

INDEPENDENT REVIEW OF THE
OFFICER INVOLVED SHOOTING OF
ANTHONY McCLAIN

April 2023

OIR
GROUP

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Introduction

On the evening of August 15, 2020, Pasadena Police Officers Dumaguindin and Mulrooney conducted a traffic stop because the car lacked a front license plate. After Anthony McClain, the vehicle's passenger was ordered out of the car, he was observed to have a firearm in his hand by Officer Dumaguindin resulting in the officer firing his weapon. Mr. McClain expired as a result of the injuries he received from the shooting. A firearm was discovered during the after-incident processing of the scene that was eventually connected to Mr. McClain by the presence of matching DNA evidence on the weapon.

Within four days, the Pasadena Police Department (PPD) voluntarily released all related body-worn camera footage and a narrated Critical Incident Briefing video, in which it reported that Mr. McClain had fled from police, pulled a concealed gun from his waistband and later discarded it in the roadway.¹

Happening only two and a half months after the murder of George Floyd and amid a nationwide protest movement urging widespread re-evaluation of policing and its disproportionate impact on communities of color, the death of a Black man at the hands of police immediately sparked controversy. The controversy was further fueled by what members of the community alleged were a series of questionable circumstances surrounding the incident: the necessity of the initial traffic stop, PPD's early and definitive statement that Mr. McClain had brandished a gun, the location of the gunshot wound in Mr. McClain's back, the shooting officer's failure to activate his body-worn camera until after the shooting, the discovery of a firearm (reported to belong to Mr. McClain) by a representative of the officer's association (called to the scene as an on-duty officer, but also acting in his union role), and allegations that officers had delayed medical attention while handcuffing a dying man.

¹ The Critical Incident Briefing video, Press Release and related body-worn camera are available at <https://www.cityofpasadena.net/police/critical-incident-briefings/critical-incident-ois-20008867-finalized-use-of-force-review/>

The City sought an independent, third-party review of the incident in addition to PPD's own Criminal and Administrative Investigations. The City retained OIR Group on November 12, 2020, to complete this assignment.²

To complete our work, OIR Group requested and received complete access to PPD's Criminal and Administrative Investigations and related documents, police reports, photographic and video evidence, recorded and transcribed interviews, and forensic evidence pertaining to this incident. We reviewed PPD memoranda related to this incident. We reviewed the Los Angeles County District Attorney's decision letter and depositions relating to civil litigation. We reviewed PPD's policy and procedures manuals. We also attended the administrative review of the incident – the Use of Force Review Board – which was chaired by an interim Chief of Police. We heard community members who spoke during Community Police Oversight Commission's³ meetings and received documentation from interested parties.

Throughout our review process, we received unfettered access to all requested materials, as well as complete cooperation from PPD members who responded candidly to our questions.

This Report is our complete and independent assessment of PPD's investigation and review of this incident.

We first present a **Summary** of the incident created from source materials such as radio broadcasts, available body-worn and in-car camera video footage, forensic evidence, and interviews with involved PPD members, witnesses and experts, including recorded depositions and reports from related civil litigation.

² OIR Group is a team of police practices experts that has provided independent civilian oversight of law enforcement since 2001. Led by Michael Gennaco, a former federal prosecutor and a nationally recognized authority in oversight, OIR Group has worked in jurisdictions throughout California and in several other states. It provides a range of monitoring, auditing, and investigative services that promote accountability with the twin goals of enhancing agency effectiveness and increasing public trust.

Information about OIR Group's work, and examples of its numerous reports, including past reports for the City of Pasadena, can be found at www.oirgroup.com

³ The Community Police Oversight Commission is the City of Pasadena's police oversight entity. Made up of 11 community members, the Commission held its first meeting in January of 2022.

We then turn to the **Criminal and Administrative Investigations**. While we identified positive features of both investigations, such as the commendable work of the assigned administrative investigator, we also identified areas for improvement. First, we found issues with timing: the Administrative Investigation was paused for nearly two years pending conclusion of the Criminal Investigation and much of the civil litigation. As a result of this time lapse and subsequent demands for its completion, the Administrative Investigation was limited and overly reliant on the evidence collected during the Criminal Investigation, which itself had several issues. Those included:

- Issues regarding the management of the crime scene.
- The involved officer was able to move through the crime scene and interact with other officers prior to being sequestered.
- A delay in obtaining officer statements, and officers viewing their own or others body-worn camera video footage.
- Shortcomings in canvassing and collecting complete witness statements by the criminal team led to outstanding questions.
- A concerning characterization of an eyewitness statement repeated in the Department's public Critical Incident Briefing video and subsequent media releases.
- The artificial demand to rush to complete the Administrative Investigation resulted in a too-limited scope and missed opportunities to fully evaluate the decision to engage in a foot pursuit as well as failures in body-worn camera activation.

With regard to PPD's **Use of Force Review Board**, the Board's deliberations did not: 1) sufficiently evaluate Officer Dumaguindin's use of deadly force, including the Board's failure to explicitly consider the Department's multi-factor policy to evaluate the force and; 2) consider and evaluate Officer Dumaguindin's decision to engage in the foot pursuit, or whether his action aligned with Department policy on foot pursuits.

Finally, we identify areas that were not sufficiently addressed within the Review Board discussion and recommend that the Department and Community Police Oversight Commission should consider these on a going forward basis:

- Potential reconsideration of pretext stops, particularly for vehicle equipment violations.
- More clearly defining the role of the police union representative at officer-involved shooting scenes.
- Effective community engagement. This incident suggested that more should be done to enhance current community-police relations.
- Revisiting how PPD releases officer-involved shooting information in the future.
- Evaluation of policies regarding handcuffing of injured subjects and provision of timely medical aid.
- Creation of a clear action plan with feedback mechanisms to ensure that all recommendations identified by the Board and, to the extent that they accept them, the OIR Group, are implemented in a timely manner.

This report is OIR Group's third critical incident review for the City of Pasadena: OIR Group was retained to review the shooting of Leroy Barnes, Jr., in February of 2009 and the March 2012 shooting of Kendrec McDade. In those two prior reports, OIR Group presented a total of 40 recommendations.⁴ In the years since these incidents, PPD implemented some of these recommendations, such as our recommendation that PPD conduct a full, independent Administrative Investigation for every critical incident (see McDade Report, Recommendation 5).⁵

⁴ The McDade and Barnes reports can be found on our website.

- McDade Report at:
https://www.oirgroup.com/_files/ugd/d85a96_32eef3e2500a405fb194a205bbb167bf.pdf
- Barnes Report at:
https://www.oirgroup.com/_files/ugd/d85a96_d118de2c9071448daddda64083cb42ef.pdf

⁵ In the McDade case, PPD determined that additional information developed through an administrative investigation was unnecessary because the criminal investigation had been sufficiently robust. OIR Group did not agree with this decision, as we discussed at length in our report, highlighting areas of inquiry that were not pursued during the criminal investigation that could and should have been addressed in a subsequent administrative investigation.

But, unfortunately, many of our previously identified concerns – for which we provided actionable recommendations – were repeated in *this* incident nearly 11 years (and several Chiefs) later. These range from the tactical decisions of the officers during the incident, such as the decision to engage in a foot pursuit of a subject believed to be armed, to issues with the Criminal and Administrative Investigations, such as scene containment and offering the officers an opportunity to view their body-worn video footage prior to giving a statement. Throughout this report, we note where we have previously identified the issue and cite our recommendations.

And as we have done previously, this report offers additional recommendations designed to improve the Department's performance in future incidents.

Summary of the Incident

On August 15, 2020, and at the direction of PPD leadership, Officers Dumaguindin and Mulrooney were providing supplemental patrol in the area of La Pintoresca Park. According to PPD, at that time, the park and surrounding area was considered a “problem location” for gang activity, drug use, and other crime; the officers had themselves recovered firearms from the area earlier that same week. Officer Dumaguindin was the passenger and Officer Mulrooney was the driver.

Officer Mulrooney observed a vehicle driving without a front license plate making a left turn. Officer Mulrooney made a U-turn to conduct a traffic stop of that vehicle. The vehicle pulled over and then the officers formally initiated the traffic stop.

Officer Mulrooney exited the police vehicle and approached the driver’s side of the vehicle. He asked the driver to roll down all the vehicle’s tinted windows, which the driver did. Once at the driver’s window, Officer Mulrooney told the driver that he stopped the vehicle because it did not have a front license plate. The driver showed the front plate, stated that he had just purchased the vehicle and that the front plate had fallen off.

When Officer Mulrooney asked for a driver’s license, the driver stated that he did not have one; he offered his ID card. Officer Mulrooney asked the driver to turn off the vehicle and then to step out to the curb. As the driver exited the vehicle, he asked Officer Mulrooney why he was being asked to exit. Officer Mulrooney replied, “well, you don’t have a license, so we’re going to step out of the car and talk on the sidewalk.”

Once they were both at the curb, Officer Mulrooney asked the driver, “do you have any weapons on you?” and requested that he turn around for a pat down. The driver turned around, placed his hands behind his back, and allowed Officer Mulrooney to pat him down. Officer Mulrooney conducted a brief pat down.

Meanwhile, Officer Dumaguindin exited the police vehicle shortly after Officer Mulrooney. Officer Dumaguindin later reported that this traffic stop caught him “off guard” because the driver pulled over before the officers formally initiated

the stop. This, he reported, resulted in his delay exiting the police vehicle. He said that he forgot to activate his body-worn camera. Officer Dumaguindin approached the vehicle with a flashlight in his left hand, looked inside the rear interior of the vehicle, and stood by the passenger side of the stopped vehicle. He then engaged the passenger of the vehicle, Mr. McClain.

Officer Dumaguindin later reported that he had never previously engaged with Mr. McClain and did not know anything about his history. Officer Dumaguindin asked Mr. McClain if he had a valid driver's license; he reported that he did so because he overheard that the driver did not have a valid driver's license. Officer Dumaguindin reported that he hoped that the passenger had a valid license and could take over driving the vehicle. Mr. McClain responded that he did not have his identification with him.

Mr. McClain appeared to be passing a cell phone between his hands; on the video from Officer Mulrooney's body-worn camera, a white object can be observed. Mr. McClain seemed to search through his pockets and look around the passenger area of the vehicle. Officer Dumaguindin stated that Mr. McClain seemed nervous and that his behavior "raised red flags."⁶

Officer Dumaguindin then observed that the driver was exiting the vehicle. Moments later, Officer Dumaguindin instructed Mr. McClain to also exit the vehicle.⁷ Officer Dumaguindin opened the passenger door and, as he reported, he attempted to calm the nervous Mr. McClain by explaining exactly what would happen during the incident, including telling Mr. McClain that he would be searched.

Mr. McClain exited the vehicle. Officer Dumaguindin took a step back, away from Mr. McClain and the vehicle. Officer Dumaguindin stated that he did so to assess Mr. McClain. At this time, Mr. McClain did not have any objects in his hands. Both of Mr. McClain's hands were holding the front of his shorts with his

⁶ In a deposition taken on August 11, 2022, for a related civil matter, Officer Dumaguindin reported that Mr. McClain was *not* acting suspiciously when Mr. McClain was seated in the vehicle.

⁷ In one statement, Officer Dumaguindin stated that he removed the passenger from the vehicle because he observed that Officer Mulrooney had removed the driver. In another (August 11, 2022, deposition), he stated that he removed Mr. McClain because he believed that they were going to impound the vehicle and all occupants had to exit the vehicle for them to do so.

left thumb in his waistband.⁸ The available video footage showed Mr. McClain appearing to tuck his right hand into his front waistband as he walked toward the back of the vehicle along the curb.

Mr. McClain turned toward the back of the vehicle and took a step away from Officer Dumaguindin. Officer Dumaguindin reached out his left arm to grab Mr. McClain but could not reach him. Mr. McClain started to run, moving between the rear bumper of the driver's vehicle and the front bumper of the police vehicle. Mr. McClain continued to grab his front waistband. Officer Dumaguindin stepped off the curb and unholstered his duty weapon. Officer Dumaguindin later reported that, based on his training and experience, he believed that Mr. McClain had a concealed gun in his waistband.

As Mr. McClain ran, he pumped his right arm forward and backward as if sprinting, but kept his left arm bent at the elbow, in front of his body and at his waist. Officer Dumaguindin reported that he then clearly observed Mr. McClain holding a firearm in his left hand. Officer Dumaguindin began to pursue Mr. McClain and yelled, "drop it!" Officer Dumaguindin ran with his duty weapon held in both hands with arms outstretched aimed at Mr. McClain.

Mr. McClain ran to the center of the street. He jumped out of his white sneakers and, at that moment, moved his left hand across the front of his body and turned his head to his right. Officer Dumaguindin yelled, "stop right now." Officer Dumaguindin reported that he believed that Mr. McClain was aiming the firearm to shoot at Officer Dumaguindin.

Simultaneously, Officer Dumaguindin fired two rounds while Mr. McClain turned his head forward and continued to run. One round struck Mr. McClain's lower right back and the other grazed his left shoulder.⁹ Mr. McClain ran to the

⁸ In his initial voluntary interview, Officer Dumaguindin reported his perception that Mr. McClain was wearing "gym shorts" with an elastic waistband. In a deposition related to civil litigation, when shown frame-by-frame video footage, Officer Dumaguindin stated that he observed Mr. McClain holding his waistband at what looked to be a "K" of his silver belt buckle (Deposition of Officer Dumaguindin, August 11, 2022, page 107). Mr. McClain was actually wearing black khaki shorts with a black, Michael Kors-brand belt that had a large "MK" silver buckle.

⁹ An autopsy revealed that Mr. McClain was struck twice. One gunshot wound showed an entry point in Mr. McClain's lateral right back, directly below his scapula. This gunshot traveled from back to front, right to left, and upward, eventually exiting through

opposite sidewalk, then continued down the street.¹⁰ Officer Dumaguindin pursued him.

Officer Mulrooney, upon seeing Mr. McClain begin to run, also momentarily jogged behind Officer Dumaguindin. Officer Mulrooney moved toward the center of the street with his hand over his duty weapon but did not unholster it. He paused. After Officer Dumaguindin fired two rounds, Officer Mulrooney broadcasted, “shots fired, shots fired! Code-3 back”¹¹ and “my partner’s in pursuit!” Shortly after, Officer Mulrooney broadcast, “Black male, he’s armed with a firearm. White shirt, black shorts.”

Officer Mulrooney then turned away from the foot pursuit and back to the curb. He commanded the driver to get on the ground and not move. The driver complied while asking, “why you asking me to get on the ground?” Officer Mulrooney stated, “well, your buddy just pulled a gun on my partner.” The driver, seemingly surprised, complied and laid prone on the ground. Another responding officer handcuffed the driver. Officer Mulrooney stated, “you’re not under arrest” and then “you’re being detained.” Officer Mulrooney told the other responding officers, “Dude took off and pulled a gun.”

Meanwhile, Officer Dumaguindin continued to pursue Mr. McClain with his duty weapon unholstered. Mr. McClain ran on the sidewalk, then moved toward the street between parked cars and back to the sidewalk. Officer Dumaguindin reported that he felt something fall from his uniform and briefly looked down.

The PPD and District Attorney’s investigations found there was evidence to suggest that Mr. McClain, while running, threw his firearm across the roadway. A firearm was later recovered from the street in front of La Pintoresca Park (we discuss this in greater detail below).

Mr. McClain’s chest at the level of his nipple. The other gunshot wound was a superficial graze to the left shoulder; the direction was indeterminate.

¹⁰ One witness reported that she heard two shots fired. From her front window that faces the street, she observed a male in a white shirt running with a “gun” in his hand. Another witness saw the foot pursuit but did not mention if Mr. McClain was holding a firearm. Other witnesses did not see the start of the foot pursuit.

¹¹ “Code-3 back” is a request for back-up officers to arrive using emergency lights and sirens.

According to an eyewitness, while running between the parked vehicles, Mr. McClain stumbled and reached both hands out as if to catch himself from falling. This witness stated that Mr. McClain did not have anything in either hand at that moment.

At this point, the buffered portion¹² of Officer Dumaguindin's body-worn video began and showed Officer Dumaguindin pursuing Mr. McClain. A PPD police vehicle, driven by Officer 3,¹³ approached, coming toward Mr. McClain. Officer 3 exited his vehicle, unholstered his duty weapon, and began to run to Mr. McClain.

Approximately 150 yards from the initial traffic stop, Mr. McClain sat down on the grassy area between the sidewalk and the west curb of the street and put his empty hands up above his head. With his firearm still pointed at Mr. McClain, Officer Dumaguindin walked past Mr. McClain toward Officer 3. Mr. McClain laid down and rolled over onto his stomach with his hands outstretched overhead. His white shirt was stained with blood on the lower right side. At this point, Officer Dumaguindin repeatedly tapped at his chest, which indicated that he was activating his body-worn camera.

With his firearm pointed at Mr. McClain, Officer 3 asked, "where's the gun?" Officer Dumaguindin stated that Mr. McClain had "tossed it." Officer 3 then holstered his service weapon and stated, "I'm going hands on" as he put on protective latex gloves. Mr. McClain turned his face toward the officers and said, "I'm passing out." Officer 3 stated "I got you" and "keep your hands out."

As Officer 3 approached, Mr. McClain attempted to roll over and sit up. Officer 3 took Mr. McClain's left arm, placed it behind his back, and instructed Mr. McClain to put his hands behind his back while also stating, "I'm gonna help you." Officer 3 asked, "where's the gun?" Mr. McClain responded that he did not have a gun. Mr. McClain rolled onto his right side with his knees up toward his chest. Officer 3 repeated, "I need your arm" as he grabbed for Mr.

¹² When an Axon body-worn camera is turned on, it is automatically in "buffering" mode. When officers activate their body-worn camera to record a specific event (known as "event" mode), the Axon body-worn camera system retains a visual-only "pre-event buffering" segment that Axon saves with the event. At the time of the incident, PPD had set this pre-event buffering to a 30-second increment.

¹³ We refer to officers and witnesses who have not been publicly named by the City using numbers (e.g., Officer 3 and 4 and so on, and Witness 1, 2, and so on).

McClain's right arm, which was tucked under his body. Officer 3 stated, "stop reaching" as he tried to pull Mr. McClain's right arm out.

Officer Dumaguindin holstered his service weapon, dropped down to one knee, and placed his hand on Mr. McClain's upper back, then also grabbed Mr. McClain's right arm and placed it behind his back. The officers handcuffed Mr. McClain.

Meanwhile, approximately six individuals had approached the scene. They yelled at the officers to help Mr. McClain and questioned why the officers had handcuffed the bleeding subject. Officer Dumaguindin stood up and unholstered his Taser as more people arrived while continuing to yell. One bystander asked, "should I call 9-1-1?" as others aggressively approached Officer Dumaguindin.¹⁴ Officer Dumaguindin repeatedly yelled, "back up!" as he displayed his Taser.

Officer 3 placed his hands on Mr. McClain's lower back wound and stated, "I'm applying pressure." As the crowd yelled at the officers to care for Mr. McClain, Officer 3 responded, "I'm trying, I'm trying" and then, to Mr. McClain, "I'm here for you" and "stay with me," as he bent down near Mr. McClain's face. Officer 3 rolled Mr. McClain slightly to the right to move his face away from the ground. Officer Dumaguindin paced between the gathered individuals, Officer 3, and Mr. McClain, eventually moving to stand behind Officer 3 and Mr. McClain.

By this time, approximately five additional officers arrived and created a makeshift skirmish line¹⁵ between the gathered individuals and Mr. McClain and Officer 3.

Another officer arrived and knelt next to Mr. McClain and, with Officer 3's help, rolled Mr. McClain onto his side. Officer 3 stated, "I haven't searched him" and "give him a sweep." Officer 5 approached and instructed the officers to turn Mr.

¹⁴ Video footage of bystander as reported by Fox 11 Los Angeles news accessed online at <https://www.foxla.com/news/attorney-police-shooting-of-anthony-mcclain-unjustified>

¹⁵ A skirmish line is a tactical law enforcement formation used in crowd management: it is a line of officers standing shoulder to shoulder, facing a crowd, intended to block off an area or push a crowd in a set direction. Typically, officers would wear and hold protective gear, such as helmets, riot batons, and/or shields. Here, the line was makeshift, and officers did not have any of the protective gear typically associated with skirmish line deployment.

McClain onto his back to apply pressure to the front wound. The officers did so. Officer 5 placed her hands over Mr. McClain's chest at the exit wound and spoke words of encouragement to Mr. McClain. Officer 3 placed his hands on the lower back wound.

Pasadena Fire Department personnel arrived at Mr. McClain's location approximately five minutes from the initial call requesting a rescue ambulance. With the help of officers, the paramedics placed Mr. McClain on a gurney and moved him toward the ambulance. The officers kept their hands over the wounds until Mr. McClain was loaded onto the ambulance. Officer 3 asked, "hey, you guys did a search?" and Officer 5 responded, "barely."

Approximately seven minutes from his surrender on the grass, Mr. McClain was transported to the hospital, accompanied by Officer 5. After surgical attempts to save him, Mr. McClain was pronounced dead at the hospital. The cause of death was determined to be primarily blood loss and a punctured lung.

Meanwhile, Officer Mulrooney, who was still at the location of the traffic stop, instructed another officer to search the driver's vehicle and said, "I just gotta check on my partner." He entered his own police vehicle and drove it towards the officer-involved shooting location. He came upon a group of officers and bystanders, parked, and exited his vehicle. Officer Mulrooney approached Officer Dumaguindin and asked, "did we recover the 417?"¹⁶ Officer Dumaguindin responded, "he tossed it." Officers Dumaguindin and Mulrooney moved past the growing crowd and walked along the sidewalk illuminating the ground with their flashlights.

Officer Dumaguindin walked into and out of a gated front yard, then continued up the street. He looked at his firearm's magazine¹⁷ while walking. He then bent over in the roadway and picked up an object, which was later determined to be his hobble restraint device.¹⁸ Officer Dumaguindin later reported that this

¹⁶ "417" is the section of the Penal Code for "person with a gun" or "brandishing a firearm." Officers often use "417" to refer to the firearm itself. Here, when officers referenced "the 417," they meant the firearm brandished by Mr. McClain.

¹⁷ A firearm's magazine is the device or holding area where ammunition is stored before being fed into the chamber of a firearm.

¹⁸ A "hobble restraint" is a device used to limit the movement of a subject's arms and legs during transportation. It is typically black and looks much like a long leash.

had fallen off his uniform during the foot pursuit. Officer Dumaguindin de-activated his body-worn camera to speak to another officer.

Officer Mulrooney approached a supervisor, reported that the firearm was still outstanding and continued to search for the firearm. Officer Mulrooney then broadcasted asking units to contain the crowd to the north of Mr. McClain's location because they had an outstanding firearm.

Meanwhile, Officer 4, who had been on the makeshift skirmish line, approached a supervisor and suggested that they call for outside agency assistance. The supervisor directed him to speak to Officer Mulrooney. Officer 4 asked Officer Mulrooney, "where's the 417?" When Officer Mulrooney responded, "we don't know," Officer 4 walked back to the area of the gathered crowd and officers.

Officer Mulrooney de-activated his body-worn camera "to talk to [his] supervisor."

Officer 4 then turned to walk in the roadway. As he walked, he received a phone call and de-activated his camera.¹⁹ Forty-five seconds later, Officer 4 re-activated his body-worn camera. He was standing near the curb, approximately 50 yards north of the La Pintoresca Park entrance driveway.²⁰ According to Officer 4, he was walking along the roadway, "happened to look down" and found a firearm. Moments later, another officer stated, "[Officer 4] found it," referring to the firearm laying in the roadway. Officer 6, who had responded to the scene, took over protecting this evidence until an evidence technician collected and booked it.

Officer Dumaguindin reported that he typically kept his hobble restraint device in his uniform pant pocket with part of the device hanging out for easy access; this placement caused it to fall out when he was running.

¹⁹ Officer 4 reported that he received a call from an individual associated with the Pasadena Police Officer's Association (PPOA); at that time, Officer 4 was a union representative with the PPOA. He de-activated his camera, he reported, because he was having a "confidential conversation" regarding the officer-involved shooting. We discuss this in detail later in the report.

²⁰ We calculated this timing using the timestamp of de-activation and the timestamp of re-activation on Officer 4's body-worn camera footage.

The firearm was later determined to be a .40 caliber Polymer80 semiautomatic handgun.²¹ An unexpended cartridge was found on the ground next to the firearm. The firearm's magazine was loaded with seven rounds of the same type of ammunition. The firearm was broken, with the slide partially detached. It is unclear, and the forensic evaluation did not seek to determine whether the firearm was ever operable or when/how the firearm was broken. A subsequent DNA analysis found Mr. McClain's DNA on the firearm.²²

Meanwhile, Officer Dumaguindin met with a supervisor and provided a recorded public safety statement.²³ The supervisor then transported Officer Dumaguindin to the Pasadena Police Department Detective's Bureau, where he was sequestered before being released to his home.

The driver was transported to the Pasadena jail where he was interrogated and later released.²⁴ The driver's vehicle was impounded. A cellular phone belonging to Mr. McClain was recovered from the front passenger seat. Two

²¹ Also known as a "ghost gun," a Polymer80 is a self-made firearm that is typically not registered or has a serial number. It can be made up of parts from various other firearms.

²² The DNA analysis matched Mr. McClain's DNA to the DNA recovered from several parts of the firearm. Officers 2 and 4 also submitted DNA for the analysis; the DNA analysis determined that the DNA of these officers did not contribute to the DNA recovered from the firearm. At the direction of his attorney, Officer Dumaguindin declined to provide a DNA sample for analysis.

²³ A public safety statement is a set series of questions related to an officer-involved shooting to gather basic information, such as the number of rounds fired, the direction of the rounds, any if there are any outstanding subjects. PPD uses the application Apex IRIS, which provides a checklist of public safety statement questions to ensure that the public safety statement is complete.

²⁴ The driver was initially arrested for felon in possession of a firearm. The driver was released under PC 849(b) because there were insufficient grounds for a criminal charge. We discuss this further in our section "Considerations Going Forward." For reference, PC 849(b) states:

A peace officer may release from custody, instead of taking the person before a magistrate, a person arrested without a warrant in the following circumstances: (1) The officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.

other cellular phones were located in the vehicle; these were also booked as evidence.

Meanwhile, people continued to gather around the crime scene, and especially in the area of La Pintoresca Park. Units from various surrounding agencies, including the Los Angeles Sheriff's Department and South Pasadena, Altadena, and Glendale Police Departments responded to assist with crowd control.

PPD Detectives responded to the scene to initiate the Criminal Investigation. Members of the Department's Professional Standards Unit also responded, as required by the Department's administrative review process. Officers set up crime scene tape to control entry into and out of the scene. Others canvassed the area for witnesses and evidence.

One day later, on August 16, Officer Mulrooney provided a voluntary statement to PPD Detectives. On August 17, Officer Dumaguindin provided a voluntary statement to PPD Detectives.

Five days later, on August 20, 2020, PPD released a Critical Incident Briefing, a narrated account of the incident that included clips from body-worn and in-car camera footage, a photo of Mr. McClain and the firearm, and footage from a surveillance camera in La Pintoresca Park. PPD also issued a related Press Release and, in accordance with state law,²⁵ released all associated video and audio recordings collected at that time.

In the following days, some members of the community erected a memorial to Mr. McClain across the street from La Pintoresca Park. The Pasadena Department of Public Works removed the memorial in late October 2020 at the City's direction. It was immediately rebuilt by some members of the community. Public Works removed it again. In November 2020, after discussions with leaders of the Black community, the City sanctioned a permanent memorial to Mr. McClain: a wisteria tree planted in La Pintoresca Park.

PPD Detectives submitted the criminal investigation to the District Attorney on February 1, 2021. On November 5, 2021, the assigned attorney completed the initial review of the file, and the case was sent up the chain in the DA's Office. On March 31, 2022, the DA issued his decision, stating that the shooting was

²⁵ Per California Assembly Bill 748, effective July 1, 2019, law enforcement agencies have 45 days to release all recordings associated with a critical incident.

legally justified. On April 1, PPD resumed its internal Administrative Investigation.

Officer Dumaguindin provided a second statement for administrative purposes on July 13, 2022.

PPD completed the Administrative Investigation in August 2022. The Department's Use of Force Board met on August 10, 2022, and found that Officer Dumaguindin's use of deadly force was consistent with the Department's use of force policy. The Department further found that Officer Dumaguindin violated its body worn activation policy by failing to timely activate his body-worn camera.

Evaluation of PPD's Investigations

When critical incidents occur, PPD's policy requires that two investigations occur: a Criminal Investigation, which investigates the incident for any criminal culpability, and an Administrative Investigation, which evaluates officers' compliance with Department policies and procedures.

Upon being notified of the incident, PPD's Robbery Homicide detectives responded to the crime scene to conduct the Criminal Investigation and personnel from the Department's Professional Standards Unit (PSU) responded to observe and assist. From that point forward, however, the Administrative Investigation was paused while the Criminal Investigation proceeded.

Investigation Timing & Process: A Matter of Practice?

Before we detail the investigative issues themselves, it is important to note that many of the identified concerns stem from timing and process. As detailed above, Pasadena's investigative process waits for the criminal side – both the Department's Criminal Investigation and the Los Angeles County District Attorney's decision letter – to be completed before resuming the Department's Administrative Investigation in earnest.²⁶

In this case, the DA issued its decision letter on March 31, 2022, and PPD immediately resumed its Administrative Investigation. But, by the time it resumed many months later, it was practically too late for the Administrative Investigation to remedy some of the issues that we identified in the Criminal Investigation (and discuss starting at page 20). And the long delay in resuming the Administrative Investigation created a demand to rapidly complete it; this pressure to complete the investigation likely contributed to many of the issues

²⁶ In the interim, the City reached a civil settlement agreement with Mr. McClain's children for \$7.5 million in 2021.

that we identify throughout this report, such as the limited scope of interviews, allegation framing, and accountability.

This “process” protocol is a matter of practice for many jurisdictions, and not law or policy. While some departments’ ability to engage in simultaneous criminal and administrative investigations are hampered by agreements with police unions, many law enforcement agencies, including the Los Angeles Police Department, choose to conduct the administrative investigation parallel to the criminal investigation. In fact, the language of PPD’s own policy on Officer-Involved Shooting investigations (Policy 310) does not prevent the investigations from happening simultaneously, assuming that a distinct team is used to conduct each.²⁷

Some have maintained that it is better to wait until the conclusion of the Criminal Investigation and until all civil litigation is concluded before the Police Department begins any substantive Administrative Investigation. The argument is that information obtained as a result of the Criminal Investigation and the civil litigation can be used to better inform the Administrative Investigation.

In our view, the most effective way to efficiently and timely conduct both Criminal and Administrative Investigations is for the criminal to begin while the investigators assigned to the administrative side respond to the scene and are regularly briefed on what the criminal investigation is learning. If involved officers provide voluntary statements on the date of the incident, the administrative investigators can defer an administrative interview until the conclusion of the criminal investigation. If not, the administrative investigator should obtain a compelled statement the date of the incident and then stand down until the criminal investigation is submitted to the District Attorney. Upon that submission, the Administrative Investigation should begin in earnest and not delay until either the District Attorney decision letter is issued, or civil proceedings are concluded.

RECOMMENDATION 1

PPD should revise its investigative protocols to ensure that its Administrative Investigation of a deadly force incident is not delayed because of either prosecutive review or civil proceedings.

²⁷ Policy 310 is available online at <https://ww5.cityofpasadena.net/wp-content/uploads/sites/57/2017/02/Policy-310-Officer-Involved-Shooting.pdf>

We now turn to our evaluation of these two investigations. While we found room for improvement as discussed herein, we also identified positive features:

- Both investigative teams participated in a scene walk-through with Officer Mulrooney on the evening of the incident.
- Available body-worn camera was immediately uploaded, appropriately tagged, and preserved by Detectives.
- On August 16, 2020, Detectives obtained and preserved video recordings from the La Pintaresca Park Teen Center. This particular surveillance technology was outdated: the camera recorded approximately one frame every three seconds rather than a continuous stream of video. This caused the video footage to appear “choppy” by modern-day standards, which caused some to contend that the Teen Center surveillance footage had been manipulated or edited to remove certain moments of video stream. However, there was no evidence to suggest that that this footage was manipulated.
- Also on August 16, 2020, Detectives searched the driver’s impounded vehicle and recovered and booked three cellular telephones from its interior: one belonging to Mr. McClain from the front passenger seat and two belonging to the driver.
- After a lengthy pause, the Administrative Investigation resumed substantively after the District Attorney provided a decision letter.
- The Department sought an uninvolved supervisor to conduct the Administrative Investigation, a difficult task given the sheer number of personnel called out to the scene on the night of the incident. This supervisor, who had previously served in Internal Affairs, took on the assignment as a collateral duty. His performance was commendable, especially considering the truncated time frame dictated to him.
- Despite being urged to complete the investigation quickly, the investigator determined that it was essential to interview Officers 4 and 6 related to recovery of the firearm. Though this delayed the completion of the investigation and the Board hearing, we commend this decision as it helped answer essential questions necessary for a robust review of the matter.

Align Policy with Practice for Criminal Investigation: Sheriff v. PPD

As we noted, PPD's Robbery Homicide Detectives responded to the scene to conduct the Criminal Investigation. While we identified areas of improvement, we found their work overall to be detailed and of high quality.

However, because the incident resulted in Mr. McClain's death, PPD's current policy requires that PPD "relinquish" the criminal investigation to the Los Angeles County Sheriff's Department. In this case, the Chief determined that the investigation would be best conducted in-house by Robbery Homicide Detectives (which is the Chief's apparent right per policy).²⁸ We learned that this has been PPD's protocol for several years now. We recommend that PPD consider aligning its policy with practice.

RECOMMENDATION 2

PPD should align Policy 310 with its current practice of conducting criminal investigations of critical incidents / officer-involved shootings in-house and remove the expectation that the Los Angeles Sheriff's Department conduct these investigations.

Crime Scene Management Issues Led to Allegations of Evidence Tampering

We identified issues with on-scene management that deserve attention especially because this incident prompted speculation (and controversy) about evidence recovered from – and officers' actions on – scene.

Overall, our review suggests that PPD handled the crime scene in ways that should have been remedied immediately by command level supervisors on scene and, later, identified by the Administrative Investigation as an area for

²⁸ Policy 310 states: "The Pasadena Police Department is responsible for the completion of criminal and administrative investigations related to officer involved shooting within their jurisdiction. The Department will relinquish the responsibility of criminal investigations to the Los Angeles County Sheriff's Department (LASD) for incidents resulting in injury or death. This decision is the responsibility of the Chief of Police, or his/her designee."

supervisor accountability and improvement. That being said, we did not find evidence that any on-scene PPD personnel intended to compromise the crime scene in a negative way. We found no evidence, for example, to support allegations that the firearm located at the scene was planted. And the presence of individuals who expressed hostility to the officers complicated the preservation of the scene. However, as detailed below, Officer Dumaguindin did compromise the scene by picking up equipment that had fallen from his person during the pursuit and Officer Mulrooney also compromised the scene by driving his police vehicle through the path of the foot pursuit.

Recognizing the unique challenges presented by this incident, the scene itself was not appropriately preserved by the supervisors -- and later the Detectives -- who responded to the scene. While this is problematic for any type of incident, it is more concerning in a critical incident. And the failure to effectively manage the scene contributed to some of the public's concerns about evidence collection. For example:

- Shortly after the shooting, Officer Mulrooney drove his police vehicle from the initial traffic stop location through the crime scene to Officer Dumaguindin's perceived location. Movement of the vehicle from its initial location, particularly by driving it through an active crime scene, violated general principles of evidence preservation.
- None of the four responding supervisors assigned themselves as the Incident Commander, resulting in overall scene management concerns.
- Initially there was no systematic plan (e.g., grid search) for searching for Mr. McClain's firearm. On body-worn camera from that evening, we observed officers walking at random up and down the roadway while others searched front yards and under parked cars. Ultimately, Officer 4 happened upon the firearm, though the footage showed several officers walk by its location.²⁹

²⁹ Once Officer 4 discovered the firearm, he appropriately set Officer 5 in charge of standing next to the firearm until Forensics properly photographed and tagged it for evidence. And, in later body-worn camera clips, we observed a careful, systematic sweep of the roadway by a line of officers from the area of the original traffic stop along the roadway searching for additional evidence such as shell casings.

- Members of the public walked into and through the crime scene in the moments after the shooting when the initial perimeter was set too small.
- Poor placement of the Command Post resulted in officer safety issues as the crowd grew, as well as staging and deployment issues as other agencies' personnel responded to provide mutual aid.

The Review Board identified several of these concerns during their review session. In its final finding memo, PPD recommended creating Department-wide training for line-level supervisors related to crime scene management, noting that the supervisors who responded to the scene were relatively new to their supervisory roles at the time of the incident.³⁰

While we agree with this larger training recommendation, it would also have been important to have formally briefed involved scene supervisors on their specific missteps. A more effective approach is to identify training deficiencies that the whole Department can benefit from *and also* target briefing to individual supervisors who were directly responsible for the crime scene management. We urge PPD to ensure that the individualized briefings occur as part of the after-action requirements.

RECOMMENDATION 3

PPD should ensure that any after-action plan relating to supervisory performance issues include a supervisor briefing on decisions that went well and decisions that could have been improved.

Involved Officer Not Sequestered and Supervised

To the detriment of the investigation, Officer Dumaguindin was not immediately sequestered, moved through the crime scene, moved evidence (his hobble restraint device), and spoke with other officers before providing a Public Safety Statement to a supervisor.

³⁰ We noted that this recommendation has both a defined responsible party – the Patrol Division Commander – and a timeframe for implementation – before the end of 2022. However, PPD reported that due to significant Department staffing transitions, this and other recommendations have not yet been implemented. As we discuss later, a clear action plan with a feedback mechanism and deadlines for completion is advisable.

While in this case the continued on-scene presence and assistance of the involved officer might have been necessary in order to try to locate the gun that had been reportedly tossed during the pursuit, the actual search of the gun should have been conducted by other officers with information provided by the on-scene officer outside of the perimeter of the crime scene. If that strategy did not immediately locate the gun, the involved officer should have been escorted through the scene by a supervisor, providing guidance to the officer not to disturb the evidence.

RECOMMENDATION 4

PPD should revise its critical incident protocols to ensure that once an officer-involved shooting scene is secure, PPD should direct any available officer to immediately sequester involved officers and prevent those officers from self-assigned roles in actual evidence collection.

RECOMMENDATION 5

PPD should revise current policy to explicitly require that all involved officers, to the extent possible without compromising public safety, shall be observed and sequestered until they are able to provide a Public Safety Statement to a supervisor, and then removed from the immediate scene of an officer-involved shooting, unless there is a special need to assist with evidence location.

A responding supervisor eventually contacted Officer Dumaguindin, asked the required public safety questions using the Apex IRIS application, and kept Officer Dumaguindin near a police vehicle until he was transported to the station, where Officer Dumaguindin was photographed and released home to rest.

Delays in Obtaining Involved & Witness Officers' Statements

Officer Dumaguindin was released home without giving either a voluntary or administrative statement,³¹ and was not called back to provide a statement until

³¹ It is important to note that officers, like any civilian, have a right not to provide a statement during criminal investigations. In this incident, Officer Dumaguindin agreed

two full days after the incident. Similarly, after providing a scene walk-through, Officer Mulrooney was also released; he returned to provide a statement the following day. And Officers 3, 4, and 6 did not provide statements until nearly two years later.

It is critical to interview involved and witness officers immediately to obtain critical information about the shooting and witness officers' actions, decision-making, and observations. Accordingly, obtaining a "same shift" statement is essential to any effective officer-involved shooting investigation because of the inherent value of a "pure" statement that is contemporaneous and untainted by subsequent input.

Moreover, such delays are contrary to investigative protocols in other contexts that they fuel the perception among many segments of the community that "police investigating police" provide their colleagues with advantageous treatment not extended to members of the public.

RECOMMENDATION 6

PPD should continue to sequester and monitor involved officers until they provide an interview prior to being released from duty on the date of the incident.

We discussed this concern at length in our review of the McDade incident, where PPD waited 36 hours to interview the involved officers. In that incident, the delay was due to concerns about officer fatigue, and officers were allowed to retire to a hotel for rest, while still being sequestered and monitored. In that review, we recommended that PPD change its protocols to ensure prompt interviews of officers involved in shootings.³²

This recommendation was not accepted. We renew our recommendation that the Department amend its policy to require timely interviews of involved and

to be interviewed for the criminal investigation, but the interview did not occur until two days after the incident. This is yet another reason to conduct simultaneous criminal and administrative investigations; officers *can* be compelled to provide an interview for administrative purposes. If an officer declines to provide a voluntary statement to criminal detectives on the date of the incident, an administrative team can and should immediately compel and administer an administrative interview prior to releasing the officer from duty. And so long as compelled statements are "walled off" from the detective's investigation, there is no prejudice to the criminal investigation.

³² OIR Group review of McDade incident, Recommendation 17, pages 58-59.

witness officers, regardless of whether the interview is criminal or administrative.

RECOMMENDATION 7

PPD should amend its critical incident investigation policy to require prior to “end of shift” interviews of involved and witness officers, except in extraordinary circumstances, such as when an officer is significantly injured.

Officers Were Allowed to Review Video Footage Before Providing Statements

Before providing interviews, officers reviewed their own or other officers’ body-worn camera video. As we addressed in both of our prior reviews, allowing officers to view video footage prior to providing a statement is not best practice. Rather, officers should provide a “pure” statement, followed by the opportunity to review video footage and then clarify their statement if necessary.

As we detailed in our report related to the McDade shooting:

Viewing audio tapes or video footage before being interviewed is likely to distort pure recall either consciously or subconsciously. Studies by experts in witness memory have repeatedly established that subjecting witnesses to external evidence can cause them to supplant or modify what they actually recall with what they see from the video evidence. As a result, allowing personnel to view a video or listen to audio prior to interviewing the involved officers eliminates the ability to obtain a pure unvarnished account from them. A view and listen first policy also can create the impression that the Department is attempting to influence the officers' accounts so that they can be tailored to the audio and video evidence that has already been gathered. Such an impression will reduce confidence by some in the Department's ability to objectively investigate deadly force incidents. Finally, a view and listen first policy is not consistent with current investigative practices PPD employs on a

*daily basis. For example, bank employee victims are not shown surveillance videos of a robbery prior to being interviewed.*³³

And while there is extensive research³⁴ for this point of view, PPD's agreement with its police union, the Pasadena Police Officers' Association, prevents the Department from accepting our recommendations and implementing this practice: since approximately 2010, the Department has provided available recordings to officers prior to interviews.

Today it has been nearly 12 years after the initial agreement with the PPOA and eight years after we last issued this recommendation. Our perspective remains the same. Again, we recommend that the Department reconsider its practice of allowing officers to view video footage before being interviewed. We recommend that the City and PPOA consider revising their agreement to reflect best practices that have been adopted by progressive policing agencies nationwide.

RECOMMENDATION 8

The City should revisit its agreement with the PPOA requiring the Department to preview recorded evidence with officers prior to being interviewed about officer-involved shootings.

Witness Canvassing and Interviews Were Incomplete; No Follow-up Occurred

An important step in investigating critical incidents is the timely and complete identification and interview of all possible witnesses, and PPD's policy details the process.³⁵ The Department itself identified concerns with the way in which

³³ OIR Review of McDade incident, page 17.

³⁴ See, for example, "What Should Happen After an Officer-Involved Shooting? Memory Concerns in Police Reporting Procedures", *Journal of Applied Research in Memory and Cognition*, 5 (2016), Rebecca Hofstein Grady, Brendon J. Butler, and Elizabeth F. Loftus.

³⁵ PPD's Policy 310 states:

witness canvassing occurred on the night of the incident (such as that the officers did not appropriately separate witnesses and interview them individually), and recommended training on interview techniques Department-wide.³⁶

But our review identified additional issues with witness canvassing and interviews, ones that may have had a detrimental impact on both the actual completeness of the final investigation and the community's perception of the outcome. And we noted that the Administrative Investigation did not appropriately identify or seek to remedy these concerns.

First, we found that at least one interview conducted on the initial canvass was incomplete, and neither Detectives nor the administrative team sought to conduct any follow-up. For example, we found the interview of Witness #5, the

Because potential witnesses to an officer-involved shooting or other major incident may become unavailable, or the integrity of their statements compromised with the passage of time, a supervisor should take reasonable steps to promptly coordinate with criminal investigators to utilize available personnel for the following:

(a) Identify all persons present at the scene and in the immediate area.

(a) A recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.

(b) Any potential witness who is unwilling or unable to remain on scene for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Officers should attempt to identify the witness prior to his/her departure without detaining him/her for the sole purpose of obtaining identification and statements.

³⁶ PPD noted:

The administrative investigation revealed that [...] officers did not separate all witnesses when getting their statements. In all police investigations, officers should collect independent statements from each witness to obtain impartial and complete statements. Additionally, officers should determine where witnesses were situated when they observed the incident. Doing so will lend to their statement's veracity and help investigators recreate the crime scene.

The Review Board determined the FTO program can ensure training officers are teaching proper interview techniques. Additionally, patrol corporals can incorporate interview techniques in patrol briefing training.

only eyewitness who reported seeing Mr. McClain with a gun in his hands, to lack thoroughness. This witness reported seeing Mr. McClain running with “a gun,” but, according to the officer’s report, could not recall which hand the gun was in. The interview did not pursue any additional questions related to the firearm, such as if the witness observed Mr. McClain discard the gun.³⁷ There is no indication that this key eyewitness was questioned further to obtain more detailed information about the firearm.

We highlighted these same concerns in our review of the McDade incident. In that review, we noted that two eyewitnesses were not asked critical questions that might corroborate or contradict the officers’ accounts of the incident. In that report, we recommended that “Pasadena PD should design investigative protocols that would ensure that witnesses were questioned about [their] observations,”³⁸ which the Department then included in its policy.

RECOMMENDATION 9

PPD should direct officers to follow PPD investigative protocols when conducting any investigation. When deficiencies are identified, PPD should conduct refresher training on these investigative protocols immediately.

RECOMMENDATION 10

PPD should consider developing policy setting out expectations for interviews, including the prohibition on interviewing witnesses together.

Further, there were several potential witnesses who were not interviewed or identified in either the Criminal or Administrative Investigations. In reviewing available video, we observed at least two additional possible eyewitnesses³⁹ and people recording the incident after Mr. McClain fell (it is unknown when exactly they arrived or when they began filming). And, over the course of

³⁷ The witness stated that she dropped to the ground and officers did not press for additional information.

³⁸ OIR Review of McDade incident, Recommendation 4, page 23.

³⁹ In the PowerPoint used during the Review Board, the investigator referred to “Witness 8,” who is apparently one of the two additional eyewitnesses. However, this was the only reference to a “Witness 8.”

several press conferences, depositions, and public comment period of Commission meetings, attorneys representing members of Mr. McClain's family cited numerous eyewitness accounts of individuals who were allegedly not interviewed by the Department.

We do not dismiss out of hand the challenges of identifying witnesses and obtaining statements after an officer-involved shooting, particularly when some are overtly hostile to police in the emotional tumult that may follow the incident, either immediately or longer-term. We also recognize that other immediate priorities, such as securing the scene and safety, may take precedence.

However, once the situation is stable, investigators should make a concerted effort to locate these witnesses through various means, even if this cannot effectively occur until the ensuing days. And if witnesses prove to be uncooperative, those efforts to identify witnesses should be thoroughly documented. Here, we did not observe, nor did the investigation document, any attempts to interview, collect contact information, or otherwise connect with potential witnesses.

During our review, PPD reported to us that attempts to contact individuals who might have video footage or witnessed the incident were unsuccessful, as many were uncooperative or unwilling to speak with police. In the subsequent days, the Department stated it attempted to contact additional potential witnesses, but the community remained largely uncooperative.

This was also the case when PPD attempted to interview witnesses to the Barnes shooting. In that report, we wrote:

Crucial to any thorough officer-involved shooting investigation is a timely canvass and interviews of potential civilian witnesses to the incident. Moreover, repeated visits to residents in the vicinity of the shooting should be undertaken to ensure that all potential witnesses are identified and interviewed. The witness canvass in this case proved particularly challenging because of the existence of a number of potential hostile witnesses and the dynamic situation faced by the responding officers.⁴⁰

In the Barnes case, however, PPD engaged in a thorough and sustained effort to locate and interview witnesses. In that case, we concluded that, despite the

⁴⁰ OIR Group Report regarding Barnes OIS, page 16.

dynamic and hostile situation, “the witness canvassing conducted in this case [was] thorough and sustained.” Even if the Department’s efforts might have been unsuccessful in gaining the cooperation of potential witnesses, it is critical for the agency to try to solicit witnesses’ cooperation and document those efforts.

Unlike the Barnes case, which happened in 2009, this incident happened in 2020, a time of technological advances in video evidence collection. Today, law enforcement can access publicly available information, such as eyewitness videos, on social media.⁴¹ Departments can also advise that witnesses can report anonymously; PPD uses this functionality for crime reporting, including a link where community can upload videos directly into the Department’s evidence system.

RECOMMENDATION 11

PPD should make every effort to contact potential witnesses to critical incidents and gather all available evidence, including using technology to allow witnesses to report or submit information anonymously and conducting a search for publicly available video content.

Eyewitness Account was Not Fully Characterized in Public Statements

In the early morning hours of the following day, officers met with two women. Initially, the meeting appeared to be about a male who was arrested during the crowd confrontation.⁴² While they were speaking, officers requested identification from both people – which commonly occurs to assist in documenting names or addresses – and then, ran records checks on at least one of them and the license plate of their vehicle. Officers did not articulate

⁴¹ A cursory search of Facebook by OIR Group, for example, yielded videos filmed on scene and eyewitness accounts in comments.

⁴² This meeting began with one officer asking the women if a recovered black Samsung cell phone belonged to either of them. The women believed that the cell phone belonged to their friend, who they named. That person, they stated, had thrown the cell phone at officers on the skirmish line earlier that evening. This cell phone was logged into PPD Evidence by the officer, where it remains unclaimed and unidentified today.

why they ran this check. It is possible that the officer ran the vehicle license plate to establish the vehicle's owner. The officers had found car keys that one of the witnesses claimed were hers for the vehicle. Upon running the plate, officers returned the car keys. According to PPD, this practice is commonly used to establish identity and ownership.

While these women continued to speak with officers that evening, running a records check can have a chilling effect on individuals' willingness to speak openly with police.

RECOMMENDATION 12

In the recommended training, PPD should make clear that witnesses are not suspects: officers should not run a witness' identity or vehicle plates unless officers can articulate a rationale for doing so.

But, toward the end of the meeting, one of the women (Witness #7) stated that she had observed part of the foot pursuit. Witness #7 casually stated that when she was seated in her parked car watching a movie, she heard gunshots and observed Mr. McClain run by her parked car with blood stains on his white shirt. She initially stated that Mr. McClain had "thrown his shit" over her car,⁴³ but then immediately recanted her statement, saying that she had heard from others that Mr. McClain had thrown his firearm, but did not see that action herself. She then stated that she knew to keep her head down when she heard gunshots.

Upon hearing that she was potentially an eyewitness to a critical incident, these officers did not engage in any formal witness interview protocol of any kind. The potential witnesses were not separated, a fundamental violation of interviewing protocols, and spoke over each other in a confusing manner. Officers then simply ended the interaction.

This witness' statement was critical, especially given the subsequent controversy about whether Mr. McClain had a firearm and how it came to be in the roadway near the park. But, upon hearing her recant her initial statement, the officers did not ask follow-up questions, nor did we see any documented

⁴³ "[Throw] his shit" was meant to refer to Mr. McClain throwing a firearm across the hood of her parked vehicle.

attempts to re-interview this witness by the Detectives conducting the Criminal Investigation.

A follow-up interview may have provided much-needed clarification. We reviewed a deposition of this witness taken during related civil litigation in which the witness clarified that she had *not* observed Mr. McClain with a weapon, nor had she observed Mr. McClain throw a weapon. In that deposition, the witness stated:

I never saw anything of that nature. I didn't even know there was a weapon involved. So that's what I wanted to clear up because I was just repeating gossip that was going around in groups that night. I was trying to put it together in my head.

I had no recollection or no knowledge of a weapon. I didn't see any weapon my entire time being there, even when I got out of the car. I never looked -- never seen anything.⁴⁴

More importantly, the Department repeatedly mischaracterized her statement, both internally and publicly, by failing to expressly note that she had almost immediately recanted this statement. For example, in the publicly released Critical Incident Briefing video, which we discuss further below, the narrator reported that this witness observed Mr. McClain “throw the firearm.” PPD again referenced this witness and her observation of the firearm in an October 1, 2020, media release regarding DNA analysis of the firearm.

In fact, the only place we located a complete characterization of her statement was in the Review Board’s findings memo, which, while publicly released, is an internal Department document.⁴⁵

⁴⁴ Deposition of witness identified by Department as “Witness #7” for *Williams v. City of Pasadena, et.al.* August 20, 2021.

⁴⁵ When the memo first introduced witness statements on pages 7 and 8, the Board accurately represented her statement. But even here, PPD later mischaracterized her statement; in its discussion of “Recovery of [Mr. McClain’s] Handgun,” the Board memo wrote:

The mischaracterization of statements, especially when they favor the officer's version of events, can and does erode the community's trust that the investigation will be a fair accounting of the information gathered. And despite there being strong DNA evidence linking Mr. McClain to the gun recovered along the path of the foot pursuit, when a statement is produced that is incomplete, even undisputable evidence comes under undue scrutiny because of that loss of trust.

The witness herself highlighted this concern about the incomplete account of her statement repeatedly in her deposition.⁴⁶

RECOMMENDATION 13

When witness statements are paraphrased or otherwise referenced in an officer-involved shooting investigation, press releases, or other media, PPD should ensure that they are a complete representation of the witness' statement.

Scope of Administrative Investigation was Too Limited

This incident was initiated by the actions of two officers, Officers Dumaguindin and Mulrooney, but resulted in the response of numerous PPD officers and supervisors. The Department reported that the high personnel count coupled with the community's desire for a rapid Administrative Investigation limited its capacity to evaluate the actions of every member who responded to the scene.

Also, Witness #7, who said she was sitting in her vehicle on the east side of Raymond Ave, saw [Mr. McClain] throw the gun over her car as he ran from [Officer Dumaguindin].

While this sentence has a footnote advising the reader to see her full statement on the earlier pages, the statement as written is not a complete account of what the witness stated. The Board also misrepresented the witness' statement in footnote 5 of its memo, where it used her statement as part of the "substantial evidence" to support the theory that Mr. McClain threw his gun across the street.

⁴⁶ The witness stated that she felt that the Department had misrepresented her statements in press releases and media reports by only reporting her initial statement and not her self-correction moments later.

To “speed up” the outcome, we were informed, the Administrative Investigation’s scope was reduced only to those officers who played a direct role in the incident, and only to allegations related to Officer Dumaguindin’s use of deadly force and failure to activate his body-worn camera.

But this scope was too limited. As a result, several key personnel were not administratively interviewed, creating information gaps and questions that remained unanswered. And, by limiting the allegations to only Officer Dumaguindin’s use of deadly force and body-worn camera, PPD missed an opportunity to evaluate other potential policy violations; specifically, other responding officers’ failure to re-activate their body-worn cameras and Officer Dumaguindin’s decision to engage in a foot pursuit.

While timely completion of administrative investigations is an important goal, it should not be achieved at the expense of a robust and thorough review of the incident, including complete interviews and identifying and addressing all performance that violated or were not consistent with the policies and expectations of the agency. Here, we discuss the implications of the limited scope and provide analysis of potential policy violations.

Administrative Interviews Were Needed

The Administrative Investigation initially only conducted interviews of Officer Dumaguindin and Officer 3. Later, and despite pressure to complete the investigation quickly, the investigator conducted interviews of Officers 4 and 6. But the investigator did not re-interview Officer Mulrooney or call-in other personnel who might have provided additional details about the incident (for example, Officer 5 provided medical aid and rode in the ambulance with Mr. McClain).

Given the number of officers that played peripheral roles (e.g., traffic control late into the evening), interviewing every individual responding officer in this case was not essential to a complete investigation. But a key witness officer – Officer Mulrooney – could and should have been interviewed. We were informed that Officer Mulrooney was not interviewed because, in early April 2022, he had provided a lengthy deposition for related civil litigation. The investigator used this deposition, which was transcribed and recorded, in lieu of the administrative interview because he found it to provide sufficient information.

But the initial Detective interview and the deposition testimony left questions unanswered. For example, in an administrative interview, Officer Mulrooney could have been asked why he did not engage in a foot pursuit with his partner or why he chose to drive through the crime scene.

RECOMMENDATION 14

PPD should ensure that critical incident administrative investigations conduct thorough interviews of all involved and witness personnel to obtain a full and complete account of all salient aspects of the incident.

Moreover, since the Administrative Investigation relied on the deposition, it should have referenced the deposition in its report, and noted that it was used in lieu of an administrative interview. Here, the Administrative Investigation only referenced Officer Mulrooney's brief, voluntary statement to the criminal investigators.

RECOMMENDATION 15

PPD should reference and include all documentation used in Administrative Investigations in reports and case files.

No Formal Allegations for Potential Policy Violation: Body-Worn Camera Re-activation

The investigation only framed one allegation for a failure to activate body-worn camera against Officer Dumaguindin. However, both the investigation and the Board review identified several instances of officers turning cameras off and failing to re-activate them.

The Department's Body Worn Camera Policy states that officers shall re-activate their cameras promptly:

450.8 TERMINATION OF RECORDING *Once activated, the BWC should remain on continuously until the member's direct participation in the incident is complete, the situation no longer fits the criteria for activation, or unless tactical or practical reasons dictate otherwise. [...]*

Recording may be stopped during significant periods of inactivity, such as report writing or other breaks from direct participation in the incident. If the BWC is used during an enforcement situation and it becomes necessary to discuss issues or concerns related to privacy or officer-safety with another employee or supervisor, the device may be turned off. The intention to stop the recording should be noted by the officer verbally such that it is recorded by the BWC before the deactivation. When the aforementioned conversation has ended, the member should reactivate the camera promptly and the member shall note verbally that the recording has continued.

PPD acknowledged these violations broadly. However, instead of framing individual allegations against officers for violation of body-worn camera policy, it offered several remedies for preventing these failures in the future:

- Activating the camera's muting functionality, which PPD had previously chosen to deactivate. With this function available, PPD opined, officers would not turn off their cameras for privacy or officer-safety reasons; this would reduce the instances of officers forgetting to re-activate their cameras.⁴⁷
- Increasing the buffer period to capture more of an incident if an officer fails to immediately activate the camera. PPD reported that this has already occurred. Today, the body-worn camera buffer is one minute (previously 30-seconds).
- Sending selected personnel to the body-worn camera vendor's – Axon – "academy" to become experts for the Department.
- Remedial training for any officer who shows deficiencies in the use of the body-worn camera, either from these new Department Axon experts or directly from Axon.

These solutions are helpful for future violations, but they do not address the potential violations and performance issues identified in this specific incident. Here, PPD missed an opportunity to provide directed remediation to individual

⁴⁷ We note that implementation of the muting function should come with regular use audits and frequent Department-wide training so that officers are aware of the very specific circumstances for its use. As of the publication of this report, PPD has not yet implemented this functionality.

officers who did not appropriately use their body-worn cameras in this critical incident.

And while some of the violations were of minimal consequence to the final outcome – for example, we observed officers tasked with longer-duration peripheral duties like traffic control turn their cameras off and back on -- one was critical: Officer 4’s failure to re-activate his body-worn camera after turning it off during a private phone call.⁴⁸ This was of sufficient concern to the administrative investigator to delay completion of the investigation for an administrative interview of Officer 4.

But the Administrative Investigation stopped short: the Department did not formally frame an allegation regarding Officer 4’s failure to re-activate his body-worn camera. As a result, the Board did not evaluate or make any findings for Officer 4’s potential policy violation.⁴⁹

RECOMMENDATION 16

PPD should ensure that critical incident Administrative Investigations address all potential violations of policy identified.

Decision to Engage in a Foot Pursuit

Despite expressly advising Officer Dumaguindin prior to his administrative interview that the investigation would include “policy compliance” with the foot pursuit policy,⁵⁰ we found that the Administrative Investigation did not sufficiently investigate Officer Dumaguindin’s decision to engage in a foot

⁴⁸ As a result of this de-activation and failure to re-activate, the actual moment of firearm recovery was not captured on body-worn camera, which left room for community speculation about the firearm’s recovery, especially because Officer 4 was both a PPOA union representative and, as he self-reported, speaking to the PPOA President in the moments before discovering the firearm (a concern that we detail below in our discussion of the role of union representatives on scene).

⁴⁹ Policy allows officers to turn off their camera to “*discuss issues or concerns related to privacy or officer-safety with another employee or supervisor.*” The question here is if Officer 4’s phone call from the PPOA president met this criterion, and one that should have been explored by the Board.

⁵⁰ Notification of Administrative Review dated June 7, 2022, sent to Officer Dumaguindin.

pursuit. Moreover, the investigation did not seek to interview Officer Mulrooney to obtain clarifying information about the foot pursuit.

Most importantly, the Administrative Investigation did not frame any formal allegations related to Officer Dumaguindin's potential violation of the Department's Foot Pursuit policy. As a result, the Review Board did not adequately or completely analyze the foot pursuit or make formal findings related to Officer Dumaguindin's decision-making process.

An allegation related to adherence to the Department's Foot Pursuit policy was warranted. But perhaps because one was not made, the Administrative Investigation did not sufficiently investigate this critical piece of the incident.

Decision to Initiate the Pursuit

In deciding to initiate a foot pursuit, **Policy 458: Foot Pursuits** requires officers to balance between the necessity of initiating a foot pursuit and safety concerns. The policy states:

Deciding to initiate or continue a foot pursuit is a decision that an officer must make quickly and under unpredictable and dynamic circumstances. [...]

*It is recognized that foot pursuits may place department members and the public at significant risk. Therefore, no officer or supervisor shall be criticized or disciplined for deciding **not** to engage in a foot pursuit because of the perceived risk involved. [emphasis added]⁵¹*

The policy goes on to state:

Officers may be justified in initiating a foot pursuit of any individual the officer reasonably believes is about to engage in, is engaging in or has engaged in criminal activity.

[...]

If circumstances permit, surveillance and containment are generally the safest tactics for apprehending fleeing persons. In deciding whether to initiate or continue a foot pursuit, an officer should continuously consider

⁵¹ PPD's Foot Pursuit Policy is available online at <https://ww5.cityofpasadena.net/wp-content/uploads/sites/57/2017/02/Policy-458-Foot-Pursuit-Policy.pdf>

reasonable alternatives to a foot pursuit based upon the circumstances and resources available, such as:

(a) Containment of the area.

(b) Saturation of the area with law enforcement personnel, including assistance from other agencies.

(c) A canine search.

(d) Thermal imaging or other sensing technology.

(e) Air support.

(f) Apprehension at another time when the identity of the suspect is known or there is information available that would likely allow for later apprehension, and the need to immediately apprehend the suspect does not reasonably appear to outweigh the risk of continuing the foot pursuit.

In his administrative interview, Officer Dumaguindin was not expressly asked why he decided to engage in the foot pursuit of Mr. McClain, but he did articulate some of his reasoning for initially deciding to pursue, as follows:

- Officer Dumaguindin directed Mr. McClain to face the vehicle for a search. Mr. McClain's choice to turn and run instead of to comply indicated to Officer Dumaguindin, he reported, that Mr. McClain intended to commit a crime, a violation of P.C. 148(a)(1):
 - *Every person who willfully resists, delays, or obstructs any public officer, peace officer, in the discharge or attempts to discharge any duty of his or her office or employment.*
- Officer Dumaguindin then believed that Mr. McClain had a gun because Mr. McClain moved his hands toward his front waistband; Officer Dumaguindin unholstered his firearm because he believed that Mr. McClain was an armed subject. Officer Dumaguindin stated that "lethal force should be met with lethal force." At this point, Officer Dumaguindin believed that Mr. McClain was in violation of P.C. 25400(a), carrying a concealed firearm.
- Officer Dumaguindin believed that alternatives to the foot pursuit were not feasible. In his interview, Officer Dumaguindin stated that, when it became clear that Mr. McClain intended to run, other options, such as

pinning Mr. McClain to the car, tackling him to the ground, or using other tools (OC spray or a Taser) were not feasible given the distance between himself and Mr. McClain or the perceived effectiveness of these tools.

At this point in the administrative interview, there was, unfortunately, no discussion of other options expressly listed in PPD's policy, such as setting up containment and surveillance, bringing in an Air Unit or canine search team, or "saturating" the area with law enforcement personnel, or if Officer Dumaguindin considered these options.⁵²

Decision to Continue the Foot Pursuit

As Mr. McClain then ran into the roadway, Officer Dumaguindin made several decisions that, in our view, placed him, his partner, and the public at risk.

Department policy requires that officers continually re-assess the decision to continue a foot pursuit, weighing the risks and benefits to himself and public safety.

The decision to initiate or continue such a foot pursuit, however, must be continuously re-evaluated in light of the circumstances presented at the time.

The policy goes on to list General Guidelines for foot pursuits as follows (we have omitted guidelines that do not apply to this incident):

When reasonably practicable, officers should consider alternatives to engaging in or continuing a foot pursuit when:

(b) The officer is acting alone.

In the first moments of the pursuit on the roadway, Officer Mulrooney briefly followed Officer Dumaguindin, moving from the curb into the street. But Officer Mulrooney did not continue to pursue with Officer Dumaguindin. Instead, Officer Mulrooney turned his attention to the detained driver back at the curb

⁵² This question was asked repeatedly in his August 11, 2022, deposition: Officer Dumaguindin was asked several times why he did not opt for containment and surveillance. Officer Dumaguindin repeatedly responded that, per his training, the decision to engage in a foot pursuit "depends on the situation." He did not provide any further explication for why the McClain situation mandated a chase to apprehend strategy. See page 91.

and, as he admitted, was not able to maintain Officer Dumaguindin in his line of sight.

Officer Dumaguindin stated that he ran directly behind Mr. McClain “at a dead sprint” and was approximately 6 feet behind Mr. McClain because he thought that Mr. McClain was trying to get away, and that because he was closest to Mr. McClain, it was his responsibility to pursue Mr. McClain, even if alone. Officer Dumaguindin reported that he knew that Officer Mulrooney was still at the original traffic stop location.

Officer Dumaguindin continued the pursuit of a believed to be armed subject alone until Officer 3 arrived from the opposite direction and Mr. McClain fell to the grass after being shot.

(c) Two or more officers become separated, lose visual contact with one another, or obstacles separate them to the degree that they cannot immediately assist each other should a confrontation take place. In such circumstances, it is generally recommended that a single officer keep the suspect in sight from a safe distance and coordinate the containment effort.

From a review of Officer Mulrooney’s body-worn camera, Officer Mulrooney appeared to have observed some of the foot pursuit from his position in the roadway. But in his deposition, Officer Mulrooney acknowledged that Officer Dumaguindin and Mr. McClain ran, “out of [his] field of view” and that he “didn’t know what happened after [Officer Dumaguindin] was out of [his] sight.” Officer Mulrooney testified that he then physically turned away from the direction of the foot pursuit, toward the curb and the driver. And his immediate attention was appropriately on the driver.

Officer Dumaguindin did not communicate any of his observations or intentions to Officer Mulrooney. Moreover, Officer Mulrooney, except for the brief radio broadcast that he made, could not reasonably provide any assistance to his partner as he was chasing a believed to be armed subject. As we note above, Officer Mulrooney ended up driving his police vehicle down the street to locate Officer Dumaguindin after the scene was secured; this indicates that Officer Mulrooney knew that he was some distance from Officer Dumaguindin. Even more significantly, Officer Mulrooney was tied up and dealing with the driver. It would have been tactically problematic for him to have assisted his partner by

joining him in the foot pursuit. Put simply, Officer Mulrooney was not in a position to render any cover or support to his partner.

(h) The suspect enters a building, structure, confined space, isolated area or dense or difficult terrain, and there are insufficient officers to provide backup and containment. The primary officer should consider discontinuing the foot pursuit and coordinating containment pending the arrival of sufficient resources.

While pursuing, Officer Dumaguindin felt something fall off his equipment belt and looked down, momentarily losing sight of a subject who had, he believed, already targeted him and was still armed. When he looked up, Mr. McClain was running “serpentine” between parked vehicles and Officer Dumaguindin could not see Mr. McClain’s hands. Accordingly, Mr. McClain’s movement and path between the parked vehicles gave Mr. McClain a tactical advantage (e.g., cover and possible concealment). At various times, should he have chosen to do so, Mr. McClain could have targeted Officer Dumaguindin from these positions of advantage.

And there were certainly insufficient officers available at that moment to provide any backup to Officer Dumaguindin.

(i) The officer becomes aware of unanticipated or unforeseen circumstances that unreasonably increase the risk to officers or the public.

When Officer Dumaguindin initiated the foot pursuit, he stated that he had a suspicion, but had not yet confirmed, that Mr. McClain had a firearm, so he unholstered his duty weapon. Seconds later, Officer Dumaguindin reported that he clearly observed the firearm, at which point he took hold of his duty weapon and held it in both hands with arms outstretched aimed at Mr. McClain. Officer Dumaguindin’s confirmation that Mr. McClain had a firearm significantly increased the risk to the officers, who, at that point, were both standing in the open roadway with no cover or backup of any kind, and between an armed subject and the driver at the curb.

This change in circumstances should have prompted Officer Dumaguindin to reassess the decision to pursue and instead consider locating cover and setting up a containment. Investigators did not ask the officer if seeing Mr. McClain’s gun caused a re-evaluation regarding the increased danger of continuing to pursue. Officer Dumaguindin stated that, after he fired his weapon, he thought

that Mr. McClain was “trying to get away,” but was not explicitly asked why he continued to give chase.

(j) The officer reasonably believes that the danger to the pursuing officers or public outweighs the objective of immediate apprehension.

Officer Dumaguindin was pursuing an armed suspect – at close range and alone - in an open roadway with no cover, while his partner officer stayed in the open roadway between Mr. McClain and the unsecured driver.

In the words of the officer, after being “targeted” by Mr. McClain, Officer Dumaguindin continued to pursue. Officer Dumaguindin reported that, at this time, he believed that Mr. McClain was trying to get away. Believing that Mr. McClain was armed but was not an active threat to him, he continued to pursue Mr. McClain.

Officer Dumaguindin conceded that he momentarily lost sight of Mr. McClain. And, despite having an obstructed view as Mr. McClain ran between parked vehicles, he continued to pursue. Once Officer 3 came onto the scene from the opposite direction, Officer Dumaguindin’s background was compromised: should he have determined to fire additional rounds, Officer 3 would have been in his background.

PPD Findings and Discipline

Upon completion of the Administrative Investigation, PPD held a Use of Force Review Board (“Board”) for this incident. As required by policy, the session was attended by the then-interim Chief, Deputy Chief, and four members of the command staff. It was observed by members of the OIR Group and remotely by the Inspector General. The then-interim Chief found Officer Dumaguindin’s use of deadly force to be within policy. He also found that Officer Dumaguindin violated the Department’s body-worn camera policy when he failed to activate his body-worn camera until after the use of deadly force.

The Administrative Investigation was presented in three sections by the investigator: use of force (e.g., the shooting itself), policy violations, and recommendations. After each section, the Board deliberated and made findings.

We found the presentation itself to be well-constructed and thoughtful, and the lead investigator to have good command of the facts of the case. Additionally, we commend the investigator for providing the full administrative file and all supporting documentation to the Board in advance of the session; Board members were clearly prepared and knowledgeable about the case.

In the subsequent roundtable discussion, command staff considered areas for Department-wide improvement that, if implemented, will increase PPD’s effectiveness and transparency. These included:

- Training for traffic stops and removing subjects from vehicles
- Increasing de-escalation training
- Preference for OC spray display over Taser display to deter the gathering crowd
- Need for batons in every vehicle, and note that collapsible batons could have been used
- Preference for a formal skirmish line to control the scene
- Crime scene and perimeter set-up

- Officers' use of body-worn cameras, specifically, turning the cameras on and off throughout the incident response
- Supervisors' response
- Further development of community outreach efforts

In late October 2022, PPD publicly released three memos.⁵³

- The first outlined the administrative review process and provided the then-interim Chief's finding on the use of deadly force. As noted above, the then-interim Chief found the use of deadly force to be within policy, determined that no further action was required, and finalized the investigation.
- The second outlined the results of the policy review portion of the Administrative Investigation. Here, the then-interim Chief found that Officer Dumaguindin violated the Department's body-worn camera policy when he failed to activate his body-worn camera until after the use of deadly force. The Board recommended, and the then-interim Chief imposed, a written reprimand and eight hours of directed training related to use of the body-worn camera.
- The third, a memo dated September 13, 2022, was a detailed summary of the Board's discussion. This memo also outlined the tactical and administrative areas of improvement discussed by the Board defined above.

Some of these topics were accompanied by action items. The then-interim Chief directed that implementation of all recommendations be managed by the Deputy Chief.

⁵³ <https://www.cityofpasadena.net/police/critical-incident-briefings/critical-incident-ois-20008867-finalized-use-of-force-review/>

Evaluation of Use of Force Review Board

In this section, we walk through the Use of Force Review Board to evaluate the appropriateness and thoroughness of its deliberations. Our assessment found that, while we appreciated the identification of issues identified above and the creation of an action plan to implement some systemic change, an optimal Review Board discussion would have involved a more thorough analysis of both the use of force and the officers' tactical decision-making.

Analysis of Deadly Force Incident to Current Policy was Not Sufficiently Rigorous

When conducting a review of a deadly force incident, PPD is to be guided by its own deadly force policy set out in its Use of Force Policy 300.⁵⁴

We maintain that, although the Use of Force memo included excerpts from the use of force policy, the Board did not rigorously consider these factors in its discussion of Officer Dumaguindin's use of deadly force. In evaluating the use of deadly force, the Board did not expressly articulate the multiple relevant factors detailed in the Department's use of force policy (as set out below), nor did the Board discuss any plausible alternative interpretation of the facts, such as whether McClain's actions -- instead of being an act of aggression -- could have been him turning around to see whether the officers were chasing him.

As reported in the Board's memo, after receiving a thorough presentation, each Board member provided his/her decision of the use of force, and each found it to be reasonable and within policy. However, none of the attendees included any rigorous evaluation of the force using the factors set out in the Department's policy.

⁵⁴ Policy 300 is available online at <https://ww5.cityofpasadena.net/police/wp-content/uploads/sites/57/2017/02/Policy-300-Use-of-Force.pdf>

Considering the prominence and importance of these factors in current policy, the Board should have applied these factors to the incident to determine the reasonableness and necessity of the force used. These include, but are not limited to the following:

- *The apparent immediacy and severity of the threat to officers and others (Penal Code § 835a).*⁵⁵
- *The conduct of the individual being confronted, as reasonably perceived by the officer at the time.*
- *Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion, or fatigue, the number of officers available vs. subjects).*
- *The conduct of the involved officer (Penal Code § 835a).*
- *The individual's apparent mental state or capacity (Penal Code § 835a).*
- *The individual's apparent ability to understand and comply with the officer's commands (Penal Code § 835a).*
- *Proximity of weapons or dangerous improvised devices.*
- *The availability of other reasonable and feasible options and their possible effectiveness.*
- *Potential for injury to officers, suspects, and others.*
- *Whether the person appears to be resisting, attempting to evade arrest by flights, or is attacking the officer.*

⁵⁵ According to PPD's policy: "an 'imminent' threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat.

An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code 835a)."

- *Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officers or others.*

In providing his final disposition, the then-Interim Chief briefly “ran through” the factors detailed above before issuing his final finding. However, these were not integrated into the lengthy discussion. As such, we recommend that all Review Board sessions include a detailed discussion of the incident using the factors outlined in PPD’s use of force policy.

Evaluation of Deadly Force did not Consider All Available Evidence

In addition to explicitly considering the factors listed above, a thorough evaluation of force should consider all available evidence. In this case, the Board’s discussion considered Officer Dumaguindin’s account of the incident:

- Officer Dumaguindin observed a firearm in Mr. McClain’s left hand.
- Officer Dumaguindin stated that he observed Mr. McClain turn in his direction and make eye contact with him while Mr. McClain moved his left hand across his body and upward.
- Officer Dumaguindin believed that Mr. McClain was looking back and raising the firearm to take aim at him.
- At the time that he fired two shots, Officer Dumaguindin reported that he firmly believed that Mr. McClain possessed the ability, opportunity, and intent to shoot at him.

Certainly, an officer’s perceptions and beliefs in the moments leading up to and immediately when using force are of paramount importance when evaluating use of force. However, the evidence in this case suggested that there were other possible explanations and considerations beyond Officer Dumaguindin’s own recitation of events. However, the Board did not expressly consider these in its evaluation. Factual questions include:

- Whether when Mr. McClain turned his head and torso toward Officer Dumaguindin, as evidenced in the In-Car Camera footage, Mr. McClain was merely turning to see if he was being chased or to ascertain Officer

Dumaguindin's location. This theory was posited in the District Attorney's decision letter but not considered by the Review Board.⁵⁶

- Officer Dumaguindin's admission that he did not see Mr. McClain point a firearm at him when he used deadly force. When Officer Dumaguindin observed Mr. McClain's left hand, which he previously observed held a firearm, rise across Mr. McClain's chest, Officer Dumaguindin believed that Mr. McClain was aiming at him to shoot him. But the Board did not consider that Officer Dumaguindin did not actually see Mr. McClain pointing a firearm at him. Considering this, the Board should have opined about whether what Officer Dumaguindin *did* see presented a sufficient imminent threat to justify the use of deadly force.
- Officer Dumaguindin's background when he fired two rounds; one of Officer Dumaguindin's rounds lodged in the doorway of a residence that was later determined to be occupied. There was also evidence that individuals were on the sidewalk, in parked vehicles, or otherwise in Officer Dumaguindin's background.

The Board's discussion largely consisted of accepting the officer's account without scrutiny. Because the policy requires an assessment of whether the officer's stated threat level was "reasonable", facts that call into that decision-making should be considered in evaluating the conduct of the officer.

RECOMMENDATION 17

When evaluating uses of deadly force, the Use of Force Review Board's analysis should consider the relevant factors to be considered under the Department's deadly force policy and all available evidence to thoroughly assess the decision to use force.

⁵⁶ The District Attorney considered this theory in its report when the DA wrote: "One interpretation of McClain's actions is that he was turning to see if Dumaguindin was pursuing him. Another interpretation is that he was turning to engage Dumaguindin. The People have the burden of proving beyond a reasonable doubt that Dumaguindin did not act in lawful self-defense. 'If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence.' CALCRIM No. 224." LADA Decision Letter, page 29.

No Formal Evaluation of the Decision to Pursue

As we detailed earlier, one key element of this incident was Officer Dumaguindin's decision to engage in a foot pursuit of Mr. McClain, but the Administrative Investigation did not frame this as a policy violation. As a result, the Board was not asked to formally consider whether the officer's actions violated the Department's foot pursuit policy.

Yet, the Board's memo suggests that it did consider and evaluate the foot pursuit. In its memo, the Board wrote:

In addition, the Review Board reviewed the Pasadena Police Department Use of Force Policy 300, Foot Pursuit Policy 458, and the Body Worn Camera Policy to ensure [Officer Dumaguindin's] actions were within policy.

The memo goes on to provide relevant excerpts from the Department's Foot Pursuit Policy: 458, suggesting that these policy sections were used in evaluating the incident and making the final determination.

But the Board's discussion was not a robust evaluation: there was only a brief discussion about the foot pursuit during which the Board accepted Officer Dumaguindin's decision to engage in the foot pursuit, stating that Officer Dumaguindin had "probable cause" to engage in the pursuit⁵⁷ and asserting, erroneously, that Officer Mulrooney did not lose sight of Officer Dumaguindin,⁵⁸ while also noting that surveillance and containment would have been preferable options. This passing reference to policy was insufficient treatment of this critical decision-making by Officer Dumaguindin.

⁵⁷ The Board cited Penal Codes 148 (resisting arrest), 417 (brandishing a firearm) and 245 (assault with a deadly weapon) as the crimes committed by the subject that justified Officer Dumaguindin's decision to engage in a foot pursuit.

⁵⁸ During his deposition, Officer Mulrooney stated that Officer Dumaguindin was out of his visual line of sight; this is important because, as we noted above, Officer Dumaguindin was acting alone without cover or aid, a factor that requires him to re-evaluate continuing to engage in a foot pursuit per policy.

And if the Board found that surveillance and containment would have been preferable options, it should have, at a minimum, ordered a debriefing of the officer and training regarding the “preferable options.”

We raise this with particular emphasis because it is not the first time in Pasadena that the decision by officers to engage in a foot pursuit may have increased the threat perception of the officer and precipitated the use of deadly force. In our 2014 review of the McDade incident, we also provided a lengthy evaluation of that officer’s decision to leave his partner and engage in a foot pursuit of a potentially armed subject (with strikingly similar fact patterns to this incident). In that report, we recommended:

The Department should brief the involved officers in the McDade shooting and devise a training bulletin for all PPD officers advising them of the Department’s foot pursuit policy, the tactical disadvantages of splitting from a partner, the policy’s requirement that officers broadcast whether they believe the suspect is armed, and the tactical concerns in closing distance on a believed to be armed suspect.⁵⁹

In its review of the McDade incident, the Department updated its Foot Pursuit policy and provided two “BlueGram” online training sessions regarding foot pursuits in 2015 and 2017.⁶⁰ While the policy update included language on splitting from a partner, it did not include our recommendation regarding the tactical concerns of pursuing a believed to be armed subject.

We certainly acknowledge that just because an issue was raised before does not mean that it will never occur again. Policing is dynamic and situational. Even so, or perhaps precisely so, the Department should carefully evaluate Officer Dumaguindin’s decision to initiate and continue the foot pursuit relative to its own policy so that officers’ decisions are appropriately remediated when necessary. We also recommend again that officers, both individually and Department-wide, be advised of the risks of engaging in foot pursuits with believed to be armed subjects and alternative options.

⁵⁹ OIR Group review of McDade incident, Recommendation 9, page 41.

⁶⁰ “BlueGrams” are online learning lessons with test questions at the end to ensure officer comprehension and completion of the lesson.

RECOMMENDATION 18

PPD should revise its force review policies to require formal evaluation of any attendant foot pursuits and evaluating whether officers' actions align with the Department's Foot Pursuit Policy.

RECOMMENDATION 19

PPD should conduct regular training on the Foot Pursuit Policy, including the preference for surveillance and containment over engagement in foot pursuits.

Considerations Going Forward

Pretext Stops

The Board discussed and its memo addressed two critical points in the incident: the traffic stop itself and the way Officers 1 and 2 engaged with the driver and subject. The Board determined that: 1) the traffic stop was legal and justified and 2) the officers' tactics for removing the occupants from the vehicle compromised officer safety.

While the Board offered training suggestions to increase officer safety, they did not critically examine these two specific practices *themselves* to determine if the practices, while legal, are aligned with present-day expectations of policing and the Department's mission.

Regarding the traffic stop: according to the Board memo and the officers' administrative interviews, the officers stopped the vehicle for failure to display a front license plate, which the Board determined was a lawful reason for the stop. Both the officers and Board articulated additional "facts" surrounding this traffic stop: the officers were on directed "extra patrol" in La Pintoresca Park because of complaints of gang activity and they had recovered three handguns from traffic stops in the recent past. The memo went on to explain that the area had increased crime rates and that the Department had recovered several firearms from the area.

While the officers were legally justified in conducting the traffic stop, the inclusion of these additional "facts," seemingly provided as additional rationale for the stop, went far beyond the vehicle code violation and suggested that the officers were engaged in a "pretext stop." California's Racial and Identity Profiling Advisory Board (RIPA) defines a pretext stop as "when an officer stops a person ostensibly for a traffic violation or minor infraction but with the intention of using the stop to investigate based on an officer's hunch that by itself would not amount to reasonable suspicion or probable cause."⁶¹

⁶¹ 2023 Annual Report, RIPA Advisory Board, at <https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>

As applied to this case, the officers used the pretense of making a (legal) traffic stop to investigate gang affiliation or to recover firearms, as they had been directed by their Department.

In its discussion, Board participants acknowledged that this specific traffic stop was a pretext stop, and the type of proactive policing supported by PPD generally because, they stated, these stops are effective. Board members shared that they had been directed by City leadership to reduce crime rates and gang activity, and that pretext stops yielded the desired results.

The issue with these stops is that because officers are given significant discretion in who they stop and for what reasons, pretext stops can result in disparate or selective enforcement, especially for communities of people of color. These communities have long held (and studies have found) that they are disproportionately stopped for minor traffic equipment violations, such as occurred in this case.

As this incident and others throughout the nation have shown, the cost of pretext stops, including the potential for deadly harm,⁶² may outweigh any potential benefits. While the use of pretext stops have undoubtedly resulted in recovery of firearms and other contraband, the question is whether that benefit is worth the detentions and other negative consequences that result from such an enforcement strategy.

Some studies have found that the public safety benefits, when measured, are negligible at best; contraband recovery rates are often low⁶³ as is any measurable crime reduction.⁶⁴ The discrepancy between costs and benefits was found to be so large that, in their 2023 Annual Report, the RIPA Board

⁶² For a discussion of the costs associated with pretext stops, see the Public Policy Institute of California 2022 study by Lofstrom et al., “Racial Disparities in Traffic Stops.”

⁶³ PPD cited anecdotal evidence that the stops “work:” in his administrative statement, Officer Dumaguindin stated that he and Officer Mulrooney had previously recovered three handguns – two during traffic stops -- from the area that they were patrolling the evening of the incident.

⁶⁴ See studies as cited by the 2023 RIPA Annual Report, including Westervelt, “Cities Looking To Reform Police Traffic Stops to Combat ‘Fishing Expeditions’” (2022); Miller et al., “Public Opinions of the Police: The Influence of Friends, Family and News Media” (2018); and Blanks, “Thin Blue Lies: How Pretextual Stops Undermine Police Legitimacy” (2016).

called for “policymakers and law enforcement and municipal leaders to consider ways to eliminate pretextual stops and therefore reduce any potential for harm stemming from such stops.”

Departments have recently reconsidered the use of pretext stops and significantly limited or restricted their use. In March 2022, the Los Angeles Police Department updated its policy to require that officers articulate the rationale for escalating a traffic or other minor violation into a criminal investigation on their body-worn camera.⁶⁵ A November 2022 Los Angeles Times study found that, in very short order, this policy change resulted in far fewer pretext stops with a higher contraband recovery rate as officers became more intentional in their stops and searches.⁶⁶ Similarly, in January 2023, the San Francisco Police Department issued a policy that limits officers from conducting traffic stops for nine low-level equipment and driving violations, including broken brake lights or failure to activate a turn signal.⁶⁷

Other departments are actively working with researchers and their community to determine the most effective policing methods related to traffic stops. For example, after researchers identified racial disparities in stops and searches coupled with an extremely low contraband recovery rate, the New Haven (Connecticut) police department consulted with community members for solutions. Together, they reformed traffic enforcement policies to focus only on hazardous driving instead of low-level equipment violations and prohibited consent searches. These changes resulted in lower rates of traffic accidents and a 63% increase in recovery of contraband from searches.

We recommend that Pasadena examine pretext stops; the Community Police Oversight Commission should convene community conversations to formally discuss and review PPD’s use of pretext stops.

⁶⁵ See LAPD Special Order 3: Limitation on the Use of Pretextual Stops, issued March 9, 2022. See also LAPD’s March 2022 “Chief’s Message” regarding this topic at: <https://www.youtube.com/watch?v=sb9SEJvIDcM>

⁶⁶ See: <https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>

⁶⁷ See SFPD General Order 9.07: Curtailing the Use of Pretext Stops, issued January 11, 2023.

RECOMMENDATION 20

The Community Police Oversight Commission should convene community conversations to formally discuss and consider the pros and cons of PPD's use of pretext stops, especially with regard to minor equipment violations.

Removal of Occupants from Vehicles

Officers removed both the driver and Mr. McClain from the vehicle. The officers' actions were, like the traffic stop, legal. While the removal of the driver was appropriate, more worthy of discussion was Officer Dumaguindin's decision to remove Mr. McClain, the passenger, from the vehicle.

In his interview, Officer Dumaguindin stated that he asked Mr. McClain for his driver's license because he overheard that the driver did not have a license; his hope, he said, was that Mr. McClain could drive the vehicle instead. But Mr. McClain's nervous response to this question "raised red flags." This, coupled with seeing his partner remove the driver from the vehicle, caused him to ask Mr. McClain to exit as well. The memo states that Officer Dumaguindin removed the passenger for the officer's safety.

But we noted, and the Board discussed, that Officer Dumaguindin did not then act in a manner consistent with an officer concerned for his safety; Officer Dumaguindin stood at a distance too far to control Mr. McClain if necessary, spoke in a casual and friendly manner, and informed Mr. McClain of his next actions.⁶⁸

If this safety concern necessitated (legally) removing Mr. McClain from the vehicle, the Board opined that Officer Dumaguindin's subsequent actions and presence should have arguably been more commanding and exhibited control. Doing so may have prevented Mr. McClain from fleeing. The Board memo noted this, stating:

⁶⁸ In the same discussion, the Board opined that Officer Mulrooney also acted in an overly friendly or casual manner throughout the traffic stop. The Board found that he approached too close to ask the driver to roll down his tinted rear windows (versus yelling the command from a distance), was too friendly, failed to adequately control the driver, failed to fully search or detain the driver, and allowed the driver to stand rather than sit on the curb.

[Officer Dumaguindin] also provided [Mr. McClain] distance as he exited the vehicle. Not controlling [Mr. McClain] provided [Mr. McClain] space to run away.

The Board's recommended additional training on removing individuals from vehicles:

The Review Board discussed these issues and determined that the Field Training Program needs consistency regarding removing subjects from vehicles and overall officer safety. Therefore, the FTO program should develop best practices for safely removing individuals from cars during traffic stops for consistency and the use of cover for safety.

Sufficient Evidence for Arrests

The Department's decision to arrest the driver of the vehicle likewise deserved further analysis. Driving without a valid license is a charge that is routinely handled by issuance of a citation instructing the alleged offender to appear in court on a given date. Here, officers instead chose to arrest the driver and book him into custody on suspicion of being a felon in possession of a firearm, even though there was scant evidence connecting the recovered firearm to him and no additional firearms were located in the vehicle. Later that evening, after a lengthy interrogation regarding the incident, Detectives released him under PC 849(b) because there were insufficient grounds for a criminal charge.

The issue of the appropriateness of the driver's arrest is one that should have been raised during the Administrative Investigation and subsequent review.

Defining the Role of Police Union Representatives on Deadly Force Crime Scenes

When Officer 4 responded to the scene, he was initially tasked with providing support on the makeshift skirmish line. But while on-scene conducting policing duties, he was also acting in his capacity as a PPOA union representative. Officer 4 reported that he was in active communication with PPOA leadership to notify the PPOA Board of the incident. He sent text messages, he reported, to coordinate the PPOA's response to the incident, including providing union representation for the involved officers as is PPOA's regular protocol. He then received a phone call from the PPOA president and de-activated his body-worn

camera to take that call. After that call but before re-activating his camera, Officer 4 then discovered the discarded firearm. Then, Officer 4 called another officer over to stand watch while he proceeded to perform his duties as a union representative, such as finding Officer Dumaguindin to check on his welfare.

Police union representatives play a valid and important role in critical incidents. It is routine that union representatives are notified of the incident and respond to the scene to provide officer representation and peer support. But the union representative should also not simultaneously be involved in active policing duties on the scene. Here, Officer 4 was playing two roles that could be perceived to be in conflict: supporting Officer Dumaguindin in his capacity as a union representative **and** searching for critical evidence in his capacity as an on-duty officer on a crime scene.⁶⁹

In conversation with us, the Department acknowledged that this topic requires further evaluation. In collaboration with its union, PPD should create a policy to confine PPOA's representative role to that function.

RECOMMENDATION 21

PPD should write policy that clearly defines the role of a PPOA representative at critical incident crime scenes.

Community Engagement After Critical Incidents

This incident occurred in August 2020, in the wake of the George Floyd murder and at a time when community-police relationships were already strained. Pasadena, like other cities, had experienced its share of protests and demonstrations on both sides of the political spectrum. The officer-involved shooting of a Black man increased this tension, as evidenced by the angry crowd that quickly formed on scene. We recognize that no community is monolithic, and there are differing opinions within every community about virtually every incident and occurrence. This incident was no different in that respect.

⁶⁹ As we discuss throughout this report, theories about the firearm were pervasive, in part created by the knowledge that a union representative had discovered the firearm off camera and after speaking to the union president.

As we noted earlier, some members of the community initially rejected PPD's Community Outreach teams in the days following the shooting, and we were advised the Department directed officers to avoid the area altogether, including driving on side streets and ending enforcement in the park.

In the subsequent days, some members of the community created a memorial to Mr. McClain in the area of his shooting and in a largely residential neighborhood, at which members of the community came to congregate. This memorial included banners, candles and other tangible remembrances. PPD reported that from August to October, crime in the area increased, ranging from low-level disturbance calls to calls of shots fired and, ultimately, a shooting on October 19, 2020.

Without any apparent public notice, City leadership coordinated with the Department of Public Works to have the memorial removed in the early morning hours of October 20 with PPD on standby at the park. While the lack of advance warning was seen as disrespectful by some members of the community, it may have been undertaken in this fashion to prevent a confrontation. However, understandably, the removal continued the tension and was perceived by some in the community to be a unilateral police decision, which was not accurate.

And, when some angry community members rebuilt the memorial, the City again had it removed, again with no advance public warning or attempts to dialogue about the reasons for its removal. Clearly, removing the memorial on two occasions was perceived as unnecessary and disrespectful. Members of the community replaced the memorial a *third* time. This time, the City collaborated with community organizers and especially Mr. McClain's grandmother -- who played a role as peacemaker -- to establish an alternative memorial for Mr. McClain and sanctioned the planting of a memorial tree. The tree was planted in November 2020.

The Board dedicated a short section of its closing memo to community outreach, concluding that the Department needed to do more in the wake of the shooting:

The Department's Community Services Section attempted to provide community outreach in the neighborhood and La Pintaresca park days after the incident. However, members of the community were upset. In

addition, community members in the park and surrounding area expressed hostility towards the officers providing outreach.

Finally, a memorial for [Mr. McClain] was established in the area of his death. The city removed the memorial, causing more friction in the relationship between the community, the city, and police. The Department attempted to work with local pastors to ease the tension.

The department recognizes the need for further development of our Post Incident Management protocols when providing outreach to the community after controversial critical incidents to avoid similar outcomes described above. To include but not limited to neighborhood stakeholders, clergy, non-profit organizations, and the department's Wellness Unit. The Special Operations Division commander and the wellness sergeant will lead this effort.

We commend the Department for this insight and recognition of the strained community relationship.

We understand that relations among some community members remain tense today and acknowledge that it takes effort from both sides -- the police and members of the community -- to effectuate change. We urge the Department to prioritize outreach now and not wait for the next incident to conduct outreach in the ways that they identified in the memo.

RECOMMENDATION 22

PPD should prioritize community outreach, including timely implementation of the recommendations in the Board memorandum relating to improving community relations.

The Critical Incident Briefing Video

Another factor that concerned some members of the community and City leadership was the content of the Department's Critical Incident Briefing video, released on August 20, 2020, along with a related press release and available audio and video recordings. By then, the Department had collected video footage from the park's surveillance camera, body-worn and in-car camera footage, Officers Dumaguindin and Mulrooney's initial statements, witness interviews conducted on the evening of the incident, and physical evidence, including the recovered firearm (but no forensic analysis of this evidence).

The Briefing video presumed that Mr. McClain had thrown “his” firearm across the roadway, and that the firearm that had been recovered belonged to Mr. McClain. However, at that time, PPD did not have forensic evidence to directly tie Mr. McClain to that firearm. And, as we noted above, the video included an incomplete characterization of an eyewitness’ statement to support its conclusion.

Finally, the Briefing video went on to name and display a DMV photo of Mr. McClain with narrated information about his prior criminal history and probation status; this information was unrelated to the incident, was unknown to the officers at the time and thus of marginal relevance. Releasing information about Mr. McClain’s criminal history displayed a lack of sensitivity for the deceased subject and his family. As stated by the Task Force on 21st Century Policing:

One way to promote neutrality is to ensure that agencies and their members do not release background information on involved parties. While a great deal of information is often publicly available, this information should not be proactively distributed by law enforcement.⁷⁰

Briefing videos are admittedly difficult to get right. A department must balance the public’s desire for immediate, full transparency with their own limited and developing knowledge, being careful to release only information that is factually accurate, evidence-based, and appropriate. If there is any doubt about the accuracy of any information, it should not be included in the public release of information. And information that is of at best marginal evidentiary value, such as the criminal history of the deceased person, should not be included.

RECOMMENDATION 23

PPD Critical Incident Briefing videos should only include information known to be accurate and omit information of limited relevance such as the criminal history of involved individuals.

⁷⁰ President’s Task Force on 21st Century Policing, Final Report, page 13.

The Handcuffing of Injured Subjects and Provision of First Aid

While the Board briefly discussed, and commended, the quick and deliberate medical attention provided by Officer 3, it did not include this topic in its closing memorandum. And the Board did not address the handcuffing of the clearly injured subject.

The fact that Mr. McClain was handcuffed and the assessment of the provision of medical care were additional areas that warranted a more detailed discussion and evaluation in the Board's memo. As we detailed above, the vocal crowd on scene immediately questioned Officer Dumaguindin and Officer 3's decision to place Mr. McClain, who they observed to be injured and bleeding extensively, in handcuffs before providing any first aid.

PPD's current policy on use of restraints, including handcuffs, leaves the decision to use handcuffs largely to officer discretion. The policy requires officers to balance "safety concerns" with factors that include [...]:

- *The circumstances or crime leading to the arrest*
- *The demeanor and behavior of the arrested person*
- *The age and health of the person*⁷¹

Here, Mr. McClain was injured and bleeding (whether Officer 3 realized this prior to handcuffing is in question), showed no sign of aggression or resistance, and showed his empty hands on two occasions. Officer Dumaguindin stated that Mr. McClain had "tossed" the firearm. However, Mr. McClain had not yet been searched and, accordingly, might still have been in possession of a firearm.

While the need to handcuff will vary by incident and circumstances, we recommend that the Department evaluate the necessity of handcuffing severely injured subjects and consider developing training on this topic.

⁷¹ See Policy 306.3: Use of Restraints.

RECOMMENDATION 24

PPD should evaluate the necessity of handcuffing severely injured subjects and consider developing training on this topic.

The community also expressed concern that PPD intentionally delayed medical attention to the wounded subject. In its review, the Board briefly discussed the officers' medical response and found it to be appropriate. We agree. And we noted that the Pasadena Fire Department was called to the scene almost immediately after the shooting.⁷² Basic lifesaving was delayed by approximately one minute while officers handcuffed Mr. McClain. Immediately following this, Officers 3 and 5 rendered basic medical aid as required by policy; these officers applied pressure with their hands on Mr. McClain's wounds and attempted to keep Mr. McClain conscious by speaking to him.⁷³ These officers rendered basic aid for several minutes before the paramedics arrived.⁷⁴

As first responders, police officers in California are required to obtain basic lifesaving skills, such as CPR and first aid, with recertification required every two years, but these basic skills are not intended to replace the advanced skills of paramedics. And, per Department policy, it is within a member's responsibility to provide "initial medical aid in accordance with their training [...] for those in need of immediate care when the member can safely do so."⁷⁵

We noted that, both in his body-worn video footage and as expressed in his administrative interview, Officer 3 provided medical aid to the best of his ability and expressed sincere intentions to help Mr. McClain. In his interview, Officer 3

⁷² According to Dispatch Logs, an ambulance was listed as "enroute to stage" at 7:54PM, seconds after the shots fired broadcast. Two minutes later, at 7:56PM, the Log shows that the ambulance was "to stage." The ambulance stood by for three minutes before the scene was declared safe for their entrance and they "rolled in" at 7:59PM. They contacted Mr. McClain at approximately 8:00PM and were logged as enroute to Huntington Memorial Hospital by 8:02PM.

⁷³ We were advised of allegations that officers, specifically Officer 3, kneeled on Mr. McClain before or while rendering aid. We found no evidence to suggest that any officer kneeled on Mr. McClain.

⁷⁴ As calculated by observing Officer 3's body-worn camera footage from the moment Officer 3 began to render medical aid to the arrival of a Paramedic to his location.

⁷⁵ See Policy 465.3: First Responding Member Responsibilities.

acknowledged that he might have used “a seal,”⁷⁶ but that he did not have one available; it was unclear if he meant that he did not have one at that moment or that he did not have one in a first aid kit. While Officer 3 might have directed other responding officers to obtain a chest seal or other first aid tools, we acknowledge that the scene rapidly became chaotic with a gathering crowd, and paramedics arrived quickly.

While she was not interviewed (and as we state elsewhere should have been), it appeared from the body-worn camera footage that Officer 5 also attempted lifesaving to the best of her ability, including assisting paramedics in the ambulance.

Overall, we found that the officers who rendered medical aid did so rapidly and to the best of their ability and training. We do, however, recommend that PPD conduct a routine inventory of all first aid equipment issued to officers to ensure that first aid kits are complete and include chest seals.

RECOMMENDATION 25

PPD should conduct a routine inventory of all first aid equipment issued to officers to ensure that first aid kits are complete and include chest seals.

Development of an Action Plan and Feedback

Mechanism

As we have noted throughout this report, the Board’s memo included a series of commendable recommendations. Some of these were concrete action items with an assigned leader and timeline to complete the effort, such as:

The Patrol Division Commander is responsible for developing a training curriculum to address these topics and ensure line-level supervision receives the class before the end of the 2022 calendar year.

Others were more ambiguous and less well-defined, such as:

⁷⁶ Here, the officer was referring to a chest seal, a type of bandage used for deep puncture wounds, such as a gunshot wound, to the chest, neck, and abdomen.

[...] the Department is looking into BWC options to mute the BWC audio while recording incidents, eliminating the need for officers to turn the camera off when discussing tactics with supervision or any other instance sound may not be required.

And, in a section titled “Action Steps,” the memo states that that (then-Acting) Deputy Chief is responsible for all training “concerns,” but does not provide a concrete action plan for their implementation or identify a responsible party for the non-training recommendations.

In our years of experience, departments often initially accept internal or external recommendations (such as those made by OIR Group) and have, in most cases, the best intentions of making them happen. But without a clear action plan and mechanism for accountability and tracking, these recommendations often do not actualize. Sometimes, recommendations that require repeated, long-term implementation, such as those related to training, only happen once. As time goes on and memory fades, departments sometimes are destined to repeat the missteps identified in previous incidents.

In fact, several of our recommendations in both prior reports were for the Department to create “a timely and robust action plan” and that the Department “should further ensure that an effective and timely feedback loop be devised **so that the executive review recommendations incorporated into the action plan are implemented.**” (emphasis added).⁷⁷

Accordingly, we again recommend that PPD create a concrete workplan for implementation of the recommendations made by its own Board and, to the extent that they accept them, those made by OIR Group in this report. This workplan should include:

- A person assigned to ensure implementation of each recommendation
- Steps required for full implementation
- A concrete timeline for implementation of each item
 - For recurring items, such as training, plans to ensure continuity, such as addition to an annual training plan / curriculum
- A mechanism to track progress
- A commitment to publicly report on status of accepted recommendations

⁷⁷ OIR Group review of Barnes incident, Recommendation 12, page 30. OIR Review of McDade incident, Recommendations 19-22, pages 65-66.

RECOMMENDATION 26

PPD should create a workplan to implement the recommendations that have come from this incident to include task owners and a timeline.

RECOMMENDATION 27

PPD should establish a mechanism to track progress and ensure completion of tasks, including providing regular public status updates on the workplan for transparency and accountability.

Conclusion

It is our intention that our review of this incident provides insight to the Department and the Pasadena community. We hope that our commentary and recommendations contribute to the on-going dialogue about policing in Pasadena. With a new Chief, newly promoted command staff, and newly formed police oversight entities, now is an ideal time to engage in collaborative, forward-thinking action. Our recommendations are intended to improve the way that PPD responds to these incidents and the issues that emanate from them.

Appendix A: Recommendation Summary

RECOMMENDATION 1

PPD should revise its investigative protocols to ensure that its Administrative Investigation of a deadly force incident is not delayed because of either prosecutive review or civil proceedings.

RECOMMENDATION 2

PPD should align Policy 310 with its current practice of conducting criminal investigations of critical incidents / officer-involved shootings in-house and remove the expectation that the Los Angeles Sheriff's Department conduct these investigations.

RECOMMENDATION 3

PPD should ensure that any after-action plan relating to supervisory performance issues include a briefing of supervisors on decisions that went well and decisions that could have been improved.

RECOMMENDATION 4

PPD should revise its critical incident protocols to ensure that once an officer-involved shooting scene is secure, PPD should direct any available officer to immediately sequester involved officers and prevent those officers from self-assigned roles in actual evidence collection.

RECOMMENDATION 5

PPD should revise current policy to explicitly require that all involved officers, to the extent possible without compromising public safety, shall be observed and sequestered until they are able to provide a Public Safety Statement to a supervisor, and then removed from the immediate scene of an officer-involved shooting, unless there is a special need to assist with evidence location.

RECOMMENDATION 6

PPD should continue to sequester and monitor involved officers until they provide an interview prior to being released from duty on the date of the incident.

RECOMMENDATION 7

PPD should amend its critical incident investigation policy to require prior to “end of shift” interviews of involved and witness officers, except in extraordinary circumstances, such as when an officer is significantly injured.

RECOMMENDATION 8

The City should revisit its agreement with the PPOA requiring the Department to preview recorded evidence with officers prior to being interviewed about officer-involved shootings.

RECOMMENDATION 9

PPD should direct officers to follow PPD investigative protocols when conducting any investigation. When deficiencies are identified, PPD should conduct refresher training on these investigative protocols immediately.

RECOMMENDATION 10

PPD should consider developing policy setting out expectations for interviews, including the prohibition on interviewing witnesses together.

RECOMMENDATION 11

PPD should make every effort to contact potential witnesses to critical incidents and gather all available evidence, including using technology to allow witnesses to report or submit information anonymously and conducting a search for publicly available video content.

RECOMMENDATION 12

In the recommended training, PPD should make clear that witnesses are not suspects: officers should not run a witness’ identity or vehicle plates unless officers can articulate a rationale for doing so.

RECOMMENDATION 13

When witness statements are paraphrased or otherwise referenced in an officer-involved shooting investigation, press releases, or other media, PPD

should ensure that they are a complete representation of the witness' statement.

RECOMMENDATION 14

PPD should ensure that critical incident administrative investigations conduct thorough interviews of all involved and witness personnel to obtain a full and complete account of all salient aspects of the incident.

RECOMMENDATION 15

PPD should reference and include all documentation used in Administrative Investigations in reports and case files.

RECOMMENDATION 16

PPD should ensure that critical incident Administrative Investigations address all potential violations of policy identified.

RECOMMENDATION 17

When evaluating uses of deadly force, the Use of Force Review Board's analysis should consider the relevant factors to be considered under the Department's deadly force policy and all available evidence to thoroughly assess the decision to use force.

RECOMMENDATION 18

PPD should revise its force review policies to require formal evaluation of any attendant foot pursuits and evaluating whether or not officers' actions align with the Department's Foot Pursuit Policy.

RECOMMENDATION 19

PPD should conduct frequent and regular training on the Foot Pursuit Policy, including the preference for surveillance and containment over engagement in foot pursuits.

RECOMMENDATION 20

The Community Police Oversight Commission should convene community conversations to formally discuss formally discuss and consider the pros and cons of PPD's use of pretext stops, especially with regard to minor equipment violations.

RECOMMENDATION 21

PPD should write policy that clearly defines the role of a PPOA representative at critical incident crime scenes.

RECOMMENDATION 22

PPD should prioritize community outreach, including timely implementation of the recommendations in the Board memorandum relating to improving community relations.

RECOMMENDATION 23

PPD Critical Incident Briefing videos should only include information known to be accurate and omit information of limited relevance such as the criminal history of the individuals.

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PPD should create a workplan to implement the recommendations that have come from this incident to include task owners and a timeline.

RECOMMENDATION 27

PPD should establish a mechanism to track progress and ensure completion of tasks, including providing regular public status updates on the workplan for transparency and accountability.