

THE CITY OF



PLEASANTON.

MEMORANDUM

Date: May 13, 2016
To: David C. Spiller, Police Chief
From: Craig Eicher, Investigations Division Captain *C.E.*
Subject: Use of Force Review CR#15-0024571

115 5/12

POLICY REVIEW:
✓ FORCE APPLIED
Use of Force

In the wake of my review of the Use of Force CR#15-0024571 on the morning of May 5th, 2015 involving Officer's Daniel Kunkel, Steven Bennett, Tyler Paulsen, Mark Sheldon and Sergeant Gora, I concur with the findings as presented by Lieutenant Knox and Sergeant Young as outlined their investigation.

Lieutenant Knox and Sergeant Young assessed the employee's actions during incident CR#15-0024571 in relation to relevant Pleasanton Police Department policy sections.

The following policies were considered:

- COMMAND NOTIFICATION
 - 205.2 NOTIFICATIONS
- USE OF FORCE
 - 300.3.1 USE OF FORCE TO EFFECT AN ARREST
 - 300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE
 - 300.4 DEADLY FORCE APPLICATIONS
 - 300.5 REPORTING THE USE OF FORCE
 - 300.5.1 NOTIFICATIONS TO SUPERVISORS
 - 300.6 MEDICAL CONSIDERATIONS
 - 300.7 SUPERVISORY RESPONSIBILITY
- CONTROL DEVICES AND TECHNIQUES
 - 308.3 ISSUING, CARRYING AND USING CONTROL DEVICES
 - 308.4 RESPONSIBILITIES
 - 308.4.1 WATCH COMMANDER RESPONSIBILITIES
 - 308.8.1 DEPLOYMENT CONSIDERATIONS
 - 308.8.2 SAFETY PROCEDURES
 - 308.9 KINETIC ENERGY PROJECTILE GUIDELINES
 - 308.9.1 DEPLOYMENT AND USE
 - 308.9.2 DEPLOYMENT CONSIDERATIONS
 - 308.9.3 SAFETY PROCEDURES
 - 308.11 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES
 - 309.3 ISSUANCE AND CARRYING TASER DEVICES

PRIVILEGED

- 309.4 VERBAL AND VISUAL WARNINGS
- 309.5 USE OF THE TASER DEVICE
 - 309.5.1 APPLICATION OF THE TASER DEVICE
 - 309.5.2 SPECIAL DEPLOYMENT CONSIDERATIONS
 - 309.5.3 TARGETING CONSIDERATIONS
 - 309.5.4 MULTIPLE APPLICATIONS OF THE TASER DEVICE
 - 309.5.5 ACTIONS FOLLOWING DEPLOYMENTS
- 309.6 DOCUMENTATION
 - 309.6.1 TASER DEVICE FORM
 - 309.6.2 REPORTS
- 309.7 MEDICAL TREATMENTS
- 309.8 SUPERVISOR RESPONSIBILITIES
- 309.9 TRAINING
- OFFICER INVOLVED SHOOTING
 - 310.5 DUTIES OF INITIAL ON SCENE SUPERVISOR
 - 310.5.2 WATCH COMMANDER DUTIES
 - 310.5.3 NOTIFICATIONS
 - 310.5.5 INVOLVED OFFICERS
- FIREARMS
 - 312.4 FIREARMS QUALIFICATION
- OFFICER RESPONSE TO CALLS
 - 316.3 REQUESTING EMERGENCY ASSISTANCE
 - 316.3.1 NUMBER OF UNITS ASSIGNED
 - 316.4 INITIATING CODE 3 RESPONSE
 - 316.7 SUPERVISORY RESPONSIBILITIES
- POLICE SERVICE DOG PROGRAM
 - 318.2 GUIDELINES FOR THE USE OF CANINES
 - 318.2.1 PREPARATION FOR UTILIZING A CANINE
 - 318.2.2 WARNINGS GIVEN TO ANNOUNCE THE USE OF A CANINE
 - 318.2.6 REPORTING CANINE USE, BITES AND INJURIES
 - 318.7 TRAINING
 - 318.7.1 CONTINUED TRAINING
- MAJOR INCIDENT NOTIFICATION
 - 358.3 MINIMUM CRITERIA FOR NOTIFICATION
 - 358.4 WATCH COMMANDER RESPONSIBILITY
 - 358.4.1 STAFF NOTIFICATION
 - 358.4.2 DETECTIVE NOTIFICATION

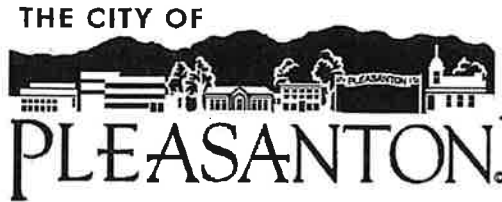
Policy 450 – Use of Audio/Video Recorders was not included in this review as the policy at the time of this incident allowed for discretionary use of recording devices.

Each of the involved officers, including Sgt. Gora acted within the parameters of department policy for each of the aforementioned policy considerations during this incident.

Two minor discrepancies were discovered during the course of this policy review. The Taser Forms had not been completed contemporaneous with the investigation. I assigned Lieutenant Laurence to complete the required documentation. Additionally, a Police Canine Service report had not been

completed as required by policy. I assigned Officer Sheldon the task of completing his Police Service Canine Report.

PRIVILEGED



MEMORANDUM

Date: May 5, 2016
To: David C Spiller, Police Chief
From: Lieutenant Jim Knox | Sergeant Ted Young
Subject: Officer Involved Shooting Use of Force Review CR#15-0024571

INTRODUCTION:

On July 5, 2015, Lt. Knox received a phone call at about 1:45 hours from Pleasanton Police Dispatcher Terri Timmerman. She informed Lt. Knox that we had an officer involved shooting and asked that he call Sgt. Gora, who was on scene. Lt. Knox hung up and attempted to call Gora but could not reach him with the cell number he had for him. Lt Knox called dispatch back and asked Timmerman to ask Sgt. Gora to call Lt. Knox. A few moments later, Sgt. Gora called Lt. Knox and informed him that they had been called to Specialty Auto Sales at 4321 First Street on an alarm call. Upon their arrival at the business they encountered a subject inside. Ultimately, the subject left the business and there was a confrontation between the suspect and Officer Dan Kunkel, which ended with Officer Kunkel shooting the suspect. Sgt. Gora advised Lt. Knox the suspect had been transported by ambulance to Eden Hospital in Castro Valley. He further advised Officer Kunkel had sustained injury as well and had been transported via ambulance to Valley Care Hospital. The suspect was later identified as Mr. Johnathan Deming Jr.

Upon hanging up the phone with Sgt. Gora, Lt. Knox called Captain Eicher, Sgt. Schlehuber and Lt. Bretzing in that order and advised them of the shooting. Lt. Knox responded to the scene. Upon arrival at the scene, he met with Sgt. Gora and Captain Eicher. Lt. Knox was briefed on the details of the incident as they were known. Captain Eicher informed Lt. Knox that he would be responsible for the administrative portion of this investigation.

Suspect: Johnathan Patrick Deming Jr. (deceased)

Involved Employees: Sergeant Eric Gora
4833 Bernal Avenue
Pleasanton, Ca. 94566
(925) 931-5100

Officer Dan Kunkel
4833 Bernal Avenue
Pleasanton, Ca. 94566
(925) 931-5100

Officer Steven Bennett
4833 Bernal Avenue
Pleasanton, Ca. 94566
(925) 931-5100

Officer Tyler Paulsen
4833 Bernal Avenue
Pleasanton, Ca. 94566
(925) 931-5100

Officer Mark Sheldon
4833 Bernal Avenue
Pleasanton, Ca. 94566
(925) 931-5100

Witness Officers: Officer Brad Middleton
4833 Bernal Avenue
Pleasanton, Ca. 94566
(925) 931-5100

Officer Palmquist
4833 Bernal Avenue
Pleasanton, Ca. 94566

Officer Anthony Pittl
4833 Bernal Avenue
Pleasanton, Ca. 94566

Officer Brandon Cobler
4833 Bernal Avenue
Pleasanton, Ca. 94566

PRIVILEGED

OVERVIEW:

The following sequence of events was established based upon radio traffic of the incident and the notes and times captured by the dispatchers in their cad entries associated with the incident:

On the morning of Sunday July 5th, 2015 at 0208 hours, Pleasanton Police dispatch received a call of an alarm activation at 4321 First Street, Specialty Auto Sales. The dispatcher was told that the alarm had come from Zone 6 and that there was a male subject on scene who refused to provide his name to the alarm company. A few minutes later, the alarm company called the police department back to advise that there were more alarm activations from the left and right rear showrooms.

Pleasanton Police Department dispatch sent Officers Kunkel and Middleton along with Sgt. Gora to the alarm. Sgt. Gora arrived on scene first and advised there was a white Mercedes Sprinter van with paper plates parked to the rear of the business. He further advised that rear door of the van was open and the dome light was on. He also articulated there was a window break at the business.

At 0220 hours, Sgt. Gora reported that there was somebody screaming very loudly inside the building and smashing things in the northwest corner of the building. He asked for his cover to respond code 3. Officer Middleton was elevated to a code 3 response. Officer Kunkel was asked for his estimated arrival time and he replied that he was on scene. Sgt. Gora got back on the radio and asked if Officer Sheldon, who was scheduled to go off duty, was still on the air. Officer Sheldon advised that he was still available and stated he would be responding from Livermore. Sgt. Gora asked Sheldon to respond code 3. Sgt. Gora stated something was going on inside the business and they were going to set up a perimeter. Sgt. Gora then asked for the district 3 officers to respond from their previous call in Ruby Hills. Officers Palmquist and Paulsen advised they were in route to the call. Sgt. Gora asked that one of them deploy with a less lethal weapon (Shotgun) when they arrived on scene.

At 0223 hours, Officer Kunkel advised that he saw a male in the building and he described the male as having a ponytail and being dressed in all black clothing. Officer Kunkel reported that the male was running to the front of the building and a few moments later, Officer Paulsen reported the male was running back toward the rear of the building. Paulsen said that the male was wearing a black bandana around his face. As the subject was running between the front and rear of the business, the officers could see the subject had a box of keys in his hands. The subject was talking to himself and walked to the front of the business, where he put the box on the ground.

As additional officers arrived on scene, Sgt. Gora set up a perimeter, delegating where officers should set up. He also asked that dispatch contact Livermore Police Department to ascertain if Livermore Police Department had a couple of officers available to assist us. At 0228 hours, Sgt. Gora advised that a suspect had just tried to force his way through the front of the business and advised that he had a big pole. A minute later, Officer Kunkel advised that the subject was challenging officers and shortly after was running to the rear of the building. At 0229 hours, Sgt. Gora advised via the radio that less lethal force had been deployed. The subject was reported to be in the back of the building by Officer Kunkel and then he updated the subject's location to be at the southwest corner of the building. He could hear screaming coming from inside the building. Seconds later the suspect was reported to be walking on top of cars. At 0231 hours, the subject was reported to be climbing in the rafters of the building. At this time, dispatch advised two Livermore units were responding code 3 from their city.

Officer Pittl arrived on scene at 0231 hours and met with Officer Sheldon and Sgt. Gora. A few moments later, Sgt. Gora advised via radio to the units in the back of the business that they were going to make entry into the business with the K-9 unit. At 0235 hours, Officer Kunkel advised that he had one out the back of the building. Nineteen seconds later, an officer advised there had been shots fired and second's later code 3 medical was requested. Sgt. Gora asked for two ambulances to respond to the rear of the business. At 0237 hours, Officer Pittl advised that they were starting medical care on the suspect. Shortly afterwards they advised they had cleared the business, confirming that there was only one suspect involved in the incident. Lt. Knox was advised of the incident by Dispatcher Timmerman at 0242 hours. Sgt. Gora reported that he was turning his body worn camera off at 0246 hours and after both the suspect and Officer Kunkel had been transported to their respective hospitals, the crime scene perimeter was set up and maintained.

PRIVILEGED

INVESTIGATION

After being notified of the incident by Sgt. Gora, Lt. Knox responded to the scene and met with Sgt. Gora and Captain Eicher. Knox was informed that he and Sgt. Young would conduct the parallel, administrative investigation. Lt. Knox noted the perimeter and the location of the suspect's vehicle and the patrol vehicles in relation to the business. He also noted a floor jack in the street in front of the business. Additionally, the glass on the south showroom door of the business was broken.

Lt. Knox returned to the police department and waited for Sgt. Young to arrive. Lt. Knox went to the upstairs conference room and met with Officer Kunkel. Attorney Joseph Lucia was present and witness. Lt. Knox requested Officer Kunkel provide a blood sample voluntarily. Kunkel stated he did not wish to do so on the advice of his attorney. Lt. Knox compelled Officer Kunkel to provide a sample per PPD Policy section 310.7 (a). Officer Kunkel complied and provided a sample which was collected by a certified phlebotomist. The sample was later taken to Santa Rita Jail and deposited in the safe for testing by the lab. Once Sgt. Young arrived, Lt. Knox and Sgt. Young waited for the assigned PPD Investigations personnel to respond for a crime scene walk through. When they were prepared, all personnel went to the crime scene and waited for the Alameda County District Attorney's Shooting Team investigators to arrive. Upon the D.A. Investigators arrival, all personnel entered the crime scene and began a slow methodical walk through of the crime scene, beginning at the rear of Specialty Auto Sales in the parking lot of 120 Spring Street, where the incident concluded.

While walking the scene, we observed the suspect's van parked in the east driveway of 120 Spring Street. Officer Kunkel's patrol car (402) was parked across the street, parallel to the business. We observed the patrol car had the less lethal shotgun in it. Additionally, LPD Sergeant Horton's car was parked on Spring Street to the rear of the suspect's white van. We also saw that Sgt. Horton's less lethal shotgun was still in his vehicle. Sgt. Gora's vehicle (481) was parked in the front portion of the parking lot of 120 Spring Street, west of the suspect's van. Both his AR-15 rifle and his less lethal shotgun were in the vehicle, however the AED was not in the vehicle.

In the driveway to the east side of the building, we observed a less lethal shotgun, a handgun and a Taser with a deployed cartridge still attached. There were two wires protruding from the cartridge, on the ground. Additionally, we observed a pool of blood, two dog tags, a watch, a black belt, shorts, a wallet, keys, a blue tank top, black jacket and blue bandana.

In the driveway to the northwest side of Specialty Auto Sales we observed a Taser cartridge blast door and some aphids. At the front of Specialty Auto Sales, we found one expended less lethal shotgun casing and one unfired less lethal bean bag round. The glass to one of the south showroom doors was broken and there was a floor jack in the street to the east of the front doors. There was glass on the ground on the outside of the door. There was another floor jack on the hood of a car parked in front of the showroom window to the north of the south showroom doors.

Upon entering the business, we noted broken guitar pieces at different locations inside the business. Near a pickup truck parked on the north side of the showroom we observed several less lethal shotgun casings, some deployed bean bags, two Tasers and several expended Taser cartridges, probes and aphids. There were a number of keys strewn across a Dodge challenger and a box that had contained the keys on the ground next to the challenger. Written on a red Ford Mustang were the words "Confront me in peace, I have much to teach" in black lettering. The writing appeared to have been written with a black sharpie type marker. In the bathroom of the south showroom, the words "Hope 4 humanity is failed" were written on the wall in what appeared to be the same black marker.

In the north showroom, the cars were covered with a yellow powder material. There was a fire extinguisher located on the floor and it appeared to have been used to spray the retardant all over the cars. The glass window on the northwest corner of the building was broken and there was glass on the floor below it which would indicate the window was broken from the outside of the business.

The Alameda County Sheriff's Crime Lab photographed and collected the evidence. See their report and crime scene photos for full details of evidence items and locations.

Upon completion of the crime scene walkthrough, Lt. Knox and Sgt. Young returned to PPD to audit interviews of the involved officers as well as the witness officers. Prior to the interviews, Knox and Young reviewed the PPD policy manual to refer to applicable policies during the course of the interviews. The interviews were conducted as follows:

Officer Bradley Palmquist (07/05/15 1357 Hours): Lt. Knox and Sgt. Young watched Officer Palmquist's interview from the watch commander's office. Detectives Stocking, Lengel, Officer Palmquist and his attorney Terry Leoni were present in the interview.

Officer Palmquist had arrived on scene and removed his less lethal shotgun from his patrol car. He responded to the northeast corner of the business and met with Officer Bennett. He began loading the shotgun with less lethal bean bag rounds while Officer Bennett verified the rounds. While loading the rounds, a double feed occurred and he handed the shotgun to Officer Bennett to assist him. Once he handed the shotgun to Bennett, he drew his handgun.

Palmquist stated that he saw the suspect throw a large object at the front of the business, 6-8 feet from where officers were standing. He stated he believed the suspect was trying to harm the officers. He saw Officer Middleton at the front of the business and heard him give the suspect verbal commands to surrender. He also heard Sgt. Gora give the command for less lethal deployment and Officer Bennett fired one less lethal bean bag round at the suspect. Palmquist noted no reaction by the suspect. He stated the officers continued to give commands to surrender and the suspect did not respond. He saw the suspect turn to his right and get on all fours (hands and feet). A short time later, he saw the suspect climbing pipes and on a ledge inside business,

20 feet up in the air. Seconds later, he dropped his legs down and started "swinging like a monkey".

Palmquist said the officers at the front of the business got together to make entry to the business. Officer Sheldon and his K-9 stood in front of the door to the south showroom and gave his verbal commands for the suspect to show his hands and to come out. Palmquist stated the suspect just stared at them. Upon making entry into the business, they found the suspect sitting on top of a black pickup truck. He described the officers being about 5 feet plus away from the suspect in a semi-circle. Palmquist stated that the suspect was "incomprehensible" and he displayed erratic behavior. There was a Taser deployed and he described one probe hitting the suspect center mass and the suspect ripped the dart off. The suspect turned to his right and ran toward the back hallway. Officer Palmquist pursued the suspect and when he reached the hallway, he could see the suspect going out of the broken window. As Officer Palmquist approached the window he heard two to three loud bangs which he immediately recognized as gunshots. He said he initially thought the K-9 had been shot because he could not see Officer Sheldon or his K-9.

Palmquist exited the business through the broken window and ran to the parking lot to the west of Specialty Auto Sales. When he rounded the corner of the white van he saw the suspect lying on the ground and then he saw Officer Kunkel laying on his back on the ground as well. He (Kunkel) had his arms above head. Palmquist said he thought Kunkel was dead. He kneeled next to Kunkel and saw that Kunkel's eyes were open but he was non-responsive to Palmquist asking him, "are you ok?" Palmquist said he finally shook Kunkel and Kunkel responded to him. He said that Kunkel still had his gun in his hand and he slid it out of Kunkel's hand, and to the side of where it had been, in his hand.

Palmquist assisted Kunkel up from the ground with another officers help. He said Kunkel was dead weight and had a hard time standing. He walked Kunkel to his patrol car and noted that Kunkel could not sit down due to the pain in his legs. He said that Kunkel told him, "I'm glad he didn't pull a gun on me, I am so happy I am alive". Palmquist noted that Kunkel had Taser wires wrapped around his gun belt and legs. Palmquist remained with Kunkel until the ambulance took him to the hospital.

Palmquist stated he thought the suspect was on PCP or drugs because of his bizarre behavior, the fact that the Taser and bean bag rounds did not seem to work on him and the extreme amount of force that had to be deployed to overcome the suspect's resistance.

During the interview, Officer Palmquist stated he was carrying his personally owned firearm during the incident and while on duty, July 5th, 2016. After the completion of the investigators interview, Lt. Knox met with Officer Palmquist and gave him a Lybarger admonition with his representative Ms. Leoni present. Knox asked Palmquist if he had been approved to carry his personally owned firearm and if he had qualified with it prior to carrying it on duty. Officer Palmquist stated that he had been approved by Lt. Laurence to carry his personally owned Glock Model 17 handgun. He further stated that he had qualified with it during a department range qualification and was carrying department issued ammunition at the time of this incident. Lt. Knox had no further questions and the interview was ended (See the case report and recorded interview for full details).

Sergeant Eric Gora (07/05/15 1539 Hours): Lt Knox and Sgt. Young observed Sergeant Gora's interview from the watch commander's office. Detectives Stocking, Lengel, Sergeant Gora and his attorney Joseph Lucia were present during the interview.

Sgt. Gora stated he heard the alarm call and responded from the station. He arrived on scene and parked to the west of the business in the parking lot of 120 Spring Street. He got out of his patrol car and began to approach the business (Specialty Auto Sales). As he did, he observed a white Mercedes Van in the same parking lot with the rear passenger door open and the dome light on. He felt the van did not seem to fit the area given the time of night. He cleared the van visually for people and started to approach the business. As he did, he saw a broken rear window and heard banging coming from inside the business, which he described as possibly metal on metal. He also heard screaming inside the building and felt that someone was attempting to steal a car. Because he was by himself, he asked for units to respond code 3. Officer Kunkel arrived on scene next and met with Sgt. Gora. Gora instructed him to stay at the northwest corner of the business, by the broken window and Gora moved up to the northeast corner. He said he heard voice(s) and screaming and was unsure if there was one or two people inside the business. Kunkel saw a suspect inside the building and gave a description over the radio. Because of the circumstances, Gora requested that Officer Sheldon and his K-9 respond from his home code 3. He requested all additional units respond code 3 as well.

Additional Officers began to arrive on scene. Officer Middleton said he saw the suspect and the suspect ran away into another part of the business. At one point the suspect came to the window and held up both of his middle fingers at the officers yelling "fuck you". Gora said he saw the suspect run out of a storage closet carrying a floor jack with a handle protruding from one end and throw it at a window. Gora said the floor jack bounced off the window. A short while later, Gora saw the suspect run toward the front window with a second jack. He activated his Taser camera, which he was testing. The suspect threw the second jack at the window. The jack broke the window and flew about 6-8 feet. He believed the suspect was throwing the jack at the officers who were close by the window. Shortly after throwing the jack through the door window, Gora said the suspect came to the threshold of the front door to the business. He had his fists clenched, he appeared angry and was emoting a "guttural screaming".

Gora said he knew they had a tactical position and said he did not want to give up ground. He further stated that he did not know if the suspect was armed and he was unsure if the suspect would advance. He gave the order for less lethal deployment. Officer Bennett fired one bean bag round which missed the suspect and struck the door frame. The suspect then retreated into the business.

Sgt. Gora confirmed there was a valid burglary and vandalism to the business. He stated the suspect was displaying irrational behavior. He appeared to be "high", he was angry and Gora believed he was possibly under the influence of PCP or meth and appeared to be in a psychosis. The suspect was swinging from the rafters and then dropped about 15 feet to the floor. Officers Sheldon and Middleton were giving repeated commands to the suspect to show his hands and come outside and he refused to comply. Gora made the decision put together an entry team and to enter the business. He knew it was a volatile situation. He instructed Officer Sheldon give a K-9 announcement prior to entering. They entered the business and found the suspect sitting on top of a grey or black pickup truck. Officers fanned out around the truck. Sgt. Gora said he

evaluated crossfire danger and found there was none. The officers continued to give the suspect commands to show his hands and to come down off the truck. Sgt. Gora gave the command for a Taser deployment and saw a red dot on the suspect's chest. The Taser was deployed and struck the suspect. The suspect pulled the barb from his leg jacket. A second Taser was deployed and the suspect pulled the probe from his chest area. The suspect rolled off the passenger side of the truck and ran toward the back of the business. Two less lethal bean bags rounds were deployed, however the suspect continued to run. Sgt. Gora ordered the K-9 deployment stating "Dog, Dog, Dog". Officer Sheldon released his K-9, Falco, off leash to pursue the suspect. Falco pursued the suspect to the rear of the business. Officer Kunkel radioed that the suspect was coming out the window at back of the business.

Sgt. Gora went with the team to the rear of the business. He was at the back of the group. Officer Middleton began knocking the glass out of the window when Sgt. Gora heard Officer Sheldon yell, "no, no, no" and then shortly after heard three gun shots. Sgt. Gora went through the window and ran to the parking lot at 120 Spring Street. When he rounded the rear corner of the white van, he saw Officer Cobler and another officer trying to gain control of the suspect's arm. He saw that Falco was on a bite and the officers were telling the suspect to stop resisting. Sgt. Gora saw Officer Kunkel lying on his back with his arms spread out. His gun was by his side and he thought Kunkel had been shot. He observed the suspect's eye and cheek were bulged out. Officer Cobler was holding a rubber glove on the suspect's stomach. Sgt. Gora said the suspect was conscious and was still fighting/resisting officers. Once the scene was stabilized Sgt. Gora made notification to Lt. Knox. He met with Officer Kunkel to obtain a safety statement. Kunkel told him that he had fired twice, and the suspect was not armed. Kunkel asked Gora, "Why did he have to do that?" Sgt. Gora asked Kunkel if he was ok and Kunkel replied, "My legs are killing me". Gora stated he had not been injured during the event, he used no force and he had recorded the event on his Taser body worn camera (See the case report and recorded interview for full details). No administrative questions were asked by Lt. Knox or Sgt. Young.

Officer Mark Sheldon (07/06/15 1120 Hours) Lt. Knox and Sgt. Young observed Officer Sheldon's interview from the watch commander's office. Detectives Stocking, Lengel, Officer Sheldon and his attorney Joseph Lucia were present in the interview.

Officer Sheldon said that at about 0215 hours he heard an alarm call dispatched over the radio and heard Sgt. Gora was responding. He heard dispatch say that there was subject on scene who answered a call into the business but did not identify himself. Officer Sheldon heard Sgt. Gora arrive on scene and heard Sgt. Gora state there was a van on scene with the door open. He also heard Gora broadcast that there was a broken window to the business and that he heard a scream inside the building. Gora asked if Sheldon was still on the radio and Officer Sheldon replied he was but he was in Livermore. Sgt. Gora requested Officer Sheldon respond code 3 to the business and meet him near the front of the business. In the meantime, Sgt. Gora was setting up a perimeter around the business.

Officer Sheldon responded code 3 to the business and parked on First Street, north of the business. While he was responding, he heard there was a subject inside the business who had a bandana over his face. Sheldon also said he heard less lethal rounds had been deployed. When he arrived at the front of the business, he met with Sgt. Gora who told him there was a broken window, the suspect was inside and was acting bizarre. Sgt. Gora said he knew there was a "good 459" to the business. Sgt. Gora stated that he wanted to form a contact team of officers

and use the K-9 on leash to make entry into the business. Sheldon thought the plan was sound and agreed to use his dog on leash.

Officers made entry into the business and confronted the suspect who was on top of a pickup truck. He was given numerous verbal commands to show his hands and surrender and refused to comply. Less lethal attempts were made but seemed to be ineffective. The suspect jumped down off the truck and ran toward the rear of the business. Sgt. Gora yelled, "dog, dog, dog". Sheldon said he released his dog to pursue the suspect. Falco ran to the rear of the business where he ran into the glass at the rear of the north showroom. Sheldon said the lighting in the showroom appeared to be cloudy. He stated it appeared as if the suspect had discharged a fire extinguisher in the building. Sheldon lost sight of the suspect after he went out of the broken window. He grabbed his dog and lifted him through the broken window. After the dog was outside, Officer Sheldon saw Officer Cobler running northwest through the parking lot. His dog, Falco keyed on Cobler. Officer Sheldon called his dog off of Officer Cobler. He jumped through the window and put his dog on a "down stay". He observed a fence to the rear of the business where he saw a white van parked on the other side. Shortly after going through the window, Sheldon said he heard two shots. He grabbed his dog by the leash and saw the group of officers were now outside of the building and were approaching the white van. The van obstructed his view of what was occurring behind it. Sheldon rounded the back of the van and saw Officer Kunkel on his back with his gun laying nearby. The suspect was laying on his stomach face down. Officer's Pittl and Cobler had engaged the suspect and the suspect was still resisting them as they were trying to handcuff him. He said he could see the suspect lifting up, so he approached the suspect and placed his dog on a bite to overcome the suspect's resistance. He said his dog bit the suspect near the left arm pit area and when he did so, the suspect stopped resisting. Falco was on leash during the bite and was removed once the suspect was handcuffed. Sheldon said he remembers looking toward Officer Kunkel and Officer Palmquist gave him a thumbs up, indicating that Kunkel was "ok".

Sheldon was not injured during the event, he did not have an audio nor a video recorder activated during the event (See the case report and recorded interview for full details). No administrative questions were asked by Lt. Knox or Sgt. Young.

Officer Tyler Paulsen (07/06/15 1320 Hours): Lt. Knox and Sgt. Young observed Officer Paulsen's interview from the watch commander's office. Detectives Stocking, Lengel, Officer Paulsen and his attorney, Joseph Lucia were present in the interview.

Officer Paulsen stated he and Officer Palmquist were at a loose dog call in Ruby Hills when the alarm call at Specialty Auto Sales was dispatched. Gora arrived on scene and asked for them to respond to the business, which had a broken window and a suspect inside. Officer Paulsen arrived on scene and met with Sgt. Gora who told him that Officers Kunkel and Cobler were at the back of the business in perimeter positions. He said Officers Bennett and Palmquist arrived at the business after he did. He said he could see the suspect inside and he appeared to be agitated and upset. Paulsen said it looked as if something was wrong with the suspect. He said he saw the suspect throw the first car jack, which did not go through the window of the business, but fell on a car inside the business. Paulsen said he saw the suspect pick up the second jack and throw it, and it broke the window.

Paulsen said he was standing on the sidewalk outside of the south showroom of the business. He said he heard the suspect say he was "a Mountain Lion". He saw the suspect hanging from the rafters near the office. He said he felt that when the suspect threw the floor jacks at the front of the business he was trying to hit an officer with them. Paulsen said it was obvious something was wrong with the suspect. Officer Bennett fired one less lethal bean bag round at him when he was standing in the threshold of the door. Numerous commands were given to the suspect but he failed to comply. The bean bag round hit the door frame and the suspect retreated into the business.

Officer Paulsen went to his car and retrieved his less lethal shotgun. He loaded it with four bean bag rounds while Sgt. Gora confirmed each round. They then waited until Officer Sheldon arrived to formulate a plan. He said at that point, they felt they may have to make entry to the business. After Sheldon arrived, they approached the building and he reached through the broken glass door and opened the door to the business. Officer Sheldon gave commands to the suspect prior to him and his K-9 entering the business. He said they entered the building and found the suspect on top of a car. They formed a half circle to surround the suspect so they had multiple force options if necessary. Officer Paulsen said he was on the left side of the truck and Officer Sheldon and his K-9 were on the right side of the truck. A Taser was deployed at the suspect and he said the suspect reached down and pulled the dart off of him. He said the suspect was agitated, upset and was unpredictable. Paulsen said he deployed his Taser without providing a warning. He was not sure if the probes hit the suspect or not. He said the suspect got down off the truck and ran. Paulsen then fired his less lethal shotgun twice and it appeared to be ineffective. He said he was unsure if either of the two rounds struck the suspect because he saw no reaction from the suspect after their deployment.

Paulsen said the suspect ran through the hallway to the north portion of the business and headed out of an opening in the window. He moved to the window with the group of officers. He said he saw Officer Sheldon put his K-9 through the window and then he followed Sheldon out of the window. He said it was dark to the rear of the business. When he got outside of the window, he said he heard shots being fired from behind the van. He went around the van and he saw Officer Kunkel on the ground with his arms out to his sides, his handgun to the right side and his Taser to the left side. He said the suspect was still moving and he and Officer Cobler went to him to handcuff him. Paulsen said once they got the suspect handcuffed, he went to Sgt. Gora's car which was parked close by, and got the med kit from it. He said they were trying to render aid. They were telling the suspect to hold still but he was still resisting, he was moaning and it took three officers to hold him down. Paulsen stated he is 6'-6" tall, weighs 250 pounds and he had to use both hands to restrain the suspect who was resisting being handcuffed.

Officer Paulsen was not injured during the incident. He said he audio recorded the incident. He said he downloaded the recording into DIMS after the incident. (See the case report and recorded interview for full details) No administrative questions were asked by Lt. Knox or Sgt. Young.

Officer Brandon Cobler (07/06/15 1507 Hours): Lt. Knox and Sgt. Young observed Officer Cobler's interview from the watch commander's office. Detectives Stocking, Lengel, Officer Cobler and his attorney Joseph Lucia were present in the interview.

Officer Cobler stated he had just gone to the locker room to end his shift and Sgt. Gora asked Cobler to respond to the alarm. Officer Cobler said he got redressed in his uniform and responded to the location. He said he was on the back of the building and he was at the southwest corner of the building. He said he could hear the suspect in the building. He described the suspect who sounded like a "caged animal". He said the suspect was breaking things and had destroyed several items inside the building. He said the suspect was going "crazy" inside.

PRIVILEGED

Officer Cobler said when he heard the suspect had gone out the back window, he ran toward the north side of the building. As he did so, he saw the K-9, who started his direction. He jumped over a shrub to avoid the dog and Officer Sheldon called his dog off. He heard the gunshots and he responded with the other officers around the van into the adjoining parking lot. Cobler went toward the suspect and said he grabbed one of the suspect's arms. He was unsure which one, and assisted in getting the suspect handcuffed. He said he used both knees and arms to hold the suspect down and the suspect was still lifting him up. As he was holding the suspect down, he saw the suspect had a hole in his stomach. He put his glove over the suspect's stomach to render aid in an attempt to control the bleeding. Cobler observed a Taser probe on the suspect's chest near his right nipple. Cobler also saw an injury to the suspect's head and he placed a towel over the wound in an attempt to control the bleeding from his head and face. Cobler said that as he was rendering aid to the suspect, the suspect was still resisting. He said he felt like the suspect could still get up and run away, that he still had that much energy left. He said at one point, one of the officers had retrieved a med kit and he replaced his rubber glove with a sterile pad on the suspect's stomach. While he was rendering aid to the suspect, he said he heard Officer Kunkel moaning or saying he was in pain.

Officer Cobler stated sustained some scrapes and bruises on his knees during the event, but other than that he was not injured. He did not use any force and he did not have an audio or video recorder activated during the event. Officer Cobler stated his video camera fell off when he got out of the car. (See the case report and recorded interview for full) No administrative questions were asked by Lt. Knox or Sgt. Young.

Officer Steven Bennett (07/06/15 1603 Hours): Lt. Knox and Sgt. Young observed Officer Bennett's interview from the watch commander's office. Detectives Chin, Silacci, Officer Bennett and his attorney, Terry Leoni were present in the interview.

Officer Bennett stated he arrived at the station for the end of his shift and Sgt. Gora requested he respond to the alarm call at Specialty Auto Sales. He returned to his patrol car and responded code 3 to the business. Upon his arrival, he took up a position on the northeast corner of the building. Officer Palmquist met with him and asked him to verify the bean bag rounds, which Palmquist was loading into the less lethal shotgun. There was difficulty with one of the rounds and Palmquist handed him the shotgun. As he held the shotgun, he saw the suspect about 15-20 feet away and saw he had a jack stand in his hands. He heard someone yell "get back" and he saw the second jack stand come flying out of the window in the front door. He said he cleared the shotgun as the suspect stepped out of the business and stood in the threshold of the doorway. At that time, he heard Sgt. Gora yell, "bean bag, bean bag, hit em". He fired one bean bag round at the suspect but the round missed him and hit the door frame. He said the suspect went back into the business, jumped on a car and jumped up into the rafters.

As the officers gathered near the door to make entry into the building, Bennett said he held his flashlight on the strobe mode directed toward the suspect to distract or disorient him. Once the initial officers made entry into the building he followed them. He said as he got near the truck the suspect was sitting on, he heard Sgt. Gora and other officers telling the suspect to get on the ground. He said Sgt. Gora yelled, "Bennett, Taser". At the same time, he also heard Officer Palmquist say "he's reaching for his left pocket. Bennett said he fired his Taser and the darts ricocheted off of the truck. He said he reloaded with another cartridge and fired a second round at the suspect. He saw that one probe missed the suspect and the other probe made contact. He said the suspect was still reaching into his pocket and was non-compliant. Officer Bennett said he started to step forward to apply the Taser to the suspect in the Drive Stun mode and someone grabbed him from behind and pulled him backward. He said he dropped his Taser or missed his holster trying to put it back. He said the suspect jumped off the truck and ran.

The suspect climbed out of the back window. As Bennett waited to follow the other officers through the broken window, he heard three shots and Officer Paulsen breaking some of the glass out of the window with the shotgun. He responded to where Officer Kunkel and the suspect were lying on the ground. He said as Officer Cobler was rendering aid to the suspect, he handed Cobler dressings to place on the suspect's wound. Bennett said the suspect "could have been under the influence or something else was wrong with him". When asked about the suspect's actions, Bennett said he felt that the suspect was throwing the floor jack at the officers. He was concerned that the glass breaking would harm them. He specifically said that he thought the second jack was being thrown at Sgt. Gora or the officers near Sgt. Gora.

Bennett was not injured during the event. He said he had an audio recorder on him during the incident but it had not been activated. (See the case report and recorded interview for full details) No administrative questions were asked by Lt. Knox or Sgt. Young.

Officer Dan Kunkel (07/06/15 1837 Hours): Lt. Knox and Sgt. Young observed Officer Kunkel's interview from the watch commander's office. Detectives Stocking, Lengel, the District Attorney's Investigators, Officer Kunkel and his attorney, Joseph Lucia were present in the interview.

Officer Kunkel stated he heard the alarm being dispatched and shortly afterwards Sgt. Gora asked Officer Kunkel to respond code 3. He said he did not respond code 3 as he was almost at the location when asked to respond. He arrived at the Specialty Auto Sales and met with Sgt. Gora who asked him to maintain the perimeter position on the northwest corner of the building. As he was stationed at the corner, he heard items being broken and it sounded like items were being smashed. He saw a male suspect with a ponytail inside the business but said the suspect did not see him. He said he felt the suspect was actively burglarizing the business. He said that he knew from his law enforcement experience in Antioch that it was common for suspects to enter and exit through the same entry point, which he was stationed near.

Kunkel said he heard the officers make entry into the business. Shortly afterwards he heard two to three gunshots. He heard over the radio that less lethal rounds had been deployed. He saw the suspect come running toward the back of the business. He attempted to get on the radio to advise others of the suspect's location but was unable due to radio traffic. Kunkel said the suspect came to the window, got on the window ledge and jumped out of the window. He said

the suspect was about three feet from him. Officer Kunkel attempted to use his Taser, however the safety was still on. He turned and began to chase after the suspect and he felt pain in one of his hamstrings. He fired his Taser at the suspect, striking him in the middle of his back. At least one probe struck the suspect as Kunkel continued to chase after the suspect but the Taser appeared to have had no effect.

PRIVILEGED

Kunkel said that as he rounded the white van, the suspect was creating a larger gap between them. He said he felt the Taser wire get tight and then break. When this occurred, the suspect stopped suddenly, turned around and screamed like an animal in duress. Kunkel said the suspect's fists were clenched and he said, "You're going to Tase me". He then suddenly ran toward Kunkel and kicked him in the waist while at the same time punching him in the face. Kunkel said he felt pain in his other hamstring and he lost his balance and fell to the ground. He said the suspect got on top of him and started punching him multiple times in the face and head. He stated, "I feared that he was going to kill me". Kunkel realized he still had the Taser in his right hand so he applied the Taser to the suspect's forehead. The suspect continued to attack Kunkel so dropped his Taser, he rocked to his right side and drew his handgun from his holster and fired one round, and then fired a second round. He said at that time the suspect got off of him and fell to the ground away from him. He said he looked and saw the suspect was not coming back at him and he could hear officer footsteps. Officer Kunkel said, "I remember being thankful that my team came to help me because I thought I was gonna die". He said he laid motionless because he was physically exhausted and could not move.

Kunkel said he remembered telling Officer Palmquist that "he (the suspect) wasn't even acting human that he was on drugs. He sounded like an animal, screaming like an animal". Kunkel said he felt like when he was fighting with the suspect that he was going to lose consciousness and if he did he felt the suspect would take his gun and kill him.

Kunkel sustained injuries to his knee, his back, his head and both hamstrings during the event. He did not audio or video record the incident. (See the case report and recorded interview for full details) No administrative questions were asked by Lt. Knox or Sgt. Young.

After reviewing the interviews of the involved officers and sergeant, Lt. Knox and Sgt. Young reviewed the radio transmissions, the video as recorded by Sgt. Gora's Taser camera, the surveillance video captured on the business' surveillance system, and LPD Sgt. Jim Horton's Taser camera video. Additionally we reviewed the Pleasanton Police Department Crime report # 15-24571, the witness statements of what was heard during the event, the alarm company transcript, the coroner's report, as well as the Taser download reports and the firearms and less lethal qualification records.

Applicable PPD Policies and Findings:

Command Notification

205.2 NOTIFICATIONS (Gora)

Any time the ranking officer, on-duty or supervisor or Watch Commander becomes aware of an emergency, significant incident, or need for assistance, an evaluation shall be made to notify the appropriate division commander. In the absence of the affected division commander, the alternate division commander should be notified. In such cases of this notification, it is the division commander's responsibility to notify the Police Chief. Such incidents warranting command notifications may include, but are not limited to the following:

(a) Officer-involved shooting

Sgt. Gora asked dispatch to call Lt. Knox and to have him call Sgt. Gora. Lt. Knox received a call from Dispatcher Timmerman at 0242 hours advising him of the shooting. Lt. Knox returned Sgt. Gora's call and spoke with him directly to obtain the details of the incident. Sgt. Gora complied with this policy by notifying Lt. Knox as the acting Division Commander. Lieutenant Knox then notified Captain Eicher, who notified Police Chief Spiller.

Command notifications were made in compliance with police department policy.

Use of Force

PRIVILEGED

300.3.1 USE OF FORCE TO EFFECT AN ARREST (Gora, Kunkel, Bennett, Paulsen, Sheldon)

Any peace officer may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835).

During this incident, Sgt. Gora gave direction for the deployment of a police canine, the less lethal beanbag gun and several Taser deployments. When Sgt. Gora arrived on scene, he observed a broken rear window to the business. As he approached the northwest corner of the business, he heard loud banging and observed a suspect inside, dressed in dark clothing. The suspect could be heard screaming from inside the building. Sgt. Gora understood he had an in progress burglary at Specialty Auto Sales.

Sgt. Gora coordinated a perimeter around the business. As responding officers surrounded the building, the suspect approached the front windows and displayed both of his middle fingers in an offensive manner toward the officers. Gora then saw the suspect run toward the window with a pipe. Gora described him as being angry; he had his fists clenched and his screaming was "guttural". Gora said he felt like the suspect could be high on PCP, or Methamphetamine, or was possibly crazy. Gora then observed the suspect pick up a floor jack and throw it at the front window. Gora stated that the officers at the front building were about five feet from the window struck by the jack. The suspect then threw a second floor jack toward officers outside of the building. The floor jack went through the glass of the front door and into the street in front of the business.

The suspect moved into the threshold of the front door where the glass had been broken out. Sgt. Gora knew he had less lethal force options available. He knew at that time he was in a good tactical position and did not want to give up ground. He did not want the suspect to try and get into a car and leave the business. He was also unaware if the suspect had any weapons inside and he knew based on the suspect's aggressive and bizarre behavior that the suspect may advance on them. Sgt. Gora gave the command for the deployment of a bean bag round in an attempt to get the suspect to surrender. Officer Bennett fired one round, which missed the suspect.

Prior to entering the building, the officers observed the suspect jumping on cars and swinging from the rafters "like a monkey". Sgt. Gora stated that numerous demands were made for the suspect to show his hands and come outside but he failed to comply with the orders. Sgt. Gora formed an entry team to go into the building and had Officer Sheldon bring his K-9 partner, Falco, who was on a leash. Officer Sheldon gave a canine warning ordering the suspect to come out of the building prior to entering into the building. The suspect failed to comply with his orders a second time.

PRIVILEGED

Upon entry, the officers located the suspect seated on top of a pickup truck in the showroom. Numerous commands were given to the suspect to get on the ground and surrender. The suspect failed to follow the lawful directions of the officers on scene. Sgt Gora gave the command for the Taser to be deployed. Officer Bennett discharged his Taser at the suspect, however only one dart struck the suspect and he removed it from his leg. Officer Bennett reloaded his Taser and discharged it a second time striking the suspect in the chest with one dart. The second dart missed the suspect. The suspect jumped off of the truck and ran toward the back of the showroom. Officer Paulsen fired two bean bag rounds in an attempt to slow down the suspect or get him to surrender. The bean bag rounds either missed or had no effect on the suspect. Sgt Gora gave the command to utilize the canine in an attempt to apprehend the suspect. Officer Sheldon released his K-9 Falco, who pursued the suspect toward the rear of the business. The suspect went out of the window before the dog could catch up to him.

Officer Kunkel, who was positioned outside the window the suspect had exited, pursued the suspect and deployed his Taser at the suspect in an effort to detain him. His Taser deployment was ineffective in incapacitating the suspect. Kunkel had seen and heard radio descriptions of the suspect's behavior, which was aggressive and bizarre. He assessed it could have been the result of a mental disorder or drug/alcohol impairment or both. The suspect demonstrated aggressive behavior toward officers by throwing car jacks through a window in the direction of the officers and the suspect was observed with a metal bar in his hand as he challenged officers. After Officer Kunkel's Taser activation had no effect on the suspect, the suspect turned and physically attacked Officer Kunkel by charging him and kicking him in the abdomen causing Officer Kunkel to lose his balance and fall backward. The suspect then straddled Officer Kunkel and began striking him in the face with closed fists. Officer Kunkel was struck an unknown number of times. During the altercation Officer Kunkel struck his head on the concrete. Officer Kunkel felt fatigue and pain and believed he was about to lose consciousness. Officer Kunkel articulated that he recalled thinking that if he lost consciousness the suspect could get his handgun and kill him. He attempted to use his Taser in drive stun mode to fend off the assault but his efforts were unsuccessful. Believing he was acting in defense of his own life, Officer Kunkel drew his firearm and fired three times at the suspect, stopping the attack.

Based upon the aggressive nature of the suspect as described above, Sgt. Gora's decision to direct his team to utilize less than lethal force options to gain compliance, and to detain or effect an arrest complied with department policy.

Officer's Bennett, Paulsen, and Sheldon complied with directives given to them by Sgt. Gora to use less than lethal force options (Taser and Bean Bag Rounds) in an effort to gain compliance, to detain or effect an arrest. Their actions complied with department policy.

Officer Kunkel's use of less than lethal force (Taser) in an effort to gain compliance, to detain or effect an arrest complied with department policy.

Officer Kunkel's use of lethal force in discharging his handgun fatally wounding the suspect was within department policy. He was intentionally and physically attacked by the suspect, who knocked him to the ground and climbed on top of him while repeatedly striking Officer Kunkel in the face and head. Additionally, Officer Kunkel believed he had experienced injuries to the hamstrings on both legs when he chased the suspect and was knocked to the ground by the suspect, as he was in great pain. Officer Kunkel's Taser activations failed to incapacitate the suspect, and he felt he was about to lose consciousness due to the suspect's continued attack. Believing the suspect intended to do him harm or possibly kill him if he lost consciousness, he drew his pistol and fired three rounds into the suspect. Officer Kunkel believed this was his only option, at the time, to stop the suspect's continuing attack and to save his own life.

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE (Gora, Kunkel, Bennett, Paulsen, Sheldon)

PRIVILEGED

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit.

These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Subject's mental state or capacity.
- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness.
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the officer.
- (k) Potential for injury to officers, suspects and others.
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (p) Prior contacts with the subject or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

- (a) The suspect displayed unusual, bizarre behavior. He was in a showroom full of cars and was in possession of the keys. Officers and the supervisor on scene feared he may attempt drive a car through the showroom window. The suspect threatened the officers, including throwing two heavy floor jacks the officers were standing outside the windows of the business.
- (b) The suspect's behavior was perceived by responding officers to be aggressive, threatening and bizarre. Involved personnel described the suspect as possibly being under the influence of drugs or suffering from mental illness. The suspect yelled and acted in an irrational, yet violent and agitated manner. He jumped on top of cars damaging them, he swung from the rafters of the business and then dropped a great distance to the floor where he displayed no discomfort or injury as one would expect from such a feat. The suspect also failed to comply with the officers repeated requests to follow their instructions and to surrender.
- (c) There were a number of officers on scene who requested the suspect surrender. He approached the large glass window and threatened and pumted officers with a large pipe and by attempting to throw car jacks at the officers who were standing outside the windows. He demonstrated physical feats that suggested he was impaired by drugs or mental illness. (Lifted two very heavy floor jacks and threw them a significant distance. Jumped from car to car and leapt into the rafters with ease). Additionally, when the suspect assaulted Officer Kunkel, Officer Kunkel was injured and taken by surprise when the suspected turned and assaulted him. Officer Kunkel was knocked to the ground by the suspect who then climber on top of him and proceeded to punching Officer Kunkel in the face and head to the point where Officer Kunkel felt fatigued, physical exhaustion, and that he was in eminent danger of losing consciousness and possibly his life.
- (d) Each officer on scene described the suspect as possibly being under the influence of drugs or suffering from mental illness based upon his irrational behavior and his physical display of strength.
- (e) The suspect was acting irrationally, screaming, clenching his fists, acting violently toward the officers, displaying anger, and making incoherent statements such as he was a Mountain Lion. The officers described the suspect as being under the influence of drugs or suffering from mental illness.
- (f) The suspect displayed a metal bar in a threatening manner in the showroom. He threw two large floor jacks toward officers who were standing outside the windows of the business and he possessed the keys to cars parked within the showroom. Officers on scene feared the suspect may drive one of the cars out of the building jeopardizing their safety or the safety of the public.
- (g) The suspect failed to comply with verbal requests to surrender. There were several less than lethal deployments (Taser and beanbag), rounds which failed to incapacitate the suspect. Upon leaving the business, the suspect ran from Officer Kunkel who conducted another Taser deployment that failed to incapacitate the suspect. The suspect stopped and turned toward the officer and attacked him. As the suspect had pinned down Officer Kunkel and was punching him repeatedly in the face, Officer Kunkel was unable to stop the suspect or get the suspect of him. He attempted a drive stun application of the Taser, however it had minimal effect on the suspect. Based upon the above factors Officer Kunkel believed he had no choice but to escalate to lethal force to defend his life.
- (h) Officers involved in this incident attempted numerous less lethal deployments which proved to be ineffective. Officer Kunkel attempted to utilize his Taser twice and attempted to fight of the suspect. Having run out of options, Officer Kunkel utilized lethal force to defend his life.
- (i) The suspect had forced his way into Specialty Auto Sales and appeared to be in the act of burglarizing the business. The suspect did not comply with officers and would not surrender. He then demonstrated violence toward officers by brandishing the metal pipe

and throwing car jacks toward them while they stood outside the windows of the business. Additionally, the suspect was running away from officers when he abruptly stopped and assaulted Officer Kunkel knocking him to the ground and punching him in the face.

- (j) Each officer and Sgt. Gora acted in accordance with their training and in accordance with policy.
- (k) The suspect threw heavy floor jacks at the officers. He possessed a metal bar which he brandished at one point and threw two floor jacks toward officers. The suspect's actions significantly raised the concerns of officers that his intentions may be to injure them. Additionally, Officer Kunkel received injuries chasing after the suspect and due to the suspect directly attacking him.
- (l) The suspect resisted the officers from the beginning of the incident to the end. He failed to comply with verbal commands to surrender. Less lethal deployments were utilized and were ineffective in gaining the suspects compliance. The suspect evaded capture by running away from officers. He passed by Officer Kunkel who attempted to Tase the suspect and then pursued him when the suspect suddenly and without warning turned and attacked Officer Kunkel.
- (m) Sgt. Gora feared that if the suspect was not apprehended the may attempt to drive a car through the business windows jeopardizing officers safety as well as the public should a car chase ensue.
- (n) Sgt. Gora feared that if the suspect was not apprehended the may attempt to drive a car through the business windows jeopardizing officers safety as well as the public should a car chase ensue.
- (o) The suspect posed a physical threat to the officers from the onset of the incident to the conclusion.
- (p) The suspect displayed aggressive and noncompliant behaviors during the entire incident. Officer were not aware of any prior contacts with the suspect that involved the propensity for violence.

This policy was adhered to by department personnel as indicated in the aforementioned overview.

300.4 DEADLY FORCE APPLICATIONS (Kunkel)

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) n officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, imminent danger may exist if an officer reasonably believes any of the following:

1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.

2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

After numerous unsuccessful less lethal applications inside the building (1 bean bag fired by Officer Bennett missed, Taser deployed by Officer Bennett twice and ineffective, Taser deployed by Officer Paulsen ineffective, bean bag fired by Officer Paulsen twice ineffective), the suspect fled the building and jumped out the same window he had entered through on the northwest corner of the building. Officer Kunkel ordered the suspect to stop and he failed to comply. Kunkel deployed his Taser one time, which struck the suspect in the back. The suspect continued to run, which demonstrated to Officer Kunkel that the Taser was ineffective. Officer Kunkel continued to chase the suspect. When Officer Kunkel ran around the suspect's vehicle he saw the suspect was gaining distance from him. Then without warning, the suspect turned around and attacked Kunkel. Officer Kunkel said the suspect turned around and began screaming like an animal in duress and immediately charged Officer Kunkel. Officer Kunkel braced himself for the impact of the assault. The suspect executed what Officer Kunkel described as a martial arts type jump kick to Officer Kunkel's abdomen, knocking him to the ground. Officer Kunkel said he fell backward hitting his back and head on the concrete. The suspect climbed on top of him, straddling Officer Kunkel's chest and began punching him in the face. Officer Kunkel tried to use his Taser in drive stun mode by pushing the Taser into the suspect's forehead and activating it. The suspect continued to sit on top of Officer Kunkel and continued punching him in the face. Officer Kunkel explained that he used his Taser to try to get enough space between him and the suspect in order to draw his gun because he feared that at any moment he was going to die. During Kunkel's interview, he said that while he was on his back, on the ground, with the suspect physically striking him, he feared he may lose consciousness and be killed. Fearing that he may lose his life, Officer Kunkel drew his pistol and fired it at the suspect.

Based on the above factors, Officer Kunkel's use of deadly force was in compliance with this policy.

PRIVILEGED

300.5 REPORTING THE USE OF FORCE (Kunkel, Bennett, Paulsen, Sheldon, Gora)

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.

Once St. Gora was able to stabilize the crime scene and obtain medical aid for the injured suspect and officer, he promptly notified his Lieutenant about the officer involved shooting. Upon Captain Eicher's arrival on scene Sgt. Gora provided him with an overview of the incident. Captain Eicher then assigned Sergeant Schlehber the responsibility of the Criminal Investigation and Lieutenant Knox and Sergeant Young the administrative investigation. Each of the department members involved in this incident were individually interviewed and cooperated with the subsequent parallel investigations.

300.5.1 NOTIFICATION TO SUPERVISORS (Kunkel, Bennett, Paulsen, Sheldon)

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.

- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a TASER device or control device.
- (f) Any application of a restraint device other than handcuffs, shackles or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges any of the above has occurred.

Sgt. Gora was on scene and directly ordered the less lethal use of force (Bean Bag and Taser) deployments. Sgt. Gora provided a detailed statement articulating his reasoning for the application of less than lethal force in order to gain compliance from the suspect.

Officers Bennett, Paulsen and Sheldon provided detailed statements regarding their applications of the Bean Bag rounds and Tasers.

Kunkel provided a detailed statement regarding his application of non-lethal and lethal force.

The Supervisor and Officers involved in this incident complied with this policy.

300.6 MEDICAL CONSIDERATION (Gora)

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor, or if not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

Officer's Cobler, Bennett, and Paulsen went to where they heard the gunshots and found both Officer Kunkel and the suspect lying on the ground. Seeing the suspect was injured and in distress Officer Cobler immediately attempted to aid the suspect by applying pressure to the abdominal wound while Officers Bennett and Paulsen attempted to detain him. After the suspect was detained, Officer Bennett assisting in providing first aid to the suspect.

Sgt. Gora arrived at the shooting scene, and almost immediately requested dispatch send two ambulances, one for the suspect and the other for Officer Kunkel. Additionally, He oversaw the administration of first aid to the suspect.

The Supervisor and officers acted in accordance with this policy.

PRIVILEGED

300.7 SUPERVISOR RESPONSIBILITY (Gora)

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her *Miranda* rights, the following shall apply:
 1. The content of the interview should not be summarized or included in any related criminal charges.
 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the subject may pursue civil litigation.
 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

- (a) Sergeant Gora was on scene during this incident and oversaw each of the officer's actions. In doing so he assured that the use of force which was utilized was in compliance with policy.
- (b) Sergeant Gora immediately called for 2 ambulances for the injured parties. He ensured the officers present provided medical aid until responding fire and paramedic personnel arrived to provide more advanced medical aid.

- (c) Sergeant Gora was unable to interview the suspect in this instance due to his injuries and subsequent death at the hospital.
- (d) Sergeant Gora directed Officer Middleton to take photographs of Officer Kunkel immediately after the scene was stabilized and prior to his being transported to the hospital for medical aid. Investigations personnel assumed responsibility for the scene, took photographs of the scene and responded to the hospital and took pictures of the suspect.
- (e) Investigations personnel and Special Enforcement Unit Detectives conducted a search for witnesses and obtained signed written statements.
- (f) All crime reporting was handled by Investigations personnel, who investigated the incident.
- (g) The Police Chief notified the City Manager and City Attorney of the shooting and the potential for civil litigation.
- (h) Lt. Knox and Sgt. Young were assigned to conduct the Use of Force Administrative Investigation.

This policy was adhered to by department personnel as indicated in the aforementioned overview.

PRIVILEGED

Control Devices and Techniques

308.3 ISSUING, CARRYING AND USING CONTROL DEVICES (Bennett, Paulsen)

Control devices described in this policy may be carried and used by members of this department only if the device has been issued by the Department or approved by the Chief of Police or the authorized designee.

Only officers who have successfully completed department-approved training in the use of any control device are authorized to carry and use the device. Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices. When using control devices, officers should carefully consider potential impact areas in order to minimize injuries and unintentional targets.

Officer Bennett took a perimeter position when he first arrived at the location as directed by his supervisor, Sgt. Gora. He was joined by Officer Palmquist, who was having difficulty with his less lethal department shotgun due to a double feed. Officer Palmquist asked Officer Bennett for assistance and Officer Bennett took possession of the shotgun and ensured it was functional. When the suspect stepped outside of the building, Sgt. Gora gave him numerous commands to show his hands, and to come out and surrender, but he failed to comply with Sgt. Gora's direction. Sgt. Gora gave Officer Bennett an order to deploy less lethal munitions.

Officer Bennett fired a Pleasanton Police Department Remington model 870 shotgun, serial number AB237648, at the suspect. He qualified with the weapon at Departmental training held on May 26, 2014. He utilized department issued beanbag rounds which were verified and loaded in Officer Palmquist's presence. The rounds (expended and non-expended) which were recovered at the scene were verified as the same rounds issued by the department.

Officer Paulsen was part of an entry team who encountered the suspect sitting on top of a pickup truck. The suspect was given numerous commands to show his hands, to come down

from the truck and to surrender but he did not comply with the directions provided by officers. Sgt. Gora gave the order to deploy less lethal munitions.

Officer Paulsen fired a Pleasanton Police Department Remington model 870 shotgun, serial number (not visible) at the suspect. He qualified with the weapon at Departmental training held on May 8, 2014. He utilized department issued bean bag rounds. Sergeant Gora witnessed Officer Paulsen load each of the bean bag rounds into the shotgun. The expended rounds which were recovered at the scene and were verified as the same rounds issued by the department.

Officer Bennett, Officer Paulsen, and Sgt. Gora complied with this policy.

308.4 RESPONSIBILITIES

308.4.1 WATCH COMMANDER RESPONSIBILITIES (Gora)

The Watch Commander may authorize the use of a control device by selected personnel or members of specialized units who have successfully completed the required training.

Sgt. Gora was both the Field Supervisor and Watch Commander at the time of this incident. As a supervisor possessed a basic understanding that every Pleasanton Police Officer has been trained in the use of the bean bag shotguns as a less lethal force option and each officer attends an annual update training. Additionally, every officer has been trained and qualified on the use of the Taser prior to being authorized to carry it on the street. Sgt. Gora authorized the application of the bean bag shotgun and the Taser by officers during this incident. Sgt. Gora was in compliance with policy.

308.8.1 DEPLOYMENT CONSIDERATIONS (Bennett, Paulsen, Gora)

Before discharging projectiles, the officer should consider such factors as:

- (a) Distance and angle to target.
- (b) Type of munitions employed.
- (c) Type and thickness of subject's clothing.
- (d) The subject's proximity to others.
- (e) The location of the subject.
- (f) Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.
- (g) Training and skill of Officer(s) intending to deploy projectiles.

PRIVILEGED

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding deployment distances and target areas. However, officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

Officer Bennett was positioned at the northeast corner of the south showroom of Specialty Auto Sales. The suspect was non-compliant and was acting violent and irrational. Officer Bennett was approximately 20 feet from the suspect, who presented himself in the doorway of the building. The officers gave the suspect multiple commands to come out of the business and to surrender, however and the suspect did not comply with their requests. Bennett had a good angle to safely deploy the bean bag round at the suspect. The suspect was not wearing thick or bulky clothing that would hinder the effectiveness of the bean bag munitions. There was no one else in close proximity to the suspect when Officer Bennett received the order from Sgt. Gora to discharge the less lethal weapon toward the suspect.

At the time of Officer Paulsen's bean bag deployment, the suspect was 15-20 feet away and running away from him. Officer Paulsen had a good angle and there were no other suspects or officers down range of where the suspect was fleeing who would be jeopardized by his deployment. Numerous verbal commands had been given to the suspect however the suspect failed to comply with the commands he was given and continued to evade capture.

Officer Bennett and Officer Paulsen complied with the above policy.

308.8.2 SAFETY PROCEDURES

(Bennett, Paulsen)

Shotguns designated for the use of kinetic energy projectiles will be specially marked as such by being painted yellow.

PRIVILEGED

Officers carrying these shotguns will inspect the shotgun at the beginning of each shift to ensure that it is in proper working order and loaded only with approved projectiles.

Officer Bennett obtained the less lethal shotgun from Officer Palmquist. As such he did not inspect the shotgun prior to the watch and could not be expected to, based upon the circumstances. When the shotgun was loaded, Officer's Bennett and Palmquist verified each round was a bean bag round prior to it being loaded into the gun. This can be heard on Sgt. Gora's video recording.

Officer Paulsen inspected his shotgun prior to beginning his shift. When the shotgun was loaded, Sgt. Gora also verified each round as Paulsen showed them to him prior to loading the shotgun.

308.9 KINETIC ENERGY PROJECTILE GUIDELINES

(Bennett, Paulsen)

The Training Officer shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

- (a) Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.
- (b) All training and proficiency for control devices will be documented in the officer's training file.
- (c) Officers who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If an officer cannot demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the officer will be restricted from carrying the control device and may be subject to discipline.

The Pleasanton Police Department provided annual range training for the less lethal force shotgun in May of 2014 and in December of 2015.

Officer Paulsen attended range training on May 8, 2014. During this training he participated and demonstrated his proficiency in the presence of a department Range Master during a standard qualification with the less lethal shotgun. Officer Paulsen was in compliance with the above policy.

Officer Bennett attended range training on May 26, 2014. During this training he participated and demonstrated his proficiency in the presence of a department Range Master during a standard qualification with the less lethal shotgun. Officer Bennett was in compliance with the above policy.

PRIVILEGED

308.9.1 DEPLOYMENT AND USE (Bennett, Paulsen)

Only department-approved kinetic energy munitions shall be carried and deployed. Approved munitions may be used to compel an individual to cease his/her actions when such munitions present a reasonable option.

Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officer determines that deployment of these munitions cannot be done safely. The safety of hostages, innocent persons and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Circumstances appropriate for deployment include, but are not limited to, situations in which:

- (a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
- (b) The suspect has made credible threats to harm him/her or others.
- (c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.
- (d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

The suspect broke into Specialty Auto Sales and was actively damaging the property within the business. The suspect was in possession of a metal pole and was threatening officers with it. Additionally, the suspect picked up a heavy floor jack and threw it through the business window toward where the police officers who stood, a few feet away. The officers were of the belief that the suspect's intent was to strike an officer with the jack. The less lethal shotgun was utilized after the suspect threw a floor jack toward the officers and through a window, and he failed to comply with lawful orders to surrender. The suspect was in possession of keys for the cars within the building and the supervisor had a concern that the suspect may attempt to drive a car through the front window of the business potentially harming the officers, or others.

Officer Bennett's and Paulsen's deployment of kinetic energy munitions were in compliance with the above policy. Sgt. Goras direction to utilize the less lethal force munitions was within policy.

308.9.2 DEPLOYMENT CONSIDERATIONS (Bennett, Paulsen)

Before discharging projectiles, the officer should consider such factors as:

- (a) Distance and angle to target.
- (b) Type of munitions employed.
- (c) Type and thickness of subject's clothing.
- (d) The subject's proximity to others.
- (e) The location of the subject.

- (f) Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.
- (g) Training and skill of the officer(s) intending to deploy the projectile(s).

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the officer or others.

PRIVILEGED

Officer Bennett was positioned on the northeast corner of the south showroom of Specialty Auto Sales. He was approximately 20 feet from the suspect, who presented himself in the doorway of the building. The officers gave the suspect multiple commands to come out of the business and to surrender, however and the suspect did not comply with their requests.

Bennett had a good angle to safely deploy the bean bag munitions at the suspect. The suspect was not wearing thick or bulky clothing that would hinder the effectiveness of the bean bag munitions. There were no other subject's in close proximity to the suspect and the suspect was non-compliant and acting irrationally.

At the time of Officer Paulsen's bean bag deployment, the suspect was 15-20 feet away and running away from him. Officer Paulsen had a good angle and there were no other suspects or officers, down range of where the suspect was fleeing, who would be jeopardized by his deployment. Numerous verbal commands had been given to the suspect however the suspect failed to comply with the commands he was given and continued to evade capture.

Officer Bennett and Officer Paulsen complied with the above policy.

308.9.3 SAFETY PROCEDURES (Bennett, Paulsen)

Shotguns specifically designated for use with kinetic energy projectiles will be specially marked in a manner that makes them readily identifiable as such. Officers will inspect the shotgun and projectiles at the beginning of each shift to ensure that the shotgun is in proper working order and the projectiles are of the approved type and appear to be free from defects.

When it is not deployed, the shotgun will be unloaded and properly and securely stored in the vehicle. When deploying the kinetic energy projectile shotgun, the officer shall visually inspect the kinetic energy projectiles to ensure that conventional ammunition is not being loaded into the shotgun.

Absent compelling circumstances, officers who must transition from conventional ammunition to kinetic energy projectiles will employ the two-person rule for loading. The two-person rule is a

safety measure in which a second officer watches the unloading and loading process to ensure that the weapon is completely emptied of conventional ammunition.

Pleasanton Police Department shotguns are all utilized for less lethal munitions. As such the stock of the shotguns have been painted yellow for easy identification and the less lethal munitions are stored in a sleeve on the stock. The shotgun is stored unloaded in each patrol vehicle.

Officer Bennett obtained the less lethal shotgun from Officer Palmquist. As such he did not inspect the shotgun prior to the watch and could not be expected to, based upon the circumstances. When Officer's Bennett and Palmquist loaded the shotgun they verified each round was a less lethal bean bag munition prior to loading it into the shotgun, as verified by Sgt. Gora's video recording.

Officer Paulsen inspected his shotgun prior to beginning his shift. Officer Paulsen had Sergeant Gora assist him in verifying each round was a less lethal bean bag munition as Officer Paulsen showed him prior to loading the shotgun.

Officer's Bennett and Paulsen complied with this

PRIVILEGED

308.11 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES (Bennett, Paulsen)

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to the Use of Force Policy.

Both Officer Bennett and Officer Paulsen provided detailed statements about their less lethal force deployments to criminal investigators.

Officers Bennett and Paulsen complied with this policy.

309.3 ISSUANCE AND CARRYING TASER DEVICES (Kunkel, Bennett, Paulsen)

Only members who have successfully completed department-approved training may be issued and carry the TASER device. TASER devices are issued for use during a member's current assignment. Those leaving a particular assignment may be required to return the device to the department's inventory. Members carrying the TASER device should perform a spark test on the unit prior to every shift.

Approved TASER holsters include:

- (a) TASER Exoskeleton holster (TASER approved but in phase out stage).
- (b) Blade Tek, Tek Lok (New current model approved by TASER Intl).
- (c) SOTECH Holster Thigh/Belt.

Officers shall only use the TASER and cartridges that have been issued by the Department. The TASER shall be carried as part of a uniformed officer's equipment in an approved holster. In situations where a holster is impractical officers must seek supervisory approval to carry the TASER in such a manner that it is readily accessible at all times.

- (a) Officers wearing the Exoskeleton shall wear the TASER on the opposite side of their duty handgun or in a location that would require a cross-draw with the weak hand. Officers wearing the thigh holster may wear the TASER on either thigh, however if worn on the strong side a cross-draw is still required.

- (b) All TASER devices shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.
- (c) Whenever practicable, officers should carry two or more cartridges on their person when carrying the TASER.
- (d) Officers shall be responsible for ensuring that their issued TASER is properly maintained and in good working order.
- (e) Officers should not hold both a firearm and the TASER at the same time.

Officer Bennett was carrying a department issued Taser, serial number X12001MCN, he received a training update for the device on October 23, 2014. Bennett was wearing a department issued BladeTek holster mounted on his duty belt, on the opposite side from his firearm. The holster was mounted so that he would have to reach across his body to draw it and was not consistent with the same actions required to draw his service weapon. According to Pleasanton Police Department personnel and training Officer Aina, Officer Bennett had two Taser cartridges assigned to him, cartridge # C4103FDCC and cartridge # C4102DN5K both were expended at the scene and recovered as evidence item PPD75853.

Following the incident, Officer Bennett's Taser was recovered by investigators. The activation history was downloaded and it was determined that Officer Bennett had performed a spark test on the device at the beginning of his shift. His last spark test prior to this incident, was conducted on 07-04-2015 at 1252 hours.

According to Officer Bennett he deployed the Taser at the suspect while the suspect was on top of the truck. He did not have his handgun in either hand at the time it was deployed. This is consistent with the recovered video recordings.

Officer Bennett complied with this policy.

PRIVILEGED

Officer Paulsen was carrying a department issued Taser, serial number X00-066590, he received a training update for the device on October 23, 2014. Paulsen was carrying the Taser in a department issued BladeTek holster mounted on his duty belt on the opposite side as his firearm. The holster was mounted on his belt such that he would have to reach across his body to draw it and not consistent with the same actions required to draw his service weapon. According to Pleasanton Police Department personnel and training Officer Aina, Officer Paulsen had two Taser cartridges in his possession, cartridge # C4102EDMM and #C4103F9H8 which was expended and still in the Taser. Both were recovered as evidence.

Following the incident, Officer Paulsen's Taser was recovered by investigators. The activation history was downloaded and it was determined that Paulsen had performed a spark test on the device at the beginning of his shift. His last spark test prior to his shift was conducted on July 4, 2015 at 1743 hours.

According to Officer Paulsen's statement he deployed the Taser at the suspect while the suspect was on top of the truck. He did not have his handgun in either hand at the time of his Taser deployment.

Officer Paulsen and Officer Bennett complied with the above policy.

Officer Kunkel was carrying a department issued Taser, serial number X12000DFH. Officer Kunkel trained and qualified with the Taser on November 17, 2014. Kunkel was carrying his Taser in a department issued BladeTek holster mounted on his duty belt on the opposite side as his firearm. The holster was mounted on his belt such that he would have to reach across his

body to draw it. According to Pleasanton Police Department personnel and training Officer Aina, Officer Kunkel had two Taser cartridges in his possession, cartridge # C4102EHNH and cartridge # C4102EHYK.

Following the incident, Officer Kunkel's Taser was recovered by investigators from the parking lot of 120 Spring Street. The activation history was downloaded and it was determined that Kunkel had performed a spark test on the device at the beginning of his shift at July 4, 2015 at 1658 hrs. as required by policy.

According to Officer Kunkel's statement, the suspect exited the building running. Officer Kunkel gave the suspect an order to stop and the suspect failed to do so. Officer Kunkel discharged his Taser at the suspect in an attempt to stop the suspect. It appears only one probe contacted the suspect as it appeared to have no effect on the suspect. Kunkel continued to hold the Taser in his hand after the activation was ineffective and ran after the suspect. The suspect turned and attacked Officer Kunkel, kicking Officer Kunkel knocking him to the ground. The suspect straddled Officer Kunkel's chest and began punching him in the face. Officer Kunkel continued to defend himself from the suspects attack. He begun to feel as if he may lose consciousness due to fatigue and pain. Officer Kunkel stated in his interview that he was struggling to stay conscious and feared the suspect would kill him if given a chance. Officer Kunkel applied his Taser again, this time in the drive stun mode, applying it to the suspect's forehead in an effort to gain distance between him and the suspect. The Taser activation appeared to have little effect and the suspect continued to straddle and strike Officer Kunkel with his fists. Officer Kunkel dropped his Taser and drew his firearm, firing it three times at the suspect. Officer Kunkel's said he did not have his firearm and Taser in his hands at the same time.

Officer Kunkel complied with the above policy.

309.4 VERBAL AND VISUAL WARNINGS (Kunkel, Bennett, Paulsen)

A verbal warning of the intended use of the TASER device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply.
- (b) Provide other officers and individuals with a warning that the TASER device may be deployed.

If, after a verbal warning, an individual is unwilling to voluntarily comply with an officer's lawful orders and it appears both reasonable and feasible under the circumstances, the officer may, but is not required to, display the electrical arc (provided that a cartridge has not been loaded into the device), or the laser in a further attempt to gain compliance prior to the application of the TASER device. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision. The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the officer deploying the TASER in the related report.

During this incident Officers Bennett, Paulsen, and other officers on scene, gave multiple verbal instructions for the suspect to come down off of the pickup truck and to surrender but he failed comply with their requests.

Officers Bennett and Paulsen complied with the above policy.

While Officer Kunkel was at his perimeter position next to the broken window, the suspect jumped out of the window and ran westbound on Spring Street. Officer Kunkel ordered the suspect to stop as he was exiting the building but the suspect did not comply with his instructions and continued to run away from him. Kunkel discharged his Taser at the suspect in an attempt to stop him.

Kunkel discharged his Taser a second time in the drive stun mode when the suspect was repeatedly striking him in the face. Due to the suspect's actions and circumstances it was unnecessary and impractical to provide a verbal warning prior to activating his Taser.

Officer Kunkel complied with this policy.

309.5 USE OF THE TASER DEVICE

(Kunkel, Bennett, Paulsen)

The TASER has limitations and restrictions requiring consideration before its use. The TASER should only be used when its operator can safely approach the subject within the operational range of the device. Although the TASER is generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.

PRIVILEGED

Officer Bennett and Officer Paulsen were located a short distance (8-12 feet) from the suspect who possessed a tactical advantage by being on top of a pickup truck. They had other officers with them, who provided additional force options.

Officer Bennett and Officer Paulsen were in compliance with this policy.

309.5.1 APPLICATION OF THE TASER DEVICE

(Kunkel, Bennett, Paulsen)

The TASER may be used in any of the following circumstances, when the circumstances perceived by the officer at the time indicate that such application is reasonably necessary to control a person:

- (a) The subject is violent or is physically resisting.
- (b) The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, him/herself or others.

Mere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the TASER to apprehend an individual.

Upon arrival at the business, the suspect was observed inside the building holding a large metal bar in a threatening manner. He approached the front glass window and displayed both middle fingers at the officers on the other side. While the officers were setting up a perimeter around the business the suspect picked up and threw two floor jacks toward officers and Sgt. Gora who were outside the front building windows. The officers believed the suspect's intent was to strike the officers with the floor jacks. One of the floor jacks penetrated a window and landed in the street a few feet from where an officer was standing.

Inside the building officers encountered the suspect standing and sitting on top of a pickup truck. They gave repeated commands for him to get down off of the truck and to surrender. The suspect continued to verbally challenge them and refused to comply with their commands.

The Taser deployment by Officer Bennett and Officer Paulsen was in compliance with this policy

Officer Kunkel responded to an alarm call at the car dealership. Sgt. Gora was first on scene and radioed to responding officers, including Officer Kunkel. He communicated that there was a broken window to the rear of the business and he could hear screaming coming from inside the business. Upon arrival, Officer Kunkel positioned himself near the broken window because he believed the opening in the window was the point of entry for the suspect and he believed the suspect was still inside. Based on his experience and training Officer Kunkel believed the suspect would use this opening to try and escape. Officer Kunkel observed the suspect inside the business and believed the suspect was actively burglarizing the business. He heard items being broken and smashed from inside the business. Officer Kunkel was alone at this perimeter position.

Officer Kunkel understood the suspect had been acting in a confrontational and violent manner toward the officers positioned outside the building based upon what he heard over the radio and had personally observed. From his perimeter position Officer Kunkel could hear the bean bag shotgun being deployed. Shortly thereafter, the suspect ran out of the broken window directly in front of Officer Kunkel. Officer Kunkel identified himself as a police officer and ordered the suspect to stop. The suspect did not stop and continued to run west on Spring Street. Officer Kunkel discharged his Taser in an effort to stop the suspect.

Officer Kunkel deployed his Taser in drive stun mode in an attempt to create space between him and the suspect who was attacking him by, straddling Officer Kunkel's chest and punching him in the face.

PRIVILEGED

Officer Kunkel's deployments of the Taser were in compliance with this policy.

309.5.2 SPECIAL DEPLOYMENT CONSIDERATIONS (Kunkel, Bennett, Paulsen)

The use of the TASER on certain individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the officer, the subject, or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the device. This includes:

- (a) Individuals who are known to be pregnant.
- (b) Elderly individuals or obvious juveniles.
- (c) Individuals with obviously low body mass.
- (d) Individuals who are handcuffed or otherwise restrained.
- (e) Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based oleoresin capsicum (OC) spray.
- (f) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

Because the application of the TASER in the drive-stun mode (i.e., direct contact without probes) relies primarily on pain compliance, the use of the drive-stun mode generally should be limited to supplementing the probe-mode to complete the circuit, or as a distraction technique to gain separation between officers and the subject, thereby giving officers time and distance to consider other force options or actions.

The suspect did not fall into any of the above listed caution categories. The suspect was standing and sitting on a pickup truck. The height of the truck would not have caused serious

harm to the suspect if he had fallen due to the Taser deployment. Additionally, officers were positioned close by who would have assisted in helping the suspect to the ground after being incapacitated. At the time that the Tasers were deployed, the suspect was sitting on top of the truck.

Officers Bennett and Paulsen complied with this policy.

The suspect did not fall into any of the above listed caution categories. Officer Kunkel deployed his Taser as the suspect failed to comply with his order to stop and was running away from Officer Kunkel. He deployed it a second time in the drive stun mode in an attempt to create space between him and the suspect who was attacking him by, straddling Officer Kunkel's chest and punching him in the face.

Officer Kunkel was in compliance with this policy.

309.5.3 TARGETING CONSIDERATIONS (Kunkel, Bennett, Paulsen)

Reasonable efforts should be made to target lower center mass and avoid the head, neck, chest and groin. If the dynamics of a situation or officer safety do not permit the officer to limit the application of the TASER device probes to a precise target area, officers should monitor the condition of the subject if one or more probes strikes the head, neck, chest or groin until the subject is examined by paramedics or other medical personnel.

The suspect was sitting on the pickup truck when Officer Bennett deployed his Taser. It appeared the probes struck the suspect in at least one leg and the other probe may have missed him. Bennett deployed his Taser twice. On the first deployment, one probe hit the suspect in the leg and on the second deployment one probe struck the suspect in the chest. As such, it appeared Officer Bennett was targeting the suspect's lower body.

The suspect was sitting on the pickup truck when Paulsen deployed his Taser. The probes may have missed him, but it appeared that officer Paulsen targeted the lower portion of the suspect's body based upon his position and where the suspect was. Based upon his statement the Taser probes skipped off the truck, the suspect was sitting on, which would indicate he was targeting the suspect's lower body as the suspect's torso was above the cab of the truck.

The suspect was running away from Officer Kunkel at the time of deployment. As such, the suspect's back was presented to Officer Kunkel as a target, which is a recommended target area. Officer Kunkel deployed the device and it appeared at least one of the probes struck the suspect in the back.

Officer's Bennett, Paulsen and Kunkel complied with this policy.

309.5.4 MULTIPLE APPLICATIONS OF THE TASER DEVICE (Kunkel, Bennett, Paulsen)

Officers should apply the TASER device for only one standard cycle and then evaluate the situation before applying any subsequent cycles. Multiple applications of the TASER device against a single individual are generally not recommended and should be avoided unless the officer reasonably believes that the need to control the individual outweighs the potentially increased risk posed by multiple applications.

If the first application of the TASER device appears to be ineffective in gaining control of an individual, the officer should consider certain factors before additional applications of the TASER device, including:

- (a) Whether the probes are making proper contact.
- (b) Whether the individual has the ability and has been given a reasonable opportunity to comply.
- (c) Whether verbal commands, other options or tactics may be more effective. Officers should generally not intentionally apply more than one TASER device at a time against a single subject.

Officer Bennett discharged his Taser at the suspect and it appeared at least one of the probes missed the suspect as the deployment was ineffective and the suspect removed the probe from his leg. He reloaded a second cartridge and fired a second time and it appeared that only one probe made contact with the suspect who did not react to the Taser deployment again. Bennett fired his Taser after being directed to do so by Sgt. Gora.

Officer Paulsen discharged his Taser at the suspect only one time after Officer Bennett's Taser was ineffective.

Officer Kunkel deployed his Taser one time as the suspect was running from him. The deployment proved to be ineffective. Kunkel deployed his Taser a second time when the suspect was attacking him and he felt he may lose consciousness and die. As such, the second deployment was reasonable and was done in an effort to save his own life.

Officers Bennett, Paulsen, and Kunkel were in compliance with this policy.

309.5.5 ACTIONS FOLLOWING DEPLOYMENTS (Kunkel, Bennett, Paulsen)

Officers shall notify a supervisor of all TASER device discharges. Confetti tags should be collected and the expended cartridge, along with both probes and wire, should be submitted into evidence. The cartridge serial number should be noted and documented on the evidence paperwork. The evidence packaging should be marked "Biohazard" if the probes penetrated the subject's skin.

Officers Bennett and Paulsen discharged their Tasers after hearing Sgt. Gora's direction to utilize them. As such they did not need to report their Taser deployments as Sgt. Gora was present during their activations. Officers Bennett and Paulsen detailed statements to criminal investigators about their Taser deployments.

Criminal Investigators collected the expended cartridges, probes and completed all evidence documentation.

Officers Bennett and Paulsen complied with this policy.

Officer Kunkel was found lying on the ground, physically exhausted, by responding cover officers and Sgt. Gora. When he was able to speak, he provided a public safety statement to Sgt. Gora regarding what had just transpired. Kunkel provided a detailed statement to criminal investigators about his Taser deployments.

Investigators collected the expended cartridge, probes and completed all evidence documentation.

Officer Kunkel was in compliance with this policy.

309.6 DOCUMENTATION (Kunkel, Bennett, Paulsen)

Officers shall document all TASER device discharges in the related arrest/crime report and the TASER device report form. Notification shall also be made to a supervisor in compliance with the Use of Force Policy. Unintentional discharges, pointing the device at a person, laser activation and arcing the device will also be documented on the report form.

The documentation of Officer Bennett's and Paulsen's Taser deployments was completed by criminal investigators. Officers Bennett and Paulsen provided detailed statements about their Taser deployments. Their statements were supported by video evidence.

The documentation of Officer Kunkel's Taser deployment was completed by criminal investigators. Officer Kunkel provided a detailed statement about his Taser deployment.

Taser device report forms were initially not completed but were completed following the investigation by Lt. Laurence and Sgt. Gora.

PRIVILEGED

Officer's Kunkel, Bennett and Paulsen were in compliance with this policy.

309.6.1 TASER DEVICE FORM (Kunkel, Bennett, Paulsen)

Items that shall be included in the TASER device report form are:

- (a) The type and brand of TASER device and cartridge and cartridge serial number.
- (b) Date, time and location of the incident.
- (c) Whether any display, laser or arc deterred a subject and gained compliance.
- (d) The number of TASER device activations, the duration of each cycle, the duration between activations, and (as best as can be determined) the duration that the subject received applications.
- (e) The range at which the TASER device was used.
- (f) The type of mode used (probe or drive-stun).
- (g) Location of any probe impact.
- (h) Location of contact in drive-stun mode.
- (i) Description of where missed probes went.
- (j) Whether medical care was provided to the subject.
- (k) Whether the subject sustained any injuries.
- (l) Whether any officers sustained any injuries.

The Training Officer should periodically analyze the report forms to identify trends, including deterrence and effectiveness. The Training Officer should also conduct audits of data downloads and reconcile TASER device report forms with recorded activations. TASER device information and statistics, with identifying information removed, should periodically be made available to the public.

The documentation of Officer Bennett's, Paulsen's and Kunkel's Taser deployments was completed by investigators. Officer Bennett, Paulsen and Kunkel all provided full detailed statements of their Taser deployments when interviewed by investigators. All required information was captured in the criminal investigation report. Taser report forms were not initially completed but were completed following the investigation by Lt. Laurence.

309.6.2 REPORTS (Kunkel, Bennett, Paulsen)

The officer should include the following in the arrest/crime report:

- (a) Identification of all personnel firing TASER devices
- (b) Identification of all witnesses
- (c) Medical care provided to the subject
- (d) Observations of the subject's physical and physiological actions
- (e) Any known or suspected drug use, intoxication or other medical problems

The documentation of Officer Bennett's, Paulsen's and Kunkel's Taser deployments was completed by criminal investigators in their respective reports. Each officer who activated their Taser provided detailed recorded statements.

309.7 MEDICAL TREATMENT (Kunkel, Bennett, Paulsen)

Consistent with local medical personnel protocols and absent extenuating circumstances, only appropriate medical personnel should remove TASER device probes from a person's body. Used TASER device probes shall be treated as a sharps biohazard, similar to a used hypodermic needle, and handled appropriately. Universal precautions should be taken.

All persons who have been struck by TASER device probes or who have been subjected to the electric discharge of the device shall be medically assessed prior to booking. Additionally, any such individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:

- (a) The person is suspected of being under the influence of controlled substances and/or alcohol.
- (b) The person may be pregnant.
- (c) The person reasonably appears to be in need of medical attention.
- (d) The TASER device probes are lodged in a sensitive area (e.g., groin, female breast, head, face, neck).
- (e) The person requests medical treatment.

PRIVILEGED

Any individual exhibiting signs of distress or who is exposed to multiple or prolonged applications (i.e., more than 15 seconds) shall be transported to a medical facility for examination or medically evaluated prior to booking. If any individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

The transporting officer shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of the TASER device.

Neither Officer Bennett nor Officer Paulsen removed any TASER probes from the suspect. After Officer Bennett deployed his Taser at the suspect, the suspect can be seen on video removing one of the probes from his own leg.

Officer Kunkel did not remove any probes from the suspect. Upon reaching the suspect at 0237 hrs. Sgt. Gora immediately requested a medical response for the suspect. The first officers on scene provided lifesaving medical efforts for the suspect until medical personnel arrived and assumed responsibility for medical aid.

309.8 SUPERVISOR RESPONSIBILITIES (Gora)

When possible, supervisors should respond to calls when they reasonably believe there is a likelihood the TASER device may be used. A supervisor should respond to all incidents where the TASER device was activated.

A supervisor shall review each incident where a person has been exposed to an activation of the TASER device. Photographs of probe sites should be taken and witnesses interviewed.

Sergeant Gora was on scene at the time of the incident and directed officers to use their Taser device in an effort to overcome the suspect's resistance.

An interview of the suspect could not be conducted as he is deceased.

Criminal Investigations personnel interviewed Pleasanton Police Department Officers Paulsen, Bennett, Cobler, Sheldon, Middleton, Palmquist, Pittl and Kunkel. Detective Chin took photographs of the suspect to document any injuries. Sergeant Gora complied with policy by turning the investigation over to the Criminal Investigations Unit.

309.9 TRAINING (Kunkel, Bennett, Paulsen)

Personnel who are authorized to carry the TASER device shall be permitted to do so only after successfully completing the initial department-approved training. Any personnel who have not carried the TASER device as a part of their assignment for a period of six months or more shall be recertified by a department-approved TASER device instructor prior to again carrying or using the device.

PRIVILEGED

Proficiency training for personnel who have been issued TASER devices should occur every year. A reassessment of an officer's knowledge and/or practical skill may be required at any time if deemed appropriate by the Training Officer. All training and proficiency for TASER devices will be documented in the officer's training file.

Command staff, supervisors and investigators should receive TASER device training as appropriate for the investigations they conduct and review.

Officers who do not carry TASER devices should receive training that is sufficient to familiarize them with the device and with working with officers who use the device.

Officer Bennett was carrying a department issued Taser, serial number X12001MCN, he last received training on the device on October 23, 2014. He passed the Taser qualification given by instructors.

Officer Paulsen was carrying a department issued Taser, serial number X00-066590, he last received training on the device on October 23, 2014. He passed the Taser qualification.

Officer Kunkel was carrying a department issued Taser, serial number X12000DFH, he received training on the device on November 17, 2014. He passed the Taser qualification.

Officer Involved Shooting

310.5 and 310.5.1 DUTIES OF INITIAL ON SCENE SUPERVISOR (Sgt. Gora and Lt. Knox)

Upon arrival at the scene of an officer-involved shooting, the first uninvolved supervisor should:

- (a) Take all reasonable steps to obtain emergency medical attention for all apparently injured individuals.
- (b) Attempt to obtain a brief overview of the situation from any non-shooter officer(s).
 - 1. In the event that there are no non-shooter officers, the supervisor should attempt to obtain a brief voluntary overview from one shooter officer.
- (c) If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information necessary to secure the scene and pursue suspects.
 - 1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of shots fired, parameters of the incident scene, identity of known witnesses and similar information.
- (d) Absent a voluntary statement from any officer(s), the initial on scene supervisor should not attempt to order any officer to provide other than public safety information.
- (e) Provide all available information to the Watch Commander and Dispatch. If feasible, sensitive information should be communicated over secure networks.
- (f) Take command of and secure the incident scene with additional personnel until relieved by a detective supervisor or other assigned personnel.
- (g) As soon as practical, shooter officers should respond or be transported (separately, if feasible) to the station for further direction.
 - 1. Each involved officer should be given an administrative order not to discuss the incident with other involved officers pending further direction from a supervisor.
 - 2. When an officer's weapon is taken or left at the scene (e.g., evidence), the officer will be provided with a comparable replacement weapon or transported to the station by other officers.

PRIVILEGED

- (a) Upon Sgt. Gora's arrival at the scene of the shooting, Sgt. Gora immediately realized the severity of the injury to the suspect. He asked dispatch to immediately have 2 ambulances respond to the location. He further directed officers to go to the supervisor's vehicle and to retrieve the trauma kit. He then oversaw the officers rendering medical aid to the suspect and Officer Kunkel prior to fire and paramedic personnel taking over. As such, his actions were in compliance with the above policy.
- (b) Sgt. Gora obtained a public safety statement from Officer Kunkel as directed by Lt. Knox prior to Kunkel being taken to the hospital.
- (c) Sgt. Gora obtained a public safety statement from Officer Kunkel as directed by Lt. Knox prior to Kunkel being taken to the hospital.
- (d) Sgt. Gora did not attempt to interview Officer Kunkel outside the public safety statement.
- (e) Sgt. Gora directed dispatch personnel to contact Lt. Knox at 0241 hours, just six minutes after the shooting occurred. Lt. Knox telephoned Sgt. Gora and received all pertinent details. Lt. Knox informed command staff and Investigations personnel.
- (f) Sgt. Gora directed Officers Pittl and Middleton to up a perimeter around the incident location. They appropriately put up crime scene tape and kept people out of the scene. Officer Sheldon began a crime scene log until the Investigations Sergeant arrived on scene and assumed control of the crime scene and investigation.
- (g) Officer Kunkel was transported to the hospital. He was accompanied there by Officer Palmquist and upon being discharged was brought to the Pleasanton Police Department where Officer Kunkel was sequestered by himself.

Lt. Knox gave Officer Kunkel an administrative order not to discuss the incident with anyone else. Lt. Knox also arranged with Sgt. Schlehuber to get Officer Kunkel a replacement firearm.

Sgt. Gora and Lt. Knox were in compliance with the above policy.

310.5.2 WATCH COMMANDER DUTIES (Sgt. Gora and Lt. Knox)

Upon learning of an officer-involved shooting, the Watch Commander shall be responsible for coordinating all aspects of the incident until relieved by the Chief of Police or a Division Commander.

See 310.5.3

310.5.3 NOTIFICATIONS

The following person(s) shall be notified as soon as practical:

- Chief of Police
- Investigations and Support Services Division Commander
- Operations Division Commander
- Coroner (in accordance with protocol)
- Officer Representative (if requested)

The Administrative Lieutenant, at the direction of the Chief of Police, will form a "Critical Incident Investigation Team." All outside inquiries about the incident shall be directed to the Watch Commander.

Sgt. Gora asked dispatch to call acting Division Commander Lt. Jim Knox. Lt. Knox received a call from Dispatcher Timmerman at 0242 hours advising him of the shooting. Lt. Knox returned Sgt. Gora's call and spoke with him directly to obtain the details of the incident. Lt. Knox then notified command staff (Captain Eicher and Chief Spiller) and Investigations personnel (Lt. Bretzing and Sgt. Schiehuber). Sgt. Gora complied with policy by notifying Lt. Knox as the acting Division Commander. Lt. Knox complied with policy by notifying Captain Eicher and Lt. Bretzing.

310.5.5 INVOLVED OFFICERS (Gora)

Once the involved officer(s) have arrived at the station, the Watch Commander should admonish each officer that the incident shall not be discussed except with authorized personnel or representatives. The following shall be considered for the involved officer:

- (a) Any request for department or legal representation will be accommodated, however, no involved officer shall be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report (Government Code § 3303(i)).
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.
- (c) Discussions with department representatives (e.g., employee association) will be privileged only as to the discussion of non-criminal information however.
- (d) A psychotherapist shall be provided by the Department to each involved officer, or any other officer, upon request.
 1. Interviews with a licensed psychotherapist will be considered privileged and will not be disclosed except to the extent that the officer is or is not fit for return to duty.
 2. An interview or session with a licensed psychotherapist may take place prior to the involved officer providing a formal interview or report, but the involved officers shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist prior to providing a formal interview or report.

- (e) Although the Department will honor the sensitivity of communications with peer counselors, there is no legal privilege to such. Peer counselors are cautioned against discussing the facts of any incident with an involved or witness officer.

Care should be taken to preserve the integrity of any physical evidence present on the officer's equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.

Sgt. Gora was in compliance with policy by providing each of his officers with a directive not to speak with one another about the incident.

Each of the subject officers involved in this case were afforded the opportunity to privately consult with their legal counsel prior to being interviewed.

Sgt. Gora oversaw the collection of Officer Kunkel's gun belt as well as the Taser wire which was caught on his belt. He had Officer Middleton take photographs of Officer Kunkel prior to Officer Kunkel being taken for medical treatment. Sgt. Gora established a perimeter around the crime scene and assured no possible evidence was disturbed.

The Criminal Investigations Unit photographed each of the officer involved in this incident.

PRIVILEGED

Firearms

312.4 FIREARMS QUALIFICATIONS (Kunkel)

All sworn personnel are required to qualify bi-annually with their duty weapon and annually with their off-duty weapon and secondary weapon on an approved range course. The Rangemaster shall keep accurate records of qualifications, repairs, maintenance, training or as directed by the Training Officer. In addition to regular qualification schedules, the Rangemaster shall be responsible for providing all sworn personnel with annual practical training designed to simulate field situations.

Officer Kunkel was carrying his department issued Sig Sauer Pistol, Model P220, .45 caliber, serial number G322216. Officer Kunkel was issued this weapon on March 24, 2014. He attended range training on June 18, 2015. He successfully qualified with his handgun and demonstrated proficiency in its use.

Officer Kunkel was in compliance with this policy.

Officer Response to Calls

316.3 REQUESTING EMERGENCY ASSISTANCE (Gora)

Requests for emergency assistance should be limited to those situations where the involved personnel reasonably believe that there is an immediate threat to the safety of officers, or assistance is needed to prevent imminent serious harm to a citizen. In any event, where a situation has stabilized and emergency response is not required, the requesting officer shall immediately notify Dispatch.

If circumstances permit, the requesting officer should give the following information:

- The unit number
- The location
- The reason for the request and type of emergency
- The number of units required

Sgt. Gora arrived on scene and found a broken window to the rear window of Specialty Auto Sales. As he approached he heard someone from inside the business screaming and smashing things. Sgt. Gora was the only unit on scene and was not fully aware of what was transpiring inside the business, however he suspected the subject may be attempting to steal a car from the business. Gora requested his cover to respond code 3, and as needed, he asked responding units to step up to a code 3 response.

Sgt. Gora was in compliance with policy.

316.3.1 NUMBER OF UNITS ASSIGNED (Gora)

Normally, only one unit should respond to an emergency call Code-3 unless the Watch Commander or the field supervisor authorizes an additional unit(s).

Sgt. Gora made an inquiry about the status of K-9 Officer Sheldon. Officer Sheldon advised that he was still on the radio but was at or near his home in Livermore. Sgt. Gora asked that Sheldon respond to Specialty Auto Sales, code 3. He then asked what the status of Officer Paulsen and Officer Palmquist was as they had been on a loose dog call in Ruby Hills. They advised they had cleared and were enroute code 3 from Ruby Hills. There was light traffic and no other known emergency vehicles driving the routes of the responding officers. Sgt. Gora was both the Field Supervisor and Watch Commander and had authority to authorize multiple code 3 responses.

Sgt. Gora was in compliance with policy.

PRIVILEGED

316.4 INITIATING CODE 3 RESPONSE (Gora)

If an officer believes a Code-3 response to any call is appropriate, the officer shall immediately notify Dispatch. Generally, only one unit should respond Code-3 to any situation. Should another officer believe a Code-3 response is appropriate, Dispatch shall be notified and the Watch Commander or field supervisor will make a determination as to whether one or more officers driving Code-3 is appropriate.

Sgt. Gora made an inquiry about the status of K-9 Officer Sheldon. Officer Sheldon advised that he was still on the radio but was at or near his home in Livermore. Sgt. Gora asked that Sheldon respond to Specialty Auto Sales, code 3. He then asked what the status of Officer Paulsen and Officer Palmquist was as they had been on a barking dog call in Ruby Hills. They advised they had cleared and were enroute code 3 from Ruby Hills. There was light traffic and no other known emergency vehicles driving the routes of the responding officers. Sgt. Gora was both the Field Supervisor and Watch Commander and had authority to authorize multiple code 3 responses.

Sgt. Gora was in compliance with policy.

316.7 SUPERVISORY RESPONSIBILITIES (Gora)

Upon being notified that a Code-3 response has been initiated, the Watch Commander or the field supervisor shall verify the following:

- (a) The proper response has been initiated
- (b) No more than those units reasonably necessary under the circumstances are involved in the response
- (c) Affected outside jurisdictions are being notified as practical

The field supervisor shall monitor the response until it has been stabilized or terminated and assert control by directing units into or out of the response if necessary. If, in the supervisor's judgment, the circumstances require additional units to be assigned a Code-3 response, the supervisor may do so.

It is the supervisor's responsibility to terminate a Code-3 response that, in his/her judgment is inappropriate due to the circumstances. When making the decision to authorize a Code-3 response, the Watch Commander or the field supervisor should consider the following:

- The type of call
- The necessity of a timely response
- Traffic and roadway conditions
- The location of the responding units

Sgt. Gora made an inquiry about the status of K-9 Officer Sheldon. Officer Sheldon advised that he was still on the radio but was at or near his home in Livermore. Sgt. Gora asked that Sheldon respond to Specialty Auto Sales, code 3. He then asked what the status of Officer Paulsen and Officer Palmquist was as they had been on a barking dog call in Ruby Hills. They advised they had cleared and were enroute code 3 from Ruby Hills. There was light traffic and no other known emergency vehicles driving the routes of the responding officers. Sgt. Gora was both the Field Supervisor and Watch Commander and had authority to authorize multiple code 3 responses. Sgt. Gora later determined the need to request additional assistance and requested Livermore to respond as well if they had a few units available to assist our units. Sgt. Gora was in compliance with this policy.

Sgt. Gora was in compliance with policy

PRIVILEGED

318.2 GUIDELINES FOR THE USE OF CANINES (Sheldon)

A canine may be used to locate and apprehend a suspect if the canine handler reasonably believes that the individual has either committed or threatened to commit any serious offense and if any of the following conditions exist:

- (a) There is a reasonable belief that the individual poses an imminent threat of violence or serious harm to the public, any officer, or the handler.
- (b) The individual is physically resisting or threatening to resist arrest and the use of a canine reasonably appears to be necessary to overcome such resistance.
- (c) The individual(s) is/are believed to be concealed in an area where entry by other than the canine would pose a threat to the safety of officers or the public.

It is recognized that situations may arise that do not fall within the provisions set forth in this policy. In any such case, a standard of objective reasonableness shall be used to review the decision to use a canine in view of the totality of the circumstances.

Absent reasonable belief that an individual has committed or threatened to commit a serious offense, mere flight from pursuing officer(s) shall not serve as good cause for the use of a canine to apprehend the individual.

Once the individual has been located and no longer reasonably appears to represent a threat or risk of escape, the canine should be placed in a down-stay or otherwise secured as soon as it becomes reasonably practical.

Officer Sheldon arrived on scene and met Sgt. Gora near the front of Specialty Auto Sales. As they were standing in front of the business the suspect approached the front windows from inside the business, looked at the officer and displayed the middle finger of each hand in an offensive manner toward the officers. A few moments later the suspect ran toward the window with a pipe and was screaming and acting like he was high on drugs. The suspect picked up a floor jack and threw it towards officers and Sgt. Gora who were standing outside the front window. He then threw a second floor jack toward officers and Sgt. Gora who were standing outside of Specialty Auto Sales glass entry doors. The floor jack penetrated the window (of the front door) and landed in the street next to where the officers were standing. The suspect stood in the doorway in an agitated manner, and would not comply with the officers commands. A less lethal bean bag round was fired at the suspect in an attempt to prevent him from re-entering the business and to encourage him to surrender. The bean bag round missed the suspect. He retreated into the building.

Officers formed a contact team at the front door of Specialty Auto Sales. Officer Sheldon made a canine announcement ordering the suspect to surrender but the suspect did not comply with the officer's directions. A group of officers and Sgt. Gora made entry into the building and encountered the suspect who was perched on top of a pickup truck. They gave numerous commands directing him to come down and surrender. Officer Sheldon made a canine advisement articulating that if the suspect did not comply with their orders he would be bit by the police canine. Officers attempted to gain control of the suspect through several Taser deployments and the use of less lethal bean bag rounds. Every deployment of less lethal force options failed to incapacitate the suspect, the suspect leapt off of the truck and ran toward the rear of the building. Officer Sheldon released K-9 Falco in an effort to apprehend the suspect before he left the building.

The suspect was able to jump out of the broken rear window before Falco was able to catch up with him. Officer Sheldon lifted Falco out of the window and let him go after the suspect again. Falco initially focused on Officer Cobler who was running toward the suspect. Sheldon called Falco off and placed him back on his lead. When Officer Sheldon and the officer Cobler reached the suspect, they observed he was seriously injured and as they attempted to detain him and render aid the suspect was still resisting their efforts to handcuff him. Officer Sheldon placed Falco on a bite near the suspect's left arm or armpit area in an effort to subdue the suspect's resistance. The suspect was successfully handcuffed and Sheldon removed Falco from the bite.

During this incident the suspect was concealed in a building full of cars and he had located the keys to those cars. There was concern by the officers and the sergeant the suspect may drive one of the cars through the glass windows of the building potentially harming them or creating a more dangerous car chase scenario. His behavior was unusual and appeared as though he may have been under the influence of drugs or suffering from a mental illness. The suspect was physically threatening officers and he would not comply with the numerous commands to surrender. After being seriously injured the suspect continued to resist the officers who attempted to handcuff him.

Officer Sheldon deployed his canine in compliance with the above policy and when the suspect was restrained, Sheldon immediately removed his dog and downed him per policy. This was supported in video documentation.

Officer Sheldon complied with the above policy.

318.2.1 PREPARATION FOR UTILIZING A CANINE (Sheldon)

Prior to the use of a canine to search for or apprehend any individual, the canine handler and/or the supervisor on scene shall carefully consider all pertinent information that is reasonably available at the time. The information should include, but is not limited to the following:

- (a) The individual's age or estimate thereof
- (b) The nature of the suspected offense
- (c) Any potential danger to the public and/or other officers at the scene if the canine is released
- (d) The degree of resistance or threatened resistance, if any, the subject has shown
- (e) The potential for escape or flight if the police dog is not utilized
- (f) The potential for injury to officers or the public caused by the suspect if the canine is not utilized

As circumstances permit, the canine handler should make every reasonable effort to communicate and coordinate with other involved personnel to minimize the risk of unintended injury.

A canine handler shall have the ultimate authority not to deploy the dog. The handler will evaluate each situation and determine if the use of a canine is technically feasible. Generally, the decision whether to deploy the dog shall remain with the handler. However, a supervisor sufficiently apprised of the situation may decide not to deploy the dog.

The suspect demonstrated threatening and unusual behavior toward the responding officers. He was screaming and acting aggressively by throwing objects at the officers as they stood outside the building. He did not comply with the officer's orders to surrender. The suspect posed a threat to both officers and the public while displaying a weapon at officers and having numerous weapons at his disposal, including the possession of keys to the vehicles parked inside the show room.

Officer Sheldon complied with the above policy.

318.2.2 WARNINGS GIVEN TO ANNOUNCE THE USE OF A CANINE (Sheldon)

Unless it would otherwise increase the risk of injury or escape, a clearly audible warning to announce that a canine will be released if the person does not come forth, shall be made prior to releasing a canine. The canine handler, when practical, shall first advise the supervisor of his/her decision if a verbal warning is not given prior to releasing the canine. In the event of an apprehension, the handler shall document in any related report whether or not a verbal warning was given and, if none was given, the reasons why.

Officer Sheldon was at the front of the building prior to deploying his canine. Sheldon provided an audible announcement into the building several times prior to entering with his canine. Sheldon provided additional verbal warnings to the suspect when he was on the pickup truck inside the business. Prior to Officer Sheldon placing Falco on a bite, the officers were attempting to handcuff the suspect, they repeatedly told the suspect to stop resisting.

Officer Sheldon complied with the above policy.

318.2.6 REPORTING CANINE USE, BITES AND INJURIES (Sheldon)

Whenever a canine is deployed and intentionally bites or otherwise causes injury to a suspect, a supervisor shall be promptly notified and the injuries documented in a Canine Use Report Form. The deployment and injuries should also be included in any related incident or arrest report.

Any unintended bite or injury caused by the canine during deployments, operations, training, presentations, or under any other circumstances, either on- or off-duty, shall be promptly reported to the Unit Coordinator. Unintended bites or injuries caused by the canine should be documented in an administrative report, not on a Canine Use Report Form.

Sgt. Gora was on scene and witnessed Officer Sheldon's canine deployments. Officer Sheldon also provided a detailed statement to Criminal Investigators about his use of force during this incident.

Officer Sheldon was in compliance with this policy section, however the Canine Use Report Form was not initially completed but has since been completed.

PRIVILEGED

318.7 TRAINING (Sheldon)

Before assignment in the field, each canine team shall be trained and certified to meet current POST guidelines. Cross-trained dog teams or those dog teams trained exclusively for the detection of narcotics and/or explosives shall be trained and certified to meet the standards established for such detection dogs by the California Narcotic Canine Association or other recognized and approved certification standards.

The Unit Coordinator shall be responsible for scheduling periodic training for all department personnel in order to familiarize them with how to conduct themselves in the presence of department canines.

Officer Sheldon attends weekly K-9 maintenance training and has completed his annual recertification conducted by the department approved canine trainer. See the attached records.

Officer Sheldon is in compliance with this policy.

318.7.1 CONTINUED TRAINING (Sheldon)

Each canine team shall thereafter be recertified to current POST guidelines and the California Narcotic Canine Association or other recognized and approved certification standards on an annual basis. Additional training considerations are as follows:

- (a) Canine teams shall receive training as defined in the current contract with the department's canine training provider.
- (b) Canine handlers are encouraged to engage in additional training with approval of the Unit Coordinator.
- (c) To ensure that all training is consistent, no handler, trainer, or outside vendor is authorized to train to a standard that is contrary to the policies of the Pleasanton Police Department.
- (d) All canine training shall be conducted while on-duty unless otherwise approved by the Unit Coordinator or Watch Commander.

Officer Sheldon attends weekly K-9 maintenance training and has completed his annual recertification conducted by the department approved canine trainer. See the attached records.

Officer Sheldon is in compliance with this policy section.

Major Incident Notification

358.3 MINIMUM CRITERIA FOR NOTIFICATION (Sgt. Gora and Lt. Knox)

Most situations where the media show a strong interest are also of interest to the Chief of Police and the affected Division Commander. The following list of incident types is provided as a guide for notification and is not intended to be all inclusive:

- Homicides
- Traffic accidents with fatalities
- Officer-involved shooting - on or off duty (see Officer-Involved Shooting Policy for special notifications)
- Significant injury or death to employee - on or off duty
- Death of a prominent Pleasanton official
- Arrest of a department employee or prominent Pleasanton official
- Aircraft crash with major damage and/or injury or death
- In-custody deaths

Sgt. Gora appropriately complied with this policy notifying Lt. Knox of the Officer Involved shooting. Lt. Knox, who was the acting Division Commander at the time made follow-up command staff notifications.

358.4 WATCH COMMANDER RESPONSIBILITY (Gora)

The Watch Commander is responsible for making the appropriate notifications. The Watch Commander shall make reasonable attempts to obtain as much information on the incident as possible before notification. The Watch Commander shall attempt to make the notifications as soon as practicable. Notification should be made by calling the home telephone number first and then by any other available contact numbers.

Sgt. Gora asked dispatch to call acting Division Commander Lt. Jim Knox. Lt. Knox received a call from Dispatch and called Sgt. Gora on scene and spoke with him to obtain the details of the incident. Sgt. Gora complied with policy by notifying Lt. Knox as the acting Division Commander.

358.4.1 STAFF NOTIFICATION (Gora)

In the event an incident occurs described in Policy Manual § 358.2, the Chief of Police shall be notified along with the affected Division Commander and the Detective Lieutenant if that division is affected.

Sgt. Gora asked dispatch to call acting Division Commander Lt. Jim Knox. Lt. Knox received a call from Dispatcher Timmerman at 0242 hours advising Lt. Knox of the shooting. Lt. Knox returned Sgt. Gora's call and spoke with him directly to obtain the details of the incident. Lt. Knox then informed command staff and Investigations personnel. Sgt. Gora complied with policy by notifying Lt. Knox as the acting Division Commander.

358.4.2 DETECTIVE NOTIFICATION (Gora)

If the incident requires that a detective respond from home, the immediate supervisor of the appropriate detail shall be contacted who will then contact the appropriate detective.

Sgt. Gora advised Lt. Knox of the shooting at approximately 0242 hours. Lt. Knox then informed command staff and Investigations personnel. Sgt. Gora complied with policy by notifying Lt. Knox as the acting Division Commander.

CONCLUSION

PRIVILEGED

We have reviewed the statements of each of the involved officers, reviewed the evidence both at the crime scene as well as that documented by investigators. We have reviewed all available video and audio evidence captured by the involved officers' body worn cameras, audio recorders, and the business' security footage. Additionally, we reviewed the investigator's crime reports, crime lab reports, the coroner's reports and the Alameda County Investigator's independent parallel investigative report. We reviewed all applicable departmental policies as outlined above relative to each subject officer. In each instance, the involved officer's use of force was warranted and consistent with department policy. Additionally, the officers' duties to report and document the uses of force were complied with as required by policy.

We conclude that the officers involved in this incident performed admirably and in a manner consistent with the expectations outlined in department policy. While the outcome of this event was tragic, officers made every effort to provide medical aid to the suspect who ultimately succumbed to his injuries.