went around the vehicle to HALL on driver's side, he created a safety concern to himself, the offender, and the rest of the team.

ACKNOWLEDGMENT

Things That Worked Well

It is important to mention that the team stepped up and worked together once the shooting started. They did utilize good communication and tactics to get Rongen to safety, stop the threat, control the scene, notify emergency personnel and provide aid to Rongen and Hall.

Scott Shapiro
Team Lead (Print)

[Signature]
Team Lead Signature

6-20-17
Date

Assistant Secretary/designee (Print)

Assistant Secretary/designee Signature

Date

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Distribution: **ORIGINAL**-Risk Management Office

COPY-Appointing Authority, Assistant Secretary/Initiator

DOC 18-022 (Rev. 05/26/16)

Page 5
DOC 400.110
[4-4225-1]



FIELD-USE OF FORCE REPORT

Offender Name ELOFSON, Angelita Louise	DOC Number 332650	
Facility/Location Port Angeles DOC Field Office - 365	Date 01/06/11	12:30 P.M.

NAME(S) OF STAFF MEMBERS DIRECTLY INVOLVED		
NAME	TITLE	INVOLVEMENT
Towle, Narine	CCOII	Use of OC and Firearm
Aldrich, Clinton	CCOIII	Use of Firearm

DETAILED DESCRIPTION OF INCIDENT
On 01/06/11, CCO Aldrich and I went to the house of Elofson, Angelita DOC # 332650, located at 110 SEAMIT ROAD, Port Angeles, WA 98362. Ms. Elofson was in violation for failure to report to DOC and failure to comply with drug treatment. As we walked up to the house there was a young pit bull that appeared friendly. I knocked on the door, Sheryl, the aunt of the offender, opened the door just a crack and I could see a nose of another dog. Sheryl stated that they are putting the "mean" dog away, because it bites. Within seconds a door opened and two pit-bulls (white with brown spots and brindled-tan) came out barking and charged CCO Aldrich. As this door opens to the inside of the house, it is unlikely that the dog forced his way out without encouragement from the inside. When the Attack ensued, I attempted to use DOC issued pepper spray. The tan pit bull ceased the attack, where the white one continued attacking CCO Aldrich. I feared for my field partner's safety as well as my own. As I was getting my firearm out, CCO Aldrich fired his weapon, the dog continued his attack. CCO Aldrich and I fired again. This time dog ran off circling to the back of the property. Offender's aunt Sheryl, another female (a relative) and the offender were outside during the canine attack. As the dog first came out, the aunt was attempting to call the dog back, however, as the attack ensued, no effort was made by any of them to intervene. Moreover, the unidentified female, as well as the aunt, were angry that DOC was shooting at the dog, attempting to divert my attention during the attack. They expressed no concern for the welfare of CCO Aldrich. As the offender was placed in handcuffs, the two aforementioned females were attempting to interfere. At this time I noticed that CCO Aldrich's hand was bleeding and that he was bit; for the time being he appeared to be OK. The offender was compliant, and after a brisk search placed in the back of the vehicle. Paramedics and the Tribal Police were dispatched to the scene. As Officer Black Crow spoke to the house owner, I learned that this was a third human attack attributed to this animal. CCO Aldrich was taken to the emergency room by another DOC officer to treat his hand. Offender was booked into Clallam County Jail. During the attack, a right front tire of the truck parked next to the house was struck by the bullet aimed at the dog. The unidentified female was upset that her truck was now damaged and she did not know how to replace the damaged tire with the spare. Again, no concern was shown or expressed toward CCO Aldrich.
DESCRIPTION OF WHAT FORCE WAS APPLIED
Initially OC was dispensed. However as the dog continued to attack CCO Aldrich, use of firearms became imminent.
Restraints Used ☐ Yes ☒ No Type: Use of department issued OC followed by use of firearm
OFFENDER DESCRIPTION OF INCIDENT, if available
N/A

Distribution: ORIGINAL: CCO

ELECTRONIC COPY: CCS FA

WITNESS DESCRIPTION OF INCIDENT – NOT DIRECTLY INVOLVED, if available					
☐ Staff N/A		☐ Offender		☐ Civilian	
Civilian Contact Information:					
Address	Street City	Street Address	City	Zip	() Phone Number

MEDICAL INFORMATION	
Medical Services Needed – Offender ☐ Yes ☒ No	Medical Facility Olympic Medical Center.
Medical Services Needed – Staff ☒ Yes ☐ No	
Medical Report(s) Attached ☐ Yes ☒ No	

MISCELLANEOUS			
Reported to the DOC Duty Officer ☐ Yes ☐ No	Date	Time	
Tele-Incident Report (TIR) Completed Yes ☐ No	Date 1/7/11	Time 12:00	
Photographs Taken ☒ Yes ☐ No	Photographer's Name Officer Black Crow with the Elwha Tribal Police		
Law Enforcement Involved in Incident ☐ Yes ☒ No	Agency	Name of Officer	
Property Damage ☒ Yes ☐ No	Description Right Front tire of the white pick-up truck parked next to the house.		
Law Enforcement Notified ☒ Yes ☐ No	Date 1/6/11	Time 12:30 ☐ AM ☒ PM	Report Number N/A
Agency Elwha Tribal Police			

REPORTING EMPLOYEE
Garrity Warning: My employer, the Department of Corrections, is directing me to provide truthful information at this time in this report under threat of discipline if I do not provide the information. My employer has advised me that truthful information I provide will not be used against me in a criminal proceeding.

SIGNATURES	
Reporting Officer Signature 	Date 1-7-11
Comments:	

AUTHORIZING SIGNATURES	
Community Corrections Supervisor Signature 	Date 1/7/11
Comments:	
Field Administrator Signature	Date
Comments:	

Distribution: **ORIGINAL:** CCO

ELECTRONIC COPY: CCS FA

DOC 21-984 (Rev. 6/11/09)

2

DOC 410.215, DOC 410.920, DOC 830.180

Review of Officer Involved Shooting of Dustin Theoharis

Report Prepared for the Office of Law Enforcement Oversight

Police Assessment Resource Center (PARC)

April 2013

Police Assessment Resource Center (PARC)

Merrick J. Bobb
President and Executive Director

Julio Thompson
Consultant

Nicholas Armstrong
Chief of Staff

Christopher Moulton
Director of Research

Melissa Tobin
Executive Assistant

Jeffrey Yamson
Executive Assistant

PARC

**POLICE
ASSESSMENT
RESOURCE CENTER**

Contents

Executive Summary.....	1
Introduction	2
I. Factual Background	2
A. Receipt of Department of Corrections (DOC) Warrant and Preparation	2
B. Arrest of Harrison and Upstairs Search	3
C. The Living Room Conversation and Decision to Search the Downstairs	3
D. Room Entry and Shooting	5
E. The KCSO Investigation	6
1. MCU Investigation	6
2. Initial Administrative Review; Prosecutor Declination	8
3. Formal IIU Investigation	9
4. Recommended IIU Findings	10
5. Shooting Review Board	10
6. Ultimate KCSO Disposition	10
F. The DOC Investigation and Evaluation	11
II. Scope of Work and Summary of Conclusion	11
A. Scope of Review	11
B. Summary of Conclusions	12
III. Assessment of KCSO Policies Relating to OIS Investigations	13
A. General Orders Manual	13
B. Supervisor Checklist for Officer-Involved Shootings	19
1. Scene Coordination Not Adequately Addressed	19
2. Comments on Specific Provisions	20
3. Information Sheet	20

IV.	KCSO Investigation	21
	A. Initial Response.....	21
	1. Apparent Conflict of Interest – Initial On-Scene Supervisor	21
	2. Potential Conflict – KCSO PAT Officer	22
	B. MCU Investigation	22
	1. Investigation Strengths	22
	2. Investigation Concerns/Areas for Improvement	23
	a. Involved Officer Interviews.....	23
	b. Crime Scene Processing	25
	c. Medical Evidence	29
	d. Witness Interviews	30
	e. Failure to Initiate IIU Investigation at the Outset	35
	f. File Contents and Presentation	36
	C. August 2012 Interviews of Involved Officers	39
	D. IIU Investigations of Entry and Tactics	40
V.	KCSO Assessment of the Incident	44
	A. Assessment of Entry/Search Issues	44
	B. Assessment of Deadly Force and Tactics	39
VI.	Decision Point Analysis	41
	A. General Assessment	41
	B. Decision Point Analysis	42
	1. Decision Points 1-16: Officer Actions Prior to Approaching Dustin Theoharis's.....	45
	2. Decision Points 17-29: Officer Actions Prior to Approaching Dustin Theoharis's.....	55

VII. OLEO's Involvement	64
-------------------------------	----

Conclusion.....	66
-----------------	----

Executive Summary

This report, *Review of Officer Involved Shooting of Dustin Theoharis*, focuses on the tactics and decisions of KCSO and DOC members who were involved in this incident, the investigations by KCSO that followed, and the assessment as a result of these investigations. This report also provides PARC's evaluation of this incident through a Decision Point Analysis, and a brief description by the King County Office of Law Enforcement Oversight (OLEO) as described by Director Charles Gaither. In writing this report, PARC examined MCU investigation files and evidence, statements and interviews of the involved officers and witnesses, photographic and video evidence, and evidence collection documentation.

After a thorough analysis of these materials, we conclude that the use of deadly force appears to have been lawful and within KCSO policy. KCSO managers reviewing the incident appropriately examined the conduct of the officers leading up to the shooting incident, reasonably identified errors and missed opportunities, and properly traced them to serious deficiencies in officer training and protocols governing service of DOC warrants.

Nonetheless, we were deeply troubled by serious deficiencies in the underlying investigation and the apparent unwillingness of KCSO to question its own officers about the use of deadly force once it appeared that they have not committed a crime. For example, the involved officers were not immediately interviewed about their actions, but instead were given over a month to provide a written account of the shooting. In addition, physical evidence was overlooked or moved, witness interviews were not thorough, and inconsistencies were not adequately addressed.

Some of the deficiencies may have been unique to this case, but others, such as the failure to promptly interview involved officers, are the product of policies that tilt noticeably in favor of officers and undermine confidence in the ability of KCSO to investigate its own officers and hold them accountable.

Introduction

This report constitutes PARC's review of the King County Sheriff's Office (KCSO) investigation of a February 11, 2012 Auburn, Washington officer-involved shooting (OIS) incident involving KCSO Detective X and Washington Department of Corrections (DOC) officer Y.¹ The memorandum also briefly discusses various KCSO's policies and procedures relating to deadly force investigations.

I. Factual Background.

A. Receipt of Department of Corrections (DOC) Warrant and Preparation.

The officer-involved shooting incident occurred during service of a Department of Corrections (DOC) warrant for the arrest of Probationer Nicholas Harrison, who had failed to report to community supervision. The arrest was carried out by DOC Officer Y with the assistance of three members of KCSO's Gang Unit: Detectives X, A, and B. KCSO has provided similar assistance to DOC many times in the past pursuant to a memorandum of understanding. Detective X later reported to investigators that he himself had provided assistance on at least 500 similar calls prior to the shooting in this case.

Officer Y received information from DOC that Probationer Harrison resided at the house of his father, Cole Harrison. Officer Y put together an arrest packet that included Probationer Harrison's description and a photograph. He later reported that he had had a

13, 19

13, 19

¹ The identities of all law enforcement members, save for the publically elected Sheriff, will remain anonymous throughout this report.

² In his March 2012 compelled written statement, DOC Officer Y did not mention sending a confidential informant to the house, but wrote instead that he had received an "anonymous tip" that probationer Harrison was in the house. (P 744). KCSO Detectives B and A referred to Officer Y sending in an informant, and Officer Y later told KCSO that the "tip" was really information from the informant he sent to the house. (P 759).

B. Arrest of Harrison and Upstairs Search.

Service of the warrant and the arrest were uneventful. The officers arrived at Harrison's house at approximately 3:45 p.m. All officers were in plain clothes, although they wore vests or jackets that clearly identified them as law enforcement. Detective B moved to the backyard to cover any possible escape route, while DOC Officer Y and KCSO Detectives X and A entered the residence after speaking to Harrison's father, Cole Harrison.

Almost immediately upon entering the split-level house, the officers spotted the probationer, Nicholas Harrison, at the top of a short flight of stairs. They summoned him down and handcuffed him without incident. The arrest appears to have been completed within a minute or two after entering the home.

Rather than depart the residence with Nicholas Harrison in custody, DOC Officer Y decided to remain at the house and spend some time "looking around for DOC violations."³ The conditions of Harrison's release authorized DOC to search his residence. Officer Y and Detective X elected to search the upstairs of the residence together. A brief search of Probationer Harrison's room and a brief conversation with the Probationer's brother, Shane Harrison, did not identify any DOC violations or any evidence suggesting a threat to officers' safety. While speaking to Shane, the officers learned that another individual, Dustin Theoharis, was staying in a lower-level bedroom. The officers claim they found a single sheet of paper that looked like a drug ledger, but they did not pursue the matter further. The officers later reported they did not ask about weapons in the house.

C. The Living Room Conversation and Decision to Search the Downstairs.

After searching Probationer Harrison's bedroom, Officer Y and Detective X returned to the kitchen/living room area where Detective A was waiting with Probationer Harrison and his family. Around the same time, Detective B joined the group.

³ DOC Officer Y Written Statement (P 744).

The witnesses disagreed about the details of the ensuing discussion, but agreed that DOC Officer Y and Detective X told the group they were going to look downstairs. All witnesses except Detective A reported hearing them say they were going to look for Mr. Theoharis in the downstairs bedroom.

Detectives A and B remained with Nicholas, Cole, and Shane Harrison, and Nicholas' five year-old son in the kitchen/living room area. These individuals (except the child, who was not interviewed) later reported not hearing any sounds from downstairs prior to the shooting. They disagreed about whether they would be able to hear loud officer commands below.

In the downstairs foyer, DOC Officer Y and Detective X noticed a tall, closed gun safe to their left and agreed they would ask Cole Harrison about it later. According to Detective X, he drew his primary firearm, a Glock .40, and used the barrel mounted flashlight to illuminate the room. (It appears there was no KCSO policy regarding weapon-mounted flashlights, and it is unclear whether this flashlight or its use here was authorized.) DOC Officer Y had a handheld flashlight and left his gun holstered.

The two officers proceeded to the room where Dustin Theoharis was reportedly staying. Cole Harrison later described the room as "a little apartment by itself," with its own bathroom and outdoor entry. He added that he would not enter the room without knocking.⁴ Both officers had been in this room during an October 2010 DOC visit to Probationer Harrison and had encountered a different lodger who, according to Detective X, had access to firearms.⁵ The officers later reported that the glass door to the bedroom was covered in fabric and the room was dark inside. They noted the glass door had an exterior lock and opened to the outside.

⁴ Cole Harrison Interview (P 313).

⁵ Detective X Written Statement (P 324).

D. Room Entry and Shooting.

According to the officers, DOC Officer Y made first contact with Dustin Theoharis by knocking on the door, announcing, "Police." He drew his sidearm and partially opened the door to look inside. (P 744). He could see the room was dimly lit, with Theoharis lying on a bed, covered by a comforter. The room was quite cluttered, and a night stand next to the bed held drug paraphernalia.

Both officers reported they identified themselves as law enforcement and asked Theoharis to show his hands as they entered the room, illuminating it with their flashlights. Theoharis briefly raised his hands from under the comforter, but only for a moment. The officers now stood at the foot of the bed. Officer Y, holding his gun in his right hand and his flashlight in his left, pulled the comforter off the bed, exposing Theoharis, who was fully dressed. Dustin Theoharis did not make any sudden movements and no weapons were in view.

Remaining at the foot of the bed, DOC Officer Y asked Theoharis if he had any guns. Theoharis reportedly replied that he had three. According to the officers, when DOC Officer Y asked where the guns were, Theoharis called out suddenly, "Right here," and then lunged to the left (nightstand) side of the bed and began reaching under the mattress with his left hand.

The officers reported shouting commands for Theoharis to stop and show his hands. When Theoharis continued his actions, the officers opened fire. It is not clear who fired first. Detective X reported that when he opened fire, Dustin Theoharis's back was exposed to him, as Theoharis was still reaching for something he thought was a gun. DOC Officer Y stated that Dustin Theoharis transitioned to lay flat on the bed.

KCSO investigators never conclusively established how many rounds were fired, because the officers were unsure how many rounds they had loaded in their weapons. Investigators recovered 15 shell casings — eight matching DOC Officer Y's gun and seven matching Detective X's. Only seven spent bullets were recovered. (P 378). The MCU and IIU investigations do not confirm how many rounds struck Theoharis or describe their trajectory.

The officers did strike Theoharis in the torso, jaw, arms and legs.⁶ None of the wounds were fatal.

Theoharis fell to the floor and remained largely immobile. Detective B, who had not heard anything from downstairs prior to the shots, ran downstairs and entered the room, pistol drawn. He jumped onto the bed and pointed his weapon at Theoharis, who was on the floor next to the night stand. Detective X holstered his pistol and dragged Theoharis by his leg(s) several feet away from the nightstand. After the shooting was broadcast and medical assistance summoned, Detective B learned the officers had not cleared the room and then proceeded to clear it himself. He found no occupants and no guns. There is no indication whether or when the officers lifted the mattress to look for the objects Dustin Theoharis was allegedly seeking to retrieve.

Investigators found no weapons or any other objects under the mattress. They did report finding a small black flashlight on the floor next to the nightstand. Neither DOC Officer Y nor Detective X claimed to have seen any object in Dustin Theoharis's hands. Because it appears undisputed that Theoharis did not retrieve a weapon, the stated justification for the use of deadly force is that officers reasonably, albeit mistakenly, believed Theoharis was in the process of retrieving a firearm in order to attack them.

E. The KCSO Investigation.

1. MCU Investigation.

Pursuant to KCSO policy, the incident was initially investigated by the Major Crimes Unit (MCU), which conducts criminal investigations. KCSO did not send to the scene any Internal Investigations Unit (IIU) or Training Bureau/Division representatives. DOC sent its own investigations team to the scene, but it did not interview any witnesses or conduct any scene analysis.

⁶ The file does not contain any photographs, diagrams, or catalog of the entry wounds.

Both Officer Y and Detective X declined to submit to a voluntary interview, though both answered several “public safety questions,” such as whether they were injured or had blood on their clothing. Although KCSO and DOC could have immediately ordered the officers to submit to an interview or provide a written report,⁷ both elected to wait a month before asking for any statement. When they did ask for the officers’ account, both agencies decided they would allow the officers to provide a written statement in lieu of an interview. (As noted below, DOC Officer Y was never interviewed about the shooting and Detective X was not interviewed about the shooting until September 13, 2012 — seven months after the incident.)

The evening of the shooting MCU conducted recorded interviews of Detectives B and A, who had been in the Harrisons’ living room when the shooting occurred.

MCU also unsuccessfully sought to interview Dustin Theoharis about the incident. The investigation indicated that Theoharis did own a rifle that was locked in the gun safe outside his room. The file materials indicate no prior history of violence by Theoharis.

KCSO ordered Detective X to provide a written account of the shooting on March 12, 2012. By this point, it appears that Detective X already had had an opportunity to discuss the incident in detail with his fellow officers at a February 22, 2013 critical incident stress debriefing scheduled by KCSO’s Personal Assistance Team (PAT) members. It appears that MCU was not in a position to question Detective X or other officers about what was discussed at the debriefing, as such peer support meetings are confidential under KCSO policy and perhaps under state law.

DOC Officer Y provided his compelled written statement on March 19, 2012. The investigative file does not address whether the officers had conferred with each other while preparing their written statements, or whether DOC Officer Y had seen Detective X’s statement prior to completing his own.

⁷ Under existing KCSO policy, even if Detective X had been ordered at the scene to provide a compelled statement, he could have taken up to 72 hours to provide it. See General Order (G.O.) 6.02.015, subd. (4)(c).

Nonetheless, MCU Investigator C did report seeing two union representatives for Detective X — KCSO Sergeant D and Guild Attorney, Christopher Vick — confer with Detective X and then later confer with DOC Officer Y and his union attorney, Chris Coker. (P 158, P 823).

Presumably MCU was not allowed to ask Sergeant D and Attorney Vick whether they had shared any information they obtained from Detective X with DOC Officer Y and his attorney. Nor is it clear whether KCSO policy addresses Sergeant D's role in the conversation with DOC Officer Y.

2. Initial Administrative Review; Prosecutor Declination.

On June 4, 2012, KCSO Sergeants E and F submitted to IIU Captain I a "Supervisor's Use of Force Incident Review" of the Auburn incident. (P 5, P817). Pursuant to KCSO policy, this review should have been completed by Detective X's on-duty supervisor. (General Order 6.01.025). However, the supervisor did not comply with this requirement and the file materials do not indicate why.

Sergeants E and F did address the use of deadly force and found it reasonable and justified. They acknowledged that it was unusual for Dustin Theoharis to have gone for a weapon when there was none to be found. The only explanation they suggested was that Theoharis, a drug user, led a troubled life. They did not discuss whether the officers' written accounts of the shooting were complete or accurate.

On June 19, 2012, the King County Prosecuting Attorney's Office issued a "declination" memo explaining that the officer would not pursue criminal charges against the officers. (P 823).

Major G presented his review by memorandum to Chief H dated August 21, 2012. The review process was assigned to two KCSO Sergeants, E and F (P 2-3. P 824). The review was based upon the MCU investigation and DOC's separate review of DOC Officer Y's actions. (P 3). Major G identified no policy violations, but did express concerns about a lack of guidance and training for KCSO officers providing assistance to DOC. Major G

expressed no views on the use of deadly force or tactics immediately prior to the shooting.

This review included two brief compelled interviews of the officers. Detective X was interviewed on August 16, 2012, and DOC Officer Y was interviewed on August 22, 2012. (P 749 – 771). By order of KCSO Major G,⁸ the interviews would address the only the search/privacy issues. (P 750). For reasons not disclosed in the file, neither officer was asked about the shooting.

On August 30, 2012, Major G issued a three-page memorandum to KCSO Chief H describing the conclusion of the administrative review. (P 886). He expressed no concerns about the shooting itself, but instead observed that “[t]he question of tactics, authority of DOC, and Fourth Amendment rules on ‘Third Party Privacy’ rights raise the most significant issue of this investigation.” He also noted the “lack of clear written expectations and policies by the KCSO that may affect the KCSO/DOC authorities.” (P 888). At the time, KCSO was nearing the expiration of the mandatory 180-period for completing personnel investigations. According to IIU, the 180-day period was set to expire September 18, 2012. (P 976).

3. Formal IIU Investigation.

IIU opened its investigation on August 30, 2012 at the request of KCSO Chief H, who wanted an examination of whether Detective X’s contact with Dustin Theoharis violated any privacy laws or was inconsistent with KCSO policy or tactics. At the time of the request, KCSO was 19 days away from the 180-day deadline for completing administrative investigations. IIU Sgt. P and King County Office of Law Enforcement Oversight (OLEO) Director Gaither interviewed Detective X on September 13, 2012; the deadline for completing the investigation having been extended to September 24. The interview addressed entry into Dustin Theoharis’s bedroom and covered the use of deadly force.

⁸ It appears that at the time Major G also served as Police Chief for the City of Burien.

IIU also sought an interview with Dustin Theoharis, but he refused. His legal counsel advised that Mr. Theoharis would be testifying in a pending civil case, and would assert entry into his room violated his Fourth Amendment rights. (P 977). IIU interviewed no other witnesses. Its records indicate that it did not review the entire MCU investigative file, which exceeded 1,000 pages.

4. Recommended IIU Findings.

On September 21, 2012, Major G provided IIU Captain I a written memorandum describing his recommendations following the IIU investigation. He found that Detective X had not complied with Department performance standards regarding the entry into of Dustin Theoharis's room. The action recommended was training in performance standards and tactics. (P 987). Chief H concurred with these recommendations by memorandum dated September 23, 2012. (P 983). Neither identified any concerns or questions regarding the use of deadly force.

5. Shooting Review Board.

KCSO policy requires a five-member Shooting Review Board (SRB) to meet within 30 days of the completion of the criminal investigation to review an officer's use of deadly force. (General Order 6.03.010). KCSO did not follow that policy in this case, but instead met on October 5, 2012. (P 832). The file does not contain any Board vote sheets, notes or reports.

6. Ultimate KCSO Disposition.

On November 9, 2012, Chief Deputy J reported to the then-Sheriff Strachan that the Shooting Review Board found Detective X's use of force justified, but split over whether he met performance standards relating to the search of the house. He reported the Board voted 5-1 that there were no violations, but also noted that he and KCSO Legal Advisor agreed with the dissenting vote that there were violations relating to privacy. (P 832).

Sheriff Strachan notified Detective X of the outcome by memorandum dated November 13, 2012. (P 874).

However, by a letter dated January 17, 2013, incoming Sheriff Urquhart notified Detective X's Guild representative that he was rescinding the proposed findings of policy violations in response to a grievance filed on the Detective's behalf. In explaining his decision, Sheriff Urquhart observed:

"I believe Detective [X] was singled out when other detectives and supervisors had at least some culpability as well. But make no mistake. I am extremely concerned with how this operation was conducted, the supervision of the units and certainly the ultimate outcome."

He concluded the letter by noting his agreement that more training was necessary and was forthcoming.

F. The DOC Investigation and Evaluation.

DOC convened its own review board on April 4, 2012, and issued a report of the board's findings on April 13, 2012. (P 14). DOC likewise credited the officers' written account of the shooting and found DOC Officer Y's use of deadly force justified. Its April 13 report expresses some concerns regarding the interaction between DOC and KCSO regarding coordination, communication, and authority to conduct searches. However, DOC found the use of deadly force was justified, and no legal or policy violations regarding the entry into Dustin Theoharis's room.

II. Scope of Work and Summary of Conclusions.

A. Scope of Review.

As requested, the principal focus of PARC's review has been the Auburn shooting and KCSO's investigation thereof. Our review consisted of review of the MCU investigation files and attachments as well as the following: (1) KCSO's General Orders (G.O.) Manual and KCSO forms; (2) photographs and the radio broadcasts relating to the Theoharis shooting; (3) security camera video from the residence; (4) MCU video from the investigation; (5) evaluations of the shooting from the Prosecuting Attorney's Office, DOC, and KCSO's

Shooting Review Board; and (6) IIU's compelled interview of Detective X regarding search of the residence. These materials were provided in hard copy and in electronic form.

The MCU investigative packet included 7 DVDs of material. Altogether, more than 1,000 pages of investigative materials were reviewed.⁹

B. Summary of Conclusions.

The Auburn case calls for a broad, searching examination of the officers' conduct. KCSO policy appropriately recognizes that public confidence is essential to its mission, and its members must conduct themselves in a manner that does not undermine that trust.

House Entry/Privacy Issues. In the aftermath of the shooting, KCSO carefully examined its own policies and practices regarding its officers' entry into the house and subsequent contact with Dustin Theoharis. It examined its existing policies and training regarding coordination with DOC officers and found them wanting in numerous respects. To its credit, it has undertaken to fill in the gaps in policy and guidance and provide supplemental training to its officers.

The file materials provided did not address, however, how those gaps had arisen and why they had not been identified years earlier. It is true that Detective X is accountable for knowing applicable procedures and the scope of his authority. However, it is also true that his supervisors are also accountable for ensuring he knows them.

Deadly Force. KCSO did not devote nearly as much time and effort to examining the officers' use of deadly force. The investigative work is not likely to inspire public confidence. The officers were allowed to write out their own accounts a month after the shooting, physical evidence was overlooked or moved, witness interviews were not thorough, and inconsistencies were not adequately addressed. Some of the concerns identified below may be unique to this case. However others, such those relating to KCSO's investigative policies

⁹ The materials provided for review included an additional 1,300 pages of medical records obtained by MCU in March 2012. However, most these records related only to treatment of Dustin Theoharis and thus did not pertain directly to the shooting.

and practices, reflect policing styles inconsistent with best practices and at odds with the Department's commitment to the public trust.

III. Assessment of KCSO Policies and Procedures Relating to OIS Investigations.

PARC's August 2012 report to OLEO ("PARC Report") identified a number of concerns regarding KCSO policies relating to use of force, personnel investigations, and risk management and suggested sweeping changes to those policies. Perhaps most relevant to this review was PARC's recommendation that KCSO supplement the criminal investigation of an OIS incident with a simultaneous administrative investigation, which addresses compliance with policy, tactics, training, as well as adequacy and use of department resources and risk management. (PARC Report 46-49). Adding this second layer of investigation and review is essential to reducing risk and to increasing public confidence in the Department.

This section identifies additional areas of concern.¹⁰

A. General Orders Manual.

- General Order 6.02.005 states that in deadly force investigations, "Particular attention shall be given to: 1. The deputy(s) involved in the shooting to help reduce the trauma suffered by the deputy(s)." It is not clear what this duty requires of investigators. Moreover, the omission of any reference to trauma that may be suffered by crime victims or other civilian witnesses leaves KCSO open to claim that it extends preferential treatment to its officers.
- General Order 6.02.015 subd. (3)(a) leaves KCSO equally vulnerable to claims of preferential treatment. It states that the on-scene supervisor's first obligation, "Immediately take the necessary steps to calm and reassure the deputy involved."

¹⁰ Provided for our review were: (1) the KCSO General Orders (G.O.) Manual and associated forms; and (2) excerpts from the collective bargaining agreement pertaining to officer interviews.

This is appropriate, but there is no similar obligation to take steps to calm and reassure civilian victims or witnesses to the shooting.

- General Order 6.02.015, subd. (4), which details how MCU is to investigate OIS incidents, also opens KCSO to charges of preferential treatment:
 - “Involved deputies shall be given special consideration regarding the timing of giving either a signed officer witness statement or a taped statement.”
Investigators are not required to give any “special consideration” to civilian witnesses, who are typically interviewed shortly after OIS incidents. KCSO also does not suggest that investigators seek written accounts, rather than interviews, from civilians.
 - “The [MCU] investigator shall be responsible for obtaining the statement within seventy two (72) hours of the time it was compelled by the deputy’s commanding officer.” Again, KCSO does not offer this delay to involved civilians.
 - “An un-taped oral statement [of the involved officer] for the purposes of clarification may be necessary.” Going off-tape with involved officers introduces the risk, and certainly the perception, that investigators may coach officers or neglect to report any self-incriminating statements made by the officer.
- General Orders 2.09 and 6.02.015, subd. (2) provide for a roll-out of Personal Assistance Team (PAT) officers to the scene of the shooting in order to provide support for involved officers. PAT officers also reach out to officers’ family members. However, we could not identify any KCSO policies that require officers to refer

crime victims (or relatives of those killed or wounded by KCSO officers to community counselors or mental health services).¹¹

- KCSO currently lacks a policy requiring involved officers or witnesses (civilian or sworn) to be separated to reduce the risk of witness contamination or even outright collusion. Many major departments, including the Washington State Police (WSP), impose some form of sequestration. *See, e.g.,* WSP Manual, § 2.00.110 (I)(A)(7):

“The involved officer(s) shall not discuss the incident with anyone other than the following people until the officer has provided an official statement to the investigators or the employer; or, if none was provided, the conclusion of the investigation”

- The KCSO does provide supervisors with various “reminders” for responding to an OIS scene, including the following: “Keep involved deputy(s) separated. This procedure is requested both by Major Crimes and the Guild.”¹² This reminder, however, is clearly inadequate. First, it does not provide for any form of sequestration prior to the arrival of a supervisor.¹³ Second, it does not provide that involved officers are precluded from talking about the shooting with witness officers.¹⁴
- A related problem is that KCSO policy does not prohibit officers from reviewing other officers’ reports prior to submitting their own reports. Indeed, policy currently does not preclude them from writing their reports in concert with

¹¹ The King County Prosecutor’s Office provides such referrals both by telephone and on its web page, <http://www.kingcounty.gov/Prosecutor/victimassistance.aspx>. However, KCSO evidently does not mandate referral to any of these resources.

¹² KCSO, *Supervisor Checklist Instructions for Deputy Involved Shootings* at 2 (Rev. 2012). (P 877).

¹³ It appears that after the shooting Detectives B and A were together for some period of time before Sergeant N arrived at the scene and separated them. *See* N Report (P 127).

¹⁴ Detective X stated in a September 13, 2013 IIU interview that he did not discuss the shooting with DOC Officer Y. (P 952). However, the investigator did not ask any follow-up questions, such as whether Detective X had discussed the incident with other officers, or had heard from any officer what DOC Officer Y had said about the incident. Thus, one cannot be confident that there was no witness contamination in this case.

each other. The lack of any such prohibition again introduces additional risks of witness of contamination or collusion and may erode public confidence.¹⁵

- KCSO policy also does not appear to address whether KCSO officers may confer with those from other agencies that may be involved in a deadly force incident. As noted above, KCSO Sergeant D, who was serving as Detective X's Guild representative, was seen by an MCU investigator speaking with DOC Officer Y and his union lawyer. At best, Sgt. D's speaking to DOC Officer Y after conferring with Detective X presents the appearance of impropriety.
- KCSO policy does not address whether investigators can compel any officers to participate in a scene walkthrough. A walkthrough enables the investigators (and later, crime scene technicians) to develop a plan for collecting and preserving evidence, and also sets the framework for officer interviews.
- As noted above, KCSO does not *require* interviews of officers using deadly force. It appears such a requirement would be consistent with the existing collective bargaining agreement.
- Although KCSO policy permits interviews of involved officers, it appears that its historical practice has been to rely instead upon compelled written statements. (G.O. 6.02.015, subd. (4)(c)). This policy and practice is contrary to sound investigative practice and erodes public confidence in the integrity of KCSO internal investigations.
- KCSO's particular implementation of a report-driven system presents additional concerns:
 - **KCSO does not impose any particular deadline for ordering a compelled written statement.** The order could come weeks or even months after the incident. (G.O.

¹⁵ Chapter 15 of the General Orders Manual is devoted in large part to articulating detailed requirements for officer reports. The level of detail goes down to the color of ink required. (G.O. 15.01.025, subd. (2)(b) (blue or black ink only)). However, these requirements do not proscribe joint report-writing or reviewing other officers' reports prior to writing one's own report. Nor do they require officers to disclose whether they had reviewed others' reports prior to finalizing their own.

6.02.015, subd. (4)(c)). Such delays not only provide opportunities for collusion or inadvertent witness contamination, but increase the risk that the officer will have forgotten (or plausibly claim to have forgotten) salient details about the incident. Until KCSO revises its policies to require contemporaneous interviews, it should issue the order for a compelled statement shortly after investigators arrive at the scene.

- **KCSO currently grants officers 72 hours to submit the written statement upon receipt of an order they do so.** This time period introduces substantial risk of witness contamination and opportunities for collusion. Pending a change to an interview-based system, the Department should require the officer to submit his or her written report prior to being released from duty following the incident. This reduces at least some of the risks of contamination or collusion.
- **KCSO policy does not specify any essential elements of the OIS written report.** For purposes of consistency and fairness, deadly force investigations should cover common ground, including pertinent training and tactics governing the officers' actions. Current policy appears to leave the agenda to the officer, whose personal interests may not always coincide with the Department's.
- General Order 6.02.015, subd. (3)(d) requires the on-scene supervisor to "[d]irect the involved deputy to leave the scene, accompanied by a deputy, PAT member, or other person requested by the involved deputy(s)." It is not clear if "scene" is limited to the immediate crime scene, or the general vicinity of the shooting.¹⁶ If the latter, there is a concern of potential witness contamination, particularly if the deputy is allowed to pick who will accompany him, as the quoted language suggests. The better practice is to leave control of the involved officers to the criminal investigators, not the on-scene supervisor.

¹⁶ One would expect "scene" to be limited to the crime scene. However, the issue remains unclear, as the same General Order uses the more specific term, "crime scene," in a different context. See G.O. 6.02.015, subd. (3) (f)-(g).

- General Order 6.02.015, subd. (4)(c), which governs MCU investigations, contains this mandate: “Individual deputies shall be special consideration regarding the timing of giving either a signed officer witness statement or a taped statement.” The policy does not identify what counts as “special consideration” for officers, but appearance of preferential treatment remains. It appears KCSO routinely asks civilians for interviews, not written statements, and conducts field interviews hours, if not minutes, after critical incidents.
- The same provision also provides: “An un-taped oral statement for the purposes of clarification may be necessary.” The concern here an investigator may conduct (i) unrecorded, pre-interviews of officers that may amount to a “rehearsal” for taped statement or (ii) unrecorded interviews of civilians that might be leading, intimidating, or otherwise leave the Department open to claims of impropriety.
 - Best practice calls for recording witnesses interviews whenever possible. Where a witness refuses to submit to a recorded interview, that fact should be noted in the investigative file. Some departments provide a form for a witness to sign that he or she refused to submit to a recorded interview.
- KCSO policy does not provide sufficient detail regarding the duties of Major Crimes Unit (MCU) investigators regarding deadly force incidents.
 - General Order 6.02.015, subd. (4)(e) provides that MCU investigators, in addition to securing crime scene evidence and obtaining evidence, shall “[c]omplete an incident report and conduct all the usual follow-up duties and responsibilities.” However, this policy does not say what the “usual” duties are.
 - In contrast, General Order 6.09 provides detailed investigative steps to be taken when investigating other types of firearms incidents. The policy discusses in detail physical evidence collection, witness interviews, and key issues to address in such investigations. It seems anomalous that KCSO policy

would not offer at least as much detail when addressing officer-involved shootings, in-custody deaths, or high-risk uses of force.

- General Order 2.09.015, subd. (4) appears to grant Personal Assistance Team (PAT) members the authority to disseminate information regarding deadly force incidents to uninvolved offices. This merits closer study, as PAT members may inadvertently spread inaccurate information regarding the incident under investigation.
- KCSO policies appear to be in conflict over whether Critical Incident Stress Debriefings (CISDs) may occur prior to the involved officers' providing a compelled statement to investigators. General Order 2.08.020, sub (4) states that debriefings "will be conducted" after compelled statements are provided, but General Order 2.08.025, subd. (6)(b) states debriefings "should take place" after officers provide their statements. To reduce the risk of witness contamination and avoid the appearance of impropriety, the debriefings should occur only after the involved officers have been thoroughly questioned by investigators.

B. Supervisor Checklist for Officer-Involved Shootings.

To its credit, KCSO has developed a four-page OIS checklist for responding supervisors. (P 876- 879). The need for a detailed checklist is important, because deadly force incidents often draw large numbers of personnel to the scene and present numerous logistical challenges.

1. Scene Coordination Not Adequately Addressed.

Surprisingly, the checklist does not address immediate and often urgent scene coordination responsibilities, including broadcasting suspect lookouts, requesting backup and support services, establishing an appropriate perimeter, and identifying witnesses and requesting their cooperation. Contact with the family of deceased or injured persons is also not addressed.

2. Comments on Specific Provisions.

A number of the stated “scene reminders” deserve special mention:

- **“Assign a deputy(s) to accompany the involved deputy(s) to the precinct, command post, or other designated location.”** (P 877). MCU should make the determination about movement of the involved officers, not the officers’ supervisor.
- **“Keep involved deputy(s) separated. This procedure is requested both by Major Crimes and the Guild.”** (P 877). If there are indeed no Guild objections to sequestration, KCSO should immediately require sequestration as a policy requirement so that involved and witness officers are required to separate at the very outset, prior to receiving an order from a supervisor.”
- **“Count all rounds of all witness deputies who were present when shots were fired.”** (P 877). This should be within MCU’s role, not a supervisor’s. It would be more appropriate for the supervisor to order the witness officers to keep their side-arms holstered, or long guns secured, until MCU’s arrival.

3. Information Sheet.

The final two pages of the checklist include a list of 14 questions the supervisor “shall” answer and provide to responding MCU sergeant at the scene. (P 878 – 879). The list is useful, particularly in that it requires the supervisor to provide the information in writing.

Nonetheless, the list could be improved in a number of areas. For example, it would be appropriate to require the supervisor to document what civilian and officer witnesses had spoken to the supervisor or others who responded to the scene. In addition, the final item on the sheet is puzzling. It asks, “Was [sic] the incident report and all officer witness statements completed?” It does not seem likely that such reports would, or should be completed by the time MCU arrives at the scene. KCSO may benefit by reviewing other agencies’ protocols for supervisors and revise its checklist accordingly.

IV. KCSO Investigation.

A. Initial Response.

The initial handling of the scene raised two concerns.

1. Apparent Conflict of Interest - Initial On-Scene Supervisor.

Under KCSO policy, the first supervisor to arrive at the scene is obliged to assume control of the crime scene, direct involved personnel, and take on preliminary investigation responsibilities. (G.O. 6.02.015, subd. (3)). Clearly, given the sensitive issues that often accompany deadly force incidents, the neutrality of the supervisor needs to remain unquestioned.

In this case, however, the first responding supervisor, KCSO Sergeant D, did not maintain the position of neutrality. Shortly after arriving on the scene, he switched roles from supervisor and neutral party to officer advocate. KCSO was aware of this apparent conflict at the outset, as noted by the June 4, 2012 internal review of the incident:

“Though this is not covered in the GOM [General Orders Manual], there appears to be a conflict with Sergeant D’s role in this incident. He was the first Sergeant on scene, spoke with the involved personnel, looked inside, but did not enter [the crime scene], directed resources, but upon arrival at the Lake Dolloff substation took on the role of Guild Representative.”

Another area of concern is that based on Detective C’s follow-up entries:

02/11/12 @ 18:50, By this time Guild Attorney Chris Vick arrived and he and Sgt. D spoke with Detective X in private.

02/11/12 @ 20:25, Officer Y had been conferring with Sergeant D, Attorney Vick and Attorney Chris Coker, who represents DOC Officers. This would appear to contradict the King County Sheriff’s Office Neighborhood Corrections Initiative Memorandum of Understanding . . . that reads:

‘Each agency shall be responsible for their respective team members in the event of emergency responses, use of force events, or injuries or accidents.’

‘Neither DOC members nor KCSO deputies are agents of the other agency nor shall act as the agent of the other.’” (P 823).

KCSO appropriately identified the conflict, but evidently did nothing to address it. The Sergeant was not asked to explain his conduct and was not held accountable for failure to comply with applicable policy. In September 2012, the same Sergeant served as one of Detective X's two Guild representatives in an IIU interview and was vocal advocate for the officer during the proceeding. (P 960 – 961).

To date, it appears that KCSO has not taken any measure to prevent similar occurrences in the future.

2. Potential Conflict - KCSO PAT Officer.

The actions of a different KCSO officer the evening of the shooting raise similar concerns. An MCU investigator's report that noted that one KCSO Personal Assistance Team (PAT) member was stationed with Detective X, while a second KCSO PAT member was stationed with DOC Officer Y. (P 157). If this officer was indeed providing PAT assistance, his actions were not only contrary to the MOU provisions quoted above, but also beyond the scope of PAT's authority — General Order 2.09.015 authorizes PAT members to respond to critical incidents in order to provide support for KCSO employees; it does not authorize them to provide support to other agencies.

It does not appear that KCSO responded to this potential conflict or questioned the PAT member about his interactions with DOC Officer Y.

B. MCU Investigation.

1. Investigation Strengths.

Overall, the Major Crimes Unit approached the investigation in an organized fashion and clearly devoted substantial time to collecting physical, documentary, and testimonial evidence regarding the entire incident, not merely the officer-involved shooting.

Other investigation strengths included:

- MCU's rollout to the scene was organized and well-staffed. MCU quickly determined that it might need additional resources and appropriately coordinated officer assistance from the Bellevue Police Department.
- The lead MCU Investigator, Detective K, exhibited good rapport-building skills in his recorded interviews of Shane, Nicholas, and Cole Harrison on the evening of the shooting.
 - For example, after notifying Nicholas Harrison of his Miranda rights, Investigator K stated: "So first of all, I know Dustin is your friend, and so I, this is probably not the easiest thing in the world, so I'm sorry about that. . . . [H]ow long have you known Dustin for?" (P 331).
 - Later, upon learning that the child who had been in the house at the time of the shooting was Harrison's son, Investigator K promptly notified Harrison that the child's mother had arranged to take him home and checked to make sure that was "cool" with Harrison. (P 332).
- MCU Investigator K was careful to avoid any problems in opening the gun safe located outside Dustin Theoharis's bedroom. The homeowner, Cole Harrison, had indicated in his recorded interview that he owned the safe and offered to open it for investigators. However, when Mr. Harrison later stated that Dustin Theoharis also had access to the safe, Investigator K appropriately informed Mr. Harrison that KCSO would obtain a search warrant before looking inside. (P 323).

2. Investigation Concerns/Areas for Improvement.

a. Involved Officer Interviews.

The most serious area of concern was KCSO's (and DOC's) failure to compel interviews of the involved officers as soon as possible. Best practice calls for a thorough, recorded interview of all involved officers as soon as possible—certainly before they are relieved from duty the day of the incident.

Under existing KCSO policy, Detective X could have requested a delay of up to 72 hours before submitting to a compelled interview or providing a compelled written report. Although that delay itself is problematic, KCSO nonetheless should have issued the order the evening of the shooting so as to obtain the evidence as soon as possible.

To avoid tainting a possible criminal prosecution, compelled interviews would have to be “firewalled” from the criminal investigation. It appears, however, that KCSO does not utilize any such technique. The report of MCU Sergeant L indicates that he repeatedly urged numerous officials—including then-Sheriff Rahr, the assigned prosecutor, and KCSO’s legal advisor, to interview Detective X as soon as possible. Each request was rejected.¹⁷ Ultimately, KCSO delayed questioning Detective X until September 13, 2012—seven months after the shooting.

The file materials raise a question about the role of the King County deputy prosecutor in persuading KCSO to delay interviewing Detective X. According to MCU Sgt. L’s investigation report, on February 16, 2012, he wrote the following:

“[the assigned prosecutor] told me his legal opinion is to hold off on compelling until after we interview Theoharis. He understands from the employer standpoint the reasons for wanting to compel now. I told him our MCU opinions are based on our experience in conducting investigations and the strategies we think would work well for gathering accurate/more comprehensive information in this OIS. I told him I also appreciate and respect his opinion and position he is in making a filing decision.” (P 108).

The next day, Sgt. L shared this recommendation with then-Sheriff Sue Rahr and the KCSO legal advisor. Both agreed to follow the prosecutor’s recommendation, apparently notwithstanding Sgt. L’s objections. (P 108).

The file does not present other accounts of these conversations, and thus the underlying motivations remain unclear. To be sure, a prosecutor’s office can and should insist that it not be given access to any involuntary statements. And it can and should recommend that the law enforcement agency’s criminal investigators likewise be denied access, so as to

¹⁷ See, e.g., Sgt. L Report at 4-6 (P 108-110) (MCU interview requests on February 14, 16-17 and 27 and March 9 denied).

avoid the risk of tainting the criminal investigation. But it is not a prosecutor's role to recommend whether or when compelled statements should be taken.

For its part, KCSO could have and should have rejected the deputy prosecutor's recommendation and proceeded with a compelled interview of Detective X that would be firewalled from MCU or the prosecutor's office. Instead, according to Sgt. L's report, then-Sheriff Rahr decided KCSO would not seek a compelled interview "until provided written direction by the Prosecutor's Office when they decide it's appropriate for us to compel." (P 108).

On March 12, 2012, KCSO ordered Detective X to provide a compelled written statement. The statement was not provided to MCU or the prosecutor's office. KCSO could have and should have issued the order the afternoon of the shooting.

b. Crime Scene Processing.

The MCU file indicates that KCSO provided a sufficient number of personnel to process the scene of the shooting. Though Dustin Theoharis's bedroom was quite cluttered, the crime scene itself was not extraordinarily complex compared to those presented in other cases. Here, the shooting occurred in a single, closed room with no opportunities for physical evidence, such as bullet fragments, to escape through floor vents or open windows. Notwithstanding sufficient staff and a closed environment, a number of problems surfaced:

Evidence Overlooked. Investigators left the crime scene the morning of February 12 without recovering all of the evidence. For example, they left the crime scene without taking into evidence a small metal flashlight located at the side of Dustin Theoharis's bed; it was not collected into evidence until February 14. (P 107). In addition, investigators failed to locate a shell casing in their initial processing and instead found it on February 14. (P 96). In addition, investigators accidentally discovered a bullet located inside of Dustin Theoharis's nightstand

on February 21, 2012, when conducting a trajectory analysis offsite.¹⁸ Finally, although investigators recovered a total of fifteen shell casings, they recovered only seven rounds.¹⁹

It is not clear whether investigators used widely-available metal detectors designed specifically for collection of forensic evidence. The utility of such devices has long been recognized.²⁰

Moved Shell Casings. Several of the crime scene photographs document two shell casings on a pile of clothes and a third shell casing located on the tile floor nearby. Standard practice is to place an evidence marker next to each shell casing, photograph the casings and markers, and then measure the locations of each. Here, however, an investigator instead moved the two shell casings found on the clothing next to the shell casing located on the floor and used a single evidence marker (#13) for all three of them.²¹ This action was captured on video (Scene Recording at 24:13). It was clear the investigator needed to move the clothing to continue searching for evidence. Nevertheless, the casings should have been marked in place and measured.

As a result, the crime scene diagram (P 514 – 515) is inaccurate. The diagram describes Evidence Marker 13 as denoting a single “casing” when in fact, it refers to three shell casings. The diagram does not reflect the original location of the two moved casings.

No Evidence Markers on Comforter or Bed. Other scene photographs show a shell casing and bullet fragments on Dustin Theoharis’s comforter and bed.²² Nonetheless, it appears that investigators did not document these items with evidence markers or provide any measurements regarding their location. As a result, the crime scene diagram is incomplete.

¹⁸ Crime scene photos taken inside the room clearly show where the bullet struck the nightstand. See Detective M Photo Nos. 2992-2993. The discovery of the bullet on February 21 is depicted in Photo Nos. IMG_7517 and IMG_7518. In his reports, MCU Investigator K indicated the bullet was accidentally discovered while the nightstand was being packaged for storage. (P 74).

¹⁹ See May 1, 2012 crime lab report. (P 378). See also Investigator K Report at 50. (P 97).

²⁰ See, e.g., R. Graham, *Metal Detection, The Crime Scene’s Best Kept Secret*, The FBI Law Enforcement Bulletin (Feb 1995), available online at: <http://www.thefreelibrary.com/Metal%20detection:%20the%20crime%20scene%27s%20best%20kept%20secret.-a016677480>

²¹ See Detective M Photo Nos. 2953 - 2959.

²² See Detective M Photo Nos. 2960 – 2968, 2981, 2986, 3007.

The diagram does not identify the location of any of these materials on the bed or on the comforter. (P 515).The crime scene video depicts these actions. (25:26 – 25:08)

Scene Measurements; Diagrams. Scene measurements are critical in enabling investigators to recreate the scene of a shooting and to form solid judgments about the location of involved individuals and the trajectory of the rounds fired. The crime scene diagram presented in the MCU file (P 514 – 515) contains no measurements for any of the evidence marked. A report from a member of KCSO's Major Accident Response and Reconstruction (MARR) Unit indicates measurements were taken, but none appear in the diagrams presented. (P 103, P 154).

The diagrams do contain a distance scale, but it is of little value in assessing the distance of marked evidence items. Finally, it was unusual not to find any rough sketches in the investigative file. Rough sketching the scene with notes and measurements is a fairly standard practice and the sketches are relevant and typically admissible evidence.

Trajectory Analysis. MCU appropriately sought to conduct a trajectory analysis of two holes in Dustin Theoharis's mattress and a bullet strike to an adjacent nightstand. However, the analysis was not particularly sound, or at least was not well-documented. First, the analysis was not conducted at the actual crime scene, which introduced the risk of error regarding the precise locations of the bed and nightstand. Second, there is no indication that investigators used any measurements when they sought to recreate the scene in the evidence room.

Third, the trajectory analysis does not account for the possibility (or even likelihood) that Detective X was on the mattress when the shot in question was fired. Photos of the analysis show only a trajectory rod inserted into an *empty* mattress; one that would not be compressed by the weight of Theoharis. An additional test, using a dummy or weights, should have been conducted.

Fourth, the analysis does not include any documentation of the mattress's interior. Was it a foam mattress with a discernible bullet channel? Did the mattress have springs or coils that

might deflect the bullet's exit path? The file does not say. There does not appear to be a second analysis performed with a dummy or other weight to simulate the effect on the mattress if the shot had been fired when Dustin Theoharis was on the bed, which seems likely.

Crime Scene Video. The scene processing video was brief (just over 29 minutes) but contained sufficiently detail to show the layout of the residence and provide a sense of the size and orientation of Dustin Theoharis's bedroom. The video technique was sound, with wide establishing shots, slow panning, and zooming shots of key evidence, such as shell casings.

Nonetheless, the video presents a number of concerns. First, the video lacked a time and date stamp, and thus it is impossible to tell when various scenes were shot. Second, the video was not shot continuously, which not only compounds the difficulty in establishing time, but also introduces subjectivity into the video. (Questions may arise why a videographer stopped recording at one point, or decided not resume recording at another.) Third, there does not appear to be any audio recorded, so that the viewer misses discussions among the investigators and a brief recorded discussion with Cole Harrison as he opens the gun safe in the downstairs foyer.

Fourth, some portions of the video are difficult to decipher. At one point (23:23,) video footage of taken inside Dustin Theoharis's bedroom shows the legs of two KCSO investigators who are wearing appropriate foot coverings to avoid scene contamination. However, the video also shows the legs of an unidentified third person, who is wearing sneakers, in the crime scene. The videographer did not zoom back so that the viewer can see who this person was. At another point (23:49), the video captures what looks like a small black plastic bag being tossed onto the floor between evidence markers 7 and 8. Without audio and a panning shot, it is impossible to determine who threw the plastic down and why. Later in the video (27:15), the black plastic is gone. It may be that the item has no relationship to the underlying events, but the disappearance is a puzzle.

Finally, the video does not continuously record the evidence collection. A crime scene video does not necessarily need to record evidence collection; it may be limited to providing a walkthrough of the scene so as to allow reviewers a better perspective of the location, fields of view, and so on. Yet if the decision is made to document evidence collection, then the video should be shot continuously, so as to avoid questions about subjectivity.

Ambient Light Video. To its credit, MCU recorded a second brief video of Dustin Theoharis's room on the afternoon of February 14.²³ The room was indeed dark, and the bed area difficult to see.

The video could have been more useful, however, if the investigators had also recorded the same room as illuminated by the two flashlight models used by DOC Officer Y and Detective X. Also, the video should have had a date and time stamp.

c. Medical Evidence.

Although MCU investigators obtained copies of Dustin Theoharis's medical records on March 15, 2012 (P 79), their reports do not reflect any analysis of the records and do not discuss the location of any of the gunshot wounds. Instead, the discussion is limited to stating that the medical records "do not provide a conclusive number for how many times Theoharis was struck by bullets or what the trajectories of the bullets were." (P 98). Rather than state this bare conclusion, MCU should have outlined what the evidence was, so that others could form their own opinions.

Detailed analysis of the medical records was beyond the scope of this review. Yet a number of the records provided to MCU investigators present at least a question about whether Dustin Theoharis sustained some of his wounds while leaning to his right in an effort to pull something from beneath the mattress. For example, the records indicate that Theoharis sustained one gunshot wound to the right front jaw and another wound to his upper right shoulder.

²³ (Digital Recording File, MVI_7459.mov).

It is not obvious how Dustin Theoharis could have sustained these two gunshot wounds from Detective X if he was leaning on his right side, facing away from the officers. DOC Officer Y did not submit to questioning, and his written statement is ambiguous about whether he fired when Theoharis was facing him.²⁴

The medical evidence may well turn out to be inconclusive, but MCU investigators should have gone through the evidence in detail so that prosecutors and KCSO officials could have more made their own judgments.

d. Witness Interviews.

Numerous Unrecorded Interviews. KCSO policy vests MCU with the discretion to conduct unrecorded interviews. (G.O. 6.02.015, subd. (4)). Best practice requires investigators to obtain recorded statements whenever possible. Although it is not always possible to obtain a witness' consent to a recorded interview, investigators should at least make the effort and document when a witness refuses consent to a recording.

In this case, MCU investigators conducted numerous unrecorded interviews and did not provide detailed summaries or contemporaneous notes of those interviews:

- On the evening of the shooting, MCU Investigator K conducted two unrecorded interviews of civilian witness Shane Cole. (P 60 – 61).
- On Monday, February 13, Investigator K conducted his third unrecorded interview of Shane Harrison and conducted an unrecorded interview of Cole Harrison. (P 68)
- On Tuesday, February 14, Investigator K returned to the Harrison house and had additional unrecorded discussions with Shane and Cole Harrison. (P 69 - 70).

²⁴ See Y Written Statement (P 30) ("While he was being shot, he turned his body over from being on his stomach to transitioning to his back. He was now lying on his back on the bed. I did not stop firing until I felt there was no longer a threat.").

- On February 27, Investigator K questioned Shane Harrison over the telephone regarding Dustin Theoharis, whom Shane had been visiting. The questioning was not recorded. (P 73).
- On March 26, Investigators K and Q returned to the Harrison residence and conducted another unrecorded interview of Shane Harrison about his conversations with Dustin Theoharis at the hospital. (P 80).
- On March 27, Investigator K had another unrecorded discussion with to Shane Harrison about Dustin Theoharis and the KCSO investigation. (P 81).

Pre-Interview. The file contains one indication of an unrecorded “pre-interview” of a witness, an emergency medical responder. At the outset of the recorded interview, the investigating detective stated, “So tell me about, we went over a little bit about what you did that day, but just for the tape, if you can go over it again.” (P 359).

Although this witness’ statement was not critical to the overall investigation, KCSO should expressly prohibit pre-interviews.

Interview Tone / Neutrality. As noted above, MCU investigators generally avoided leading questions in their recorded interviews. One notable exception arose in the MCU interview of Detective B, who had remained in the Harrison’s living room while DOC Officer Y and Shane Harrison went downstairs to look for Dustin Theoharis. The investigator’s question is unnecessarily leading:

“Correct me if I’m wrong, but it sounds like, ah, [Y] and [X] had gone downstairs to check and see if this individual had weapons, which would have been a violation because the person you had arrested was on active DOC, so having weapons in that house would have been a DOC violation. Is that correct?” (P 296).

Thoroughness of Recorded Interviews. MCU’s recorded interviews the night of the shooting were extremely brief. MCU spent a total of only 57 minutes interviewing the three civilian witnesses (Cole, Shane, and Nicholas Harrison) and only 47 minutes interviewing the two officer witnesses, (Detectives B and A). As a result, many details were omitted,

inconsistencies not pursued, and opportunities for follow-up questions missed. For example:

- Investigators did not pin down the location of the five witnesses at the time of the shooting. The witnesses stated they were in the living room area, but most did not provide any greater detail.²⁵ The investigators could have addressed the issue easily by asking each witness to sketch out where everyone was located.
- Investigators did not ask any of the five witnesses in the recorded interviews whether the radio or television was on while they were in the living room/kitchen area prior to the shooting.²⁶ Such information was relevant to the issue of why none of the five witnesses reported hearing any commands from DOC Officer Y and Detective X prior to the shooting. MCU Investigator C reported that the day after the shooting, he asked Detectives A and B about the television volume. They characterized it as “normal” or “loud enough to hear.” (P 160). However, this follow-up questioning was not recorded, and MCU evidently never asked the three civilian witnesses.
 - Shane Harrison told MCU said he did not hear any voices and said he would have. (P 349). He said he had no problem hearing Dustin moan and swear after the shots. (P 349, 355)
 - Cole Harrison said he heard voices after the shots were fired, but not before. (P 327).
 - Nicholas Harrison said he heard the officers knock on Dustin Theoharis’s door, but isn’t sure he heard any voices before the shots. (P 337-338). He said one

²⁵ Shane Harrison disclosed his location to the MCU investigator (P 353), but the investigator did not follow up by asking Harrison where everyone else was located.

²⁶ One of the first officers to enter the house prior to MCU’s arrival did not mention in his report whether the television was on. (P 100). However, MCU Investigator K wrote in his report that when he entered the living room at 10:10 p.m. — over 5 hours after the shooting — the television was on and “and the volume was on medium to high.” (P 61)). He also noted the remote control was nearby and he turned the television off. Scene video recorded by Detective O shows the television on (video at 6:30), but the video is not time stamped and there is no audio on the video recording.

would have to shout to be heard upstairs where he was and said he did not hear any loud voices. (P 339-340).

- Investigators did not adequately explore whether Cole Harrison, the homeowner, had consented to officers' entering Dustin Theoharis's room. Mr. Harrison told MCU at one point that he told officers they could "go down to the back" of the house to find Theoharis's room (P 316), but MCU did not follow up on whether Mr. Harrison consented to their entering the room. The investigators did not pursue the issue of consent in their other recorded interviews, either.
- Investigators did not ask Detective B or Detective A whether the officers had discussed a plan of action once Nicholas Harrison was in custody.
- Investigators did not ask the officers to describe their understanding of Detective X's authority to search the remainder of the house or enter Dustin Theoharis's bedroom. Nor did they ask the officers to explain their understanding of their authority to conduct a protective sweep when serving DOC warrants for individuals like Nicholas Harrison.
- Investigators did not lay a basic foundation regarding any of the five witnesses' ability to provide accurate and reliable testimony. For example, they did not ask the witnesses when they had last slept or whether they had taken any medications that might affect their recall or ability to communicate.
- Investigators did not carefully and consistently question the five witnesses about whether there had been any mention of guns in the house prior to the officers' effort to contact Dustin Theoharis.
 - MCU Investigator K, who interviewed civilian witnesses Shane, Cole, and Nicholas Harrison, did not ask if anyone discussed the presence of firearms prior to the shooting.

- In Shane Harrison's interview, the subject does not come up at all.²⁷
- In Nicholas Harrison's interview, MCU Investigator K never asked if anyone had discussed the subject of guns with officers. Investigator K did ask whether Nicholas knew Dustin Theoharis owned any guns (he said he did not (P 339)), but did not ask if he heard any mention of guns prior to the shooting.
 - Likewise, in Cole Harrison's interview, Investigator K never asked if there was a discussion with officers about a weapon in the house. Instead, Mr. Harrison was merely asked if Dustin Theoharis had a gun. In responding this question Harrison volunteered that he had told the officers about Theoharis's gun. (P 319). He did not say, however, whether he mentioned this before or after the shooting, and the investigator did not ask. The investigator also neglected to ask Mr. Harrison to recount fully what he had told the officers and what, if anything, they said in reply.
 - MCU Investigator C interviewed Detectives B and A and similarly did not pursue the topic of whether there was discussion of a gun in the house, but rather relied upon the few details volunteered by the officers.

Interview Coordination. MCU took its only recorded interviews of the house occupants on the evening of the shooting. As noted above, MCU Investigator K interviewed the three civilian witnesses (Shane, Cole, and Nicholas Harrison) and MCU Investigator C interviewed the two officer witnesses (Detectives B and A). MCU did not take any steps to coordinate the interviews, so that Investigators K and C would know what each witness said that evening and would be able to pursue topics raised prior interviews. For example:

- Cole Harrison told Investigator K that DOC Officer Y and Detective X had "rushed" downstairs to look for Dustin Theoharis. (P 316-317). MCU Investigator C did not

²⁷ According to MCU's investigative report, the subject was later raised with Shane Harrison on February 13, when investigators returned to the house. The report states that Shane Harrison stated that he did not mention guns to the officers who had entered the house (P 68). This statement was not recorded, and the investigative file contains no contemporaneous interview notes from the investigators. As discussed elsewhere, KCSO should consistently record witness interviews.

hear this allegation, and thus did not know to ask the officer witnesses if anyone was in a rush.

- Detective B told MCU Investigator C that he heard Shane Harrison talking with DOC Officer Y and Detective X about whether there were guns in the house. (P288-289)). However, MCU Investigator K, who interviewed Shane Harrison that evening, did not know of B's allegation and thus was not in a position to test that allegation with Harrison.

e. Failure to Initiate IIU Investigation at the Outset.

KCSO General Order 3.03 indicates that members are required to promptly report all complaints of misconduct. When IIU learns of a complaint of misconduct, the IIU Commander determines whether to open an IIU investigation or leave the investigation to the chain of command. (G.O. 3.03.030). The General Orders do not offer any definition of "complaint," but it is assumed that would include any allegation of officer misconduct.

Here, KCSO did not open an IIU investigation until August 30, 2012, long after it was aware the officers were accused of misconduct.

- The evening of the shooting, MCU Investigator C was informed by Detective B and Sergeant R that, prior to being removed from the scene by paramedics, Dustin Theoharis had stated, "I can't believe you guys shot me." (P 292). The clear import of the statement was that Theoharis was claiming the shooting was unjustified.
- In his March 26, 2012 interview with a civilian witness who was not at the scene of the shooting, MCU Investigator K acknowledged that he was aware of Dustin Theoharis's intention to sue the Department. (P 371).
- On March 29, 2012, MCU Investigator K found Shane Harrison had been posting extensively on Facebook about the shooting, claiming the shooting was unlawful. *See, e.g.,* K Report (P 87) ("[Theoharis] was wrongfully shot by the police at my house today . . .").

These allegations alone should have sufficed to open a parallel IIU investigation.

f. File Contents and Presentation.

Contents Not Numbered. The contents of the MCU investigation book were well-organized, but the documents were not sequentially numbered. Numbering the investigative report is a best practice in that ensures document control and facilitates citations to the record.

Handwritten notes missing. The file does not contain any handwritten notes made by the officers on the scene and does not contain any of the investigators' notes. Such notes are clearly relevant to the investigation and should have been included. During his MCU interview, Detective A repeatedly referred to his field notes during the course of his interview by MCU. (P 257, P 264). The investigator did not ask to see or copy the notes, and it is not known whether the notes were copied or turned over. The investigators' own handwritten notes from their interviews are likewise relevant and should have been available.

Insufficient scene sketches or diagrams. The MCU file did not contain any annotated sketches or diagrams indicating where the civilian witnesses and officers were located in the residence. There is no indication that MCU asked any witness to provide a sketch or annotate a scene diagram to indicate where individuals were located prior to, during, or after the shooting.

Failure to address evidentiary conflicts. Several conflicts emerged during the investigation and neither MCU nor IIU took any effort to pursue them or flag them in any memorandum or report. Such conflicts included:

- Detective A told MCU Investigator C that prior to the shooting he had no idea there was anyone downstairs. (P 262).
 - However, only minutes earlier, Detective B told Investigator C that DOC Officer Y and Detective X had announced in the living room (where he and Detective A was located) that they were going downstairs to check on Dustin Theoharis

and see whether he had guns. (P 291). MCU did not pursue the point with Detective A or highlight the inconsistency.

- Cole Harrison and Shane Harrison each told MCU Investigator K that they told (unspecified) officers that Dustin Theoharis was downstairs. (P 316 and P 346- 347). This again could present a conflict with Detective A's account, but was not pursued or highlighted in any reports.
- Detective A also told MCU Investigator C that he had no reason to have any concerns about DOC Officer Y and Detective X searching the downstairs. (P262-263). This presented at least a potential conflict with Detective B's prior statement to Investigator C that (1) the officers had discussed the potential presence of firearms before entering the house and (2) while in the living room (where Det. A also stood) he heard Y and X speaking to Shane Harrison discussion about whether Theoharis had guns. (P 288, 290).

KCSO investigators may benefit from the use proof charts to lay out witness testimony regarding key issues. One example might look like this (next page):

Issue: Was there any discussion of guns in the house prior to entry into Dustin Theoharis's room?	
Cole Harrison	Mentioned Dustin Theoharis's rifle to unidentified officers, but did not specify when. Not asked if he heard any other discussion of guns.
Shane Harrison	Issue not addressed in recorded interview. Investigator K states that Shane Harrison told him in a subsequent unrecorded interview that he did not discuss guns. He was not asked if he heard any other discussion of guns.
Nicholas Harrison	Issue not addressed in interview.
Detective B	Officers discussed possibility of guns prior to entry. Heard Shane Harrison talking to DOC Officer Y and Detective X about whether guns were in the house. (Conflicts with Shane Harrison statement.) Heard Y and X announce to all they were going to look for guns downstairs in Theoharis' room. Not asked if he heard Cole Harrison or anyone.
Detective A	Not asked about any pre-entry discussion among officers. Stated Cole Harrison mentioned a rifle after they heard shots fired (Possible conflict with Cole Harrison statement). Said he had no reason to believe there was anyone else in the house. (Possible conflict with Detective B statement).

The very act of drawing up a proof chart may prompt investigators to pursue key questions to address any inconsistencies or gaps in the evidence. Where inconsistencies persist, proof charts make it easy for decision makers to understand where the witnesses are in agreement or disagreement.

C. August 2012 Interviews of Involved Officers.

On June 4, 2012, the MCU investigation was presented to KCSO Major G for initial administrative review, with the primary review work performed by KCSO Sergeants E and F. (P 2, P 817). During the course of that review, Major G asked Sergeant E to interview Detective X about entry and search issues; he did request any questioning about the shooting itself. (P 750).

Interview of Detective X. Sergeant E conducted a recorded interview of Detective X on August 16, 2012. The interview is very brief, lasting just 19 minutes. (P 790). The interviewer did not ask Detective X about the shooting, but confined his questions to all events that preceded entry into Dustin Theoharis's bedroom. Nonetheless, the interviewer failed to ask fundamental questions about the officers' actions.

The failure to do so is troubling, particularly given that the materials accompanying the interview transcript included a list of prepared questions (P 798) that were never posed during the interview. The list included many fundamental questions that simply were overlooked, including these examples:

- "When approaching the front door, did anyone request entry to the house from Mr. Cole Harrison? Who? If not, did anyone announce lawful purpose for entering the house? If so, what was said and by whom?"
- "Whose decision was it not to do [a protective sweep upon entry]?"
- "Prior to making contact with Dustin or going downstairs to contact him in the bedroom, did you ask about weapons, prior contact with police, propensity towards violence, if there were more than one person downstairs, etc.? If not, why not?"
- "Isn't getting information about people and their history prior to contacting them a common practice in police work for officer safety reasons?"
- "[Were] any questions asked of the occupants of the house to determine third party status of Dustin and the room he was staying in? If not, why not?"
- "Did anyone consider having one of the Harrisons ask Dustin to come out of his room? Why not?"

Interview of DOC Officer Y. KCSO Captain M conducted a recorded interview of Officer Y on August 22, 2012. The interview ignored the use of deadly force and was cursory in all other respects; the transcript spans only six pages. In addition, one of the officer witnesses, Detective B, sat in on the interview, though his role or authority to do so was never explained.

Finally, the interview is replete with leading questions. At one point, Captain M suggests to DOC Officer Y additional grounds for justifying his search. (P 757- 760). At another, he suggests to DOC Officer Y that his reference to an “anonymous tip” in his March 2012 written statement report was an error, and Officer Y must have intended to refer to a confidential informant. (P 759). The interview was the least neutral and perhaps the most cursory of all presented for review.

D. IIU Investigation of Entry and Tactics.

As discussed in Section I above, KCSO ultimately opened a formal IIU investigation on August 31, 2012. By that time, KCSO had only 19 days to complete an administrative investigation under Department policy.²⁸ The challenge to ICU was formidable, as the MCU investigative notebook alone held nearly 750 pages. IIU managed to obtain only one six-day extension in the investigation, moving the deadline to September 24, 2012.

Clearly, IIU did not have the ability to conduct a full investigation. Despite overwhelming time constraints, IIU did manage to ask Detective X some hard questions, and often the answers provided were not satisfactory. Key aspects included:

- It was the only interview in which a witness asked to identify mark a diagram to indicate where he and others were located.²⁹ (P 941).

²⁸ General Order 3.03.150 requires that all administrative investigations be completed within 180 days of learning of the matter to be investigated. In this case, the 180-day deadline was set to expire on September 18, 2012. (P 976).

²⁹ Sgt. P could have improved the outcome if he had asked Detective X to mark the locations of each of the civilians and officers in the living room at the time he headed to the downstairs level of the house. The information would inform judgments about whether those individuals would be in a position to hear any commands issued downstairs.

- The IIU investigator appropriately asked Detective X if anyone had asked the occupants if Dustin Theoharis had weapons in the house. (P 942). Upon hearing that Detective X say he was unaware of anyone asking, the investigator pressed X to explain why not. Ultimately, Detective X said he did not know. (P 943).
- When asked for the first time to provide his understanding of applicable DOC policies regarding community supervision, Detective X acknowledged he had not looked at them recently and added that he should be checking for recent updates. (P 942).
- When asked to explain whether his legal authority to conduct a protective sweep ended once Nicholas Harrison was in custody, Detective X initially conceded he did not know what applicable policy required. (P 955).

Nonetheless, the interview was hardly exhaustive. Detective X was not walked through the series of events step by step and asked to recount all he had heard, said, and witnessed. Nor were there questions that might test some of the claims by other officers, such as Detective B's claim that the officers had discussed the possibility of finding guns before entering the house. Nor were basic questions about alternatives explored, such as why officers did not simply ask Shane Harrison to call his friend Dustin to come upstairs, why they did not call a supervisor, or why they did not ask the Harrisons more information about Dustin Theoharis, such as whether he had prior problems with the police.

V. KCSO's Assessment of the Incident.

A. Assessment of Entry/Search Issues.

Overall, KCSO did a good job identifying the gaps in policy, guidance and training regarding coordination with the DOC field supervision officers. It was appropriate for managers to examine existing policies and practices and to recommend more detailed requirements and supplemental training.

As noted above, KCSO initially decided to sustain findings that Detective X did not meet performance standards regarding his search of the lower portion of the Harrison residence.

The recommended consequence, supplemental training, seemed apt, given Detective X's difficulty in his IIU interview to articulate the policies that governed his actions.

It appears, however, that KCSO later rescinded the finding. The file materials did not include any explanation; the reason for doing so it is not obvious from the materials that were provided.

Also unclear is why the gaps in KCSO policies and practices regarding DOC residential entries had not been detected sooner. The materials provided do not suggest there was any follow-up with the supervisors responsible for the program. It would have been appropriate to question those individuals thoroughly about their understanding of officers' authority, their supervision of coordinated efforts, and their expectations for line officers.

Finally, it is also unclear whether KCSO elected to examine any prior searches conducted by the officers in question. Given the concerns with Detective X's actions in this case, it would have been appropriate to review prior incidents that also involved a third-party residing in the offender's dwelling. Such review may turn up additional concerns about tactics and policy.

B. Assessment of Deadly Force and Tactics.

In contrast, the file materials indicate KCSO spent substantially less time considering the shooting itself and had a general unwillingness to test the officers' written account of the shooting.

- The initial administrative review of the incident, conducted by Sergeants E and F, acknowledged difficulty understanding why Dustin Theoharis would tell the officers he had guns in the room and then make a furtive movement, "knowing full and well there was no firearms and having an idea what would come next" (P 11). Rather than recommend questioning the officers about this version of events, the review concluded that Dustin Theoharis must have been acting irrationally, given his drug use and troubled life. (*Id.*).

- KCSO did eventually interview DOC Officer Y, but never asked him about the shooting or any of the events that occurred in Dustin Theoharis's bedroom.
- KCSO first interviewed Detective X in August 2012 and did not ask him any questions about the shooting or events inside the bedroom.
- KCSO did not ask Detective X any questions about the shooting until September 13, 2012—over seven months after the shooting and only 11 days before the deadline for completing its investigation. As noted above, the September IIU interview was not exhaustive.
- KCSO never asked Detective X why the officers did not simply ask Shane Harrison to call Dustin Theoharis upstairs from his bedroom to talk to the officers. It is not obvious that the officers' decision to take a flashlights-out, guns-drawn approach was the only option available to them, and thus there should have been consideration of alternatives and the officers asked to explain the choices they made.
- KCSO policy required the Shooting Review Board to convene within 30 days of the completion of the criminal (MCU) investigation. (G.O. 6.03.010). However, the Board did not comply with that policy. The criminal investigation had concluded by late April 2012, and the prosecutor's office had issued a declination memorandum in June 2012. Yet, for reasons not stated in the materials, the Board did not meet until October 5, 2012.³⁰ By that time, the deadline for completing an administrative investigation of the incident had expired.

It is true that KCSO's ability to evaluate the shooting incident was constrained by the lack of third party witnesses and Dustin Theoharis's refusal to provide a statement. Yet as noted above, KCSO missed numerous opportunities to obtain much more information from the involved officers, and unreasonably delayed its efforts to obtain that information.

³⁰ See November 9, 2012 Deputy Chief J memorandum regarding SRB review and determination. (P 832).

These missed opportunities unnecessarily limited the scope and thoroughness of administrative review.

VI. Decision Point Analysis.

A. General Assessment.

During the administrative review of the incident, KCSO managers identified numerous areas of concern regarding officers' entry into the Harrison household and officers' subsequent entry into Dustin Theoharis's bedroom. The decision point analysis below expresses similar concerns. It also identifies basic issues that were never resolved in the investigation, such what KCSO officer was in charge, and what the particular officers said or heard once they were inside the house.

As for the deadly force incident, one can confidently say that the prosecutor lacked sufficient evidence to support a criminal prosecution given the lack of independent witnesses, a statement from Dustin Theoharis, and little admissible information from the involved officers. Beyond that, however, it is difficult to draw firm conclusions; the KCSO investigation left many factual questions unanswered. If the officers' account of the incident is accurate, the use of force was within policy. But their account also raises questions about the officers' training, tactics, and judgment. The decision point analysis raises these questions but, without further information from the officers, cannot resolve many of them.

B. Decision Point Analysis.

1. Decision Points 1-16: Officer Actions Prior to Approaching Dustin Theoharis's Bedroom.

- 1) On February 11, 2012, DOC Officer Y receives notice of a warrant to arrest Probationer Nicholas Harrison, who violated the terms of his release by failing to report to DOC community custody within 24 hours of his release. The warrant is for**

“Escape from Community Custody.” Officer Y looks up Nicholas Harrison’s listed residence and asks [REDACTED] 13, 19 [REDACTED] hat

13, 19

References: DOC Officer Y IIU Interview (P 758-760); Detective A Interview (P 260); Detective B Interview (P 286).

Comment: Actions appropriate. The officers obtain information regarding chances of success and potential risk prior to approaching the location.

- 2) **DOC Officer Y pulls together an arrest packet for Probationer Harrison that includes a description and photograph. He then discusses the warrant with KCSO Detective A. The two agree Harrison is probably unaware of the warrant and thus they expect an easy arrest. Later, the two discuss the arrest with Detective B. The plan is to attempt the arrest at 3 p.m. It is not clear any KCSO supervisor was advised of the planned operation.**³¹

References: Detective A MCU Interview (P 256-60); DOC Officer Y Written Statement (P 743); Detective B Interview (P 285).

Comment: Except for the apparent failure to notify a supervisor of the planned operation, the officers’ actions appear appropriate. At this point DOC Officer Y was aware that Probationer Harrison was on community supervision for a drug conviction and had a prior drug and domestic violence conviction.

The officer statements and interviews lack many details about these early discussions. They do not address, for example, whether or when the officers discussed the layout of the house, which was known to DOC Officer Y and Detective X from a 2010 residential search. Both had reported in their compelled written statements that, during the 2010

³¹ It does not appear that KCSO asked Detective X’s supervisor, Sergeant N, or any other supervisors whether they were aware of the operation. (Sgt. N’s report addresses only his response to the shooting. (P 127). In his September 13, 2012 IIU interview, Detective X stated he did not know if a supervisor had been advised. (P 938-939). He claimed it was up to DOC Officer Y to decide whether to notify a supervisor. (P 939).

search, they had entered the downstairs bedroom (the shooting scene) and had encountered a resident living there. Detective X's report noted (though DOC Officer Y's report did not) that this resident had "access to guns." (P 739 – X Statement); (P 743 – Y Statement).

- 3) **According to Detective B, the officers talk about a prior visit to the house involving "a roommate previously that had [had] guns, and DOC was having an issue with it saying that the offender (Nicholas Harrison) can't live there if the roommate has guns in the house."**

References: Detective B Interview (P 288).

Comment: This discussion, if it took place as described, is appropriate and significant to the officers' decision-making. A prior history of firearms in the house increased the need for the officers to form a concrete plan with designated roles for each officer.

It is not clear, however, if Detective B's report of this discussion is accurate. None of the other officers mention this discussion and unfortunately, KCSO investigators did not pursue the point in the interviews. As noted above, DOC Officer Y and Detective X did refer to this prior roommate in their reports, and X referred to access to firearms. However, neither reported discussing this prior encounter with anyone the day of the shooting.

- 4) **DOC Officer Y and Detective A drive to the area and stop a little north of the residence. They briefly await arrival of Detective B and Detective X, who are to arrive in their own cars. At some point, Officer Y**

13, 19

13, 19

References: DOC Officer Y IIU Interview (P 759); Detective A Interview (P 259-260); Detective B Interview (P 285).

Comment: Actions appropriate. The presence of the child presented additional safety concerns, but there is no indication in the file the officers discussed that concern or changed their planning in any way.

- 5) **Detective B arrives in his car. The officers briefly discuss driving together in a group, and placing Detective B in the rear of the house to cover any escape route. The three drive closer to the residence and wait for Detective X's arrival.**

References: Detective A Interview (P 260); Detective B Interview (P 285 - 287).

Comment: Actions appropriate, however, there is insufficient information regarding the officers' discussion.

Was there any discussion of the layout of the house? Was there a discussion about the resident in the back bedroom Y and X had encountered in 2010? Was there any discussion about firearms or a search plan? MCU Investigator C had asked Detective B about the officers' planning, but did not obtain a complete answer and did not follow up. (P 286- 288).

As noted in Decision Point 3 above, Detective B told MCU that, prior to approaching the house, the officers had discussed whether there were guns in the house, and whether there had previously been an occupant in the house with guns. (P 288). This claim was not corroborated by the other officers, however, and seems contrary to Detective A's statement to MCU that he had no idea there might be anyone in the house other than those **13, 19** (P 262- 263).

- 6) **Detectives X arrives and the officers begin their approach to the house. Detective B drives his car into the driveway, exits, and walks to the rear yard. The remaining three officers walk to the front door.**

References: Detective A MCU Interview (P 260); Detective B Interview (P 287-288); Detective X Written Statement (P 739).

Comment: Appropriate to begin a group approach and to send Detective B to cover the back.

Nevertheless, as noted above, it is unclear whether the officers discussed what role each would play, or what they would do once they entered the residence. It is also unclear whether the officers discussed anything with Detective X when he arrived. The limited information obtained from the officers suggests they were simply going to react to whatever they found inside the house. Such an ad hoc approach unnecessarily presents risks for the officers and is likely inconsistent with KCSO training.

The investigation does not tell us where Detective B took position in the rear or what he did once he reached his destination. Thus, we cannot assess his actions there. According to Detective B, he remained in the rear for roughly three minutes before Detective A called to say they were Code 4 inside, with Nicholas Harrison in custody. (P 288).

- 7) **DOC Officer Y sees the front door open briefly and spots Cole Harrison, the owner. As Cole Harrison begins to close the door, Officer Y identifies the officers as law enforcement, instructs him to keep the door open. He enters, asking where Nicholas Harrison is.**

References: DOC Officer Y Written Statement (P 744); Cole Harrison Interview (P 314); Detective A Interview (P 260).

Comment: The actions appear lawful and within policy, as DOC's warrant permitted entry. It is not clear, however, whether DOC Officer Y sought consent to enter the house or stated DOC's authority to enter. It would have been appropriate to do both.

- 8) **As Officers Y, X, and A enter the house, Cole Harrison calls Nicholas Harrison out. Nicholas emerges from the upstairs bathroom, where his brother, Shane Harrison, had been cutting his hair. The officers recognize Nicholas as he stands near the top**

of the stairs. Detective A responds by identifying himself and asking Nicholas to come down.

References: Nicholas Harrison Interview (P 333); Shane Harrison Interview (P 346); Detective X Aug. 16 Interview (P 765); Detective X Sept. 13 Interview (P 940) Detective A Interview (P 260- 61).

Comment: Having entered the house, the officers' actions appear appropriate.

- 9) The officers explain there is a DOC warrant for Nicholas Harrison's arrest. Nicholas Harrison walks down the stairs and is handcuffed without incident.**

References: Nicholas Harrison Interview (P 333-334); Detective A Interview (P 260-261); Detective X Sept. 13 Interview (P 940).

Comment: Actions appropriate.

- 10) Detective A notifies Detective B via cell phone (direct connect) that they are Code 4. Detective B leaves the rear yard to enter the front door.**

References: Detective B Interview (P 288); Detective A Interview (P 261- 262).

Comment: There is some question as to whether the Code 4 is premature. The officers have not secured the house or even asked the known occupants if anyone else was inside. As noted above, Detective B told MCU that, prior to making the entry, the officers had discussed whether there may guns in the house. (P 288). If that is correct, making a Code 4 call to B was inappropriate. Instead, Detective A could have notified Detective B that Nicholas Harrison was in custody, but the house had not yet been secured.

- 11) DOC Officer Y decides to remain at the residence and conduct a search of Harrison's living area; he informs Detective X of his intentions.**

References: DOC Officer Y Written Statement (P 744); Officer Y IIU Interview (P 759-760); Detective X Aug. 16 Interview (P 766).

Comment: Actions appropriate. Although the officers could have left with Nicholas Harrison in custody, DOC Officer Y did have the right to examine Harrison's living quarters to ensure he has not violated any other terms of his release.

- 12) DOC Officer Y and Detective X head upstairs to inspect Nicholas Harrison's bedroom, accompanied by Shane Harrison. Meanwhile, Detectives B and Detective A remain in the living room with Nicholas Harrison (handcuffed), Cole Harrison, and Nicholas Harrison's five year-old son.**

References: DOC Officer Y Written Statement (P 744); Officer Y IIU Interview (P 760); Detective X Written Statement (P 740); Detective X Sept. 13 Interview (P 940 - 941); Detective X Aug. 16 Interview (P 766); Detective A Interview (P 261); Nicholas Harrison Interview (P 335); Shane Harrison Interview (P 346).

Comment: Questionable for the officers to separate and look for contraband before at least inquiring whether there is anyone else in the house and if the occupants know of any firearms in the residence.

Detective X stated in his compelled written report that he had previously visited this residence with DOC Officer Y in October 2010 and had found another resident in the downstairs bedroom and this individual had access to firearms. (P 739). DOC Officer Y also mentioned in his report the prior encounter with a resident in the back bedroom, though he did not mention access to firearms (P 743).

In light of that prior experience with the Harrison residence, the officers should have inquired at the outset whether there were other persons or guns on the premises. In retrospect it seems likely that if they had done so, they would have learned that Dustin Theoharis was the only other person in the house, and learned that Dustin Theoharis had a rifle that Cole Harrison had once locked in the gun safe, and that Theoharis had told him earlier in the day he had removed and placed in his truck.

(Cole Harrison Interview, P 319-320).³² At that point, the officers could have formed a sound tactical plan that would minimize risk to all in the house.

The search of the upstairs bedroom appears lawful, as Shane Harrison had told DOC Officer Y that Nicholas Harrison lived in that room.

13) DOC Officer Y conducted the search of Nicholas Harrison's room, while Detective X stood by and spoke to Shane Harrison.

References: DOC Officer Y Written Statement (P 744); Office Y IIU Interview (P 760-761); Detective X Written Statement (P 740); Detective X Aug. 16 Interview (P 766-67); Shane Harrison Interview (P 346).

Comment: As noted above, it seems imprudent for two of the officers to split off and search before learning about other occupants or the presence of firearms. Yet the search, conducted under DOC authority, appears lawful and consistent with policy.

14) DOC Officer Y and /or Detective X ask Shane Harrison whether there was someone else living in the back bedroom, as in the past. Shane replies that a new friend, Dustin Theoharis, is living back there. Detective X does not follow up with any questions.

References: Same as in Decision Point No. 13; Detective X Sept. 13 Interview (P 942 – 943).

Comment: Appropriate inquiry, but one that should have taken place before the officers split off from Detectives A and B.

The officers missed an opportunity to obtain more information about Dustin Theoharis, and did not ask if he had any friends or companions with him. During his

³² As it turned out, Dustin Theoharis had not placed his rifle in his truck; the weapon was found in Cole Harrison's locked gun safe. Nonetheless, given the level of cooperation exhibited by Cole Harrison, it seems likely that he would have told him about the gun and where he thought it might be.

September 2012 IIU interview, Detective X offered no particular reason for failing to ask about guns in the house, other than to suggest he did not ask because the overall feeling in the house was “low key.” (P 943).

- 15) DOC Officer Y tells Detective X he would like to search the remainder of the house. The two, accompanied by Shane Harrison, return to join Detectives A and B and the rest of the Harrison family.**

References: Same as in Decision Point No. 13.

Comment: Actions appropriate. Nonetheless, as discussed above, it remains unclear whether, at this point, DOC Officer Y and Detective X had been speaking to Shane Harrison about the presence of guns in the house. The two officers’ March 2012 written reports do not mention any discussion of firearms, and the topic is not pursued in their August 2012 compelled interviews.

Detective A also told MCU that he was unaware of any conversation about guns or anyone else being in the house.³³ (P 262 – 263). However, in his MCU interview, Detective B said he heard DOC Officer Y and Detective X talking with Shane Harrison about whether there were guns in the house. (P 288).³⁴ He added that the two officers told Shane they were going to check to see if Dustin Theoharis had guns. (P 290).

MCU did not ask Shane Harrison in his recorded whether he discussed guns with the officers, and Harrison did not mention the subject in the interview. However, MCU Investigator K noted in his investigative report that, during a February 13, 2012 (unrecorded) interview with Shane Harrison, Harrison “said he didn’t say anything about guns.” (P 68).

³³ Detective A told MCU Cole Harrison informed him *after* shots were fired that Dustin Theoharis had had a gun in the house days earlier. (P 264).

³⁴ Specifically, Detective B told MCU: “[Officers Y and X] finished whatever they were doing upstairs, and then I heard them talking about, um, whether the roommate had guns in the house because that was an issue before.” (P 288).

Cole Harrison told MCU in his recorded interview that he told officers Dustin Theoharis had a gun. (P 319). Yet MCU did not clear up when this discussion occurred, or who the officers were. It is thus not clear whether Cole Harrison was telling MCU about a conversation he had with Detective A which, according to A, occurred after they heard gunshots downstairs. (P 264).

Nicholas Harrison told MCU he did not hear any mention of guns in the house. (P 339).

- 16) DOC Officer Y and Detective X briefly rejoin Detectives A and B and the Harrison family in the living room, then announce they are going to check Dustin Theoharis in the downstairs bedroom. They then head down the stairs.**

References: Detective X Written Statement (P 740); Detective X Aug. 16 Interview (P 767); Cole Harrison Interview (P 315-317); Nicholas Harrison Interview (P 331); Detective A Interview (P 262).

Comment: The announcement is appropriate, though the scope of officers' right to go downstairs and check is unclear. The compelled statements of DOC Officer Y and Detective X indicate that, at this point, they did not have reasonable suspicion of a safety risk that would justify a protective sweep of the area. Neither officer mentioned having any information about a weapon downstairs or any threat posed by Dustin Theoharis.

Thus, any legal justification for going downstairs appears to be limited to DOC authority to check living areas to which Nicholas Harrison had access. From prior experience, the officers would likely know that Nicholas had access at least to open foyer area at the foot of the stairs. Nevertheless, they did not know whether Dustin Theoharis's bedroom constituted a third party residence.

The appropriate course would have been to question the homeowner, Cole Harrison, about Dustin Theoharis's room, so as to determine whether it was an area within DOC's search authority. The officers also could have asked Cole Harrison's consent to

enter the bedroom. His answer may have provided useful information for determining whether there was DOC search authority. Cole Harrison told MCU that the bedroom used by Theoharis room was “a little apartment by itself” with its own bathroom and outdoor entry. He added that he would not enter the room without knocking. (P 324).

The officers also missed an opportunity to contact a supervisor to discuss their search authority. In addition, as discussed earlier, it is not obvious why, given what the officers knew and said they perceived at the time, they did not simply ask Shane Harrison to call his friend Dustin upstairs so they could talk to him.

The officers also did not discuss any tactics. (Detective X Sept. 13 Interview, P 944).

Detective X had one less lethal option, a Taser, but did not draw the weapon or discuss whether to do so. (*Id.*)

Finally, there is also some question about how quickly DOC Officer Y and Detective X headed down the stairs to check on Dustin Theoharis. Cole Harrison repeatedly told MCU that the officers “rushed” down stairs as if they were in a great hurry. (P 316-317). However, Nicholas Harrison told MCU that the officers walked down in no hurry. (P 337). KCSO did not explore the point with other witnesses.

2. Decision Points 17-29: Analysis of Actions After Officers Began Approaching Dustin Theoharis’s Bedroom.

The decision points set forth below are based solely upon officer accounts; Dustin Theoharis declined repeated requests to speak to KCSO investigators. Furthermore, DOC Officer Y was never interviewed about the actual shooting, and Detective X was not questioned about the shooting incident until September 13, 2012. The lack of early, thorough interviews of the involved officers makes it difficult to assess the reliability of the officers’ accounts. For purposes of the analysis that follows, the officers’ accounts are assumed to be reliable.

Finally, it should be emphasized that although the events described below are broken into numerous decision points, the events occurred in a very brief time period, perhaps less than

a minute overall. Detective B told MCU that he heard shots roughly 10 seconds after the officers had reached the downstairs and turned the corner. (P 291, 294). Detective X did not offer an estimate of the time spent downstairs prior to opening Dustin Theoharis's door, but did estimate that he and DOC Officer Y had been in Dustin Theoharis's room only about 10-15 seconds before opening fire. (P 963).

- 17) Detective X and DOC Officer Y enter a darkened foyer. Detective X turns on the flashlight mounted on his Glock to clear the room. In doing so, he observes a large, closed safe which he thinks might be a gun safe. DOC Officer Y tells Detective X they will have to talk to "Dad" (i.e., Cole Harrison) about the contents. The two proceeded toward Dustin Theoharis's bedroom.**

References: Detective X Statement (P 740); DOC Officer Y Written Statement (P 744); Detective X September 13 Interview (P 946).

Comment: Observing and communicating about the safe is appropriate. Yet the officers missed an opportunity to stop their progress and check with Cole Harrison upstairs about the safe and about firearms in the house. Detective X told IIU the safe meant to him, "there are probably guns in the house," (P 946), and yet the officers did not change their plans or communicate this new information to the officers upstairs.

The officers were not asked why they did not turn on any lights in the foyer or ask the Harrisons to do so. The officers' statements do not reflect a need for stealth. Turning the lights on would have provided better visibility and freed both officers' hands from using flashlights.

A related concern, not at all addressed by KCSO, was Detective X's use of a gun-mounted flashlight to illuminate the foyer. It is not clear whether the device was Department approved, or whether its use is appropriate absent articulable grounds to draw and point a firearm. Did Detective X use the gun-mounted light because he perceived a threat or was it simply a matter of convenience? KCSO never asked him to

explain, and the file materials do not reflect any discussion of the issue during administrative review. The question is important, because the very act of drawing a sidearm may increase risks of a deadly force encounter and limit less lethal force options.

- 18) The two officers approach Dustin Theoharis's bedroom, the entrance to which comprises two closed glass doors at the end of the foyer. The glass was covered with dark cloth, blocking view into the next room. DOC Officer Y notes the door opens outward and/has an exterior lock and decides to open the door.**

References: DOC Officer Y Written Statement (P 744) Detective X Statement (P 740).

Comment: DOC Officer Y later justified entry into the room by noting that the door opened outward and had an exterior lock. This, he stated, indicated that Nicholas Harrison had access to the room, and thus it was within his DOC search authority. (P 744).

KCSO's legal advisor and various managers reasonably questioned whether the mere fact that there was an exterior lock and the location of the door hinges was enough for officers to conclude Dustin Theoharis had no privacy interest in his bedroom.³⁵ For all DOC Officer Y knew at this point, Dustin Theoharis was the only person given a key to the room. Or it may have been that the area was considered, as DOC Officer Y later told IIU, "clearly off limits" to Probationer Harrison. (P 762). As noted by KCSO, the officers should have slowed down and addressed the issue of access/privacy by speaking to Cole Harrison before making the approach.

³⁵ See, e.g., Chief H September 23, 2012 Memorandum at 3 (P 871) (Officers should have "slowed down" and discussed with others whether the bedroom was a third-party residence.); Major G August 30, 2012 Memorandum at 2 (P 830) (information disclosed in officers' reports not sufficient to establish that entry into the bedroom was permissible); Legal Advisor Shelledy August 2, 2012 E-mail Message to Major G (P 750) (officers should have known whether the homeowner gave permission for others to enter the bedroom so it could be deemed an area to which Probationer Harrison had access). The file also contained excerpts from court decisions addressing third-party privacy within a residence. (P 751- 754).

- 19) **DOC Officer Y knocks on the door and draws his sidearm. He then announced “Police,” as he opens the door and looks in. Detective X looked in over DOC Officer Y’s shoulder. The room is dark, though Officer Y recalled dim lights over to the left by a bar area.**

References: DOC Officer Y Written Statement (P 744); Detective X Statement (P 740); Detective X Sept. 13 Interview (P 944 - 945).

Comment: Knocking and identifying appears lawful and within applicable policy. As noted above, entry into the room presented the third party privacy issues noted by KCSO. Chief H’s observation that the offices should have “slowed down” (P 36) seems apt.

As discussed above, it remains unclear why the officers opted for this stealthy, guns-drawn approach, which may have unnecessarily limited their choices and presented deadly force as the most immediate force option.

Seeing that the room was dark, the officers might have taken a moment to look for a light switch. (Crime scene photos and video show a standing lamp directly to the left of the door.) DOC Officer Y stated in his compelled interview he did not think to do so. (P 763). IIU did not ask Detective X about this.

There is some evidentiary conflict regarding the ambient lighting in the room. DOC Officer Y indicated in his written report that there were some dim lights over by the bar. (P 744), but Detective B stated in his MCU interview that no lights were on. (P 293). Detective A told MCU that when he arrived in the room after backup arrived, the room was well-lit—though this is probably after the exterior window coverings had been removed. (P 265). As noted above, MCU took a video of the room without the lights on, but should have recorded what the room looked like as illuminated by the two flashlight models used by DOC Officer Y and Detective X.

- 20) **Dustin Theoharis, covered in a comforter/blanket, stirs in the bed. Detective X calls out, "Sheriff's Office," and DOC Officer Y adds, "Police, put your hands above the blanket where I can see them."**

References: Same as in Decision Point No.19.

Comment: The commands are lawful and consistent with policy. Nonetheless, the question not addressed by the investigation or KCSO's internal review is whether this sudden, "command" approach contributed officers' own perceptions of risk. Neither officer was asked, for example, why they had not knocked on the door and said something like, "Dustin, this is DOC and the Sheriff's Department. Your friend Shane said you were down here. Mind if we come in a talk for a few minutes?"

- 21) **According to Detective X, Dustin Theoharis responds (to the question in the above comment) by stating, "No." DOC Officer Y enters the room and Detective X follows him into the room with his handgun at the low ready position. He moves to the right of DOC Officer Y, and points his handgun at Dustin Theoharis. At some point, DOC Officer Y has his flashlight in his left hand and his gun in his right.**

References: DOC Officer Y Written Statement (P 744); Detective X Written Statement (P 740- 741).

Comment: See comments about entry into the bedroom. Once in the darkened room, the officers' use of flashlights and reliance on the handguns seems appropriate with the threat they reported perceiving.

A few additional issues remain unclear, however. First, the officers were never asked if they scanned the entire room to ensure others were not in there with Theoharis. Second, the investigation did not clearly establish the officers' locations for the entire time period leading up to the shooting other that they remained at the foot of the bed. According to Detective X's statement, DOC Officer Y stood at the left corner of the bed (the corner nearer the nightstand) and X stood roughly at the center of the foot of the bed. (P 741, P 947). However, DOC Officer Y's report states initially he had

moved to the “right corner of the bed,” and later, after pulling a comforter/blanket off Dustin Theoharis, moved to Detective X’s left (P 745). These matters should have been cleared up so KCSO could form judgments about the officers’ tactics.

- 22) DOC Officer Y observes drug paraphernalia on the night stand and tells Detective X, “rigs,” to denote their presence.**

References: DOC Officer Y Written Statement (P 744); Detective X Written Statement (P 741); Detective X Sept. 13 Interview (P 962).

Comment: Actions appropriate. The officers’ written statements conflict as to *when* Officer Y made this “rigs” comment to Detective X. Detective X’s statement indicates the “rigs” comment was made after Officer Y removed the comforter/blanket from Dustin Theoharis. (P 741). However, Officer Y’s written statement indicates he made the “rigs” comment before he pulled off the comforter/blanket. (P 744). Although this inconsistency may not affect the overall analysis, it does highlight the need for detailed, contemporaneous interviews.

- 23) With gun and flashlight in hand, DOC Officer Y rips the blanket off Dustin Theoharis, while Detective X covers Theoharis with his weapon.**

References: DOC Officer Y Written Statement (P 745); Detective X Written Statement (P 741); Detective X Sept. 13 Interview (P 947).

Comment: Appropriate goal, but questionable in its execution. It is not clear which hand Office Y used to remove the comforter/blanket, but either way, it seems unlikely he could have kept an accurate target while he did so. Furthermore, without an interview, we do not know whether pulling the comforter/blanket off temporarily impeded Detective X’s view of Theoharis.

- 24) According to DOC Officer Y, he moved to the left of Detective X and asked Dustin Theoharis if he had any identification. Theoharis replied, “Ya.”**

Reference: DOC Officer Y Written Statement (P 745).

Comment: The questioning is appropriate, and moving closer to the nightstand is appropriate. We do not know, however, whether the movement crossed any lines of fire.

Another key issue not addressed in the investigation is why officers elected to remain at the foot of the bed at this point. From their descriptions, they appear to have remained fixed in a shooting position. By remaining in this position, rather than closing in toward Theoharis on the left (nightstand) side, the officers may have limited their force options. At this point, the comforter had been removed and the officers could see Theoharis with no weapons in view. The question becomes whether one officer could have provided lethal cover while the other moved to the left (nightstand) side of the bed, thus cutting off access to any weapons that may be in the vicinity. Because the officers were never asked to discuss force options, it is difficult to assess the feasibility of alternatives.

25) DOC Officer Y asks Dustin Theoharis, “Do you have any weapons?”

References: DOC Officer Y Written Statement (P 745); Detective X Written Statement (P 741); Detective X Sept. 13 Interview (P 947 – 948).

Comment: Actions appropriate, though as mentioned earlier, it would have been better to explain why the officers were there, and to ask Dustin Theoharis whether there were any weapons *in the room*.

Possible evidentiary conflict: In his September 13, 2012 IIU interview, Detective X stated that DOC Officer Y had also cautioned Dustin Theoharis not to reach for a weapon when he asked this question. (P 948, 957). Yet the two officers’ compelled written statements do not reflect this caution being given. If the caution was indeed given, it was appropriate.

26) When Dustin Theoharis responds, “I have 3 guns,” DOC Officer Y asks where the guns were. Theoharis responds loudly, “Here!” and “dove his left hand” over the left (nightstand) side of the bed “as if grabbing for something.”

References: DOC Officer Y Written Statement (P 745); X Written Statement (P 741); Detective X Sept. 13 Interview (P 948).

Comment: Actions appropriate. The critical point is to learn where any weapons are.

There is another evidentiary conflict here. Detective B told MCU that, moments after the shooting, Detective X told him that Theoharis said he had four, not three guns. (P 291). This again highlights the need for contemporaneous interviews of the involved officers.

- 27) The officers shout commands for Dustin Theoharis to put his hands up or show his hands, but Theoharis continues digging away with his left hand. Theoharis pauses briefly to look at the officers, then resumes digging with his left hand.**

References: DOC Officer Y Written Statement (P 745); Detective X Written Statement (P 741); Detective X Sept. 13 Interview (P 948).

Comment: The commands are appropriate. As noted above, it is not known whether Officer Y had a realistic opportunity to close in on Theoharis so that other force options were available. At this point, the officers are essentially locked into a situation where deadly force is the only practical force option.

- 28) DOC Officer Y fires at least eight times and Detective X at least 7 times. Both Officers reported firing at Theoharis's back as he was reaching over the side of the bed.**

References: DOC Officer Y Written Statement (P 745); Detective X Statement (P 741); Detective X Sept. 13 Interview (P 950).

Comment: As noted above, MCU recovered only 15 shell casings and 7 spent bullets. (P 378). It is possible the officers fired additional rounds because they were unsure how they had loaded their weapons.

Assuming the officers' statements are accurate, deadly force would be reasonable. But there is insufficient information to determine whether total number of rounds fired was excessive. One question that the investigation and internal review did not resolve, or apparently raise, was whether the incident involved fire contagion. It was incumbent for investigators to consider other explanations for the officers' conduct, such as whether one officer prematurely opened fire and the second began firing only because his partner had started firing. If KCSO did consider the possibility, it did not reflect the assessment in the file materials provided.

Another question is whether KCSO trains its officers to fire in short bursts (*e.g.*, controlled pairs) so as to allow the officers an opportunity to assess the suspect's actions between bursts. Here, Detective X stated in his September 13, 2012 interview that he fired continuously, until Dustin Theoharis rolled back onto the bed and his hands were in plain view. (P 950). Again, the file materials do not reflect any consideration of fire control.

- 29) Dustin Theoharis briefly rolls back onto the bed and the officers stop firing. He then falls to the floor next to the nightstand. He appears immobile on the floor, with visible arm and leg fractures. DOC Officer Y and Detective X continue covering Dustin Theoharis with their firearms. Officer Y attempts to radio shots fired and request for medical assistance. Detective X thinks he tried to radio as well.**

References: DOC Officer Y Written Statement (P 745); Detective X Statement (P 741); Detective X Sept. 13 Interview (P 950).

Comment: Actions appropriate.

- 30) Upstairs, Detectives A and B look at each other after hearing the rapid gunfire. Detective A draws his sidearm to cover the family in the living room, and Detective B draws his sidearm and runs downstairs.**

References: Detective A Interview (P 263- 264); Detective B Interview (P 291).

Comment: Actions appropriate; it is not clear whether Detective B announced his entry as he entered the foyer. He should have, because he did not know where DOC Officer Y and Detective X were at the time.

- 31) Reaching the bedroom, Detective B calls, "Coming in," before entering the room with gun drawn. He noted Y and X are standing still with their weapons pointed, as if in shock.**

References: Detective X Written Statement (P 741); Detective B Interview (P 291); Detective X Sept. 13 Interview (P 951).

Comment: Actions appropriate. Detective B communicates to the officers in order to avoid surprising them.

- 32) Detective B notes DOC Officer Y to his left and Detective X to his right. He asks the officers what happened and whether there was a weapon. Unable to see Dustin Theoharis clearly, Detective B stands on top of the bed points his firearm at Theoharis.**

References: Detective B Interview (P 291- 292); DOC Officer Y Written Statement (P 745); Detective X Written Statement (P 741).

Comment: Appropriate for B to seek information and to take charge once he saw that DOC Officer Y and Detective X seemed to be shock. Deciding to stand on the bed was not ideal, as it is not a stable platform and there appears to have been sufficient space for him to move instead to the left side of the bed near the nightstand. Finally, it is not known if Detective B crossed either officer's line of fire.

- 33) Detective X holsters his sidearm and drags Dustin Theoharis toward the foot of the bed, so as to remove access to a weapon. He decided not to handcuff Dustin Theoharis in light of his visible injuries, including a visibly broken arm.**

References: DOC Officer Y Written Statement (P 745); Detective X Written Statement (P 741); Detective B Interview (P 292, 295).

Comment: Actions appropriate, though it would have been better for Detective X to ensure the rest of the room was clear first. DOC Officer Y and Detective B were covering Theoharis, which gave X the chance to ensure no one else was in the room.

There is an evidentiary conflict here. Detective B told MCU that DOC Officer Y, and not Detective X, dragged Dustin Theoharis away from the night stand. (P 292, 295).

34) Detective B asks the officers if they had cleared the rest of the room. DOC Officer Y said no, so B cleared the closet area.

References: Detective B Interview (P 292); Y Written Statement (P 745).

Comment: Actions appropriate.

35) At some point, Detective B radios shots fired.

References: Detective B Interview (P 294).

Comment: Actions appropriate, though the investigation does not pin down where in the sequence of events B made the radio call. He told MCU Investigator C he made the radio call, but does not say when. (P 294).

VII. OLEO Involvement.

After submitting this report to Director Gaither, he had the following to add to illustrate OLEO's involvement in the investigative process of this shooting incident:

"Something not noted in the report was the pressure OLEO exerted on the KCSO to initiate an Administrative Investigation in February 2012. This pressure did not stop and continued until the administrative Investigation was commenced in August 2012."

- Director Gaither attended what he believed was a Major Incident Debriefing on February 14, 2012. At this meeting, Major Crimes provided a briefing of the shooting incident. During the course of Major Crime's presentation, Director Gaither noted the following: the involved officers had not been interviewed and their rationale for using deadly force

was not known, KCSO was reluctant to compel the involved officers to provide their account of the shooting incident, and, although a representative from IIU was present at the briefing, he lacked the authority to initiate an administrative investigation. Director Gaither also noted Major Crimes could not account for all of the rounds fired, that KCSO does not have a policy that assured each deputy loaded each magazine to capacity to enable it to determine the total number of rounds fired following a shooting incident, and that the weapon mounted flashlight affixed to Det. X's flashlight constituted a policy violation. Director Gaither alerted [the] KCSO Legal Advisor of his concerns and advised her [that] this would be an appropriate basis to launch an administrative investigation. Director Gaither further noted that Major Crimes failed to collect important pieces of evidence, which included a flashlight Major Crimes opined was "the gun" the victim allegedly reached for and drug paraphernalia in the room. When he asked a Major Crimes detective why these items had not been collected, the detective replied "it did not have evidentiary value." When Mr. Gaither advised [the KCSO Legal Advisor] that the KCSO should collect these items, she directed Major Crimes to return to the scene and to collect them. The King County Police Officer's Guild ("Guild") later filed a grievance against the KCSO and Director Gaither that alleged his attendance at this meeting violated the Collective Bargaining Agreement. As a consequence, Director Gaither is no longer allowed to participate in any meetings involving the review of an Deputy Involved Shooting.

- OLEO met with Sheriff Strachan and IIU Captain I on many occasions and requested that an administrative investigation be commenced. Both Sheriff Strachan and Captain I advised Director Gaither that IIU could not self-initiate an administrative investigation and they were waiting for a complaint or lawsuit to be filed.
- On December 13, 2011, Director Gaither met with Sheriff Rahr and advised her of concerns relative to tolling, concurrent criminal/administrative investigations, force investigative teams, supervisor's failure to report misconduct, and walkthroughs of crime scenes and critical incidents. Neither Sheriff Rahr nor Sheriff Strachan implemented policies to address these issues before the Auburn shooting incident.
- OLEO sent e-mails periodically asking when the KCSO anticipated commencement of an administrative review. One email was sent after the Seattle Times reported on the Shooting on June 20th.
- OLEO also raised concerns with the Weapon Mounted Flashlights. Not only was the use a deputy safety because the additional weight of the flashlight could cause Glock pistols to malfunction, but also because it increased the possibility of a deputy involved shooting since the deputy pointed the flashlight and handgun at the subject he illuminated.
- Due to the Auburn case, OLEO helped coordinated a trip to Los Angeles for KCSO command staff to observe the LAPD's Officer Involved Shooting process. KCSO changed many of its policies following this trip.

- OLEO did not certify the administrative portion of the Auburn shooting incident as thorough and objective due to the limited scope and amount of time IIU had to complete the investigation.

“OLEO actively engaged the KCSO to amend [relevant] policies before and after the Auburn shooting incident. Despite OLEO’s efforts, KCSO did not implement appropriate policies to address these concerns and did not commence an administrative investigation until August 30th.”

Conclusion

The Auburn shooting incident brought to light significant lapses in KCSO’s administration of its Neighborhood Corrections Initiative with the Department of Corrections. Although KCSO should be credited for responding to those lapses in the wake of the incident, larger questions, such as how such lapses had come to arise, remain unanswered.

The incident also highlights significant weaknesses in existing policies and practices regarding deadly force investigations and review. KCSO has made numerous compromises to the integrity of the investigation process, such as relying upon written statements from involved officers.

To better serve its dual commitments to officer safety and preserving the public trust, KCSO should revamp its investigation and review model to ensure deadly force and other high risk incidents are subject to immediate, searching examination of policy, tactics, and training. Many departments have successfully adopted such models and drawn lessons from high risk incidents that better prepare officers to meet challenges they face in the field.

Lewis, Tina J. (DOC)

From: Fithian, Tomas P. (DOC)
Sent: Monday, February 1, 2010 9:48 AM
To: Aylward, Anmarie (DOC); Harms, James W. (DOC); Meusborn-Marsh, Stefani L. (DOC); Ashlock, Dianne K. (DOC); Gastreich, Kathy E. (DOC); Strange, Cheryl E. (DOC); Vail, Eldon W. (DOC); Blonien, John 'Scott' (DOC)
Cc: Shapiro, Scott M. (DOC); Nozawa, James H. (DOC)
Subject: FW: MESSAGE FROM DT34

Tomas P. Fithian, Emergency Operations Manager

-----Original Message-----

From: DOCOBTSAPPLICATION@DOC1.WA.GOV..... [<mailto:DOCOBTSAPPLICATION@DOC1.WA.GOV>.....]

Sent: Friday, January 29, 2010 08:11

To: PRISONSFIELDRREGION@DOC1.WA.GOV.....; FIELDREGIONS@DOC1.WA.GOV.....;
FIELDEAST@DOC1.WA.GOV.....

Subject: MESSAGE FROM DT34

/SUBJECT INCIDENT REPORT - USE OF FORCE

OTSO310 WASHINGTON DEPARTMENT OF CORRECTIONS DATE: 01/29/10

INCIDENT REPORT TIME: 16:10.58

NO:10086 TYPE:USE OF FORCE STAFF REPORTING:HISEY, MICHAEL

OCCURRED ON: 01/29/10 AT 01:52PM REPORTED ON: 01/29/10 AT 03:12PM

LOCATION: TOPPENISH OFFIC CONFIDENTIAL: NO

PLACE: IN THE COMMUNITY 11 EGAN LANE, WAPATO, WA

OFFENDERS INVOLVED INJ HOS STAFF INVOLVED INJ HOS

819544 YBARRA, OSWALDO C. N N HISEY, MICHAEL N N

318722 IBARRA, JESUS H. N N

DESCRIPTION:

I ATTEMPTED TO CONTACT THE OFFENDER AT HIS LISTED ADDRESS TO CONDUCT A ROUTINE HOME VISIT. I HAD BEEN AT THE RESIDENCE ON NUMEROUS OCCASSIONS AND HAD NEVER ENCOUNTERED ANY DANGEROUS ANIMALS. I KNOCKED ON THE FRONT DOOR AND IMMEDIATELY OBSERVED A LARGE GERMAN SHEPARD EXIT A DOGHOUSE AND CHARGE TOWARD ME WHILE GROWLING AND BEARING IT'S TEETH AT ME. I WAS UNABLE TO FLEE TO SAFETY. FEARING FOR MY SAFETY I FIRED THREE ROUNDS FROM MY DEPARTMENT ISSUED FIREARM, STRIKING THE DOG THREE TIMES. THE DOG STOPPED THE ATTACK AND CAME TO REST SEVERAL FEET FROM ME. I IMMEDIATELY CONTACTED YSO USING MY PORTABLE RADIO. OFFICERS FROM YSO, WPD AND WSP RESPONDED TO TAKE THE REPORT OF THE INCIDENT AND TO CONTROL THE FAMILY WHO WAS BECOMING AGGRESSIVE TOWARD ME. THE FAMILY WAS ALLOWED TO TRANSPORT THE DOG IN AN ATTEMPT TO GET MEDICAL TREATMENT FOR IT. YSO INDICATES THE ANIMAL WAS UNREGISTERED IN THE COUNTY. CCS SWANSON AND ACTING DUTY OFFICER CCS MARK DAVIS BOTH NOTIFIED. USE OF FORCE REPORT SUBMITTED THIS DATE. REFER TO YSO # 10-01644. IT SHOULD BE NOTED THAT DURING PREVIOUS VISITS TO THE RESIDENCE, THE DOG HAD BEEN ON A CHAIN, HOWEVER IT WAS NOT AT THE TIME OF THIS INCIDENT.

PROPERTY DAMAGE: NO APPROXIMATE COST: \$ 0

OTHER AGENCIES CONTACTED: DATE: 01/29/10 TIME: 01:52PM

YAKIMA COUNTY SHERIFF, WASHINGTON STATE PATROL, WAPATO POLICE DEPARTMENT

HOSP NAME: FOLLOWUP RPT: NO AGAINST: INMATE

----- OFFENDERS INVOLVED -----

NAMES: YBARRA, OSWALDO C. DOC NO: 819544 CLASS: HNV

LAST KNOWN ADDR: 11 EGAN ST. WAPATO WA

DOB: 03/21/1982 SEX: M RACE: WHITE HISP.ORIG: Y

MSC: DRUG VIOLATIONS COUNTY: YAKIMA

SUPERVISION START DATE: 04/25/05 SUP.TYPES: CCP,CCJ

CCO: BE05 MICHAEL HISEY

FBI NO: 043576RB8 SSA NO: 18 SID NO: 20170575

NAMES: IBARRA, JESUS H. DOC NO: 318722 CLASS: MOD

LAST KNOWN ADDR: 11 EGAN LANE WAPATO WA

DOB: 04/12/1989 SEX: M RACE: WHITE HISP.ORIG: Y

MSC: UNKNOWN-S/B CODE 01 COUNTY: ????????????

SUPERVISION START DATE: 00/00/00 SUP.TYPES: ???

CCO: UNKNOWN

FBI NO: 299985JC5 SSA NO: 18 SID NO: 22829467



August 19, 2008

To: Anne Fiala, Assistant Deputy Secretary
Community Corrections Division

From: Ralph Berthon, Field Administrator
Henry Pineda, Community Corrections Specialist
Denny Johnston, Correctional Program Manager

Subject: Critical Incident Review
Telephonic Incident Report 00042 August 5, 2008
Use of Force – Nicholas Weber

Critical Incident Review TIR 00042 08-05-08

Table of Contents

Critical Incident Review	
Introduction	3
Elements of the Critical Incident Review	3
Incident Description	4
Incident Description	4
Assailant Information	6
Departmental Response	7
Emergency Operations Center	7
Incident Site	8
Hospital Debrief Site	10
Policy Assessment	12
Policy Assessment	12
410.920 Use of Force – Community Corrections	12
410.220 Firearms for Community Corrections	13
370.380 Community Response Units	13
400.100 Reporting of Incidents and Significant Events	14
400.110 Reporting and Reviewing Critical Incidents	14

410.255 Critical Incident Stress Management	14
Memorandum of Understanding - Review	15
Review Memorandum of Understanding	15

Critical Incident Review TIR 00042 08-05-08

Introduction This is a critical incident review of the events surrounding Telephonic Incident Report (TIR) 00042 Use of Force dated 08-05-08.

Elements of the Critical Incident Review The group was tasked to answer the following questions in this report:

- Description of shooting incident;
- How the Department Organizationally dealt with the incident;
- Assess current Department Policies that govern incidents and evaluate if they adequately cover the Department's and Staff needs;
- Review the Memorandum of Understanding (MOU) between the Department of Corrections and the U.S. Marshal's Office to assess if it adequately meets the needs and expectations in these types of situations.

Incident Description

Incident Description

On 08-05-08, Community Corrections Specialist (CCS) Nicholas Weber was conducting fugitive investigations for his assignment with the United States Marshal Service Pacific Northwest Fugitive Apprehension Task Force.

On 08-05-08, CCS Weber was conducting a fugitive investigation into the whereabouts of Lawrence R. Steele, 04-30-1962, with Deputy US Marshal Lisa Stephenson, as part of his regularly assigned duties as a Task Force Officer (TFO) with the US Marshal's Pacific North West Fugitive Apprehension Task-Force (PNWFAT). Steele was wanted on a Federal Parole warrant, issued 06-24-08. The Violation was for Failure to Submit Supervision Reports and the underlying charges were Armed Robbery, Possession of a Firearm During a Crime of Violence, Carrying a Pistol Without a License and Simple Assault. CCS Weber and Deputy Stephenson were in an unmarked Marshal Service Chevy Suburban that was outfitted with concealed emergency equipment including red and blue emergency lights and sirens. Stephenson was driving and Weber was in the front passenger seat. Weber was dressed in plain street clothes with a ballistic vest marked POLICE under an unbuttoned short sleeve shirt.

Weber and Stephenson's investigation revealed that Steele was likely in the area of S. 96th Street and South Hosmer Street, and was known to be driving a Black 1996 Chevy Camaro with Washington State license plate 832XUV. At approx 1345 hrs, Stephenson and Weber were turning Northbound onto S. Hosmer from the East bound lane of S. 96th St when they observed Steele driving the Camaro west bound on 96th St with his left turn signal on. As Stephenson completed the turn the officers lost sight of the Camaro. Weber contacted Deputy Marshal James Adkins, and DOC TFO Jacob Whitehurst, who were working nearby and request that they assist in locating Steele. As Weber and Stephenson continued to search, they located Steele at the 76 gas station at 10505 S. Steele Street. Steele was out of the vehicle and was fueling up his car. As Steele was leaving the gas station he stopped to speak with an unknown female through the passenger window of his car.

Weber and Stephenson used this opportunity to contact Steele in his stopped vehicle. Deputy Stephenson pulled the Marshal vehicle into a position that appeared to block the forward movement of Steele's vehicle. Stephenson and Weber exited their vehicle and drew their firearms because Steele's criminal history included assault and firearms convictions. Weber reported he opened his shirt clearly revealing the POLICE markings on his ballistic vest. Weber reports hearing Stephenson announce "Police, show me your hands," through the Camaro's open passenger window. Weber stated he started maneuvering around the front of the Marshal's vehicle in an attempt to contact Steele from

the driver's side of his car. As Weber was rounding the front of the Marshal's vehicle he reported hearing the Camaro's engine race and heard the tires squeal on the pavement. Weber stated he saw smoke from the tires as Steele turned the wheels of his vehicle and accelerated around the front of the Marshal's vehicle heading directly toward Weber. Weber stated that he feared for his life and that he believed Steele was going to run him over. Weber stated that there was not enough time to get out of the way of Steele's vehicle. In an attempt to divert Steele away, Weber fired four rounds at Steele through the front of Steele's vehicle area with his State issued **20** and **20**. As Weber fired he tried to create as much space as he could by backing up and trying to move out of the way of Steele's vehicle. The vehicle swerved as Weber's rounds impacted it and just after the fourth shot Weber reports seeing Steele flinch backward in his seat. Weber reports Steele grabbed his left shoulder with his right hand. Weber further stated that Steele missed hitting him and could feel wind from his vehicle as it passed him. Weber stated that if he had not fired Steele would have run him over. Weber stated that from the time he saw the wheels turn toward him to the time the car slipped past him was less than three seconds. Steele then sped into traffic on South Steele Street. Steele appeared to be having difficulty controlling the car and had to bring it nearly to a stop, Once Steele got the vehicle under control he sped North on South Steele Street.

Stephenson and Weber attempted to maintain visual contact with Steele but he was driving too fast for them to follow safely. Weber contacted Deputy Marshal Adkins and CCS Whitehurst and advised them of the events that had occurred. Weber then notified local law enforcement via a phone call to 911. Stephenson and Weber conducted a brief area check but did not locate Steele. They then returned to the 76 Gas Station to coordinate the search with local law enforcement. Stephenson and Weber spoke to responding officers from various agencies providing them photographs of Steele, giving a vehicle description, and the most current information on his possible location. Weber contacted his supervisor Michael Poston to notify him of the incident and requested that he respond to the scene. Deputy Adkins and Whitehurst assisted local police officers and located the Camaro which was crashed and abandoned in a motel parking lot on South Hosmer Street. The officers began searching the area of the crashed vehicle. Steele was spotted by several officers as he exited a Denny's on Hosmer Street and was taken into custody and transported to Allenmore Hospital in Tacoma, WA.

CCS Poston arrived at the scene, put Weber in his car and transported him to Tacoma General Hospital.

Continued on next page

Incident Description, Continued

**Assailant
Information**

Steele, Lawrence R. DOB 04-30-62

Steele was on Federal Parole for Armed Robbery, Possession of Firearms while committing a crime of violence, carrying a pistol without a license, and simple assault. Steele’s warrant was for violation of parole for failing to report and failing to provide a change of residence. In addition Steele told Pierce County Detectives that he had been using numerous controlled substances since release from prison.

Steele’s warrant was referred to the Pacific Northwest Fugitive Apprehension Task Force because the U.S. Marshal Service is tasked with serving all Federal Probation and Parole Warrants.

Continued on next page

Departmental Response

Departmental Response

One of the mandates of the CIR is to determine how the Department responded to this incident. Included in this is:

- HQ Emergency Operations Center (EOC)
 - Departmental Response at Incident Scene
 - Department Response at Hospital – Debrief Site
-

Emergency Operations Center

The emergency operations center in Headquarters was activate at 3:00 pm on August 5, 2008 and closed at 5:41pm the same day. The following details what worked well and suggestions for improvement.

What Worked:

Overall, most interviews of those in the EOC reported that the center performed as envisioned. Comments about what worked well included:

- The EOC performed and functioned as defined in policy;
- The EOC included personnel appropriate to handle the incident;
- Those in attendance worked well as a team;
- The incident commander performed well and;
- Nextel communication worked well.
- EOU Specialist Scott Shapiro provided policies, contacts, information, and post shooting guidelines to EOC.

Areas that Need Improvement:

Although those interviewed were happy with the way the EOC performed, most had many suggestions for improvement in the future. These include:

- Information and communication from involved agencies was sometimes difficult;
 - Much of the information flowing into the EOC was not accurate or verifiable;
 - Sprint, Verizon, and Blackberry devices did not work in the EOC;
 - Incident commander needs to have apparel that clearly identifies them;
 - Department needed command post or EOC liaison at incident site;
 - Hard copy of policy manuals was not available in EOC;
 - The CISM phone tree was not up to date nor accurate;
 - No debrief following the closure of the EOC;
-

Continued on next page

Departmental Response, Continued

Emergency Operations Center

- Limited amount of computers hindered access to the vast amount of incoming and outgoing information which was required;
- Need finalized post shooting checklist or job aid;

Emergency Operations Center

- Most of the personnel in the EOC did not have formal training in National Incident Management System (NIMS) and;
 - Have access to Firearms Training Specialist or Subject matter expert.
-

Incident Site

The following are comments and suggestions relating to the Department's response at the incident site.

What Worked:

- CCS Poston arrived at the incident site quickly and placed Weber in his vehicle to receive basic information;
- CCS Poston transported Weber to the local hospital for evaluation per policy and examination;
- CCS Poston secured the Department Firearm per policy and preserved if necessary to investigation;
- CCS Poston notified Department Chain of Command and supplied known information to appropriate staff;
- CCS Poston allowed Weber to contact his family and bargaining unit attorney and;
- Specialist Jacob Whitehurst responded to the scene to assist other agencies and gather information for the Department.

Areas that need improvement:

- Department needed to deploy a trained representative to the incident site to liaison with other agencies involved and provide HQ EOC with timely and accurate information, in addition this person would be the point of contact for all agencies at the incident site;
 - Reporting the incident to the agency was difficult for the responding supervisor. The Department should establish one point of contact or telephone number for reporting significant incidents. This point of contact will be responsible for providing support and mobilizing personnel necessary to respond to these incidents. All staff and Supervisors should be provided this on a card or job aid to assist in notifications;
-

Continued on next page

Departmental Response, Continued

Incident Site (continued)

- Duty Officer Phone number should not change. HQ could designate one phone line in HQ, which could be programmed to forward to the specific duty officer in charge that day. This would simplify reporting critical incidents;
- HQ should also establish a dedicated phone number for agencies involved in the incident to call, this could be patched through to the EOC. Many agencies including the U.S. Marshal's did not know who to contact.
- Job aid or checklist each Supervisor and Officer could carry relating to post shooting procedures, in addition this information could also be sent to the affected personnel via text message to phone or blackberry;
- Department create a formal process if the firearm/s is needed for the investigation. The Department should not simply hand the gun over to another agency; it should be secured by the Department and if necessary, released with appropriate documentation and evidence control.

Continued on next page

Departmental Response, Continued

Hospital Debrief Site

The following are comments and recommendations from personnel at the Hospital Debrief Site where Weber was transported.

What Worked:

- The hospital provided a sanctuary which secluded Weber from the media, detectives, and provided a place to debrief, receive medical attention, and appropriate support;
- The private room in the hospital helped tremendously.
- CISM team member Karen Blatman-Byers responded quickly and provided support to Weber and those assisting.
- EOU Specialist Scott Shapiro responded to the hospital and provided guidance, policy information, and subject matter expertise to Supervisor Poston, Weber, and Earl Wright.
- U.S. Marshal's provided a supervisor to assist and coordinate incident, including policies, MOU's, and assist in any other function required for Weber or the Department.
- Weber's bargaining unit attorney greatly assisted in alleviating stress and protecting Weber's rights during this critical time. In addition he did liaison with Earl Wright to protect both Weber and the Department's interest during this time.
- Earl Wright was able to coordinate the Department's interest at the hospital and keep the EOC informed of the latest information. He was also able to liaison with the other agencies involved. This is important to have this type of contact provided as the supervisor was involved with ensuring staff well being and collecting information that Earl could disseminate to the EOC.
- Supervisor Poston providing Weber with a replacement gun helped Weber and reinforced the Department's support of him during this time.
- Supervisor Poston taking Weber home after being released from the hospital.
- All involved felt the overall Departmental response was excellent, considering this was the first Community Corrections officer involved shooting.

Areas that need improvement:

- Department needs to ensure a NIMS trained representative is deployed to the hospital site to liaison with other agencies involved and provide HQ EOC with timely and accurate information, in addition this person would be the single point of contact for all agencies at the hospital

site.

- CISM offered to get whatever the responding personnel needed, but in the future it would be better after initial contact is made to provide food and beverages to those involved, especially when the hospital stay lasted approximately 5 hours.
 - Although a representative from CISM was at the scene, the program does not involve CISM as a first responder. The CISM program is a follow up operation. It would make sense to have a first responder program to take care of the tasks the CISM member did at the hospital.
 - Provide information to the officer before leaving the hospital on Department resources relating to counseling and who to contact.
 - Explanation of what administrative leave is, because the officer was not clear and was originally told he was being suspended from duty.
 - The Department response seemed overly concerned about Weber's firearm and its location. In this incident it was secured by the supervisor. In the future the Department should establish a protocol where it is secured by the Supervisor and only released to another agency through formal written request as is done by the U.S. Marshal Service. The firearm is Department property and a proper chain of custody must be followed.
 - The Department was overly concerned about obtaining a UA from Weber. This appeared unnecessary and was not required by the investigating agency. The UA should only be required if there is probable cause that the officer was under the influence at the time of the event.
-

Policy Assessment

Policy Assessment

The following identifies policies that were pertinent to this event. The focus is on what worked and gaps that need to be filled.

Policies:

410.920 Use of Force – Community Corrections
410.220 Firearms for Community Corrections
370.380 Community Response Units
400.100 Reporting of Incidents and Significant Events
400.110 Reporting and Reviewing Critical Incidents
410.255 Critical Incident Stress Management

410.920 Use of Force – Community Corrections

The policy in general worked well and included information needed to assist those involved in the reporting process.

Some of the issues that could be improved include:

- Develop a post shooting job aid for those who will be involved. This includes the Officer, Supervisor, and executive staff. In addition these job aids should be available in the Department EOC. The job aids could be small enough to be carried by armed officers and their supervisors, including duty officer phone numbers.
 - The Department should secure the Department firearm and develop a procedure to maintain chain of custody. In addition if an agency requires the gun for investigation, it should only be released by written formal request. This includes other Departmental owned equipment. This is consistent with the Marshals service protocol.
 - When the firearm is taken by the supervisor, a replacement firearm should be issued as soon as possible, unless the supervisor has substantial cause not to reissue the firearm.
-

Continued on next page

Policy Assessment, Continued

410.920 Use of Force – Community Corrections (continued)

- The urinalysis should only be requested when there is reasonable suspicion that the involved staff member is under the influence of alcohol and/or any illegal substance.

410.220 Firearms for Community Corrections

The Community Corrections Firearms policy is administrative in nature. It deals with the process of who gets a firearm and how this happens. It also deals with proper carry, concealment, and misconduct. There were no noted deficiencies within this policy.

370.380 Community Response Units

The Community Response Units policy is also administrative in nature. It outlines the differences from standard units and operations. Weber was in compliance with this policy and no noted deficiencies were found.

Area for improvement:

Supervisor Poston believes that it would be beneficial for CRU, especially task force positions report to a centralized statewide chain of command. This would aid in reporting and understanding of the MOU's task force officers operate under. This makes sense.

Additionally, CRU includes to very different entities, Task Force Officers and Neighborhood Corrections Initiative (NCI) Officers. The task of these two groups is very different. It would make sense that the Department separates these two unique functions. All Task force officers are partnered with a local or federal task force. The task force officers should fall under the CRU unit and policy. This will ensure consistency in MOU's and operations. It was noted by the US Marshals Service that it was difficult to determine who to contact when the incident occurred as there was no central CRU point of contact. The Marshals feel it would be of great assistance to deal with one manager that supervises all of the task force supervisors.

Continued on next page

Policy Assessment, Continued

**370.380
Community
Response Units
(continued)**

NCI by its nature makes sense to fall under the local community corrections supervision. NCI is predominantly a Seattle Police Partnership. This partnership focuses on community offenders on active supervision, but not necessarily fugitives. Most of their contact benefits community corrections at a local level.

**400.100
Reporting of
Incidents and
Significant
Events**

It appears this policy is being followed. The only comments made were stated previously in the incident site section. This recommended the establishment of a permanent duty officer phone number that could be distributed to all staff.

**400.110
Reporting and
Reviewing
Critical
Incidents**

As noted above it is recommended the establishment of a permanent duty officer phone number that could be distributed to all staff. The policy itself lends to a complicated approach of passing around cell phone numbers that may not be distributed to staff that need it. A centralized number forwarded to the acting duty officer would solve this. In addition it was also noted that not all of the staff working in the EOC had the appropriate NIMS training. It would greatly assist if all executive staff completed the NIMS training. It was also noted that only the Nextel phones worked in the EOC. It would be beneficial to put in a cellular repeater in the EOC to ensure all Department issued communications devices work in the EOC.

**410.255 Critical
Incident Stress
Management**

This policy is currently in draft. Comments were listed above in the hospital section. These related to having a first responder CISM person. Currently CISM is a follow up within 8 hours of the incident.

Memorandum of Understanding - Review

**Review
Memorandum
of
Understanding**

The investigation also includes a review of the MOU between the US Marshal Service and the Department. The current MOU is titled MOU Pacific NW Fugitive Apprehension Task Force dated October 8, 2007. During the incident the MOU adequately covered the event. There were no known deficiencies discovered. All concerned noted the MOU served the interest of both agencies and aided in the post shooting follow up. The MOU appeared to protect the Department and Specialist Weber.



INCIDENT REVIEW REPORT

		Report Date 05-11-2018	
Offender Name JACOB, Ross A		Offender DOC # 789930	Critical Incident Review #
Name of Initiator Mac Pevey	Team Leaders Scott Shapiro		Team Members Brent Martin

INCIDENT

Date and Time: 05/31/2017	Location: 12813 163 rd Ave SE, Renton WA 98059
Brief Description of Incident: NW CRU CCS Rongen was working on the apprehension of DOC Offender JACOBS 789930 who had DOC Warrant. On 05/30/17, surveillance was conducted at 12813 163 rd ave SE, Renton WA suspected residence of JACOBS. Offender JACOBS was observed at the residence. There were 3 DOC Officers and approximately 4 King County Sheriff's Officers (KCSO) on scene to assist with the warrant apprehension. They did not attempt the arrest of JACOBS that day. On 05/31/17, CCS Rongen and CCS Kowalchuk conducted surveillance at the residence. Seattle Police Department (SPD) Detective Tomlinson arrived to assist. They observed Offender JACOBS exit residence and was congregating around two vehicles in the driveway. They drove up to the residence. Det Tomlinson exited early and went to front door area, CCS Rongen and CCS Kowalchuk pulled into the driveway. JACOBS fled on foot towards the front door. Det. Tomlinson observed JACOBS with a firearm. Shots were fired by JACOBS, Det. Tomlinson and CCS Rongen. JACOBS went down in the front yard was detained. Medics and additional Officers were called to the scene.	
Name, Title, and Address of All Employees Involved: NW CRU CCS Rongen and NW CRU CCS Kowalchuk	
Name, DOC Numbers of All Offenders Involved: Jacob, Ross 789930	
Location and Description of Property Damaged:	

REVIEW

Chronological Summary of Facts/Events: CIR Review conducted by S Shapiro and CCS Martin, report based on SPD CIR review, Reports, and Interviews with CCS Rongen and CCS Kowalchuk, times based on reports and interviews

05/24/17, NW CRU Referral from CCO Speckhals assigned to CCS Rongen. Referral included Offender information, vehicle associated, suspected location of Offender, associate Monte girlfriend and reports of Offender behavior and possession of a firearm.

05/30/17, 1200 hours CCS Rongen conducts surveillance of residence 12813 163rd ave SE, Renton WA. Observes Offender JACOBS at residence and a Kia Optima vehicle associated to JACOBS and a Toyota truck at residence.

05/30/17, CCS Rongen requests additional Officers. CCS Kowalchuk arrives. They staff case. Request additional Officers. Additional DOC CCS Conaty and 2 KCSO Officers arrive.

05/30/17, Offender Jacobs observed at door of residence, did not exit.

05/30/17, 2200 hours surveillance concluded all units cleared.

05/31/17, 1020 hours CCS Rongen and CCS Kowalchuk conduct surveillance of residence 12813 163rd ave SE, Renton WA. Kia Optima vehicle at residence.

05/31/17, 1130 hours Toyota truck with female ID as Kristel Monte, Offender JACOBS girlfriend arrive at residence.

05/31/17, 1135 CCS Rongen notified KCSO of surveillance location. 1139 hours called Detective Tomlinson for assistance. CCS Rongen and CCS Kowalchuk observe Monte load items into truck and return inside residence carrying an infant car seat.

05/31/17, 1315 hours ATF TFO/SPD Detective Tomlinson arrives to location and gets into CCS Rongen vehicle. Surveillance continues.

05/31/17, 1330 hours Offender JACOBS observed exiting residence and congregating in and around the KIA Optima and then Monte exit with a baby in car seat and raking front yard.

Distribution: **ORIGINAL**-Risk Management Office

COPY-Appointing Authority, Assistant Secretary/Initiator

DOC 18-022 (Rev. 08/15/14)

Page 1
DOC 400.110
[4-4225-1]

05/31/17, 1400 hours CCS Rongen requests KCSO Officers. KCSO unit requested in training/unavailable. Another KCSO Officer was half an hour out, and would be enroute.

05/31/17, 1407 hours CCS Rongen, CCS Kowalchuk and Detective Tomlinson discussed a tactical plan and departed from surveillance position, drove to residence 12813 163rd ave SE, Renton WA, in order to attempt to arrest Offender JACOBS.

05/31/17, 1410 hours CCS Rongen broadcast Officer Involved Shooting (OIS) over radio. Detective Tomlinson called SPD notified OIS. Dispatch started medical. 1415 medical arrives.

05/31/17, KCSO, SPD, Bureau of Alcohol Tobacco and Firearms (ATF) officers arrive at various times clear the residence, medical transports Offender JACOBS. SPD begins OIS process.

Summary of Witness Statements (Include Name of Each Witness): CCSp Rongen, CCSp Kowalchuk, CCS Mills (phone)

Summary of Facts: Information obtained through reports and interviews

WHAT WAS THE PLAN GOING IN:

On 05/24/17, CCS Rongen received a CRU referral for DOC Offender JACOBS 789930 who had DOC Warrant since 05/19/17. CCS Rongen was the primary case agent of the apprehension of JACOBS. CCS Rongen had information that Offender JACOBS was possibly armed with a firearm, using methamphetamine, threatened suicide by cop, was reports of volatile behavior, having relationship problems and was pending a new felony charge of possession of a firearm.

On 05/30/17, CCS Rongen observed JACOBS at the 12813 163 rd Ave, Renton WA and vehicle associated with JACOBS at the residence, along with a Toyota truck associated to JACOBS girlfriend/associate Kristal Monte. Based on the concerning information provided by CCO and new charges, CCS Rongen requested additional officers. CCS Kowalchuk, CCS Conaty and a KCSO team of around 4 officers with marked police vehicles were in the area to assist. CCS Rongen and Kowalchuk were primary surveillance. Other units were staged in the area.

During interview with Rongen he stated that they had requested KCSO SWAT and were informed that SWAT would not be able to assist due to it only being a DOC warrant. It was mentioned by Rongen in the interview that there is some areas in King County and officers in KCSO have been directed to not work with him to include members on the SWAT team. He stated that he felt SWAT did not help because he was on scene and running the operation. ***This is a serious concern that Rongen is working in an area where sections of law enforcement are directed to not work with him and creates a safety concern.*** Rongen stated that his supervisor CCS Mills was aware of this issues with KCSO.

Since SWAT as primary was not an option, Rongen and the Officers at the scene then changed the arrest plan, It was reported that they believed they had enough personnel to conduct the arrest, however, based on the current information they did not want to arrest him in the house. The plan was to arrest him outside of the residence and that KCSO in the marked units would be primary arrest if JACOBS went mobile in one of the vehicles. JACOBS did not leave the residence. They concluded the operation at 2200 hours.

On 05/31/17, around 1020 hours CCS Rongen and CCS Kowalchuk resumed surveillance of 12813 163rd Ave, Renton WA. They observed the KIA associated with JACOBS at the residence. The Toyota truck was not at the residence. Around 11:30 hours, surveillance observed the Toyota Truck return to the residence, with Monte as driver, get out and go into the residence, they did not observe JACOBS. CCS Rongen received additional information from DOC CCO about Offender JACOBS not wanting to return to prison for the new firearm charge.

CCO Rongen called Officers for additional assistance. Around 13:15 hours SPD Det. Tomlinson arrived CCS Rongen picked him up and joined CCS Rongen and CCS Kowalchuk in CCS Rongen's DOC Truck and returned to surveillance position. ****One concern is that they put all three of them in one vehicle, which limited the view to only one perspective on the residence.

Around 1330 hours surveillance observed JACOBS exit the residence and congregate outside around the vehicles. Monte and the baby had gone inside. Around 1400 hours CCS Rongen made additional calls for additional officer assistance. Additional officers were not available, one officer was 30 minutes from the residence.

According to reports and interviews this is where they started developing a tactical plan to apprehend JACOBS while he was outside the residence. Their plan was to drop the SPD Det Tomlinson off short of residence, so he could use the concealment of shrubs to get to the front door and block JACOBS retreat into the residence. CCS Rongen and CCS Kowalchuk would continue to drive up to the residence, block the vehicles and make contact with JACOBS.

***When asked during interview and in reports they did not know exactly where JACOBS was when they started their approach to the residence. They had last seen him move from the KIA towards the Toyota truck. ***

CCS Rongen stated that he decided that this would be the best time to apprehend JACOBS since he was out of the residence, they believed based on his clothing attire that he was not armed.

Things to note: There was only 3 Officers this day, compared to 7 the day prior. The most current intel noted JACOBS unstable behavior, threatening statements, and he was most likely armed.

I asked Rongen if he staffed this case with CCS Mills. He said he notified her that he was out working the case on 5/30/17. And that she was made aware later that SWAT was not going to assist however they had 7 officers for the arrest. CCS Mills reported that she had told Rongen that she did not want him arresting the offender in the residence. She reported that she felt comfortable with the 7 officers to effect arrest on 5/30, however did not know that Rongen was going to arrest JACOBS with just the 3 Officers on 5/31. I asked Rongen if he staffed the case and arrest with CCS Mills on 05/31/17, he stated he did not.

CCS Mills should have made the arrest a priority once she learned SWAT was not going to assist and that they were working in King County and had limited personnel, CCS Mills could have pulled additional CRU Specialist to assist or ensured enough staff were available for the arrest. The SPD investigation determined had Officer Tomlinson followed the SPD threat matrix, this arrest should have been referred to SWAT.

INDIVIDUAL AND TEAM TACTICS:

The overall team tactic was to drop Det. Tomlinson off utilizing concealment to prevent JACOBS ability to enter into the residence, while Rongen and Kowalchuk drove up the driveway, blocking any vehicle escape. Rongen and Kowalchuk would exit the vehicle and make contact with JACOBS. Not knowing exactly where JACOBS was posed some of an issue.

I asked Rongen what his plan was once Kowalchuk got out and contacted JACOBS. Rongen said that he was going to go around the vehicle and back up Kowalchuk.

Once Kowalchuk got out of vehicle he was now one on one with JACOBS which is not ideal. Rongen never made it around the vehicle.

Kowalchuk advances on JACOBS who starts running towards the door. Rongen never made it around the vehicle to back up Kowalchuk. Once JACOBS fled towards the door, he came face to face with Det. Tomlinson and according to reports, Det. Tomlinson observed a gun, announced the gun, and shots were fired.

Knowing the safety concerns with this offender, their plan to arrest the offender with three persons, (compared to 7 the day prior) and not even really 3 since they were splitting up, was unduly rushed.

Their decision to arrest JACOBS at the time was based on him being outside alone, them observing offender in clothing that didn't appear to support having a firearm. Both Kowalchuk and Rongen were convinced by Jacob's clothing that he did not have a gun. The problem was Jacob had access to two vehicles which none of the team could see once the surveillance area was left. During the initiation of the arrest plan Jacob was obscured by bushes until Rongen and Kowalchuk reached the driveway.

The actual team tactics that they used they tried to get as much coverage as they could by splitting up. however, this tactic made it so the officers did not have support. They had a driving force to not let JACOBS back into the residence, so they attempted to block that door with Det. Tomlinson. ****if their biggest concern was to not let JACOBS get back into the house, then why didn't two of them get out and approach JACOBS from that direction? Which would have pushed him away from the residence.

Individual tactics. Kowalchuk got out of vehicle and confronted offender who fled. Kowalchuk moved after him, only for a short distance, stating that he knew if continued after JACOBS he would have be in cross fire position with Tomlinson.

Rongen got out on driver's side, did not go around to back up Kowalchuk and observed JACOBS as he fled in front of the residence and towards Det. Tomlinson. According to Rongen he fired his pistol when JACOBS had turned towards him and was clear of Det. Tomlinson. Rongen's first back drop was the residence, where they knew the female Monte was inside with a minor child. Additionally Roangen was in a cross fire with Tomlinson at one point.

Det. Tomlinson was using a bush as concealment and basically popped out of the bush when JACOBS was fleeing towards the door, observed a firearm carried by JACOBS, shots were fired by both parties.

WERE THE TACTICS CONSISTENT WITH PLAN AND TRAINING:

Overall, the tactics were not consistent with the plan and training. Since they only had 3 people and they were split up, each officer was going to end up one on one with JACOBS. Their overall plan was rushed and they did not have enough people to effect this high risk arrest. Rongen stated that he knew this was going to be high risk and yet still made the decision to attempt the arrest with only 3 officers. Tomlinson by the door, Kowalchuk passenger side vehicle, Rongen driver side vehicle.

With only 3 officers/split up they put themselves in disadvantaged positions. Because they rushed the decision to arrest, they did not plan beyond the initial contact nor consider contingencies, i.e... If he runs if he fights, if he shoots, if he doesn't comply. They had one plan, to just go up there and contact JACOBS, not let him back in the house and see what happens. It seems they thought he was going to comply, which is not realistic based on the information they had. Their overall tactics and plan is not consistent with training.

LIST OF APPLICABLE RCWs/WACs/DOC POLICIES AND PROCEDURES

DOC 420.390 Arrest and Search

DOC 370.380 Community Response Units

RECOMMENDATIONS

Improvements

RECOMMENDATIONS:

Recommend that Rongen not work in King County nor any jurisdiction where local law enforcement will not assist him. Rongen should be more closely supervised by CCS Mills and there must be a clear process for approval of arrest plans. DOC 370.380 CRU mandates that arrest outside of task force operations require staff to follow DOC 420.390 Arrest and Search. It appears that was not followed in this incident.

It is recommended that Rongen get an evaluation for fitness for duty prior to returning to CRU. Recommend that both Rongen and Kowalchuk go over the API manual, specifically around arrest planning and the importance of communication and staffing their case with their CCS.

Recommend CCS Mills go out with her staff on high risk arrests to observe, evaluate and ensure proper planning and risk mitigation is in place and policy is followed.

ACKNOWLEDGMENT

Things That Worked Well

They were set on not letting him back into the house (and they didn't), and based on the information they had, that is sensible decision. However they could have used two officers and approached from that angle which would have pushed him away from the house and created more of an L shape contact vs a V. while the other officer blocked vehicle and exit using vehicle as cover.

They did call out their location. They did staff the offenders high risk concerns. They did call for aid and provide aid while maintaining security.

Kowalchuk and Rongen had all their DOC issued equipment, (even though Rongen was wearing shorts).

Scott Shapiro

Team Lead (Print)



Team Lead Signature

5-11-18

Date

Assistant Secretary/designee (Print)

Assistant Secretary/designee Signature

Date

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information

Distribution: ORIGINAL-Risk Management Office

COPY-Appointing Authority, Assistant Secretary/Initiator

DOC 18-022 (Rev. 08/15/14)

Page 4
DOC 400.110
[4-4225-1]

and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

Distribution: **ORIGINAL**-Risk Management Office

COPY-Appointing Authority, Assistant Secretary/Initiator

DOC 18-022 (Rev. 08/15/14)

Page 5
DOC 400.110
[4-4225-1]

Lewis, Tina J. (DOC)

From: Shapiro, Scott M. (DOC)
Sent: Thursday, April 18, 2019 9:12 AM
To: Everson, Courtney M. (DOC)
Subject: [REDACTED] 2

2

From: Everson, Courtney M. (DOC)
Sent: Wednesday, April 17, 2019 3:34 PM
To: Shapiro, Scott M. (DOC) <smshapiro@DOC1.WA.GOV>
Subject: [REDACTED] 2
Importance: High

Hey Scott,

2

[Courtney Everson](#), Executive Secretary
Department of Corrections
Community Corrections Division – NW Region
7345 Linderson Way SW MS: 41126
Tumwater, WA 98501-1126
360.725.8317

From: Distefano, Monica J. (DOC)

Sent: Wednesday, April 17, 2019 11:41 AM
To: Everson, Courtney M. (DOC) <cmeverson@DOC1.WA.GOV>
Subject: [REDACTED] 2

[REDACTED] 2

From: Malane, Laura (ATG)
Sent: Wednesday, April 17, 2019 11:29 AM
To: Distefano, Monica I. (DOC) <mjdistefano@DOC1.WA.GOV>
Subject: [REDACTED] 2

Good Morning Monica

[REDACTED] 2

If you have any questions or concerns please do not hesitate to contact me.

Laura Malane
Investigator Analyst
Torts Division
1250 Pacific Avenue Suite 105
PO Box 2317
Tacoma, Washington 98104-2317
(253) 593-6109
(206) 450-7236
laurad@atg.wa.gov

2

2

2

2

2

2

2

2