

Agenda Report

December 7, 2015

TO: Honorable Mayor and Council

THROUGH: Public Safety Committee (December 7, 2015)

SUBJECT: RESPONSE TO RECOMMENDATIONS FROM THE OIR GROUP'S REPORT TO THE CITY OF PASADENA CONCERNING THE OFFICER-INVOLVED SHOOTING OF KENDREC McDADE

RECOMMENDATION:

The following report is for information only, no action by the Public Safety Committee or the City Council is requested at this time.

BACKGROUND:

On March 24, 2012 Kendrec McDade was fatally shot by Pasadena Police Officers Matthew Griffin and Jeffrey Newlen. The following facts are taken from court papers submitted by the City related to this incident:

On March 24, 2012 at approximately 11:04 p.m. a call was placed to 9-1-1 by Oscar Carrillo. Carrillo reported to the 9-1-1 dispatcher that he had been robbed at gunpoint by two African-American males in their early 20's. Carrillo reported to the dispatcher that both subjects had guns. Mr. Carrillo stated eight times during the 911 call that both subjects pointed guns at him.

Following receipt of the report from dispatch, the dispatcher notified the responding officers (including Griffin and Newlen) that the "subjects had a gun". The dispatcher also provided an audio report over the radio to the responding officers of an armed robbery had just occurred involving two black males wearing dark clothes and that the subjects both had guns. The dispatcher also provided an audio report over the radio to the responding officers of an armed robbery had just occurred involving two black males wearing dark clothes and that the subjects both had guns.

Officers Newlen and Griffin (hereinafter jointly referred to as "officers") arrived in the vicinity of the robbery within approximately two to three minutes of the original dispatch. As the officers entered the intersection of Orange Grove and Fair Oaks, they observed an individual matching the description of one robbery suspect who was in the middle of Fair Oaks.

From the time the officers first saw McDade up until shots were fired, it was their intent to detain McDade. After McDade made eye contact with the officers, he began running west towards a parking lot, with the officers following the suspect. While the officers were pursuing McDade, they continually observed him conceal his right hand and appear to grasp something at his waist. During the pursuit, Officer Griffin even stated to Officer Newlen that "I think he's got a gun."

While McDade was running and attempting to evade the officers, his left arm was pumping and swinging while his right arm stayed still and clutched the right side of his waist. At no point prior to McDade being shot could either officer see McDade's right hand. At one point during the officers' pursuit of McDade, McDade changed direction followed by Officer Newlen exiting the vehicle and proceeding on foot while Officer Griffin continued to pursue via the police car. While running behind McDade down the sidewalk, Officer Newlen told McDade words to the effect of "Stop. This is the police."

Officer Griffin pulled his car approximately adjacent to McDade on Sunset Avenue and brought the vehicle to a stop. After bringing his vehicle to a stop, the officers' observed McDade change directions; instead of running down the sidewalk, McDade turned at a right angle to his right and began running directly toward Officer Griffin, while holding his waist, who was seated in his car. While McDade was sprinting towards the door of the police vehicle where Officer Griffin was seated, McDade's right hand continued to grasp the right side of his right hand, with his right hand not visible.

At that point, Officer Griffin believed McDade was a dangerous man with a gun who was coming to kill Officer Griffin. Fearing for his life and believing McDade was coming to kill him, Officer Griffin fired his weapon at McDade. Officer Griffin discharged his weapon at McDade four times in rapid succession, until he believed the imminent threat on his life was over.

Officer Griffin's four shots were fired in rapid succession within a second and a half to two seconds. At the time Officer Griffin discharged his weapon, McDade had ran up to within a foot and a half to two feet of Officer Griffin.

After observing McDade exit the sidewalk and run up to the door of Officer Griffin's police vehicle, Officer Newlen hears a gunshot and observes muzzle flashes from the area where McDade was standing, next to the police vehicle. At that moment, Newlen was approximately 10 yards away.

After hearing the first shot, Officer Newlen observed McDade turn toward him and take a crouched position followed by hearing another shot which Officer Newlen believed was McDade shooting at him. Believing McDade had just shot and killed Officer Griffin and that he was now firing at him, Officer Newlen

returned fire at McDade. At the time Officer Newlen discharged his weapon, he could not see McDade's hands. Officer Griffin fired four rounds at McDade until he observed McDade going to the ground.

Following the subject incident, the officers were separated and directed to not discuss the incident with anyone. A criminal investigation was conducted which was subsequently turned over to the District Attorney and the Department of Justice. Following the Los Angeles District Attorney's review of this incident, it determined that the officers' actions were reasonable and legal and that deadly force was appropriate.

Attachment A is the report from the Los Angeles County District Attorney's Office – Review of Kendrec McDade Officer Involved Shooting.

OIR Group Scope of Work

In addition to the review by the Los Angeles County District Attorney, and the Federal Department of Justice, the City contracted with OIR Group to provide an independent review of the officer involved shooting. Specifically, OIR Group was tasked with:

- a. Reviewing investigative materials for thoroughness and objectivity;
- b. Participating in any meetings by executives of the Pasadena Police Department involving the formal administrative review of the shooting incident, and providing independent recommendations regarding any potential administrative issues, including potential accountability, systematic issues, investigative issues, policy review and training; and
- c. Providing comprehensive written report of the results of the independent review.

In August, 2014 OIR Group provided its final report which included a summary of the incident, comments on the thoroughness of the criminal investigation and a series of findings and recommendations related to the administrative personnel investigation. OIR Group performed similar services for the City following the officer involved shooting death of Leroy Barnes.

It is worth noting that at the outset of OIR Group's engagement on the McDade Incident, staff made public statements that the any and all recommendations made by OIR Group in its final report would be made public and that the Police Department would provide responses to the recommendations at a meeting of the Council's Public Safety Committee, consistent with what was done with the Leroy Barnes report.

However, as a result of requests by members of the public for release of the entire report, staff developed a redacted version which excluded elements which were thought to be protected personnel information under state law. The City was challenged in superior court over its plan to release the redacted version, however, the court ruled in the City's favor. This ruling was then appealed to the Court of Appeal. The Court of

Appeal ruled in favor of the release but ordered certain modifications to the redactions including the underacting of some portions of the report. A public version of OIR Group's report has since been released, and is available on the City's website.

OIR Group's final report included a total of 26 recommendations. Of this total the Department agrees with 19 and either has current policies/practices in place which adequately address the recommendation or is in the process of implementing the recommendation(s). Regarding the balance, the Department either partially agrees or disagrees. A response to each recommendation is provided below.

Response to Recommendations made by OIR Group

Recommendation 1: Because in McDade, the Department's training personnel were not called to roll out to the crime scene, PPD should again consider revising protocols to ensure that training personnel are part of the rollout team for officer-involved shootings.

Response to Recommendation 1: The Department agrees with this recommendation and will implement this recommendation for future officer-involved shootings that result in great bodily injury or death. Although they were not part of the 'rollout team' for this incident, Training staff, including firearms and defensive tactics instructors, participated in the administrative review of the case and offered opinions and training insights with respect to the actions of the officers involved in this incident.

Recommendation 2: Pasadena PD and the City should revisit the current Letter of Agreement with the Pasadena Peace Officers Association requiring the department preview recorded evidence with officers prior to being interviewed about officer-involved shootings (as they did in the McDade case) and should strive to develop protocols that would prevent officers from previewing recorded evidence prior to their interviews.

Response to Recommendation 2: The Department does not agree with this recommendation. Allowing officers to review video is consistent with contemporary police practices as codified in the Department's Lexipol policy 310.8 (Attachment B). However, this is an administrative policy decision, which could be revisited.

Recommendation 3: To avoid the use of telephonic interviews as occurred in the McDade case, PPD should develop protocols discouraging the use of telephonic interviews in officer-involved shooting investigations. When in person interviews prove to be impracticable, the investigative file should explain why.

Response to Recommendation 3: The Department agrees with this recommendation. Departmental protocol states that witness interviews should be taken in person where possible. The Department will formalize this through implementation of a policy within 60 days.

Recommendation 4: Because in the McDade case, despite our suggestions, witnesses were not asked questions that could have supported or contradicted involved officers' version of events, Pasadena PD should design investigative protocols that would ensure that witnesses were questioned about observations that could do so.

Response to Recommendation 4: The Department agrees with this recommendation. The Department has investigative protocols which guide officers when questioning witnesses and ensures thoroughness. In regard to this incident, immediately following the Officer Involved Shooting (OIS), officers began interviewing witnesses and other persons associated with the incident. Officers attempted to locate evidence to include video recordings from businesses that might have captured the sequence of the events. Officers canvased all the residents and businesses within a city block on either side of the route traveled by McDade during the incident in an effort to identify witnesses and/or locate evidence that either corroborated or contradicted the statements of the involved officers. (Attachment C)

Recommendation 5: Because in the McDade case the department failed to conduct an administrative investigation, the department should develop protocols requiring that in every use of deadly force incident, Pasadena PD should conduct an administrative investigation that, at a minimum, includes follow-up interviews of the involved officers regarding tactical decision-making and collects sufficient additional evidence so that the executive team may identify and assess performance, supervision and equipment issues based on the involved officers articulated mindset.

Response to Recommendation 5: The Department agrees that administrative investigations should be conducted. The Department did, in fact, conduct an administrative investigation. Generally speaking, and without providing the specifics of any administrative investigation, an administrative investigation of an officer-involved shooting entails a review of the entire criminal investigation file—keeping in mind that the administrative investigators neither conducted nor directed the criminal investigation. Therefore, in some instances, administrative investigators will develop additional information to evaluate whether the officers acted within policy—for example, conducting further/subsequent interviews of the involved officers (for the administrative investigation only). The administrative investigation will culminate with a recommendation to the Chief of Police as to whether the involved officers acted within policy (if outside policy, this would later be the basis for discipline), and the Chief will make his determination thereon. (Attachment D)

Recommendation 6: Because the independent reviewers in the McDade shooting were not invited to attend the Department's administrative review, should PPD engage in future independent reviews, it should reconsider inviting such reviewers to attend those reviews.

Response to Recommendation 6: The Department agrees with this recommendation. OIRG principles were not invited to the police department administrative review board for two primary reasons. First, their presence in the review process may have unnecessarily influenced the review board and its outcomes or limit robust discussions and criticism. Second, confidential police officer personnel records are discussed and/or generated during the administrative review. Nonetheless, in retrospect, the Department recognizes the value of independent reviews.

Recommendation 7: The Department should brief the involved officers and issue a training bulletin on the tactical considerations and potential disadvantages in operating a patrol car while holding a firearm in one hand.

Response to Recommendation 7: The Department agrees with this recommendation and has developed training tools for all officers in the Department, including an Emergency Vehicle Operations course.

Recommendation 8: Considering what happened in the McDade incident, the department should devise protocols and provide training on those protocols that would require immediate radio notification if officers who are following a suspect collide with a structure, however minor.

Response to Recommendation 8: The Department generally agrees with this recommendation. The Department currently has a policy regarding vehicular accidents which requires all employees to report any vehicle accident to supervisors as soon as practical. The recommendation is that a report be made immediately, apparently regardless of the severity of the vehicle damage or other competing facts. The Department believes the totality of the circumstances should be considered in assessing priority of reporting vehicle accidents while in pursuit.

Recommendation 9: 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.

Response to Recommendation 9: The Department agrees with this recommendation. In response, the Department developed a Foot Pursuit Training Course. Although Department policy does not prohibit police officers separating during a foot chase, the Department recognizes that foot chases are dynamic and, at a minimum require increased communication between police partners, field personnel, the dispatch center and Air Support Flight Crews. The training course is designed to encourage officers to consider all available options prior to splitting up. (Attachment E and Attachment F)

Recommendation 10: To avoid the officer and public safety issues that arose in this case as a result of the decision to attempt to cut off Mr. McDade and box him in, PPD should circumscribe its tactical policies and create training that would prohibit a "cut-off" and "box-in" maneuver when pursuing suspects believed to be armed.

Response to Recommendation 10: The Department does not agree with this recommendation. The "box-in" tactic remains a viable tactic which may be effective under certain circumstances. When deployed properly, it drastically reduces escape choices for suspect(s); reduces risk and increases officer/public safety. Containment continues to be taught in the basic police academy and Advanced Officer Training classes.

Recommendation 11: PPD should brief the involved officer and issue a roll call briefing and/or training bulletin regarding the need under stressful circumstances to remember to place your car in park before exiting the patrol car and the potential calamitous consequences if one forgets to do so.

Response to Recommendation 11: The Department agrees with this recommendation. Officers receive driving instruction including an Emergency Vehicle Operation Course to ensure they understand the dynamics associated with driving under stress.

Recommendation 12: The City should consider whether it should allocate funding for a new mobile audio video system to be installed in PPD patrol cars.

Response to Recommendation 12: The Department agrees with this recommendation and a new mobile audio video system has been installed.

Recommendation 13: Because in McDade the involved officers chose not to respond with lights and siren and therefore their in-car audio video system was not automatically activated and because they did not manually activate the system, the Department should devise a policy requiring manual activation of the in car audio video system when an officer is responding to felony calls or pursuing a person believed to be armed.

Response to Recommendation 13: The Department generally agrees with this recommendation as it relates to ensuring video data capture. The newly implemented in-car video system utilizes three cameras per patrol vehicle. The front facing camera operates automatically when the vehicle is turned on therefore ensuring a level of continuous video capture regardless of whether a vehicle is responding to an incident with lights and sirens or not. (Attachment G)

Recommendation 14: PPD should equip its officers with mobile audio devices.

Response to Recommendation 14: The Department agrees with this recommendation and is moving forward with the deployment of personal video and audio recording devices for field personnel, commonly referred to as body-worn cameras.

Recommendation 15: Because in the McDade shooting, no involved officers activated their mobile audio devices, PPD should devise policy specifying when officers are required to activate mobile audio devices.

Response to Recommendation 15: The Department agrees with this recommendation and as indicated above, is currently in the process of selecting and deploying body-worn cameras. Associated with this deployment will be the development of policies regarding the use of such devices including when activation is required.

Recommendation 16: Crime scene photographs should be carefully reviewed by the investigators. If there is evidence of items having been moved, inquiry should be undertaken into that movement and case notes should explain the circumstances behind that movement.

Response to Recommendation 16: The Department agrees with this recommendation. Officers receive comprehensive training concerning issues associated with crime scene preservation. Effective protocols are in place to ensure evidence is documented, marked and collected for further use and/or to recreate the crime scene and to follow the chain of evidence procedures. However, in the McDade shooting, the on-scene supervisors and/or officers were concerned with securing emergency medical assistance for Mr. McDade. Pasadena Fire Paramedics were directed into the crime scene so they would be appropriately positioned to provide the best emergency care as possible for McDade. Evidence preservation in and around the immediate area was less of a focus while paramedics were attempting to provide urgent care to Mr. McDade. As a result, evidence was inadvertently disturbed while providing medical attention to Mr. McDade. The information was reported to the detectives who documented the disturbance in their reports.

Recommendation 17: Because in the McDade shooting, the involved officers were not interviewed until thirty-six hours after the incident, Pasadena PD should devise protocols so that interviews of involved officers are conducted no more than a few hours after the incident.

Police Department response to Recommendation 17: The Pasadena Police Department agrees with this recommendation. Officers and witnesses involved in critical incidents such as this should be interviewed as soon as practical

In order to complete a robust interview of involved officers and witnesses, detectives must have a complete grasp of the incident for which they are attempting to recreate the incident.

Recommendation 18: As was eventually done in the McDade review, a robust and detailed administrative memorandum should be timely prepared that documents the discussion, issues identified and determinations by the Review Board with regard to tactical decision-making, policy concerns, supervision, equipment, post incident response and assessment of the internal investigations.

Response to Recommendation 18: See response to Recommendation 5.
(Attachment D and Attachment H)

Recommendation 19: Pasadena PD's critical incident administrative review process should include a documented, tailored and detailed action plan designed to target and address any issues involving tactics, supervision, training, equipment, or post incident response or investigative issues.

Response to Recommendation 19: The Department agrees with this recommendation. Following all critical incidents and uses of force, the Department conducts a comprehensive administrative investigation. An Administrative Review Board considers all aspects of the critical event including: tactical decision-making, equipment, state-of-mind, and Department policies and training as articulated by the involved officers during their voluntary statements and/or compelled statements. The findings of the Administrative Use of Force Review board also include the examination

of protocol, duties and responsibilities. In cases where discipline is applied the Department has routinely prepared a detailed report and action plan. As a result of the OIR Group's recommendation the Department has extended this practice to include all incidents. (Attachment D and Attachment H).

Recommendation 20: The critical incident action plan should include as a necessary component that individual feedback is provided to involved officers and any other actions PPD personnel regarding decision making and issues identified during the internal review.

Response to Recommendation 20: The Department agrees with this recommendation. As part of the administrative review process, appropriate feedback is provided. (Attachment H)

Recommendation 21: The critical incident review action plan should include as a necessary component the creation of a training bulletin that provides insight to all PPD personnel issues and challenges identified during the internal review.

Response to Recommendation 21: The Department agrees with this recommendation and as a matter of practice routinely provides feedback to staff through various mechanisms include briefing, training bulletins and meeting.

Recommendation 22: The critical incident review action plan should include the assignment of tasks to PPD and include a report back date when the Review Board should convene and receive feedback about the efficacy of the actions ordered.

Response to Recommendation 22: The Department agrees with this recommendation. As part of the administrative review process, feedback is provided with appropriate implementation timelines.

Recommendation 23: Once concerning officer tactical decision making is identified such as the involved officers:

1. Not successfully broadcasting their observations of McDade being armed when they followed him in the police vehicle.
2. Not communicating with each other regarding their apprehension plan.
3. Continuing to pursue the suspect aggressively, including traversing an admittedly unsafe narrow throughway.
4. The driver officer deciding to take his gun out thus making difficult driving maneuvers with one hand.
5. Failing to reevaluate the safeness of their actions after colliding the patrol car with a building.
6. Failing to broadcast the collision.
7. Splitting partners without effective communication resulting in unclear understanding about their next moves.
8. The passenger officer deciding to chase an armed suspect on foot with the intent to apprehend rather than the preferred and safe goal of containment.
9. The driver officer deciding to engage in a "cut-off" and "box in" maneuver which required driving past and armed suspects, and

10. The driving officer positioning and stopping the patrol car too close to a running suspect he believed was armed.

PPD should consider whether such decisions may have combined to instill in the officers an extraordinary level of fear so that once the driving officer placed himself in a precarious position so that once Mr. McDade made an unanticipated move, the officer believed deadly force was his only option.

Recommendation 24: In reviewing officer-involved shootings, PPD should recognize the strong correlation between officer tactical decision making that is inconsistent with principles of officer and public safety and the eventual perceived need to use deadly force and use that principle, consistent with recent California Supreme Court jurisprudence, to assess and evaluate officer decision-making.

Responses to Recommendation 23 and Recommendation 24:

Pasadena Police Officers strive to provide the best policing service to the community while maintaining the public's trust. Often times, officers are required to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving. The ability to carry out those responsibilities is achieved through department training that is comprehensive, contemporary and on-going. The foundation of the training encompasses decision making, tactical skills training and cognitive analysis. To accomplish its training standards, the Department uses state of the art simulation, live fire drills, and scenario based exercises. So that Pasadena Police Officers have the most contemporary policies to guide them, the department uses the constitutionally based Lexipol Policy Manual which is the prevailing standard in law enforcement.

Recommendation 25: The Department should continue to work to create a culture where officers are encouraged to use tactical proficiencies and decision-making consistent with principles of officer safety to dictate desired outcomes.

Response to Recommendation 25: The Department agrees with this recommendation. The Department has a robust training program which is supported by a dedicated Training Sergeant. The Department utilizes state of the art tools, such as an interactive live-fire simulator. The tactical proficiencies and decision-making techniques that are developed are supported by policies that are reinforced during Roll Call Training, Advanced Officer Training, and other learning environments.

Recommendation 26: The Department and the City should cement its commitment to transparency by authorizing release of a factual, analytical, public and independent report that permits its public and stakeholders the ability to determine for themselves how the incident unfolded, how well the department investigates and reviews officer-involved shootings, how well the department holds involved personnel accountable, and how well the Department develops learning for itself and its officers in response to them.

Response to Recommendation 26: The Department agrees with this recommendation. A public version of the OIR Group's report on this matter is available on the City's website at <http://cityofpasadena.net/OIRreport/> and is attached as

Attachment I. Future independent review of major incidents will not include confidential information so the report in its entirety can be released publically.


COUNCIL POLICY CONSIDERATION:

Implementation of the agreed upon recommendations contained in the OIR Group's report will act to further the City Council's strategic plan goal to ensure public safety.

FISCAL IMPACT:

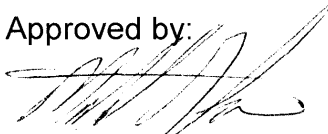
This report was presented for information only; accordingly there are no direct fiscal impacts. Implementation of some or all of the recommendations discussed herein will have budgetary impacts and will be addressed through either existing appropriations in the Police Department's operating budget, the City's capital improvement program budget or future appropriations.

Respectfully submitted,



Phillip L. Sanchez
Chief of Police

Approved by:



Michael J. Beck
City Manager