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SUPREME COURT  
STATE OF WASHINGTON  
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CLERK

NO. 100102-9

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IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

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DAVID O'DEA,

Petitioner,

v.

CITY OF TACOMA

Respondent.

---

ANSWER TO PETITION FOR REVIEW

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WILLIAM C. FOSBRE, City Attorney

JEAN P. HOMAN

WSB# 27084

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## I. INTRODUCTION

In this case, a former Tacoma Police lieutenant – on a Saturday afternoon and in a residential parking lot bordering a busy Tacoma street – fired his weapon eleven times *at the tires of a car*. By his own admission, he did so because he wanted to “distract” the driver of that car. After giving the officer the benefit of a full review process, the Tacoma Police Chief decided that the officer’s use of deadly force violated department policy. The Chief of Police found that O’Dea did not have probable cause to believe that the driver presented an imminent threat at the moment O’Dea employed deadly force, and *that O’Dea never should have fired his weapon at all*. Moreover, this was not the first time O’Dea had exhibited dangerously poor judgment, and was unwilling or unable to recognize his mistakes. Consequently, the Chief terminated O’Dea’s employment.

O’Dea sued, alleging that he was terminated because he chose to protect human life by shooting at the tires of the vehicle instead of the driver of the vehicle, and therefore claimed that his

termination was in violation of public policy. The City moved for summary judgment, and trial court granted the City's motion. In a unanimous opinion, Division II affirmed, finding that O'Dea could not establish causation, an essential element of his *prima facie* case, and therefore, summary judgment was appropriate. O'Dea v. City of Tacoma, No. 54240-4-II, 2021 Wash. App. LEXIS 1236, 2021 WL 1985439 (Wash. Ct. App., May 18, 2021).

Plaintiff now seeks review by this Court, alleging that this case presents an issue of substantial public interest under RAP 13.4(b)(4). In his petition, however, Plaintiff does not explain what issue of substantial public interest is presented by this case, nor does he analyze how this basis for review has been treated by this Court in the past. An examination of the cases in which this Court has granted review under RAP 13.4(b)(4) easily demonstrates that review of the instant case is not warranted under RAP 13.4(b)(4). Moreover, Plaintiff's petition does not identify or analyze any other basis for review set forth in RAP

13.4(b). Instead, Plaintiff asks this Court to grant review, not to protect the public policy at issue (protection of human life) or to resolve an issue of substantial public import, but rather to protect and vindicate only his own personal interests.

Plaintiff has not demonstrated grounds for review and the instant petition should be denied.

## **II. ISSUE FOR REVIEW**

Did Division II correctly decide that Plaintiff's claim of wrongful discharge in violation of public policy fails, as a matter of law, where Plaintiff could not establish that he was terminated because of any policy-linked conduct and where he failed to adduce evidence that the City's justification for his termination was pretextual.

## **III. STATEMENT OF THE CASE**

Division II's analysis of the instant case includes a detailed and accurate description of the use of force incident that was cited as a basis for O'Dea's termination, as well as the subsequent investigation/review process, and therefore, that factual background is not repeated herein. Two points, however, warrant emphasis.

First, O’Dea claims that he was terminated because he shot at the tires of the vehicle instead of the driver, but the record does not bear this claim out. As evidenced by the uncontroverted record in this matter, O’Dea was terminated because Police Chief Don Ramsdell concluded that O’Dea *never should have fired his weapon at all*. Second, the improper use of deadly force was not the only basis for the Chief’s decision to terminate O’Dea’s employment. Due to an earlier policy violation (an incident that caused serious injuries to multiple civilians) and O’Dea’s unwillingness to accept responsibility for his actions, Chief Ramsdell’s decision to terminate O’Dea was also based on a pattern of poor judgment and dangerous behavior.

A copy of Chief Ramsdell’s affidavit, and all exhibits thereto, is attached hereto in the Appendix for the Court’s convenience. See CP 140-214, in Appendix.



#### IV. REASONS WHY REVIEW SHOULD BE DENIED

- A. Division II correctly determined that Plaintiff failed to establish all essential elements of his wrongful discharge claim, and therefore, summary judgment was appropriate.

Appellate review of a summary judgment determination is *de novo*. Ellis v. City of Seattle, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000). Thus, “the appellate court engages in the same inquiry as the trial court.” Id. (quoting Trimble v. Washington State Univ., 140 Wn.2d 88, 92-93, 993 P.2d 259 (2000)).

A defendant moving for summary judgment can meet its burden by showing that there is an “absence of evidence to support the [plaintiff’s] case.” Young v. Key Pharm., Inc., 112 Wn.2d 216, 255 n.1, 770 P.2d 182 (1989)(quoting Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). After the defendant makes the required showing, “the inquiry shifts to the party with the burden of proof at trial, the plaintiff.” Young, 112 Wn.2d at 255.

If, at this point, the plaintiff “fails to make a showing sufficient to establish the existence of an

element essential to that party's case, and on which that party will bear the burden of proof at trial," then the trial court should grant the motion. ... "In such a situation, there can be 'no genuine issue as to any material fact,' since ***a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.***"

(emphasis added) Hiatt v. Walker Chevrolet, 120 Wn.2d 57, 66, 837 P.2d 618 (1992)(quoting Young v. Key Pharm., Inc., 112 Wn.2d at 225, which, in turn, quoted Celotex Corp. v. Catrett, *supra*). Consequently, the plaintiff "must do more than express an opinion or make conclusory statements"; *the plaintiff must set forth specific and material facts to support each element of his prima facie case.* Id. Because O'Dea did not set forth specific, material facts to establish either the causation element or the absence of justification element of his *prima facie* case, summary judgment was appropriate and Division II did not err in so holding.

In order to establish his common law claim of wrongful discharge in violation of public policy, the Plaintiff was required

to establish the following elements: (1) the existence of a clear public policy (the clarity element); (2) that discouraging the conduct in which the plaintiff engaged would jeopardize the public policy (the jeopardy element); (3) that the policy-linked conduct caused the dismissal (the causation element); and (4) that the defendant cannot offer an overriding justification for the dismissal (the absence of justification element)<sup>1</sup>. Gardner v. Loomis Armored, Inc., 128 Wn.2d 931, 936, 913 P.2d 377 (1996). See also Martin v. Gonzaga Univ., 191 Wn.2d 712, 725-28, 425 P.3d 837 (2018) (plaintiff must not only show the

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<sup>1</sup> Generally, wrongful discharge in violation of public policy has been limited to four scenarios (1) where an employee is fired for refusing to commit an illegal act; (2) where an employee is fired for performing a public duty or obligation such as jury duty; (3) where an employee is fired for exercising a legal right or privilege such as filing a works compensation claim; and (4) where an employee is fired in retaliation for reporting employer misconduct, i.e. whistleblowing. Dicomes v. State, 113 Wn.2d 612, 782 P.2d 1002 (1989). The four factor framework adopted in Gardner, *supra*, is used where a case does not fit neatly into one of these four scenarios, like the case herein. See e.g., Rose v. Anderson Hay & Grain Co., 184 Wn.2d 268, 277-78, 287, 358 P.3d 1139 (2015).

employee's discharge may have been motivated by reasons that contravene a clear mandate of public policy, but that the public-policy-linked conduct was a significant factor in the decision to discharge the worker; moreover, a burden-shifting procedure applies under which the employer may defeat the claim by proving that the termination was justified by an overriding justification).

In the instant case, Division II found that O'Dea had failed to adduce evidence to establish the causation element of his prima facie case:

O'Dea's decision not to shoot at Mendoza Davalos was not the basis for O'Dea's termination. In briefing and in oral argument, O'Dea argued that he was terminated because he “chose not to shoot at or ‘target’ Mendoza Davalos when his actions threatened Lt. O'Dea's life.” Br. of Appellant at 16. But O'Dea was not terminated because he chose to shoot at the tires, rather than shoot at Mendoza Davalos. Chief Ramsdell clearly stated that the Department terminated O'Dea because he chose to discharge his firearm at all, and O'Dea has not presented evidence to the contrary.

To satisfy the causation element, O'Dea “must prove that the public-policy-linked conduct caused

the dismissal.” *Gardner*, 128 Wn.2d at 941. O’Dea need not prove that this was the sole cause of his dismissal, but he must prove that it was a cause. *Wilmot v. Kaiser Alum. & Chem. Corp.*, 118 Wn.2d 46, 70, 821 P.2d 18 (1991).

Ramsdell was explicit that he did *not* terminate O’Dea because O’Dea decided not to shoot at Mendoza Davalos. In Ramsdell’s sworn affidavit, he stated, “I terminated Mr. O’Dea’s employment because he violated the Tacoma Police Department use of force policy by using deadly force when it was not necessary or reasonable.” CP at 141. Ramsdell concluded that O’Dea’s use of force was not necessary or reasonable because O’Dea fired his weapon when the car was already passing him. He continued, “I terminated Mr. O’Dea from his position with [the Department] ***because Mr. O’Dea never should have fired his weapon*** under the circumstances.” *Id.*

...

In addition, Ramsdell stated that “[a]nother factor in [his] decision to terminate Mr. O’Dea’s employment was a reoccurring pattern of poor judgment.” CP at 142. Ramsdell considered O’Dea’s 2015 vehicle pursuit, which resulted in injuries to multiple people, and he noted that O’Dea never took full responsibility for his actions in that incident. Ramsdell concluded, “I have no reasonable basis to believe that [O’Dea] will not continue to exercise extremely poor judgment and engage in dangerous behavior, which ultimately puts the public and other officers at risk.” *Id.*

*There is no genuine issue of material fact regarding the cause of O'Dea's termination. The Department terminated O'Dea because it disapproved of his use of force. Ramsdell relied on the investigation conducted by Internal Affairs and concluded that when O'Dea fired his weapon, it was not reasonable or necessary. He also expressed concern that O'Dea had repeatedly violated Department policies and endangered others.*

(emphasis added in last paragraph) O'Dea v. City of Tacoma,  
No. 54240-4-II, 2021 Wash. App. LEXIS at \*24-27.

Thus, although O'Dea claims that he was terminated because he did not shoot the driver of the vehicle, all of the evidence in the record is to the contrary. As plainly stated by Chief Ramsdell, O'Dea was terminated for using deadly force when he should not have and for repeatedly violating Department policy and thereby endangering the public. Because O'Dea adduced no evidence that conduct linked to the public policy in question was a basis for his termination, his wrongful discharge in violation of public policy claim failed, as a matter of law.

Moreover, although Division II found it unnecessary to reach the issue, the O’Dea court also noted that Plaintiff had also failed to adduce evidence to show that the City’s justification for his termination was pretextual. O’Dea, No. 54240-4-II, 2021 Wash. App. LEXIS at \*28, n.8. Plaintiff’s failure to establish that there was no overriding justification for his termination is also fatal to his claim and is another basis upon which summary judgment can be affirmed. Martin v. Gonzaga Univ., 191 Wn.2d at 725-729.

“The overriding justification element entails balancing the public issues raised by the plaintiff against the employer’s interest.” Id. at 728. While “[t]he decision not to shoot at another person directly relates to the public policy of protecting human life”, O’Dea, No. 54240-4-II, 2021 Wash. App. LEXIS at \*24, so does a police department’s vigorous enforcement of the limits on its officers’ use of deadly force. It is unfathomable that in today’s society, a law enforcement agency could not terminate a police officer who inappropriately uses deadly force without

violating public policy. Having the ability to terminate an officer for violating the well-defined and long established standards governing the use of deadly force—in other words, holding law enforcement officers strictly accountable when they use deadly force that is unreasonable, unnecessary and contrary to prevailing best practices—is critical for any law enforcement agency. Moreover, the City’s ability to hold its officers strictly accountable for a wrongful use of deadly force only serves, not jeopardizes, Washington’s policy interests in protecting human life.

Based on the uncontroverted record, there is no question that Plaintiff did not adduce evidence sufficient to establish all of the essential elements of his *prima facie* case of wrongful discharge in violation of public policy<sup>2</sup>. Thus, it is clear that Division II did not err in affirming summary judgment.

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<sup>2</sup> Although Division II also exercised its discretion and address the summary dismissal of Plaintiff’s claims of negligent infliction of emotional distress and outrage, Plaintiff did not include the dismissal of those claims in his Petition for Review



B. The instant case does not present an issue of broad public application sufficient to establish an issue of substantial public importance under RAP 13.4(b)(4).

In his Petition for Review, Plaintiff cites to RAP 13.4(b)(4) only once<sup>3</sup>, claiming that because this case involves a law enforcement officer's use of deadly force, it involves an issue of substantial public interest that warrants review. A careful examination of cases in which this Court has granted review because of an issue of substantial public interest demonstrates that this is not one such case.

Pursuant to RAP 13.4(b)(4), “[a] petition for review will be accepted by the Supreme Court only: ... (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.” This provision is cited as a basis for review only six times in Washington's reported and

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to this Court. Because review is apparently not being sought for those claims, the City also does not address those claims in its Answer to the Petition.

<sup>3</sup> See page 11 of Petition for Review.

unreported cases, and each of those times, the Court identified an issue that had the potential for broad public application. See In re Pers. Restraint of Williams, No. 99344-1, 2021 Wash. LEXIS 159, 2021 WL 1541532 (Wash., Feb. 3, 2021); Randy Reynolds & Assocs. v. Harmon, 193 Wn.2d 143, 437 P.3d 677 (2019); In re Pers. Restraint of Flippo, No. 92616-6, 2016 Wash. LEXIS 814, 380 P.3d 413 (Wash., May 18, 2016); In re Adoption of T.A.W., No. 92127-0, 2016 Wash. LEXIS 245, 387 P.3d 636 (Wash., Jan. 14, 2016); State v. Watson, 155 Wn.2d 574, 122 P.3d 903 (2005); In re Marriage of Ortiz, 108 Wn.2d 643, 740 P.2d 843 (1987).

For example, In re Pers. Restraint of Williams involved the question of whether continued confinement of a prisoner with poor health in a facility rampant with COVID was a violation of the prisoner's right to be free from cruel and unusual punishment, as guaranteed by the Eighth Amendment to the United States Constitution and article I, section 14 of the Washington Constitution. This Court granted review, both on the grounds of

substantial constitutional questions and an issue of substantial public interest. With respect to the issue of substantial public interest, this Court reasoned as follows:

But the history of the pandemic indicates that the department became overwhelmed by the situation and is still struggling to get matters under control. The chaos wrought by COVID-19 at Coyote Ridge and other heavily affected correctional facilities, and the department's efforts in responding to this constantly changing threat, constitutes an ongoing issue of substantial public interest within the meaning of RAP 13.4(b)(4).

In re Pers. Restraint of Williams, No. 99344-1, 2021 Wash. LEXIS 159, at \*5-6. Thus, the issue raised by Mr. Williams in in personal restraint petition warranted review under RAP 13.4(b)(4) because the potential impact of the issue extended far beyond Mr. Williams' individual situation. The ongoing pandemic, which was ravaging correctional facilities across this state, raised significant constitutional issues for the thousands of incarcerated prisoners in Washington.

Similarly, in State v. Watson, this Court granted review under RAP 13.4(b)(4) to consider whether a memorandum issued

by a Prosecuting Attorney (“the Horne memorandum”) and disseminated to all Pierce County Superior Court judges, the Department of Assigned Counsel and the Department of Corrections was an improper ex parte communication with the court. Watson, 155 Wn.2d at 575. The memorandum was issued not in the context of any specific case, but to advise the various arms of the criminal justice process that the Pierce County Prosecutor’s Office would, as a matter of policy, no longer recommend drug offender sentencing alternative (DOSAs) sentences. Id. at 575-76. In a successful prosecution approximately a year later, the prosecuting attorney filed a sentencing brief and attached the Horne memorandum. Id. The Court of Appeals had held that the Horne memorandum was an improper ex parte communication, but was harmless as to that particular offender. Id. at 576. The state sought discretionary review by this Court of whether dissemination of the Horne memorandum was an improper ex parte communication. Id. at 577. This Court granted review under RAP 13.4(b)(4), stating

“[t]his case presents a prime example of an issue of substantial public interest. The Court of Appeals holding, while affecting parties to this proceeding, also has the potential to affect every sentencing proceeding in Pierce County after November 25, 2001, where a DOSA sentence was or is at issue.” Id. This Court reasoned that the Court of Appeals treatment of the Horne memorandum would “[invite] unnecessary litigation” and “[create] confusion generally.” Id. “Further, the court’s treatment of communications as *ex parte* in *later* proceedings has the potential to chill policy actions taken by both attorneys and judges—they may fear that their statements or actions in various public roles would later be treated as *ex parte* communications.” Id. Thus, like the issue in In re Pers. Restraint of Williams, the issue on which the Watson Court granted review under RAP 13.4(b)(4) had the potential for broad and significant public impact, well beyond the participants to the single litigation matter in which the issue arose. Accord Randy Reynolds & Assocs. v. Harmon, 193 Wn.2d 143, 437 P.3d 677 (2019) (review

granted under RAP 13.4(b)(4) on issue of whether the superior court commissioner had inherent equitable authority to issue an ex parte order staying a writ of restitution in an unlawful detainer action); In re Pers. Restraint of Flippo, No. 92616-6, 2016 Wash. LEXIS 814, 380 P.3d 413 (Wash., May 18, 2016)(review granted under RAP 13.4(b)(4) on issue of imposition of legal financial obligations (LFO) where issue had “the potential to affect a number of proceedings in the lower courts” and review would “avoid unnecessary litigation and confusion on a common issue”); In re Adoption of T.A.W., No. 92127-0, 2016 Wash. LEXIS 245, 387 P.3d 636 (Wash., Jan. 14, 2016)(review granted under RAP 13.4(b)(4) to address question of the scope and application of the Indian Child Welfare Act (ICWA) to the termination of parental rights for non-Indian parents and the subsequent adoption of the Indian child by step-parent); In re Marriage of Ortiz, 108 Wn.2d 643, 740 P.2d 843 (1987)(review granted under RAP 13.4(b)(4) to address issue of whether a custodial parent must repay the noncustodial parent for all

payments made by the noncustodial parent pursuant to an invalid escalation clause in a child support order).

That same potential for broad public influence is conspicuously absent in the instant case, however. O’Dea has not identified how Division II’s opinion in this case has the potential to impact a significant number of other litigants, and such an impact is not readily apparent from the face of the matter. While the City does not disagree that a police officer’s use of deadly force could – depending upon the circumstances – present an issue of substantial public interest, this case is not about the legal limits that govern the use of deadly force or the ongoing debate about reevaluating those limits. This case is about whether a single litigant was able to adduce sufficient evidence to survive summary judgment. When viewed through the lens of Division II’s analysis, this case does not present an issue for which review is appropriate under RAP 13.4(b)(4).

## V. CONCLUSION

Division II issued a thorough, well-reasoned opinion, and correctly concluded that Plaintiff had not adduced sufficient evidence to establish his *prima facie* case. Division II did not err in reaching this conclusion and review of the opinion is not warranted, on any grounds.

David O’Dea’s petition for review should be denied.

This document contains 3,521 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 22nd day of September, 2021.

WILLIAM FOSBRE, City Attorney

/s/ Jean Homan

JEAN P. HOMAN, WSBA #27084

Deputy City Attorney

Attorney for City of Tacoma



**CERTIFICATE OF SERVICE**

On September 22, 2021, I hereby certify that I electronically filed the foregoing RESPONSE TO PETITION FOR REVIEW with the Clerk of the Court, which will send notification of such filing to the following:

Brett A. Purtzer  
Hester Law Group, Inc., P.S.  
1008 South Yakima, Avenue, Suite 302  
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EXECUTED this 22<sup>nd</sup> day of September, 2021 at Tacoma, WA.

/s/Gisel Castro  
Gisel Castro, Legal Assistant  
Tacoma City Attorney's Office

# **APPENDIX**

September 05 2019 3:51 PM

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

DAVID O'DEA,  
  
Plaintiff,  
  
vs.  
  
CITY OF TACOMA, a municipal  
subdivision of the State of  
Washington; and the TACOMA  
POLICE DEPARTMENT, an agency  
of the City of Tacoma,  
  
Defendants.

NO. 18-2-08048-2

AFFIDAVIT OF DONALD L.  
RAMSDELL IN SUPPORT OF CITY  
OF TACOMA'S MOTION FOR  
SUMMARY JUDGMENT

Noted for consideration:  
October 4, 2019

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF PIERCE     )

DONALD L. RAMSDELL, being first duly sworn upon oath deposes and says:

1. I am over the age of eighteen and am competent to testify herein.

2. I am currently the Chief of Police of the Tacoma Police Department and  
have held this position since 2003. I have been with the Tacoma Police Department  
since 1985 and have held a number of ranks and positions in the Department during  
my tenure.

AFFIDAVIT OF DONALD L. RAMSDELL  
Page 1 of 6  
(18-2-08048-2)

Tacoma City Attorney  
Civil Division  
747 Market Street, Room 1120  
Tacoma, WA 98402-3767  
253-591-5885 / Fax 253-591-5755

1           3.     As the Police Chief, I am the appointing authority for the Police  
2 Department; I am ultimately responsible for decisions concerning the hiring and  
3 termination of employees for the Department. Many of the positions in the Police  
4 Department are civil service positions, however, the civil service eligibility process is  
5 managed by Human Resources.

6           4.     In 2017, I terminated David O'Dea's employment with the Tacoma Police  
7 Department, effective June 23, 2017. At the time of his termination, Mr. O'Dea was a  
8 lieutenant with the Police Department; he had been employed by the Police Department  
9 for 23 years.

10          5.     I terminated Mr. O'Dea's employment because he violated the Tacoma  
11 Police Department use of force policy by using deadly force when it was not necessary  
12 or reasonable. When confronted with an actively resistant suspect who was trying to  
13 flee, Mr. O'Dea fired his weapon at the tires of the vehicle eleven times. At the moment  
14 Mr. O'Dea fired his weapon, the suspect vehicle was *passing* him and was not an  
15 imminent threat to either Mr. O'Dea or any of the officers present at the scene.  
16

17          6.     I understand that Mr. O'Dea is claiming that I terminated his employment  
18 because he did not shoot the driver of the vehicle, but instead aimed at the tires of the  
19 car – in other words, that I terminated his employment “because he decided not to shoot  
20 at and/or kill Mr. Mendoza-Davalos[.]” (Complaint for Damages, para. 3.1(b)). That is  
21 not why I terminated Mr. O'Dea. I terminated Mr. O'Dea from his position with TPD  
22 ***because Mr. O'Dea never should have fired his weapon*** under the circumstances.  
23 Although Mr. O'Dea states that he believed he was in imminent danger, a reasonable  
24  
25

1 police officer facing the same circumstances would not have viewed the suspect as an  
2 imminent threat and would not have considered the use of deadly force necessary<sup>1</sup>.

3 7. Another factor in my decision to terminate Mr. O'Dea's employment was  
4 a reoccurring pattern of poor judgment and his lack of accountability for his actions and  
5 decisions. In 2015, I suspended Mr. O'Dea for 40 hours for violating the Department's  
6 pursuit policy in an incident that resulted in a serious motor vehicle accident where  
7 multiple persons were injured. Despite a clear violation of the pursuit policy and  
8 significant discipline, Mr. O'Dea refused to take responsibility for this incident. Similarly,  
9 Mr. O'Dea continues to claim that his use of deadly force was not a violation of the use  
10 of force policy. His decision-making in both situations was dangerous and he is either  
11 unable or unwilling to admit it. Because of this, I have no reasonable basis to believe  
12 that he will not continue to exercise extremely poor judgment and engage in dangerous  
13 behavior, which ultimately puts the public and other officers at risk.

14  
15 8. My rationale for terminating Mr. O'Dea's employment is set out more  
16 completely in the Notice of Intent to Terminate, a true and correct copy of which is  
17 attached hereto as Exhibit 1 and incorporated herein by this reference as though fully  
18 set forth.

19 9. In reaching my decision to terminate Mr. O'Dea's employment, I relied  
20 upon the investigation conducted by Internal Affairs. Attached hereto as Exhibit 2, and  
21 incorporated herein by this reference as though fully set forth, is a true and accurate  
22

23  
24 <sup>1</sup> Under the Department's use of force policy, "[t]he necessity to use deadly force arises when there is no  
25 reasonable alternative to using such force, and, without it, the Officers or others would face imminent  
danger of death of serious bodily injury."

1 copy of the Complaint Findings and Recommendations authored by Assistant Chief  
2 Michael Ake as a result of the Internal Affairs investigation.

3 10. In addition to the Internal Affairs investigation into Mr. O'Dea's use of  
4 deadly force, there was also a Deadly Force Review Board convened to evaluate the  
5 use of deadly force. This Board consists of two management appointees, two union  
6 appointees and two civilians. Four of the six Board members found Mr. O'Dea's use of  
7 deadly force to be in violation of the policy and I agreed with their determination.  
8 Attached hereto as Exhibit 3, and incorporated herein by this reference as though fully  
9 set forth, is a true and accurate copy of the Use of Deadly Force Review Board  
10 memorandum and findings.

11 11. Attached hereto as Exhibit 4, and incorporated herein by this reference as  
12 though fully set forth, is a true and correct copy of the Complaint Findings and  
13 Recommendations authored by Assistant Chief Peter Cribbin following the Internal  
14 Affairs investigation into Mr. O'Dea's violation of the pursuit policy.

15 12. Attached hereto as Exhibit 5, and incorporated herein by this reference as  
16 though fully set forth, is a true and correct copy of the Notice of Intent to Suspend for  
17 the suspension that I gave Mr. O'Dea in 2015, as a result of his violation of the pursuit  
18 policy.

19 13. After I issued the Notice of Intent to Terminate, Mr. O'Dea sought review  
20 of my decision by the Disciplinary Review Board. This Board consists of two  
21 management appointees and three union appointees. The employee is permitted to  
22 address the Board and to present materials and mitigating factors to the Board to  
23 establish why the discipline should be reduced. The Disciplinary Board evaluating the  
24  
25

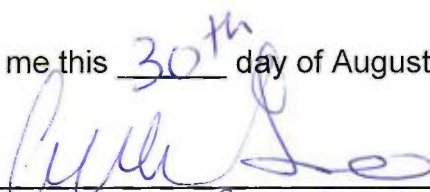
1 proposed termination unanimously upheld my decision to terminate Mr. O'Dea's  
2 employment. Attached hereto as Exhibit 6, and incorporated herein by this reference  
3 as though fully set forth, is a true and accurate copy of the Disciplinary Review Board's  
4 determination and my IDM to Mr. O'Dea, advising him of the Board's decision.

5 FURTHER YOUR AFFIANT SAYETH NAUGHT.

6   
7 \_\_\_\_\_  
8 DONALD L. RAMSDELL

9 SUBSCRIBED and SWORN to before me this 30<sup>th</sup> day of August, 2019.



  
\_\_\_\_\_  
Printed Name: Gisel Castro  
NOTARY PUBLIC in and for the State of  
Washington, residing at: Tacoma, WA  
My commission expires: 2-3-20

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**DECLARATION OF SERVICE**

I hereby certify that on September 5, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and will send a true and correct copy of notification of such filing to the following:

Brett A. Purtzer  
Hester Law Group, Inc., P.S.  
1008 South Yakima Avenue, Suite 302  
Tacoma, WA 98405  
[brett@hesterlawgroup.com](mailto:brett@hesterlawgroup.com)

DATED this September 5, 2019, at Tacoma, Washington.

/s/ Gisel Castro  
Gisel Castro, Legal Assistant  
Tacoma City Attorney's Office  
747 Market Street, Suite 1120  
Tacoma, WA 98402  
(253) 591-5499  
Fax: (253) 591-5755  
gcastro@ci.tacoma.wa.us



## **EXHIBIT 1**

# TACOMA POLICE DEPARTMENT

## Intra-Departmental Memorandum



**TO:** Lieutenant David O'Dea  
Operations Bureau

**FROM:** Donald L. Ramsdell  
Chief of Police

**DATE:** June 22, 2017

**SUBJECT: DISCIPLINARY ACTION/NOTICE OF INTENT TO TERMINATE  
INTERNAL AFFAIRS CASE # 16COM-0081**

### INCIDENT:

On August 6, 2016, you were assigned as the 2<sup>nd</sup> Relief (Swing Shift) Patrol Commander. At 1838 hours, South Sound 911 (SS911) received a call regarding a traffic collision at 3228 South Union Avenue in Tacoma. Officer Huebner responded to the scene and contacted the two parties involved. At the conclusion of the investigation, the suspect, identified as Mendoza Davalos, intentionally backed his vehicle into Officer Huebner's marked patrol vehicle. Officer Huebner requested an additional Patrol Officer and a Supervisor respond to his location. At 1910 hours, you, Officer Waddell, and Officer Koskovich arrived on the scene.

Davalos barricaded himself inside his vehicle and refused to comply with the Officers' commands to exit the vehicle. During the encounter, Davalos drove his car and struck several unoccupied parked vehicles in an attempt to leave the scene. You fired your Department-issued handgun eleven (11) times at the moving vehicle as Davalos drove away.

On November 1, 2016, the Deadly Force Review Board convened and four of the six Deadly Force Review Board Members determined that your use of deadly force was outside of department policy. I reviewed the Board's recommendations and concurred with their findings. I ordered an Internal Affairs investigation into the allegations of Unsatisfactory Performance and violation of the Department's Use of Force Policy.

The department has also alleged that you violated the Department's Equipment Policy by carrying a back-up handgun without approval or current qualification. During the Internal Affairs investigation, it was also discovered that you failed to notify SS911 Dispatch, Patrol Supervisors, and responding Officers that shots were fired at the scene. You also personally drove your assigned vehicle back to Tacoma Police Headquarters (TPD HQ), which raised concerns of procedural violations during officer involved shootings.

### EXPLANATION OF ACTION:

I have reviewed the entire investigative packet and the Complaint Recommendations and Findings by Assistant Chief Michael Ake. I have also considered the information you and Lieutenant Fred Scruggs provided during your Pre-Disciplinary/Loudermill Interview. I have weighed any mitigating factors against any aggravating factors. I will remind you that the Tacoma Police Department is a value-driven agency which demonstrates its core values through professional dedication, conduct, and service. Our core values serve as guiding principles and our successes will not be achieved by merely proclaiming our values, but by consistently modeling them.

Notice of Intent to Terminate: Lieutenant David O'Dea  
June 22, 2017  
Page 1 of 8

16COM-0081.0640

It is the responsibility of all Department members to follow the Department's Policies and Procedures at all times. The Professional Expectations of the Tacoma Police Department state, in part: *All Tacoma Police members must be fully aware of the ethical responsibilities of their position and strive constantly to model the highest possible standards of professional policing. No single standard of core values can conceivably address every potential situation which may confront members of our Department. A general understanding and respect for the Department values which guide our agency, coupled with an individual commitment to making well informed judgments rooted in our agency values, are the foundation upon which individual and departmental integrity is built and maintained.*

**Tacoma Police Department Policy P3.1- Use of Force states in part:** *This policy shall establish the professional philosophy of the Tacoma Police Department relative to proper use of force in the performance of service to the community. Officers of the Tacoma Police Department may use force when necessary, and shall use only that force which is reasonable.*

**P3.1.6.B states in part:** *The Tacoma Police Department recognizes and respects the value of all human life. Procedures and training are designed to resolve confrontations prior to escalation to the point deadly force may be applied. During the performance of their duties and as a last resort, Officers may apply deadly force when confronted with an imminent danger of death or serious bodily injury to protect themselves or others. Officers are not required to place themselves or others in immediate danger of death or serious bodily injury before using deadly force. The necessity to use deadly force arises when there is no reasonable alternative to using such force and, without it, the Officers or others would face imminent danger of death or serious bodily injury.*

**Section P3.1.6.E states in part:** *Deadly force should not be used against a subject in a moving vehicle unless it is necessary to protect against imminent danger to the life of the Officer or others.*

As with many of the situations that police officers face on a daily basis, this was a rapidly evolving situation with an individual who was not complying with the officers' commands. He had backed into a patrol car and was clearly trying to leave the parking lot, even if that meant hitting parked cars. Although, you at some point found yourself standing in an area where Mr. Mendoza Davalos' vehicle was travelling, the evidence is clear that at the point you fired your weapon the vehicle was not a threat to you. The forensic evidence gathered and reviewed by the detectives during the investigation clearly showed you began shooting as the car was passing you. I did review the information provided by the mechanic hired by your attorney; however it does not appear he did the type of forensic analysis that was conducted by the department. In addition, the witnesses at the scene confirm that although the vehicle at one point may have been driving in your general direction and came within feet of you, the car was not a threat to you at the point you began to fire.

It is noteworthy to me that the driver was ultimately apprehended by an officer deploying their ECT (Electronic Control Tool) and not a use of deadly force. At no time did any of the officers who were at the scene feel the need to use deadly force, either to protect themselves, protect the public, or protect you. Furthermore, even though they were all at the scene and viewing Mr. Mendoza Davalos' actions, they were all surprised when you began shooting. The officers viewed Mr. Mendoza Davalos as an actively resistant individual and acted accordingly.

I considered your statement and information presented at the Pre-Disciplinary Hearing. Although I appreciate your perspective and opinions on what happened that day, I must base my decision on what I would expect a reasonable officer to do in that situation. I appreciate that you felt your life was in jeopardy during this incident. I also appreciate that you felt it was necessary to shoot at the tires of a

moving vehicle to protect yourself. Furthermore, I appreciate you felt by shooting at the vehicle tires that you could potentially disrupt the driver's action. However, what matters when determining whether the use of deadly force was within policy is whether you were in imminent threat of death or serious bodily injury at the time of the application of force. I understand you felt your life was in jeopardy, but the evidence is clear to me that the car was no longer a threat to you when you began to shoot.

In addition, I have serious concern with the fact that once you made the decision to use deadly force, you shot at the vehicle's tire. I see no evidence that shooting at the tire would have actually done anything to prevent the vehicle from continuing forward. In fact, the vehicle did continue to travel for a short distance before officers were able to contact the driver. Fortunately, you were not in the front of the vehicle when you began shooting, so the vehicle was not a danger to you as it continued to move forward. I understand that you were concerned with the position of the other officers as you began to shoot and that you did not feel you could safely target the driver without putting officers at risk. However, the first question you should ask yourself is not whether or not other officers would be placed in jeopardy if you shot your firearm, but whether you should fire your weapon at all. In addition, based on the witness statements and position of the officers, the danger to the officers was not alleviated by shooting at the tires. In fact, you yourself were injured as a result of shooting into the asphalt. While I do not believe in general, the use of deadly force was within policy, I also find that the decision to shoot at the tires was not within policy nor consistent with training.

I considered the fact the Mr. Mendoza Davalos ultimately plead guilty to a reduced charge and admitted driving at you with his car. However, my decision has to be based on the totality of the circumstances of all the information in this case. While his statement on plea of guilty is somewhat relevant, it must be put into context with all of the other information when determining how much weight I give it. What is most important to me when determining whether the use of force was within policy is what actually happened immediately preceding and during the use of force. In this incident, the evidence is clear that you fired your weapon as the car was passing and was no longer an imminent threat to you. Regardless of what was contained in Mr. Davalos' plea agreement, when you shot at his tire he was not a threat to you.

By using your issued handgun to stop a fleeing vehicle with an actively resistant subject, I find that you failed the element of our policy that states, "*The necessity to use deadly force arises when there is no reasonable alternative to using such force and, without it, the Officers or others would face imminent danger of death or serious bodily injury.*" The totality of the investigation clearly supports the sustained finding in this case. Therefore, I agree with Assistant Chief Ake and find the allegation of Violation of Use of Force against you *sustained*.

**Tacoma Police Department Policy P1.1.6.A.11- Unsatisfactory Performance states in part:** *Members shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Members shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Unsatisfactory performance may be demonstrated by:*

- *A lack of knowledge of the application of laws required to be enforced.*
- *An unwillingness or inability to perform assigned tasks.*
- *The failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving Police attention.*
- *Absence without leave.*

- *Officers shall submit all necessary reports on time and in accordance with established departmental procedures. Reports submitted by Officers shall be truthful and complete, and no Officer shall knowingly report or cause to be reported any inaccurate, false, or improper information.*

In addition to other indicia of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance:

- *Repeated poor evaluation or a written record of repeated infractions of rules, regulations, directives, or orders of the Department.*

You received a Department-level suspension as discipline on (1) one previous occasion for violating the Unsatisfactory Performance Policy and Vehicle Pursuit Operations Policy which I took into consideration here. What I found most troubling in considering this past discipline was even when presented the facts of the incident that led to your initiation and continuation of the pursuit, you still believed that you performed within policy. Not advising SS911 of the shots being fired when SS911 inquired is not acceptable. During the Loudermill Hearing, you told me that you were convinced that you made the advisement of shots being fired and attempted to support it by a slight microphone click heard on a SS911 recording and a SS911 Dispatcher giving a time indicator. That was not convincing evidence, but rather testimony of your unwillingness to take full responsibility for even the slightest poor performance issue.

Also, driving yourself to Tacoma Police Headquarters for forensic processing after the shooting incident was wrong and violated the Officer-Involved Shooting Protocol. It put a young officer tasked with taking you away from the scene in an awkward position of knowing what was right and doing something he knew was wrong. I cannot accept your failure to meet with the on-scene supervisor to give a "Public Safety Briefing" of the shooting. During your interview with IA regarding not making contact with the supervisor, you told them, *"I am the lieutenant. It should not be my responsibility to go seek out a sergeant, a subordinate, to track them down to say come, come over here, and, and get a briefing. It should be the sergeant recognizing that I had already acknowledged that I was arriving on a scene; and he should know, she should know that I'm there. Uhm, and that if they have any questions, that they should come up to me and not the other way around; not to mention, I'm the officer involved in the shooting."* I expect supervisors to set and uphold the standards of this department. I expect supervisors to lead by example. By your actions, it is clear that you are not improving your performance from past discipline, nor are you modeling the professional standards expected of Command-Level Supervisors. The totality of the investigation clearly supports the sustained finding in this case. Therefore, I agree with Assistant Chief Ake and find the allegation of Unsatisfactory Performance against you *sustained*.

**Tacoma Police Department Policy P2.3.3 (K) – Equipment.** There is a specific requirement and mandate that in order to carry the second on-duty weapon, qualifications with the second on-duty firearm must be done annually. You failed to maintain a current qualification with the second on-duty weapon you were carrying the night of this incident. During your interview with IA, although you stated that you were not trying to circumvent the policy, you attempted to pass blame to TPD Firearms Instructors. You told IA Investigators that you made it known to firearms instructors that you needed to run the back-up handgun qualification course the day you were there for training but, *"at the conclusion of training that day, they never offered the back-up gun course."* I agree with Assistant Chief Ake and find the allegation of Equipment violation against you *sustained*.

I want to be clear, that while I am sustaining all of the violations investigated, my disciplinary decision would be the same even without the minor violations related to your off-duty weapon and any allegations related to your conduct after the shooting.

**RECENT DISCIPLINE:**

On August 7, 2015, you received a 40 hour suspension for violating Department Policies of Unsatisfactory Performance and Vehicle Pursuit Operations. You were the Swing Shift Commander who personally initiated a pursuit of a vehicle on Halloween night through the streets of Tacoma that did not meet the Department's Vehicle Pursuit Operations Policy. Your poor decision to initiate and continue a pursuit ended in a multi-vehicle collision resulting in significant injuries to citizens and substantial damage to property. The City subsequently paid a significant settlement to resolve one lawsuit resulting from your actions and continue to work through a second lawsuit from the same incident (14COM-0142).

**FINDINGS:**

I considered the statements made by you and your Union Representative, Lieutenant Fred Scruggs, at the Loudermill. I agree with Lieutenant Scruggs that you have received numerous awards, served on the Honor Guard, served in every Bureau within the Department, and participated in the Police Training Officer (PTO) Program. I commend your ability to be both an active duty Military Officer and a member of this Department. I have no doubt that you have done good things throughout your career and that you care for this department deeply.

However, my decision in this case is rooted with a reoccurring pattern of poor judgement that you display and the lack of accountability you take for your actions. The goal of discipline is first and foremost to correct behavior. Unfortunately, when an employee is provided with formal avenues to correct their behavior and continues violating policies by performing unsatisfactory and dangerously, my options are extremely limited.

While I appreciate your sincerity and obvious thoughtfulness you gave to your presentation in the Loudermill, I must base my decision on your actions and past behavior. In making my decision, I cannot ignore the pattern of unsatisfactory performance that has put citizens' lives at risk and the City of Tacoma on guard. I cannot ignore that you have been unwilling to take responsibility for your actions either during your previous incident or during the current incident. As I have outlined above, the evidence I reviewed does not support your reasoning for the use of deadly force. At the time of your shooting at the vehicle's tire, neither you nor anyone else was in imminent danger of death or serious bodily injury. You targeted the tire in an effort to stop the vehicle from fleeing.

Even as it was recommended that you be demoted after your last incident, I was not ready to take that step and gave you a lengthy suspension. I truly felt even though that incident was very serious and left many people injured, I believed that you deserved the opportunity to learn and grow from that incident. I wanted to give you the opportunity to show that you could still effectively continue with the Tacoma Police Department as a police lieutenant. However, by not taking responsibility for your prior incident, it was nearly impossible to provide any meaningful remedial training to prevent another potentially harmful situation. By not taking any responsibility for this incident, I have no assurances this type of dangerous decision-making will not happen again. Unfortunately, I am forced to face the reality that no additional level of progressive discipline will correct your dangerous performance issues and poor judgement.

As a result of the sustained findings, you will be **Terminated** from your position as a Tacoma Police Lieutenant effective June 23, 2017.

**CAUSE FOR DISCIPLINARY ACTION/RULES AND PROCEDURES VIOLATED:**

Your actions with regard to the above listed incident resulted in **sustained** finding for the following Section of the Tacoma Police Department Policy and Procedures and City of Tacoma Personnel Rules:

**TACOMA POLICE DEPARTMENT POLICIES:**

- P3.1 – Violation of Use of Force
- P1.1.6.A.11- Unsatisfactory Performance
- P2.3.3 (K) - Equipment

**CITY OF TACOMA PERSONNEL RULE 1.24.940- SECTION:**

E. Incompetency or inefficiency in the performance of duties of the position to which they are appointed.

**DISCIPLINARY CHARGES EXAMINATION PROCEDURE AND REVIEW BOARD**

- 1) Upon receipt of written Notice of Intent to Terminate, an employee will have 48 hours (excluding weekends or holidays) to respond, in writing to the Office of the Chief indicating a desire to examine the charges. Failure to respond within the 48 hours will be an automatic waiver of the review process.
- 2) During the examination and review process, accused employees may have a Union Representative and/or Attorney assist them. On incidents involving more than one (1) employee, only one (1) Union Representative will be allowed.
- 3) The Department will make available to the employee all allegations and reports pertinent to the investigation. The examination must be completed within five (5) days (excluding weekends or holidays). If the volume and/or complexity of material is such that more than five (5) days are required, an extension may be granted on request.
- 4) If, after examination, the accused employee wishes to contest one or more of the allegations and/or penalty, the employee will submit in writing to the Office of the Chief a request for review of disciplinary action. This request will specify each allegation contested and the specific reason. The Board will review only those contested allegations that are submitted in writing.
- 5) If the accused feels that a punishment is too severe, the accused shall submit in writing that concern and the Board shall consider only the amount of discipline.

**THE REVIEW PROCESS:**

- 1) On receipt of written notice of request for review, the Chief will convene the Review Board within five (5) days (excluding weekends and holidays).
- 2) The employee in charge of the investigation will present to the Review Board the allegations and subsequent investigation.
- 3) The accused employee may present before the Board any statements, facts, or witnesses to substantiate their position. The employee may call a maximum of six (6) witnesses unless the Board determines more witnesses are necessary.
- 4) The finding of the Board will be submitted in writing to the Chief and to the accused no later than the working day following the date the Board rendered its decision. The findings will address each contested allegation or proposed discipline with supportive rationale for the decision.

Notice of Intent to Terminate: Lieutenant David O'Dea  
June 22, 2017  
Page 6 of 9

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- 5) Within forty-eight (48) hours, (excluding weekends and holidays) on receipt of the Review Board's findings, the Office of the Chief will notify the accused and Board members in writing of the final decision regarding any disciplinary action. In consideration of this final decision, the findings of the Board will be advisory in nature. If the Chief does not follow the Board's findings, he/she will include his/her rationale in his/her written notice. Should additional facts be discovered during a Disciplinary Board Hearing, the Chief may notify the Board Chairman and the accused that additional response time will be necessary to review the new information.

**CITY OF TACOMA PERSONNEL RULES:**

**1.24.940 - DISCIPLINARY ACTION:**

Any permanent employee may be disciplined for cause by an appointing authority, with the approval of the City Manager or the Director of Utilities, as the case may be, but a written statement of reasons for the discipline and the effective date shall be submitted within five (5) business days to the Human Resources Director, and a copy thereof personally delivered to or sent by certified mail to the employee affected at his/her last known address.

**1.24.950 EMPLOYEE RIGHTS OF APPEAL:**

Any permanent employee in the Classified City Service who is aggrieved may submit written appeal to the Civil Service Board in case of suspension for more than 30 days, dismissal or disciplinary reduction in rank or pay, or from any and all other matters arising out of or in connection with the Civil Service and Personnel Rules. Such employee shall file a written appeal within 10 working days following the date of written notice of suspension, dismissal or the date of reduction in rank or pay. Appeals from any and all other matters arising out of or in connection with the Civil Service and Personnel Rules shall be submitted within such time limits as may be designated in other sections of these Rules. Any appeal submitted to the Board shall be in the form of a concise statement giving the reasons for the appeal. The Board shall dismiss any appeal, or portions of an appeal, which has been filed with a city, state, or federal agency or court having authority to order a remedy in the case.

The Civil Service Board shall hear and/or investigate appeals with reasonable dispatch and shall give the appointing authority and the affected employee equal opportunity to be heard. Each party shall have an opportunity to call witnesses and present evidence. The hearing shall be held at such times and in such manners as may be determined by the Board. The appointing authority and the affected employee may be represented by counsel of his/her designated representative, and the Board shall at such hearings have the power of subpoena and require the attendance of witnesses and the production thereby of books, papers and records pertinent thereto and to administer oaths to such witnesses. The Board shall submit a written report to the City Manager or Director of Utilities in which it shall report its findings and decisions. Such findings and decisions shall be final and binding on all parties concerned. (See also Section 1.24.820) (Ord. 16383; passed June 29, 1959, as amended pursuant to Charter 6.14; Oct. 18, 1971.) (Amended effective Jan. 29, 1980, pursuant to Charter 6.14.)

**BENEFITS:**

The City will continue to pay your medical, dental and vision benefits through **June 30, 2017**. After that date, you are eligible for health care coverage under COBRA. COBRA provides you an opportunity to self-pay your medical, dental and vision benefits at the City's group insurance rates for up to 18 months. You should receive information on COBRA within the next two weeks. You will have 60 days to decide if you would like to continue your benefits. As a LEOFF II employee, you may have differing options for medical continuation, and retirement. Please contact Shannon Irwin at the City of Tacoma, Human Resources at (253) 591-5823. She will assist you with any questions regarding your COBRA and LEOFF II retirement benefits.



FAILURE TO RESPOND SHALL BE DEEMED A WAIVER OF YOUR RIGHT TO RESPOND PRIOR TO IMPOSITION OF SAID DISCIPLINE.

[Signature] 22 JUNE 2017  
Employee signature Date

A copy of the foregoing notice was personally served to **Lieutenant David O'Dea** on this 22 day of JUNE, 2017, at 1302 hours by SGT GJ ROBERTS

and  
[Signature] [Signature] [Signature]  
Donald Ramsdell William Fosbre Gary Buchanan  
Chief of Police City Attorney Interim Human Resources Director

\*Authorized by e-mail dated 6/21/2017 4:09 PM

GJR/bb

Notice of Intent to Terminate: Lieutenant David O'Dea  
June 22, 2017  
Page 2 of 2

16COM-0081.0647

## **EXHIBIT 2**



**TACOMA POLICE DEPARTMENT**  
**Intra-Departmental Memorandum**

**TO:** Donald L. Ramsdell  
Chief of Police

**IB:** #17-001

**FROM:** Assistant Chief Michael Ake  
Investigations Bureau Commander

**DATE:** April 17, 2017

**SUBJECT:** **COMPLAINT FINDINGS AND RECOMMENDATIONS:**  
**IA CASE #16COM-0081**

I have reviewed Internal Affairs investigation #16COM-0081. Lieutenant David O’Dea is accused of violating the following Tacoma Police Department Policies:

- P3.1 Violation of Use of Force
- P1.1.6.A.11 Unsatisfactory Performance
- P2.3.3 (K) Equipment

**SYNOPSIS**

On August 6, 2016, Lieutenant David O’Dea was assigned as the 2<sup>nd</sup> Relief (Swing Shift) Patrol Commander. At 1838 hours, South Sound 911 (SS911) received a call regarding a traffic collision at 3228 South Union Avenue. Officer Huebner responded to the scene and contacted the two parties involved. At the conclusion of the investigation, the suspect identified as Mendoza Davalos, intentionally backed his vehicle into Officer Huebner’s marked patrol car. Officer Huebner requested an additional patrol officer and a supervisor to respond to his location. At 1910 hours, Lt. O’Dea, Officers Travis Waddell and Ryan Koskovich arrived on the scene.

Davalos barricaded himself inside his vehicle and refused to comply with the officers’ commands to exit the vehicle. During this encounter, Davalos drove his car and struck several unoccupied parked vehicles in an attempt to leave. Lt. O’Dea fired his department-issued handgun eleven (11) times at the moving vehicle as Davalos drove away.

On November 1, 2016, the Deadly Force Review Board convened and determined that Lt. O’Dea’s use of force was outside of department policy. Chief Donald Ramsdell reviewed the Board’s recommendation and concurred with the findings. Chief Ramsdell ordered an Internal Affairs investigation into the allegations of unsatisfactory performance and violation of the department’s Use of Force Policy.

The department has also alleged that Lt. O’Dea violated the department’s equipment policy by carrying a back-up handgun without approval or qualifications. During the IA investigation, it was also discovered that he failed to notify SS911 Dispatch, patrol supervisors, and responding

*To create a safe and secure environment in which to live, work, and visit by working together with the community, enforcing the law in a fair and impartial manner, preserving the peace and order in our neighborhoods, and safeguarding our constitutional guarantees.*

IB: 17-001 Date: April 17, 2017 Subject: Complaint Findings & Recommendations #16COM-0081 Page 1 of 20

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officers that shots were fired at the scene of the incident. Lt. O'Dea also personally drove his vehicle back to the Tacoma Police Headquarters (TPD HQ), which raised concerns of procedural violations during officer involved shootings.

## **INVESTIGATION**

### **Officer Ed Huebner's Interview**

Officer Ed Huebner was assigned as a Police Patrol Specialist on August 6, 2016 working swing shift patrol in the sector three. He responded to the El Popo Apartment complex for a vehicle collision incident. During the investigation, one of the subjects involved intentionally backed into his vehicle. Officer Huebner activated his emergency lights on the patrol car and pulled in directly behind the suspect. Officer Huebner was not injured and his vehicle sustained minor damage. Officer Huebner attempted to take the suspect into custody but the suspect barricaded himself in the car. Officer Huebner requested another police unit and a supervisor to the scene.

Officer Huebner stated that Lt. O'Dea and Officers Koskovich and Waddell responded to assist. A short time later, he was informed by police dispatch that the suspect made a statement that if they did not move; he was going to run them over.

CID asked Officer Huebner if Davalos was trying to run over Officers or just trying to get away, he replied, "He was obviously trying to get out of there it seemed like to me, you know what I mean, in any way he could." Officer Huebner said that the vehicle got high centered on the curb; and then the vehicle backed into the Impala that was parked next to him, pushing it into a truck. Officer Huebner said that the vehicle went forward and over the curb. Officer Waddell smashed out the driver's window and Officer Koskovich smashed out the passenger window. Officer Huebner said that the vehicle was accelerating in a northeast direction and Lt. O'Dea was "five feet, maybe... between five and ten feet" away from the vehicle. Officer Huebner said that at first, the vehicle was driving toward Lt. O'Dea, but then veered and missed; striking an SUV that Lt. O'Dea was standing near. Officer Huebner said that Mendoza Davalos had no signs of intoxication but he was "very, very angry. He just seemed overly angry and not reasonable at all."

Officer Huebner assessed the suspect's actions as being, "Actively Resistant." Officer Huebner acknowledged that at no time during this incident did he feel the suspect posed an imminent threat to him, other Officers, or the public.

Officer Huebner was asked if at any time during the incident Lt. O'Dea was endangered by being struck by the vehicle; and he replied, "Not that I saw. No."

Officer Huebner described that when his vehicle was initially struck by the suspect, the initial collision was "enough to jar me, but not enough to do any damage."

When the suspect vehicle began moving forward over the curb, Officer Huebner didn't see any Officers get hit by the suspect vehicle or any movement by the Officers that could have been reasonably interpreted as their getting hit. Officer Huebner thought "everybody got out of the way."

*To create a safe and secure environment in which to live, work, and visit by working together with the community, enforcing the law in a fair and impartial manner, preserving the peace and order in our neighborhoods, and safeguarding our constitutional guarantees.*

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Officer Huebner was asked about what Lt. O'Dea was doing in this timeframe; and he replied, "As the vehicle rammed the pick-up, took a hard right to get into the parking lot to go northbound, as it was passing Lt. O'Dea, I saw him pull his service pistol, at a low-ready, and then fire several times. It looked like he was firing at the, at the tires, the front tire of the vehicle."

In the IA interview, Officer Huebner stated that he did not see the suspect vehicle going directly towards Lt. O'Dea at any point in the situation. However, in the CID interview, Officer Huebner stated that the suspect Mendoza Davalos, "may have been driving directly at O'Dea."

Officer Huebner stated that if Lt. O'Dea didn't move and stood in the parking lot, the suspect vehicle would not have struck him.

Officer Huebner believed that Lt. O'Dea appeared to be shooting at the tire. Officer Huebner said that Lt. O'Dea was four or five feet when he started firing. Officer Huebner explained that Lt. O'Dea took a "...a lunge, like a, one giant step, one step." Towards the driver's side of the suspect's vehicle.

Officer Huebner said that Lt. O'Dea started to fire at the vehicle "As soon as the vehicle, uh, took the hard right and started to go northbound in the parking lot, before it cleared the car that was, uh, right there, I guess to the, uh, passenger side, like two spaces over; as soon as it cleared the back end of that car, that's when I saw O'Dea take one giant step and start to fire at the tires."

IA asked Officer Huebner if Lt. O'Dea was in front of the vehicle or was he off to the side of the vehicle when he began firing at the suspect vehicle. Officer Huebner replied, "When he, as I saw it, he would have, the vehicle's left front quarter panel would have been passing Lieutenant O'Dea, going northbound, as Lieutenant O'Dea started to fire at the tire."

IA asked Officer Huebner when Lt. O'Dea stopped firing at the vehicle and he replied, "As the vehicle had passed him; and the, the left rear quarter panel had, had passed by him, he stopped."

Officer Huebner was located behind the suspect's vehicle as it drove north and Lt. O'Dea started shooting. Officer Huebner didn't think he was in any danger of being struck by gunfire due to his position. Officer Huebner believed that Officer Koskovich was along the passenger side of the suspect's vehicle, and out of the way of any shots fired.

After the shooting occurred, Officer Huebner used his patrol vehicle to pin the suspect vehicle to keep it from moving. Officer Huebner said that the pinning of the suspect vehicle was low speed and was effective at stopping the suspect vehicle.

Officer Huebner said that once the suspect was in custody, Lt. O'Dea walked to the center of the parking lot. Lt. O'Dea appeared shocked by the incident and "Not really comprehending what had just happened." (Tab 11, p. 19) He told Lt. O'Dea to stop talking. IA asked Officer Huebner what was said and he replied that he didn't know exactly what it was, but Lt. O'Dea started talking about his wife and the stress of things that just happened. (Tab 11, p. 20).

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Officer Huebner heard a supervisor who he thought was Sergeant Paris tasking a new unknown officer to him to take Lt. O'Dea back to the station.

Officer Huebner said he discussed the incident later with Officers Waddell and Koskovich. Officer Huebner said they "...were all kinda shocked that it happened." (Tab 11, p. 23) IA asked Officer Huebner to clarify why he was shocked it happened and he said, "Based on what I visually saw, it didn't rise to the level of deadly force. I, uh, my own opinion, where I was at, from where, my standpoint. It was, it was, hear the gun shots, it, it, it, it was shocking, you know." (Tab 11, p. 23)

#### **Officer Ryan Koskovich's Interview**

On August 6, 2016, Officer Ryan Koskovich was assigned to swing shift patrol, working in a two-officer car with Officer Waddell. They responded to the El Popo Apartments to assist Officer Huebner. Officer Koskovich contacted Officer Huebner and was advised there was probable cause to arrest the suspect for a felony assault.

The suspect was moving around inside the car which caused Officer Koskovich to heighten his officer safety considerations. Officer Huebner advised him that he was waiting for a supervisor to respond prior to any attempts to extract the suspect from the vehicle. Lt. O'Dea arrived at the scene several minutes later and met with Officer Huebner. Officer Koskovich did not recall hearing any of the conversation. Officer Koskovich stated that all the officers on scene walked up to the suspect's car without an extraction plan when the suspect put his car into gear and started to back up. The suspect's car made a series of small movements towards the officers in an attempt to leave the scene.

Officer Koskovich was close to the suspect's vehicle when it started backing up. Officer Koskovich stated that he stepped out of the way before being nearly struck. Officer Koskovich used his flashlight to break the passenger side window as the suspect's vehicle continued making small movements. Officer Koskovich stated that the only danger the suspect vehicle posed to him was possibly being "brushed up against him" and not being ran over. He said the suspect vehicle's movements "were so small and at that speed, I had time to move." (Tab 14, p. 9-10)

Officer Koskovich didn't know if Officer Waddell was struck by the suspect's vehicle; however, he observed Officer Waddell break out the driver's side window. Officer Koskovich stated that the suspect's vehicle gained speed and struck other vehicles while attempting to leave.

Officer Koskovich observed that Lt. O'Dea was positioned in front of the suspect's vehicle in a northerly direction and in the direct travel path of the car. (Tab 14, p. 10 and Tab 15, p. 9) Officer Koskovich didn't know how Lt. O'Dea got there, because Lt. O'Dea was with Officer Huebner on the southeast side of the car. (Tab 14, p. 11)

Officer Koskovich stated that the suspect's vehicle accelerated quickly towards Lt. O'Dea. The three other officers on scene were not in the path of the suspect vehicle. Lt. O'Dea was backing up towards another parked vehicle located directly behind him. The suspect's vehicle nearly "clipped" Lt. O'Dea when he started firing his handgun. Officer Koskovich stated that Lt. O'Dea

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fired at the suspect's vehicle while positioned a foot or two away and on the side of the vehicle. (Tab 9, p. 12-13) Officer Koskovich told CID Detectives that Lt. O'Dea was ten feet away from the suspect's vehicle when he fired his handgun. (Tab 15, p. 9)

Officer Koskovich observed that Lt. O'Dea was shooting at a downward angle at the lower portion of the vehicle. Officer Koskovich clarified that Lt. O'Dea was positioned "north of the tires of the vehicle and the front quarter panel." It appeared to Officer Koskovich that Lt. O'Dea was firing north to south, as the vehicle was passing. According to Officer Koskovich, Lt. O'Dea stopped firing when the back half of the vehicle passed him. (Tab 14, p. 16)

IA asked Officer Koskovich if he believed that Lt. O'Dea was in danger of being struck by the suspect's vehicle at the point the shooting occurred. Officer Koskovich replied that potentially the rear of the vehicle could have hit him. Officer Koskovich believed that Lt. O'Dea fired a succession of rounds without any pause. Officer Koskovich told CID Detectives that Lt. O'Dea may not have been directly to the side of the vehicle when he fired the shots, but was close to it. (Tab 15)

It appeared to Officer Koskovich that the rounds were striking the front tire and the rim on the driver side of the vehicle. Officer Koskovich was surprised by the shooting due to the circumstances and stated, "Uhm, I would not have fired my weapon in that case, which is why I was surprised that he was shooting." (Tab 14, p. 15)

Officer Koskovich stated that he wasn't in a direct line of fire of Lt. O'Dea, but "it could have been a possibility that rounds could have struck the concrete and, and skipped up and hit, uh, the location where I was standing." (Tab 14, p. 15) Officer Koskovich briefed Sergeant Paris when he arrived on the scene about the incident and his use of force.

IA asked Officer Koskovich if he believed Lt. O'Dea's actions were reasonable. Officer Koskovich replied that firing at a vehicle or subject in the vehicle would have been extremely reasonable if he perceived a lethal threat. Officer Koskovich also stated that when Lt. O'Dea was out of harm's way of the vehicle and shooting at the tires to stop the car would be unreasonable. IA followed up the question and asked if Lt. O'Dea's actions were necessary; Officer Koskovich replied, "No." (Tab 14, p. 22)

#### **Officer Travis Waddell's Interview**

On August 6, 2016, Officer Travis Waddell was assigned to swing shift patrol, working in a two-officer car with Officer Koskovich. The officers arrived at the El Popo Apartment complex to assist Officer Huebner. Officer Waddell stated that based on Officer Huebner's brief, there was probable cause to arrest the suspect. Officers Waddell and Koskovich took positions around the suspect vehicle and gave the suspect verbal commands to exit and that he was under arrest.

Officer Waddell believed the suspect to be actively resistant as he didn't comply with directions. Officers Waddell and Koskovich planned to force entry into the vehicle by breaking a window but Officer Huebner didn't believe it was necessary. Officer Huebner wanted to wait to brief a supervisor prior to employing any force on the suspect. Lt. O'Dea arrived and was briefed by Officer Huebner.

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Officer Waddell stated that SS911 Dispatch advised them that the suspect was on the phone and wanted to go to the hospital. Officer Waddell responded to SS911 to tell the suspect to step out of the vehicle and that he was under arrest. He also advised that they would have an ambulance transport him to the hospital.

Around this time Officer Waddell observed the suspect place his car into gear and believed the car was going into reverse. The suspect accelerated and hit Officer Huebner's Patrol car. Officer Waddell attempted to break out the driver's side window with his wooden baton.

Officer Waddell said that when the suspect vehicle struck Officer Huebner's vehicle, it didn't have enough room to gain a lot of speed. Officer's Huebner's vehicle however did move from the force generated. It appeared to Officer Waddell that the suspect was trying to flee in his vehicle

Officer Waddell stated that he was not in a position to be struck by the suspect's vehicle; it would have taken some severe action to do so. Officer Waddell stated that Officer Koskovich was along the suspect vehicle's passenger side and also not in position of danger.

Officer Waddell didn't believe the suspect was targeting Lt. O'Dea, but the suspect's vehicle was traveling towards him in the commission of fleeing and resisting arrest. If Lt. O'Dea didn't move the suspect vehicle would have struck him. (Tab 17, p. 12) Officer Waddell stated that Lt. O'Dea jumped out of the way, pointed his service weapon and fired at the suspect's vehicle. Lt. O'Dea turned his body towards the vehicle and pressed out his weapon to begin to shoot.

Officer Waddell stated that Lt. O'Dea was in front of or on the side of the vehicle when he started firing. He clarified that it was "anywhere between a 45 to a 70 degree angle from the vehicle. He wasn't directly to the side, not, not that I could see." (Tab 17, p. 14) Officer Waddell stated that the suspect vehicle came within "inches" of Lieutenant O'Dea.

Officer Waddell stated that Lieutenant O'Dea appeared to be targeting the left front wheel well or the tire of the vehicle. Officer Waddell was surprised when Lt. O'Dea started firing because he didn't expect to hear gun shots. Waddell relayed that Lt. O'Dea stopped firing near or behind the a pillar of the vehicle. Officer Waddell stated that he was running to keep up with the suspect's vehicle but stopped so he didn't get in Lt. O'Dea's line of fire. Officer Waddell said he was within "ten to twelve feet" of when Lieutenant O'Dea started firing. (Tab 17, p. 16) Officer Waddell believed the suspect's intent was most likely to flee.

Officer Waddell wasn't as certain during the Criminal Investigations interview of the shooting regarding where Lt. O'Dea was targeting his shots. Officer Waddell told detectives that, "I couldn't be certain. Uh, I, really couldn't tell if he was shooting at the driver or if he was shooting at the tire or what his intentions were. I just knew he was shooting." (Tab 18, p. 9)

Officer Waddell was concerned that Officer Koskovich may have been in the crossfire due to Lt. O'Dea firing his weapon. Office Waddell believed that Lt. O'Dea fired his service weapon against a life threatening threat; however, the manner in which his service weapon was utilized was to disable the vehicle rather than the use of deadly force at the suspect. (Tab 17, p. 23)

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Officer Waddell stated that Lt. O'Dea stopped firing as the front half of the vehicle had passed him. (Tab 18, p. 9)

Officer Waddell believed Lt. O'Dea's actions were reasonable; however, the manner the deadly force was applied appeared to be against TPD's policy and "...endangered other Officers, uhm needlessly." (Tab 17, p. 26)

Officer Waddell believed Lieutenant O'Dea's actions were necessary as the suspect's vehicle drove towards him, but stated, "I just felt it was tactically odd and somewhat, uh, put Officers in needless danger to shoot, uh, at the tire." (Tab 17, p. 26)

### **Sergeant Barry Paris' Statement and Interview**

Sergeant Paris is a Swing Shift Patrol Supervisor assigned to Sector Three. Sgt. Paris responded to the El Popo Apartments when Officer Huebner requested additional units and a supervisor over the radio. Upon arrival, he observed that Officer Huebner had his vehicle pinned against the suspect vehicle. Officers Waddell and Koskovich were in the process of handcuffing the suspect who was resisting. Sgt. Paris observed Lt. O'Dea at the scene. Sgt Paris took command of the scene and Officer Huebner briefed him on the situation. Sgt. Paris was informed that an officer involved shooting occurred a few minutes before he arrived. Sergeant Paris stated he didn't hear any radio traffic that indicated shots were fired. While Huebner was briefing him, Lt. O'Dea approached them and stated, "I was shooting at the tire and not the suspect." (Tab 5, p. 3)

Sergeant Paris assigned Officer McNeely to take Lt. O'Dea back to Tacoma Police Department Headquarters. Sgt. Paris stated that Lt. O'Dea was present when he gave those instructions to Officer McNeely. Lt. O'Dea voiced his concern about leaving his vehicle in the area and that his vehicle was not part of the crime scene. Sgt. Paris believed his concern as reasonable and wasn't sure how Lt. O'Dea actually returned to the station. Sgt. Paris told Officer McNeely to go to the station and stay with Lt. O'Dea.

IA asked Sergeant Paris if the bullets fired at the suspect vehicle stopped it and he replied "No." When asked what ultimately stopped the suspect vehicle, Sergeant Paris replied that Officer Huebner used his vehicle to pin the vehicle in.

Sergeant Paris spoke to Officer Koskovich and Officer Waddell after the incident. According to Sgt. Paris, there was a perceived concern by those Officers about the possibility of being struck by Lt. O'Dea's gunfire. There did not appear to be a concern by either Officer about being struck by the suspect vehicle. (Tab 5, p. 10-11)

Sergeant Paris held an informal type debriefing the next day following the incident. He recalled Officers Koskovich, Waddell, and Huebner being present for the debriefing. Some of what they discussed was the proper use of force, the totality of the situation and maybe how to do things differently in the future. The Officers all had input but Sgt. Paris believed that the Officers were "a little restrained" with what they said since it involved a police lieutenant.

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#### **Sergeant Paul Jagodinski's Interview**

Sergeant Paul Jagodinski was requested to respond to the scene, but he was delayed due to an unrelated incident. He did not recall who requested him. Sgt. Jagodinski eventually arrived and was told by Sgt. Paris that Lt. O'Dea wasn't there. Sgt. Jagodinski met Lt. O'Dea at TPD HQs. He relayed that Lt. O'Dea is friend and his purpose in finding Lt. O'Dea was to make sure he was okay. Sgt. Jagodinski didn't discuss the incident with Lt. O'Dea. He described Lt. O'Dea's demeanor as nervous, in that he had "done something and now he's gotta explain it." Sgt. Jagodinski didn't note any delays related to Lt. O'Dea's forensic processing or the investigation.

#### **Officer Aaron McNeely's Interview**

On August 6, 2016, Officer Aaron McNeely was a Patrol Officer assigned to graveyard shift Patrol Division in sector four. Officer McNeely arrived on-scene to assist Officer Huebner at the El Popo Apartment complex. Sgt. Paris was at the scene and directed him to set up the crime scene tape and identify possible witnesses. Officer McNeely stated that he had been on-scene for about three to six minutes before he learned that shots had been fired.

Sgt. Paris directed him to transport Lt. O'Dea to TPD HQs. Officer McNeely stated that there were other officers in the vicinity when Sergeant Paris ordered him to do so, but wasn't sure if anyone heard the conversation. Officer McNeely said that Lieutenant O'Dea was not present when the order was given.

Officer McNeely initially thought he was going to take Lt. O'Dea back in his patrol vehicle, but Lt. O'Dea stated that he was driving back in his own car Officer McNeely could follow him. Officer McNeely admitted that he "had never been through anything like that before, so I just did what he, (Lieutenant O'Dea) told me to do." Officer McNeely didn't think that any protocols were being violated. Officer McNeely stated "I was to escort him back to Headquarters; and then he kinda took over from there, because he's a senior Officer. And like any Officer, I kinda took him at his word that that was what we were supposed to do."

Officer McNeely acknowledged that Lt. O'Dea never said anything to the effect of he was countermanding Sergeant Paris' directions on how Officer McNeely was to get him back to TPD HQs. Upon arriving at TPD HQs, Officer McNeely and Lt. O'Dea met Sergeant Jagodinski. Sgt. Jagodinski took over the escort of Lieutenant O'Dea.

#### **Detective Christopher Shipp's Interview**

Detective Christopher Shipp is assigned to the Homicide Unit and assisted Det. Reopelle with the forensic processing of Lt. O'Dea at TPD HQ. While Det. Ship was taking notes during the processing, Lt. O'Dea asked him what he was doing there. Det. Shipp initially thought he misheard him and replied, "Excuse me?" Lt. O'Dea asked him again what he was doing and when Det. Shipp replied that he was taking notes, Lt. O'Dea questioned him further asking him on what. Detective Shipp explained his purpose to Lt. O'Dea and Lt. O'Dea seemed satisfied and didn't pose any further questions. Det. Shipp stated later that he kind of wrote off Lt. O'Dea's demeanor since he had just been involved in a shooting and that he was probably not used to being directed by subordinates. Det. Shipp said Lt. O'Dea's back-up handgun was located and processed.

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### **Detective Steve Reopelle's Interview**

Detective Steve Reopelle is assigned to the Homicide Unit and assigned to this incident as the Lead Investigator. Det. Reopelle conducted the forensic processing of Lt. O'Dea at TPD HQs along with Detective Shipp. Detective Reopelle contacted Lt. O'Dea who was in his own office. Lieutenant Alan Roberts (Union Representative) was arranging for an attorney for Lt. O'Dea and requested a few additional minutes. Det. Reopelle stated that he did "observe" Lt. O'Dea try and "assert his rank, uhm, and, and, intimidate, uh, Detective Shipp, who is obviously, a, a junior Detective." Det. Reopelle explained that this was Det. Shipp's first Officer-Involved Shooting investigation and he described the process to Detective Shipp. He told Det. Shipp to take good notes during the processing, so they could record it later. Det. Reopelle said that as the forensic processing was taking place Lt. O'Dea confronted Det. Shipp about what he was doing and "why he was there." Det. Reopelle said that the manner Lt. O'Dea did it "...was kind of in a real challenging manner" and that his "...take on it was that he was trying to intimidate, uh, Detective Shipp." After Det. Shipp explained what his purpose was to Lt. O'Dea, Det. Reopelle acknowledged that Lt. O'Dea seemed satisfied with the explanation given remaining compliant through the rest of the process.

Det. Reopelle said that during the process, Lt. O'Dea was also carrying a back-up pistol. Det. Reopelle said that the backup pistol was carried inside the shirt within the body armor. The backup firearm was determined to not have been used in this incident.

According to Det. Reopelle's Supplemental Report, he and Det. Shipp interviewed Mendoza Davalos at the Pierce County Jail. Davalos was the driver of the vehicle which had rammed Officer Huebner's vehicle. Davalos said he understood English better than he spoke it. A Spanish interpreter was used. Davalos denied having mental health issues. Davalos said that he never "saw an Officer wearing a white shirt and denied trying to run into any Officers." He claimed that an Officer's vehicle pushed him up and over the curb and said he only realized they were police after they broke out his windows and began shooting at him.

### **Detective James Buchanan's Interview**

Detective James Buchanan is assigned to the Homicide Unit. On August 6, 2016, Det. Buchanan responded to the El Popo Apartment complex and was assigned to process the parking lot crime scene with Detective Vold. Det. Buchanan's role was to oversee the forensic photography and the collection of evidence. He also served a search warrant on the suspect's vehicle at TPD HQs.

Det. Buchanan determined that "off-hand" eleven rounds were fired. He stated that they didn't recover all eleven bullets from the scene. He explained that, "The bullets disintegrate and pieces break apart. We found pieces." IA asked Detective Buchanan if Officer Huebner's patrol vehicle or the bullet damage stopped the suspect vehicle and he replied, "Officer Huebner's car did."

Det. Buchanan described specific defects to the suspect's vehicle upon further examination at TPD HQs.

We removed the tire which also had the defect, which was the driver side front tire, we removed that. Or prior to that, we noticed a defect in the driver's front mud flap that appeared to go back to front. So, it appeared to be a bullet strike. Also noticed a strike on the sidewall driver side tire on the exterior side. We removed the tire and noticed a strike on the brake caliper for the driver side. Once we removed that tire, we noticed two more

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strikes on the interior wheel rim well. And we also noticed what appeared to be an exit for a bullet on the interior side wall of the driver side tire. We noticed a strike on the frame itself that appeared to go back to front as there was undercoating that was peeling towards the front. And there was two unknown defects on the exhaust that we couldn't tell what was, if it was a strike from a bullet or going over something. We noticed that the coolant line, which there was green coolant, appeared to have been struck. There was also red fluid consistent with something being struck that we couldn't find the hole for.

Det. Buchanan could not determine the cause of the defect to the coolant line. It could have possibly been caused when the suspect vehicle went over the curb at the scene, Det. Buchanan acknowledged that the location of the coolant fluid spill in the parking lot was "More consistent with the shooting" and not where the suspect vehicle went over the curb. Det. Buchanan acknowledged that Lieutenant O'Dea would not be able to directly target the cooling line due to its location. It was more likely caused by an indirect shot striking the parking lot surface since the cooling line was underneath the vehicle in the engine compartment.

Detective Buchanan determined that five to ten bullets-either actual or partial struck the suspect's vehicle. He said that there were no penetrating defects located in the passenger compartment of the suspect vehicle. Det. Buchanan acknowledged that the shots appeared to have been centered toward the left front tire area of the suspect's vehicle. Det. Buchanan said that there were no defects located to the tire tread of the front left tire. He acknowledged that the defects were from the side.

IA asked if there were any indications that Lt. O'Dea was standing in front of the vehicle when he began shooting, Det. Buchanan replied, "There's nothing obvious to point to that."

Based on the location of the defects to the vehicle, IA asked Det. Buchanan where Lt. O'Dea would have been located in comparison to the driver's side door hinge; would he have been in front of the door hinge, next to the door hinge, or behind it. He replied, "It could have been all three."

#### **Detective Brian Vold's Interview**

Detective Brian Vold has been assigned as a Homicide Detective for approximately 17 years. At the scene, Detective Vold found multiple shell casings. He stated that he observed several bullet impact marks on the aggregate asphalt of the pavement. Some of the impacts were clearly from the barrel of the gun directly into the pavement. Detective Vold stated that he couldn't account for every shot fired, either impacting the vehicle or impacting the pavement.

Detective Vold stated that the bullet strikes to the suspect's vehicle were primarily located in the driver's side left front wheel. He stated that by the impact of the bullet strikes, it was almost perpendicular to the wheel rather than from the front of the vehicle. Detective Vold believed that Lt. O'Dea was standing almost perpendicular, right at the left front wheel directly to the side of the vehicle as he was shooting. He added that there were additional shots farther down the car, which was caused either by Lt. O'Dea moving or the vehicle moving past him-which appeared more apparent.

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Detective Vold was asked if there was any evidence that Lieutenant O'Dea targeted anywhere in the passenger compartment of the vehicle and he replied no. Detective Vold relayed that this was unusual from his experience stating, "In my professional opinion, I don't see what effect this discharge of this weapon was gonna have on either defending anybody or detaining the suspect." Detective Vold stated that the shooting occurred in the area of the parking stalls on the west side. One of the fragments was on a curb line at the east end of the stalls of the parking lot. Based upon the distance of a stall and the traverse area between the stalls, that fragment was probably thirty-five feet away. There was another fragment to the east. Several other fragments were found to the north, slightly northeast, that were probably, maybe fifteen, twenty feet away.

Detective Vold was shown two photographs of the bullet strikes to the vehicle. He was asked where he believed Lieutenant O'Dea was standing when he fired his weapon with the round entering the front driver's side mud flap. Detective Vold stated, "I think that would put him beside the driver's door. I would say back towards the back side of the driver's door, and then towards the rear, uh, on the driver's side and close to the vehicle." In regards to the impact of the mud flap, IA asked Det. Vold if Lt. O'Dea could have been in front of the vehicle when he fired his weapon, he replied "Oh, absolutely not. Absolutely not. Uh, by that point, nearly fifty percent of the vehicle is past him."

Detective Vold was asked if he was able to determine where Lt. O'Dea might have been standing when he fired the shots that struck the front wheel; and he said, "Oh, absolutely. I mean, and not even the front corner. I mean, these are clearly on the side of the vehicle."

#### **Sergeant James Barrett's Responses to IA**

Sergeant James Barrett was the Range Sergeant for the Tacoma Police Department responsible for firearms training for Department personnel. He responded to questions by IA regarding Lt. O'Dea's response to the discharge of his firearm. Sergeant Barrett wrote that department personnel are not trained to fire their weapons to disable vehicles. On August 6, 2016, Sergeant Barrett stated that Lt O'Dea's actions were not consistent with the Tacoma Police Department's firearms training. (Tab 25)

#### **Lieutenant David O'Dea's IA Interviews and Statements**

Lt. David O'Dea read a prepared statement at the beginning of his IA interview. His statement discussed the purpose of his original written statement given to CID. (Tab 22) Lt. O'Dea stated that the statement was given at the request of the Prosecutor's Office to assist with the probable cause in the criminal prosecution of Mendoza Davalos. His intention was to provide additional details to CID, but he was never requested to do so. Lt. O'Dea also relayed that his statement to IA was initially drafted as the narrative for a police report in preparation for follow up questions. Lt. O'Dea stated that he added to the narrative after being served a 48-hour notice from IA.

On August 6, 2016, Lt. O'Dea was assigned as the Swing Shift Patrol Commander. He heard Officer Huebner's request for another officer and a supervisor over the radio. Lt. O'Dea reviewed the CAD for the incident and when he heard a request for an estimated time of arrival for a supervisor, Lt. O'Dea felt he couldn't ignore the officer's request, so he stopped to assist.

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Lt. O'Dea stated that when he found the officers and the suspect, the suspect was inside a vehicle with the engine running. Officer Waddell was standing by the driver's side of the suspect vehicle while Officer Koskovich was on the passenger side. Both Officers Waddell and Koskovich had their handguns drawn in a low-ready position and were focused on the subject inside the vehicle. Lt. O'Dea observed that a patrol vehicle with its emergency lights activated behind the suspect's vehicle. Officer Huebner was standing next to that patrol vehicle on the driver's side.

Lt. O'Dea met Officer Huebner and received a briefing of the incident. Officer Huebner advised Lt. O'Dea that the initial incident was not a collision, but a road rage incident. Officer Huebner let one of the drivers leave the scene after his investigation concluded. Officer Huebner relayed to Lt. O'Dea that while dealing with the suspect, the suspect "rammed his Patrol car while he was inside." Lt. O'Dea confirmed with Officer Huebner that there was probable cause to arrest the suspect, but did not have a plan to get the suspect out of the vehicle.

Lt. O'Dea didn't see any injuries to Officer Huebner or damages to the patrol vehicle. Lt. O'Dea recalled Officers Waddell and Koskovich giving the suspect verbal commands to turn off the car, open the door, and get out. He recalled Officer Waddell at one point saying that the suspect was moving around and that he couldn't see his hands.

Lt. O'Dea requested Tacoma Fire to stage near the scene for several reasons. First, he was concerned the suspect or the officers might be injured during an extraction of the suspect from the vehicle. Second, Lt. O'Dea was concerned that Officer Huebner might have been injured due to the vehicle ramming. Last, he also believed that the suspect was "not acting rationally" and may have been suffering from some kind of medical or mental crisis or a drug reaction. Lt. O'Dea cited Graham V. Connor regarding his medical concern for the suspect.

Lt. O'Dea noted that officers and SS911 were speaking with the suspect. SS911 was being requested to tell the suspect he was under arrest and to exit the vehicle. SS911 responded they would try, but there was a language issue. Lt. O'Dea said that Officer Huebner commented that he had already spoken to him in English.

Lt. O'Dea and Officer Huebner spoke about the tactics to utilize if needed to extricate the suspect from the vehicle. Lt. O'Dea didn't know that the officers had discussed smashing out the windows to affect the arrest prior to his arrival. Lt. O'Dea said that Officer Huebner didn't tell him he had even spoken to Officers Waddell and Koskovich.

IA asked Lt. O'Dea about what the suspect's actions in relation to the TPD's Use of Force Model. Lt. O'Dea initially stated that the suspect was, "at a minimum passively resistant." Lt. O'Dea reasoned through the subject's actions and said, "he's beyond passive and, and moving to the realm of actively resistant." Lt. Standifer (Lt. O'Dea's Union Representation during his interview) clarified with Lt. O'Dea that there was information that the suspect had assaulted Officer Huebner. Lt. O'Dea considered the suspect's actions and that his assessment of the suspect was elevated due to the suspect using a weapon to assault Officer Huebner.

Lt. O'Dea said that while he was discussing the incident with Officer Huebner, they were located at the rear of Officer Huebner's patrol vehicle. Huebner's patrol car was behind the suspect's vehicle. Lt. O'Dea stated that while the discussion was occurring, "in my peripheral vision, out

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of my left eye, I can see Waddell on the far side and Koskovich on the, on the near side of the car. Without warning, while I'm just talking to Huebner, the car surges up over the, the concrete curb; uhm, and, uhm, I see Waddell violently move backwards. I think he's been struck by the car; uhm, by the, by the driver of the Nissan." (Tab 20, p. 15)

Lt. O'Dea believed the suspect intentionally struck Officer Waddell. IA asked Lt. O'Dea if he considered applying deadly force at that time. Lt. O'Dea stated, "It's something I had considered. Yes. But I had, uhm, on that far side, if, from where I was, if I were to use deadly force then, I, I had no idea where, uh, Waddell was. He would be in danger by anything that I try to do deadly force wise." (Tab 20, p. 17)

Lt. O'Dea said that he began moving laterally north from behind the back of Officer Huebner's vehicle after the suspect's vehicle surged forward. When the suspect vehicle backed up, it struck a vehicle in an adjacent parking space. Lt. O'Dea felt the suspect vehicle was going to continue backing up, forcing the parked vehicle out of the way in an attempt to flee. Lt. O'Dea continued to move trying to stay out of the suspect vehicle's path and to try and locate assisting Officers.

Lt. O'Dea stated:

The suspect vehicle stopped and, and started to make a, a right hand turn. I could see his front right tire crank all the way to, close to, if not all the way, to the, to the right hand stop. So, he, the car wheel turned; and you can see it under the wheel well come all the way out, uhm, to, I, I would think, almost all the way to the far right. Then he accelerated the car. You could hear the engine revving; and he started to make a, a very tight right turn. I'm thinking at this point now, rather than backing up out of the lot, he's gonna make that tight right turn and just continue south and out of the lot. And I'm continuing to move, but now that he's in that tight right turn, I, I draw my gun." (Tab 20, p. 20)

Lt. O'Dea continued:

I'm moving laterally. Uhm, he's continuing to make that tight right turn. I'm continuing to move. I'm trying now at this point, uhm, to, to get to the, the west side of the parking lot, uhm, to, to some sort of cover that's over there. Uhm, there was a couple cars that were parked further to the north. Uhm, and all, and so I'm trying to stay out of his path, but also keep sight on him and what he's doing and where he's going. And he's continuing to accelerate. Uhm, and he stops his turn and turns the wheels to the left. And now he's coming right at me. I can remember being five, six, seven feet in front of the hood of the vehicle. Uh, I can remember being in center of the vehicle. Both headlights were, uhm, equal distance. Uhm, and, and I was fearful he was gonna run me over. I had, I knew that there was enough time, there was not enough time for me to move. I couldn't move quickly enough to get away from him; and there wasn't enough distance for me to move before he hit me. So, I, I had my gun out already; and it went from a low ready, uh, to a firing position. Uhm, I could, the suspect car, the Nissan's coming at me. Uhm, I, I could not fire to the south. Uh, I had no clear idea where Huebner was or Waddell. Uhm, I had saw Koskovich, he had already come out, uhm, while the, the vehicle was making the tight right turn and, and broke out the passenger window. But he retreated and I wasn't sure where he was. Uh, I did not want to endanger their lives, if I had missed the driver, and shot, shot at the driver, and shot to the

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south. Uhm, and so, like I said, I, I knew I had no time, uhm, and no distance to escape. And so I had to get inside of his OODA Loop. I, I had to do something to create that fraction of time to disrupt him, uhm, so that I could get out of there safely.” (Tab 20, p. 21)

Lt. O’Dea was asked to define the OODA Loop. He explained it was based upon an Air Force principal to interrupt and get inside a decision maker’s process. Lt. O’Dea continued by explaining that he wanted to disrupt the suspect’s OODA Loop process so he began shooting when he determined that the suspect was going to hit him with the moving vehicle. Lt. O’Dea added that there wasn’t any danger of anyone being struck by his shots. (Tab 20, p. 24)

Lt. O’Dea started that he was in front of the car at one point and when he decided to shoot, the vehicle “...veered away to the, to the right as I was shooting.” (Tab 20, p. 29) Lt. O’Dea stated that he stopped shooting when he saw the center lug nut portion of the car’s tire and when the suspect was no longer a threat.

Lt. O’Dea believed the suspect was intentionally trying to hit him with the vehicle. Lt. O’Dea said in part, “I’m clearly visible as a police officer. I was clearly visible in the middle of that parking lot as the only person in the middle of that parking lot. Uh, he, he had an avenue of escape if he backed up; but he didn’t do that. He had an avenue of escape if he continued that tight right turn, but he didn’t. He turned left at me to go north in the parking lot where there is no exit. He had nowhere to go. What was he doing other than trying to kill me?” (Tab 20, p. 25-26)

Lt. O’Dea said he was sure his shooting at the vehicle posed no danger to any officer or citizen. He felt he was shooting at a hard downward angle a few feet in front of him and that the asphalt would absorb the impact of the rounds. At no time did Lt. O’Dea target the suspect. Lt. O’Dea said he wasn’t sure where the officers were and feared if he shot at the suspect he would be endangering other officers’ lives. When asked how far he was from the vehicle when he began shooting, Lt. O’Dea stated that he was close enough to reach out and touch the vehicle.

Lt. O’Dea was asked if he felt his shooting at the vehicle disabled it. Lt. O’Dea believed his shooting at the vehicle did disable it as he noted the left front tire was flattened and that there was a dump of fluid he related to damage caused by his shooting. When asked what ultimately caused the suspect vehicle to stop, Lt. O’Dea stated that he had no idea. Lt. O’Dea was not sure where each of his rounds struck but was very confident that his rounds struck the target area.

Lt. O’Dea was asked about his performance as a supervisor post-shooting at the scene. He believed he was taking care of supervisor tasks at the scene. He was checking on the Officers for injuries, requesting additional officers, etc. Lt. O’Dea was asked about advising on the radio of shots being fired. He stated that he advised SS911 Dispatcher that he was involved in the shots fired incident.

Lt. O’Dea said that his purpose for calling S290 Sgt. Jagodinski to the scene was to assist Sgt. Paris. Sgt. Jagodinski could make required notifications while Sgt. Paris worked the shooting scene. When asked if he ever formally turned the scene over to Sgt. Paris, Lt. O’Dea replied in part, “No. I did not. When McNeely came and talked to me, uhm, and said that he’d been told

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to take me back to the station, uh, or take me back to my car and follow me back to the station, uhm, I, I had a officer on the scene, uhm, who by our own Policies can act, uhm, uh, in charge of crime scenes. Uh, I had, that Officer was talking to a Sergeant that was dispatched to the call; and Sergeant Paris, it was his Sector. It was his Officers. Uh, he was obviously being talked with, talked to by Huebner, receiving what I believe to be a briefing about what had occurred, uh, uhm, and all. And, you know, I, I'm, I am the Lt. It should not be my responsibility to go seek out a Sergeant, a subordinate, to track them down to say come, come over here, and, and get a briefing. It should be the Sergeant recognizing that I had already acknowledged that I was arriving on a scene; and he should know, she should know that I'm there. Uhm, and that if they have any questions, that they should come up to me and not the other way around; not to mention, I'm the Officer involved in the shooting." (Tab 20, p. 39)

Lt. O'Dea did not recall speaking directly to Sgt. Paris at the scene. IA asked Lt. O'Dea about being contacted by Officer McNeely at the scene and being told by Officer McNeely that he was there to take him back to TPD HQ. Lt. O'Dea clarified that it was "to my car." When asked why it was to take him back to his car, Lt. O'Dea replied, "I don't know. My car was on the other side of the, of the, of the apartment complex. Uhm, but I know by protocol and by experience, uhm, now, you know, may not have been in the best of, of shape to drive, thinking about other, other things. And it just seemed it's part of the protocol is to get the Officer safely back to the station." (Tab 20, p. 44-45)

Lt. O'Dea recalled a specific reaction he had regarding the shooting event. He said his "personal, uhm, reaction to the shooting was, uhm, I remember at one point trembling so much that I put my hands underneath my arms to control just the general shaking from now that all this adrenalin had dumped into my system and there was no place for it to go." (Tab 20, p. 45)

Lt. O'Dea was asked about qualifying with his backup pistol. He said he recalled signing the back-up handgun qualification roster and qualifying with his back-up handgun during the Spring of 2015. He said that during his Spring of 2016 In-Service training, the instructor inquired with the class about who needed a backup qualification. Lt. O'Dea said he advised the instructor that he needed a backup qualification; but at the end of the day, it was not offered. Lt. O'Dea didn't inquire further about the backup qualification with the instructor stating it, "didn't dawn on me that I needed to do that at that point in time."

Lt. O'Dea said there was no delay on his part regarding any forensic processing at the Police HQ, but he did recall sitting in his office waiting for CID to contact him.

Lt. O'Dea was asked if he felt he violated the department policy regarding shooting at a moving vehicle. He replied,

No. I do not. He was trying to kill me. I was trying to stop him. Uh, as I said before, I could not clearly target the driver without putting our Officers at risk. I also had to be concerned about his, the, the suspect's own mental health issues. As I said, he wasn't acting reasonably nor rationally. He might have been suffering from some, uh, medical condition or some issues he was having with drugs. Uh, our, our primary role as Police Officers is to preserve human life. I was trying to preserve life." Lt. O'Dea expanded on why he felt he was within policy. He stated in part, "that vehicle was assaulting me. The, it was a threat to my life. Our department policy also allows us to use tools and

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tactics not normally available. You reference, the, has the department ever provided me training about shooting at a moving vehicle. No, but I have had similar training by this Department, shooting at a moving target coming at me. It's, it's not all that different. I used, uh, I, I used training that I had received from this department in a similar manner; while not necessarily intended that way, uh, I used that to save my life. (Tab 20, p. 59)

Lt. O'Déa was given three (3) enlarged Forensic scene diagrams during the interview. Lt. O'Dea labeled the diagrams #1, #2 and #3. On Diagram #1, Lt. O'Dea was asked to label where Officers and vehicles were located when he arrived. Officer locations are labeled on the diagrams by the initial of their last names. On Diagram #2, Lt. O'Dea was asked to label the suspect vehicle's path and his location when he began firing at the vehicle. On Diagram #3, Lt. O'Dea was asked to label his location when he stopped firing. One unaltered scene diagram with a Legend is included in the tab. The Legend explains evidence markers located on the diagram. The three (3) diagrams used in the interview were signed by Lt. O'Dea, Lt. Standifer, Captain Wade and Sergeant Roberts.

Lt. O'Dea provided IA a written statement at the beginning of his IA interview. Lt. O'Dea believed that Officer Waddell was struck by the suspect vehicle due to Waddell's sudden and violent movement. Lt. O'Dea determined to shoot and get inside the suspect's OODA loop as his best option allowing him to get to a SUV to his right. The suspect vehicle was closing and he continued to move. All of this was happening simultaneously. He cleared my backdrop for the angle of his shooting. During the process of electing to fire, he also considered the fact that the suspect may have mental health issues, given his behavior and the primary duty as police Officers is to preserve life. He believed that there was no other option, but to fire his weapon in a manner which would provide him time to get away.

He began firing while moving laterally and rotating his body to keep a clear sight line while the Nissan continued to accelerate towards him. He continued to move and fire until the Nisan began to veer its wheels to the right in an effort to escape the rounds being fired.

Lt. O'Dea relayed that he "distinctly" remembered Dispatch asking them at the scene if they were alright. They advised that they had reports of shots being fired at the scene. He recalled keying his mic with his right hand and saying that it was him who shot.

#### **Lt. O'Dea's Written Statement to CID**

Lt. O'Dea wrote that Officer Huebner found the accident was more of a road rage incident. He and the officers on scene were dealing with a driver "who had already demonstrated that he was willing to use not only force but deadly force to resolve a minor traffic issue. He had used his vehicle as a battering ram in an attempt to force his way past Police Officers and their vehicles."

Lt. O'Dea stated that Officers had not been able to ascertain if the driver had any weapons; and in his mind, "there was the clear possibility that he could use his vehicle as a weapon again to ram his way out and escape."

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Lt. O'Dea advised South Sound 911 (SS911) to have Fire respond and stage in the event that their assistance was needed. Lt. O'Dea stated that the suspect was refusing to exit the vehicle and may be "experiencing some sort of mental health crisis."

Lt. O'Dea wrote that the vehicle surged forward and went up and over the concrete curb. He and Officer Waddell moved backwards quickly and "it appeared to me that PPO Waddell had been struck by the vehicle." Lt. O'Dea stated that the driver had used his vehicle as a weapon and used it "to intentionally strike PPO Waddell."

Lt. O'Dea wrote that the suspect turned the front wheels sharply to the right and accelerated forward in a tight right hand turn. He relayed that he moved clear of the rear of vehicle and was now in front of the suspect's vehicle.

Lt. O'Dea stated that he "...was in fear of my life, thinking that the driver might use his vehicle to intentionally strike me." Lt. O'Dea was a couple of steps away from the front left of the vehicle. As the vehicle started to approach, he "...fired several careful and well-aimed shots at just the front left wheel of the vehicle."

Lt. O'Dea stated that he was confident from his training with the Police Department and the military that he could "safely and quickly disable the front tire with a few well aimed shots, rendering the vehicle unable to drive..."

## FINDINGS

I find the charge of Violation of the Use of Force **sustained**. The Department's Deadly Use of Force Review Board convened for Lt. O'Dea's on 11/1/2016. Two management representatives (Captain Shawn Gustason and Assistant Chief Michael Ake) and both citizens found that Lt. O'Dea's application of force was not reasonable and not within departmental policy. The two Local 26 representatives found the application of force was reasonable and within departmental policy, due to extraordinary circumstances.

Lt. O'Dea's shooting at a moving vehicle's tire was not within policy of the Tacoma Police Department. Former TPD Range Sergeant Jim Barrett relayed to IA investigators that our department personnel are not trained to fire weapons to disable vehicles. He advised that Lt. O'Dea's actions were not consistent within TPD's firearms training framework.

Lt. O'Dea's decision to shoot at the tire of a moving vehicle actually elevated the already tense and dangerous tactical situation. Lt. O'Dea brought up the fact that he believed the suspect intentionally rammed Officer Huebner's patrol car prior to the shooting. Officer Huebner stated that he never told Lt. O'Dea that he was "rammed." Lt. O'Dea also stated that he believed the suspect intentionally struck Officer Waddell. Officer Waddell told IA that he was not in a position to be struck by the suspect's vehicle. These factors appear to influence Lt. O'Dea to believe the suspect's actions were more dangerous than the other officers on the scene.

Officers Koskovich and Waddell told Sgt. Paris after the incident that they were concerned of the possibility of being struck by Lt. O'Dea's gunfire. These same officers didn't believe they were in danger of being struck by the suspect's vehicle during the incident. Officer Waddell relayed

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that Lt. O'Dea's actions were reasonable; however, shooting at the suspect's tires needlessly endangered other officers on the scene. However, Officer Koskovich didn't believe Lt. O'Dea's actions were necessary or reasonable when he shot at the suspect's tires to stop the car. Officer Koskovich also relayed that he believed he could have been personally in danger by Lt. O'Dea shooting at the tires and the rounds skipping the pavement and hitting him.

Detective Vold is a seasoned detective with the Tacoma Police Department who is a subject matter expert in the Homicide Section. He is also responsible for testing firearms at the Washington State Crime Lab for evidence gathering. Det. Vold believed that Lt. O'Dea fired his service handgun at the suspect's vehicle while standing at the side of the vehicle. He left no doubt that Lt. O'Dea was not standing in front of the vehicle when the shooting began. Det. Vold's interpretation of the evidence coincided with Officers Huebner, Koskovich, and Waddell's statements that Lt. O'Dea was standing to the side of the suspect vehicle when he fired his weapon. Detective Buchanan also stated to IA that there wasn't any evidence or indication that Lt. O'Dea was standing in front of the car when he began shooting. Det. Buchanan believed Lt. O'Dea started shooting while standing, "...in front of the door hinge, next to the door hinge, or behind it." These statements conflict with Lt. O'Dea's sense of grave concern of being run over by the suspect's car as the car had started to pass by him rather than drive towards him as he indicated.

Lt. O'Dea's decision to shoot at the tires of a moving vehicle endangered the lives of the officers on the scene and potentially anybody else who may have been in the area of the shooting. He fired eleven rounds at the tires and due to several reasons, which includes disintegration by hitting the pavement; all of the rounds were not accountable. Lt. O'Dea clearly believed his life and other officers were in danger by the suspect's actions. His evaluation and assessment of the tactical situation differed than the other officers on the scene. Lt. O'Dea's determination to shoot at the vehicle's tire due to his fear of being struck by the suspect's car is negated by the fact that he was shooting at the tires of the vehicle as it was driving past him rather than driving towards him.

I find the charge of Unsatisfactory Performance to be **sustained**. Lt. O'Dea's poor decision making and lack of proper application of our department's Deadly Use of Force Policy added to the dangerous situation. His decision was unacceptable for either a seasoned senior police commander or an inexperienced police recruit officer. His failure to take appropriate actions increased the risks to the officers on the scene and any nearby citizens when he fired his handgun in the apartment complex parking lot. Lt. O'Dea continued the path of making poor decisions as he didn't fully inform South Sound 911 and incoming officers that shots were fired at the scene. This law enforcement practice is critical in insuring any officers responding to the scene have elevated their officer safety posture and prepared for a potentially dangerous situation. If he had done so, this would have facilitated other supervisors working the shift to begin officer shooting protocols.

Lt. O'Dea's rank and position of shift commander had an impact with his interaction with the sergeants, detectives and officers at the scene. As an example, Officer Aaron McNeely was directed by Sgt. Paris to escort Lt. O'Dea back to TPD HQs. Rather than following normal protocol during an officer involved shooting situation, Lt. O'Dea did not go with an officer tasked to drive him to police headquarters. Lt. O'Dea decided to drive himself back to the station

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and had Officer McNeely follow him. This placed Officer McNeely in an awkward position as he knew this was against protocol. Lt. O'Dea also had an uncomfortable interaction with Detective Christopher Shipp when he questioned him about the notes he was taking during the forensics processing situation at the Police HQs. Det. Shipp attributed the interaction to Lt. O'Dea's recent experience from the shooting scene. Det. Reopelle interpreted the interaction as Lt. O'Dea asserting his rank and trying to intimidate Det. Shipp. After Lt. O'Dea was provided the purpose of the notes, he appeared to understand the situation better.

I find the charge of Equipment Violation to be **sustained**. Lt. O'Dea acknowledged he was not current within the department's annual standard of qualification with his back-up handgun. His latest back-up qualification occurred on 1/3/2014 and he did not qualify in 2015 or 2016. He previously qualified in 1999, 2007, 2008, 2010, 2011, 2012, and 2013. Lt. O'Dea explained that he advised the firearms instructor of his need for a backup qualification, but it was not offered. Lt. O'Dea's explanation does not sound reasonable. Lt. O'Dea is a senior commander who should fully understand the back-up handgun policy. He has been a qualified firearms instructor at the police range for several years as well as the department's Training Lieutenant in charge of the police range during his career.

#### **Past Performance**

On August 7, 2015, Lt. O'Dea received a **40 hour suspension** for violating department policies of Unbecoming Performance and Vehicle Pursuit Operations. Lt. O'Dea was the swing shift commander who personally initiated a pursuit of a vehicle on Halloween night through the streets of Tacoma that didn't meet the Tacoma Police Department's vehicle pursuit operations policy. Lt. O'Dea's poor decision to initiate and continue a pursuit ended in a multi-vehicle collision resulting in significant citizen injuries and substantial damage to property. The City subsequently paid a significant settlement to resolve one lawsuit resulting from his actions and continue to work through a second lawsuit from the same incident. (14COM-0142)

#### **Recommendation**

I recommend Lieutenant David O'Dea be **terminated** from employment.

Lt. O'Dea has continued to make unsatisfactory decisions and his performances does not meet the standards expected of a Tacoma Police Officer, especially a Lieutenant who is responsible for maintaining and enforcing the Department's Policy and Procedures. His failure to follow the Department's Use of Force Policy by shooting his handgun at the tire of a moving vehicle endangered the lives of not only his fellow officers on the scene, but potentially anyone in the area of the shooting. Throughout the investigation he has attempted to justify his actions and believes he was within our policies and guidelines. Lt. O'Dea fails to believe he did anything wrong. Lt. O'Dea's tenure and experience on the police department includes an assignment as the training lieutenant assigned in the Administrative Service Bureau where he had direct oversight of the police firearms range. Lt. O'Dea also served as a range safety officer. These two assignments provided him the training and experience above the average officer and commander regarding our Department's Use of Force Policies. Simply put, he should have known better than to fire his weapon at a tire of the moving vehicle.

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The totality of the situation is aggravated by the fact that Lt. O'Dea was previously disciplined in 2015 and received a 40 hour suspension for a serious breach of the Department's Pursuit Policy. He failed to accept any responsibility in that situation as well. His pattern of poor decision making is of great concern. Despite his training, experience, and prior discipline he continues to make decisions that put both fellow officers and citizens at risk. After his last incident, I personally met with Lt. O'Dea and provided him the department's expectations in the areas of leadership and supervisory responsibility. He has also subsequently received training related to Use of Force and Vehicle Operations. As a result of his last disciplinary issue and subsequent training it was my hope his decision making and ability to follow policy would improve. Unfortunately, just over one (1) year after he received discipline for his actions that caused six (6) people, including two children to be sent to the hospital, this incident occurred.

Even in the relatively minor violation of the Department's Equipment Violation, Lt. O'Dea attempted to justify why he wasn't currently qualified to carry his back-up handgun; he attempted to shift the blame to a firearms range cadre member. Once again, Lt. O'Dea does not accept any responsibility for his actions.

Lt. O'Dea does not model the behavior and actions expected of a seasoned law enforcement officer or commander. Lt. O'Dea's last two incidents have created a danger to himself, the officers around him, and the public. Lt. O'Dea has been disciplined previously for violating the Department's Vehicle Operations Policy and received a forty hour (40) suspension. Lt. O'Dea's actions reflect poorly upon himself, the position of a senior police manager, and the Tacoma Police Department.

MA

## **EXHIBIT 3**

**TACOMA POLICE DEPARTMENT**  
**Intra-Departmental Memorandum**



**TO:** Donald L. Ramsdell  
Chief of Police

**FROM:** Assistant Chief Kathy McAlpine *KM*  
Use of Deadly Force Board Chair

**DATE:** November 1, 2016

**SUBJECT: USE OF DEADLY FORCE REVIEW BOARD**  
**INTERNAL AFFAIRS CASE 16UOF-0094**

On August 6, 2016, at 1838 hours, South Sound 911 broadcasted a pending vehicle collision at the El Popo Apartments located at 3228 South Union Avenue in Tacoma. Officer Edwin Huebner was in the area and responded to the call. Upon arrival, he contacted Mr. Paterno who said that he was driving his vehicle in the area of Union Avenue and Center Street, and nearly collided with Mendoza Davalos' vehicle. Mr. Paterno said that if they actually had collided, it would likely have been his fault but the vehicles did not hit each other. Mr. Paterno said that Mendoza Davalos was hostile toward him when he said there was no accident. Mr. Paterno was advised by the 911 Operator to take pictures and try to exchange information with Mendoza Davalos, but Mr. Paterno stopped and waited for Police due to Mendoza Davalos' hostility. Officer Huebner contacted Mendoza Davalos who was rubbing his neck while seated in his vehicle. Mendoza Davalos said that Mr. Paterno ran a red light causing him to "stop really fast" to avoid a collision. Mendoza Davalos demanded Mr. Paterno's information and insurance so he could go to the hospital because he wasn't feeling well. Officer Huebner offered medical aid to respond to the scene but Mendoza Davalos refused and insisted that Officer Huebner provide him with Mr. Paterno's information and complete a collision report. Mendoza Davalos became increasingly agitated. Officer Huebner got both drivers' information which he put in the CAD Inquiry and told Mr. Paterno to leave due to Mendoza Davalos' behavior. When Officer Huebner attempted to give Mendoza Davalos an Incident Report Card with the report number on it, Mendoza Davalos rolled up his driver's window, started his vehicle, and began to leave. Officer Huebner was in his marked patrol vehicle behind Mendoza Davalos' vehicle as they approached the exit of the driveway which emptied onto South Union Avenue. Mendoza Davalos did not merge onto Union Avenue even though traffic had cleared, then got out of his vehicle and began taking pictures. When Mendoza Davalos got back into his vehicle, Officer Huebner said that Mendoza Davalos looked into his vehicle's rear view mirror, smiled, and backed into Officer Huebner's fully marked patrol car. Mendoza Davalos then conducted a several point turn and parked in a stall in the apartment parking lot facing west. Officer Huebner activated his emergency lights, turned around and pulled very close to Mendoza Davalos' vehicle, so he could not ram his patrol car again. Officer Huebner's vehicle sustained very little damage to the front push bar and he was not injured. Officer Huebner attempted to contact Mendoza Davalos and take him into custody; but Mendoza Davalos had locked his door, rolled up his windows, and pulled his hood over his head. Officer Huebner backed off, moved to the rear of his vehicle, and requested another unit and a Supervisor. Officers Koskovich and Waddell (a two-officer car) responded and arrived. Officer Huebner advised them of the situation. Officer Waddell took a position on the driver's side of Mendoza Davalos' vehicle and Officer Koskovich took a position on the passenger side. Both Officers Koskovich and Waddell had their handguns out, low-ready draw and direct, due to their inability to see Mendoza Davalos' hands and his refusal to show them. Lieutenant O'Dea responded and arrived at the El Popo Apartments. Officer Huebner advised Lieutenant O'Dea of the incident and that Mendoza Davalos was now locked inside his vehicle, ignoring commands to show his hands. Lieutenant O'Dea and Officer Huebner began to discuss a plan of action. Officer Waddell advised that Mendoza Davalos appeared to be on the phone with 911, which Dispatch confirmed. Officers told Dispatch to advise Mendoza Davalos to exit the vehicle and that he was under arrest. Mendoza Davalos told the 911 Operator that he did not understand why he was under



arrest and that he wanted to go to the hospital. Dispatch told Officers that Mendoza Davalos was threatening to run them over with a vehicle. Lieutenant O'Dea requested that Fire stage in case medical aid was needed. Mendoza Davalos put his vehicle in gear and went forward, up and over the curbing. Officer Waddell struck the driver's window several times with his baton and the window shattered. Officer Koskovich struck the passenger side window which also shattered. Due to his inability to go farther forward, Mendoza Davalos put his vehicle into reverse, accelerated, and struck a black Chevrolet Impala that he had been parked next to. Mendoza Davalos pushed the Impala into a Chevrolet S10 pickup that it was parked next to. Mendoza Davalos then pulled forward and was facing north in the lot as he drove towards a silver SUV. Lieutenant O'Dea had moved from behind Officer Huebner's patrol car and was standing near the driver's door of the silver SUV. Mendoza Davalos continued to move forward towards the silver SUV and then turned slightly to the northeast. As the vehicle passed the SUV, Lieutenant O'Dea fired eleven (11) rounds from his handgun targeting the vehicle's left front tire. Lieutenant O'Dea stated he thought the suspect vehicle had struck an officer and was fearful that the vehicle was going to strike him. Lieutenant O'Dea stated he fired several careful, well-aimed shots at the front left wheel of the vehicle to disable it. Mendoza Davalos continued north in the lot where there was no outlet to the street. Officer Huebner got into his patrol car as Mendoza Davalos attempted to turn his vehicle around. Officer Huebner used his patrol car to pin the front right corner of Mendoza Davalos' vehicle to prevent it from moving. Mendoza Davalos attempted to shift gears to free his vehicle as Officers Koskovich and Waddell moved towards the vehicle to take Mendoza Davalos into custody. Officers Koskovich and Waddell struggled with Mendoza Davalos to take him into custody. Officer Huebner deployed his Electronic Control Tool (ECT) through the passenger side window at Mendoza Davalos which was effective. Mendoza Davalos was taken to the ground and handcuffed. Post application procedures were followed and medical aid was summoned to check Mendoza Davalos. Sergeant Paris arrived on-scene after Mendoza Davalos was taken into custody. Lieutenant O'Dea told Sergeant Paris that he was aiming for the vehicle's tire when he was shooting.

Officers Koskovich and Waddell ultimately transported Mendoza Davalos to the hospital. He was cleared medically, and booked into custody at the Pierce County Jail. Mendoza Davalos did not have any injuries and his vehicle sustained minor damage. Officer Huebner's vehicle sustained very minor damage. The two vehicles Mendoza Davalos struck sustained major damage. Lieutenant O'Dea had sustained small lacerations to his chin and left arm just above the wrist during the incident but he was not sure exactly how it occurred. No other Officers were injured.

The Use of Force Board, comprised of Citizen, Union, and Management representatives, convened on Tuesday, November 1, 2016, at 0900 hours in the Chief's Conference Room in order to conduct a review of the above noted Use of Deadly Force incident.

The Board reached a split decision regarding this Use of Force. The two Management Representatives found this Use of Force outside of Policy and recommended an internal investigation be conducted regarding possible Policy violations. The two Local 26 Representatives determined the Use of Force to be within Policy and recommend no further action. (See attachment for Local 26 President's comments.) The two Citizen Representatives found this Use of Force to be outside of Policy; one recommended re-training, while the other recommended that the Lieutenant be reprimanded. Please see individual Board findings for specific comments.

I concur with majority finding that this Use of Force was outside of Policy and agree that an internal investigation should be conducted.

Attachments -- (6) Deadly Force Board Findings/Local 26 comments

/bb

**TACOMA POLICE DEPARTMENT**  
**Intra-Departmental Memorandum**



**TO:** Donald L. Ramsdell  
Chief of Police

**FROM:** Assistant Chief Mike Ake  
Operations Bureau  
Management Representative

**DATE:** November 1, 2016

**SUBJECT: USE OF DEADLY FORCE REVIEW – Internal Affairs Case #16UOF-0094**

After examining all of the evidence, I have arrived at the following decision and have made the following recommendations concerning this incident involving Tacoma Police Lieutenant David O’Dea.

**BRIEF OVERVIEW:**

TPD Case Number: 16-219-01280  
Officer Involved: Lieutenant David O’Dea  
Name of Subject Involved: Jose Manuel Mendoza Davalos  
Date/Time of Incident: Saturday, August 6th, 2016 at 1838 hours  
Address/Location of Incident: 3228 South Union Avenue, Tacoma  
Type of Incident: Officer Involved Shooting  
Injuries: Non-Fatal-Property Damage

**SYNOPSIS OF INCIDENT FINDINGS:**

On August 6, 2016, at 1838 hours, South Sound 911 broadcasted a pending vehicle collision at the El Popo Apartments located at 3228 South Union Avenue in Tacoma. Officer Edwin Huebner was in the area and responded to the call. Upon arrival, he contacted Mr. Paterno who said that he was driving his vehicle in the area of Union Avenue and Center Street, and nearly collided with Mendoza Davalos’ vehicle. Mr. Paterno said that if they actually had collided, it would likely have been his fault but the vehicles did not hit each other. Mr. Paterno said that Mendoza Davalos was hostile toward him when he said there was no accident. Mr. Paterno was advised by the 911 Operator to take pictures and try to exchange information with Mendoza Davalos, but Mr. Paterno stopped and waited for Police due to Mendoza Davalos’ hostility. Officer Huebner contacted Mendoza Davalos who was rubbing his neck while seated in his vehicle. Mendoza Davalos said that Mr. Paterno ran a red light causing him to “*stop really fast*” to avoid a collision. Mendoza Davalos demanded Mr. Paterno’s information and insurance so he could go to the hospital because he wasn’t feeling well. Officer Huebner offered medical aid to respond to the scene but Mendoza Davalos refused and insisted that Officer Huebner provide him with Mr. Paterno’s information and complete a collision report. Mendoza Davalos became increasingly agitated. Officer Huebner got both drivers’ information which he put in the CAD Inquiry and told Mr.

Paterno to leave due to Mendoza Davalos' behavior. When Officer Huebner attempted to give Mendoza Davalos an Incident Report Card with the report number on it, Mendoza Davalos rolled up his driver's window, started his vehicle, and began to leave. Officer Huebner was in his marked patrol vehicle behind Mendoza Davalos' vehicle as they approached the exit of the driveway which emptied onto South Union Avenue. Mendoza Davalos did not merge onto Union Avenue even though traffic had cleared, then got out of his vehicle and began taking pictures. When Mendoza Davalos got back into his vehicle, Officer Huebner said that Mendoza Davalos looked into his vehicle's rear view mirror, smiled, and backed into Officer Huebner's fully marked patrol car. Mendoza Davalos then conducted a several point turn and parked in a stall in the apartment parking lot facing west. Officer Huebner activated his emergency lights, turned around and pulled very close to Mendoza Davalos' vehicle, so he could not ram his patrol car again. Officer Huebner's vehicle sustained very little damage to the front push bar and he was not injured. Officer Huebner attempted to contact Mendoza Davalos and take him into custody; but Mendoza Davalos had locked his door, rolled up his windows, and pulled his hoody over his head. Officer Huebner backed off, moved to the rear of his vehicle, and requested another unit and a Supervisor. Officers Koskovich and Waddell (a two-officer car) responded and arrived. Officer Huebner advised them of the situation. Officer Waddell took a position on the driver's side of Mendoza Davalos' vehicle and Officer Koskovich took a position on the passenger side. Both Officers Koskovich and Waddell had their handguns out, low-ready draw and direct, due to their inability to see Mendoza Davalos' hands and his refusal to show them. Lieutenant O'Dea responded and arrived at the El Popo Apartments. Officer Huebner advised Lieutenant O'Dea of the incident and that Mendoza Davalos was now locked inside his vehicle, ignoring commands to show his hands. Lieutenant O'Dea and Officer Huebner began to discuss a plan of action. Officer Waddell advised that Mendoza Davalos appeared to be on the phone with 911, which Dispatch confirmed. Officers told Dispatch to advise Mendoza Davalos to exit the vehicle and that he was under arrest. Mendoza Davalos told the 911 Operator that he did not understand why he was under arrest and that he wanted to go to the hospital. Dispatch told Officers that Mendoza Davalos was threatening to run them over with a vehicle. Lieutenant O'Dea requested that Fire stage in case medical aid was needed. Mendoza Davalos put his vehicle in gear and went forward, up and over the curbing. Officer Waddell struck the driver's window several times with his baton and the window shattered. Officer Koskovich struck the passenger side window which also shattered. Due to his inability to go farther forward, Mendoza Davalos put his vehicle into reverse, accelerated, and struck a black Chevrolet Impala that he had been parked next to. Mendoza Davalos pushed the Impala into a Chevrolet S10 pickup that it was parked next to. Mendoza Davalos then pulled forward and was facing north in the lot as he drove towards a silver SUV. Lieutenant O'Dea had moved from behind Officer Huebner's patrol car and was standing near the driver's door of the silver SUV. Mendoza Davalos continued to move forward towards the silver SUV and then turned slightly to the northeast. As the vehicle passed the SUV, Lieutenant O'Dea fired eleven (11) rounds from his handgun targeting the vehicle's left front tire. Lieutenant O'Dea stated he thought the suspect vehicle had struck an officer and was fearful that the vehicle was going to strike him. Lieutenant O'Dea stated he fired several careful, well-aimed shots at the front left wheel of the vehicle to disable it. Mendoza Davalos continued north in the lot where there was no outlet to the street. Officer Huebner got into his patrol car as Mendoza Davalos attempted to turn his vehicle around. Officer Huebner used his patrol car to pin the front right corner of Mendoza Davalos' vehicle to prevent it from moving. Mendoza Davalos attempted to shift gears to free his vehicle as Officers Koskovich and Waddell moved towards the vehicle to take Mendoza Davalos into custody. Officers Koskovich and Waddell struggled with Mendoza Davalos to take him into custody. Officer Huebner deployed his Electronic Control Tool (ECT) through the passenger side window at Mendoza Davalos which was effective. Mendoza Davalos was taken to the

ground and handcuffed. Post application procedures were followed and medical aid was summoned to check Mendoza Davalos. Sergeant Paris arrived on-scene after Mendoza Davalos was taken into custody. Lieutenant O'Dea told Sergeant Paris that he was aiming for the vehicle's tire when he was shooting.

Officers Koskovich and Waddell ultimately transported Mendoza Davalos to the hospital. He was cleared medically, and booked into custody at the Pierce County Jail. Mendoza Davalos did not have any injuries and his vehicle sustained minor damage. Officer Huebner's vehicle sustained very minor damage. The two vehicles Mendoza Davalos struck sustained major damage. Lieutenant O'Dea had sustained small lacerations to his chin and left arm just above the wrist during the incident but he was not sure exactly how it occurred. No other Officers were injured.

**FINDINGS:**

- A. Use of Deadly Force was reasonable and within Department policy.
- B. Use of Deadly Force was not reasonable and not within Department policy.
- C. Use of Deadly Force was accidental with reasonable circumstances.
- D. Use of Deadly Force was accidental with no reasonable circumstances.
- E. Reasonable and within Department policy due to extraordinary circumstances.

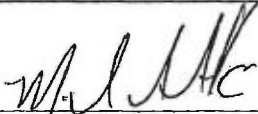
**RECOMMENDATION:**

- A. Recommend no further action.
- B. Recommendations with re-training   
Please specify area(s) of re-training:

C. Other, please specify.

RECOMMEND INTERNAL INVESTIGATION FOR POLICY VIOLATIONS

**Signature of Review Board Member:**



Assistant Chief Michael Ake  
Operations Bureau  
Management Representative

**TACOMA POLICE DEPARTMENT**  
**Intra-Departmental Memorandum**



**TO:** Donald L. Ramsdell  
Chief of Police

**FROM:** Captain Shawn Gustason  
Operations Bureau  
Management Representative

**DATE:** November 1, 2016

**SUBJECT:** USE OF DEADLY FORCE REVIEW – Internal Affairs Case #16UOF-0094

After examining all of the evidence, I have arrived at the following decision and have made the following recommendations concerning this incident involving Tacoma Police Lieutenant David O'Dea.

**BRIEF OVERVIEW:**

TPD Case Number: 16-219-01280  
Officer Involved: Lieutenant David O'Dea  
Name of Subject Involved: Jose Manuel Mendoza Davalos  
Date/Time of Incident: Saturday, August 6th, 2016 at 1838 hours  
Address/Location of Incident: 3228 South Union Avenue, Tacoma  
Type of Incident: Officer Involved Shooting  
Injuries: Non-Fatal-Property Damage

**SYNOPSIS OF INCIDENT FINDINGS:**

On August 6, 2016, at 1838 hours, South Sound 911 broadcasted a pending vehicle collision at the El Popo Apartments located at 3228 South Union Avenue in Tacoma. Officer Edwin Huebner was in the area and responded to the call. Upon arrival, he contacted Mr. Paterno who said that he was driving his vehicle in the area of Union Avenue and Center Street, and nearly collided with Mendoza Davalos' vehicle. Mr. Paterno said that if they actually had collided, it would likely have been his fault but the vehicles did not hit each other. Mr. Paterno said that Mendoza Davalos was hostile toward him when he said there was no accident. Mr. Paterno was advised by the 911 Operator to take pictures and try to exchange information with Mendoza Davalos, but Mr. Paterno stopped and waited for Police due to Mendoza Davalos' hostility. Officer Huebner contacted Mendoza Davalos who was rubbing his neck while seated in his vehicle. Mendoza Davalos said that Mr. Paterno ran a red light causing him to "stop really fast" to avoid a collision. Mendoza Davalos demanded Mr. Paterno's information and insurance so he could go to the hospital because he wasn't feeling well. Officer Huebner offered medical aid to respond to the scene but Mendoza Davalos refused and insisted that Officer Huebner provide him with Mr. Paterno's information and complete a collision report. Mendoza Davalos became increasingly agitated. Officer Huebner got both drivers' information which he put in the CAD Inquiry and told Mr.

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Officers Koskovich and Waddell ultimately transported Mendoza Davalos to the hospital. He was cleared medically, and booked into custody at the Pierce County Jail. Mendoza Davalos did not have any injuries and his vehicle sustained minor damage. Officer Huebner's vehicle sustained very minor damage. The two vehicles Mendoza Davalos struck sustained major damage. Lieutenant O'Dea had sustained small lacerations to his chin and left arm just above the wrist during the incident but he was not sure exactly how it occurred. No other Officers were injured.

**FINDINGS:**

- A. Use of Deadly Force was reasonable and within Department policy.
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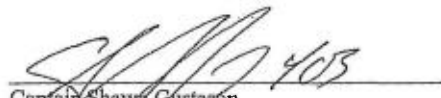
**RECOMMENDATION:**

- A. Recommend no further action.
- B. Recommendations with re-training   
Please specify area(s) of re-training:

C. Other, please specify.

*FURTHER INVESTIGATION FOR UNSATISFACTORY PERFORMANCE*

**Signature of Review Board Member:**

  
\_\_\_\_\_  
Captain Shawn Gustason  
Operations Bureau  
Management Representative

**TACOMA POLICE DEPARTMENT**  
**Intra-Departmental Memorandum**



**TO:** Donald L. Ramsdell  
Chief of Police

**FROM:** Lieutenant Alan Roberts  
Union Local #26  
Union Representative

**DATE:** November 1, 2016

**SUBJECT: USE OF DEADLY FORCE REVIEW – Internal Affairs Case #16UOF-0094**

After examining all of the evidence, I have arrived at the following decision and have made the following recommendations concerning this incident involving Tacoma Police Lieutenant David O'Dea.

**BRIEF OVERVIEW:**

TPD Case Number: 16-219-01280  
Officer Involved: Lieutenant David O'Dea  
Name of Subject Involved: Jose Manuel Mendoza Davalos  
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Address/Location of Incident: 3228 South Union Avenue, Tacoma  
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**SYNOPSIS OF INCIDENT FINDINGS:**

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**FINDINGS:**

- A. Use of Deadly Force was reasonable and within Department policy.
- B. Use of Deadly Force was not reasonable and not within Department policy.
- C. Use of Deadly Force was accidental with reasonable circumstances.
- D. Use of Deadly Force was accidental with no reasonable circumstances.
- E. Reasonable and within Department policy due to extraordinary circumstances.

**RECOMMENDATION:**

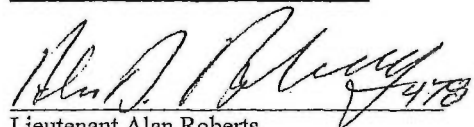
- A. Recommend no further action.
- B. Recommendations with re-training   
Please specify area(s) of re-training:

\_\_\_\_\_

- C. Other, please specify.

SEE Attached Document

**Signature of Review Board Member:**



Lieutenant Alan Roberts  
Union Local #26  
Representative

Lt. O'Dea did not violate either department policy or procedures. Lt. O'Dea was in fear of his life and those of his subordinate officers who were all within feet of the suspect ramming cars and driving at officers not to mention the suspects own words he was going to assault the officers.

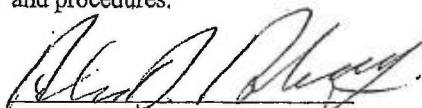
Under department policy P3.1.5(B), The Tacoma Police *Department recognizes and respects the Value of all human life*. Lt. O'Dea not only followed this policy but he believes in this policy as the taking of a human life should be the last resort an officer should execute. Lt. O'Dea stated he was applying the use of deadly force against a suspect who was engaging in deadly force. With that said, in following this policy, Lt. O'Dea believed in his overall training as an officer and a soldier in the military; he could stop the deadly force without having to kill Mr. Mendoza.


Lt. O'Dea was acting under the *reasonable officer standard* which is based on the reasonableness of what a normal officer might do under the same circumstances. Lt. O'Dea believed that even though the S/Mendoza was using deadly force, he believed he could stop that threat without having to kill Mr. Mendoza and Lt. O'Dea did stop him.

Under department policy P3.1, "*Officers may use tools and tactics outside the parameters of departmental training.*" They just have to be reasonable. Lt. O'Dea believed he could stop the use of deadly force and save Mr. Mendoza without having to kill him. Lt. O'Dea did not want to kill Mr. Mendoza if he did not have too. The killing of a human life is the last resort reaction that an officer should use *especially if other options are still available*.

Under department policy P3.1.6(E), it states that, "Deadly Force **should** not be used against a subject in a moving vehicle unless it is necessary to protect against imminent danger to the life of the Officer or others." The policy as stated does not exclude or eliminate an officer from shooting at a moving vehicle. Nowhere in our policy does it state that an Officer **Shall** not shot at a moving vehicle. That is because of P3.1 allowing officers in the field to use tools and tactics outside the parameters of departmental training that reasonable officer might employ.

For this reason, Lieutenants Scruggs and A. D. Roberts, union representation to the deadly force review board of Lt. O'Dea, unanimously agree that Lt. O'Dea was within departmental policy and procedures.

 Nov. 2, 2016  
Alan D. Roberts, President  
Tacoma Police Management Association

  
Fred Scruggs, Treasure  
Tacoma Police Management Association

**TACOMA POLICE DEPARTMENT**  
**Intra-Departmental Memorandum**



**TO:** Donald L. Ramsdell  
Chief of Police

**FROM:** Lieutenant Fred Scruggs  
Union Local #26  
Union Representative

**DATE:** November 1, 2016

**SUBJECT: USE OF DEADLY FORCE REVIEW – Internal Affairs Case #16UOF-0094**

After examining all of the evidence, I have arrived at the following decision and have made the following recommendations concerning this incident involving Tacoma Police Lieutenant David O’Dea.

**BRIEF OVERVIEW:**

TPD Case Number: 16-219-01280  
Officer Involved: Lieutenant David O’Dea  
Name of Subject Involved: Jose Manuel Mendoza Davalos  
Date/Time of Incident: Saturday, August 6th, 2016 at 1838 hours  
Address/Location of Incident: 3228 South Union Avenue, Tacoma  
Type of Incident: Officer Involved Shooting  
Injuries: Non-Fatal-Property Damage

**SYNOPSIS OF INCIDENT FINDINGS:**

On August 6, 2016, at 1838 hours, South Sound 911 broadcasted a pending vehicle collision at the El Popo Apartments located at 3228 South Union Avenue in Tacoma. Officer Edwin Huebner was in the area and responded to the call. Upon arrival, he contacted Mr. Paterno who said that he was driving his vehicle in the area of Union Avenue and Center Street, and nearly collided with Mendoza Davalos’ vehicle. Mr. Paterno said that if they actually had collided, it would likely have been his fault but the vehicles did not hit each other. Mr. Paterno said that Mendoza Davalos was hostile toward him when he said there was no accident. Mr. Paterno was advised by the 911 Operator to take pictures and try to exchange information with Mendoza Davalos, but Mr. Paterno stopped and waited for Police due to Mendoza Davalos’ hostility. Officer Huebner contacted Mendoza Davalos who was rubbing his neck while seated in his vehicle. Mendoza Davalos said that Mr. Paterno ran a red light causing him to “*stop really fast*” to avoid a collision. Mendoza Davalos demanded Mr. Paterno’s information and insurance so he could go to the hospital because he wasn’t feeling well. Officer Huebner offered medical aid to respond to the scene but Mendoza Davalos refused and insisted that Officer Huebner provide him with Mr. Paterno’s information and complete a collision report. Mendoza Davalos became increasingly agitated. Officer Huebner got both drivers’ information which he put in the CAD Inquiry and told Mr.

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ground and handcuffed. Post application procedures were followed and medical aid was summoned to check Mendoza Davalos. Sergeant Paris arrived on-scene after Mendoza Davalos was taken into custody. Lieutenant O'Dea told Sergeant Paris that he was aiming for the vehicle's tire when he was shooting.

Officers Koskovich and Waddell ultimately transported Mendoza Davalos to the hospital. He was cleared medically, and booked into custody at the Pierce County Jail. Mendoza Davalos did not have any injuries and his vehicle sustained minor damage. Officer Huebner's vehicle sustained very minor damage. The two vehicles Mendoza Davalos struck sustained major damage. Lieutenant O'Dea had sustained small lacerations to his chin and left arm just above the wrist during the incident but he was not sure exactly how it occurred. No other Officers were injured.

**FINDINGS:**

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**RECOMMENDATION:**

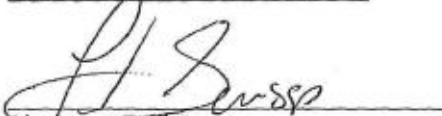
- A. Recommend no further action.
- B. Recommendations with re-training   
Please specify area(s) of re-training:

\_\_\_\_\_

- C. Other, please specify.

veh ~~wording~~ wording in policy re: shooting AT moving

**Signature of Review Board Member:**

  
Lieutenant Fred Scruggs  
Union Local #26  
Representative

**TACOMA POLICE DEPARTMENT**  
**Intra-Departmental Memorandum**



**TO:** Donald L. Ramsdell  
Chief of Police

**FROM:** Ken Sikes  
Tacoma Resident  
Citizen Representative

**DATE:** November 1, 2016

**SUBJECT: USE OF DEADLY FORCE REVIEW – Internal Affairs Case #16UOF-0094**

After examining all of the evidence, I have arrived at the following decision and have made the following recommendations concerning this incident involving Tacoma Police Lieutenant David O’Dea.

**BRIEF OVERVIEW:**

TPD Case Number: 16-219-01280  
Officer Involved: Lieutenant David O’Dea  
Name of Subject Involved: Jose Manuel Mendoza Davalos  
Date/Time of Incident: Saturday, August 6th, 2016 at 1838 hours  
Address/Location of Incident: 3228 South Union Avenue, Tacoma  
Type of Incident: Officer Involved Shooting  
Injuries: Non-Fatal-Property Damage

**SYNOPSIS OF INCIDENT FINDINGS:**

On August 6, 2016, at 1838 hours, South Sound 911 broadcasted a pending vehicle collision at the El Popo Apartments located at 3228 South Union Avenue in Tacoma. Officer Edwin Huebner was in the area and responded to the call. Upon arrival, he contacted Mr. Paterno who said that he was driving his vehicle in the area of Union Avenue and Center Street, and nearly collided with Mendoza Davalos’ vehicle. Mr. Paterno said that if they actually had collided, it would likely have been his fault but the vehicles did not hit each other. Mr. Paterno said that Mendoza Davalos was hostile toward him when he said there was no accident. Mr. Paterno was advised by the 911 Operator to take pictures and try to exchange information with Mendoza Davalos, but Mr. Paterno stopped and waited for Police due to Mendoza Davalos’ hostility. Officer Huebner contacted Mendoza Davalos who was rubbing his neck while seated in his vehicle. Mendoza Davalos said that Mr. Paterno ran a red light causing him to “stop really fast” to avoid a collision. Mendoza Davalos demanded Mr. Paterno’s information and insurance so he could go to the hospital because he wasn’t feeling well. Officer Huebner offered medical aid to respond to the scene but Mendoza Davalos refused and insisted that Officer Huebner provide him with Mr. Paterno’s information and complete a collision report. Mendoza Davalos became increasingly agitated. Officer Huebner got both drivers’ information which he put in the CAD Inquiry and told Mr.

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Officers Koskovich and Waddell ultimately transported Mendoza Davalos to the hospital. He was cleared medically, and booked into custody at the Pierce County Jail. Mendoza Davalos did not have any injuries and his vehicle sustained minor damage. Officer Huebner's vehicle sustained very minor damage. The two vehicles Mendoza Davalos struck sustained major damage. Lieutenant O'Dea had sustained small lacerations to his chin and left arm just above the wrist during the incident but he was not sure exactly how it occurred. No other Officers were injured.

**FINDINGS:**

- A. Use of Deadly Force was reasonable and within Department policy.
- B. Use of Deadly Force was not reasonable and not within Department policy.
- C. Use of Deadly Force was accidental with reasonable circumstances.
- D. Use of Deadly Force was accidental with no reasonable circumstances.
- E. Reasonable and within Department policy due to extraordinary circumstances.

**RECOMMENDATION:**

A. Recommend no further action.

B. Recommendations with re-training

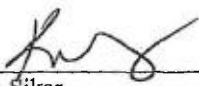
Please specify area(s) of re-training:

Retraining in when to use deadly force specifically in vehicles

C. Other, please specify.

While I appreciate Lt Odea did not fire at the driver to disable the threat he felt, & firing at the tires is clearly not within policy. Given when Lt. Odea was stoned in relation to the vehicle, it also appears when first shots were fired, it appears the threat was actually pressing, yet he began to fire anyway. For these reasons, retraining seems wise.

**Signature of Review Board Member:**

  
\_\_\_\_\_  
Ken Sikes  
Tacoma Resident  
Citizen Representative

**TACOMA POLICE DEPARTMENT**  
**Intra-Departmental Memorandum**



**TO:** Donald L. Ramsdell  
Chief of Police

**FROM:** Kevin Lindsay  
Tacoma Resident  
Citizen Representative

**DATE:** November 1, 2016

**SUBJECT:** USE OF DEADLY FORCE REVIEW – Internal Affairs Case #16UOF-0094

After examining all of the evidence, I have arrived at the following decision and have made the following recommendations concerning this incident involving Tacoma Police Lieutenant David O'Dea.

**BRIEF OVERVIEW:**

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Officer Involved: Lieutenant David O'Dea  
Name of Subject Involved: Jose Manuel Mendoza Davalos  
Date/Time of Incident: Saturday, August 6th, 2016 at 1838 hours  
Address/Location of Incident: 3228 South Union Avenue, Tacoma  
Type of Incident: Officer Involved Shooting  
Injuries: Non-Fatal-Property Damage

**SYNOPSIS OF INCIDENT FINDINGS:**

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- E. Reasonable and within Department policy due to extraordinary circumstances.

**RECOMMENDATION:**

A. Recommend no further action.

B. Recommendations with re-training

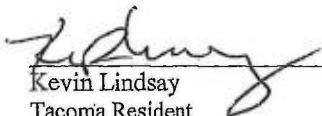
Please specify area(s) of re-training:

Review officers of department policies

C. Other, please specify.

I feel that the officer did not shoot to harm was good  
But not within policy. This officer should be reprimanded but  
not to the point of losing his job.

**Signature of Review Board Member:**

  
Kevin Lindsay  
Tacoma Resident  
Citizen Representative

## **EXHIBIT 4**

# TACOMA POLICE DEPARTMENT

## Intra-Departmental Memorandum



**TO:** Donald L. Ramsdell  
Chief of Police

**FROM:** Assistant Chief Peter Cribbin *[Signature]* **DATE:** April 24, 2015  
Administrative Services Bureau

**SUBJECT: COMPLAINT FINDINGS AND RECOMMENDATIONS**  
**IA Case #14COM-0142 LIEUTENANT DAVID O'DEA**

I have reviewed the Internal Affairs' investigation #14COM-0142 regarding the actions of Lieutenant David O'Dea. Lieutenant O'Dea is accused of violating the following department policies:

- P3.2.2 Vehicle Pursuit Operations
- P1.1.6 (A)(11) Unsatisfactory Performance

### SYNOPSIS

On October 31<sup>st</sup>, 2014, at 1800 hours, Halloween night, Lieutenant O'Dea was looking for a domestic violence suspect in the area of 6<sup>th</sup> and Stevens. The domestic incident had occurred a few minutes earlier in the area of the 4000 block of North 13th. The suspect, William McClain, had left the area on foot, and was described as a twenty-seven old white male. Dispatch also advised that the victim declined medical aid, left the scene, and went to the Walgreen's on 6<sup>th</sup> Avenue.

While Lieutenant O'Dea was in the area of 6<sup>th</sup> and Stevens, he saw a SUV pull into the Walgreen's parking lot. Lieutenant O'Dea said the SUV was being driven in a somewhat erratic manner and he believed the driver may have possibly been the domestic violence suspect. After observing the actions of the SUV driver, Lieutenant O'Dea concluded he was not the suspect.

As Lieutenant O'Dea was exiting the Walgreen's parking lot, he observed a red Jeep travelling westbound on 6<sup>th</sup> Avenue. The driver appeared to be in a bit of a rush and the physical characteristics of the Jeep's driver led Lieutenant O'Dea to believe he may have possibly been the suspect from the domestic. Lieutenant O'Dea pulled in behind the Jeep which was stopped for a red light at 6<sup>th</sup> and Stevens. Lieutenant O'Dea said the Jeep's driver looked both ways, drove through the red light, and nearly struck another vehicle. Lieutenant O'Dea said he activated his emergency equipment; and after clearing the intersection, he attempted to stop the Jeep for Reckless Driving. The Jeep did not stop and Lieutenant O'Dea considered the driver to be "Actively Resistant."

Lieutenant O'Dea pursued the Jeep at speeds up to sixty miles an hour from the area of 6<sup>th</sup> and Verde to South 12<sup>th</sup> and Union. Lieutenant O'Dea related that during this time the driver of the Jeep committed several traffic violations. The pursuit ended when the Jeep became involved in a collision at South 12<sup>th</sup> and Union. The injuries sustained by innocent third parties were severe. The initial on scene Police and Fire responders believed they had a double fatality. Injuries to these victims included a broken back, broken ankle, broken wrist, bruised lung, and a broken sternum. (Six victims were transported to hospitals, not including the suspect.)

The driver fled on foot but was apprehended by Sergeant Fick. The driver of the Jeep, Jason Haskins, was found to have marijuana and alcohol in his system. Haskins was not the suspect in the domestic;

and he was later charged with Eluding, Vehicular Assault, and Hit and Run. Haskins did not have any involvement in the original Domestic Dispute call.

## **INVESTIGATION**

### **Captain Gustason**

Per Department police P3.2.3 (H) all vehicle pursuits are reviewed by the chain of command via the Electronic Use of Force report. After reviewing the incident, Captain Gustason recommended that the incident be investigated by Internal Affairs. He indicated that after reviewing the audio tapes of the incident, it was apparent that the initiation and continuation phases of the pursuit appeared to be outside of Department Policy. He indicated that Lieutenant O'Dea's radio procedures also appeared to be outside of Department Policy.

### **CAD/Dispatch Transcription**

At 17:5956 hours Lieutenant O'Dea advised dispatch "Lincoln 7 Priority". He provided the vehicle license and something to the effect "(Unintelligible) from me, north 7<sup>th</sup> coming up on Stevens." At 18:00:09 hours Lieutenant O'Dea states "vehicle almost hit another car, southbound on Stevens, speeds sixty miles an hour." At 18:00:31 hours Sergeant Fick advised he was "behind the Lincoln unit". Lieutenant O'Dea advised "passing Tyler. Looks like he's going to go southbound on Proctor; nope, continuing past Proctor". At 18:01:11 Lieutenant O'Dea advised "he crashed, hit the transformer on Union. All lights out. TA. I need a couple of other cars here."

### **Sergeant Fick:**

During his interview, Sergeant Fick said he heard Lieutenant O'Dea call out over the radio that he was trying to stop a vehicle travelling southbound on Stevens Street from North 7<sup>th</sup>. Lieutenant O'Dea never actually said he was in pursuit. Sergeant Fick did not hear the reason for the pursuit; however, he knew Lieutenant O'Dea was in the area of the Proctor Treats where children participate in Halloween events and assumed the vehicle Lieutenant O'Dea was pursuing was involved in a serious crime in the area or a hit and run.

Sergeant Fick said he activated his emergency lights to stop all eastbound traffic on South 12<sup>th</sup> to avoid a collision if the fleeing vehicle continued southbound on Stevens to South 12<sup>th</sup>. He then observed the Jeep, which was travelling at an estimated speed of fifty miles per hour, fail to stop for a red light on Stevens at South 12<sup>th</sup>. Sergeant Fick said the Jeep then turned eastbound onto South 12<sup>th</sup> Street; and a few seconds later, Lieutenant O'Dea's patrol vehicle, with its emergency equipment activated, also turned east onto South 12<sup>th</sup> Street, following the Jeep. Lieutenant O'Dea was approximately one block behind the suspect vehicle.

Sergeant Fick said he then followed Lieutenant O'Dea at a distance of approximately three blocks and lost sight of both Lieutenant O'Dea and the suspect as they crested a hill. When Sergeant Fick crested the same hill, he observed that Lieutenant O'Dea's vehicle was several blocks in front of him. Sergeant Fick stated he then saw a power transformer explode in the area. Lieutenant O'Dea then advised over the radio the suspect had hit a pole at South 12<sup>th</sup> and Union. When Sergeant Fick arrived at the scene of the collision, the suspect was already fleeing the area on foot; and a group of citizens was chasing him. Sergeant Fick also pursued the suspect and was able to take the suspect into custody with the help of Sergeant Roberts.

Sergeant Fick assisted with the investigation of the collision and handling of the suspect. Sergeant Fick said he could smell a strong odor of intoxicants emanating from the suspect. Sergeant Fick said at some point Lieutenant O'Dea came up to him and said "I think we have a good reckless driving."

Sergeant Fick was asked on a Halloween night what was the traffic for vehicles and pedestrian? Was there a lot of people out and about? Sergeant Fick stated "yes, sir." Sergeant Fick stated the intersection at South 12<sup>th</sup> and Stevens was pretty full in all directions. Sergeant Fick stated there was a small group of pedestrians on the north side of the intersection and no pedestrians on the south side. Half a block behind Sergeant Fick there were pedestrians on both sides. Sergeant Fick was asked while he was traveling eastbound on South 12<sup>th</sup> Street following the suspect, or red SUV and Lieutenant O'Dea's vehicle, did he see pedestrians on South 12<sup>th</sup>? Sergeant Fick stated "yes, sir.... *There were pedestrians on the south side of the street at that point, I don't remember how many because we were moving pretty quick; and traffic was pretty congested right in there. We were going out around cars.*" (Tab 25, page 6 & 7).

Sergeant Fick was asked about the weather conditions that night. Sergeant Fick stated it was dark; he believed the streets were wet, but that he would have to double check that and it was a cool night. He further stated it was approximately 1800 hours when the whole thing went down; so traffic was heavy on a Friday night for roadway conditions.

Sergeant Fick was asked based solely on the information, being the second car in this pursuit, if he was the initiating Officer, did he have knowledge or see anything on the suspect or the suspect vehicle's part that would have led him to continue a pursuit after its initiation? Sergeant Fick stated "*I didn't have the knowledge of what the pursuit was for. I thought the pursuit was either the subject had run down some small pedestrians, children or something like that; or there had been something with a gun. You know, something very heinous.*" Sergeant Fick further stated without any additional information based on his observations he thought it was reckless driving and he would have discontinued the pursuit. Sergeant Fick stated "I would have discontinued it probably before it ever reached the intersection of South 12<sup>th</sup> and Stevens, but I can guarantee I would have discontinued it at South 12<sup>th</sup> and Stevens." Sergeant Fick was asked if his decision was based on vehicle conditions, pedestrian, weather conditions, and lighting. Sergeant Fick stated "*all those conditions and the fact of all I heard on the radio was sixty miles an hour, if there would have been a speed of sixty miles an hour for a violation like that on Stevens street during those conditions, there's no way I would have continued the pursuit.*" (page 11-12).

Sergeant Fick was asked as a supervisor if one of his own officers had initiated the pursuit and based on the information provided and the suspect vehicle's actions, would he have allowed his officer to continue the pursuit? Sergeant Fick stated "No, I would not." (See page 12, line 18).

#### **Lieutenant O'Dea:**

During his interview, Lieutenant O'Dea said he was in the area of 6<sup>th</sup> and Stevens looking for a domestic violence suspect. Lieutenant O'Dea said he saw an older blue Chevy Suburban drive real quickly and a bit erratically into the Walgreen's parking lot at 6<sup>th</sup> and Stevens Street. Lieutenant O'Dea said he thought it might be the domestic violence suspect looking to get away, but he then recognized the subject in the Suburban was not the domestic violence suspect. He also said he had no information one way or the other that the suspect left in a vehicle or had access to a vehicle, but believed the suspect could have had a vehicle nearby. Lieutenant O'Dea told us he was aware the victim of the domestic was at the Walgreen's, but added she was initially at a different location; and Officer Lorberau was going to contact her at that initial location. Lieutenant O'Dea said he checked his MDC for updates on the call. As he was doing this, he observed a vehicle (Jeep) drive by, which is the vehicle that he ultimately pursued. The Jeep was travelling westbound on 6<sup>th</sup> Avenue at an excessive speed and was approaching the intersection of 6<sup>th</sup> and Stevens.

Lieutenant O'Dea said the driver of the Jeep matched the general description of the domestic suspect and he very much thought this could be the domestic suspect. Not only did he match the description of the domestic suspect, but he was driving at an excessive rate of speed as he left the area. Lieutenant



O'Dea said there were some other vehicles in the area at the time whose drivers matched the description of the suspect but they did not garner his attention like the driver of the Jeep.

Lieutenant O'Dea said he pulled in behind the driver of the Jeep, which stopped for the red light for east/west travel at 6<sup>th</sup> Avenue. The Jeep was facing west on 6<sup>th</sup> Avenue at Stevens. The driver of the Jeep appeared nervous and looked to his left and right constantly. Lieutenant O'Dea said as he began to enter the Jeep's license plate into the system, the Jeep suddenly ran the red light and headed west on 6<sup>th</sup> Avenue. The Jeep almost hit another vehicle when it ran the red light. Lieutenant O'Dea stated *"at that point, I recognized that he had nearly caused a collision. Uhm, and as well as, now the, the thought that he was the DV suspect in my mind, the way I can kinda best describe it is as I was looking at this whole situation was it's kind of a, kind of like a roller coaster. I see the vehicle coming. Could he be the DV suspect? And so, you know, you're interest kinda piques a little bit. Uhm, but now I'm thinking as he's sitting at the light initially, that he's gonna make the right hand turn, so now my interest in him as a DV starts to go down, but it doesn't disappear. Now that he takes off on, at a high rate of speed and almost causes a collision; I'm thinking, now maybe he is the DV suspect. So, it's kinda that roller coaster and that's the only, the best way that I can use to describe how, what I'm thinking about at this uhm, but that, you know, that's playing in there. But now what's also playing in, in my decision making is that, he's a reckless driver. He nearly caused a collision and I don't know how he avoided that collision..... You know is he more a reckless driver, less a DV suspect or more a DV suspect, less a reckless driver? I'm not sure. But my decision making was I've got a guy that's now nearly caused a serious accident or a potential death of the person that was driving the car. I've got probably cause, in my mind to stop and detain him for an investigation for reckless driving."* (Tab 26 page 9-10).

Lieutenant O'Dea said he activated his lights and sirens; and after clearing the intersection, he attempted to catch up to the Jeep. He said the Jeep had already turned north on Verde Street; and as it did so, it drove into the oncoming lane. The Jeep then turned eastbound on North 7<sup>th</sup> and made no attempt to stop or slow down. Lieutenant O'Dea stated he had his lights and siren on, and that *"he was not complying with my emergency lights and siren, with my uh, you know, my duties to stop him. He was, he was not complying. I judged him to be actively resistant at that point."* The Jeep then turned on Stevens and headed southbound; and in doing so, it went into the northbound lane. The Jeep then went south on Stevens and ran another light which was red for north/south travel, after going around vehicles which were stopped for the red light at 6<sup>th</sup> Avenue. As the Jeep went through that intersection, it nearly struck another vehicle as it continued southbound on Stevens. Lieutenant O'Dea stated *"I continued to pursue him..... still driving and now being able to pick up the radio and advise dispatch and the other officers what it was that was going on."* He was now in pursuit of the Jeep for two counts of reckless driving. He also said he put out information over the radio about what was going on but he didn't say he was in pursuit. He believed anybody who heard his radio traffic could reasonably assume he was in pursuit.

Lieutenant O'Dea was asked if at that point he was actively pursuing the vehicle. Lieutenant O'Dea replied *"good question, now you know there's no doubt in my mind after those three turns, uhm nearly cause that collision, the third, or the second collision now on Stevens, that this more than just a traffic stop. Now he's actively fleeing me.... He's past a couple of opportunities to pull off to the side."*

The pursuit of the Jeep continued as it travelled southbound on Stevens to South 12<sup>th</sup>. At South 12<sup>th</sup>, it turned left and headed eastbound on South 12<sup>th</sup> Street after going to the left of a vehicle which was stopped at the intersection. Lieutenant O'Dea said he cleared the intersection and continued to pursue the Jeep. The Jeep continued to travel eastbound on South 12<sup>th</sup> Street, operating in a reckless manner.

Lieutenant O'Dea lost sight of the Jeep when it crested a hill on South 12<sup>th</sup>. At this point, he started to begin thinking about whether the pursuit needed to continue. Lieutenant O'Dea said after the Jeep went over the rise in front of him, he made the decision to terminate the pursuit as soon as he passed the two

cars in front of him, because he didn't want to confuse the drivers of those cars by turning off his emergency equipment. Before Lieutenant O'Dea could terminate his pursuit, he saw a shower of sparks come up over the horizon and immediately recognized that a power transformer had exploded. Once he arrived at South 12<sup>th</sup> and Union, he found the Jeep had collided with a power pole and another vehicle; and the Jeep's driver had fled on foot. This pursuit lasted a little more than one minute.

Lieutenant O'Dea was asked about the vehicle and pedestrian conditions during the pursuit. Over the course of the interview, Lieutenant O'Dea described the conditions as follows: "traffic was light, surprising light for the time of day that it was. The suspect vehicle nearly struck two vehicles while traveling at a high rate of speed. The roadway conditions were dry. No pedestrian traffic." Lieutenant O'Dea was asked because it was Halloween night, were there lots of kids, people out trick or treating. Lieutenant O'Dea replied "*No. No kids, no costumes, no nothing, no body walking around.*" (See page 23, line 22-23).

Lieutenant O'Dea was asked "do you believe by not stating specifically you were in pursuit that you were violating the Department's Vehicle Pursuit Operations Policy?" Lieutenant O'Dea stated "*I do, but I never had a good, clear, safe opportunity to articulate on the radio, like we would like to have done. But there is no doubt in my mind that what I said added to potential confusion by others. Uhm, and that I could have done a better job of making that clearer. Uhm, but I think a reasonable person, would understand, what I was doing was a pursuit for a reckless driving vehicle. But certainly, you, you look back and there are things that I could have done better, differently.*" (Tab 26, page 31, lines 19-24)

Lieutenant O'Dea was asked "Do you believe by not stating specifically the reason you were in pursuit that you were violating the Department's Vehicle Pursuit Operations Policy?" Lieutenant O'Dea stated "*No, because I would be given the opportunity, uhm after the fact to explain why I did what I did, when I did what I did. Those kinds of things. That I would, I would be given a chance.*" (Tab 26, page 31, lines 27-28)

Lieutenant O'Dea stated "*the situation was short; the decision making was rapid; the situation constantly changed in my mind, that the driver of that car was that DV suspect. I don't think that I did that part justice, in my report. I certainly didn't do that at all on the radio. But that was part of my decision-making process.*"

Lieutenant O'Dea was asked given the information that he provided about the incident did he believe his performance while conducting the pursuit was satisfactory? Lieutenant O'Dea replied "*Are there things that I could have done better? Yes, no question about that, we can all do better at what we do. Uh, and there's no doubt of that, that's the case for me. And, and in fact, that's, you know, the case on, on many things that, that I have done as a Police Officer here, uh, to take that constructive criticism, the feedback, and then work to improve and, and that' what we want to do. Was my performance unsatisfactory in the eyes of the Department, strictly by the policy? I, I don't believe so. I was trying to apprehend somebody who showed a willful disregard to human life in the fact that it was those two car accidents. And at that time, too, it was likely that , not, not likely, but it played out in my mind that he might be a DV suspect. And we have an obligation as police officers to locate and arrest the primary aggressor..... Unsatisfactory Performance is not black and white, that we have to allow for the accumulation of information.... I think if you look at all of that and add in, is he doing what we want them to do, and are they doing it within the confines of our policies, our procedures, the law and our expectations. And I think if you apply that filter to this, it's not Unsatisfactory Performance. It certainly is, we could do a better job. Let's learn from this and let's move on from here.*" (Tab 26, page 32-33)

Lieutenant O'Dea was asked if given the same set of circumstances and this was an Officer or Sergeant who had initiated the pursuit, would he have allowed the pursuit to continue if he was monitoring the

situation. Lieutenant O'Dea replied *"that's another good question. It's hard for me to answer that question, uhm, because I was the Officer, not the Supervisor at the point in time. When, the whole thing started, there's no doubt in my mind that at that point in time, I ceased being the Shift Commander."* Uhm, and that I was the Officer." (See page 33, line 8-11). Lieutenant O'Dea said he would have given an Officer in a pursuit a chance to explain the reason for the pursuit. Lieutenant O'Dea further stated *"if it wasn't what I would have thought was correct, or not correct, was within the Policy, it would have been, yes, we're shutting it down now, uhm because I, you know, I've got to balance that need of taking care of the City, you know, the, the, now I'm, you know, put on the, the Administrator hat. I've gotta worry about liability and damage control and public perception and, those kind of things that start to come in..."* (See page 33, lines 8-25)

## **FINDINGS**

Lieutenant O'Dea has been accused of violating the following Department policies:

- P3.2.2-Vehicle Pursuit Operations
- P1.1.6 (A)(11)-Unsatisfactory Performance

### **P3.2.2 – Vehicle Pursuit Operations – I find this charge to be sustained.**

Vehicle Pursuit Operations policy states in part:

*"The Tacoma Police Department recognizes that under RCW 46.61.035, Officers have the legal right and duty to apprehend offenders who flee from the police and present a threat to the public. However, Department members will only engage in pursuits when the necessity to apprehend the violator outweighs the danger posed to the public. Every Department member engaging in a pursuit must be able to articulate what conditions were present that justified the pursuit."*

*Officers may initiate a vehicular pursuit when, in the Officer's reasonable judgement, an actively resistant subject presents or has presented an imminent threat of death or serious bodily harm and/or the severity of the crime or circumstances, other than eluding itself, necessitates immediate apprehension. The serious risks created during a pursuit require a Police Officer to weigh many factors when deciding whether or not to pursue the violator. The Officer should consider the overall circumstances in relation to the danger posed to the community and other Officers when deciding to initiate, or terminate the pursuit of a vehicle."*

*"Motorcycle and unmarked units should not participate in pursuits except in extreme circumstances. They should be relieved by an officially marked patrol vehicle as soon as possible."*

From the moment Lieutenant O'Dea decided to pursue the vehicle after he witnessed a traffic infraction he was in violation of our policy. It is hard to imagine a situation where a traffic infraction would ever justify a pursuit under our policy. While he does state that the driver could have been the DV suspect, he had no evidence the suspect was involved in the DV incident. He began to chase him because he ran a stop light. Even after he violated the policy by initiating the pursuit, Lieutenant O'Dea continued the pursuit under the mistaken belief that because the driver was eluding and driving recklessly he was justified to continue the pursuit. While he did appear to have his lights and sirens on, Lieutenant O'Dea was operating an otherwise unmarked car making it even more difficult to justify a pursuit under these circumstances.

Even though Sergeant Fick and Lieutenant O'Dea give differing accounts as to the amount of vehicle traffic and pedestrians in the area, the mere fact that the collision happened with as many cars and innocent bystanders as it did supports the fact that pursuing a vehicle on Halloween night, at speeds of up to 60 mph, on the side streets of an urban environment is more than enough evidence to show the decision to initiate and continue this pursuit was clearly out of policy.

**P1.1.6(A)(11) – Unsatisfactory Performance – I find this charge to be sustained.**

The Unsatisfactory Performance policy states in part, “Members shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Members shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department.”

Lieutenant O'Dea demonstrated his lack of competency not only on the night of the pursuit, but also during the investigation. Even when confronted with the policy and knowing the injuries and damage caused directly by his decision to pursue, he still believes he performed within our policies. As a lieutenant he is trusted to have the competency to direct and supervise others in the course of their duties; however, he failed to understand the basic premise of our pursuit policy. Although Lieutenant O'Dea believed that during the pursuit he stopped acting as a supervisor and was acting as an “officer” this does not relieve him of his responsibility to know and understand the policies of this department.

**PAST PERFORMANCE**

**November 19, 2013, P1.1.6.A.11 Unsatisfactory Performance, Sustained, Verbal Warning**

On November 19, 2013, Lieutenant O'Dea received a written Verbal Warning for Unsatisfactory Performance for the following incident:

On July 17, 2013, Lieutenant O'Dea was the graveyard shift commander when he responded to the 2300 block of North Winnifred Street after being contacted by a Field Sergeant. Lieutenant O'Dea was briefed on the incident and the following facts: gunshots were heard by neighbors and Tacoma Police Officers; they identified the address where the gunshots were coming from. The gunshots were followed by repeated screams of distress by a female inside the same residence. These screams were heard by neighbors and the responding Police Officers. There were at least two people inside the identified residence and at least two people declined to respond when Tacoma Police Officers knocked on the door.

Lieutenant O'Dea directed the Officers to call the residence and knock on the door. Lieutenant O'Dea then instructed nearly all the units to cease efforts and clear the scene without determining if there were any victims inside the residence. Lieutenant O'Dea received a sustained finding for Unsatisfactory Performance and a documented Verbal Warning. Lieutenant O'Dea's decision was not reasonable nor did it meet the expectations of a Scene Commander.

**RECOMMENDATION**

Some of the most dangerous situations we encounter as Police Officers involve pursuing a fleeing suspect. Pursuits are not only dangerous for the Officer and the suspect but to anyone who may be in the vicinity of the pursuit. It is precisely for this reason the Department has put limits on both when we can initiate a pursuit and when we can continue a pursuit. The decision to pursue or not pursue should not be made lightly. Ultimately, the decision must take into account the seriousness of the offense and

the potential for injuries and property damage as a result of the pursuit. We rely on our Officers and supervisors to make these decisions within policy and with the ultimate goal being to protect life and property.

Lieutenant O'Dea failure to follow the Pursuit Policy resulted in six (6) innocent bystanders, including two (2) children, being injured. While some of them suffered bumps and bruises; others suffered more significant injuries including a broken back, a broken ankle, and a broken wrist. The property damage was also extensive, including a snapped in half utility pole and damage to multiple vehicles. Lieutenant O'Dea's failure to follow the policy was the direct cause of these injuries and property damage.

I would be concerned if any member of the Department made the decisions Lieutenant O'Dea made on this night. However, as a Lieutenant who is responsible for directing and supervising pursuits it greatly concerns me that not only did he feel his pursuit was justified at the time, but he inexplicably continues to believe he was in the right. He should know reckless driving in and of itself does not justify a pursuit. He should know that a traffic infraction does not justify a pursuit. He should know that on Halloween night the likelihood of increased traffic and pedestrians is greater. The last thing we want our Officers to do would be to take a potentially dangerous situation and make it worse by their decision to pursue. This is exactly what happened in this situation.

This case in and of itself is a serious breach of our policies, but his previous discipline makes me concerned that Lieutenant O'Dea lacks the proper decision making skills to continue in his current rank. How can we expect him to supervise and guide our Officers when his decision making and knowledge of our policies is so deficient? While the usual disciplinary recommendation in cases like this would include retraining to help the employee become successful and make better decisions, the problem with this case is it is unclear any sort of retraining would be successful. Lieutenant O'Dea fails to believe he did anything wrong. He has a history of poor judgement which in one case *could* have led to someone getting hurt, and in this case *did* lead to multiple people being hurt. I question whether any retraining would make him successful as a Lieutenant.

While I understand a loss of rank is rare in this Department and only reserved for the most extreme circumstances, based on Lieutenant O'Dea's past performance and the facts of the present case, I believe it is appropriate. As a Sergeant he will have the supervision and training opportunities necessary to prevent this type of situation from happening again. If a loss of rank is not appropriate based on your review of this case and the information provided at any pre-disciplinary hearing, I recommend a long term suspension and a review of Lieutenant O'Dea's performance to determine what, if any, re-training would help him be successful as a Lieutenant in the future.

PC/bb

## **EXHIBIT 5**

# TACOMA POLICE DEPARTMENT

## Intra-Departmental Memorandum



**TO:** Lieutenant David O'Dea  
Administrative Services Bureau

**FROM:** Donald L. Ramsdell  
Chief of Police

**DATE:** July 2, 2015

**SUBJECT: DISPLINARY ACTION/NOTICE OF INTENT TO SUSPEND  
INTERNAL AFFAIRS CASE #14COM-0142**

### INCIDENT:

On October 31, 2014, at 1800 hours, Halloween night, you were looking for a domestic violence suspect in the area of 6<sup>th</sup> and Stevens. The domestic incident had occurred a few minutes earlier in the area of the 4000 block of North 13<sup>th</sup> and the suspect, William McClain, had left the area on foot, and was described as being a twenty-seven year old white male. Dispatch also advised the victim declined medical aid, left the scene, and went to the Walgreens on 6<sup>th</sup> Avenue.

While you were in the area of 6<sup>th</sup> and Stevens, you saw an SUV pull into the Walgreens parking lot. You said the SUV was being driven in a somewhat erratic manner and you believed the driver may have possibly been the domestic violence suspect. After observing the actions of the SUV driver, you concluded he was not the suspect.

As you exited the Walgreens parking lot, you observed a red Jeep travelling westbound on 6<sup>th</sup> Avenue. The driver appeared to be in a bit of a rush and the physical characteristics of the Jeep's driver led you to believe he may have possibly been the suspect from the domestic. You then pulled in behind the Jeep which was stopped for a red light at 6<sup>th</sup> and Stevens. You stated that the driver of the Jeep looked both ways, drove through the red light and nearly struck another vehicle. You then activated your emergency equipment; and after clearing the intersection, you attempted to stop the Jeep for Reckless Driving. The Jeep did not stop and this caused you to consider the driver to be "Actively Resistant."

The Jeep was then pursued by you at speeds up to sixty miles an hour from the area of 6<sup>th</sup> and Verde to South 12<sup>th</sup> and Union. You related during this time the driver of the Jeep committed several traffic violations. The pursuit ended when the Jeep became involved in a collision at South 12<sup>th</sup> and Union Avenue. The injuries sustained by innocent third parties were severe. The initial on-scene Police and Fire responders believed that they had a double fatality upon arrival. Injuries to those victims included a broken back, broken ankle, broken wrist, bruised lung, and a broken sternum. Six victims were transported to hospitals, not including the suspect.

The driver of the Jeep fled on foot but was apprehended by Sergeant Fick. He was identified as Jason Haskins and was found to have marijuana and alcohol in his system. Haskins was not the suspect in the domestic; and he was later charged with Eluding, Vehicular Assault, and Hit and Run. Haskins did not have any involvement in the original Domestic Dispute call.

### EXPLANATION OF ACTION:

The Vehicle Pursuit Operations policy states in part:

*"The Tacoma Police Department recognizes that under RCW 46.61.035 (see RCW for legislative language in its entirety), Officers have the legal right and duty to apprehend offenders who flee from the police and present a threat to the public. However, Department members will only engage in*

**CITY OF TACOMA PERSONNEL RULES:**

**1.24.940 - DISCIPLINARY ACTION:**

Any permanent employee may be disciplined for cause by an appointing authority, with the approval of the City Manager or the Director of Utilities, as the case may be, but a written statement of reasons for the discipline and the effective date shall be submitted within five (5) business days to the Human Resources Director, and a copy thereof personally delivered to or sent by certified mail to the employee affected at his/her last known address.

**PAST PERFORMANCE**

On November 19, 2013, you received a written Verbal Warning for Unsatisfactory Performance for the following incident:

On July 17, 2013, you responded to the 2300 block of North Winnifred Street as the graveyard Shift Commander, after you were contacted by the Field Sergeant. You were briefed on the incident and the following facts: gunshots were heard by neighbors and Tacoma Police Officers; the address where the gunshots were coming from was identified. The gunshots were followed by repeated screams of distress by a female inside the same residence. These screams were heard by neighbors and the responding Police Officers. There were at least two people inside the identified residence and at least two declined to respond when Tacoma Police Officers knocked on the door.

You directed the Officers to call the residence and knock on the door. You then instructed nearly all units to cease efforts and clear the residence without determining if there were any victims inside the residence. You received a sustained finding for Unsatisfactory Performance and a documented Verbal Warning. Your decision was not reasonable nor did it meet the expectations of a Scene Commander.

**FINDINGS:**

The Police Department puts a high level of trust and responsibility in its leaders, with the expectation that those leaders will carry out their duties in a proficient and competent manner. You were the Shift Commander during this incident and as such were the senior leader during this shift. Essentially, you were in charge of the entire Department at the moment this incident occurred; there was no one on duty at the time this incident occurred that was senior to you. Therefore, there was no one on duty who could have countermanded your decision to pursue the Jeep. Your decision to initiate and continue the pursuit of the Jeep was a gross violation of the Department's Vehicle Pursuit Operations Policy. You stated you believed the driver of the Jeep may have been a domestic violence suspect you were looking for, which you believe gave you justification to pursue the Jeep. I find your logic flawed, as there was very little information available in regards to the domestic violence incident itself and the description of the suspect was limited. There was no information the suspect had left in a vehicle or had access to a vehicle. Your lack of judgement led you to initiate and continue a pursuit that ended tragically in a multi-vehicle collision, which resulted in significant injuries to innocent citizens and substantial damage to property. You told Internal Affairs investigators you were acting as an officer and not as a Lieutenant during your pursuit of the Jeep. Whether you are an Officer or a Lieutenant, the policies and procedures of the Tacoma Police Department apply to all, regardless of rank or position. As I reviewed this case, it gave me cause and concern as to whether you have the knowledge and abilities to continue to perform the duties and responsibilities of a Tacoma Police Lieutenant. Obviously, Assistant Chief Cribbin shared this concern as he recommended you be demoted to the rank of sergeant. However, I am not ready to take such action as I believe you still have the ability to be a fully competent lieutenant with proper training and guidance.

As a result of the sustained findings, you will receive a suspension of five (5) eight-hour working days (40 hours total) to be served from **Monday, July 6 through Friday, July 10, 2015**. Furthermore, you will receive remedial training in Use of Force and Vehicle Operations. A detailed Training Plan will be developed concerning these topics to remedy these policy violations. Also, as part of your Training Plan, you will be mentored by Assistant Chief Ake in the areas of leadership and supervisory



responsibility. *No other leave balances to include vacation, floating holidays, compensatory time, sick leave or PTO can be used to augment your hours of suspension.*

**FUTURE PERFORMANCE:**

You are hereby notified that any further violation of the Tacoma Police Department Policies and Procedures, Directives or Orders, and/or the City of Tacoma Personnel Rules, may result in more severe discipline, up to and including termination of employment.

**TACOMA POLICE DEPARTMENT EXAMINATION PROCESS**

- 1) Upon receipt of written Notice of Intent to Suspend, an employee will have 48 hours (excluding weekends or holidays) to respond, in writing to the Office of the Chief indicating a desire to examine the charges. Failure to respond within the 48 hours will be an automatic waiver of the review process.
- 2) During the examination and review process, accused employees may have a Union Representative and/or Attorney assist them. On incidents involving more than one (1) employee, only one (1) Union Representative will be allowed.
- 3) The Department will make available to the employee all allegations and reports pertinent to the investigation. The examination must be completed within five (5) days (excluding weekends or holidays). If the volume and/or complexity of material are such that more than five (5) days are required, an extension may be granted on request.
- 4) If, after examination, the accused employee wishes to contest one or more of the allegations and/or penalty, the employee will submit in writing to the Office of the Chief a request for review of disciplinary action. This request will specify each allegation contested and the specific reason. The Board will review only those contested allegations that are submitted in writing.
- 5) If the accused feels that a punishment is too severe, the accused shall submit in writing that concern and the Board shall consider only the amount of discipline.

**THE REVIEW PROCESS:**

- 1) On receipt of written notice of request for review, the Chief will convene the Review Board within five (5) days (excluding weekends and holidays).
- 2) The employee in charge of the investigation will present to the Review Board the allegations and subsequent investigation.
- 3) The accused employee may present before the Board any statements, facts, or witnesses to substantiate their position. The employee may call a maximum of six (6) witnesses unless the Board determines more witnesses are necessary.
- 4) The finding of the Board will be submitted in writing to the Chief and to the accused no later than the working day following the date the Board rendered its decision. The findings will address each contested allegation or proposed discipline with supportive rationale for the decision.
- 5) Within forty-eight (48) hours, (excluding weekends and holidays) on receipt of the Review Board's findings, the Office of the Chief will notify the accused and Board members in writing of the final decision regarding any disciplinary action. In consideration of this final decision, the findings of the Board will be advisory in nature. If the Chief does not follow the Board's findings, he/she will include his/her rationale in his/her written notice. Should additional facts be discovered during a Disciplinary Board Hearing, the Chief may notify the Board Chairman and the accused that additional response time will be necessary to review the new information.

**FAILURE TO RESPOND SHALL BE DEEMED A WAIVER OF YOUR RIGHT TO RESPOND  
PRIOR TO IMPOSITION OF SAID DISCIPLINE.**

LT D. O'DEA #166 07/02/15  
Employee signature Date

A copy of the foregoing notice was personally served to **Lieutenant David O'Dea** on

this 2nd day of July, 2015, at 1107 hours

by Lt. Edward [Signature]

and [Signature]

[Signature]  
Donald Ramsdell  
Chief of Police

[Signature]  
Elizabeth Pauli  
City Attorney

[Signature]  
Joy St. Germain  
Human Resources Director

## **EXHIBIT 6**

**TACOMA POLICE DEPARTMENT  
Intra-Departmental Memorandum**



**TO:** Donald L. Ramsdell  
Chief of Police

**FROM:** Assistant Chief Shawn Gustason  
Discipline Review Board Chair

**DATE:** July 14, 2017

**SUBJECT: DISCIPLINE REVIEW BOARD FINDINGS  
INTERNAL AFFAIRS CASE 16COM-0081**

On July 13, 2017, the Disciplinary Review Board met and reviewed the investigative package and informational documents provided by Internal Affairs relative to the investigation. The Board consisted of two Chief's Appointees – Assistant Chiefs Shawn Gustason (Board Chair) and Ed Wade, and three Union Appointees – Captain C.P. Taylor and Lieutenants Frank Krause and Corey Darlington.

Lieutenant O'Dea was notified of the Board, produced several documents, and presented a statement in support of his position. Lieutenant O'Dea also called Officer Travis Waddell as a witness.

Lieutenant O'Dea was contesting: 1) Due Process; 2) Application of Department Policies and Procedures; and 3) Reconsideration of Discipline.

**CONCLUSIONS AND RECOMMENDATIONS:**

The Board unanimously upheld the Chief's disciplinary decision.

cc: Local 26  
David O'Dea



City of Tacoma  
Police Department

July 17, 2017

**MR. DAVID O'DEA**  
915 N Laurel Ln  
Tacoma, WA 98406

**SUBJECT: DISCIPLINE REVIEW BOARD FINDINGS**  
**Internal Affairs Case #16COM-0081**

Dear David:

On Thursday, July 13, 2017, the Discipline Review Board convened at your request to review the discipline imposed related to Internal Affairs Case #16COM-0081.

After listening to your testimony and that of your witness, as well as reviewing the investigative package and informational documents provided by Internal Affairs relative to the investigation, the Board unanimously upheld my disciplinary decision of termination.

Attached for your review is a copy of the Discipline Review Board's findings and conclusions.

Sincerely,

Donald L. Ramsdell  
Chief of Police

Attachment: Discipline Review Board Findings

cc: Internal Affairs  
Local #26

3701 South Pine Street -- Tacoma, Washington 98409-5735

*To create a safe and secure environment in which to live, work, and visit by working together with the community, enforcing the law in a fair and impartial manner, preserving the peace and order in our neighborhoods, and safeguarding our constitutional guarantees.*

16COM-0081.0747

# TACOMA CITY ATTORNEYS OFFICE

September 22, 2021 - 12:55 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 100,102-9  
**Appellate Court Case Title:** David O'Dea v. City of Tacoma, et al.  
**Superior Court Case Number:** 18-2-08048-2

### The following documents have been uploaded:

- 1001029\_Answer\_Reply\_20210922125312SC250983\_8920.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was Petition for Review-answer-final.pdf*

### A copy of the uploaded files will be sent to:

- appeals@hesterlawgroup.com
- brett@hesterlawgroup.com
- talner@aclu-wa.org

### Comments:

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Sender Name: Jean Homan - Email: [jhoman@cityoftacoma.org](mailto:jhoman@cityoftacoma.org)  
Address:  
747 MARKET ST #1120  
TACOMA, WA, 98402-3701  
Phone: 253-591-5629

**Note: The Filing Id is 20210922125312SC250983**