



VALLEJO POLICE DEPARTMENT

Memorandum

To: [REDACTED]

From: Shawny K. Williams, Chief of Police

Date: October 3, 2022

Subject: Notice of Discipline - Termination

I have carefully reviewed the following investigation conducted by the OIR Group. Based upon all the facts known in this matter, your actions warrant termination.

Pursuant to the Memorandum of Understanding with the Vallejo Police Officers Association, Civil Service Commission Rule 18.1, 18.2 and Administrative Rule (2.35), I am notifying you of my decision to terminate your employment with the Vallejo Police Department effective October 3, 2022. You are a classified employee of the City of Vallejo and have the right to appeal my decision pursuant to Civil Service Commission Rule 18.3 and Section 30 J. of the Memorandum of Understanding between the City of Vallejo and the Vallejo Police Officers Association.

Applicable Policies and Procedures

Your employment is being terminated based upon the finding(s) that you have violated provisions of the Vallejo Police Department Policies as set forth below. Under the circumstances, the following violations set forth below, either individually or in combination, supports my decision to terminate your employment. These violations resulted in the death of Mr. Monterrosa.

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

¹ All references to "Policy" refer to the Vallejo Police Department Lexipol Policies. I am enclosing copies of the policies with this notice.

In addition to the above and the evidence set forth herein, including the investigator's report and the supporting documents, videos and recordings attached thereto, I have carefully reviewed the report authored by Skelly Officer Marc Fox wherein he concluded that your actions did not arise to the level of termination. After carefully considering Mr. Fox's analysis and conclusions, I have determined that based upon all of the facts known in this matter, and despite Mr. Fox's conclusions, that your actions do require termination.

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

You, [REDACTED] and [REDACTED] were members of both the Crime Reduction Team ("CRT") and SWAT Units. On June 1, 2020, the three of you rode in an unmarked CRT vehicle, a truck. [REDACTED] was driving, [REDACTED] was in the front passenger seat and you were in the rear seat.

[REDACTED] broadcasted at approximately 0036, June 2, 2020 that looting was occurring at the Walgreens on Broadway and Redwood Street in Vallejo. [REDACTED] drove the CRT 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 [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 CRT 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."² In response, [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.³

In your administrative interview, you told investigators that in response to [REDACTED] broadcast, while you observed numerous people, you focused on one

² 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.

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

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 CRT 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 concerned that "there was a reason he was not either fleeing or complying ⁴ 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. [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 [REDACTED] assumed was a gun. [REDACTED] described first seeing what he thought was a black pistol magazine protruding out of Mr. Monterrosa's sweatshirt. Then, [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 [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 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.⁵

After you shot Mr. Monterrosa, you and [REDACTED] exited the CRT vehicle on the driver's side of the truck and turned on your body-worn cameras. [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 CRT vehicle activated your body-worn cameras.⁶ After exiting the CRT vehicles, you activated your cameras.

⁴ You have acknowledged that nobody gave Mr. Monterrosa any orders.

⁵ 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.

⁶ Because you fired shots through the windshield of the CRT vehicle, there was glass blowback and some gas discharge from the rifle inside the vehicle.

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?

██████████ 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 Attorney General's Office is still evaluating. You gave a voluntary statement to the criminal investigators.⁷

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 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). I concur with the finding from the OIR Group's investigations that your use of deadly force was not objectively reasonable.

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

⁷ 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 you are acquitted, my decision will be unaffected.

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'."
- 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 face 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.⁸ 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. [REDACTED] response in the moment that, "I don't know, man"

⁸ You told criminal investigators that Mr. Monterrosa, "starts pulling something out" and "grabbing towards" the handle.

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 it" 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.

Additionally, in evaluating the question regarding the potential threat presented by Mr. Monterrosa, two other factors are also deserving of attention. First, as noted above, your question to your partner immediately after your use of deadly force ("what did he point at us?") demonstrates significant uncertainty about any immediate threat. Moreover, when you answered your own question: ("he pointed a gun at us"), I believe that you did so to justify your conduct.

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 CRT 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. Additionally, 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 CRT 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 CRT." 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 the 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 deprives 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 appeal these charges and the resulting discipline by notifying Monica Gomez in writing (via email at 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 Discipline, and all of the exhibits referenced herein upon which the intended action is based and which were previously provided to you.

Your failure to request a timely appeal by notifying Monica Gomez within the time period specified will constitute a waiver of your right to appeal the discipline and the termination, which is based upon this Notice of Discipline and the documents previously provided to you with the Notice of Intended Discipline, will be final.


You have 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 pursuant to Government Code section 3304(b) of the Public Safety Officers Procedural Bill of Rights Act.

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

cc: Personnel File

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF DISCIPLINE

SIGNATURE:




DATE: 10-3-22

Employee's Name:



PERSONAL SERVICE WITNESSED BY:

SIGNATURE:



DATE: 10-03-22

Witness's Name:

LT SHANE BOWEN

Personal Service Witness(es)

DATE: _____

SIGNATURE:

DC [Signature]

DATE:

10/3/22

Witness's Name:

DC JASON TA

Personal Service Witness(es)

DATE:
