



## VALLEJO POLICE DEPARTMENT

### Memorandum

**To:** [REDACTED]

**From:** Shawny K. Williams, Chief of Police

**Date:** December 1, 2021

**Subject:** Notice of Intent to Discipline- Termination of Employment

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Pursuant to *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, Civil Service Commission Rule 18.1 and Administrative Rule 2.35, I am notifying you of my intent to terminate your employment with the Vallejo Police Department. If my intention remains unchanged following completion of any pre-disciplinary review in this matter, then I will notify you in writing of your termination following completion of the pre-disciplinary process.

#### Applicable Policies and Procedures

I intend to terminate your employment based upon preliminary finding(s) that you have violated provisions of the Vallejo Police Department Policies as set forth below. Under the circumstances, any one of the violations set forth below, standing alone or in combination with any other violation(s), would support the intended termination.

1. Policy #300.4 De-Escalation<sup>1</sup>
2. Policy #300.5 Use of Force
3. Policy #300.6 Deadly Force Application
4. Policy #321.5.6 Efficiency
5. Policy #423.4 Portable Audio/Video Recorders
  - a. Policy #423.4 Member Responsibilities
  - b. Policy #423.5 Activation of the Portable Recorder

#### Summary of Facts

In the days after the murder of George Floyd, the City of Vallejo was one of many jurisdictions to experience civil unrest, much of which was peaceful, but some of which involved looting, vandalism, and other criminal behavior. To meet the

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<sup>1</sup> All references to "Policy" refer to the Vallejo Police Department Policy Manual. I am enclosing copies of the policies with this notice.

community's increased security needs, the Police Department called you, Detective [REDACTED] and Detective [REDACTED] into work on the night of June 1, 2020.

You, Detective [REDACTED] and Detective [REDACTED] were members of both the [REDACTED] and SWAT Units. On June 1, 2020, the three of you rode in an unmarked [REDACTED] vehicle, a truck. Det. [REDACTED] was driving, Det. [REDACTED] was in the front passenger seat and you were in the rear seat.

[REDACTED] broadcasted at approximately 0036 hours on June 2<sup>nd</sup> that looting was occurring at the Walgreens on Broadway and Redwood Street in Vallejo. Det. [REDACTED] drove the [REDACTED] vehicle to [REDACTED] location and the three of you had a brief conversation with [REDACTED] that lasted approximately five to fifteen seconds. During the brief conversation, [REDACTED] said that he would drive north on Broadway and pull into the Walgreens' parking lot through the northwest entrance. He directed Det. [REDACTED] to drive into the Walgreens parking lot through the south entrance. Nobody objected to the "plan" articulated by [REDACTED]. You did not discuss any tactical strategy; de-escalation; coordination with other available units; or, how to respond in the event of pursuit.

As [REDACTED] and the [REDACTED] vehicle proceeded to and through the Walgreens' parking lot, [REDACTED] broadcasted on the radio, "they're wearing all black. It looks like they're armed; possibly armed."<sup>2</sup> In response, Detective [REDACTED] turned on his emergency lights and people in the Walgreens' parking lot started to flee, including the occupants of a gray truck and a black sedan.<sup>3</sup>

In your administrative interview, you told investigators that in response to [REDACTED] broadcast, while you observed numerous people, you focused on one particular individual in the parking lot, later identified as Sean Monterrosa, who appeared to have tried to enter and then was left behind by the black sedan. You grabbed your Colt M4 Commando rifle, which was resting between your legs. You pointed the rifle towards the front windshield of the [REDACTED] vehicle through the front seats and over the dashboard. Neither of your colleagues removed their firearms at that time.

You have described observing Mr. Monterrosa running "towards the car [black sedan]," stopping, and then "turn[ing] towards me – turn[ing] towards our vehicle and get[ing] down in what looked like a kneeling shooting position." You told administrative investigators, "it seemed like [Mr. Monterrosa] had something on him," because Mr. Monterrosa appeared to you to be "running with his hands in his waist area". You told administrative investigators that you were particularly

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<sup>2</sup> In your administrative interview, you recalled that about three seconds before the shooting in question, [REDACTED] broadcast, "the guy in black is armed." [REDACTED] did not make that specific statement, however.

<sup>3</sup> You told administrative investigators that you knew that other officers were responding to the location.

concerned that “there was a reason he was not either fleeing or complying<sup>4</sup> with – with getting on the ground.” You further said you were concerned because Mr. Monterrosa turned around to face you, knelt down, and had his hands near his waist. You said that you could see a couple of inches of “something” in Mr. Monterrosa’s waistband.

Your colleagues saw things somewhat differently. Det. [REDACTED] told investigators that Mr. Monterrosa knelt down on one knee and, different from what you saw, held a dark colored object in his hand that Det. [REDACTED] assumed was a gun. Det. [REDACTED] described first seeing what he thought was a black pistol magazine protruding out of Mr. Monterrosa’s sweatshirt. Then, Det. [REDACTED] saw what he thought was a brown pistol handle. He said he “saw Monterrosa spinning around, kind of like in an athletic position, if you will, with his hands towards his waistband.” Unlike you or Det. [REDACTED] Det. [REDACTED] did not report seeing Mr. Monterrosa grabbing or holding anything.

Then, within what you reported as several seconds of [REDACTED] radio broadcast, you fired five rounds through the [REDACTED] vehicle’s windshield in rapid succession. Because you fired through the windshield, the glass fractured and blew back, limiting your visibility. One of your bullets struck Mr. Monterrosa in the back of the head, killing him at the scene.<sup>5</sup>

After you shot Mr. Monterrosa, you and Detective [REDACTED] exited the [REDACTED] vehicle on the driver’s side of the truck and turned on your body-worn cameras. Detective [REDACTED] who still had not removed his gun from his holster, exited on the passenger side. Prior to the shooting, none of you in the [REDACTED] vehicle activated your body-worn cameras.<sup>6</sup> After exiting the [REDACTED] vehicles, you activated your cameras.

You approached Mr. Monterrosa, who was laying on the ground on his side and bleeding from his head. He did not have a firearm. Mr. Monterrosa had a hammer with a natural wood-colored handle in the front pocket of his hoodie style sweatshirt. A dark colored cell phone lay on the ground next to him.

The BWC cameras captured the following exchange after the shooting:

You: What did he point at us?

[REDACTED] I don’t know, man.

You (to other officers): Hey, he pointed a gun at us.

The Solano County District Attorney’s Office and the Vallejo Police Department jointly conducted a criminal investigation of the incident, which the California

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<sup>4</sup> You have acknowledged that nobody gave Mr. Monterrosa any orders.

<sup>5</sup> During your interview in this investigation, you were asking about your training firing through windshields. While you recalled learning it could affect a round’s trajectory, you stated you did not receive extensive training on this subject.

<sup>6</sup> Because you fired shots through the windshield of the [REDACTED] vehicle, there was glass blowback and some gas discharge from the rifle inside the vehicle.

Attorney General's Office is still evaluating. You gave a voluntary statement to the criminal investigators.<sup>7</sup>

The City also engaged a team of police practices experts, the OIR Group, to conduct an administrative investigation into your use of deadly force against Mr. Monterrosa. OIR investigators interviewed you as part of that investigation. The OIR investigators determined that your use of deadly force against Mr. Monterrosa violated Departmental policies, including because it was not objectively reasonable under the totality of the circumstances.

### Analysis

I have preliminarily concluded that under the totality of the circumstances, as described at length in the OIR report, your use of deadly force against Mr. Monterrosa violated Policy 300.5 (Use of Force) and Policy 300.6 (Deadly Force Applications).

Policy 300.5 states: "An officer shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose."

Policy 300.6 states: "An officer may use deadly force to protect him/herself or other from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person." Furthermore, Policy 300.6 states: "An 'imminent' threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention. (Penal Code 835a)." Per Policy 300.6, the availability of other reasonable and feasible options and their possible effectiveness is important in evaluating the "totality of the circumstances."

You told administrative investigators that you based your decision to shoot on the "totality of the circumstances," which you went on to describe as follows:

- "People are generally armed."
- "A lot of these people were armed."
- "[REDACTED] says, 'he's armed'."

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<sup>7</sup> Whether or not the Attorney General files criminal charges against you does not impact my decision. A prosecutor's decision whether to file criminal charges is different from my decision to terminate your employment. Our decisions are subject to different burdens of proof. The prosecutor must prove criminal charges by proof beyond a reasonable doubt and I base my decision on a preponderance of the evidence. Similarly, if criminal charges are filed and subsequently dismissed, or if you are acquitted, my decision will be unaffected.

- Monterrosa turned and grabbed an object in his waist, which looked to you like a butt of a firearm.

Separately, you mentioned as significant in your decision-making that the subject did not flee and dropped to one knee in what you considered a shooting stance.

The investigators from OIR analyzed the “totality of circumstances” in depth in their report. I agree with their assessment that you did not have a reasonable basis to believe that you faced an imminent threat that justified the use of deadly force. Your generalized concern that people were engaged in criminal activity, i.e. looting, did not give you a reasonable basis to believe that Mr. Monterrosa, in particular, posed a threat of death or serious bodily injury to you or anyone else. Although you told investigators that you believed [REDACTED] said Mr. Monterrosa was “armed,” [REDACTED] in fact said that it appeared that “they” were possibly armed, referring more generally to the people in the parking lot. The fact that [REDACTED] reported that unspecified individuals were possibly armed did not give you a reasonable basis to believe that Mr. Monterrosa, who was only one of multiple subjects in the parking lot, posed a threat of death or serious bodily injury to you, your colleagues or anyone else.

While you have said that you believed that Mr. Monterrosa had a firearm in his waistband, you have also stated that you only saw a couple of inches of what you thought was the butt of a firearm in his waistband. Importantly, you did not tell investigators that Mr. Monterrosa actually removed the object from his waistband.<sup>8</sup> Equally important, you told investigators that Mr. Monterrosa did not point anything at you.

Your question immediately after the shooting, “what did he point at us?” (a question you asked in a tone indicating you were genuinely unsure of the answer), indicates you did not even have a firm belief that Mr. Monterrosa was armed. You even acknowledged to investigators afterwards that you were uncertain. Det. [REDACTED] response in the moment that, “I don’t know, man” reveals that he also did not have a belief as to what, if anything, Mr. Monterrosa pointed at officers.

I do not credit your subsequent statement to other officers “hey he pointed a gun at us,” which circumstances suggest was more defensive than accurate, particularly since you told investigators that Mr. Monterrosa did not point anything at you and told them instead that Mr. Monterrosa only started pulling something out or was “grabbing towards that” when you shot him. You also told investigators that you only meant your statement to convey to fellow officers that Mr. Monterrosa was “going for a gun”. Everything that you have said about what happened in the moments leading to the shooting indicates that you did not have an objectively reasonable belief that Mr. Monterrosa was an imminent threat in the moment when you shot him.

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<sup>8</sup> You told criminal investigators that Mr. Monterrosa, “starts pulling something out” and “grabbing towards” the handle.



As you acknowledged to the criminal investigators, you were “on edge” that night and felt “fearful that something bad’s gonna happen.” As stated in Policy 300.6, “An officer’s subjective fear of future harm alone is insufficient as an imminent threat.” You also told criminal investigators that you had waited too long to shoot in a prior case and had resolved not to do so again in the future, further indication that you made a rushed and ultimately improper judgment to use deadly force in this instance.

The evidence indicates that you fast approached a group of people suspected of property crimes, focused on one individual, pointed a rifle at him, did not give him any directions, drew mistaken conclusions from his “failure” to surrender in a manner that you thought he should, and then assumed that he was about to shoot you and your partners. You then shot at him five times in rapid succession, killing him. You continued firing despite your impaired view, resulting from your firing through the windshield from inside the [REDACTED] vehicle. Your failure to gather information, evaluate de-escalation strategies, and engage in tactical planning before approaching a potentially armed suspect increased the risk of deadly force.

Even if your use of deadly force was technically proper, which I do not believe to be accurate, Policy 300.4 requires officers to take “reasonable and prudent actions which operate to mitigate the immediacy of the threat.” You, your colleagues and [REDACTED] helped create confusion and chaos by rushing into the Walgreens parking lot without adequate planning. You were not driving the [REDACTED] vehicle, but you still had a say in how events would transpire. You should have provided feedback to [REDACTED] and your colleagues that the four of you needed a better plan. As you said in your administrative interview, “we always have time on our side, in our unit . . . there’s rarely a need to rush anything in [REDACTED]” You had time on your side that night and additional police officers on the way.

Given your tactical training and experience, you knew or should have known that you needed to carefully assess and plan to handle perceived threats. Given the lack of cover/other units on scene, and the widespread looting and protests, if you believed that anyone in the parking lot was armed, you should have insisted on careful planning, including de-escalation. You failed to do so, and in the midst of the confusion and chaos that you helped cause, exercised very poor judgment. Your conduct amounts to unsatisfactory performance in violation of Policy 321.5.6.

You also failed to timely activate your body worn camera. You were required to activate your camera as soon as you had a reasonable expectation of an adversarial encounter. The moment you and the others discussed driving into the parking lot to confront suspected looters you should have activated your camera. You acknowledge that this was a mistake. You told administrative investigators you were processing too much information to activate your BWC. I

do not credit your explanation because it is very easy to activate the camera and Department trained you how to do it.

The Department is committed to transparency and accountability. Your failure to activate your body worn camera until after the shooting, is not only a violation of Departmental policies but it also undermines the Department's commitment to transparency and accountability and potentially deprive investigators of important evidence.

In *Skelly v. State Personnel Board*, the California Supreme said that the overriding consideration in assessing the proper level of discipline is the extent to which an employee's conduct resulted in, or if repeated is likely to result in harm to the public service. According to the Supreme Court, other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence.

The harm to the public service as a result of your actions in this case is obvious. Mr. Monterrosa died because of your use of deadly force. Your actions also tend to undermine public confidence in the ability of the Police Department to deliver safe and effective police services in Vallejo.

Your conduct as described herein, and in detail in the OIR Investigative Report, therefore warrants termination from your position with the City of Vallejo.

### **WARNING AGAINST RETALIATION**

This provision is to notify you that it is illegal and inappropriate to retaliate against any person who has participated in complaining or providing information regarding allegations of your misconduct. You may not retaliate against any individual who has provided information to the City of Vallejo regarding your above-described conduct.

### **RIGHT TO APPEAL**

You have the right to respond to these charges through my office by notifying Monica Gomez in writing (via email at [Monica.Gomez@cityofvallejo.net](mailto:Monica.Gomez@cityofvallejo.net)) within five (5) calendar days from the date of this document. In addition, you should carefully review the grounds set forth in this Notice of Intent to Discipline, and all of the exhibits referenced herein upon which the intended action is based, as the Pre-Disciplinary (Skelly) conference is your opportunity to respond to any and all of the grounds set forth in this notice either verbally or in writing. Although the pre-disciplinary meeting is not a formal evidentiary hearing, you may be represented by legal counsel or another individual of your choice.

Your failure to provide a written response or to request a Skelly conference will constitute a waiver of your right to provide a response prior to imposition of discipline; in which case, my decision to either sustain or modify the intended termination will be based upon this Notice of Intent to Discipline and its attachments.

All materials upon which this intended disciplinary action is based have been provided to you including complete copies of all reports, notes, transcripts, and audio recordings.

If the intended discipline is sustained, you have additional appeal rights under section 30(J) of the Memorandum of Understanding between the City of Vallejo and the Vallejo Police Officers Association and Administrative Appeal rights Government Code section 3304(b) of the Public Safety Officers Procedural Bill of Rights Act.

Attachments:

- A. Civil Service Rule 18 – **Suspension, Fine or Removal**
- B. Investigative Report and Policies Referenced in Investigative Report
- C. VPOA MOU – **Section 30 – Grievance Procedure**

cc: Personnel File

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**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF INTENDED DISCIPLINE**

SIGNATURE: \_\_\_\_\_

DATE: 12-1-21

Employee's Name: \_\_\_\_\_

PERSONAL SERVICE WITNESSED BY: Lt. Robert Knight

SIGNATURE: \_\_\_\_\_

DATE: 12/01/21

Witness's Name: \_\_\_\_\_

J. Potts J Potts 12/1/21

Personal Service Witness(es) \_\_\_\_\_

DATE: \_\_\_\_\_