

Memo 2019-0206

To: Chief Brian Manley
cc: Assistant Chief Troy Gay, Director of the Office of Police Oversight Farah Muscadin,
From: Community Police Review Commission
Date: 01/11/2021
Re: IAD Case Number: 2019-0206 Officer Involved Shooting

On January 11, 2021, the Community Police Review Commission (CPRC) reviewed case no. 2019-0206 and received a briefing from the Internal Affairs Division (IAD). The incident under review occurred at the intersection of East 6th St. and Neches Street. A total of eight Department (APD) officers were present during the incident, and only two of the eight officers unholstered and drew their firearm. The other APD officers on the scene exercised proper judgment by (1) not placing themselves in the path of the moving vehicle as it drove through the intersection and (2) not drawing their firearm to shoot at the moving vehicle.

The CPRC holds that Officer A in case: 2019-0206 violated Austin Police Department GO 202.1.3 (and GO 202.1.1(a)). After reviewing body-worn camera (BWC) footage from four officers – not including footage from Officer A – as well as determined that Officer A's use of deadly force was not objectively reasonable and that the moving vehicle that he fired upon did not present an imminent threat of death or serious bodily injury. Officer A took steps toward the vehicle and nearly into the vehicle's path causing the driver to veer away from Officer A. Officer A put himself in danger by doing so and acted out of accord with policy and best practices. The CPRC holds the incident did not constitute an extraordinary circumstance to justify disabling the vehicle by use of firearm, pursuant to GO 202.1.3 (d). Therefore, Officer A's attempt to disable the vehicle by use of firearm was not reasonable under the circumstances.

Facts of the Case

The incident occurred after 1:30 am on March 2, 2019. A vehicle traveling north on Neches Street approached the intersection of East 6th Street and Neches Street, where it stopped behind a pedicab. Three officers at the scene reported seeing passengers in the vehicle. After being stopped behind the pedicab for several seconds, APD officers standing in the intersection noticed the vehicle and approached it. The driver maneuvered the vehicle around the pedicab before traveling north on Neches, accelerating through the intersection to cross 6th St. Officer A, who was positioned on the north side of the intersection, fired his weapon after the vehicle cleared the

intersection and was continuing north on Neches. Officers pursued the vehicle on foot but lost sight of the vehicle around East 7th Street and Red River Street.

Based on what the CPRC could observe in HALO footage, on the south side of the intersection there were two to five pedestrians crossing from west to east on East 6th Street in the southern crosswalk of the Neches and East 6th intersection. The driver crossed the intersection after those pedestrians were out of the crosswalk.

On the north side of the intersection, there were two pedestrians walking from east to west as the vehicle began to move into the intersection. These pedestrians were out of the crosswalk before the vehicle reached the north crosswalk, and were standing on the sidewalk of the northwestern corner of East 6th and Neches when Officer A fired his weapon. These pedestrians were not inline with the shot but within range of a ricochet or at risk of behind struck by the vehicle had the driver lost control.

An APD officer (Officer B) was near the northern intersection of East 6th and Neches when the vehicle passed and Officer A fired. Officer B was in close proximity to the line of fire from Officer A, and Officer B expressed his concern that he had been injured by Officer A's use of deadly force in BWC video. (Officer A's BWC footage was not made available to the CPRC for review in this case.)

The CPRC makes the following recommendations:

Recommendation 1: Officer Discipline: *Indefinite Suspension*

- a. Based on following policy violations and facts:
 1. GO 202.1.3 (d) stipulates that officers shall attempt to disable a moving vehicle using a firearm only under extraordinary circumstances in which the officer reasonably believes the deadly force is necessary to protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.
 2. The CPRC holds that the incident in question does not constitute an extraordinary circumstance given that:
 - 1) The driver of the vehicle not swerve in the direction of pedestrians or APD officers, nor did it hit pedestrians or APD officers;
 - 2) The driver did not attempt to turn east or west onto East 6th Street to travel toward pedestrians;
 - 3) The driver avoided the pedicab driver, APD officers and pedestrians when crossing the intersection;
 - 4) By the time Officer A drew and fired his firearm, the vehicle had exited the intersection and was traveling through a pedestrian-free, barricaded street; and
- b. According to the Discipline Matrix in GO 903, this violation constitutes use of deadly force that was not objectively reasonable and merits indefinite suspension. The CPRC recommends that Chief Manley follows this course of disciplinary action, as stipulated in APD policy.

Recommendation 2: Review and revise GO 202.1.3 MOVING VEHICLES

1. CPRC recommends revision for GO 202.1.3 MOVING VEHICLES:
 - i. CPRC will provide specific recommendations in the coming weeks.

Recommendation 3: Adopt or revise policies related to barriers, traffic control devices, crowd control, and traffic flow

- a. Include procedures for barricading frequently closed streets in GO 343.5.2 BARRIERS AND TRAFFIC CONTROL DEVICES
 - Add section (d) to 343.5.2 to codify procedures for barricading streets or areas that are frequently closed for pedestrians, such as East 6th Street and areas around major festivals, such as Austin City Limits (ACL) and South by Southwest (SXSW).
 - Strengthen barricades by strategically placing APD patrol vehicles in front of or behind metal barricades to deter vehicles from entering pedestrian only areas. Alternatively, position water-filled barrels behind metal barricades to prevent vehicles from easily navigating around or through barricades.
- b. Revise GO 343.5.3 PRIORITY OF TRAFFIC FLOW
 - Add 6. Taxis or ride-share vehicles to 343.5.3 (a)
 - Add section (b) to 343.5.3 to stipulate that officers shall divert vehicles away from pedestrian-only areas *before* the vehicle is able to approach or travel into a barricaded area
- c. Provide training to current and in-coming APD officers on above changes to barricading procedures, crowd control, and traffic flow
- d. Recommendation 4: Review and revise GO 116.4.7 BODY WORN CAMERA VIDEO and GO 303.3.1 WHEN DEPARTMENT ISSUED BWC SYSTEM USE IS REQUIRED to ensure a constant stream of footage during times when large crowds are expected (e.g. when downtown events conclude and businesses close).
 - CPRC will provide specific recommendations in the coming weeks.