
Review of an Internal Affairs Investigation into the Officer Involved Shooting of June 3, 2007



**REPORT PREPARED FOR
THE CITY OF AUSTIN, TEXAS**

November 27, 2007



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POSITIONS ARE APPROXIMATE. APD PHOTO. ALL NOTATIONS MADE BY KROLL

Gun recovered

1175 Harvey

1179 Harvey

Olsen

1181 Harvey

1177 Harvey

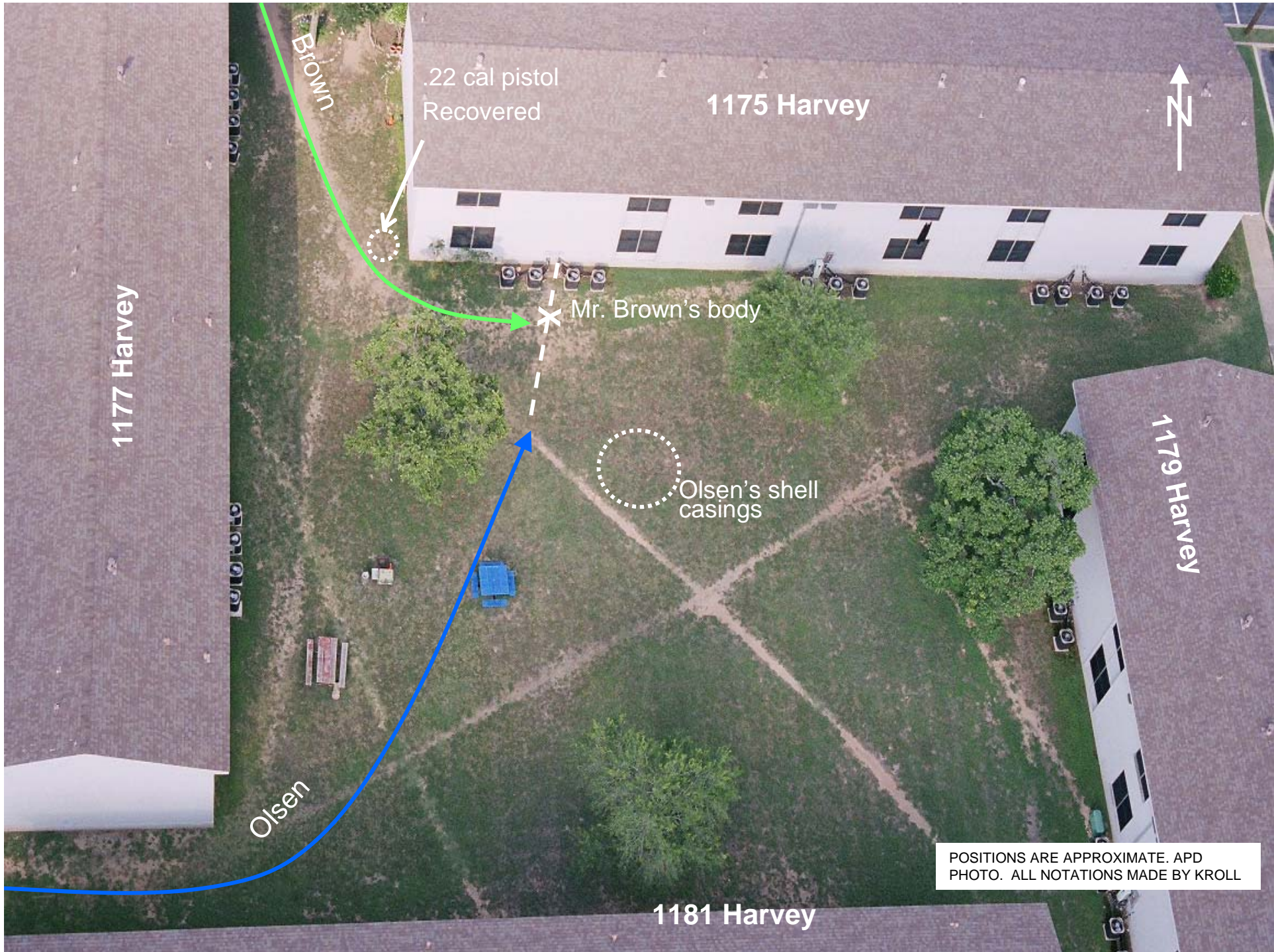
Brown & Ramos

Chester's Lounge

Initial encounter

Sgt. Olsen Police Vehicle





.22 cal pistol
Recovered

1175 Harvey



Brown

Mr. Brown's body

Olsen's shell
casings

1179 Harvey

1177 Harvey

Olsen

1181 Harvey

POSITIONS ARE APPROXIMATE. APD
PHOTO. ALL NOTATIONS MADE BY KROLL



I. Introduction

Police officers occupy a special position in our society. They alone in the domestic arena are invested with the authority, and the means, to take human life when deemed necessary by circumstances. As a society, we expect those decisions to be made with the utmost care and regard for human life, making the decision of when to employ deadly force the most critical decision that any police officer can make. In any incident in which deadly force is involved, a review of that use of force from a both a criminal standpoint (determining whether the criminal laws of the jurisdiction involved were violated by the use of such force) and an administrative standpoint (determining whether the policies and procedures of the department were violated by the use of such force) must take place in order to assure society that appropriate care and consideration were given before deadly force was employed. The determination of these questions may be considered by some to be a second-guessing process. The process, however, is in fact necessary and crucial to ensuring that policing is conducted with the highest degree of integrity, in full compliance with the Constitution and laws of the United States and the local jurisdiction and most importantly, with respect for human life.

The needs of the community are best served by a thorough and unbiased investigation designed to discover and root out misconduct wherever it may lie and to seek the truth of the matter under investigation. As in this case, the administrative aspect of a critical incident investigation is normally conducted internally by a specially designated unit within a police department. Sometimes, in order to make certain that the investigation process has been conducted without fear or favor and to enhance public confidence in the process, independent outside entities are called upon to review the process and findings of internal inquiries. Such is the case here. Kroll Government Services (hereinafter referred to as "Kroll") was asked to conduct a review of the investigation which was launched after the events of the morning of June 3, 2007, when Sgt. Michael Olsen encountered and ultimately shot and killed Kevin Brown.



At the outset we note that in a case such as this, where a young man is shot in the back twice, where there is an indication that the officer fired two more rounds at the man when he was on the ground and where the evidence showed that the man was unarmed at the time of the shooting, transparency of the investigative process is critical. In rendering this report we fully recognize that on the surface, the facts of this case are particularly troublesome to the Austin Police Department (APD) and to the community which expects and demands that their police officers make the best decisions even in the most difficult of circumstances. That being said, neither the laws of the State of Texas nor the policies of APD require "best" decisions. Rather those rules require only that officers make decisions permitted by such statutes and regulations. Our review of the internal investigation of the incident is therefore limited to the thoroughness and fairness of the process and the reasonableness of its conclusions as to whether Sergeant Olsen made permissible, not necessarily perfect, decisions under the applicable regulations.

Our report follows.

II. Background and Scope of Assignment

In the early morning hours of June 3rd, 2007, after a brief chase through a parking lot and apartment complex, Kevin Brown was shot and killed by Sergeant Michael Olsen of the Austin Police Department (APD). An autopsy revealed that Mr. Brown had sustained two gunshot wounds to his back and died as a result of those wounds. Sergeant Olsen, in a number of statements indicated that at the time he shot Mr. Brown he believed Mr. Brown was armed with a gun, and that Mr. Brown turned toward him and reached for his waist placing Sergeant Olsen in fear for his life. As is the case in all Officer Involved Shootings, a criminal investigation conducted by the Homicide Unit of the Department was launched. Evidence from this investigation was presented to a Travis County Grand Jury which voted "No Bill," thereby declining to indict Sergeant Olsen.¹ Following the criminal

¹ Because of secrecy provisions of the laws regulating grand jury proceedings, Kroll was not privy to what evidence was presented to the grand jury.



investigation, an administrative investigation, conducted by the Internal Affairs Division of APD was launched in order to determine whether policies or procedures of the Austin Police Department had been violated. Their administrative report, which was completed on November 14th, 2007, found that Sergeant Olsen had violated Department policy relative to the tactics employed in the planning, approach and pursuit of Mr. Brown, but rendered a determination of “Inconclusive” relative to the question of whether the use of deadly force employed by Sergeant Olsen violated APD policy.

On November 15, 2007 Kroll was retained by the City of Austin to review the administrative investigation of the officer involved shooting death of Mr. Kevin Brown. By contract with the City of Austin Kroll was charged with conducting a qualitative review of the Internal Affairs investigation, focusing on the thoroughness and appropriateness of the IAD investigatory techniques, analysis and conclusions regarding the shooting. To the extent that the IAD investigation relied on evidence and material gathered in the criminal investigation conducted by the Homicide Unit, it was required that we assess that unit's work as well.

The review was to be conducted based primarily on the investigative reports prepared by APD homicide and internal affairs investigators and the related evidentiary materials all of which was provided to Kroll on November 17th and 18th.² Kroll immediately commenced its review which, by the terms of the contract, was required to be completed by November 27th.

Specifically excluded from this assignment was any review of the adequacy or appropriateness of the policies and procedures of the Department, or of officer training regarding the use of deadly force or tactics which can be employed to minimize the need for the use of deadly force. Likewise, the scope of the assignment does not call for the making

² As will be discussed later in this report, Kroll did request certain additional items of evidence which were not initially provided by the City and which, as best as can be determined, were not reviewed by either the Homicide or IAD investigations.



of any recommendation relative to discipline. The discipline to be imposed for any violation of departmental policy is ultimately in the sole discretion of the Chief of Police. Any discipline imposed will necessarily take into account the seriousness of any breach of departmental policies and procedures as well as Sergeant Olsen's full record as a police officer.

III. Team Members

A. *Jeff Schlanger, Project Executive and Coordinator*

Jeff Schlanger is President of Kroll Government Services (KGS), formerly serving as Managing Director and Chief Operating Officer of Kroll's Security Service Group. In his role as President of KGS, Mr. Schlanger is ultimately responsible for all work being performed for local, state and the federal government and for all monitoring assignments, including the on-going monitoring of the Los Angeles and Detroit Police Departments, both of which include the extensive review of officer involved shootings. In addition, Mr. Schlanger has served as Project Executive and Coordinator in a variety of police action reviews including those for the Tennessee Highway Patrol and the San Francisco Police Department.

Mr. Schlanger is a product of the New York County District Attorney's Office, where he served for 12 years as both Senior Investigative Counsel and Senior Trial Counsel to District Attorney Robert M. Morgenthau. His career in the District Attorney's Office began in the Trial Division, where Mr. Schlanger was a homicide prosecutor and ended in the Rackets Bureau where he investigated Organized Crime. Mr. Schlanger's investigations focused on homicides committed by the members of both traditional and non-traditional organized crime, other forms of labor racketeering, including extortion, loan sharking, bribery, kickbacks, no-show jobs, bid-rigging and wage violations, and police and political corruption. It was Mr. Schlanger's investigation of the Westies, a notorious Irish gang from the West Side of Manhattan, its ties to the Gambino crime



family, and the development of cooperating witnesses from those groups, that directly led to the State's prosecution of John Gotti and others for the shooting of a Carpenters' Union official. In connection with his investigative and prosecutorial roles, Mr. Schlanger was cross-designated as a Special Assistant United States Attorney in both the Southern and Eastern Districts of New York.

From 1990 to March of 1998, Mr. Schlanger was in private law practice and headed his own private investigation firm. In 1998 Mr. Schlanger's private investigation firm was purchased by Kroll Inc. Mr. Schlanger holds a BA degree (with honors) from the State University of New York at Binghamton and a JD from The New York University School of Law.

B. *Jeff Noble*

Jeff Noble has over 23 years of law enforcement experience. He is currently a commander with the Irvine Police Department, Irvine, California. Commander Noble earned his bachelor's degree in Criminal Justice from California State University, Long Beach, and he earned a juris doctorate from Western State University College of Law where he graduated with honors in 1993.

Commander Noble has consulted for many Southern California police agencies and several major cities. Most notably, Commander Noble was part of an outside team of police experts who reviewed the City of San Francisco's Office of Citizen Complaints (OCC) investigation into what was widely reported as the "Fajitagate" case involving the indictment of seven command staff members and three line personnel of the San Francisco Police Department. Commander Noble is currently serving as an expert for the City of Chicago on cases involving Lieutenant Jon Burge and alleged confessions by torture that resulted in the pardon of several death row inmates.

Commander Noble, along with Geoffrey Alpert, Ph.D., has written a textbook on Internal Affairs Investigations that is due to be published by Waveland Press in early



2008.

C. John Lenoir

John Lenoir has over 25 years experience as a criminal prosecutor in both state and federal courts. As an Assistant District Attorney in New York County (Manhattan), Mr. Lenoir led investigations and prosecutions of homicides and other violent crimes. As a federal prosecutor in the Southern District of Texas, Mr. Lenoir led one of the first multi-agency task forces targeting money laundering enterprises, and was chief of the Civil Rights Division. He directed numerous investigations involving confidential informants, using undercover agents and sophisticated electronic surveillance techniques. These investigations led to the successful prosecution of corrupt public officials and one of the most significant civil rights prosecutions involving police brutality in South Texas. Mr. Lenoir developed the first comprehensive training program for the Southern District of Texas US Attorney's Office legal and support staff, and developed training in federal law and procedures for local police and sheriff departments of South Texas. Mr. Lenoir worked with Houston Police Department officials in the design of a web-based delivery of training programs, and was a regular lecturer on civil rights at the Houston Police Academy.

In 2001-2002, Mr. Lenoir was on special assignment in Washington, DC as Counsel to the Director of the US Marshals Service, and was later named Administrative Assistant US Attorney for the Eastern District of New York. Mr. Lenoir joined Kroll Government Services as Managing Director in July 2007.

He graduated from American University in Washington, D.C. with a degree in Political Science, and went on to earn a Masters and Ph.D. in Cultural Anthropology at the Graduate Faculty, New School for Social Research in New York. While serving as a full-time member of the faculty of John Jay College of Criminal Justice at the City University of New York as Assistant Professor of Anthropology, Lenoir earned a law



degree at Rutgers University School of Law at Newark New Jersey.

IV. Methodology

Each of the team members has reviewed all of the materials provided. Specifically these materials are listed in Appendix A, and aggregate to thousands of pages and hundreds of photographic and video exhibits. While there was discussion among the team during the analysis phase of the materials provided, each member was urged to form his own opinion on the thoroughness and conclusions of the IAD investigation. This report reflects the consensus of the team.

The IAD investigation focused on three administrative charges:

1. That Sergeant Olsen failed to exercise sound judgment in employing the police tactics that began with his initial approach of Kevin Brown in the parking lot of Chester's Lounge, and led up to his use of deadly force when he confronted Mr. Brown in the courtyard of the Elm Ridge Apartments.
2. That Sergeant Olsen's use of force against Mr. Brown did not comport with the APD's Use of Force policies.
3. That Sergeant Olsen's use of force against Mr. Brown did not comport with the laws of the State of Texas.

In our review of the conclusions reached by IAD to these questions we employed the standard of proof for an administrative investigation, "preponderance of the evidence." The standard of proof is the level of certainty and the degree of evidence necessary to meet the Department's burden of establishing that in fact policies or procedures of the Department were violated. The preponderance of the evidence standard requires that evidence simply be of greater weight or more convincing than the evidence that is offered in opposition to it;



in other words that the standard is met when it is more likely than not that the individual engaged in the misconduct charged by the department.

Thus, in conducting our review we have attempted to resolve the following questions:

1. Was the Internal Affairs investigation conducted appropriately according to applicable laws, policies and procedures?
2. Was the Internal Affairs investigation conducted thoroughly in terms of the gathering and review of evidence?
3. Was the correct analysis and standard of proof applied to the evidence which was gathered?
4. Were the conclusions reached supported by the evidence and the analysis employed?

With respect to the evidence itself, and conclusions to be drawn therefrom, the majority of the facts surrounding this incident are undisputed. The primary issues over which there exists some level of dispute are: (1) the timing and sequence of the shots which Sergeant Olsen fired; (2) the state of mind of Sergeant Olsen when he fired his weapon; and (3) the reasonableness of Sergeant Olsen's state of mind and actions judged from the perspective of a reasonable individual in Sergeant Olsen's circumstances.

V. The Incident³

On June 3rd, 2007 Sergeant Michael Olsen and Officer Ivan Ramos of the Austin Police Department were working uniform patrol together on a special detail denoted as "Operation Silent Night." The purpose of that detail was to have a highly visible police presence within the targeted hot spots to reduce crime and increase public perception of police response.

³ On pages ii and iii, we have included aerial photographs showing the locations relevant to the events of June 3rd. The aerial photos were taken by APD as part of the investigation. We have placed markings on the photographs depicting various aspects of the events of that morning in order to give the reader better insight into those events. While the markings are derived from the other evidence in the case, all of the markings are approximate and are the result of our best interpretation of such evidence.



Specifically, the officers were directed to conduct strict enforcement of "Car Clubs" that bring late night congregation and cruising with loud music which created a disturbance in the affected residential communities, particularly in the early morning hours.

At about 4:10 a.m. Sergeant Olsen and Officer Ramos had made an enforcement stop on a vehicle directly in front of Chester's Lounge and were in the process of issuing the driver a citation for excessive noise when Sergeant Olsen was approached by Mr. Mark Page. Mr. Page, a security guard for Chester's Lounge, told Sergeant Olsen that he believed an individual, later identified as Darius Lovings, who was wearing a white tank-top t-shirt was armed with a handgun. Mr. Page was able to identify Mr. Lovings to Sergeant Olsen as Mr. Lovings was standing in the parking lot of Chester's Lounge several yards away from where he and Sergeant Olsen were standing.

Sergeant Olsen asked the security guard to keep an eye on Mr. Lovings as Sergeant Olsen completed the citation. After Sergeant Olsen completed the citation, Mr. Page told him that he believed Mr. Lovings had handed the handgun off to a second individual wearing a red shirt, who was later identified as Kevin Brown. Mr. Page was able to point out this second individual who was also in the parking lot of Chester's Lounge.

Sergeant Olsen told Officer Ramos that Mr. Page believed that Mr. Brown was carrying a handgun and Sergeant Olsen requested an additional officer by radio transmission. Officer Norrell responded on the radio that he was responding and that he was "two seconds away." Sergeant Olsen did not wait for Officer Norrell to arrive and instead walked into the parking lot, followed by Officer Ramos, directly toward Mr. Brown and Mr. Lovings.

Sergeant Olsen focused his attention on Mr. Brown when, according to Olsen, Mr. Brown appeared startled and stepped back when the officers approached. Sergeant Olsen directed Mr. Brown to show him his hands. Mr. Brown did not comply with the order and a brief



struggle between Sergeant Olsen and Mr. Brown ensued.⁴ Mr. Brown was able to escape the grasp of Sergeant Olsen and began to run through the parking lot in an attempt to evade the officers. Sergeant Olsen stated that as Mr. Brown ran, he was holding the right side of his pants with his right hand rather than swinging his arms in a normal running fashion. Sergeant Olsen would later tell investigators that at that point he was "100%" certain that Mr. Brown was armed with a handgun.

The officers pursued Mr. Brown into the courtyard of an adjacent apartment complex, by climbing a fence which separated the Chester's Lounge parking lot from an adjacent apartment complex. While climbing over the fence Sergeant Olsen injured a finger on his right (dominant) hand during the pursuit. He told investigators that the injury must have occurred while he was climbing over the fence.⁵ After scaling the fence Sergeant Olsen separated from Officer Ramos by taking a different path putting him in a courtyard bounded by four buildings of the complex. Sergeant Olsen confronted Mr. Brown in the courtyard and according to his account ordered him to stop and to put his hands up. Sergeant Olsen stated that instead of putting his hands up, Mr. Brown made a furtive movement on his right side where Sergeant Olsen believed Mr. Brown was secreting a handgun. Stating that he believed Mr. Brown was going to engage him in a gun battle, Sergeant Olsen fired four rounds at Mr. Brown striking him twice in the back. Mr. Brown fell to the ground and although paramedics were immediately summoned, Mr. Brown was pronounced dead at the scene. There were no eyewitnesses to the initial confrontation between Sergeant Olsen and Mr. Brown in the courtyard, although Officer Norrell arrived immediately after the initial confrontation and did observe some of the shots being fired by Sergeant Olsen. A number of individuals in the apartment complex, as well as Officer Ramos and Officers Chancellor and Carillo, heard the shots fired.

⁴ The approach of Sergeant Olsen and Officer Ramos, the brief struggle and Mr. Brown's initial flight from the scene is all captured on videotape which was made part of the investigative file.

⁵ Although Sergeant Olsen is right handed there is no indication that this injury affected Sergeant Olsen's ability to fire his weapon or his state of mind.



A search of Mr. Brown revealed that he was not armed at the time of the shooting; however, a .22 caliber pistol was discovered along the path Mr. Brown had taken to elude the officers approximately 25 feet from where Mr. Brown was shot.

Adhering to APD protocol, an investigation into the shooting was conducted by APD's Homicide Unit and developed the following evidence:

1. Statements of Sergeant Olsen

Sergeant Olsen provided four statements to the Austin Police Department. His first statement was a written statement made on June 3rd to Homicide investigators. His second statement was a videotaped re-enactment filmed at the scene of the incident. Sergeant Olsen later gave two statements to Internal Affairs investigators. His first IA interview was on September 7th and the second was on November 7th.

In his first statement, Sergeant Olsen said that he saw Mr. Brown running toward him from between building #1177 and #1175. Sergeant Olsen described the area between the buildings as being dark, but the center of the courtyard where he was standing was "reasonably well" lighted. Sergeant Olsen stated that as Mr. Brown ran toward him, he drew his gun and yelled something to the effect of "Stop! Police! Let me see your hands!" Sergeant Olsen said that he slowed his pace so as not to get too close to Mr. Brown and that Mr. Brown rounded the corner of building #1175 and made a left hand turn now running southbound along the rear of building #1175.

Sergeant Olsen said that after Mr. Brown moved a short distance than Mr. Brown slowed and turned "slightly" toward him such Mr. Brown was looking directly at him. Sergeant Olsen said that Mr. Brown was "clearly digging his hand into his waistband and I feared that he was trying to pull the gun on me." Sergeant Olsen continued, "Although I had not actually seen a gun I had no doubt he was carrying a gun." Sergeant Olsen based his



opinion that Mr. Brown had a gun on the statements made to him by Mr. Page, Mr. Brown's actions as he approached Mr. Brown outside the club, Mr. Brown's actions of keeping his right hand by his pants as though he were securing a gun in his waistband as he ran from the officers and, when he was confronted by Sergeant Olsen in the courtyard, his "digging into his waistband as if trying to pull a gun."

Sergeant Olsen stated that he believed that Mr. Brown was about to fire upon him and that he feared for his life so he fired upon Mr. Brown. Sergeant Olsen said that he was standing and that he fired several rounds at the center of mass and that Mr. Brown fell to the ground.

Sergeant Olsen said that after Mr. Brown fell to the ground that Mr. Brown continued to be "reaching and digging at his waistband as if trying to get the gun out." Sergeant Olsen said that he "paused and hesitated . . . before making the decision to shoot several more rounds to ensure that I ended the threat." Sergeant Olsen added that he recalled "other officers rounding the corner (of building #1175) just as I shot these last rounds or just after."

In his video re-enactment Sergeant Olsen provided a more detailed description of Mr. Brown's actions as Sergeant Olsen first approached him. Sergeant Olsen said that Mr. Brown's back was turned toward him as he initially walked up. While Mr. Brown's back was turned and before Mr. Brown saw Sergeant Olsen approaching, Mr. Brown moved his right hand to his right waist area as though he was adjusting something in his waistband. Sergeant Olsen said that when Mr. Brown saw him approaching that Mr. Brown's "eyes got big" as though he was startled by Sergeant Olsen's presence. Sergeant Olsen said that this is when he formed the belief that Mr. Brown did have a gun in his waistband as described by Mr. Page.

Sergeant Olsen said that he tried to grab Mr. Brown's hands, but that Mr. Brown used both of his hands to push Sergeant Olsen away. Sergeant Olsen said that he was able to grab onto Mr. Olsen's shirt as he began to run away and that he felt that he would have been able



to tackle him at that point, but that he was fearful of Mr. Brown's gun so he chose not to.

Sergeant Olsen also clarified Mr. Brown's position when he was on the ground after the first group of rounds. Sergeant Olsen said that Mr. Brown's head was turned so his left ear would be toward the ground and that Mr. Brown was looking directly at him. Mr. Brown's right hand was visible and Sergeant Olsen could see that Mr. Brown's right hand was digging into his waistband as though he was still trying to get a gun out. Sergeant Olsen stated that based on this fear that he fired at Mr. Brown again. After these rounds were fired, Sergeant Olsen said that Mr. Brown put his arms out directly to his sides and it was at this point that Sergeant Olsen no longer felt that Mr. Brown was a threat and that Officers Ramos and Norrell were able to approach and handcuff Mr. Brown, with Sergeant Olsen still holding Mr. Brown at gunpoint.

In his first IA interview Sergeant Olsen said that he starting "yelling" at Mr. Brown from the time he rounded the corner of building #1175 and that he yelled "Let me see your fucking hands. Let me see your hands." Sergeant Olsen said that after Mr. Brown rounded the corner he "just looked straight at me, and . . . was digging for that gun, and then he started turning his body, just slightly towards me." Sergeant Olsen added, "I thought he was fixing to spray rounds at me." Sergeant Olsen said that he believed that he had fired five or six rounds at that point, but now knows based on the Homicide investigation that he fired a total of four rounds during the entire incident. Sergeant Olsen said that he assumed that he hit Mr. Brown with his initial shots because he fell to the ground immediately.

Sergeant Olsen was asked that based on where the gun was eventually found what he believed that Mr. Brown was doing during the time when Sergeant Olsen believed he was digging for a gun. Sergeant Olsen stated that he believed that Mr. Brown had accidentally dropped the gun and that he was trying to pull the gun out, but that he could not find it.

Sergeant Olsen was asked why he shot Mr. Brown when he was face down on the ground.



Sergeant Olsen replied, “Because he was still digging in his waistband.” Sergeant Olsen said that he was still yelling at Mr. Brown to “Let me see your fucking hands,” that Mr. Brown did not show his hands and that he still felt threatened. Sergeant Olsen said that he did not have any cover, there was nowhere for him to go, and he felt that Mr. Brown was still a threat, so he “made the decision to fire more.”

In his second interview by IA Sergeant Olsen was asked why Mr. Brown was shot in the back. Sergeant Olsen explained that he was “somewhat behind” Mr. Brown when Mr. Brown started digging in his waistband and that Mr. Brown turned toward him when he fired his weapon. Sergeant Olsen did not say that Mr. Brown’s back was his target, but that he was firing at the center of mass.

2. Statements of Officer Ramos

In his statement to Homicide, Officer Ramos said that Mr. Brown had a “pretty good” lead and that he saw Officer Norrell pull into the apartment complex. Officer Ramos said that he lost sight of Mr. Brown and that he heard two or three shots. Officer Ramos said that he did not hear any verbal commands, but he felt that he may have too far away to hear commands if they were given. Officer Ramos drew his weapon and hesitated for a moment because he did not know if he was being shot at. Officer Ramos said that at some point he made a radio broadcast of shots fired, but he was not certain when he made the broadcast.

Officer Ramos said that when he made it to the courtyard he saw Sergeant Olsen and Officer Norrell with their guns drawn and Mr. Brown was face down on the ground and bleeding from the back.

During his re-enactment video, Officer Ramos said that he had just reached the southeast corner of building #1177 when he heard the shots. He drew his weapon and paused because he did not know if he was being shot out. He then “pied” the southeast corner of the



building and was able to see between buildings #1177 and #1175 and into the courtyard area. From that position, Officer Ramos was not able to see Mr. Brown, so he proceeded to the northwest corner of building #1175. As he was able to look around the corner of building #1175, he saw Mr. Brown on the ground with his hands out to his sides. Officer Ramos moved up and was able to handcuff Mr. Brown.

In his statement to Internal Affairs, Officer Ramos said that he only heard two or three shots and they were in rapid succession. Officer Ramos said he did not know where Sergeant Olsen was when he heard the shots and that he did not see him until he entered the courtyard. Officer Ramos said that he was the one that handcuffed Mr. Brown and Officer Norrell did not assist him. Officer Ramos did not speak with Sergeant Olsen after the shooting and he only discovered that Sergeant Olsen had shot Mr. Brown when Officer Norrell later told him.

3. Statements of Officer Norrell

Officer Norrell told the Homicide investigators on June 3rd that as he drove into the apartment complex he saw Mr. Brown about 40 to 50 feet in front of him running west between building #1177 and #1175. Officer Norrell got out of his car and began to chase Mr. Brown on foot. Officer Norrell said that he saw that Mr. Brown was reaching toward his pants with his hands, but he could not see what Mr. Brown was doing. Mr. Brown ran around the northwest corner of building #1175 and Officer Norrell could see Sergeant Olsen in the courtyard. As Mr. Brown went around the corner of building #1175, Officer Norrell lost sight of him. As Officer Norrell was reaching the corner of the building he heard three or four gunshots in rapid succession.

After the initial volley of shots, Officer Norrell rounded the corner of building #1175 and saw Mr. Brown lying on his stomach. Officer Norrell said he heard Sergeant Olsen yell at Mr. Brown something like, "Let me see your hands." Officer Norrell said he could see



Sergeant Olsen pointing his gun at Mr. Brown. Officer Norrell heard another shot and said that he could see the round strike Mr. Brown's back.

Officer Norrell began yelling at Mr. Brown to show him his hands and Mr. Brown put his arms out to his sides. Officer Norrell said that Officer Ramos arrived at his position at about that time and that he and Officer Ramos approached Mr. Brown and handcuffed him.

In his video re-enactment, Officer Norrell said that he pulled into the parking lot with his emergency lights on. Officer Norrell said that he first saw Mr. Brown as he was pulling up to a parking space between building #1177 and #1175. Officer Norrell saw that Mr. Brown was running, but that he had his right hand on the right side of his pants pocket area. Officer Norrell got out of his car, ran up to the southwest corner of building #1175 and as he approached, could see an officer in the courtyard. Officer Norrell said he did not know who the officer was, but that he could tell it was an officer due to the reflective tape on the officer's sleeves.

Officer Norrell said that as he approached the northwest corner of building #1175 he heard four to five shots with a slight pause before the last shot. Officer Norrell said that he saw Mr. Brown fall face down on the ground and that the last shot struck Mr. Brown either just before he struck the ground or just as he struck the ground. Officer Norrell said that he saw the last shot hit Mr. Brown and it appeared that the shot hit Mr. Brown's right upper shoulder and that the round went from Mr. Brown's right to his left across his upper back.

In his statement to Internal Affairs Officer Norrell provided a more detailed description of Mr. Brown's actions as he ran between building #1177 and #1175. Officer Norrell said that Mr. Brown had both of his hands on his waist and added that "he was holding his pants up, or reaching or something, but he definitely wasn't swinging his arms." Officer Norrell said that Mr. Brown was not at a full run and that he was starting to slow down as he ran between the buildings.



Officer Norrell said that he did hear Sergeant Olsen giving Mr. Brown verbal commands to put up his hands, but he could not tell if it was before the shots or during the shots. Officer Norrell said that when he heard the shots that he stopped as fast as he could because he did not know who was shooting.

Officer Norrell was asked about a discrepancy between his statement to the Homicide investigators taken that day of the incident and a statement that he made during his re-enactment. On the day of the incident, Officer Norrell said that he saw Mr. Brown being shot when he was on the ground. During the re-enactment he said that it appeared that Mr. Brown was still falling when he shot. Officer Norrell said that it was very close and he could not be certain if Mr. Brown was on the ground, or if he was almost on the ground. Officer Norrell said that Mr. Brown's hands were underneath him when he was on the ground.

4. Officers Carrillo and Chancellor

Officers Carrillo and Chancellor were working together on the club car overtime detail. They said that they had just completed a car stop when they heard Sergeant Olsen radio that he possibly had a man with a gun. When the foot pursuit began, they drove to the apartment complex and arrived at the same area and just behind Officer Norrell. Officers Carrillo and Chancellor saw Mr. Brown running westbound between building #1177 and #1175 and then they heard several shots. The officers indicated that they did not see the actual shooting.

5. The Civilian Witnesses' Statements

a. John Garcia

Mr. Garcia lives at 1175 Harvey #131. Mr. Garcia said that he takes care of his mother and



that he gets up every morning at about 4:00 a.m. to check on her. Mr. Garcia said that he was awake when he heard one shot, then “Don’t shoot, don’t shoot” then three or four more shots. Mr. Garcia said that he did not see the shooting but merely heard the shots and the statement.

b. Samantha Aguilera

Ms. Aguilera lives at 1179 Harvey #223. Ms. Aguilera said that she was awake getting ready to put the coffee on when she heard four gunshots. Ms. Aguilera said that she did not hear anything prior to the shots.

c. Amelia Stewart

Ms. Stewart lives at 1175 Harvey #231. At about 4:00 a.m., Ms. Stewart heard four to five gunshots outside of her apartment. Ms. Stewart said all of the shots were together and “real fast.” Ms. Stewart looked out of her kitchen window and saw a Black male on the ground with two police officers standing next to him. She could see the male’s feet and based on the position of the feet she believed the male was lying on his back. Ms. Stewart said she heard someone say, “I can’t breathe, I can’t breathe. Can you turn me over?” Ms. Stewart said that one of the officers told the man, “Stay with me, stay with me.”

d. Jon Parker

Mr. Parker was at his sister’s residence in building #1183. Mr. Parker said that he was walking out to his car which was parked in the parking lot by the back entrance of the complex, where the parking lot backs up to Chester’s. As he walked toward his car, he saw a Black male jump the fence from Chester’s to the apartment complex. Mr. Parker said that the man was wearing blue jeans and he was not wearing a shirt. When the man jumped the fence he fell to the ground, but got up and began running.



Mr. Parker said that two Austin Police officers were chasing the man. Mr. Parker described one of the officers as “chubby” and the other as “skinny.” The officers jumped over the fence and the chubby officer fell down. According to Mr. Parker, the male was looking back as he ran and he was holding his pants up. A couple of seconds after all three of the men turned the corner, Mr. Parker heard five or six shots. Mr. Parker described the shots as one shot, a gap, and then the rest fired rapidly.

Mr. Parker ran around the corner to see what happened and saw the Black male on the ground with both of his hands out to his sides. Mr. Parker said that he never heard the officers yell any commands like “Stop,” or “Freeze” and he believed that he would have heard any commands because no one was outside at that time of the morning and the sound would have echoed.

Mr. Parker added that neither of the officers had their guns out when they were chasing the man, that he never saw the man with a gun and when the male jumped the fence, his pants had fallen down almost under his butt and he was holding his pants up with both hands as he ran.

e. Matthew Probstfeld

Mr. Probstfeld was on a ride-a-long with Officer Norrell. Mr. Probstfeld was with Officer Norrell when he heard the radio call from Sergeant Olsen about a man possibly having a gun. Officer Norrell drove to the front of Chester’s and as they pulled up Mr. Probstfeld saw officers standing by a Black man wearing a red t-shirt. As soon as Mr. Probstfeld saw the man, the man started running from the officers and he saw the officers give chase.

Officer Norrell immediately drove to the apartment complex and Mr. Probstfeld saw the man running down the sidewalk. Mr. Probstfeld said the man had his hands low in his



pocket area, unlike a person running normally who would have their arms pumping back and forth. Officer Norrell jumped out of the car and began to chase the man. At the same time, Mr. Probstfeld saw another officer in the courtyard. As soon as Officer Norrell rounded the corner of the building and went out of Mr. Probstfeld's sight, Mr. Probstfeld heard three gunshots in a row, a split-second pause and then a fourth shot.

Mr. Probstfeld said after the shooting he noticed an officer come back around the corner of the building and he appeared to be looking on the ground for something. Mr. Probstfeld said the officer found something between buildings #1177 and #1175 in the same area that the man had run through. Later, Mr. Probstfeld said that Officer Norrell came and stood guard by whatever was on the ground.

f. Gilbert Stevenson

Mr. Stevenson was in his apartment at 1185 Harvey #113. Mr. Stevenson said he heard some yelling, then he heard two shots, then about three shots after that. Mr. Stevenson said the shots were not more than two seconds apart.

g. Kathryn Spencer

Ms. Spencer lives at 1179 Harvey #125. Ms. Spencer was home asleep when she heard four shots. After about two to three minutes she went to her kitchen window which faces the courtyard. Ms. Spencer saw two police officers standing over a man. The man was lying face down with his feet away from her and his head towards her. Ms. Spencer said she heard the man say, "I don't want to die" twice.

h. Ricci Diggs

Mr. Diggs was asleep and awoke when he heard four shots, followed by two more shots.



Mr. Diggs did not hear any yelling or any commands from the officers.

i. Stacie Williams

Ms. Williams lives at 1177 Harvey #132. Ms. Williams heard two shots followed by two more. Ms. Williams said that she never heard an officer shout commands like “Stop,” or “Freeze.”

j. Darius Lovings

Mr. Lovings was identified as the man wearing the white muscle t-shirt who was identified by Mr. Page as the man who originally had the gun and handed it off to Mr. Brown. Mr. Lovings admitted that he had spoken with Mr. Brown and that he was standing near him when the officers approached, but he denied having a gun. Mr. Lovings said that he was at the club to check up on his girlfriend who was also at the club, but that he could not go inside because he did not have any money.

Mr. Lovings said that when the officers approached Mr. Brown that one of the officers tried to grab Mr. Brown’s wrist. Mr. Brown wrestled with the officer and was able to get free. Mr. Brown then ran away trying to get away from the officers and the officers followed him. Mr. Lovings said that he heard four or five gunshots and that he went to the apartment complex and saw Mr. Brown lying on the ground saying that he did not want to die.

k. Antoine Thompson

Mr. Thompson said that he was staying at a friend’s apartment in the apartment complex. Mr. Thompson said that he heard gunshots, so he went to the window of the apartment and saw a man who was handcuffed lying on the ground. The man was saying, “I don’t want to die. I don’t want to die.” Mr. Thompson went outside to investigate and he was eventually



arrested by officers for interfering with their investigation.

Mr. Thompson was interviewed by Internal Affairs on September 13th and during that interview Mr. Thompson stated that all of the shots were fired in rapid succession and that there was no pause between any of the shots.

6. The Physical Evidence at the Scene

Among the physical evidence at the scene was a Jennings .22 caliber chrome semi-automatic pistol that was located on the north side of building #1175. There were three defect marks from projectiles on the west side building #1175. One was in the dirt between the middle two of four air conditioning units and two were on the wall above the mark in the dirt. Four expended shell casing from Sergeant Olsen's weapon were recovered in the courtyard.

a. The Gun

The Jennings .22 caliber chrome semi-automatic pistol found at the scene was traced by its serial number to Mike Lane. Homicide investigators contacted Mr. Lane and he told them that he had loaned the gun to a friend of his who was later identified as Theron Fisk. Mr. Fisk told Mr. Lane that he was going to go to his parents' house to shoot the gun.

Through their investigation Homicide detectives learned that Austin Ayers, Mr. Fisk, and Annice Cannon paid \$1,100 for an ounce of methamphetamine from a drug dealer that they only knew as "Icy Mike." They checked the methamphetamine after the purchase and discovered that they had been cheated. What they believed to be methamphetamine was in fact sugar.

Mr. Ayers, Mr. Fisk and Ms. Cannon were angry that they had been cheated and they met



with Wesley Smith hoping that he may be able to lead them to “Icy Mike.” Mr. Smith called Mr. Brown who told him that he had information on “Icy Mike,” but that the information wasn’t free. Mr. Brown asked for \$100 or something of value. The group did not have anything of value as they had just lost their \$1,100 on the bad drug deal. The only thing of value that they had was Mr. Lane’s handgun which Ms. Cannon had found in Mr. Fisk’s car. The three drove to a Jack-in-the-Box restaurant where Ms. Cannon handed the gun to Mr. Smith who in turn handed the gun to Mr. Brown.

b. The Autopsy

The autopsy of Mr. Brown was conducted by Dr. David Dolinak, Chief Medical Examiner of Travis County. Dr. Dolinak wrote that one gunshot wound entered Mr. Brown’s right mid back centered 14 $\frac{3}{4}$ inches below the top of his head and 3 inches right of the posterior midline. The direction of the projectile was back to front, right to left and very slightly down. There was no soot, muzzle imprint or stippling (small black dots around the wound that comes from pieces of burning gunpowder embedded in the skin – evidence that the victim may have been shot at close range). This projectile caused a track through the skeletal muscle, a fracture of the left 8th rib and (along with gunshot wound #2) a measured 1250 ml hemothorax. The projectile was recovered inside Mr. Brown’s body.

The second wound was near the midline of the mid back, centered 16 $\frac{1}{2}$ inches below the top of the head and $\frac{3}{4}$ of an inch right of the posterior midline. The direction of this projectile was back to front, right to left and down. There was no soot, muzzle imprint or stippling. This projectile caused a fracture of the left 9th and 7th ribs, perforation of the left lung and (along with gunshot #1) a measured 1250 ml hemothorax. This projectile was recovered inside Mr. Brown’s body.

Dr. Dolinak concluded that Mr. Brown died as a result of the gunshot wounds.



c. The Forensic Analysis Conducted by Greg Karim

Greg Karim is the Firearms Examiner for the Austin Police Department. Mr. Karim inspected Sergeant Olsen's duty firearm that was used during the shooting. The weapon is a Glock, 40-caliber, semi-automatic, double-action pistol. The weapon holds 12 rounds in the magazine and one round in the chamber. After the shooting the weapon was inspected by Mr. Karim. At that time, the weapon had eight rounds in the magazine and one round in the chamber indicating that four rounds had been discharged. Mr. Karim test fired the weapon and found that the weapon functioned normally.

Mr. Karim inspected the scene and found three defect marks, but determined that there were only two bullet strike paths. The first defect mark was in the dirt between the two centered of the four-pack of air conditioner units. Above the dirt mark was a second defect mark in the wall of the apartment building. Mr. Karim determined that both of these marks were made by the same bullet that first struck the dirt, then the wall of the building. The third defect mark was also on the wall of the building indicating that a second bullet struck the wall. Mr. Karim tested both of the defect marks on the wall and found that both marks showed the presence of lead which is consistent with a bullet strike.

Fragments of both projectiles were located at the scene and Mr. Karim was able to determine that the fragments were from Speer Gold Dot, Jacketed hollow-point ammunition which is the department issued ammunition that Sergeant Olsen was carrying in his firearm.

Mr. Karim inspected the two projectiles that were recovered from the body of Mr. Brown by the Medical Examiner and found that the ammunition was consistent with the ammunition carried by Sergeant Olsen. Mr. Karim was able to identify that the rifling marks made on the projectiles were consistent with a Glock 40-caliber pistol, but there were not enough individual characteristics to positively state the projectiles came from Sergeant Olsen's Glock.



Mr. Karim conducted an ejection pattern analysis of Sergeant Olsen's firearm to make a determination based on the ejection analysis and the location of the expended casings from Sergeant Olsen's firearm at the scene where Sergeant Olsen was standing at the time that he fired his weapon. Mr. Karim made video tapes of his testing both from the ground and from on top of a fire department aerial ladder. Mr. Karim fired only the top four rounds from the weapon – one in the chamber and three from the magazine with the magazine fully loaded to replicate the conditions as fired by Sergeant Olsen. Mr. Karim then measured the distance on an X and Y axis to determine the location of where the expended casings landed in relationship to where they were fired from. Based on this information, Mr. Karim was able to make estimations on where Sergeant Olsen was standing when he fired the weapon at the scene.

Mr. Karim inspected the Jennings, 22-long rifle caliber pistol that was found at the scene. That weapon was processed for latent prints and for DNA. There were two latent prints found on the gun. One was determined not to belong to Mr. Brown and the other was inconclusive. Mr. Brown could not be excluded as a donor from the DNA samples that were recovered from the gun. The weapon contained a single round in the magazine and no rounds in the chamber. The round in the magazine had a firing pin impression that was found to be consistent with a "misfired" round. The weapon was inspected and test fired and was found to be capable of discharging live rounds of ammunition and functioned normally during the test.

Mr. Karim examined the shirt that had been worn by Mr. Brown and found the defects in the shirt to be consistent with the wounds received by Mr. Brown and that there was no discernable particulate gunpowder pattern observed surrounding the two defects on the shirt, indicating that he was not shot at close range.

Mr. Karim conducted a trajectory analysis and found that defects 17, 17-A and 17-B (The



ground and two impact points on the wall of the building) were consistent with originating from the courtyard area with a downward trajectory from the west to the east. Mr. Karim also concluded that the “debris from the ground dirt, concrete chipping from the foundation or fragments ricocheting from the impacts could have possibly hit or landed on the suspect or suspect’s clothing without visible damage or evidence. The suspect was moved and attended by EMS personnel prior to arrival at the scene.”

During his ballistics briefing conducted on August 30th, Mr. Karim was asked if Sergeant Olsen’s “statements in his re-enactment are consistent with the physical evidence that you have?” Mr. Karim responded, “Yes. I stated that the general areas described in Sergeant Olsen’s written statement and demonstrated in his videotape walk-through were found to be consistent with the firearms related evidence that was evaluated.”

Mr. Karim was asked a follow up question to clarify his response and he stated, “well, they’re in reference to what he showed, by his movements, where he was believed to have gone, and did, uh, fired some shots. And then he moved to an area that was within the blue circle (a diagram produced by Mr. Karim to indicate where Sergeant Olsen was standing based on the ejection analysis) that I indicated, and fired again some more shots. Now, how many shots, um, I don’t know, and I can’t determine that. What I did determine was that in the first spot he indicated, the second area he indicated, and the direction he was shooting is consistent with the physical evidence locations. So his location, the direction he’s shooting, and where the evidence was located was what I was referring to.”

d. The Forensic Analysis Conducted by Dr. William Lewinski

Dr. Lewinski is a behavioral scientist specializing in law enforcement related issues. He has a Ph.D. in Police Psychology and is a tenured, full professor in the Law Enforcement Program at Minnesota State University, Mankato, where he has taught for 23 years. Dr. Lewinski is conducting the leading research on human behavior in lethal force encounters.



His current focus is on subject and officer movement in lethal force encounters as well as action/reaction parameters.

Dr. Lewinski was retained by the Austin Police Department to review this shooting incident involving Sergeant Olsen and Mr. Brown. Dr. Lewinski was provided with the Homicide investigation materials and was asked to opine on whether the forensic evidence supported Sergeant Olsen's statements of the incident.

It was Dr. Lewinski's opinion that Sergeant Olsen's version of the incident was possible if we recognize that it took him some time to bring his weapon on target and fire. During that relatively brief period of time, Mr. Brown could have turned away. The slight motion required for Mr. Brown to turn away from Sergeant Olsen is less than the time required for Sergeant Olsen to acquire his target of fire and to discharge a round at the target. This "lag" time would result in Sergeant Olsen's firing his rounds after Mr. Brown had turned striking Mr. Brown in the back.

Dr. Lewinski noted that the rounds that Sergeant Olsen fired in first burst did not hit the backdrop of the building and therefore those rounds must have hit Mr. Brown.

Dr. Lewinski next explained that falling bodies take time to fall and a body moving forward will cover some distance while falling. Dr. Lewinski stated that if Mr. Brown was moving from left to right (as viewed by Sergeant Olsen), parallel to the building, Sergeant Olsen could not have struck Mr. Brown when he was upright and then also strike the ground and wall impact points from a single location. This, according to Dr. Lewinski, means that Sergeant Olsen had to have stepped at least two short steps sideways in between his bursts of shots to align him such that when he fired his last burst, the rounds impacted on the ground and on the wall in the fashion that they did. It is the opinion of Dr. Lewinski that there had to be a distinct break in between the two sets of shots in order for Sergeant Olsen to have moved slightly, for Mr. Brown to fall and for the rounds to impact in the manner



that they did.

Dr. Lewinski argued that this theory is further supported by the fact that the two bursts of fire were closely grouped. The first two rounds striking closely together on Mr. Brown's back and the second burst after Mr. Brown had fallen and were grouped closed together on the wall.

Dr. Lewinski also stated that if you ignored Sergeant Olsen statements, there are several scenarios that are possible and still consistent with the forensic evidence. It is possible, according to Dr. Lewinski that Mr. Brown never reached for his waistband. It is possible that Mr. Brown never turned toward Sergeant Olsen and a combination of these two factors is also possible – that Mr. Brown never reached for his waistband and that he never turned toward Sergeant Olsen.

VI. Applicable law, policies and procedures

A. *Policies and statutes governing IAD investigations*

1. **US Constitution - The Requirement to Conduct Separate Criminal and Administrative Investigations - The Garrity Procedures**

On the surface, investigations of the potential of criminal misconduct by police officers appear to be quite analogous to all other administrative investigations with the exception that there will be a concurrent criminal investigation. There is, however, a significant conflict between the administrative and criminal investigations. The conflict revolves around the ability of the administrative investigators to compel statements from the subject officer and the impact of those statements on the criminal investigation. To appreciate this conflict one needs to understand the 1967 United States Supreme Court decision in Garrity v. New Jersey (385 U.S. 493 (1967)).



Edward Garrity, the Chief of Police of Bellmawr, New Jersey and other officers were suspected of fixing traffic tickets. The Supreme Court of New Jersey ordered the state Attorney General to conduct an investigation into the alleged misconduct which, if found to be true, would have been a criminal violation of New Jersey law. As part of that investigation, the deputy attorney general conducted interviews of the subject officers and before initiating the interrogation, the officers were advised of a state statute that required the officers to answer the questions. The officers were told that if they refused to answer questions that they may lose their jobs and their pensions. After receiving this admonition, all of the officers answered the questions posed by the deputy attorney general.

The statements made by the officers during that interview were later used by local prosecutors in the prosecution of the officers. The incriminating statements were offered into evidence at the officers' trial to show the officers' guilt of the criminal violations and based in part on that evidence, the officers were convicted. After their conviction, the officers appealed claiming that the use of these statements that were compelled under the threat of termination violated their constitutional rights.

In Garrity, and as further defined in subsequent cases, the officers' compelled statements were deemed as immunized and thus inadmissible under the Fifth Amendment privilege. The Court reasoned that the option given to the officers to either forfeit their jobs or to incriminate them in a criminal matter was inherently coercive. The Garrity case essentially held that although employers may compel statements from public employees by threatening job termination, and although these statements may be used in the administrative context where they were elicited, the statements may not be used in a later criminal prosecution.

The Courts' treatment of police officers' compelled statements as immunized is significant because of the restrictions imposed on the prosecutorial use of such testimony. The restriction prohibits far more than the statements of the officer alone. Indeed, any evidence



derived from the officers' statements cannot be used, nor can the statements be used to impeach the officer if the officer testifies differently during the criminal proceedings. Further, the prosecution is barred from using witnesses whose testimony has been shaped, altered, or affected by the defendant's earlier immunized testimony. This prohibition extends to any communication with the witness where investigators employed information gained from an immunized statement to aid the witness to refresh their memory, focus their thoughts, organize their testimony, or alter their prior statements. Essentially, any use of the compelled statements in any manner will have a significant impact on the prosecution of the criminal matter.

The Garrity concern vests when the subject officers are compelled to make statements. Sergeant Olsen, Officer Ramos and Officer Norrell all provided statements to the department's homicide investigators on June 3rd; however none of those statements were compelled.

The first compelled statement was obtained from Officer Ramos on August 20th. A compelled statement was taken from Officer Norrell on August 21st and Sergeant Olsen did not give a compelled statement to the Internal Affairs investigators until September 7th. These compelled statements were obtained after the homicide investigators had concluded their investigation and after the Travis County Grand Jury had completed their proceedings. The Grand Jury did not indict Sergeant Olsen effectively ending the criminal investigation.

The Garrity procedures employed by the Austin Police Department were appropriate in this matter. Indeed, the Austin Police Department has incorporated specific Garrity procedures into their department policy to address Garrity concerns under department policy section A109.07.

2. APD Policies

The policies and procedures which guide internal investigations are contained within A109



of the General Orders, Policies and Procedures of the APD. These policies designate IAD as the unit within the Department responsible for investigating Officer Involved Shootings (OIS's) and provides general guidelines to those investigations. Section .11 of A109 provides for the standard of proof to be employed and the classification of dispositions of complaint investigations:

Classifications of Complaints

The standard of proof used to arrive at a final classification is a "preponderance of the evidence." Complaints can be classified as:

- A. Unfounded – Allegation is false or not factual.
- B. Exonerated – Incident complained of occurred, but was within Departmental policy.
- C. Inconclusive – Insufficient evidence either to prove or disprove the allegation(s).
- D. Sustained – The allegation, and/or acts of misconduct discovered during the investigation which were not alleged in the complaint, is supported by sufficient evidence.

B. Policies governing police tactics

All APD officers are required by Section A201.01C (2) of the APD General Orders Section to abide by the policies, rules, regulations, procedures and directives of the Austin Police Department. Section .01 of the Patrol SOP (2006) states, "It is entirely possible that officers will find themselves in situations not absolutely and specifically addressed in this manual. In those cases, officers should be reminded to use common sense and good judgment." The failure then to use common sense and good judgment in the performance of an officer's duty is actionable.

C. Policies and statutes governing the Use of Deadly Force

There is both federal and state law which specifies those situations in which a law enforcement officer may use deadly force in connection with the making of an arrest. In addition there are state statutes which define when ordinary citizens are permitted by law to use deadly force. In those cases where the deadly force which an officer has used is found



not to be authorized by law, a secondary inquiry as to whether the officer's use of deadly force would be permitted to utilize deadly force under the standards for an ordinary citizen must be undertaken. In addition to these statutes, APD policy administratively defines when APD officers may use deadly force.

1. US Constitution

The U.S. Supreme Court in *Graham v. Connor* (490 U.S. 386 (1989)) held that the use of excessive force during an arrest, an investigatory stop, or any other seizure of a person is judged by Fourth Amendment standards. In making its decision, the Court recognized that the right of an officer to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat of force. The Court reasoned that the task then becomes to balance the "nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing government interests at stake." This balancing test is achieved by the application of what the Court labeled the objective reasonableness test.

This type of balancing test is not capable of precise definition or mechanical application, but requires careful attention to the facts and circumstances of each particular case. The factors to be considered include:

- 1.) The severity of the crime,
- 2.) Whether the suspect poses an immediate threat to the safety of the officers or others, and
- 3.) Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

The Court added three important factors in the analysis of the objective reasonableness test. First, the court stated that the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision



of hindsight. Second, the Court found that the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation. And finally, the Court looked at the underlying intent or motivation of the officer applying the force and found that an officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.

The Fourth Amendment analysis rests strongly on the concept of "reasonableness." That is, was the officer's use of force reasonable, given all the current and past circumstances known to the law enforcement agent when he took action? This standard is determined from the perspective of a reasonable officer on the scene of the crime. For example, suppose an officer confronts a man with a weapon in the middle of a robbery. The officer commands him to drop the weapon. The man turns toward the officer and points the gun in the officer's direction. The officer shoots and kills the man. It is then discovered that the weapon was really a well-constructed toy model of a gun. If this event is not placed in the proper contextual framework of a reasonable perception standard, this officer theoretically would be guilty of shooting an unarmed man. The only "solution" to this problem would be to let the perpetrator shoot first so the officer can verify that he or she is being challenged with a "real" gun. Obviously, such an alternative is not viable.

Violation of any law of the United States is made a violation of APD policy through Section A 201 .01 (C) of APD's General Orders which requires all employees to "obey the laws of the United States, the State of Texas, and the ordinances of the City of Austin or any other local jurisdiction in which they may be present..."

2. Texas Penal Code



Chapter 9 of the Texas Penal law contains those situations in which force may be used thereby providing a justification defense against a charge involving assault or homicide.

With respect to the use of force by peace officers in the performance of an arrest or search, Section 9.51 provides the following:

§ 9.51. ARREST AND SEARCH. (a) A peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:

(1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and

(2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

(b) A person other than a peace officer (or one acting at his direction) is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making a lawful arrest, or to prevent or assist in preventing escape after lawful arrest if, before using force, the actor manifests his purpose to and the reason for the arrest or reasonably believes his purpose and the reason are already known by or cannot reasonably be made known to the person to be arrested.

(c) A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use of force would have been justified under Subsection (a) and:

(1) the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.

(d) A person other than a peace officer acting in a peace officer's presence and at his direction is justified in using deadly force against



another when and to the degree the person reasonably believes the deadly force is immediately necessary to make a lawful arrest, or to prevent escape after a lawful arrest, if the use of force would have been justified under Subsection (b) and:

(1) the actor reasonably believes the felony or offense against the public peace for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to another if the arrest is delayed.

(e) There is no duty to retreat before using deadly force justified by Subsection (c) or (d).

(f) Nothing in this section relating to the actor's manifestation of purpose or identity shall be construed as conflicting with any other law relating to the issuance, service, and execution of an arrest or search warrant either under the laws of this state or the United States.

(g) Deadly force may only be used under the circumstances enumerated in Subsections (c) and (d).

With respect to when ordinary physical force can be used by both ordinary citizens and police officers who, by virtue of the circumstances are not authorized to use force to effect an arrest or execute a search warrant, Section 9.31 specifies those circumstances in which ordinary physical force can be used:

§ 9.31. SELF-DEFENSE. (a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force.

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c);

(3) if the actor consented to the exact force used or attempted by the other;

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he



cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor; or

(5) if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was:

(A) carrying a weapon in violation of Section 46.02; or

(B) possessing or transporting a weapon in violation of Section 46.05.

(c) The use of force to resist an arrest or search is justified:

(1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

(d) The use of deadly force is not justified under this subchapter except as provided in Sections 9.32, 9.33, and 9.34.

Lastly Section 9.32 specifies when an ordinary citizen can use deadly force against another:

§ 9.32. DEADLY FORCE IN DEFENSE OF PERSON. (a) A person is justified in using deadly force against another:

(1) if he would be justified in using force against the other under Section 9.31;

(2) if a reasonable person in the actor's situation would not have retreated; and

(3) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to protect himself against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

(b) The requirement imposed by Subsection (a)(2) does not apply to an actor who uses force against a person who is at the time of the use of force committing an offense of unlawful entry in the habitation



of the actor.⁶

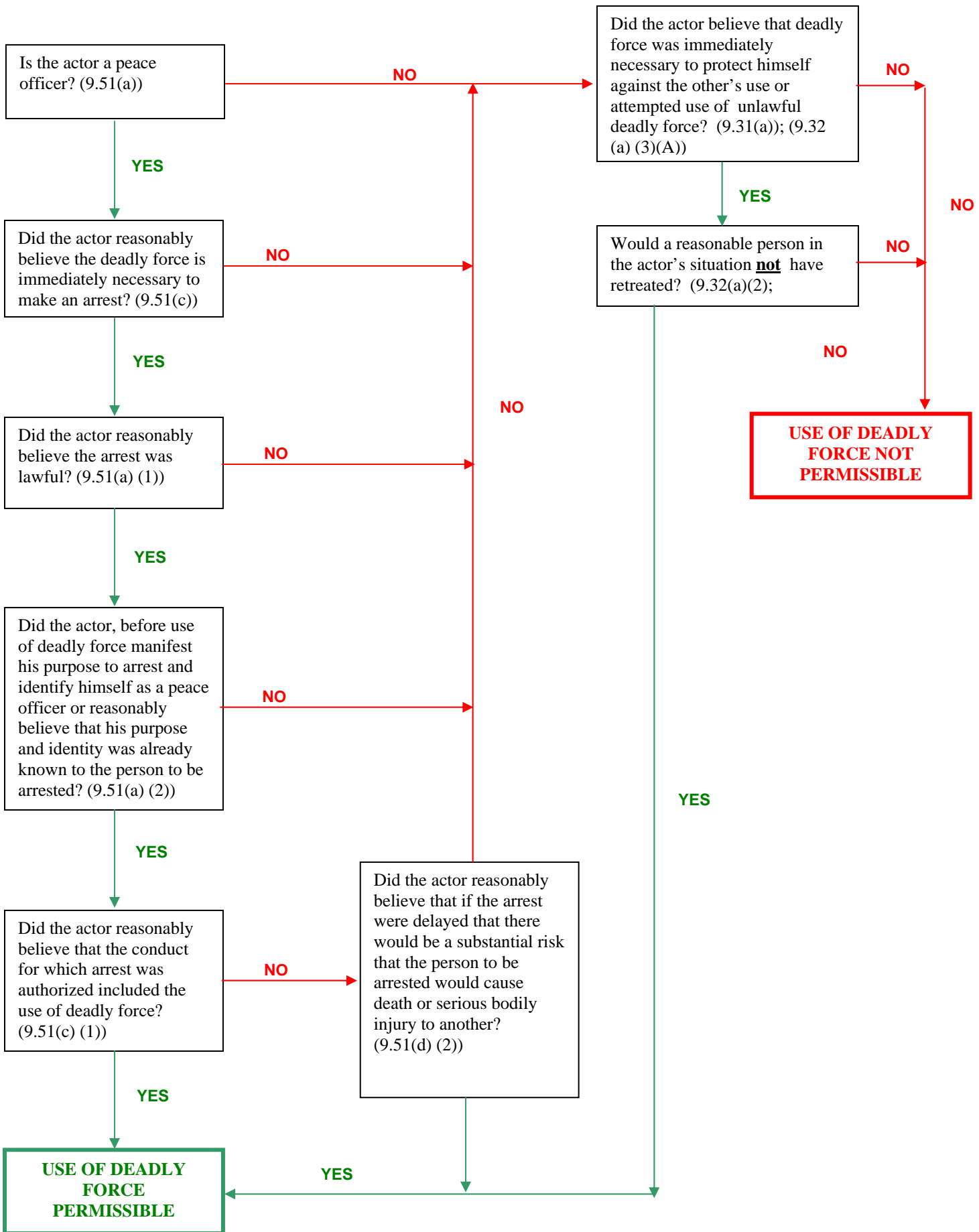
Violation of any law of the United States is made a violation of APD policy through Section A 201 .01 (C) of APD's General Orders which requires all employees to "obey the laws of the United States, the State of Texas, and the ordinances of the City of Austin or any other local jurisdiction in which they may be present..."

a. Decision Tree

The following decision tree graphically depicts the analysis to be applied in determining whether a use of deadly force by a peace officer violated Texas law.

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⁶ It should be noted that as of September 1, 2007 the law pertaining to the use of deadly force in defense of a person, has changed, most notably with the elimination of any duty to retreat. Under no circumstance would the new law be applicable to the events of June 3rd, 2007.





3. APD Policies

The Austin Police Department Use of Force policy states:

"A. Deadly force is any force capable of causing death or serious bodily harm. The use of a firearm is deadly force. The use of other equipment such as impact munitions, a nightstick or automobile may be deadly force depending on the technique of use."

"B. Deadly force may only be used when the officer has a reasonable belief that another person poses a threat of death or serious physical harm either to the officer or another."

VII. The Investigations

As noted above, the scope of Kroll's assignment with the City of Austin, by necessity included a review of the Homicide investigation, to the extent that investigation was relied upon by IAD. In both the Homicide and IAD investigations, the quality and adequacy of an investigation can be measured by the thoroughness, fairness and timeliness of the investigation. These components can only be gleaned from the details of the specific actions undertaken by investigators as recorded in the documentation of the completed investigation. Our evaluation of the investigations conducted follows.

1. The Administrative Investigation

1.) Was the investigation adequate, reasonable, thorough, and conducted to determine the truth?



Were all reasonable efforts made to identify, locate, and interview potential witnesses?

The Homicide detectives conducted an extensive area canvas and made all reasonable efforts to seek and identify all potential witnesses. One example of their efforts involves information that involved some anonymous calls from a caller who identified herself as “Tasha.” Tasha told detectives that she was at Chester’s the night of the incident with a friend. Tasha stated that the friend had gone to the apartment complex and that her friend had witnessed the shooting. The detectives were able to engage Tasha in conversation during one of the calls and she told them that she would be meeting with the other unidentified witness on the following Thursday as it was Tasha’s birthday. Detectives were able to trace the origin of the call, identify the caller based on her date of birth that she had inadvertently provided and ultimately located the possible witness who was a resident of the apartment complex.

Was an area canvas conducted to locate witnesses and evidence?

An extensive area canvas was conducted by the Homicide detectives. There were supplemental reports from several officers that documented their efforts to contact residents within the apartment complex in an attempt to locate possible witnesses. These efforts revealed several different witnesses who heard the shots, looked out their windows and saw a portion of the events or in one case was outside when the incident occurred. All of the witnesses who were contacted made statements and those statements were documented as part of the investigation. Detectives also documented vacant apartments, apartments where no one was at home and statements from individuals who denied hearing or seeing the incident.



Was the incident scene inspected and documented?

The scene was inspected not only by Homicide detectives and Crime Scene Investigators, but the Homicide detectives took the extraordinary step of bringing 41 police academy cadets to the scene to literally cover the courtyard in a logical pattern seeking any possible additional evidence. One of those cadets did locate a projectile fragment that was determined to have come from Sergeant Olsen's firearm.

The scene was photographed, videotaped and a scale drawing was made to document the location of the items located. One diagram was of Chester's night club. The author of the diagram used a utility pole which can be identified by serial number and the northwest corner of the building, which is a fixed object that can similarly be easily located. Another diagram was of the apartment complex. This diagram was very important to the investigation as it showed the area of the actual shooting and the pieces of evidence that were located. In this diagram, rather than using the corner and the straight sides of buildings as reference points, the author used two trees that were in the courtyard. When preparing diagrams fixed objects that are more permanent should be used. Trees are generally not used because they are easily removed, preventing a reconstruction of the scene if it became necessary at some later date.

A better system of diagramming in this case would have been to use a coordinate method. This particular method requires two reference lines and all measurements must be perpendicular to the reference lines. For example, the casings could have been measured perpendicular to the west side of building #1175 for one reference point and the other reference point could have been a perpendicular measurement from the prolongation of the north side of building #1175. These types of measurements have significant value in this case and would help to answer the questions – How far from the wall of building #1175 was the Jennings .22 caliber gun located? How far from the west wall of building #1175 was the



defect in the ground where the bullet struck? How far was Mr. Brown's body from that point? These questions cannot be easily answered based on the diagram that was completed.

Was evidence identified, secured, inspected, and maintained appropriately?

The Homicide detectives and Crime Scene Investigators completed a thorough process of locating, photographing, collecting and analyzing evidence items located at the scene. Crime scene investigator Eleanor Williams collected and photographed: Sergeant Olsen's gun belt; his uniform and boots; Mr. Brown's clothing from the Medical Examiner's Office; both projectiles from Mr. Brown's body; the police yellow blanket used to cover Mr. Brown's body; fingernail swabs, hair sample and a blood standard from Mr. Brown; and she collected the paper bags that were placed on Mr. Brown's hands for a subsequent gun shot residue examination.

Crime Scene Investigator Shannon Shafer collected the following items from the scene: Sergeant Olsen's in-car mobile video tape; the items that had been in Mr. Brown's pockets and were removed during his search; four 40 caliber casing; and projectile fragments. Crime Scene Investigator Robert Tenneyuque collected the tree stump. Crime Scene Investigator James Bush collected the Jennings .22 caliber handgun and he took photographs and videotape of the entire scene prior to any evidence being collected. Crime Scene Investigator Juanita Vasquez took overall photographs of the incident scene and she collected DNA samples from Officer Chancellor, Officer Ramos and Officer Carrillo. Crime Scene Investigator Vince Gonzales took video of the entire scene. Forensic DNA Scientist Claire McKenna collected DNA samples from Sergeant Olsen, Officer Norrell, Officer Hayes, Mr. Lovings, Mr. Fisk, Ms. Cannon, Mr. Ayers, Mr. Lane and Mr. Smith. Crime Scene Investigator Jennifer Aguirre processed evidence items and booked those items into the evidence room. Crime Scene Investigator Lee Hernandez videotaped the officers' re-enactments. Crime Scene Investigator Victor Caballos took aerial photographs



of the scene. Latent print Examiner Dennis Degler compared Mr. Brown's finger and palm prints to those found on the Jennings .22 caliber pistol. Forensic DNA Section Supervisor Cassie Carradine compared the DNA samples that were obtained with the DNA sample that was obtained from the Jennings .22 caliber pistol. In sum, all evidence was appropriately collected and handled.

Were all witnesses interviewed and all subject officers interrogated?

All of the identified witnesses and subject officers were interviewed by Homicide detectives. The only interviews conducted by Internal Affairs were Sergeant Olsen, Officer Norrell, Officer Ramos, Corporal Coffey, Mr. Thompson and the briefing conduct by Mr. Karim.

Were all reasonable leads followed to their logical conclusion?

The criminal investigation did an excellent job of tracing the Jennings .22 caliber semi-automatic handgun that was found at the scene. The serial number on the gun provided a starting point, but the information on how the gun came into the possession of Mr. Brown was much more difficult. The registered owner of the gun had given it to her son, Mark Lane, who in turn loaned the gun to an acquaintance of his named Darren Fitt. Mr. Lane did not know how to locate Mr. Fitt, but he had heard that Mr. Fitt's storage locker had recently been searched by the police.

Detectives began to research this information and found a storage locker that belonged to Theron Fisk. Mr. Lane identified Mr. Fisk from a photograph as the person that he knew as Mr. Fitt. Mr. Fisk had an outstanding warrant and detectives with the department's Intelligence Unit were able to locate Mr. Fisk, arrest him on the warrant and present him to the Homicide detectives for questioning regarding the gun. Mr. Fisk led detectives to Austin Ayers, Annice Cannon and Wesley Smith. The Homicide detectives were able to



locate all of these subjects and were able to obtain their statements and thus were able to trace the origins of the gun to Mr. Brown's possession within two days of the shooting.

Another example of the efforts of the Homicide detectives was demonstrated with the interviews of Mr. Smith. Mr. Smith was located and provided an interview to the Homicide detectives denying knowledge of the gun. The following day Mr. Smith was arrested for being in a stolen car. Homicide detectives were able to gain the trust of Mr. Smith even though he was in custody for another serious crime. Mr. Smith provided a second interview to the detectives and this time he provided truthful information.

One apparent significant omission, however, was the apparent failure to collect and review the mobile videos of all units that responded to the scene. Particular attention should have been paid to the in car video of Officers Carrillo and Chancellor as these officers provided statements that they heard the gunshots. This video was apparently not collected or reviewed by Homicide or Internal Affairs and it was not known until the video was requested by Kroll that Carrillo's and Chancellor's video recorded the sound of the gunshots.

Were witnesses asked to identify other potential witnesses?

Because most of the interviews conducted by Homicide detective were not recorded we are unable to make an assessment of whether all reasonable efforts were made to seek out all possible witnesses. However, based on the efforts of Homicide in their area canvas and their efforts with the anonymous caller "Tasha" who alleged that she knew a witness who was not coming forward, it is reasonable to believe that all reasonable efforts were made.

Did the investigator assign priority to the most important issues of the investigation, or did they focus on minor concerns?



All of the priority investigative procedures were conducted in an appropriate manner. The scene was secured and completely processed the day of the incident. Witnesses were interviewed, fingerprint and DNA samples were obtained and evidence items were collected. The Austin Police Department committed an appropriate number of resources for the processing of the scene and for the investigation of this matter.

Did the Investigator's examine all reasonable theories of the case?

There were two investigative steps conducted by Internal Affairs that we felt were worthy of mention. First, Internal Affairs held a Ballistics Briefing conducted by the department's firearms expert, Mr. Greg Karim. Mr. Karim developed a PowerPoint presentation to explain the forensic evidence at the scene and his efforts to analyze the evidence (a greater discussion of his presentation is made later in this document). This briefing included members of the department command staff, members of the Police Monitor's Office, members of Internal Affairs and an Assistant City Attorney. Although Mr. Karim had prepared a formal presentation, the individuals present asked many probing questions in an attempt to understand the evidence and the investigative steps taken in the forensic analysis conducted by Mr. Karim. This type of open dialogue is very beneficial when attempting to understand and draw conclusions in a case such as this.

Second, Internal Affairs employed the use of an outside expert, Dr. William Lewinski to help them to understand the time and motion dynamics of this case based on the forensic evidence and the statements made by the officers and witnesses. This step was very beneficial to help understand the evidence that was gathered and to reach certain conclusions therefrom.



2.) Were the interviews and interrogations conducted appropriately?

Did the investigators ask questions properly (open-ended and non-leading)?

We can only assess the interviews that were recorded. The Homicide detectives recorded the re-enactments from Sergeant Olsen, Officer Ramos and Officer Norrell. During the re-enactments the detective asked very broad open questions of the officers and he allowed them sufficient opportunity to respond in their own words. When necessary, he would ask more direct or specific question, but we found that these specific questions were only used to clarify points already made by the officers.

The interviews conducted by Internal Affairs were generally well done. Detective Kreider was the primary interviewer in all of the interviews and he asked short, open-ended questions that required the officers to provide a narrative response. This type of questioning is preferable as the witness is not led to a particular statement or conclusion regarding their action, but instead they describe the events to the best of their memory.

Did the investigators ask appropriate follow up questions and complete follow-up investigation when warranted?

a. Comments Made by Sergeant Olsen

Internal Affairs conducted a second interview with Sergeant Olsen on November 7th. One of the areas of inquiry was about a statement that could be heard on Sergeant Olsen's mobile video recorder made just minutes prior to Sergeant Olsen's contact with Mr. Brown. Sergeant Olsen made a comment, presumably to Officer Ramos (although this was not asked), about him (Olsen) losing his temper twice with citizens that night. Sergeant Olsen stated during the interview that he had stopped a car for loud music and that one of the



passengers was “mouthing off.” Sergeant Olsen admitted that he ended up “chewing him out” and that he probably used some language that he should not have used.

Internal Affairs made little effort to inquire further as to what was said by Sergeant Olsen at the car stop. Similarly, Internal Affairs did not question Sergeant Olsen when he said that he was frustrated because some people need to go to jail because “. . . of their attitudes and their actions.” Internal Affairs did not ask any further questions of Sergeant Olsen in this area and never sought information on the second instance that Sergeant Olsen referred to on the mobile video recorder.

Internal Affairs did conduct a follow up interview with Officer Ramos on the same issue. Officer Ramos said that he could not remember any specifics, but if Internal Affairs could tell him which car stop he may be able to recall. Again, Internal Affairs made no further inquiry.

This issue, which could have shed light on Sergeant Olsen’s state of mind at the time of the shooting, was significant enough for Internal Affairs to conduct an additional interview with both Sergeant Olsen and Officer Ramos, but it appears that they made no effort to review the mobile video tape for Sergeant Olsen’s entire shift to determine what had occurred when Sergeant Olsen admittedly lost his temper. If Internal Affairs did review the tapes there they failed to address the circumstances in their report.

b. Corporal Coffey

Internal Affairs interviewed Corporal Coffey the department academy instructor on use of force and field tactics to show what was taught to Sergeant Olsen during the police academy. Internal Affairs failed to ask proper foundational questions to show that Corporal Coffey actually taught Sergeant Olsen. They did not reference any records that would indicate that Sergeant Olsen was in Corporal Coffey’s class and they did not reference any



course outlines, textbooks or any material to identify what was taught to Sergeant Olsen.

Although Internal Affairs did attach Sergeant Olsen's training records they did not provide a description of the training given to Sergeant Olsen that was applicable to the current matter, they did not document any roll-call or other training that Sergeant Olsen may have received and they made little effort to question Sergeant Olsen about his prior tactical training.

Did the investigators conduct follow up interviews when necessary?

The issue of whether there was one group of shots or two groups of shots became relevant during the investigation. Indeed, one of the areas listed under "discrepancies" in the Internal Affairs report is this issue indicating that both Sergeant Olsen and Officer Norrell stated that there were two groups and that Officer Ramos and Mr. Thompson said that all of the rounds were fired in rapid succession.

Internal Affairs did not address the other witnesses who heard the shots. Ms. Aguilera, Ms. Stewart and Ms. Spencer and all heard all of the shots as a single group. Mr. Parker heard one shot, a gap and then the rest fired rapidly. Mr. Probstfeld heard three shots, a split-second pause, and then one additional shot. Mr. Stevenson heard two shots, then about three shots after the first two. Mr. Diggs heard four shots followed by two more. Ms. Williams heard two shots followed by two more. Only Mr. Garcia claimed that he heard one shot, then "Don't shoot, don't shoot," then three or four more shots. It is unclear as to why Internal Affairs chose to omit these statements.

Although Internal Affairs relied on Mr. Thompson's statements to impeach the credibility of Sergeant Olsen, they did not mention that there were significant contradictions within Mr. Thompson's statement to Internal Affairs. Mr. Thompson was asked if he had been drinking that night and he responded, "No sir." Detective Kreider replied, "No drinking?"



and again Mr. Thompson denied that he had been drinking. A couple of questions later when asked about his high blood pressure and if he was on medication, Mr. Thompson admitted that he had been drinking that night, but he did not feel he was intoxicated. Internal Affairs also did not mention that Mr. Thompson was upset because he had been arrested for entering the crime scene that night and although Mr. Thomson claims that the he was never ordered to leave the arresting officers had a different account that was not addressed in the Internal Affairs report.

Once Internal Affairs recognized that the timing of the shots was relevant, they should have conducted follow up interviews with the witnesses to determine if they could clarify their statements. At a minimum, these additional statements should have been addressed within their report. Further, and perhaps most significantly they should have addressed the fact that the only two people who actually witnessed the event, Sergeant Olsen and Officer Norrell said there were two groups. Further, Mr. Probsfeld, whose attention was focused on the incident because had heard the radio call, was in Officer Norrell's car and was closer to the shooting incident than Officer Ramos, also heard two groups of shots. Internal Affairs also ignored Mr. Karim's Ballistic Briefing interview where Mr. Karim stated that Sergeant Olsen's statement were consistent that he fired two groups of shots. Mr. Karim stated Sergeant Olsen ". . . fired some shots. And then he moved to an area that was with the blue circle that I indicted, and fired again, some more shots." (pg. 10). Finally, they ignored and never mentioned that Dr. Lewinski concluded that "regardless of the statements of any witnesses, there was a distinct break in between the two sets of shots." The omission of these statements and evidence which provide, in our opinion, a preponderance of the evidence that indeed two volleys were fired, is a critical omission which, in fact, could have impacted the conclusion of the case.

Equally concerning is the fact that Internal Affairs may have had conclusive evidence as to whether it was one group of shots or two simply by reviewing Carrillo's and Chancellor's in car video. Kroll requested the video after undertaking this review, recognizing its potential



significance, and noting its absence. We received the video on November 26th and it is appears that two groups of shots may be decipherable from the tape. This tape should have been collected, reviewed, and appropriate analysis should have been conducted. APD was able to “clean” Sergeant Olsen’s video and a similar proper processing of this tape could have conclusively resolved this concern.

Were the interviews recorded?

Very few of the interviews conducted by the Homicide detectives were recorded. The only recorded interviews were telephone interviews or interviews where the witness was going to be unavailable. None of the interviews of the witnesses at the scene were recorded. The officer re-enactments were recorded, but their initial interviews were not. All of the significant interviews, including the involved officers and witnesses were typewritten statements that were notarized. These types of statements tend to leave off detail and they fail to capture the witnesses tone and other factors that may be used to assess credibility. In today’s age of technology there would appear to be no reason not to record the statements of witnesses.

All of the Internal Affairs interviews were recorded.

Were the interviews conducted in-person when possible?

All of the interviews were conducted in-person with the exception of a single interview where the witness was unavailable to be contacted by any other means.

Were the witnesses separated and interviewed individually?

All of the officer Homicide and Internal Affairs interviews that were recorded show that the officers were separated. There is no evidence to show that other witnesses were



interviewed as a group or were somehow prompted in their responses by other witnesses.

Were all witnesses and subject officers treated with dignity and respect?

Based on what we could view during the video re-enactments and the interviews conducted with Internal Affairs, we saw no evidence that the officers were treated unprofessionally. We are unaware of any complaints emanating from the treatment of any civilian witness other than Mr. Thompson. Because the interviews of witnesses were not recorded, there is no basis to form an opinion beyond that indicated by the lack of any complaint.

3.) Was the investigation conducted with fairness?

Was there evidence of bias against the complainant?

One area of potential bias in an investigation is demonstrated by efforts by the police to show that the complainant, or in this case Mr. Brown, has a criminal history and that they grant weight to the criminal history in reaching their conclusions. Although a person's criminal history may be relevant if assessing the credibility of a person in this matter the credibility of Mr. Brown is not at issue because Mr. Brown did not make any statements that need to be judged. The criminal history may be relevant when determining if the person had prior convictions for similar bad acts that would give weight to the person's action in the pending matter.

In this case, the Homicide detectives did attach Mr. Brown's criminal history. But they also attached Sergeant Olsen's prior criminal history and Sergeant Olsen's prior disciplinary record within the department. This action of seeking similar information on both parties indicates a lack of bias.



Was there evidence of bias against the officer?

There was no evidence of bias against the subject officer.

Did the investigator suppress or minimize statements unfavorable to the subject officer?

The omission of the statements and evidence relative to the issue of whether there were two volleys of shots by Sergeant Olsen which provide, in our opinion, a preponderance of the evidence that indeed two volleys were fired, is a critical omission which, in fact, could have impacted the conclusion of the case. It is unclear whether this was an intentional suppression or minimization of evidence statements that were adverse to the officers' interests.

Did the investigators selectively chose to only interview witnesses who favored the officers?

There was no evidence of avoiding witnesses that might have disputed the officers' account of the incident.

Were subject officers allowed representation during interrogation and advised of applicable rights?

All of the officers were advised that they were being compelled to provide a statement, that they were required to cooperate with the investigation and that they were required to provide full and accurate information regarding the incident under investigation. In each of the interviews two detectives from Internal Affairs were present, along with a representative from the Police Monitor's Office. Sergeant Olsen was represented by an attorney.



Did the investigators allow the subject officers to review evidence or witness statements prior to the subject officer's interrogation?

During their Internal Affairs interviews, Sergeant Olsen and Officer Ramos were asked if they had an opportunity to prepare prior to the interview and the officers indicated that they had. Officer Ramos was specifically asked if he had the opportunity to review his statement that was given to Homicide and his re-enactment video and he said that he had. It appears that the officers did have access to their own prior statements, but there was no evidence that Internal Affairs had provided the officers with other witness statements prior to their interview with the purpose of altering the officers' statements to conform with the statements of other officers or with pieces of evidence obtained during the investigation. Sergeant Olsen did mention that he knew he had only fired four shots during his first Internal Affairs interview, but he stated that he learned that through the media.

Was there evidence that the investigators conspired with the subject officer to lessen the subject officer's culpability?

No such evidence was present in this matter.

4.) Was the investigation properly documented?

Was the report well written and generally free of grammatical errors?

The Homicide and Internal Affairs reports were generally free of grammatical errors. A recommendation for a summary report as part of the Homicide report is made in the following category. The overall composition of the Internal Affairs report will be discussed in the conclusion of this part of the review.



Did the report detail a chronological account of events?

The report written by the Homicide detectives was very comprehensive and it contained supplemental reports from every officer that had any involvement in the case. These supplemental reports are very valuable as they serve to remind the individual officers of their actions at a later time particularly as they may prepare for court what could be years later. The difficulty with the homicide report is that the lead detective did not prepare a report that summarized all of the statements, evidence and investigatory steps that were taken. Such a summary is valuable as it serves as a roadmap for anyone reviewing the report to gain a better understanding of the case.

Was the report prepared in a logical format?

The Homicide report was an accumulation of supplemental reports created by individual officers as those portion of the reports were completed. As we suggested above, a better approach would have been to have the primary detective prepare a summary report that encompasses the entire event without requiring the reader to develop a chronological timeline on their own.

The Internal Affairs report was broken down by allegation, however the facts for allegations #2 and #3 were identical and these two sections should have been combined.

Was the report factual, or did it contain conclusory statements?

The Homicide report was factual. The Internal Affairs report failed in some respects to draw appropriate conclusions based on the evidence, and/or failed to address all of the relevant material.



Did the report clearly identify exculpatory as well as inculpatory evidence?

The Homicide report was thorough and included all information. As we have already discussed, the Internal Affairs report failed to include information that would have been exculpatory to Sergeant Olsen (e.g., Mr. Thompson's interview, a thorough description of Mr. Karim's and Dr. Lewinski's analysis).

Were all reference documents attached?

Both investigations referenced and attached all necessary documents.

Were all witnesses, officers and involved parties identified (name, address and phone number)?

All identifying information was clearly listed within the report.

Was there evidence of bias, embellishments, exaggerations, or false statements?

There was no evidence of bias, embellishments, exaggerations or false statements.

Were credibility assessments supported with evidence?

There were no credibility assessments made in either the Homicide or Internal Affairs report. Although the Internal Affairs report made no credibility assessments, some assessment or at least some information should have been provided particularly as it relates to Mr. Thompson and Sergeant Olsen.



Did the report provide a clear, defensible basis for all conclusions?

a. Groups of Rounds Fired

In the Internal Affairs report on page 19, Internal Affairs states, “Ballistics Expert Greg Karim said there is no way to conclude which of the rounds that were fired by Sergeant Olsen were fired while Mr. Brown was standing or on the ground.” That statement is not accurate. What Mr. Karim stated was that he could not tell if the shots were fired “only” when Mr. Brown was standing, or “only” when he was on the ground. Mr. Karim stated that some of the rounds may have been fired as Mr. Brown was falling to the ground. Later in his briefing, Mr. Karim stated that the rounds in Mr. Brown’s back were consistent “with the first shot while he’s standing, the second shot while he’s going down and he’s a little bit lower.” Mr. Karim goes on to state that there are several “possibilities” including that all four rounds were fired while Mr. Brown was on the ground.

But those “possibilities” are not consistent with all of the evidence and contradict the analysis provided by Dr. Lewinski. Dr. Lewinski concluded that Mr. Brown was “shot twice by the first series of shots and then Sgt. Olsen fired another two rounds, very shortly after Mr. Brown struck the ground.” Further, the belief that there is a possibility that all four rounds were fired at Mr. Brown while he was on the ground completely rejects the evidence of two groups of shots, and the statements of both Sergeant Olsen who said that Mr. Brown was still upright when he fired his first rounds and of Officer Norrell who said the first rounds were fired, that he saw Mr. Brown falling to the ground and then another round was fired.

Even if Internal Affairs chose to reject all of this evidence, they should have included it as part of their report and posed arguments distinguishing what they apparently found to be inaccurate.



b. Cover

The Internal Affairs report concludes that there was no indication that Sergeant Olsen or Officer Ramos took advantage of cover during the pursuit, but the report does not discuss what cover they should have taken or what cover may have been available to them. Sergeant Olsen and Officer Ramos were involved in a rapidly moving foot chase. They moved from a parking lot, to an area of brush and trees into the apartment complex. There is no evidence that during this process that there was cover available to the officers or that they should have taken cover at a specific point.

The concern of cover became ripe when Sergeant Olsen was in the courtyard. Sergeant Olsen's statements were that he was proceeding through the courtyard an area with no available cover when he was confronted by Mr. Brown. Internal Affairs suggests that Sergeant Olsen by leaving the cover provided to him by the southwest corner of building #1177, but they do not offer an alternative. Even though Sergeant Olsen saw the overhead lights of other officer entering the apartment complex, he could not have known that Mr. Brown would change his direction of travel so dramatically to come back directly at him. It appears the Internal Affairs would have Sergeant Olsen wait behind the corner of the building without regard for continuing in the pursuit of Mr. Brown. We agree that Sergeant Olsen made tactical errors in the course of the foot pursuit, but we cannot say that once he reached a position of cover that he should have remained there without being threatened at that time.

There was no evidence presented that Officer Ramos failed to take appropriate cover. Indeed, when Officer Ramos heard the shots he immediately stopped, drew his gun, and made an assessment by using the corner of building #1177 as cover and "pieing" around the corner. Finally, there is no indication that Internal Affairs has made a similar allegation against Officer Ramos if they indeed believe that he failed to take appropriate actions.



c. Option of Tackling Mr. Brown

Internal Affairs concludes that Sergeant Olsen lost the option of tackling Mr. Brown when he drew his weapon. We recognize that Sergeant Olsen suggested that tackling Mr. Brown was an option, but we disagree that such an option ever existed. Sergeant Olsen had a reasonable belief that Mr. Brown was armed with a handgun. Attempting to tackle an armed individual in these circumstances would have been inappropriate and it is completely appropriate for a police officer to draw his firearm and point it at an individual whom he has a reasonable belief is armed with a handgun.

d. The Location of Mr. Brown's Hands While He was Running

Internal Affairs points out in their discrepancy section that Sergeant Olsen believed that Mr. Brown was keeping his right hand at his right side because he was holding a gun that had been tucked into his shirt. Officer Ramos also saw Mr. Brown holding his right side and he felt that Mr. Brown was either holding up his baggy pants or was trying to hold onto something. Officer Norrell said that Mr. Brown had placed both of his hands on his waist but he was unable to determine if it was to hold his pants up or something else.

Internal Affairs did not draw any conclusions to these observations and we must conclude that because this issue was listed in the discrepancy section that Internal Affairs was not convinced that Mr. Brown was carrying a gun during the foot pursuit or that they are making a statement about one of the officers' credibility. Yet, we now know that Mr. Brown had been given the gun two days before by Wesley Smith, Mr. Page believed Mr. Brown had the gun and that he had secreted it in his waistband, Mr. Brown grabbed his waistband as if adjusting a gun as Sergeant Olsen approached him Mr. Brown held his waist while he was running in a manner consistent with holding a gun in his waistband, and the gun was located 25 feet from Mr. Brown's body. Although the statements by the witness



officers all vary we must recognize that they had different amounts of knowledge and different views of Mr. Brown. We believe that it is undisputed that Mr. Brown was armed with gun when he was seen by Mr. Page and that he maintained the gun until he ran between buildings #1177 and #1175. We further believe that all of the officers' statements are credible based on their individual knowledge of the events and their individual observations.

Regardless of our beliefs, if Internal Affairs felt that there was evidence that the officers were incorrect or unbelievable they should have presented their evidence rather than simply listing the information as though it were unreliable.

Officer Norrell's Conflicting Statement of When He Saw Mr. Brown was Shot

Internal Affairs lists Officer Norrell's statement to Homicide and his statements during his re-enactment of when he saw Mr. Brown being shot as a discrepancy. There is a discrepancy between Officer Norrell's two statements. This reveals the value of engaging in a re-enactment where the witnesses can describe the events as they receive visual memory cues by being at the location where the event occurred. It also reveals that the transcribed and notarized statement taken by Homicide the day of the event is not the best type of statement to obtain. If Officer Norrell gave his statement on tape with an investigator asking open-ended, non-leading questions during the Homicide interview a better more thorough statement would have been obtained.

Listing this information in this "discrepancy" section gives the reader very little information. Internal Affairs does not mention that they asked Officer Norrell about this discrepancy and he explained that it was too close to call, that Mr. Brown was either on the ground or almost on the ground. It is impossible to determine from the report whether Internal Affairs believes that Officer Norrell is not being truthful about one of his statements, that he made a mistake, or that any conclusions based on this discrepancy



should be drawn. Internal Affairs simply does not address these important concerns.

e. Conclusion to Allegation #3

The conclusions drawn by Internal Affairs to Allegation #3 are simply a cut and paste of their conclusions from Allegation #2. Admittedly, Allegations #2 and #3 involved the identical facts of the use of deadly force portion of the incident. Repeating the facts and the conclusion does not provide the reader with any additional information and only serves to add confusion to an already difficult matter. Internal Affairs should have combined these allegations into a single fact pattern for greater understanding, or they should have addressed the uniqueness of these allegations and how the facts addressed these specific allegations.

Did the report provide alternative interpretations based on conflicting but credible evidence?

The Internal Affairs report did not engage in analysis of conflicting evidence and the investigators did not conduct follow up interviews to clarify the areas of concern, or objective state both sides of the issues (e.g., the number of shot groups).

5.) Was the investigation and report prepared in a timely manner?

Was the investigation, and report completed in an appropriate time period?

The homicide report was completed on August 9th, only 66 days after the incident. Frequently these reports must be completed very quickly if there is a suspect in custody or as in this case a Grand Jury review. The homicide report was completed within an appropriate time.



The administrative investigation was completed on November 14th. The administrative investigation often consumes more time than the criminal investigation, in part because the Internal Affairs investigators frequently wait for the criminal investigation to be completed to avoid any possible Garrity concerns. In this case, Internal Affairs did conduct interviews after the Grand Jury had declined to indict Sergeant Olsen, they hosted a briefing by Mr. Karim, and they sought an outside expert opinion by Dr. Lewinski to better understand the facts.

The State of Texas has disciplinary deadlines that require the Internal Affairs report to be completed and discipline imposed within six months of the incident. Here, Internal Affairs left the adjudicating authority three weeks to review their material, arrive at a finding and impose discipline if warranted. We find that Internal Affairs completed their investigation in a timely manner and that they provided the adjudicating authority with sufficient time to review the report, request some minimal additional investigation if necessary, arrive at a finding and impose discipline if necessary.

2. Conclusion

a. Homicide Investigation

We found it necessary to review the Homicide investigation as it was relied upon by the Internal Affairs detectives. If the Homicide investigation and report was of a poor quality it should have placed the Internal Affairs detectives on notice that additional investigation needs to be completed. We believe that overall the investigation and report conducted by the Homicide detectives was of an excellent quality. We found their investigation to be reasonably thorough, at times tenacious, fair and timely. We are very aware the Homicide detectives had just over two months before the Grand Jury proceedings began and that their investigation and report was prepared in anticipation of those proceedings.



The areas of criticism are as follows:

- We believe that all of the interviews should have been recorded. The recording of interviews, particularly in homicide cases, allows for a greater depth of interview, the ability to capture tone and inflection to gain some sense of credibility, and doesn't cause the investigator to feel limited on the length of the interview based on how much will need to be typed.
- There should have been a summary report. A summary report that puts all of the pieces together is helpful for the detective (they can readily see what has been accomplished, what has been missed, and what needs additional work) for the prosecutor as they are able to gain a sense of the case much easier, and for IA in their administrative investigation.
- All of the mobile videos should have been collected and reviewed, both for direct evidence and for potential discussion of evidence among involved officers. The failure to collect Officers Carrillo's and Chancellor's video deprived the investigation of evidence which could corroborate or refute Sergeant Olsen's statements.
- There should be a simple, easy to read diagram of the scene depicting critical aspects of the incident.

b. Internal Affairs Investigation

Unfortunately, for the reasons cited above and summarized below, we do not believe that the Internal Affairs investigation and report was of the same quality as the Homicide investigation and report.



Investigative Steps

Internal Affairs took very few investigatory steps of their own. Their entire investigation consisted of Mr. Karim's briefing, the retention of Dr. Lewinski for his analysis, and the interviews of Mr. Thompson, Corporal Coffey, Sergeant Olsen, Officer Ramos and Officer Norrell. As we have discussed above there were other steps that reasonably should have been taken.

Internal Affairs should have reviewed Sergeant Olsen's mobile video for his entire shift and they should have asked him about the second incident that he had mentioned. They should have questioned Sergeant Olsen about his statement to them that "some people need to go to jail because of their attitudes and actions." They should have conducted follow up interviews with all of the witnesses who heard a single group of shots. This was not a significant issue at the time of their interviews by Homicide, but it became one later in the investigation. They should have recognized that Officer Carrillo's and Chancellor's video was not collected or reviewed and should have done so. Internal Affairs should have made more effort to determine the degree of tactical training that Sergeant Olsen had received. Lastly, they should have reviewed and reported on Sergeant Olsen's 2002 incident in which he admitted lying and falsely reporting relative a use of force incident.

Report

The effectiveness and competency of an investigation is judged generally by the quality of the reports that are produced. A poorly written report will cast doubt even on the most thorough investigation. Although all portions of the report need to be composed in a complete, accurate and comprehensive manner, the narrative portion of the report forms the report's true substance. When judging the quality of reports, any reviewer, including supervisors, managers, auditors, media or members of the public will closely examine the narrative portion because it contains the detail of the investigation. The narrative must



address the: who, what, why, where, when and how's of the investigation. The narrative needs to contain all of the information necessary for a commanding officer to be able to draw reasonable and fair conclusions and determine the findings and possible discipline

The quality of investigative reports is determined to large extent by their accuracy, completeness, clarity and style. Investigators must be objective and impartial. It is the goal of investigators to be a reporter and tell a story when preparing reports. As a reporter, the investigator must accurately describe all of the facts of the case that are relevant to prove or disprove the allegations. The report must be accurate in that it is a true representation of the facts discovered by the investigator. Information both favorable and unfavorable to the subject officer should be included. Opinions of witnesses and experts must be clearly labeled and evidence should be sought and presented that tends to corroborate and distinguish statements made by witnesses and subject officers.

The report must be complete. The reader should be left with no questions regarding the investigation after reading the report. The elements of the offense must be clearly established and the facts of the case should be applied to the elements to prove or disprove the allegations. All reasonable leads should have been investigated and the outcomes of the leads need to be documented in the narrative. All relevant information concerning the investigation, including inculpatory evidence – evidence that tends to support the subject officer's liability for the alleged offense, and exculpatory evidence – evidence that tends to show the subject officer's blamelessness, must be included.

Finally, the report must be clear. The report should be developed in a logical, chronological manner that leads the reader through the facts in a cogent and understandable way. The report should be well structured and easily read. The reader should have no difficulty in following the sequence of events and after the reader has completed a review of the narrative there should be no additional investigation required for the reader to reach a finding (or a non-finding).



In this case, the report did not meet these standards. Internal Affairs did not provide a chronological account of the incident. They did not summarize the statements of many of the witnesses and they used witness statements without regard for the contravening statements of other witnesses (e.g., the use of Mr. Thompson's statements). Internal Affairs did not fulfill their role to assess the information and to draw reasonable conclusions based on the evidence or to at least fully describe all of the evidence on both sides of an issue. Simply put, Internal Affairs was unable to tell the story of what happened during the early morning hours of June 3rd that led to the shooting death of Kevin Brown.

With respect to these issues, Internal Affairs simply listed them as "discrepancies" and made no effort to resolve what they saw as discrepancies in statements or in evidence. There were a number of issues that were not addressed including: the tackling of Mr. Brown; where Mr. Brown's hands were and what he was doing with his hands during the pursuit; Officer Norrell's conflicting statements; and the conflicting statements on whether there was one or more groups of shots fired. We believe that Internal Affairs had sufficient information to resolve many of these concerns, as we do later in this report, or at least to provide a more thorough discussion explaining their reasoning for drawing no conclusion.

While their report's introduction, describes the Medical Examiner's report and the location of the bullets in Mr. Brown's body, there is no discussion under Allegation #2 or #3 relative to Mr. Brown being shot twice in the back. Likewise, although there is a comment that a gun was found 25 feet away from Mr. Brown's body, there is no discussion on this important issue. To ignore issues of this importance in their discussion of the use of deadly force is troubling.

Similarly, there is no discussion of Sergeant Olsen's prior administratively sustained complaint and the effect on credibility that should be drawn from that conviction. Moreover, the underlying allegations in that complaint could be viewed as potentially



relevant to the instant investigation. At a minimum a discussion of the issue should have been included in the report.

As noted above, the entire section that was written on allegation #3 was cut and pasted from allegation #2 with the exception of the "Discrepancies" and "Other Factors to Consider" sections. Obviously, a complete repeat of information was not helpful to describe the events or to arrive at a conclusion.

VIII. Analysis of the Allegations and Conclusions

A. Allegation 1 - Relating to the Tactics Employed by Sergeant Olsen

1. General Observations Relative to Tactics

As noted above, APD officers are mandated to utilize common sense and good judgment in the exercise of their duties. Nowhere is this mandate more important than in an officer's determination of what tactics to employ in a given situation. "Tactics" are methods, maneuvers or techniques used to achieve policing objectives. Evaluation of any use of force incident must include an assessment of the tactics used by the involved officers. Because police officers may encounter an almost infinite variety of scenarios in the field, it is generally impossible to pre-determine the tactics that should be used. Rather, officers must apply general principles and methods to situations that are fluid, dynamic and uncertain. Sound tactical performance thus relies upon officers' ability to evaluate scenarios they encounter, and to make appropriate tactical decisions as to how the scenario should be managed in order to meet the relevant policing objectives.

When considering tactics used in any given scenario, the following three questions should be considered:



- 1) What was the scenario?
- 2) What was the policing objective?
- 3) To what extent did the tactics applied to the scenario serve the policing objective?

Because of the typical complexity of operational policing, single incidents usually encapsulate multiple scenarios and objectives. As such, it is likely that a reviewer will need to repeatedly consider the above three questions in the course of conducting an evaluation.

Police officers have a duty to perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others. Sound tactical decision-making enables officers to avoid unnecessarily placing themselves and their fellow officers in harm's way, to avoid undue risks to public safety, and to minimize the need for officers to resort to serious uses of force to achieve their objectives. Understanding that officers may need to balance the safety of different actors in a scenario against one another (e.g., officer shoots suspect to prevent suspect from shooting officer; officer exposes himself to risk of being shot in order to rescue civilian from imminent danger), safety should be considered as an important objective in all police operations.

There are few "bright lines" regarding tactics officers must not use. For instance, the Austin Police Department policy dictates that firearms shall not be discharged as a warning under any circumstances. However, the vast majority of tactical issues are not so clear-cut. Instead, officers have the discretion to select options from the "tool bag" of tactics they have acquired through their training and experience. As such, an evaluation of tactical performance comprises an evaluation of officers' demonstrated knowledge and decision-making.

2. Planning, Approach and Initial Contact

Whenever police officers have the opportunity to formulate a plan before taking action they



should do so. Depending on the characteristics of a scenario, officers may have weeks to plan, or no more than a few seconds. In order to plan effectively, officers should:

1. Gather as much information about the scenario as is feasibly possible.

The more information officers possess about a scenario, the better their capacity to plan tactics that will fit that scenario. The information-gathering stage of the planning process could range from an officer waiting for the results of a license-plate check before initiating a stop of a suspicious vehicle, to a team conducting surveillance of a building being used by organized criminal in advance of a search warrant execution.

Sergeant Olsen and Officer Ramos had made a car stop directly in front of Chester's Lounge. As they were issuing the driver a citation, a security guard, Mark Page, approached Sergeant Olsen and told him that he believed that a patron, later identified as Darius Lovings, of the lounge was carrying a gun. We know the exact conversation between Mr. Page and Sergeant Olsen because Sergeant Olsen was wearing a microphone that recorded the event on his vehicle's mobile video system.

Mr. Page told Sergeant Olsen that Mr. Lovings told him that he was threatened inside the club. Mr. Lovings told Mr. Page that someone inside the club threatened to shoot him when he left the club. Mr. Page stated that Mr. Lovings told him that he was going to "bust back" meaning that he was going to shoot the person who made the threat. Sergeant Olsen asked Mr. Page where the man was who made the threat and Mr. Page stated that that man had left the club, but that Sergeant Olsen ought to be worrying about the victim of the threat, Mr. Lovings, who was now in the parking lot of the club. Mr. Page told Sergeant Olsen Mr. Lovings was wearing a white muscle t-shirt and he had a gun secreted in his back pants pocket. Mr. Page was able to point out Mr. Lovings to Sergeant Olsen as Mr. Lovings was standing in the parking lot about 50 feet away from Sergeant Olsen and Mr. Page.



Sergeant Olsen asked Mr. Page to "keep an eye on him," and he advised Officer Ramos that "we may have a man with a gun right inside this thing here." Sergeant Olsen completed the traffic citation, then he radioed that he had been "flagged down at Chester's about a guy who might have a gun." Sergeant Olsen can then be heard telling Officer Ramos, "Right around the corner. Black male. White muscle shirt. On the other side of this motorcycle."

Mr. Page then told Sergeant Olsen that a man, later identified as Kevin Brown, and who was wearing a red shirt now had the gun. Mr. Page stated that it looked like Mr. Lovings and Mr. Brown were shaking hands and that Mr. Brown took the gun and tucked it into his waistband.

Based on the information provided by Mr. Page, Sergeant Olsen led Officer Ramos as they contacted Mr. Brown. In his Internal Affairs interview, Officer Ramos said, "We didn't have any plan . . . there wasn't any plan at all." Sergeant Olsen made little effort to gain any additional information prior to making contact with Mr. Brown. Sergeant Olsen did not ask Mr. Page if he knew the subjects by name, if he knew what vehicles they were driving, or if they were associated with others who may be standing nearby. Similarly, he did not ask clarifying questions of Mr. Page, like "Did you actually see the gun?" And, "Can you describe the gun?"

2. Take account of risk factors.

All risk factors known to be involved in a scenario, as well as those that should be considered as a matter of routine should be accounted for in a plan to the extent possible. Risk factors include anything that may threaten harm to an officer, civilian or suspect. Commonly encountered risk factors that should be considered in the planning process include the likelihood that a person will be armed, that a vicious dog may be encountered, or that a person is mentally ill.



Sergeant Olsen clearly focused on the belief the Mr. Brown was armed with a handgun. He did not consider any other possible risk factors of the scene that he was about to enter. He did not know if Mr. Lovings, the person that Mr. Page originally thought had the gun, was still armed with that gun or with another gun. Sergeant Olsen did not assess the risks of the bystanders.

Although Sergeant Olsen had some concern about the crowd at Chester's, noting in his statement that "we are always 'out gunned' when we go into the parking lot," it appeared that he did not take this risk factor into consideration.

3. Assemble sufficient police resources before taking action.

Absent exigent circumstances, a plan of action should include the assembly of appropriate police resources. In practice, this means that a sufficient number of officers and supervisors should be assembled, that they should be appropriately equipped, and that the assistance of specialized units (e.g., Air Support, K-9, SWAT) should be sought when appropriate.

In this case, Sergeant Olsen recognized that he may need assistance to contact an individual who was potentially armed with a handgun. When available and when the circumstances permit, it is always advisable to employ additional officers. Here, such a tactic was important for several reasons. First, an additional officer would allow one officer to have a lethal force option (handgun), a second officer to have a less-lethal option (baton or Taser - Sergeant Olsen was carrying a Taser at the time of the incident), and allow the third officer to have physical contact with the subject to apply a control hold or to handcuff.

Second, Sergeant Olsen was told by Mr. Page that Mr. Lovings initially had possession of the handgun. It was Mr. Lovings who made the statement the he would use the weapon and Mr. Lovings was standing near Mr. Brown when Sergeant Olsen approached. Further, although Mr. Page believed that Mr. Lovings passed the handgun to Mr. Brown, Mr. Page



could have been mistaken or Mr. Lovings may have had another weapon.

Third, there was a crowd of people in the area of Mr. Brown that greatly outnumber the number of officers. These other individuals may have had the opportunity to interfere with the arrest of Mr. Brown, or they may have become a threat to the officers during the detention and arrest process.

Finally and perhaps most importantly, Officer Norrell stated over the radio that he was "two seconds" away. Indeed, we know that Officer Norrell arrived very quickly from his statements and the statements of his ride-a-long who said that as they pulled into the driveway of Chester's they saw Sergeant Olsen and Officer Ramos approaching Mr. Brown. Sergeant Olsen had already delayed his contact with Mr. Brown while he completed a traffic citation and he had Mr. Brown in sight during the entire time. If Mr. Brown had moved or created an immediate threat, Sergeant Olsen and Officer Ramos would have probably been in a better position to react to the threat because there was some distance between themselves and Mr. Brown.

4. Use available time

Officers should take the time available to plan before taking action. Moreover, they should avoid taking action that may unduly limit planning opportunities (e.g., alerting suspects to a police presence before it is appropriate to do so.)

Sergeant Olsen radioed asking if there was another police unit close to Chester's. After being advised by Officer Norrell that he was "two seconds" away, Sergeant Olsen approached Mr. Brown. Based on the mobile video recording only 15 seconds elapsed between when Sergeant Olsen radioed a request for another unit and his telling Officer Ramos to "Come on." 8 seconds after that Sergeant Olsen can be heard telling Mr. Brown, "Let me see your hands, put your hands up."



Sergeant Olsen did not wait for Officer Norrell to arrive. Instead he walked directly to contact Mr. Brown who was standing a few yards away. This initial approach, with Sergeant Olsen leading and Officer Ramos following closely behind was video recorded by another patron of the Lounge. That video lasts only a few seconds and documents that Sergeant Olsen did not have his gun out of his holster and that Officer Ramos appeared to be drawing his firearm.

There was nothing that prevented Sergeant Olsen from waiting a few more seconds, or even minutes, before contacting Mr. Brown. In that time he could have given Officer Ramos a better briefing, he could have pointed out both Mr. Lovings and Mr. Brown to Officer Ramos, he could have asked Mr. Page additional questions, he could have formulated and communicated a plan with Officer Ramos (even something as simple as I will be the contact officer and you will provide cover) and he could have waited for the arrival of Officer Norrell and potentially other units.

If the circumstances had not changed after Officer Norrell's arrival, and it was felt that immediate action was necessary, Sergeant Olsen could have at least briefed Officer Norrell, identify the subjects to Officer Norrell and communicate a plan of action between himself, Officer Ramos and Officer Norrell.

3. The Foot Pursuit

Pursuing on foot is a commonly-used tactic for the apprehension of fleeing suspects. A number of factors should be considered in determining whether a foot pursuit is an appropriate tactic.

Before undertaking a foot pursuit, officers should consider the risks involved in pursuing, and whether an alternative means of apprehension (e.g., perimeter) would be more



appropriate. Factors to consider include:

- a.) Whether the suspect is armed with a gun. Absent an articulable danger to officers or others should a pursuit of a suspect armed with a gun not be undertaken, officers should not pursue a suspect armed with a gun. This is due to the exposure to the danger of being shot that such pursuits entail. If it is possible for an officer to follow a suspect with a gun by moving between positions of cover, however, this risk may be reduced.
- b.) Whether the suspect is armed with a weapon other than a firearm (e.g., knife). Officers should avoid closing the gap on a suspect armed with a non-firearm weapon during a foot pursuit.
- c.) The number of officers versus the number of suspects. Generally, lone officers should not engage in a foot pursuit (nor should pairs of officers split from one another), and teams of two or more officers should ensure that they outnumber the suspects being pursued.
- d.) The type of environment into which the suspect is fleeing. Officers should avoid pursuing suspects into environments where the suspect can conceal himself from the officer, due to the risk of ambush. Officers should be wary of pursuing into areas with which they are unfamiliar, where there is a possibility that they are being led into an ambush involving additional suspects, or where there may be a danger of accidents (e.g., over roofs, through yards containing dogs, across a busy highway).

If an officer decides to undertake a foot pursuit, he/she should broadcast the following information before doing so bearing in mind that it is very difficult to clearly broadcast while running: Officers location, number and location of suspects, where back-up officers should respond to, and whether the suspect is armed.



If an officer loses sight of a suspect during a foot pursuit, he/she should stop and attempt to determine where the suspect has gone. Officers should use tactical caution (including "slicing the pie" or taking a "quick peek") when rounding corners, and should not climb over walls or other barriers without taking precautions to establish that the suspect is not lying in wait.

In this case, Both Sergeant Olsen and Officer Ramos engaged in a foot pursuit of Mr. Brown. Even though Sergeant Olsen, a field supervisor, was "100%" certain that Mr. Brown had a gun, he chased Mr. Brown as Mr. Brown ran behind a large metal storage container where there was only a small gap of space between the container and an adjacent fence. What is worse, Sergeant Olsen allowed his subordinate officer, Officer Ramos to follow Mr. Brown through this treacherous and dangerous area.

Sergeant Olsen and Officer Ramos chased Mr. Brown through a wooded area where they both acknowledged that they lost sight of Mr. Brown at least momentarily. Mr. Brown scaled a low chain link fence that separated the parking lot of Chester's Lounge from the adjacent apartment complex. Although the fence on the parking lot side was a few feet high, the other side dropped several additional feet as the fence was placed on top of a concrete wall.

After climbing over the fence and descending down the wall, Officer Ramos who was now some distance in front of Sergeant Olsen continued to chase Mr. Brown along the sidewalk. Sergeant Olsen, who slipped on the wall causing him to fall, chose to cut through the apartment complex in an attempt to "cut off" Mr. Brown. Sergeant Olsen acknowledged that he made no efforts to alert Officer Ramos that he was no longer following him. By abandoning Officer Ramos, Sergeant Olsen placed Officer Ramos' safety in jeopardy. Sergeant Olsen could not have known that Mr. Brown would eventually make a u-turn in his direction. Mr. Brown could have easily stopped and engaged Officer Ramos and Sergeant Olsen would not have known and would not have been able to help.



When Mr. Brown did make his change in direction to come back toward Sergeant Olsen, Sergeant Olsen's attempt to cut off Mr. Brown created a cross-fire situation. A cross-fire occurs when officers place themselves within one another's line of fire. Cross-fires are very dangerous, both due to the risk that an officer will be hit by friendly fire, and the risk that an officer will be unable to shoot in self-defense due to the risk of shooting a fellow officer. Officers should avoid configuring themselves in any manner that creates a cross-fire. Had Sergeant Olsen fired at Mr. Brown when he was running between buildings #1177 and #1175 a cross-fire situation would have existed. Officer Ramos and Officer Norrell were both "down range" of Sergeant Olsen and either could have been hit by an errant shot.

Cover/Concealment

Cover is any material or object behind which officers can position themselves for protection from gunfire or threats. The use of cover is a basic tactic that officers can use to shield themselves from the threats posed by armed or potentially armed suspects, as well as from threats such as moving vehicles or thrown missiles.

Concealment, as the term suggests, involves an officer concealing him/herself from the view of the suspect. Unlike cover, concealment does not provide a physical barrier to the threat itself (e.g., bullet, car). However, concealment reduces opportunities for a suspect to aim a weapon or otherwise direct a threat towards an officer.

It is generally unwise for an officer to leave a position of cover before a threat has been stopped. Officers should abandon cover (and thus exposes themselves to the threat) only when such action is justified by exigent circumstances. Whether it is tactically sound for an officer to leave a position of concealment will depend upon the overall advantages and risks that will result from such action, versus the advantages and risks associated with remaining



concealed.

Sergeant Olsen found himself without cover or concealment because he left his partner officer and rushed into the courtyard without consideration for his own safety. Both Officer Ramos and Officer Norrell stated that as they rounded corners that they "pied" the corners to ensure they were not being set up. Sergeant Olsen did not employ any type of officer survival tactic as he entered a large open area that he was unfamiliar with. Had Sergeant Olsen remained with Officer Ramos he would not have faced this situation.

4. Training

Police officers are not presumed to be knowledgeable in tactics simply because they are police officers or because they have a certain amount of street experience. Basic tactical considerations are taught initially in the police academy, but this training must be supplemented with ongoing in-service or advanced officer training. It is the responsibility of organizations to ensure that its officers have at least a competent level of tactical training and certainly that its supervisors, those individuals who are trusted to lead, mentor and train their subordinates officers have competent skills that they can pass along to their subordinates.

In order to demonstrate that Sergeant Olsen was properly trained, Internal Affairs interviewed Corporal Coffey, who was the Department's academy instructor for Use of Force, Combat Tactics and Officer Survival Skills. Corporal Coffey was asked about forming a plan prior to making contact with a potentially armed individual and he was asked if an officer should wait for back up to arrive prior to making such contact. Corporal Coffey provide open, non-specific responses to both of these questions. First, Corporal Coffey stated that developing a plan would depend on timing, distance, the amount of intelligence you have and whether the officer believed the threat to be credible. As to whether or not an officer should wait for follow up officers prior to making contact,



Corporal Coffey again stated that it would depend, but he added that the more officers you have the better your chances are.

Corporal Coffey could not recall any lesson plan or scenario that he provided to the academy class outlining how officers should respond to armed individuals. In fact, Corporal Coffey stated that although he would like to have "lots of help," he added that if he felt the subject posed an immediate danger that he might go "hands-on" with the subject immediately. We found such a statement from a Use of Force expert and an academy instructor to be troubling. Certainly there are a wide range of alternatives (e.g., verbal commands, O.C. spray, Taser, holding the suspect at gun point, retreating to a position of safety) that would be more tactically sound than an immediate "hands-on" approach. In consideration of Corporal Coffey, the statement may be taken out of context as the internal affairs investigators never provided him with the scenario that confronted Sergeant Olsen.

When questioned as to what was taught about whether to shoot a suspect if the officer had a suspicion of a weapon, but where the weapon had not actually been seen, Corporal Coffey first responded, "...if you suspect he has a weapon, you can't shoot him." Corporal Coffey went on to contradict himself by stating that he believed an officer could shoot an individual even if the officer did not actually see a gun if there is a furtive movement like someone reaching for a gun.

Corporal Coffey's responses to other questions were equally troubling. Corporal Coffey was asked if it was tactically sound to leave your partner during a foot pursuit. Corporal Coffey said that he would not want to leave his partner, followed by it would depend on a variety of circumstances and he finally concluded that police work is a dangerous job and that "someone's got to do it."

We found the troubling responses by Corporal Coffey to be strikingly similar to the responses given by Sergeant Olsen. When Sergeant Olsen was interviewed by Internal



Affairs and asked why he entered a crowded area to contact a potentially armed man, Sergeant Olsen responded, "You've got to do, what you've got to do. And there weren't any other units available" (even though Officer Norrell was available and only two seconds away). Sergeant Olsen further described his approach to Mr. Brown by saying, "I had a gut feeling something was wrong. The hair on my neck stood up and I felt something was wrong. So I decided to go ahead and go hands on." We can only conclude that perhaps Sergeant Olsen was acting in the manner that he was trained some 13 years ago by Corporal Coffey.

Equally of concern was a statement made by Sergeant Olsen when he was asked "Was it ever an option to just discontinue the chase?" Sergeant Olsen replied, "It's always an option, but it's not, it wasn't an option, in my mind. Once someone starts running, I'm going to chase them until I can no longer chase them." This mindset allows for no reasonable alternatives that may be in the best interests of the community or for the involved officers to be considered.

It was this academy training as recounted by Corporal Coffey that occurred nearly 13 years prior to the event that forms Internal Affairs' basis to conclude that Sergeant Olsen was properly trained in the tactical approach, contact and foot pursuit of an armed individual. However, Internal Affairs was unable to show that Sergeant Olsen received any of the academy training outlined by Corporal Coffey. Corporal Coffey stated that he believed that he was Sergeant Olsen's academy instructor in these areas, but he was not certain. Internal Affairs did not refer to any academy manual, text, or curriculum to support their findings.

Even if Sergeant Olsen did receive training in the academy, the testimony by Corporal Coffey in many parts actually supports the poor tactics employed by Sergeant Olsen. Further, a review of Sergeant Olsen's training records indicate that since he graduated from the academy over 12 years ago he has received 707 hours of continuing professional training. Of those hours, the records indicate that he received 176 hours of continuing



professional training classified as "Patrol/Tactical" in the following areas:

11/30/2006	8 hours	Taser Training
8/7/2002	10 hours	Mounted Patrol
11/9/2001	1 hour	Handgun Laser Sight System
7/25/2000	7 hours	Pursuits and Weapons of Mass Destruction
5/4/2000	20 hours	Advanced Tactical Pistol
11/11/1998	3 hours	FATS Simulator (decision making)
10/29/1998	20 hours	Tactical Pistol
5/7/1998	40 hours	Mounted Patrol
8/29/1997	32 hours	Police Cycling
7/30/1997	20 hours	Mobile Field Force
2/27/1997	15 hours	Unknown - files have been purged

Remarkably, Sergeant Olsen has received very little documented training in field tactics since he graduated from the academy. Indeed, although his training record indicates that he received FATS training, in which officers engage in a variety of tactical scenarios including shoot/don't shoot scenarios, Sergeant Olsen, could not recall this training.

On November 26th, we were provided with some additional materials related to the training of Sergeant Olsen which were made a supplement to the IA investigation report. We reviewed a copy of an email between Lieutenant Jason Dusterhoft and Detective Sam Kreider of Internal Affairs. Lieutenant Dusterhoft was reviewing the Internal Affairs report and had questions similar to ours about Sergeant Olsen's training. Lieutenant Dusterhoft asked for course outlines or a syllabus from Sergeant Olsen's academy or tactical pistol course. Lieutenant Dusterhoft asked whether Sergeant Olsen had attended any courses dealing with armed subjects in a crowd and he asked that Joe Alvarado be interviewed as he believed that Mr. Alvarado was Sergeant Olsen's academy instructor in Use of Force.



Detective Kreider responded stating that the academy did not have the course or instructor information from Sergeant Olsen's academy. Internal Affairs declined to interview Mr. Alvarado stating that he was not one of Sergeant Olsen's instructors, but Detective Kreider did conduct an interview on November 21st with Sergeant Jason Mutchler who was a tactical pistol instructor for the department. Sergeant Mutchler knows Sergeant Olsen, but he could not recall if Sergeant Olsen had ever attended any of his courses. Sergeant Mutchler stated that the tactical pistol course primarily focused on shooting skills and the class did not cover the Austin Police Department Use of Force policy.

Sergeant Mutchler was also asked several leading questions by Detective Kreider that contained incomplete hypotheticals seeking Sergeant Mutchler's opinion on trying to "cut off" a fleeing suspect and leaving cover when confronting an armed suspect. Because of the construct of the questions, and the questionable relevance, the responses lack any real value to this investigation. Indeed, some of the questions seemed to misunderstand the law and suggest that it could never be lawful to use deadly force against an unarmed person – even where it is objectively reasonable that the person is both armed and an immediate threat.

5. Conclusion

The facts as recited above regarding the planning, approach, initial contact and pursuit of Mr. Brown are essentially undisputed. We find by a preponderance of the evidence, that Sergeant Olsen failed to use common sense and good judgment in the execution of his duties and that that failure manifested itself in poor tactics which ultimately contributed to a sequence of events leading up to the death of Kevin Brown. (This is not to diminish Mr. Brown's own responsibility for the circumstances which evolved.) We believe that these poor tactics placed Officer Ramos and Sergeant Olsen at risk and did in fact, ultimately leave Sergeant Olsen in a position where he believed he had no alternative to the use of deadly force. We therefore agree with the Internal Affairs conclusion that this charge should be found "Sustained."



We note that it is unclear to what extent Sergeant Olsen was provided with appropriate training to make these split-second tactical decisions. Much of what is demonstrated in Sergeant Olsen's interviews seems to have been fostered by the fact that most of the time even the poorest of tactics do not have deadly consequences or, for that matter, any consequences at all. Police departments, through on-going in-service training, must strive to fight the type of complacency exhibited by this mindset. We recommend that a review of tactical training be undertaken by APD in order to determine whether the current level of training is adequate in terms of scope and frequency.

B. Allegation 2 and 3 - Relating to the Use of Force and APD Policy and Texas State Law

1. General Observations

Unlike Allegation 1, where the relevant facts are basically undisputed, it is necessary to make findings of facts which bear on the issues of Allegations 2 and 3. Specifically, the state of mind of Sergeant Olsen and the reasonableness of that state of mind must be determined. So too, must various aspects of the shooting itself be determined, including whether there were two volleys of shots. Moreover, if there were two volleys of shots, whether each of those volleys (if not each shot) is within policy or out of policy must be determined

We believe that the following analysis appropriately breaks the incident down into its component parts, each of which need separate analysis and resolution. Using the standard of proof of "preponderance of the evidence," findings of fact in each of these areas will allow for an appropriate analysis and ultimate conclusion when applied to APD policies and procedures (Allegation 2) and the laws of the State of Texas (Allegation 3). This ultimate conclusion will ask the question: "Do the facts, as found to have occurred, show, by a preponderance of the total body of evidence, that Sergeant Olsen violated either the policies and procedures of APD (Allegation 2) when



he used deadly force against Kevin Brown?"

2. The Approach to Mr. Brown and the Legality of the Attempted Detention of Mr. Brown

Sergeant Olsen had made a car stop in front of Chester's and was contacted by a uniformed security guard, Mr. Page, who told him that he believed that Mr. Lovings had a handgun. Sergeant Olsen told Mr. Page to watch Mr. Lovings as he finished issuing a citation to the driver whom he had stopped. Mr. Page did so and believed that he saw Mr. Lovings hand off the pistol to Mr. Brown which, according to Mr. Page, Mr. Brown tucked into his waistband. This information was imparted to Sergeant Olsen by Mr. Page.

Under the law, Mr. Page is considered a "citizen informant" whose statements may be relied upon by police officers. Although a seasoned police officer like Sergeant Olsen knows that sometimes witnesses make mistakes, we find it was perfectly appropriate for Sergeant Olsen to act upon the information provided to him in what Sergeant Olsen would reasonably believe to be good faith statements made by Mr. Page. Indeed, it would have been inappropriate for Sergeant Olsen to have ignored the statements made by Mr. Page and simply driven away.

Sergeant Olsen told Officer Ramos of the suspicions and he radioed for an additional officer. Based on the statement of Mr. Page alone, Sergeant Olsen had reasonable suspicion that criminal activity was afoot and that Mr. Brown may be associated with the criminal activity. Notwithstanding our finding above relative to tactics, we find, that Sergeant Olsen had the lawful right detain Mr. Brown in order to conduct an investigation.

3. Sergeant Olsen's State of Mind after the Attempted Detention

Sergeant Olsen approached Mr. Brown and told him, "Let me see your hands. Put your



hands up." Instead of obeying Sergeant Olsen's lawful orders, Mr. Brown immediately began to flee and started running from Sergeant Olsen and Officer Ramos. As he ran, Sergeant Olsen saw that Mr. Brown's right hand was holding the right side of his pants. This type of motion is consistent with the actions of someone who has a handgun tucked into their waistband and inconsistent with someone who is trying to run fast as fast as they can to get away from the police officers who are chasing him. While it may be argued that Mr. Brown, who was wearing baggy pants, may simply have been trying to hold his pants up while he ran, the standard is not whether there exists an alternative belief that Sergeant Olsen might have held, but whether his stated belief was objectively reasonable. Given the fact that Sergeant Olsen was told that a man had a gun tucked into his waistband, that the man fled when approached by Sergeant Olsen and Officer Ramos and that while fleeing held his waistband in a manner consistent with having a gun in his waistband, we find, by a preponderance of the evidence, that, at the time the pursuit was begun, Sergeant Olsen had a reasonable belief that Mr. Brown was armed with a deadly weapon and readily capable of using deadly force against Sergeant Olsen or others.⁷

4. Sergeant Olsen's State of Mind During the Pursuit

Sergeant Olsen and Officer Ramos chased Mr. Brown through the parking lot of Chester's, over a fence that separated Chester's from the apartment complex, to the sidewalk that runs in an east/west direction on the south side of building #1177. Mr. Brown ran eastbound down the sidewalk and Officer Ramos followed him. Sergeant Olsen, who apparently had injured his finger while scaling the fence, decided to go northbound behind the west end of building #1177 and into the courtyard in an attempt to "cut off" Mr. Brown thereby preventing Mr. Brown from continuing eastbound.

Sergeant Olsen saw Mr. Brown a few seconds after entering the courtyard. Mr. Brown,

⁷ Although immaterial to this finding, we do find that Kevin Brown, at the time he fled did, in fact, have the .22 caliber pistol later found around the corner of the building where he was shot by Sergeant Olsen.



with Officer Ramos seconds behind him, ran around the east end of building #1177 and started running westbound toward the courtyard. It is reasonable to believe that Mr. Brown changed his direction from westbound to eastbound because he saw Officer Norrell's marked police unit with its lights on enter the apartment complex parking lot and drive westbound toward him.⁸

According to Officer Norrell, Mr. Brown ran at an angle from the northeast corner of building #1177 to the southwest corner of building #1175. It is reasonable to believe that Mr. Brown took a diagonal path because that would be the shortest distance between the two points. Indeed, there is a worn dirt path in the grass that goes on a diagonal between the two buildings indicating that it is a common path for residents moving from one building to another. It was in this area between building #1177 and #1175 that the Jennings .22 caliber pistol was later located. The gun was found a few feet from the north wall of building #1175 and a few feet from the northwest corner of building #1175.

Officer Norrell saw Mr. Brown between these buildings and said that both of his hands were in the area of his hips and that he felt this was unusual for a person running. It is reasonable to believe that Mr. Brown saw Officer Norrell's car and knew that he was being chased on foot by other officers and that the officers may be about to catch him. It appears that Mr. Brown discarded the gun intentionally because it was located a distance to the south of Mr. Brown's path (Mr. Brown's left hand side) and the officers said that he had been using his right hand to hold his waist area.⁹

After Mr. Brown turned the northwest corner of building #1175 he began running

⁸ As noted above the fact that neither the homicide investigation, nor the Internal Affairs investigation indicates the exact measurements which may have played an important role in the determination of questions of fact. Likewise, there does not exist an appropriate diagram showing those relative distances.

⁹ Regardless of whether Mr. Brown intentionally discarded the gun or if he accidentally dropped it, the preponderance of the evidence shows that Mr. Brown had the gun. Specifically, the evidence shows that Mr. Brown had been given the Jennings .22 caliber pistol two days before by Wesley Smith. This, combined with Mr. Page's observations and Mr. Brown's holding of his waist band, present clear and convincing evidence that Mr. Brown had the gun in his possession up until the time it was dropped near the northwest corner of building #1175.



southbound parallel to the rear of building #1175. Sergeant Olsen was in the courtyard and stated that as Mr. Brown rounded the corner of building #1175 and that he began yelling at Mr. Brown to let him see his hands. No witness provides corroboration for any orders being given by Sergeant Olsen prior to the first shots. Sergeant Olsen said that Mr. Brown looked directly at him and started moving his hands around his waist area causing Sergeant Olsen to believe that Mr. Brown was "digging" for a gun. Sergeant Olsen said that Mr. Brown started turning slightly toward him and based on the motion of his hands, the turning movement of his body and Sergeant Olsen's belief that Mr. Brown was armed with a handgun, Sergeant Olsen formed the opinion that Mr. Brown was going to shoot at him, so he fired at Mr. Brown. No witness provides corroboration for Sergeant Olsen's observations.

We find, by a preponderance of the evidence, that while it was reasonable for Sergeant Olsen to believe that Mr. Brown was armed with a deadly weapon which he was capable of using to cause serious or deadly injury to Sergeant Olsen at the time immediately preceding the first shots which Sergeant Olsen fired, the only evidence to indicate that Sergeant Olsen reasonably believed that deadly force was immediately necessary to protect himself against Mr. Brown's unlawful use of deadly force, are Sergeant Olsen's own statements, which for the reasons articulated below, can not necessarily be fully credited.

5. Determination of the Number of Shots Fired by Sergeant Olsen

Although Sergeant Olsen believed he fired five or six rounds at the center of mass (the largest part of the human body between the waist and the neck), ballistics evidence shows that he only fired a total of four rounds during the incident. Based on the ballistics evidence including spent shell casings, as well as bullets and fragments recovered from Mr. Brown's body and the scene, we find, by a preponderance of the evidence, that Sergeant Olsen fired a total of four rounds.



6. Determination of the Sequence and Spacing of the Shots

Sergeant Olsen indicated in each of his statements that he believed that he paused between the first shots which were fired and a second volley of shots. He indicated that he paused and consciously decided to shoot the second volley. The existence of two separate volleys of shots is corroborated by six civilian witnesses as well as Officer Norrell.¹⁰

The ballistics and forensic evidence relative to the sequence and spacing of the shots provides corroboration for the existence of two separate volleys. Dr. William Lewinski, was provided with the Homicide investigation materials and was asked to opine on whether the forensic evidence supported Sergeant Olsen's statements of the incident.

Dr. Lewinski explained that falling bodies take time to fall and a body moving forward will cover some distance while falling. Dr. Lewinski stated that if Mr. Brown was moving from left to right (as viewed by Sergeant Olsen), parallel to the building, Sergeant Olsen could not have struck Mr. Brown when he was upright and then also strike the ground and wall impact points from a single location. This, according to Dr. Lewinski, means that Sergeant Olsen had to have stepped at least two short steps sideways in between his bursts of shots to align him such that when he fired his last burst, the rounds impacted on the ground and on the wall in the fashion that they did. It is the opinion of Dr. Lewinski there had to be a distinct break in between the two sets of shots in order for Sergeant Olsen to have moved slightly, for Mr. Brown to fall and for the rounds to impact in the manner that they did. (Dr. Lewinski did not have knowledge of the Carrillo/Chancellor video)

Dr. Lewinski argued that this theory is further supported by the fact that the two bursts of fire were closely grouped. The first two rounds striking closely together on Mr. Brown's back and the second burst after Mr. Brown had fallen and were grouped closed together on

¹⁰ The testimony of witnesses as to the sequencing and number of shots differed widely. Ms. Aguilera, Ms. Stewart, Ms. Spencer and Officer Ramos all heard all of the shots as a single group. Mr. Parker heard one shot, a gap and then the rest fired rapidly. Mr. Probstfeld heard three shots, a split-second pause, then one additional shot. Mr. Stevenson heard two shots, then about three shots after the first two. Mr. Diggs heard four shots followed by two more. Ms. Williams heard two



the wall.

Sergeant Olsen believed that he fired two rounds at Mr. Brown after he was on the ground. Officer Norrell believes that the last shot struck Mr. Brown either just as he hit the ground or just before. Based upon the evidence we do not find that Mr. Brown was struck after he fell toward the ground. As we have already stated, the evidence supports that Mr. Brown was struck two times while he was upright. We know that Mr. Brown was not shot in the right arm or upper shoulder area and that none of the bullets traveled through Mr. Brown's body in the direction as described by Officer Norrell. It is, however, reasonable to believe that what Officer Norrell actually saw was debris bouncing back from the wall after one of Sergeant Olsen's rounds struck the dirt and ricocheted up onto the wall of the building. Mr. Karim stated in his report that such debris was likely and although there was no debris found on Mr. Brown, his body was moved by EMS and the debris would have easily fallen off.

In our opinion, based on the evidence, Sergeant Olsen fired his last two rounds at Mr. Brown while Mr. Brown was on the ground and that he missed with both shots.

Based on Sergeant Olsen's own statement, the statement of various witnesses, and the forensic analysis of Mr. Karim, Dr. Lewinski, and the Medical Examiner we find, by a preponderance of the evidence, that Sergeant Olsen fired in two volleys separated by less than two seconds. We further find that the first volley consisted of two rounds both of which struck Mr. Brown in the back causing him to fall to the ground. The second volley, we find, also consisted of two rounds, one of which struck the back wall of #1175, the other striking the ground immediately in front of the wall then ricocheted onto the wall. This second volley was fired when Mr. Brown was on the ground.

shots followed by two more. Only Mr. Garcia claimed that he heard one shot, then "Don't shoot, don't shoot," then three or four more shots.



7. Sergeant Olsen's State of Mind relative to his own safety at the time of the firing of the first volley

Sergeant Olsen stated that he confronted Mr. Brown as Mr. Brown was moving along the back wall of #1175, and that in fear for his own safety he fired his weapon at the center of Mr. Brown's mass. The issue with respect to this first volley is whether, at the time that Sergeant Olsen fired his weapon, Sergeant Olsen actually held this belief at the time that he fired his weapon, and if so, was his belief that his own life was in danger, reasonable.

Sergeant Olsen provided four statements to the Austin Police Department. His first statement was a written statement made on June 3rd to Homicide investigators. His second statement was a videotaped re-enactment filmed at the scene of the incident. Sergeant Olsen later gave two statements to Internal Affairs investigators. His first IA interview was on September 7th and the second was on November 7th.

In his first statement, Sergeant Olsen said that he saw Mr. Brown running toward him from between building #1177 and #1175. Sergeant Olsen described the area between the buildings as being dark, but the center of the courtyard where he was standing was "reasonably well" lighted. Sergeant Olsen stated that as Mr. Brown ran toward him, Sergeant Olsen drew his gun and yelled something to the effect of "Stop! Police! Let me see your hands!" No witness to the events, including Officer Norrell or Officer Ramos, heard any warning prior to the first shots being fired. Sergeant Olsen said that he slowed his pace so as not to get too close to Mr. Brown and that Mr. Brown rounded the corner of building #1175 and made a left hand turn now running southbound along the rear of building #1175.

Sergeant Olsen said that after Mr. Brown moved a short distance, Mr. Brown slowed and turned "slightly" toward him and Mr. Brown was looking directly at him. Sergeant Olsen said that Mr. Brown was "clearly digging his hand into his waistband and I feared that he was trying to pull the gun on me." Sergeant Olsen continued, "Although I had not actually



seen a gun I had no doubt he was carrying a gun." Sergeant Olsen based his opinion that Mr. Brown had a gun on the statements made to him by Mr. Page, Mr. Brown's actions as he approached Mr. Brown outside the club, Mr. Brown's actions of keeping his right hand by his pants as though he was securing a gun in his waistband as he ran from the officers and, when he was confronted by Sergeant Olsen, his "digging into his waistband as if trying to pull a gun." There is no witness, however, who corroborates Sergeant Olsen's observation of Mr. Brown's actions prior to the first shots being fired.

Sergeant Olsen stated that he believed that Mr. Brown was about to fire upon him and that he feared for his life so he fired upon Mr. Brown. Sergeant Olsen said that he was standing and that he fired several rounds at the center of mass and that Mr. Brown fell to the ground.

It was Dr. Lewinski's opinion that Sergeant Olsen's version of the first shot was consistent with the evidence given the fact that it took him some time to bring his weapon on target and fire. During that relatively brief period of time, Mr. Brown could have turned away. The slight motion required for Mr. Brown to turn away from Sergeant Olsen is less than the time required for Sergeant Olsen to acquire his target of fire and to discharge a round at the target. This "lag" time could result in Sergeant Olsen's firing his rounds after Mr. Brown had turned striking Mr. Brown in the back. Dr. Lewinski noted that the rounds that Sergeant Olsen fired in he first burst did not hit the backdrop of the building and therefore those rounds must have hit Mr. Brown.

What is not clear from Dr. Lewinski's findings is whether Mr. Brown in fact turned toward Sergeant Olsen, as Sergeant Olsen claims (or that Mr. Brown was reaching toward his waist at the time.) Dr. Lewinski stated that if Sergeant Olsen statements were ignored, there are several scenarios that are possible and still consistent with the forensic evidence. It is possible, according to Dr. Lewinski that Mr. Brown never reached for his waistband. It is possible that Mr. Brown never turned toward Sergeant Olsen. A combination of these two factors is also possible - that Mr. Brown never reached for his waistband and that he never



turned toward Sergeant Olsen.

In order to find by a preponderance of the evidence that Sergeant Olsen was reasonably in fear for his safety in that Mr. Brown turned toward Sergeant Olsen and reached for his waistband, we would have to give full credibility to Sergeant Olsen's statement in which he indicated that such was the case. We can not do so for a number of reasons. Firstly, no witness heard the warnings which Sergeant Olsen indicated he had given. It is not reasonable to believe that Officer Norrell who was just steps away would not have heard these warnings, had they been given. Further, Sergeant Olsen, has a documented history of lying. In 2003, then-Officer Olsen was charged both criminally and administratively with lying on police reports to justify the use of physical force against an individual whom he had arrested. Although the criminal charges were ultimately dropped, the administrative charges were sustained. This prior conduct of Sergeant Olsen cannot and should not be ignored relative to the issue of his credibility. That being said, we cannot, by any evidence which exists, state by a preponderance of the evidence that Mr. Brown did not turn toward Sergeant Olsen and did not make a movement toward his waist area. Therefore, we find with respect to the first shots fired that there is insufficient evidence to either prove or disprove whether Sergeant Olsen was, in fact, in reasonable fear for his own safety at the time he fired the first volley. Although the law has since been changed, under section 9.32(a)(2) as it was in effect in June of 2007, a police officer would have a duty to retreat if such were reasonable under the circumstances.¹¹ With respect to the first volley of shots, the analysis of duty to retreat is essentially the same as whether or not Sergeant Olsen actually believed that he was in danger and if so if such belief was reasonable. That is, if Mr. Brown did, in fact, turn toward Sergeant Olsen and did, in fact, reach into his waistband thereby causing Sergeant Olsen to be in reasonable fear for his safety we do not believe, that with respect to the first volley of shots that a reasonable person (police officer) in such a situation would have retreated.



Under APD policy, the appropriate classification for this charge given the inability to prove or disprove the allegation is "Inconclusive." We therefore agree with the IAD finding that with respect to the first shots fired by Sergeant Olsen the finding should be "Inconclusive".

8. Sergeant Olsen's State of Mind relative to his own safety at the time of the firing of the second volley

Dr. Lewinski's analysis showed that a body in motion will continue in motion as it falls and that it takes some time for a body to fall to the ground. Officer Norrell said that he saw Mr. Brown's body falling and although he was not certain that Sergeant Olsen had given Mr. Brown commands before the first group of shots he was certain that both he and Sergeant Olsen were giving commands at this point. Officer Norrell said that both of Mr. Brown's hands were in front of him as he was falling and that both of his hands were at his waistband area. Officer Norrell was standing directly behind Mr. Brown preventing him from having any view of the motion of Mr. Brown's hands.

Officer Norrell initially stated that Mr. Brown was on the ground when Sergeant Olsen fired again, but in his re-enactment Officer Norrell said that either just prior to Mr. Brown's impact with the ground or just as he impacted the ground that he heard another shot. Officer Norrell believed he saw this shot strike Mr. Brown somewhere in the area of Mr. Brown's right shoulder or upper back and that the round traveled from Mr. Brown's right to his left across his upper back area. Officer Norrell added that he saw this shot "ruffle" Mr. Brown's shirt.

Sergeant Olsen stated that he fired two groups of shots. According to Mr. Karim and Dr. Lewinski, Sergeant Olsen's statements conform to the forensic evidence. Sergeant Olsen stated that he fired the second group of shots because Mr. Brown was still "digging" into his

¹¹ It is possible that case law may have affected this requirement even before the law was changed. That being said the plain language of the statute as quoted in the Internal Affairs report would seem to require analysis or mention of the topic.



waistband area and that Sergeant Olsen still believed that Mr. Brown was trying to get his gun in order to shoot at him. Sergeant Olsen stated that based on this fear that he was going to be fired upon, he fired a second group of shots at Mr. Brown.

Both Officer Norrell and Sergeant Olsen stated that Mr. Brown had his hands in front of him at his waist level immediately prior to the last group of shots. We have the advantage of hindsight, something that was not available to Sergeant Olsen and we now know that Mr. Brown was not armed at the time that he was shot. In his second Internal Affairs interview, Sergeant Olsen theorized that Mr. Brown was still searching for the gun, but that he had accidentally dropped it and that he didn't know it was gone. It is very difficult to attempt to rationalize specific behavior without knowing the thoughts of the person engaged in the behavior. We do not know what Mr. Brown was doing, but based on the statements of Officer Norrell and Sergeant Olsen it is reasonable to believe that his hands were underneath him and near his waistband as he fell.

Similar to the first volley, however, in order to find by a preponderance of the evidence that Sergeant Olsen was in reasonable fear for his safety at the time he fired the second volley, we would have to give full credibility to Sergeant Olsen's statement in which he indicated that such was the case. For the reasons enumerated above, we cannot do so. Although, Officer Norrell's observation of both of Mr. Brown's hands underneath his body does not rule out a perception of danger by Sergeant Olsen, it is equally consistent with such a perception, if it existed, being unreasonable. Therefore, we find with respect to the second shots fired that there is insufficient evidence to either prove or disprove whether Sergeant Olsen was in reasonable fear for his safety at the time he fired the second volley.

The question of "duty to retreat" under the second volley is more complicated than in the first volley. With respect to the second volley Officer Norrell was already on the scene, Mr. Brown was already on the ground, Sergeant Olsen did not see either Mr. Brown's hands or a gun. The question of whether a reasonable police officer in such a situation would have



fired a second volley, or rather essentially retreated and worked with a fellow officer to cover Mr. Brown with lethal force, while moving in to handcuff Mr. Brown, is a more difficult one to answer. Yet, both Sergeant Olsen and Officer Norrell stated that Mr. Brown's left ear was toward the ground and that he was looking in Sergeant Olsen's direction. While Officer Norrell said that Mr. Brown's hands were under his body and that due to his direction he could not see what Mr. Brown was doing with his hands, both Sergeant Olsen and Officer Norrell said that they were yelling commands at Mr. Brown and that Mr. Brown was non-compliant. Sergeant Olsen said that Mr. Brown's right hand was digging at his waist and he believed that Mr. Brown was reaching for a gun. If Mr. Brown in fact appeared to be digging in his waist as though he were reaching for a gun, it is reasonable that Sergeant Olsen would be fearful for his safety and under such circumstance not been compelled under policy or law to retreat. Even though, however, for the reasons cited, we do not necessarily credit the statements of Sergeant Olsen, there is no evidence to indicate that the circumstances were not as he described. Under APD policy, the appropriate classification when such a situation occurs is "Inconclusive."

IX. Conclusion

We have attempted in the preceding pages to fully analyze the Internal Affairs investigation and its conclusions from a standpoint of thoroughness, adequacy, reasonableness, and quest for the truth.

We have found significant shortcomings in that investigation, most notably:

- the apparent failure to obtain a crucial in-car video;
- the failure to more fully and adequately explain the ballistics evidence and the trajectories of the shots fired and how, notwithstanding the fact that Mr. Brown was hit in the back, that the trajectories were potentially consistent with Sergeant Olsen's version of the events;
- the failure to conclude correctly with respect to the existence of two volleys and to



assess each of the two volleys of shots separately with respect to a determination of each volley's conformance with deadly force policy;

- the failure to address the "duty to retreat" issue which the law required in June of 2007;
- the failure to fully address the issue of training and the role which training or the lack thereof may have played in the incident; and, most of all,
- the failure to include in their analysis the issue of the credibility of Sergeant Olsen given his prior sustained complaint for lying and falsifying documents to justify and cover-up an excessive use of force.

Notwithstanding these shortcomings, we believe that the conclusions which were reached in the investigation relative to the three administrative charges comport with the evidence and are, in fact, ultimately correct.

With respect to the finding of "sustained" relative to Allegation 1, it is clear that Sergeant Olsen's tactics lacked sound judgment and unnecessarily and unwisely placed himself and Officer Ramos in mortal danger. This ultimately led to the situation where Sergeant Olsen felt that the use of deadly force against Mr. Brown was his only option.

With respect to the finding of "inconclusive" relative to Allegations 2, essentially these findings indicate that, even completely discounting Sergeant Olsen's statements because of the credibility issue, there is no proof that the actual shooting in the courtyard did *not* transpire in the way described by Sergeant Olsen; that there is no proof that under those circumstances, assuming they existed, that Sergeant Olsen was not in fear for his safety; and that it is not possible to say that such a fear, assuming it existed, would objectively be unreasonable under the circumstances or that any reasonable person in such circumstances would have retreated.

We do recognize that the "inconclusive" findings relative to Allegations 2, will be less than fully satisfactory to many. There will be those who believe that the fact that an



individual, believed to be armed, who ran away when police officers approached, in and of itself makes the use of deadly force against that individual permissible at the slightest provocation. Similarly, there will be those who believe that it is impossible to justify shooting an individual in the back or on the ground under any circumstance. Both of these notions are equally wrong. It is only a thorough and careful analysis of all of the facts and circumstances, done without prejudice, fear or favor, which can determine whether the acts of a police officer in such a situation are unlawful or violative of departmental policies or procedures. Even with the most careful analysis however, there are often times when certain facts can not be ascertained, and questions still remain. One thing is absolutely certain, however: that the facts and circumstances of the shooting of Mr. Brown are by any measure, a tragedy for all involved.



APPENDIX
LISTING OF FILES RECEIVED

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E:\Austin PD\Internal Affairs Files\Olsen\00-Left Side			
Left Side Docs..PDF	236 KB	Adobe Acrobat Document	11/15/2007 4:46 PM
E:\Austin PD\Internal Affairs Files\Olsen\01- Control Sheet			
Control Sheet.pdf	215 KB	Adobe Acrobat Document	11/15/2007 4:46 PM
E:\Austin PD\Internal Affairs Files\Olsen\1-Table of Contents			
Table of Contents.PDF	36 KB	Adobe Acrobat Document	11/15/2007 4:46 PM
E:\Austin PD\Internal Affairs Files\Olsen\2-Investigative Summary			
Olsen Summary.pdf	6,832 KB	Adobe Acrobat Document	11/15/2007 4:46 PM
E:\Austin PD\Internal Affairs Files\Olsen\A-Complainant Information			
A-1 Chief Enriquez Complaint Form.PDF	29 KB	Adobe Acrobat Document	11/15/2007 4:46 PM
E:\Austin PD\Internal Affairs Files\Olsen\B-Accused Employee Information			
B-1 Administrative Orders.PDF	870 KB	Adobe Acrobat Document	11/15/2007 4:47 PM
B-2 Sgt. Olsen 1st IAD Interview.PDF	990 KB	Adobe Acrobat Document	11/15/2007 4:47 PM
B-3 Sgt. Olsen 2nd IAD Interview.PDF	479 KB	Adobe Acrobat Document	11/15/2007 4:47 PM
B-4 Sgt. Olsen Homicide Statement .PDF	268 KB	Adobe Acrobat Document	11/15/2007 4:47 PM
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C-2 Michael Lane Homicide Statement .PDF	76 KB	Adobe Acrobat Document	11/15/2007 4:48 PM
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C-7 IAD Interview of Antoine Thompson.PDF	445 KB	Adobe Acrobat Document	11/15/2007 4:48 PM
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Homicide Case File Kevin Brown APD history.PDF	16,128 KB	Adobe Acrobat Document	11/15/2007 4:54 PM
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07-321 IAD Interview of Antoine Thompson.WMA	7,437 KB	Winamp media file	11/15/2007 4:48 PM
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07-317 Aug 20 Interview of Ofc. Ramos .WMA	16,217 KB	Winamp media file	11/15/2007 4:48 PM
07-317 Cpl Coffey.WMA	8,952 KB	Winamp media file	11/15/2007 4:48 PM
07-317 Ofc. Ivan Ramos 2nd Interview.WMA	6,988 KB	Winamp media file	11/15/2007 4:49 PM
07-317 Ofc. Norrell IAD Interview.WMA	12,834 KB	Winamp media file	11/15/2007 4:49 PM
Ofc. Norrell DND Order.WMA	679 KB	Winamp media file	11/15/2007 4:49 PM
Ofc. Ramos DND Order.WMA	876 KB	Winamp media file	11/15/2007 4:49 PM
E:\Austin PD\Internal Affairs Files\Olsen\E-Physical Evidence\Audio			
07-317 Greg Karim Evidence Briefing part 1.WMA	22,643 KB	Winamp media file	11/15/2007 4:50 PM
07-317 Greg Karim Evidence Briefing part 2.WMA	6,894 KB	Winamp media file	11/15/2007 4:50 PM
Austin Report	251 KB	File	11/15/2007 4:50 PM
BestFit.mov	2,305 KB	QuickTime Movie	11/15/2007 4:50 PM
Default.PLS	1 KB	Winamp playlist file	11/15/2007 4:50 PM
E:\Austin PD\Internal Affairs Files\Olsen\E-Physical Evidence\Ultimate Performance Inc			
BestFit-1.mov	2,303 KB	QuickTime Movie	11/15/2007 4:51 PM
E-11 Force Science Report.pdf	1,225 KB	Adobe Acrobat Document	11/15/2007 4:51 PM
No-Look-1.mov	2,432 KB	QuickTime Movie	11/15/2007 4:51 PM
E:\Austin PD\Internal Affairs Files\Olsen\F-Miscellaneous Documentation\Audio			
07-317 Call from Jacquelyn McClellan.WMA	898 KB	Winamp media file	11/15/2007 4:51 PM
07-317 call from Ms. Jenkins Aunt of Ms. McClellan.WMA	667 KB	Winamp media file	11/15/2007 4:51 PM
07-317 call to Karen Gilespy .WMA	1,158 KB	Winamp media file	11/15/2007 4:51 PM
07-317 Call to Ms McClellans mother.WMA	237 KB	Winamp media file	11/15/2007 4:51 PM
07-317 Call to Sgt. Robert Jones.WMA	1,056 KB	Winamp media file	11/15/2007 4:51 PM
ballistics report cont ellsworth.WMA	2,148 KB	Winamp media file	11/15/2007 4:51 PM
ballistics report ellsworth`.WMA	26,668 KB	Winamp media file	11/15/2007 4:52 PM
David Fisher phone call #1.WMA	5,195 KB	Winamp media file	11/15/2007 4:51 PM
David Fisher phone call #2.WMA	1,564 KB	Winamp media file	11/15/2007 4:51 PM

Name	Size	Type	Modified
David Fisher phone call #3.WMA	3,289 KB	Winamp media file	11/15/2007 4:51 PM
E:\Austin PD\Internal Affairs Files\Olsen\Homicide Report\Chap #2			
Chap #2 Homicide Case File.PDF	1,972 KB	Adobe Acrobat Document	11/15/2007 4:52 PM
Versadex report #07-1540634.PDF	15,663 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
E:\Austin PD\Internal Affairs Files\Olsen\Homicide Report\Chap #8			
Chap 8 Homicide Case File.PDF	11,724 KB	Adobe Acrobat Document	11/15/2007 4:54 PM
Chap 8 Homicide Case File Algie Bunton Statement.PDF	438 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
Chap 8 Homicide Case File Statement From John Garcia.PDF	53 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
Chap 8 Homicide Case File Statement from Nellie Dunaway.PDF	691 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
Summary: 79 Object(s) / 19.262 KB			

Name	Size	Type	Modified
Chap 9 Homicide Case File.PDF	7,598 KB	Adobe Acrobat Document	11/15/2007 4:54 PM
Chap #1 Homicide Case File.PDF	5,093 KB	Adobe Acrobat Document	11/15/2007 4:52 PM
Chap #3 Homicide Case File.PDF	795 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
Chap #4 Homicide Case File.PDF	1,147 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
Chap #5 Homicide Case File.PDF	9,209 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
Chap #6 Homicide Case File.PDF	631 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
Chap #7 Homicide Case File.PDF	615 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
Homicide Case File Kevin Brown APD history.PDF	16,128 KB	Adobe Acrobat Document	11/15/2007 4:54 PM
Table of Contents Homicide Case File.PDF	181 KB	Adobe Acrobat Document	11/15/2007 4:54 PM
E:\Austin PD\Internal Affairs Files\Olsen\Homicide Report\Chap #2			
Chap #2 Homicide Case File.PDF	1,972 KB	Adobe Acrobat Document	11/15/2007 4:52 PM
Versadex report #07-1540634.PDF	15,663 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
E:\Austin PD\Internal Affairs Files\Olsen\Homicide Report\Chap #8			
Chap 8 Homicide Case File.PDF	11,724 KB	Adobe Acrobat Document	11/15/2007 4:54 PM
Chap 8 Homicide Case File Algie Bunton Statement.PDF	438 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
Chap 8 Homicide Case File Statement From John Garcia.PDF	53 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
Chap 8 Homicide Case File Statement from Nellie Dunaway.PDF	691 KB	Adobe Acrobat Document	11/15/2007 4:53 PM
Summary: 15 Object(s) / 3.404 KB			