

*City of Davis*

# Independent Police Auditor Report:

Review of DPD Officer-Involved Shooting of  
Christopher Gray

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Pursuant to our contractual agreement and existing protocols, the Independent Police Auditor reviewed the investigative and review materials associated with the December 19, 2019 officer-involved shooting involving Davis Police Department personnel, in which Christopher Gray was fatally wounded. This report contains our summary and identification of relevant concerns and issues surrounding the investigation and review of the incident by DPD.

## Factual Background

On December 19, 2019, just after 3:30 AM, Carol Gray called DPD's emergency number to report that her son, Christopher Gray, had threatened her. During the recorded call, the dispatcher could hear arguing, then screaming and loud thumps before the call disconnected. Two officers were dispatched to the call – Corporal Alex Torres and Officer Fiona Wais – with the information that the confrontation had turned physical and the female caller was heard screaming. Given the serious nature of this call, the other two officers on duty at the time – Officers Francisco Talavera and Benjamin Adams – also responded to the location.

The officers arrived at about the same time, parked their patrol vehicles a short distance away from the home and approached on foot. They gathered in the driveway, where they met briefly to discuss a plan for approaching the house and getting either Mr. Gray or his mother out of the house. Corporal Torres advised the others that he was familiar with Mr. Gray from prior calls, and that he had a history of mental illness.

The officers positioned themselves around the large French doors at the front of the house, two on each side, with one officer taking a position where he could also see inside the house through a front window. Through that window, and the windows in the front doors, officers could see a person laying on the floor in the front room, partially covered by a white sheet with blood on it. The officers believed they could see a rise and fall of the sheet, leading them to conclude that the person was alive and breathing.

Corporal Torres (the ranking officer on scene) directed someone to deploy “less-lethal” and Officer Talavera withdrew and readied his Taser, while Torres unholstered his firearm. Officer Adams (monitoring the scene through the front window) could see Mr. Gray walking about in the kitchen. Officers knocked on the door, announced themselves as Davis Police, and, calling Mr. Gray by name, told him to come out. Officer Adams then saw Mr. Gray open a kitchen drawer, remove several knives and approach the front room.

Corporal Torres instructed Officer Wais to check the front door, and she opened the right side to see Mr. Gray standing about 30 feet away with a knife. She maintained her position outside of the home and withdrew her firearm while ordering him to stop and drop the knife.

Sergeant Kimberly Walker arrived on scene around this time and began directing officer movements. On instruction to use less-lethal weapons, Officer Talavera moved to the open doorway and confronted Mr. Gray, who he could see held a knife in his raised right hand and at least one more in his left as he walked toward the door. Mr. Gray said, "Enough of this shit. Come in the house and fucking shoot me." Talavera fired his Taser. Mr. Gray fell backward but quickly recovered and got back on his feet and went back toward the kitchen.

Officer Talavera moved to a position just inside the house, followed by Officer Wais, but were directed by the Sergeant and Corporal Torres to stop, and then to retreat back outside. Before Officer Talavera stepped back outside the house, Mr. Gray came out and threw a knife at him, missing. Mr. Gray went back to the kitchen, then re-emerged and threw a second knife toward the officers as officers ducked and took cover behind the door. Mr. Gray went back to the kitchen and got more knives.

Mr. Gray emerged from the kitchen and rushed toward the officers, all of whom were now outside the house. He collided with Officer Talavera, who was trying to transition from his Taser to firearm. Officer Talavera momentarily turned away from Mr. Gray as both Corporal Torres and Officer Adams fired (two and three rounds, respectively). Mr. Gray dropped to the ground just outside the front door. A little more than four seconds later, Officer Talavera fired two rounds from his firearm at Mr. Gray.

As Mr. Gray laid on the ground just outside the front door, body-worn camera footage depicts an officer repeatedly ordering him to put the knives down. He was still moving, but slowly, and about a minute later, an officer declared that he's moving in and asks for cover. He took the knives out of Mr. Gray's hand, and then video shows a moment of indecision, during which an officer asks, "Drag his body out? Or cuff him up?"<sup>1</sup> Ultimately, officers handcuffed Mr. Gray in that spot and then began providing emergency medical care, including retrieval of a trauma kit, application of a chest seal, and chest compressions. Mr. Gray was later pronounced dead at the scene. The Yolo

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<sup>1</sup> Referring to Mr. Gray as a "body" was not ideal, particularly since officers also noted he was still breathing at the time. But it was also a moment of understandable confusion, when officers were trying to figure out whether they could give him medical aid in the closed-in area where he laid, or if they needed to pull him away from the door to give themselves (and eventually, paramedics) a little more room to work.

County Coroner determined there were five gunshot wounds, and that each of the three shooting officers fired at least one bullet that could have been fatal.

Ms. Gray, laying under the sheet, also was pronounced dead at the scene. She had suffered multiple injuries, but a stab wound to her abdomen proved fatal.

Officer Talavera suffered a broken index finger in the collision with Mr. Gray at the doorway.

The shooting occurred less than two minutes after officers first approached the house.

## Criminal Investigation and District Attorney Review

Pursuant to existing protocol, the West Sacramento Police Department (WSPD) conducted an investigation into this officer-involved shooting incident. WSPD investigators conducted thorough interviews of involved and witness officers, with a sole focus on determining potential criminal liability for the officers' uses of deadly force. Investigators interviewed witness officers and one shooting officer within hours of the shooting, while the two other shooting officers were interviewed two days later.<sup>2</sup>

The District Attorney reviewed the West Sacramento investigation and ultimately concluded that all three officers reasonably believed Mr. Gray posed a threat of death or great bodily injury at the time they used deadly force, and there was insufficient evidence to support the filing of criminal charges against any of them, pursuant to the legal standards applicable at the time.<sup>3</sup> To guide its analysis of Officer Talavera's decision to fire his weapon, the DA's office engaged the services of a Human Performance Science instructor from a firm that provides training and safety and risk management services to law enforcement and other government agencies. In a lengthy report evaluating the incident, the instructor evaluated the evidence and described a scenario in which Officer Talavera perceived a threat that justified the use of deadly force, despite the fact that Mr. Gray was, at the time, laying on the ground with at least two fatal wounds.

## Prior Calls for Service Involving Mr. Gray

Just before 8:00 PM on December 18, Carol Gray had called DPD because of her son's behavior. Officers responded and interviewed both Ms. Gray and Christopher Gray, but

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<sup>2</sup> Best investigative practices call for involved officers to be interviewed on the day of an incident, preferably before the end of their shifts. This approach promotes accuracy and investigative integrity by eliminating potential sources of interference.

<sup>3</sup> California Penal Code §§196 and 835(a) changed the standard for a law enforcement officer's use of deadly force from "reasonable" to "necessary," effective January 1, 2020.

determined he did not meet the criteria for a 72-hour mental health hold pursuant to California Welfare and Institutions Code §5150. Officers did make arrangements for a mental health professional from the Yolo County Health and Human Services Agency to meet with Carol and Christopher on December 19, 2019. Those officers' shift had ended by the time Ms. Gray called dispatch again fewer than eight hours later. This shooting incident occurred prior to that scheduled meeting with the mental health practitioner.

In addition, we learned about other calls for service involving Mr. Gray, including what was reported to us as scores of prior calls from the Grays' neighbors regarding Christopher Gray's erratic and menacing behavior, along with the allegation that DPD's response to these prior calls was insufficient.

## IPA Review and Analysis

The Independent Police Auditor (IPA) reviewed the materials relevant to this incident, including DPD reports, officer interviews, audio and video recordings, the investigative report completed by the West Sacramento Police Department, the Coroner's report, the Yolo County District Attorney's memo detailing its decision not to prosecute involved officers, a report from an outside individual relied upon by the District Attorney in reaching his decision, and the DPD Internal Affairs memo.

These materials also were released to the public pursuant to California law governing the release of peace officer personnel records and audio/video recordings of fatal officer-involved shootings.

## Tactical Decision-Making and Use of Deadly Force

DPD did many things well as this incident unfolded: The officer who was assigned the initial call waited for nearby backup before approaching the volatile, predictably dangerous situation; officers gathered away from the entrance to the home, asked, "what's the plan?" and very briefly discussed their options before moving toward the house; the ranking officer took charge and directed movement and weapons choices; a sergeant arrived quickly and exercised operational command; radio communications were clear.

Once officers had engaged Mr. Gray, they likewise made a number of tactically sound decisions: They positioned themselves to give the best view into the home without splitting up, and one officer armed himself with the less-lethal Taser while others provided cover with lethal weapons. As Officers Talavera and Wais moved to just

inside the house, the sergeant recognized the danger inherent in the officers' positioning and ordered them to move back outside. These were the involved officers' best efforts at de-escalation, given the circumstances presented. Officers believed Ms. Gray was still alive at the time, and the obvious need to get to her quickly precluded any notion of disengagement or a prolonged negotiation with Mr. Gray (who, in any event, did not appear to be willing to engage with officers in a nonviolent way).

When Mr. Gray rushed at the officers armed with knives, he clearly presented a deadly threat that Officer Adams and Corporal Torres reasonably responded to with the use of deadly force. There are significant questions remaining, however, about Officer Talavera's decision to fire after Mr. Gray was down. Officer Talavera told WSPD investigators that Mr. Gray was still standing as Talavera fired his weapon, aiming at Mr. Gray's torso. The body-worn camera footage shows this to be a misstatement, as Mr. Gray is clearly on the ground when Officer Talavera fires. The misstatement alone is neither surprising nor necessarily troublesome. Human memory is imperfect, and frequently "gets things wrong" when trying to recall stressful events.

The human performance instructor engaged by the prosecutor addressed this memory deficit, and went further, providing a detailed analysis of the evidence and human factors principles relating to perception, stress, attention, decision making, and response time. He ultimately concluded that Talavera's use of deadly force – taking into account all these factors, including the impact of the pain associated with his broken finger – was based on a reasonable perception of a deadly threat. The District Attorney and DPD relied on this analysis to find the officer's use of force lawful and within policy.

Ideally, Officer Talavera would have been interviewed as part of DPD's administrative investigation to discuss some of the factors later illuminated by the human performance instructor. As it was, the WSPD detectives did not play the body-worn camera footage for him (or any of the involved officers), question him about the discrepancy, or ask him for an explanation. For many reasons, the practice of interviewing an officer prior giving him access to body-worn camera footage is preferred over those agencies that allow officers to watch video footage prior to giving a statement. But best practice is to take the officers' statements, then give them the opportunity to review the video followed by the chance to make any additional statements. As we discuss below, a subsequent administrative interview could have provided this opportunity.<sup>4</sup>

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<sup>4</sup> Here, any opportunity to conduct a follow-up interview of Officer Talavera was precluded by his subsequent medical leave and departure from DPD.

## DPD's Administrative Review

Pursuant to protocol, the Chief assigned a lieutenant assigned to complete an administrative investigation into this officer-involved shooting, to assess whether officers' actions complied with Department policy and procedure. The lieutenant produced a thorough and detailed report of the incident and analysis of applicable DPD policies. However, his report relied almost entirely on the criminal investigation completed by WSPD.<sup>5</sup>

While the initial investigation was thorough, its focus was on potential criminal liability. We recommend that agencies' administrative investigations include some additional fact-gathering – including administrative interviews of involved officers and supervisors – to supplement the criminal investigation. Criminal investigators do not interview witnesses or gather evidence with an eye toward determining whether the performance of any officer violated policy, assessing pre-event tactical decision making, reviewing the decisions of supervisors, or considering post-incident conduct such as the timely provision of medical care. A broader administrative investigation should address these types of issues.

In this case, follow-up interviews would have been especially important, to provide officers the opportunity to review body-worn camera footage and provide explanations for discrepancies between the video and their initial statements. While Officer Talavera was not available to be interviewed due to medical leave, the investigator could have explored the extent to which any of the other officers considered Mr. Gray to continue to be a threat after he went down.

The incident also raised one question about post-shooting supervisory performance that was not explored in the administrative investigation – initially, only two officers were identified as shooters. One responsibility of an on-scene supervisor following an officer-involved shooting is to identify all those who fired their weapons and initiate protocols for segregating them from others and transporting them back to the station. Here, Sergeant Walker acknowledged during her interview with WSPD that she'd made a mistake with respect to only later learning that Officer Talavera had fired his weapon. She said she was busy ensuring that the officer received medical attention for his injured finger and neglected to confirm whether he had discharged his gun. Her candid acknowledgement of this error very soon after the incident was commendable. Nonetheless, this is an issue that should have been further explored in the administrative investigation, at a minimum to determine exactly when supervisors

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<sup>5</sup> A DPD Deputy Chief interviewed the three involved Dispatchers as part of the administrative investigation.

learned that Talavera had fired his weapon and whether there was any adverse impact on the integrity of the investigation.

### District Attorney's Reliance on "Human Factors" Consultant

The District Attorney's office and WSPD engaged a Human Performance Science instructor to evaluate Officer Talavera's use of force, relative to the "human factors" involved, and specifically to address the four and a half second delay between Officer Torres's last fired round, when Mr. Gray dropped to the ground, and Officer Talavera's first fired round. The consultant is certified as a "Force Science Analyst" by the Force Science Institute, a company that has drawn heavy criticism from both academics and advocates of police reform for questionable application of scientific principles and reliance on disputed data to reach conclusions that almost always support the reasonableness of an officer's actions.

As we discussed above, the instructor concluded in a lengthy report that Officer Talavera's use of deadly force was based on a reasonable perception of a deadly threat. In his only interview related to this incident, the officer stated that Mr. Gray was standing when Talavera fired at him, though the body-worn camera footage shows this statement to be clearly inaccurate. The human factors report explains away this difference between perception and evidence as a result of the fact that Officer Talavera had been injured in Mr. Gray's assault, then lost sight of the threat, but reasonably perceived it still existed at the time he fired. Acute stress, divided attention, response time, and perceptual distortion and memory deficits all played a factor in the officer's response, according to the human factors report.

We have several concerns about this approach to evaluating Officer's Talavera's use of deadly force. As a substantive matter, we acknowledge the cognitive psychology, kinesiology, physiology, and other scientific principles that impact human performance and perception in stressful conditions. These "human factors" principles have potential applicability to individual critical incident scenarios. Nonetheless, we are troubled by our sense that the introduction of these concepts often tends to be one-sided and over-reaching.

While we have little doubt that Officer Talavera's performance, perception, and memory were impacted by the stress of the entire situation presented that night – the danger he faced as well as the pain of the injury that preceded the shooting – we are troubled by the use of a report by an "expert" by both the criminal investigator and responsible prosecutor to explain these issues. While the human factors instructor cites a couple of relevant statements from Officer Talavera's interview, the lack of any statement from officer Talavera about the inconsistency between what he perceived and what the

evidence shows makes reliance on an “expert” to explain away that discrepancy particularly dubious here.

A related concern has to do with the way justification through science has the effect of ending the inquiry into questionable performance in ways that truncate the potential of the review process. This is true not necessarily just in terms of policy issues and officer accountability, but also in terms of training opportunities and an agency’s willingness to use a stressful, challenging situation as an occasion to reinforce the importance of sound tactical decision-making.

### Review of Prior Calls for Service

DPD’s administrative review of the officer-involved shooting did not expressly address the questions surrounding earlier calls for service involving Christopher Gray, or any assessment regarding the sufficiency of DPD’s responses to those calls. The Chief’s memo regarding this case acknowledges this issue, but states that DPD is looking into the prior police calls as part of a separate investigation. To date, we have not received any materials relating to that investigation.

### Deployment of Mental Health Clinicians

Recently, the City of Davis has expressed increasing support for the use of mental health clinicians to assist in calls like those that Mr. Gray’s neighbors and family members had been requesting DPD to respond to in advance of this tragic incident. We support this type of holistic intervention strategy for assisting those in mental health crisis, as a complement to the more limited tools available for law enforcement. One valuable exercise would be for the mental health clinician assigned to “co-respond” to mental health calls to examine the prior calls for service in this case and determine whether other interventions might have been considered prior to the fateful day that resulted in the death of Ms. Gray and her son.

### Recommendation

DPD should provide the prior call history information to a mental health clinician assigned to assist DPD with mental health calls, so that he/she can undertake an analysis of those calls and report on whether other interventions might have been considered prior to the officer-involved shooting incident.