

APPENDIX K: INTERVIEW OF SERGEANT CORTEZ GARDNER, DETECTIVE LIEUTENANT DAVID SMYSOR AND DETECTIVE SERGEANT TIM MCNAUGHT

On July 21, 2020 at approximately 8:30 am., Hillard Heintze Director Mark Giuffre, Senior Investigator Shirley Colvin and Investigator James Jones interviewed Urbana Police Department (UPD) Sergeant Cortez Gardner, Detective Lieutenant David Smysor and Detective Sergeant Tim McNaught. The investigators conducted the interview over Zoom.

Smysor's Professional Background

Smysor stated that he is the UPD's Criminal Investigations commander and supervisor for the Use of Force Review Board. Smysor was promoted in October 2019. Prior to his current role, he was a detective sergeant in Criminal Investigations and the coordinator of the Use of Force Review Board. Smysor has served approximately 10 years in Criminal Investigation. He worked for a while in Patrol, then was assigned back in Investigations. Smysor described the Use of Force Review Board supervisor role as somewhat hands-off without much need for supervisor oversight as the coordinator conducts most of the required work.

Use of Force Review Board Overview

Smysor described the Board as somewhat autonomous in that members independently review materials related to each use of force incident and then meet as a group. After that discussion, the majority conclusion is written up in a memorandum to the Chief of Police. When use of force incidents are reported to Smysor or when the Chief requests a specific incident be reviewed, Smysor passes on the information to the coordinator, who arranges for the reviews and meeting. Smysor does not attend Use of Force Review Board meetings or chair the Board.

McNaught said he has been the coordinator for approximately six months. He related that historically, the Board conducted use of force reviews approximately once per quarter. One of the reviews' goals is to examine what use of force tactics were used and to educate officers on how to author detailed and descriptive reports when force is used. Another purpose is to compile yearly data on use of force incidents for training purposes in order to identify and address any training needs.

Current members of the Board are Smysor, McNaught, Detective Adam Marcotte, Detective Darrin McCartney, Andy Hewkin and Colby Wright. Detective Dave Resh served as a long-time member but was recently replaced. Marcotte is a member of the Metro Special Weapons and Tactics (SWAT) team and a firearms and chemical agent instructor. McCartney is also a firearms instructor.



Board Review of the Use of Force Incident on April 10, 2020

Overview

Smysor said that in the April 10, 2020 use of force incident involving Aleyah Lewis, the Chief requested the Review Board hold a special meeting and provide him with a finding regarding the officer's use of force. Each Board member reviewed the material independently and then they met as a group, came up with a majority decision and documented it in a memorandum to the Chief. Smysor noted that this was the first time "in quite a few years" that the Board was requested to conduct a special review.

When reviewing use of force incidents, the Board members routinely review the reports from the officers who used force, the follow-up reports from the use of force investigator and body-worn camera (BWC) footage. Board members do not directly question officers. When additional information is needed, the Board will send a message to the officer or the supervisor indicating that they need more information. The Board does not receive direct information from civilians. For the April 10, 2020 incident review, the Board also reviewed social media video footage.

Gardner's Follow-Up Investigation

Gardner stated that he was promoted to sergeant approximately a year ago. He could not specifically recall but believes he may have been assigned one follow-up use of force investigation before being assigned to the Lewis incident. He recalled that on April 10, 2020, Sergeant James Koker informed him of the use of force incident involving Lewis. Koker had also spoken with Smysor to learn more about the incident. Because Gardner was a sergeant scheduled to report during the next shift and was not directly involved in the use of force incident, he was assigned to conduct the follow-up use of force investigation.

Gardner reviewed BWC footage from cameras that Sergeant Michael Cervantes and Officer Eric Ruff wore, a video of the incident posted on social media and the officers' reports, with the exception of Cervantes' report because it was not finished at the time of his review. Gardner made two attempts to interview Lewis. Gardner stated that based on his training and experience, Lewis was "clearly under the influence of a drug" and unable to understand and respond to questions.

Additional Interviews and Body-Worn Camera Footage Review

We asked Gardner, Smysor and McNaught if officers were interviewed during the follow-up use of force investigations and if canvasses were ever conducted to identify and interview civilian witnesses. Gardner stated he did not interview the officers involved and instead relied on the officers' reports. Gardner stated he did not canvass the area because he had the video from officers' BWCs as well as a video from social media that provided a wide view of the entire incident.

Smysor noted that BWCs are a great help in evaluating use of force incidents and to ascertain what happened. He stated that officers could be relied on to conduct witness interviews and that it is not absolutely necessary to re-interview witnesses. Smysor pointed out that in the April 10, 2020 incident, potentially 100 apartment windows overlooked the scene from which someone could observe something. Time constraints made it impractical for a follow-up use of force investigator to canvass that many residences, according to Smysor.



They said that the UPD started using BWCs approximately a year ago. The UPD is considering adjusting the review schedule to adapt to the availability of video when reviewing use of force incidents. Specifically, the Board is considering conducting reviews on a monthly rather than quarterly basis.

Training

McNaught said that the UPD does not have a formal use of force review training program. New sergeants are provided with a copy of the use of force review policy and when possible, a senior sergeant will review the use of force review policy and protocols with the newly promoted sergeant.