LEVEL 1 UOF INCIDENT (CANINE BITE) INVESTIGATION

April 17, 2019, 2305 Hours
5007 Scotia Avenue
4975 Stacy Street

INTERNAL AFFAIRS DIVISION
FORCE INVESTIGATION SECTION
REPORT NUMBER

19-0416
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FORCE INVESTIGATION DIVISION REPORT
OF A LEVEL 1 USE OF FORCE (CANINE BITE)
FIS No. 19-0416

The following report in its digital form contains video links that can be viewed during the review of the report. All video, addenda, investigator's notes, and issues and concerns, can be viewed by clicking on the colored link.

TO: ANNE E KIRKPATRICK, CHIEF OF POLICE

CHIEF:

Synopsis: On Thursday, April 17th 2019, at approximately 2208 hours, Oakland Police Patrol Officers were dispatched to the area of Golf Links Road and Skyline Boulevard on a report of an armed robbery. Officers located possible suspects in front of 15735 Skyline Boulevard. As officers attempted to contact the individuals, several unknown persons fled downhill into a residential neighborhood. California Highway Patrol air support located possible suspects hiding in two separate locations. OPD personnel conducted two separate yard searches utilizing an OPD Canine. One suspect was located and bitten (Level 2 Use of Force) at 5007 Scotia Avenue. Three suspects were located and one bitten (Level 1 Use of Force) at 4975 Stacy Street. Suspects were arrested and injured persons were transported to Alameda County Hospital (ACH) for medical treatment

INVESTIGATIVE SUMMARY

At approximately 2202 hours, calls 911 advising OPD Dispatch (via CHP transfer) that he and his girlfriend were robbed of their cellphones. The victim’s location was determined to be the area of Golf Links Road and Skyline Boulevard.

At approximately 2225 hours, Officer J. Peng 9381 who was working as OPD Unit 3L34, was dispatched to the above area to investigate the report of the armed robbery. (CAD: 962-PER SPANISH TRANSL – SUSP MB18 WEARING BLK JKT, BLU PANTS-ARMED W/A GUN. ROBBED RP AND HIS FRIEND-UNK DOF OF SUSP- RP BORROWED THIS PHONE). Officer S. Kofford 9470 (bio) was working an overtime patrol assignment as OPD Unit 2T51 and responded as a Cover Officer.

According to Kofford, she has been assigned to Beat 35 (area of incident) for the past three years. She has conducted numerous security checks in the area and has encountered several persons involved in activities ranging from loud music and loitering to persons consuming alleged alcohol and/or marijuana. Kofford is also aware of recent crime trends that affect her area of patrol. She noted in her report that there had been an influx of robberies in the same area involving male Hispanics. She noted the following incidents in her report (link to: CID Reports).

Additionally, Kofford noted that she had received and/or was made aware of emails from Criminal Investigation (CID) that referenced similar crimes in the area (see Kofford’s report for additional information) The emails that Kofford references in her report are as follows:

OPD Robbery Investigator G. Buford sent out a Departmental e-mail on 4 Apr 19 regarding a robbery series in the area of Skyline Blvd.:
ATTN ALL EAST END UNITS: During the past week there have been two armed robberies which have occurred in the area of Skyline Blvd and Grass Valley Rd. In both incidents, the victims and suspects were of Hispanic origin. The suspects are described as (3) MH’s in their twenties, 5’4” to 5’8” in height, armed with a black firearm. The suspect vehicle in each incident is described as an SUV black in color possibly a Chev Equinox with no front license plate. The loss in both incidents were newer model iPhone’s, expensive eyewear and a large amount of U.S. Currency. During the robbery that occurred on 3 Apr 19, the victims were in the area smoking marijuana when they were approached by the suspects. I am requesting extra patrols in there throughout the day as the robberies have taken place between the hours of 1300 – 1900 hours. Please forward any FC’s to me and notify me of any arrest made in the area. Refer to these RD#’s 19-015433 and 19-016513.

OPD Investigator R. Aguilar sent out a Departmental e-mail on 10 Apr 19 at 0410 hrs. in response to Investigator G. Buford’s e-mail:

Please cancel the want on the Chevrolet Equinox Black SUV with a rear blue and yellow paper plates. This evening, thanks to the great work of Sgt. Anderson's District 5 Swing Shift Squad, the Chevrolet Equinox and two (2) suspects were located and arrested. It should be noted that the suspect vehicle was released back to the owner.

The two (2) suspects were taken to CID for further questioning were important information was obtained. (b)(5)(B) (PFN: (b)(5)(C)) advised investigators that the Central American Gangs (Salvadoran and Guatemalan descent) have been casing and targeting the Skyline Blvd. corridor for victims. These Central American Gangs have been targeting specifically other Central American victims that loiter in the Skyline Blvd. corridor/parks. We are providing this information for situational awareness for patrol units in East Oakland.

At the moment, we are attempting to identify the following individuals that loiter in the area of 51st Ave. & Foothill Blvd. The following individuals/nicknames are believed to be part of the Central American Gangs that have been targeting the Skyline Blvd. corridor:

- “El Blacky”, MH, 20-25 years old, dark complexion, NFD
- MH, Guatemalan descent, NFD
- MH Salvadoran descent, 18-20 years old.

There is NO PC TO ARREST at the moment. We are attempting to identify the above-named individuals only.

Note: On 10 Apr 19, at 1222 hrs., Investigator T. Shea advised Investigator G. Buford and R. Aguilar that “Blackie” is Carlos Amaya-Velasquez (DOB: 08/15/1996; PFN(b)(5)(C)).

Having the above information in mind, Kofford believed their dispatched call may be likely related to the above armed robberies.

Kofford arrived to the general area before Peng and began to conduct her search for the victim and/or suspects in her vehicle. Kofford advised that as she was driving eastbound on Skyline Boulevard, when she observed at least three (3) male Hispanics standing next to a Toyota Camry 4-door gold (b)(3)(B) parked, blocking the driveway to 15735 Skyline.

According to Kofford, she has contacted the homeowner of (b)(5)(B) (b)(5)(B)
(Picture) on various occasions, who indicated that he would not associate with anyone who would elect to loiter in front of his property and that he would often call OPD when he comes into contact with persons loitering on or around his property. Kofford indicated that she attempted to run the above license plate out via her MDT (Wants and Warrants) but was unsuccessful due to technical difficulties (computer needed a re-boot due to poor reception).

Kofford proceeded to drive eastbound on Skyline as she attempted to reboot her computer. As she did this, Kofford observed a second parked vehicle (approximately 50 yards east of the driveway of 15735 Skyline), an Infinity G20 silver with paper plates that appeared to be occupied by unknown persons. Kofford continued eastbound on Skyline and indicated that she was not flagged down at any point. She then elected to conduct a U-turn, to investigate the gold Toyota.

According to Kofford, as she drove back, westbound on Skyline, she observed that the gold Toyota had moved (approximately 15 yards) and was now parked in front of the silver Infinity. Kofford noted that she also observed three (3) male Hispanics walking towards 15735 Skyline. Kofford indicated in her report that Peng was having a difficult time locating her, so she briefly activated her emergency overhead lights in hopes of directing him to her location. Kofford stated that she was then able to re-establish a connection on her computer and conduct a file check on the Toyota, which ultimately came back as a reported stolen vehicle.

At approximately 2238 hours, Kofford parked and exited her vehicle in an attempt to contact the male Hispanics (Kofford's PDRD). Peng arrived on scene as she was getting out of her car and joined Kofford while she contacted the subjects. Kofford advised that she now only observed two (2) of the three (3) male Hispanics sitting in the driveway of 15735 Skyline.

At approximately 2240 hours, Kofford asked Dispatch for an additional unit and Officer B. Nelson 9166 (2L32) answered and responded to the area. Kofford advised Dispatch that when she approached the two subjects, she had heard and observed an unknown individual wearing red clothing fleeing downhill from her location towards Scotia Avenue. Kofford did not pursue the third individual, but instead asked Dispatch for additional units. Officers K. Au 9150 (bio) and A. Mann 9189 (bio) (2A33) answered and responded to the area.

Kofford and Peng detained the two male Hispanics that they observed sitting in the driveway of 15735 Skyline Blvd. These two detained males were later identified as suspects [b](5)[b](5)[c] and Oscar Salmeron Guardado (bio) for their possible involvement in armed robberies as well as the stolen vehicle. Both [b](5)[c] and Salmeron where handcuffed and placed into patrol cars.

Kofford began to search the area in front of 15735 Skyline where she had first observed the male Hispanics loitering around their parked vehicles and discovered what appeared to be a black semi-automatic handgun placed underneath a loose piece of tree bark just off the side of the roadway. Kofford notified Dispatch of her recovery, and that it was determined to be a BB gun, at approximately 2243 hours and requested air support to assist with locating any outstanding suspects. Dispatch then requested AIR 31 (CHP) for assistance.

Note: During Sergeant Leal's IAD interview, he discussed the following in regards to the BB gun:

*There's been documented incidents where, uh, guys have more than one gun or they use that as like a decoy. Uh, "Hey, I'm going to throw this fake gun and I'm going to run with
the real gun to see if I get away." And then if I'm going to get caught, I'm going to stash it and put it in close proximity to where I'm at. So, when I get out of jail or I can call somebody from jail, you can come pick it up. Uh, with social media and cell phone communications now, it's not uncommon to be on yard searches and hear people on cell phones trying to line up a ride so they can break the perimeter and jump out. It didn't happen in this case, but there's, there's so many what ifs we can play. That's why I say it's impossible to plan for everything. But um, to answer your question, having a fit gun recovered the replica, it does not lessen the danger."

At approximately 2248 hours, Nelson (2L32) advised Dispatch that he spotted a male Hispanic wearing red shorts and a white tank top walking on Skyline, east of Kofford's location, towards Grass Valley. Nelson elected to detain the male Hispanic for his possible involvement in this incident (later identified as suspect Carlos Amaya Velasquez (bio)). Kofford then advised Dispatch that the silver Infinity was also a reported stolen vehicle based on the information she received on the MDT in her vehicle after she ran the VIN.

At approximately 2250 hours, Dispatch advised that a citizen called and stated that two male blacks just ran through their back yard located at 21 Marvin Court. AIR 31 confirmed that 21 Marvin Court was in close proximity to Kofford's location. At approximately 2251 hours, 2A33 (Mann and Au) advised Dispatch that they would respond to the area of Marvin Court.

At approximately 2258 hours, AIR 31 advised Dispatch that they had two (2) possible suspects (hot spots) hiding near 4970 Scotia Avenue which backed up to 4975 Stacy Street (map). Multiple OPD units advised Dispatch that they were en-route to the area to assist.

At approximately 2259 hours, 2A33 arrived on Scotia and AIR 31 directed them via radio to a heat source at 4970 Scotia St. Sergeant A. Leal 8587 (2L75) (bio) told Dispatch that he was en-route to the scene.

At approximately 2300 hours, 2A33 advised that they were in a foot pursuit of one suspect (later determined to be Yudel Castillo (bio)) northbound on Maydon Court. Dispatch requested Code 33 and AIR 31 provided updates via radio on the location of the pursuit, and that the suspect was observed moving east through the yards from Shetland Court. Leal requested an OPD Canine to the scene. AIR 31 advised that the suspect ended up on the right side of 5007 Scotia Avenue.

At approximately 2304 hours, Leal asked Dispatch for an update on the request for an OPD Canine. Officer M. Neff 8522 (3K11) (bio) as well as Officer R. Gerrans 8765 (bio) and his Trainee, Officer D. Simas 9802 (2K41J) advised that they were en-route to the scene. Au and Mann advised Dispatch of their rifle deployment and Leal acknowledged this information. Leal directed Au to establish a perimeter around 5007 Scotia. AIR 31 updated that they now had two separate locations with possible suspects (heat sources) – 5007 Scotia and 4975 Stacy.

At approximately 2306 hours, Kofford advised Dispatch that she located a black beanie, clothing, keys and a flashlight during her article search of the area. Leal then asked Dispatch for more units to respond to the scene.

At approximately 2309 hours, Kofford advised that she was unable to locate the victim of this robbery. Leal told Dispatch that it appeared that based on the previously referenced criminal intelligence emails that the suspects may be related to a series of previous robberies that have

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1 Transcription of Leal’s IAD Interview (Page 83)
occurred same general area.

At approximately 2310 hours, Leal advised that he was on scene. Lieutenant B. Wehrly 8240 (2L85) (bio) advised Dispatch that he was en-route to the scene. AIR 31 advised that they had approximately twenty (20) minutes of fuel left and were arranging for a CHP helicopter to replace them when available.

At approximately 2313 hours, Wehrly asked Dispatch to stage medical (Grass Valley Elementary School). Au advised Dispatch that the perimeter around 5007 Scotia had been established. AIR 31 advised that the other outstanding suspect(s) had jumped a fence from Scotia and landed in the rear of 4975 Stacy Street, near the north-east corner.

At approximately 2315 hours, Wehrly asked Dispatch how many supervisors had responded to the incident. Sergeant W. Fleming 8743 (bio) (3L75) and Sergeant M. Cardoza 8367 (bio) (3L74) advised that they were en-route. AIR 31 advised that the established perimeter appeared secure for the most part.

At approximately 2320 hours, Gerrans began giving the canine announcement at 5007 Scotia. Officer T. Latibeaudiere 9420 (3L32) advised that from his position on the rear perimeter of 5007 Scotia, he could hear the announcements. Leal advised Dispatch that he was authorizing the deployment of the OPD Canine, and further advised that they would begin with the search on Scotia then move down to the Stacy location.

At approximately 2331 hours, Fleming, Cardoza and Wehrly arrived on scene. Wehrly advised that he was the Incident Commander (IC) for this event. Gerrans advised that he would then be driving the perimeter on Scotia to continue giving canine announcements. Leal requested Dispatch for a Less Lethal Shotgun and Officer A. Andrews 9517 (2L29) answered and responded to 5007 Scotia.

At approximately 2332 hours, Leal asked Dispatch to note on CAD that loud and clear canine announcements had been given at the northern perimeter, near Scotia, and that the suspect had refused to emerge from the yards and surrender. Wehrly confirmed that medical had been staged. Dispatch advised that medical was staged at the pre-determined location. AIR 31 advised that there was no change in the suspect(s) locations, both on Scotia and Stacy, at that point in time.

At approximately 2335 hours, Wehrly asked Dispatch to contact another agency in regards to air support, in case the CHP helicopter was unable to replace AIR 31. Leal advised Dispatch that he had completed a brief for the Search Team and that contingencies had been discussed.

At approximately 2345 hours, Wehrly asked Dispatch that they (later determined to be Gerrans via PDRD) had contacted the homeowner of 5007 Scotia. Gerrans told the homeowner that they were going to search the yard of his residence, asked if they had any dogs in their backyard, and advised them to stay inside toward the front of the house.

At approximately 2351 hours, Leal advised Dispatch that they were starting the search of 5007 Scotia Avenue. Prior to beginning the search, Leal had conducted a briefing on how they were going to conduct the search. This briefing was not captured on PDRD; however, based on statements from the Search Team members that were interviewed, this briefing did in fact take place.
The Search Team Members included: Sergeant A. Leal (Supervisor), Canine Officer M. Neff with his Canine Bas, Officer R. Kabahit (Primary Rifle), Officer K. Au (Secondary Rifle), Officer R. Gerrans (FTO) with his Trainee, Officer D. Simas (Utility), Officer A. Andrews (Less Lethal Shotgun), and Office I. Harris (Throw and Go).

The Auxiliary Designated Arrest Team (DAT) Members included: Lieutenant B. Wehrly, Sergeant M. Cardoza, Officer M. Smith (bio) (FTO) with his Trainee, Officer I. Cardenas (bio), and Officer D. Jenkins.

AIR 31 advised that the suspect was laying down along the east side of 5007 Scotia. Gerrans spoke to the homeowner and received a key to unlock the gate, located on the south-west corner of the residence.

The Auxiliary DAT positioned themselves offset, behind cover and across the street from 5007 Scotia.

The Search Team made entry along the west side of the residence to begin a slow and methodical search for the suspect(s) as well as any possible evidence. (An unknown civilian dog is also heard barking on the PDRD of several search team members)

At approximately 00:47 into the search, members of the Search Team made their way through the side gate and along the west side of the house up to the north-west corner of the residence, which opened up to the rear yard.

At approximately 00:53 into the search, Neff released Bas with a search command into the rear yard. The Search Team can be heard talking about general tactics, such as maintaining 360° coverage, light and noise discipline, and next moves, as well as watching the dog work.

At approximately 02:16 into the search, Neff called Bas back to him at the north-west corner, at which point Neff took physical control of Bas. Neff then re-deployed Bas with a search command to continue his search of the remainder of the yard.

At approximately 03:31 into the search, Bas started to walk along the east side of the residence.

   Note: CHP FLIR video shows the suspect lying prone and hiding along a dark and narrow walkway on the east side of 5007 Scotia. (Pic)

At approximately 03:40 into the search, Castillo can be heard screaming. The Search Team members approached the north-east corner of the residence in an attempt to contact Castillo.

At approximately 03:56 into the search, Neff said to Castillo, “Let me see your hands, let me see your hands, let me see both of your hands.” Neff said to the Search Team that Castillo was moving around and that he may be hitting the dog. Neff said in his report that he believed Castillo was holding Bas’ collar with one hand and that he appeared to be punching Bas with his other hand (view was obscured by several objects located in the pathway). Neff went on to say in his IAD statement (captured on PDRD as well) that he never had a clear view of Castillo’s hands and was afraid that he may be concealing weapon on his body or nearby. Neff continued to reinforce the bite command (Dirsch) to Bas.
The east side of the residence is 4'-10" wide (measurement taken by IAD) with several items obscuring the view (water hose, fountain, plastic pool) down towards Castillo who was approximately 20-25 feet away.

**Note:** Sergeant Leal explained in his IAD interview, “And then right as he came into my view, the suspect like threw the dog off of him and, and essentially took a fighting stance. I know that's boilerplate but, but his fighting stance, as he threw the dog off of him, you can tell he like spread a stance out, bend his knees to square up and keep his balance so he didn't fall over. And then that seemed to just really, um, kind of set things off for the dog again since he fought the dog and threw him off. And it almost looked like he was trying to throw the dog into the fence. It was right next to him because it was a small space. The dog re-engaged the guy, and I want to say it like got him on the, got him on the leg when he reengaged him and the guy like doubled over and went down to the ground.”

Officer Kabahit 8628 (3L24) (bio) stated in his CID interview, “He was looking down at us towards, uh, he was looking down towards, uh, the search team. I could see that the K9 was above him and it appeared to be biting on his, um, on the hoodie of his sweatshirt. He was--appeared to be like kind of fighting the dog off by using his hands, pushing the dog’s face and body. As he was struggling with, uh, the dog Officer Neff was giving commands to the suspect or Castillo at the time and he was telling him, um, to get his hands up. Castillo continued to struggle with the dog.”

At approximately 04:18 into the search, Neff continued to order Castillo to show his hands. Castillo appeared to be struggling with Bas as he stood up, spun and removed his jacket. As the jacket came off, Castillo was momentarily separated from Bas who then immediately re-engages, by biting him in the upper, inner thigh area. During this brief span of time, Neff did not reinforce the bite command for Bas. Neff then told Castillo to get on the ground with his hands up.

At approximately 04:38 into the search, Neff asked the Search Team members if they could see Castillo’s hands from their vantage point and Leal said “Yes.” Neff then directed the Search Team to approach Castillo.

At approximately 04:47 into the search, the Search Team members physically attempt to take control of Castillo. Castillo appeared to be struggling (refusing to remove hand away from under his body) with the Search Team members who attempted to handcuff him.

**Note:** Leal said in his IAD interview that he observed a man who appeared to look out his window, towards Castillo and Bas, during the dog bite. Leal went on to say that he had a brief conversation with the man telling him no one was going to get hurt. The man eventually closed the window.

Leal told Cardoza about the possible witness once Castillo was escorted out of the yard. Cardoza contacted the witness, identified as (b)(5)(B) via phone to investigate if he observed the canine bite and/or if he recorded the incident. (b)(5)(B) would not confirm if he had any video that evening but advised that he did observe Castillo and OPD officers. (b)(5)(B) said that he observed the dog have a hold of Castillo’s leg.

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2 Transcription of Leal’s IAD Interview (Page 45)
3 Transcription of Kabahit’s CID Interview (Page 7)
On 23 Apr 19, CID investigators responded to [B] (5) [B] to speak with [D] (5) [B] to confirm if there was any possible video evidence. [B] (5) [B] stated that he did not record the incident. [D] (5) [B] went on to say that he observed OPD officers point their guns at [C] (5) [B]. (This information was addressed in the discrepancies portion of this report)

At approximately 05:02 into the search, Neff grabbed Bas by the collar and was able to walk back, away from the Search Team. (approximate duration of bite: 01:24)

PDRD Neff, Matthew 2019-04-17 23-51-00 [01:30 – 07:15]

At approximately 2355 hours, AIR 31 advised that the OPD Canine made contact with the suspect. Leal confirmed that the canine contacted and subsequently bit Castillo. Leal requested medical to his location (RIG #4429). Wehrly acknowledged all radio traffic. Kabahit advised that he had a Level 4/Type 22 UOF during the event. Leal requested that AIR31 relocate to the Stacy Street scene. AIR 31 advised that the CHP helicopter (H32) was approaching the area.

At approximately 0004 hours, Leal requested a BFO 1 Unit to respond to Alameda County Hospital (ACH) to take custody of suspect Castillo. Officer J. Judge 8305 and his Trainee, Officer J. Pittman 9690 (3J25) responded and advised that they were en-route to ACH.

At approximately 0006 hours, Leal asked Dispatch for any Spanish speaking officers but then quickly canceled the request advising that he had a Spanish speaking Officer (Trainee Officer Cardenas 9772 - 2J34) already on the Search Team. Leal recognized this when he saw Cardenas debriefing Castillo in Spanish. Leal advised that personnel were going to relocate to Stacy Street.

At approximately 0025 hours, Leal briefed the Search Team on the plan as well as possible contingencies. PDRD Leal, Jr Alan 2019-04-18_00-20-34 [11:40 - 38:00]

At approximately 0038 hours, Kabahit advised that the rear DAT was set up on Scotia. Leal requested that Kabahit discuss deconfliction and other contingencies with the rear DAT. Leal then discussed priorities between his Search Team and the rear DAT. Fleming acknowledged Leal's information.

At approximately 0042 hours, Leal asked Dispatch for any additional Patrol Rifle Officers (PRO) to assist with the rear DAT. Latibeaudiere answered and responded. Leal advised Dispatch that he acknowledged his rifle deployment.

At approximately 0043 hours, Wehrly advised H32 that they were going to conduct more canine announcements (English and Spanish) at the Stacy Street location and requested if they could observe and identify any suspect(s) movement. Leal advised Dispatch that he acknowledged all rifle deployments and that they were all at his direction.

At approximately 0046 hours, Fleming advised that his rear DAT (Map) was briefed and ready to go. Wehrly acknowledged that information. H32 advised that there was no change to the suspect(s) position. The rear DAT acknowledged that they can hear the canine announcements from their location.

At approximately 0049 hours, H32 advised that the suspect(s) were huddled close together under some dense brush (See below photo).
Leal acknowledged this information and advised units on the perimeter that they were waiting for medical to stage before they could conduct their search.

At approximately 0057 hours, Leal asked Dispatch for additional PROs from BFO 1 to provide more Overwatch due to the terrain. The recommendation to utilize Overwatch on the roof was made to Leal by Au. Sworn Technician, Officer B. Christensen 8395 (3L64) answered and advised that he would retrieve his rifle from the Eastmont Sub Station; however, Leal chose not to use Christensen for Overwatch since he had already begun technician work on this event.

At approximately 0101 hours, Wehrly advised that PROs were en-route from BFO 1.

PRO Officer K. Singh 9587 (bio) and Officer S. Triana 9562 (bio) (5S14) as well as PRO Officer T. Cavins 9521 (bio) and Officer M. Reiton 9480 (2A06) answered from BFO 1 and responded to 4975 Stacy Street. Leal advised that units should respond “Code 3” due to the distance and H32 air time (approximately thirty-five (35) minutes left of fuel at this point).

At approximately 0109 hours, PRO Officer J. Ladd 9365 (bio) and his Trainee, Officer A. Amores 9809 (3J03) advised that they would also be responding. Again, Leal directed them to respond “Code 3” due to time. Leal also authorized the use of an OPD Canine during the search on Stacy Street.

At approximately 0122 hours, Cavins advised Leal that Overwatch was in place. (On rooftop of 4975 Stacy Street)

Overwatch Members: Officer K. Singh (Rifle), Officer S. Triana (Spotter/Cover), Officer T. Cavins
At approximately 0125 hours, Leal advised Dispatch that they were starting the search of 4975 Stacy Street.

Search Team Members: Sergeant A. Leal (Supervisor), Canine Officer M. Neff with his Canine Bas, Officer R. Kabahit (Primary Rifle), Officer K. Au (Rifle), Officer R. Gerrans (FTO) with his Trainee, Officer D. Simas (Utility), Officer A. Andrews (Less Lethal Shotgun), Officer I. Harris (Throw and Go), Officer J. Ladd (Rifle) with his Trainee, Officer A. Amores (Utility), Officer M. Smith (FTO/Utility) with his Trainee, Officer I. Cardenas (Spanish), Officer B. Olson (Utility), and Officer D. Minor (Utility)

Rear DAT Members: Sergeant W. Fleming (Supervisor), Officer I. Anderson (Senior FTO) with his Trainee, Officer A. Smith (Less Lethal Shotgun), Officer T. Latibeaudiere (Rifle), Officer M. Rosas, and Officer A. Mann.

Gerrans spoke to the homeowner of (b)(5)(B) at the front door and advised him to stay towards the front half of the residence. The homeowner advised that the best access to the rear yard would be along the east side of the home.

Prior to conducting the search, Leal provided a second short brief to review tactics and possible contingencies. PDRD Leal, Jr. Alan 2019-04-18 01-21-13 [02:20 - 05:13]

Wehrly and Cardoza were present for the second briefing, then they relocated behind cover across the street to the east of 4975 Stacy Street when the search began.

The Search Team walked up and approached the side yard gate located on the south-east side of 4975 Stacy Street. Leal directed Kabahit to temporarily unscrew neighboring flood lights for officer safety reasons. Once the lights were removed, Leal told Neff to release his dog, Bas. Neff then released Bas with a search command, and Bas is observed by members of the Search Team walking along the east side of the residence, making a left into the back yard and then eventually out of their sight.

At approximately 00:37 into the search, Bas returned to the Search Team that was still staged at the side yard gate on the south-east corner of the residence. Neff took physical control of Bas.

At approximately 00:45 into the search, Leal advised he would lead the first five members of the Search Team to move forward towards the north-east corner of the residence where the side yard opens up to the rear yard.

Note: Leal explained in his IAD interview, “So we had two small elements in this backyard, so we weren’t just one giant package. And my thought on this moving this team up was we can work in small unit tactics. If we had to end up flanking in this person, it would be, it would be hard because of the terrain.”

At approximately 01:25 into the search, Leal and the Search Team began a slow and methodical search for the suspect(s) as well as any possible evidence along the east side of the residence (narrow pathway). Upon arrival to the north-east corner of the residence, they held their position.
At approximately 01:30 into the search, the Search Team fanned out into the rear yard. Search Team members were observed (PDRD) scanning the terraced hillside adjacent to the back patio, intermittently illuminating the area with their flashlights and/or weapon mounted lights. A large wood awning on the north-east section of the residence appears to prevent Search Team members from observing the hillside in full.

4975 Stacy Rear Yard (Night)

4975 Stacy Rear Yard (Daylight)
At approximately 01:55 into the search, the Search Team continued the search of the rear patio as well as the west side (side yard) of the residence.

At approximately 02:23 into the search, Leal requested (via radio) that the second half of the Search Team relocate to the backyard/patio area. Leal directed the first half of the Search Team to position along the southwest portion of the backyard and advised that he would place the second half of the Search Team along the southeast portion of the backyard (under the awning). Leal then provided updated contingencies to the Search Team.

At approximately 03:17 into the search, Leal told Neff that he could deploy Bas. Bas was released with a search command and began searching the hillside.

**Note:** The account of what follows is, by necessity, written in a chronological format; therefore, the appearance of time discrepancies may exist due to multiple conversations happening simultaneously.

At approximately 03:56 into the search, suspect #2, later identified as, Wilber Fernandez (bio) can be heard moaning. Neff yelled out to Fernandez, “Come out with your hands up.” (Approximate time on bite 00:00)

**Note:** Fernandez had been hiding in a thick Pampas Grass plant that was approximately 10-15 feet high and approximately 35-40 feet up the west side of the hillside.

**Note:** Neff explained in his IAD interview, “I see the tree, it looked like it was shaking and in the back of my mind again I'm thinking is he - did he make contact with a cat or is something going on, but then I heard -- heard some sort of groaning. So, at some point I gave the sus -- come out with your hands up and then at some point I see -- let's see -- I don't know if the suspect -- I can't remember if the dog was -- I could see the dog pulling. It looked like he had the pant leg or the shoe of a suspect. Then I could see what -- I could see -- I could tell it was a male Hispanic or male at that point. I didn't know he was Hispanic for sure. And I said crawl down to us, crawl down to us because I wanted to see -- I wanted to get him out of this bush in this area where they could have, number one other suspects, but they could have firearms. And I couldn't see both of his hands because visually there was brush in the way. So I'm telling him, come down to us, come down to us and then do you want me to just keep going or -- And then let's see, at some point -- or then the Spanish speaking officer, I can't remember where they were. They're right over here. They started giving commands. So, I tell him to come down to us, come down to us. I think he's telling him get down here. You know, crawl down to us and at some point, he’s -- the dog -- he is not making a -- he is like grumbling like (inaudible). So, I'm thinking, Oh the dog screwing around. Maybe he got his pant leg. He's just trying to take off his -- you know, pulling off his jeans, got the material ripping it or his shoe because I could see his shoe -- or his leg went up and I could see the dog at some point had his jeans. I'm like, okay.”

At approximately 0130 hours, Kabahit (Search Team) asked Cavins (Overwatch) via radio if he could see the back patio from his location. Cavins advised that he was able to observe a rock patio to the left of Kabahit. H32 advised that the OPD Canine made contact with a suspect.

At approximately 04:08 into the search, Leal reminds the Search Team about 360-degree

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5 Transcription of Neff’s IAD Interview (Page 81)
security. Leal provided an update via radio cautioning units on scene that they had only found one suspect at this point. Gerrans told Cardenas to yell commands in Spanish. (Approximate time on bite 00:16)

Spanish Translation: Wilbur Fernandez: “Ay me agarró el perro. Hey, hey” (Translation from Spanish: = Hey, the dog caught me!)
Sergeant Leal: “There he is. He’s speaking Spanish.”
Wilbur Fernandez: “Ey, ¡Ayúdenme! ¡Ayúdenme!” (Translation from Spanish: “Hey, help me, help me!”)
Officer Neff: “Hey, come out with your hands up.” (speaking over each other, multiple conversations)
Sergeant Leal: “75, we have contact with at least one suspect. Guys, as to remind you, 360 security, we’ve only found one.” (speaking over each other, multiple conversations)
Wilbur Fernandez: [Inaudible, yelling in the background] (speaking over each other, multiple conversations)
Officer Neff: “Hey, come out with your hands up.” (speaking over each other, multiple conversations)
Wilbur Fernandez: “¡Ey sal con las manos arriba!” (Translation from Spanish: “Hey, come out with your hands up.”)
Sergeant Leal: “Louder.”
Officer Gerrans: “Cardenas, yell ‘Come out with your hands up.’ Yell that.” (speaking over each other, multiple conversations)
Wilbur Fernandez: [Inaudible] (speaking over each other, multiple conversations)
Officer Cardenas: “¡Ey sal con las manos arriba!” (Translation from Spanish: “Hey, come out with your hands up.”)
Officer Gerrans: “Come down the hill with your hands up.”
Officer Cardenas: “¡Baja, baja con las manos arriba, baja la montaña con las manos arriba!” (Translation from Spanish: “Come down, come down with your hands up, come down the hill with your hands up”) (speaking over each other)
Wilbur Fernandez: “No, sí [Inaudible].” (Translation from Spanish: “No, yes -”) (speaking over each other)
Officer Cardenas: “¡Pon las manos hacia arriba!” (Translation from Spanish: “Get your hands up”) (speaking over each other)
Wilbur Fernandez: “¿Si me pueden venir a quitar el perro por favor?” (Translation from Spanish: “Can you take the dog off, please?”) (speaking over each other)
Officer Cardenas: “¡Pon las manos arriba!” (Translation from Spanish: “Get your hands up”) (speaking over each other)
Wilbur Fernandez: “Sí, tengo manos [yells in pain]” (Translation from Spanish: “Yes, I have hands.”)

At approximately 04:34 into the search, Leal asked Fernandez in Spanish, “Where is your friend?” (Approximate time on bite 00:37)
Officer Neff: “You wanna – you -” (speaking over each other multiple conversations)
01:32:45 hrs. Officer Cardenas: “¿Dónde está tu amigo?” (Translation from Spanish: “Where is your friend?”) (speaking over each other multiple conversations)
Officer Gerrans: “Ask him where’s - where’s his friend, ask him where his friend -” (speaking over each other multiple conversations)
Wilbur Fernandez: “Están arriba, ¿Si me pueden quitar el perro por favor?” [inaudible].”
(Translation from Spanish: “They are above. Can you get the dog off me, please?”) (speaking over each other multiple conversations)
Officer Cardenas: “He said that he’s up high. He says he’s up high.” (speaking over each other multiple conversations)

At approximately 04:40 into the search, Neff asked Leal, “Do you want to move up to him, Sarge?” and Leal said, “Hey, let’s call the second dude out. Leave that dog on that bite. Call that second dude out.” (Approximate time on bite 00:44)

At approximately 0132 hours, H32 advised via radio that there may be possibly one more suspect still hiding in the bushes. Cavins advised that he heard a second voice from his location.

At approximately 04:51 into the search, an unknown Search Team member said “There he is, there is movement.”

At approximately 04:53 into the search, Leal said, “Hey, hey, we’re gonna take number two into custody. Leave the dog on the bite.” (Approximate time on bite 00:57)

At approximately 05:02 into the search, Leal said to Cardenas, “You’re gonna give him high risk commands to walk down these stairs.” Neff advised Leal that there were three (3) suspects in total. Leal asked Search Team members to confirm the total number of suspects and both Fernandez and Cardenas advised that there were three in total.

At approximately 05:20 into the search, Leal said to Cardenas, “So tell him to stop right now. We need a lull.” Then went on to ask Neff, “Matt, if you call your dog off, do you think this dude will stay there, or do you want to keep him on the bite?”

At approximately 05:29 into the search, Neff said, “I can probably call him off as long as I can see his right hand. I can’t see his right hand.” Leal then said, “Well alright, let’s keep him on the bite until the two suspects are away from him.” (Approximate time on bite 01:32)

At approximately 05:36 into the search, Leal said, “Get the guy in the gray [later identified as suspect #3, [REDACTED]] to walk down these stairs. The guy in the black shirt [later identified as suspect #4, Victor Meza-Hernandez (bio)], keep him right there exactly how he is.” Cardenas then advised that he would direct the [REDACTED] down the hill first.

H32 advised that a second and third suspect were coming out of the bushes with their hands up with three (3) total.

At approximately 05:44 into the search, Leal asked the Search Team for his Less Lethal Shotgun. [REDACTED] is observed (PDRD) walking down the hillside, past Fernandez as he is being issued directions from Cardenas. [REDACTED] was directed into a handcuffing position at the foot of the hillside.
Leal directs Andrews (Less Lethal Shotgun) to focus on Fernandez and Meza-Hernandez. Meza-Hernandez is observed standing with his hands up, next to Fernandez.

**Note:** It took approximately forty (40) seconds to walk down the hillside.

At approximately 06:21 into the search, Neff gave Bas the heel command, which is “Fuss.” Bas released his bite on Fernandez and is observed (PDRD), walking back towards Neff, passing towards Neff. (Total approximate time on bite 02:24) Neff advised that he had control of the dog.

**Note:** Bas immediately released his bite of Fernandez after one Fuss (heel) command from Neff. As Bas started moving down the hillside his head turned to his right and look at Meza-Hernandez as if he might bite. Neff immediately gave Bas a second Fuss (heel) command to keep Bas from biting Meza-Hernandez. Bas continued down the hillside towards Neff again gave Bas four (4) more Fuss (heel) commands (and one "leave it" command) to ensure Bas did not bite. (Gerrans’ PDRD)

Leal directed the members of the Search Team to continue to give commands to the suspects. is handcuffed and escorted from the backyard.

At approximately 0134 hours, Leal advised Dispatch that they had a dog bite on one suspect, (Fernandez) and that all suspects are being compliant at this point. He went on to say that they had one (1) in custody and were trying to call the other two (2) down.

At approximately 07:43 into the search, Leal told the Search Team members to give commands to Fernandez first, due to his injuries. Fernandez advised that he was stuck on something and that he could not move down the hill as requested. Leal then directed his Search Team members to issue commands to Meza-Hernandez.

Sergeant Leal asked Dispatch for medical to make their location for Fernandez.

At approximately 08:43 into the search, Search Team members gave commands to Meza-Hernandez. Meza-Hernandez walked down the hillside from where Fernandez was located with his hands raised to the lower level/patio level of the backyard. Meza-Hernandez was directed by Search Team members into a position for handcuffing. Meza-Hernandez was handcuffed and removed from the backyard.

At approximately 0136 hours, Leal advised Dispatch that Fernandez was apparently stuck and that they would need to go up the hill to retrieve him. Wehrly acknowledged Leal’s update.

At approximately 10:02 into the search, Leal ordered Fernandez to crawl down the hillside. Cardenas advised Sergeant Leal that Fernandez claimed, in Spanish, to be stuck. Leal then elected to approach Fernandez with members of the Search Team. They approached Fernandez and as they got close, Leal said that Fernandez was indeed stuck. Leal told Cardenas, “Keep the Spanish rolling. Tell him he’s gonna be alright and just listen to everything we say.”

At approximately 0138 hours, Leal advised Dispatch that they moved up the hill and contacted and handcuffed Fernandez. Cardoza advised the Search Team via radio that medical was prepared to receive Fernandez as soon as he is walked out. Wehrly advised that medical (Paramedics Plus) will bring a gurney into the backyard.
At approximately 12:24 into the search, Leal confirmed with H32 that there were no additional heat sources located in the yard. Leal directed Search Team members to conduct an article search of the backyard. Search Team members discussed how best to facilitate moving Fernandez down the hillside to EMS staff.

At approximately 0143 hours, Wehrly told units to stay on scene until all administrative functions could be completed, including a debrief. Leal advised the unit at ACH (3J25) that they would also be receiving and monitoring Fernandez as well as Castillo.

At approximately 16:48 into the search, Leal asked Search Team members if they needed anything. Kabahit advised that he was attempting to place a tourniquet on Fernandez due to the severity of the injury. Leal directed Simas to apply the tourniquet. Leal provided a bottle of water to Fernandez.

At approximately 0144 hours, Wehrly advised Dispatch to go Code 4/Code34 (normal radio traffic).

At approximately 0145 hours, Leal advised Dispatch that there was a delay removing Fernandez from the hill and that they are applying a tourniquet (tourniquet video) due to apparent blood loss.

At approximately 23:00 into the search, Search Team members successfully applied the tourniquet to Fernandez’s leg. The Search Team members then lifted Fernandez and carried him down the hillside to an awaiting gurney.

At approximately 0150 hours, Kabahit advised via radio that he had three (3) Level 4/Type 22 UOF during this event. Leal acknowledged this information via radio.

At approximately 0152 hours, Ladd advised that he had three (3) Level 4/Type 22 UOF during this event. Leal acknowledged this information.

At approximately 0154 hours, Singh advised that he had three (3) Level 4/Type 22 UOF during this event. Cardoza acknowledged this information.

At approximately 0155 hours, Wehrly advised 3J25 that Fernandez was en-route to ACH.

After Fernandez was transported to ACH, Leal, Wehrly and the rest of the officers on scene conducted a debrief of the entire event (off PDRD). During this time, Wehrly identified the dog bite on Stacy to be a Level 2 UOF. Officers were then directed to canvass for possible witnesses. Cardoza collected and compiled information to be used in his UOF report. The stolen vehicles were towed and the officers left the scenes secured after their administrative duties were completed.

On 19 Apr 19, CID and IAD were advised that this event was elevated to a Level 1 UOF due to the nature of the injury. IAD (Force Team) responded to CID (Homicide) where Cardoza provided a summary of events for the investigators. IAD and CID then sent out notifications (Members were advised not to discuss the case with anyone due to an ongoing criminal/administrative investigation) as well as ordering a lock down of the PDRD footage associated with the incident.
SCENE DESCRIPTION

This incident occurred in the City of Oakland (Area 5-Beat 35) in Alameda County. This area, located in the Oakland hills, is primarily made up of residential neighborhoods coupled with swaths of densely forested areas, containing lush and thick vegetation. The neighborhoods are comprised of large, single family homes with spacious yards.

There were four (4) outstanding suspects that were found to be hiding in two separate yards. Castillo hid in the rear of 5007 Scotia Avenue and Fernandez, Meza- Hernandez hid in the rear of 4975 Stacy Street. These residences are approximately a block and a half away from each other.

The incident began at 2208 hours, during hours of darkness (sunset at approximately 1848 hours), and lasted approximately three hours into the early morning. The temperature was normal for the time of the year – with a low of about 56° at the time of this incident. It was a dark and somewhat cloudless night. The area was generally illuminated by streetlights as well as sporadic residential exterior lighting. The rear yards of the two residences were relatively dark and were only illuminated when officers on scene utilized their flashlights.

5007 Scotia Avenue

This residence is a single-family residence with a five (5) foot wooden fence surrounding the rear yard. There rear yard was mostly level with a slight slope upward towards the home. The yard contained various items such as patio furniture, large potted plants, a lawnmower, and a basketball hoop. The east side of 5007 Scotia is comprised of a narrow walkway, approximately 4’10” wide, bordered by the 5-foot wooden fence. This walkway contained several items including a kid’s pool, metal chair, cat tree, hose and hose reel.

[Satellite view from Google maps of 5007 Scotia]

6 All weather related information was obtained from https://www.farmersalmanac.com/
4975 Stacy Street
This is a single-family home surrounded by a five (5) foot wooden fence. The rear yard has small flat patio area that extends from the rear of the house towards a three (3) foot, stone retaining wall which supports a steep terraced hillside. There is a large wooden awning that covers approximately 1/3 of the eastern portion of the patio area. The rear yard is enclosed by a seven
(7) foot chain linked fence. The terrace hillside contains numerous plants, trees and shrubs of varying height and width.

[Satellite view from Google maps of 4975 Stacy]

[Street view of 4975 Stacy]
CANVASS FOR WITNESSES

A canvass for witness was conducted by officers on scene the night of the incident, as part of the Level 2 UOF investigation (Cardoza). Additionally, CID Investigators conducted a second canvass days after the incident.

The following individuals were identified and interviewed by CID Investigators. None of these individuals witnessed any of the use of force reported that night:

The following individuals were contacted during the canvas on the night of the incident and provided a written statement. None of these individuals witnessed any of the use of force reported that night.
CID and IAD (22 Aug 19) conducted separate canvases with no new witnesses and/or video identified.

**SUSPECT INFORMATION**

Suspect 1: Yudel Castillo a Male Hispanic 18 years old. Castillo was found hiding in the backyard of 5007 Scotia, wearing gray hoodie, red shorts red pants, and was bitten by OPD Canine, Bas.

Suspect 2: Wilbur Fernandez a Male Hispanic 18 years old. Fernandez was found hiding in the backyard of 4975 Stacy and was bitten by OPD Canine, Bas.

Suspect 3: Edgar a Male Hispanic 16 years old was found hiding in the backyard of 4975 Stacy with Fernandez and Hernandez. No canine use of force was used, and he was not injured.

Suspect 4: Victor Mesa Hernandez a Male Hispanic 21 years old was found hiding in the backyard of 4975 Stacy with Fernandez and . No canine use of force was used, and he was not injured.

Suspect 5: Yafery a Male Hispanic 16 years old. He was arrested by Kofford at the scene of the initial stop on Skyline Blvd. No force was used, and he was not injured.

Suspect 6: Oscar Guardano a Male Hispanic 19 years old. He was arrested by Kofford at the scene if the initial stop on Skyline Blvd. No force was used, and he was not injured.

Suspect 7: Carlos Velasquez a Male Hispanic 22 years old. He was arrested by Nelson on Skyline near Grass Valley. No force was used, and he was not injured.

**INJURIES**

Castillo received the following injuries as a result of the canine bite:
- Contusions and multiple abrasions on scalp with four lacerations. No acute post traumatic brain injury.
- Abrasions and ligature marks over the anterior neck (*due to canine pulling on sweatshirt which was eventually removed during the struggle*).
- Laceration to hand.
- Abrasions over bilateral lower extremities
- Large abrasion over posterior right shoulder.
Fernandez received the following injury as a result of the canine bite:

- large 8" wound to medial right calf with exposed bone and muscle, 2 smaller 1" wounds to posterior right leg.
MEDICAL REPORT

Both suspects were treated at Alameda County Hospital ER by ER medical staff. It should be noted that neither Castillo nor Fernandez were tested for intoxicants.

Castillo received treatment in the ER and was medically cleared for incarceration. Dr. Brittany Dixon MD completed the medical report for Castillo. (Link)

Fernandez was seen by ER medical staff and was admitted to ACH. He was in the hospital for twenty-three (23) days and was released to his home. A medical report for Fernandez was completed by ACH staff. (Link)

EVIDENCE

OPD Technician, Officer B. Christensen was the primary evidence technician who processed the scene. Photographs were taken of the scenes at 5007 Scotia and 4975 Stacy, the suspects and their injuries, the stolen vehicles, as well as the following noteworthy evidence items that were collected on scene (as documented in Christensen’s report):

01 (EQ #1) - BB GUN; one (1) "Umarex" "X B G" CO2 Powered .177 Caliber Steel BB Air Gun Pistol, Ser. [D][5][C], blk (From Ofc. Kofford in the 15700 Blk Skyline Blvd)

02 (EQ #2) - FLASHLIGHT; one (1) "DURACELL" flashlight, blk (From Ofc. Kofford in the 15700 Blk Skyline Blvd)

03 (EQ #3) - KNIT HAT; one (1) knit hat, blk with red "Jordan" symbol (From Ofc. Kofford in the 15700 Blk Skyline Blvd)

04 (EQ #4) - T-SHIRT & SWEATSHIRT; one (1) "Under Armour" t-shirt, size L, (inside out) and one (1) "Top Shelf" sweatshirt, size XXL, ple/blk (inside out) (From Ofc. Kofford in the 15700 Blk Skyline Blvd)

05 (EQ #5) - SWEATSHIRT; one (1) "HANES" sweatshirt, size L, gry/red (From 5007 Scotia Ave)

PET L. Chen was directed to take photos of Castillo at ACH.

OPD Technician, Officer C. Hunt processed the two (2) stolen vehicles for evidence at 733 Kevin Court (Auto Plus Towing facility).
CID tasked Oakland Police Service Technician, K. Haggerty with attempting to retrieve possible surveillance video that had been identified and documented during the initial canvass. CID provided the following:

- **(b)(5)(B)** - Police Service Technician Haggerty contacted **(b)(5)(B)** who advised the DVR had already looped over itself.
- **(b)(5)(B)** - Video surveillance was collected from the residence and the video player time is approx. 1 hour ahead of real time.
  - The video camera is activated by motion detection and captured two short video clips. Due to the fact that it is dark outside, the video does not appear to capture anything other than an ambulance and an OPD vehicle driving in front of the residence. The owner was unable to download the video so the owner’s camera phone played the video and Police Service Technician Haggerty recorded the video on her cellphone.
- **(b)(5)(B)** - The owner **(b)(5)(B)** was out of town at the original time of contact but advised that the cameras did not record anything and possibly malfunctioned.
- **(b)(5)(B)** - Police Service Technician Haggerty contacted **(b)(5)(B)** who advised cameras were installed on 21 Apr 19 (after the incident).
- **(b)(5)(B)** - PST Haggerty responded to the owner’s residence on multiple occasions over several days, leaving notifications for the owner to contact OPD; however, the owner never contacted us. Potential video was never able to be recovered.
WEAPONS

“Umarex” “XBG” CO2 Powered .177 Caliber Steel BB Air Gun Pistol, Ser #, Black, located by Kofford in the 15700 Block of Skyline and collected as evidence by Christensen.

CREDIBILITY ASSESSMENTS

This investigation conducted credibility assessments on all witnesses, subjects and involved parties. This investigation evaluated their statements compared with evidence, perspective and relationships. All Departmental personnel were also evaluated by a 910-day review of their Prime/Vision records and Complaint History.

This investigation found all parties to be credible. (Link)

VISUAL DOCUMENTATION

Body Worn Video (BWV)
See PDRD Assessment below.

Outside Agency Video
CHP Air Support assisted with this incident. They provided the aerial video footage recorded from this incident.

Video Enhancement
NCRIC (Northern California Regional Intelligence Center) was tasked with attempting to enhance (lightening, magnification, frame by frame) PDRD videos related to the two canine bites. They provided nine (9) “enhanced” videos. These enhanced videos did not provide any new or applicable information.
013450, 015033, 013517, 015109, 013414, 014600, 013502, 235823, 013417
Additionally, Sergeant I. Ramirez assisted CID with combining the CHP videos with multiple PDRD videos into seven (7) new enhanced videos. These videos allow the viewer to
simultaneously watch the FLIR footage synced with the PDRD footage. These enhanced videos did not provide any new or applicable information.

PDRDSYNC Incident 01, PDRD Sync Incident 01LN, PDRD Sync Incident 02LNC, PDRD SyncV3 Incident 02a, PDRD SyncV3 Incident 02b, PDRD SyncV3 Incident 02C, PDRD Sync LNC

Social Media
Personnel assigned to IAD Integrity Unit (Sergeant R. Coglio) monitored social media sites, including YouTube, Facebook, and Twitter, from the date of the incident and throughout the course of this investigation.

On 29 Dec 19, Coglio provided the following, final update:

_I have completed the requested internet / social media search for any images, videos or postings regarding the incident on 17/18 Apr 19 with negative results. In addition, I was unable to locate any mainstream media coverage, nor any social media posts/discussions regarding the incident._

**PERSONNEL AT SCENE**

The units that responded to the incident was comprised of 2nd and 3rd Watch Patrol. (Telestaff)

An Excel spreadsheet documenting personnel during this event is contained within the IAD case file and is available for review. (Link)

There was no _Crime Scene Log_ authored for this incident.

**CRIMINAL INVESTIGATION**

Homicide Investigator, Sergeant R. Vass provided the following information regarding the criminal interviews of the seven (7) suspects:

_Officer Uttapa was the initial primary OPD Investigator called-out to investigate the robbery. Officer Uttapa was partnered with fellow OPD Investigator Sather. Officer Uttapa responded to OPD CID and provided a briefing regarding his activities and the investigation although he advised that his investigation was still underway. Officer Uttapa stated that seven (7) suspects had been arrested on 17/18 Apr 19 for robbery or their suspected involvement in a robbery series coupled with the crime of possessing the stolen vehicles. Additionally, he believed that the suspects may be linked to four (4) additional robberies. Officer Uttapa further advised that the victim of the robbery was still unknown and no contact information was available. Officer Uttapa will provide a copy of his investigation once his investigation is complete._

_Note_: Officer Uttapa would later resign from OPD (unrelated to this incident) and Officer Sather became the primary investigator.

A review of Investigator Uttapa’s investigation revealed that he had either interviewed or attempted to interview the seven suspects who had been arrested. Below is a summary of each interview. All interviews were in Spanish and the suspects were admonished via the Oakland Police Department Form. All interviews occurred on 18 Apr 19 at OPD CID with the exception of that of Wilbur Fernandez which occurred on 23 Apr 19 at ACH.
Summary of Interviews (not verbatim):
Edgar [b][s][c] was interviewed by Officer W. Garcia [Spanish] and Officer Sather. Edgar [b][s][c] advised that he was picked up by Wilbur Fernandez in a silver Infiniti after work. The Infiniti was occupied by Yefferon [b][s][c], Yudel Castillo, and Oscar Salmeron-Guardado. Edgar [b][s][c] possessed a black replica handgun which he stored in his backpack. The group drove up to Skyline Blvd. where they met Carlos Amaya-Velasquez (aka “Blacky”) who was in a tan Toyota. During the evening a police vehicle drove up to the group and Edgar [b][s][c], Victor Meza-Hernandez, and Wilbur Fernandez ran off and hid in some bushes. While Edgar [b][s][c] was hiding he heard about ten (10) announcements and understood what the K-9 announcements meant. Eventually the K-9 located and bit Wilbur Fernandez at which time Edgar [b][s][c] surrendered to the police. Edgar [b][s][c] denied any involvement in a robbery. Refer to Edgar [b][s][c] interview for further details.

Oscar Salmeron-Guardado was interviewed by Officer P. Ortiz and J. Garcia. He advised that he was picked up by Yudel Castillo in a tan Toyota vehicle. The vehicle was occupied by Edgar [b][s][c], Yefferon [b][s][c], Wilbur Fernandez, and Victor Meza-Hernandez. Yudel Castillo drove to Skyline Blvd. and Edgar [b][s][c] possessed a black BB gun which Oscar Salmeron-Guardado manipulated. The group met up with Carlos Amaya-Velasquez who was driving a black Infiniti SUV. The group was standing around when an officer drove up and the group ran with the exception of Yefferon [b][s][c] and Oscar Salmeron-Guardado. Oscar Salmeron-Guardado stated that he did not run because he had not done anything wrong but believed the others ran because they possessed keys to the stolen vehicle. [b](b)(5)(C) Oscar Salmeron-Guardado denied any involvement in a robbery and advised that he did not witness any from the group commit a robbery. Refer to his statement for further details.

Yefferon [b][s][c] was interviewed by Officer P. Ortiz and Officer J. Garcia. Yefferon [b][s][c] advised that he was picked up by Wilbur Fernandez who was driving a gold Toyota Camry. This vehicle was occupied by Yudel Castillo, Edgar [b][s][c], Victor Meza-Hernandez, Oscar Salmeron-Guardado. The group drove up to Skyline Blvd. where they met Carlos Amaya-Velasquez (aka “El Black”). The group took turns driving the Toyota Camry. As a police vehicle approached the group Oscar Salmeron-Guardado hid the BB gun in a nearby bush and the group ran, with the exception of Yefferon [b][s][c] and Oscar Salmeron-Guardado. Yefferon [b][s][c] denied any involvement in the robbery. Refer to his statement for further details.

Yudel Castillo was interviewed by Officer W. Garcia and Officer D. Soriano. Yudel Castillo advised that a male only identified as [b][s][b] dropped off an Infiniti SUV for his group to use. Yefferon [b][s][c], Wilbur Fernandez, Oscar Salmeron-Guardado, and Yudel Castillo left in the Infiniti. The group picked up Edgar [b][s][c] and they drove up to Skyline Blvd. where they drove around. Yudel Castillo denied being involved in a robbery during this incident but admitted to participating in a robbery with Carlos Amaya-Velasquez and Yefferon [b][s][c] on another previous incident about a month prior. Refer to his statement for further details.

Note: Investigators Uttapa and Sather were unable to locate any robbery report matching the details that Yudel Castillo provided.

Note: Sergeant M. Valle conducted an additional interview of Yudel Castillo for administrative proposes due to the fact he had been bitten by the K-9. This additional
interview was recorded on Officer J. Judge’s body worn camera. Yudel Castillo advised that he saw the police coming toward his location so he ran to avoid being shot by the police and avoid being arrested. He hid in the backyard and knew the police were looking for him. Castillo hid in the corner of a backyard and knew the police were looking for him. Yudel Castillo heard the officers making announcements with the loudspeaker, but could not understand the announcements because they were in English and he only understands Spanish. After hearing the announcements Yudel Castillo decided to remain in the backyard because he did not want to be arrested. The K-9 entered the yard and the K-9 bit him several times. Officers entered the yard and placed him into handcuffs. Yudel Castillo advised that while he ran he dropped a cellphone. Refer to this additional recorded statement for further details.

Wilbur Fernandez was interviewed by Officer W. Uttapa at ACH and translated by Officer P. Ortiz. Wilbur Fernandez advised that he was with five males (one Honduran male, two Salvadorian males, and two Guatemalan males) inside of a gray sedan vehicle. One of the Guatemalan male subjects drove the group to the 15700 block of Skyline Blvd. and began to smoke marijuana. While on Skyline Blvd. a male known as “Black” also arrived Skyline Blvd. and met up with the group. Wilbur Fernandez observed that “Black” looked nervous and startled because he continuously looked over his shoulder. Wilbur Fernandez knows “Black” has previously robbed individuals for their phones, shoes, money, and other items. Although “Black” looked nervous he did not mention anything about a robbery. While standing on Skyline Blvd., Wilbur Fernandez and the group observed a police vehicle traveling toward their location so he hid in some bushes with “Black” who told Wilbur Fernandez that he had a robbery warrant for his arrest.

Wilbur Fernandez ran and hid in some bushes when police approached. Fernandez does not know why his other associates ran and hid when the police approached. Fernandez stated he did not know who the gray sedan belonged to.

Refer to his recorded interview for further details.

Note: Sergeant Cardoza conducted an additional interview of Wilbur Fernandez for administrative proposes on 19 Apr 19 due to the fact he had been bitten by the K-9. The interview was conducted in Spanish and translated by Officer Iniguez. Wilbur Fernandez stated Fernandez was with four other friends in a car when the police passed by. They saw the police make a U-Turn. Wilbur Fernandez and his friends had warrants and were scared and didn’t want to go to jail so they all ran but got split up. He ended up in the backyard with two people who he didn’t know (Edgar and Victor Meza-Hernandez). Wilbur Fernandez heard the police announcements in Spanish about the dog finding them and biting them. The two people he was with told him to stay hidden and they would not be found. He was bitten by the dog and sustained a major injury to his right calf. Refer to his statement for further details.

Carlos Amaya-Velasquez refused to provide a statement.

Note: It was ultimately determined through Uttapa’s investigation that there was enough Probable Cause to arrest Amaya-Velasquez “Blackie” for robbery as well as possession of a stolen vehicle. (Approved by Honorable Judge, J. Chin on 22 Apr 19)

Victor Meza-Hernandez refused to provide a statement.
The Oakland Police Criminal Investigations Division (CID) completed a concurrent investigation into this Incident. Vass had provided numerous updates throughout this investigation to IAD concerning the progress of his investigation. (Link)

The criminal case had not yet been presented to the Alameda County District Attorney’s Office at the time of this Internal Affairs Investigation report.

**SUBJECT MATTER EXPERTS (SME)**

OPD Canine Coordinator, Officer M. Patterson was interviewed twice by CID. Patterson discussed training, certification, policy and canine commands but did not provide an assessment and/or analysis of the Uses of Force during this event. (Patterson CID Interview 1, Patterson CID Interview 2)

Canine SME Brad Smith (Canine Tactical Operations & Consulting- Mabank, Texas) was contracted by the City of Oakland to provide an assessment and analysis of OPD Canine policy, OPD Canine training practices, deployment criteria, Search Team structure and tactics utilizing a canine, Canine Handler control, Industry/National standard for dealing with multiple suspects, Industry/National standard for time on bite, Industry/National standard for assessing the UOF while dog is on bite, Industry/National standard in regards to de-escalation techniques. In addition, Smith analyzed the two Uses of Force (canine) during this event. He provided several reports, two (2) to CID (SME CID Report, SME CID Report Supp) and one (1) to IAD (SME IAD Report).

**ASSESSMENTS**

IAD’s approach to the Administrative Assessment of a Level 1 Use of Force

To start, there is a significant difference between the evidentiary standards that are utilized in a criminal review of a Level 1 UOF, and the standard utilized in an administrative review. The criminal review process requires a determination of whether there existed legal justification for force used during the circumstances presented.

The administrative review process is much broader in scope, and requires a determination regarding whether all involved officers’ actions were in accordance with the Department’s policies (including Use of Force Policy), or any other rules and regulations that were in effect on the date of the application of force. In contrast to the criminal investigation, the administrative process addresses different issues and is controlled by the less stringent level of proof, a Preponderance of Evidence.

The following are the assessments for the various components of this incident.

**Response to a Robbery Call Assessment**

This investigation evaluated the initial response of officers to the area Golf Links Road and Grass Valley Road after receiving a dispatched call of an armed robbery.

Patrol Procedures: Officers are trained to respond quickly to scenes involving individuals possibly armed with firearms, but to do so in a reasonably tactical and safe manner (IB - High Risk...
Incidents). This is done not only for the safety of citizens and responding officers, but to allow officers to determine the suspect’s presence / location, and to determine whether the suspect is actively posing a threat.

The area of Golf Links Road, Grass Valley Road, and Skyline Boulevard is a heavily wooded and relatively dark area which sometimes makes it difficult for responding officers to navigate. Although Peng was initially dispatched as the Primary Officer, Kofford arrived to the area first.

Kofford had worked in that area for approximately three years and was familiar with the neighborhood streets as well as some of the homeowners. Furthermore, Kofford had an intimate knowledge of the types of crimes that generally occur in the area including but not limited to loitering, consumption of illegal intoxicants as well as illegal sexual acts. Additionally, Kofford had received and remembered information regarding a trend of armed robberies in the area being committed by male Hispanics.

As Kofford was driving in the area to look for the robbery victim and/or suspects she observed three male Hispanics in front of 15735 Skyline Boulevard. The male Hispanics were standing next to a Toyota which was eventually identified as a stolen vehicle.

Kofford waited for Peng and then contacted the three male Hispanics to investigate their possible involvement in the armed robbery. Upon exiting her patrol vehicle, one of the male Hispanics fled down the hillside. Kofford and Peng detained the remaining two suspects and Kofford advised radio of what had transpired. Additional units were requested to assist with the investigation.

Kofford’s response and subsequent detention of the two suspects was prudent, and was done in a reasonably safe and tactical manner.

**IAD Recommendation:** None

**Containment / Perimeter Assessment**

Consistent with Oakland Police Department Information Bulletin “Perimeters – Supervisor Responsibility”, dated 03 Nov 10, Officers are trained to not follow fleeing subjects into yards unless exigent circumstances exist. They are trained instead, to set perimeters, establish containment, setup a Search Team, and conduct a systematic search to locate the hidden subject.

During this incident, the following occurred:

- Kofford and Peng arrived on Skyline and detained two suspects. Dispatch was notified that a third suspect had fled. Kofford conducted a search of the area and located a BB gun. Kofford did not pursue the suspect who fled.
- CHP Air support assisted with helping locate any outstanding suspects.
- Officers responded to the area to assist. Nelson located and detained a suspect near Kofford’s position. Dispatch notified officers that area residents had reported possible suspect(s) in their yards.
- Au and Mann observed and gave chase (foot) to a suspect who ultimately ended up in the rear yard of 5007 Scotia. Neither officer pursued the suspect into the rear yard.
• CHP Air advised that they had two locations with possible suspects (5007 Scotia and 4975 Stacy)

• Sergeant Leal directed Au (via radio) to assist with establishing a perimeter. Leal arrived on scene and assisted with positioning officers.

• Two perimeters were established and CHP Air advised that they appeared secure.

• Lieutenant Wehrly (IC) and Sergeants Cardoza and Fleming arrived on scene and assisted with scene maintenance. Medical was staged. There was no command post established.

• Gerrans provided canine announcements over the PA system while driving the perimeter in his patrol vehicle.

• This information was broadcast over OPD radio, keeping units apprised of the situation.

• A Search Team was established by Leal and a search was conducted at 5007 Scotia with one suspect located. Fleming supervised the seconded perimeter as the first search transpired.

• Officers from the first search/perimeter relocated to the second location at 4975 Stacy

• A Search Team was again established by Leal and a search was conducted at 4975 Stacy with three suspects located. Fleming supervised the rear DAT/perimeter as the second search transpired.

• Cardoza collected officer information to use for his report. Officers were directed to canvass for possible witnesses.

The perimeter was established promptly once the suspects’ locations had stabilized. Au and Mann did not follow the suspect into the yard following their foot chase. Supervisors on scene managed the perimeters and provided units’ information via the radio. Two systematic yard searches were conducted and four suspects were ultimately located.

IAD Recommendation: None

Communications Division Assessment

Communications Division Policy D-03 states members, “shall cause all pertinent information to be supplemented in a timely manner to appropriate incidents”.

In this incident, the Communications Division, for the most part, correctly relayed information regarding the following:

• General description of circumstances requiring police response.

• Suspects locations when identified once in the yards.

• Relayed pertinent information throughout the duration of the incident.

Based on the CAD recordings, Communications generally performed their duties as trained and within policy set forth by the Communications Division.
However, at the onset of the incident, CHP Dispatch transferred a 911 call to OPD Dispatch. The person speaking advised that he was walking his dog and that he was flagged down by two robbery victims. A third-party Spanish translator was requested.

The translator asked the victim to describe the suspect. The victim stated that the suspect was male and that he was “Moreno”. Dispatch then updated CAD to reflect that the suspect was a Male Black. Additionally, the victim advised that the suspect was standing near two (2) parked vehicles. This information was not relayed or updated via CAD.

The term “Moreno” can be used to describe a person’s dark skin complexion or to refer to a person’s race as Black (Homicide Investigator W. Garcia, who is fluent in Spanish and reviewed and translated the 911 call, provided this insight). This information was never clarified by the translator. Furthermore, the information about the two parked vehicles was never relayed to the dispatched officers. This information may have possibly posed an officer safety concern (armed robbery suspects) but also may have assisted officers in identifying potential armed robbery suspects more quickly.

IAD Recommendation:

- Provide a Training SNF to the Dispatcher in regards to relaying all pertinent information provided by a victim of a violent crime.
- Contact the Third-Party Translator Service and address concerns about clarifying words that may have more than one meaning.

Legal Assessment

OPD DGO TB I-M states in part:

Grounds to Detain

A. Grounds to Detain: "Reasonable Suspicion"

Reasonable Suspicion is a term used to describe the minimum level of suspicion required to lawfully detain a suspect or make a car stop.

Reasonable suspicion exists when the detaining officer or the officer authorizing the detention is aware of specific facts which reasonably indicate that a crime is occurring, has occurred, or is about to occur, and the person to be detained is involved in that activity.

Reasonable suspicion is similar to probable cause, in that both terms describe a particular level of suspicion. They differ, however, in that reasonably suspicion may be based on information that is not as incriminating or as reliable as the information needed to establish probable cause. As the U.S. Supreme Court explained,

Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.
Kofford was dispatched to a robbery call in the Oakland Hills. Kofford knows that there had been a series of armed robberies in the area that involved male Hispanics. Kofford had spoken to several area residents and specifically knew that there should be no vehicles and/or persons near, or in front of, 15735 Skyline (b)(5)(B).

Kofford observed two (2) vehicles and several male Hispanics loitering about or near 15735 Skyline within approximately 30 minutes and approximately 960 feet of the reported robbery. As Kofford (along with Peng) went to contact the male Hispanics, she observed that one had fled, down a hillside, towards a residential neighborhood. Kofford noted that the area was heavily wooded and dimly illuminated. Kofford elected to detain the remaining male Hispanics to investigate their possible involvement in armed robberies. This detention was supported by reasonable suspicion as enumerated above, and was in compliance with OPD policy, procedure and law.

During the length of the detention, officers determined the following:

- The two (2) vehicles parked near or IFO 15735 Skyline were reported stolen.
- A third suspect was detained not far from 15735 Skyline, wearing clothing not befitting for that time of day (tank top and shorts).
- Discarded clothing as well as car keys were located and recovered.
- A BB gun was located and recovered.
- Four (4) additional suspects were observed in person and by CHP (FLIR) to be hiding in residential yards, near Kofford’s location.

OPD DGO TB I-M states in part:

Probable Cause Defined:

The level of suspicion which will justify an arrest is known as "probable cause." As a general rule, probable cause exists when an officer is aware of facts which would "lead a person of ordinary care and prudence to entertain an honest and strong suspicion" that the suspect is guilty of a crime.

U.S. Supreme Court, "Probable cause is a fluid concept-turning on the assessment of probabilities in particular factual contexts-not readily, or even usefully, reduced to a neat set of legal rules."

The use of police practices and procedures may vary depending on the totality of the circumstances and the information known or unknown by the officer(s) at the time of the incident. The decision as to the appropriate police practices and/or procedures also depends on time constraints, the risks presented by a suspect(s), to the public, and the tools available to the officer(s).

Due to the totality of the circumstances, officers on scene had the following information, giving them probable cause to arrest the suspects prior to contact:
• Kofford responded to an armed robbery dispatch when she observed several male Hispanics in or around two (2) stolen vehicles. Upon attempting to make contact, several of the suspects fled. (10851VC and 496 (d) PC)

• Officers were aware of a trend in armed robberies in the area committed by male Hispanics. (This information was broadcast over the radio). BB gun was recovered on scene. (Possible 211PC)

• Officers attempted to detain one suspect who fled into the yard of 5007 Scotia. (148 PC)

• CHP Air identified (FLIR) additional suspects hiding in the rear of 4975 Stacy. (148 PC)

• Multiple canine announcement had been given ordering the hiding suspects to surrender, but they refused. (148PC)

The suspects were ultimately found and arrested for 496(d) PC (receiving stolen property). They were transported to CID (two went to ACH for medical treatment) where a criminal investigation took place to include a robbery inquest.

Based on the totality of the entire event, probable cause existed for the officers’ arrest of the suspects. The arrests were legal, and within Departmental policy.

IAD Recommendation: None

Use of Force Assessment (Pointing of Firearms)

The courts have determined that use of force qualifies as seizure of a person under the 4th Amendment. The 4th Amendment states in part that citizens shall be, “secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, which shall not be violated, and no Warrants shall issue, but upon probable cause…”

Department General Order K-03, regarding use of force, uses Graham v. Connor to analyze uses of force under a reasonableness standard as defined by the U.S. Supreme Court.

Graham v. Connor factors:

1. The severity of the crime
2. Whether the subject poses an immediate threat to the safety of officers or others
3. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.

DGO K-03 (Use of Force) states in part the following in regards to the Use of Firearms:

1. The intentional pointing of a firearm at another person is a use of force.
2. The drawing, exhibiting and intentionally pointing of a firearm at another person is threatening and intimidating and when unwarranted may cast a negative impression on members. A member may intentionally point a firearm only when the member has reasonable cause to believe it may be reasonable for his/her safety or for the safety of others.
3. The pointing of a firearm at a person is a seizure and requires legal justification. No member shall draw and point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation may escalate to the point where lethal force would be permitted. When it is determined that the use of lethal force is not necessary, as soon as practicable, firearms shall be secured or holstered.

DGO K-04 (Reporting and Investigating the Use of Force) states in part:

**Level 4-Use of Force**

1. The intentional pointing of a firearm at a person.

This investigation revealed thirteen (13) separate Level 4/Type 22 (pointing of a firearm) Uses of Force:

Officer R. Kabahit - Pointing of a Firearm at four (4) suspects. (Castillo, Fernandez, Meza-Hernandez, and [b][5][C]

Officer J. Ladd - Pointing of a Firearm at three (3) suspects. (Fernandez, Meza-Hernandez, and [b][5][C]

Officer K. Singh - Pointing of a Firearm at three (3) suspects. (Fernandez, Meza-Hernandez, and [b][5][C]

Officer T. Cavins - Pointing of a Firearm at three (3) suspects. (Fernandez, Meza-Hernandez, and [b][5][C]

Analysis of Pointing of a Firearm (Level 4, Type 22)

This investigation evaluated the events leading up to Kabahit, Ladd, Singh, and Cavins pointing their firearms at Castillo (Kabahit), Fernandez, Meza-Hernandez, and [b][5][C] In this incident, there were thirteen (13) separate Level 4 uses of force by these officers.

The following occurred:

- At approximately 2353 hours, Kabahit pointed his rifle at Castillo.
- At approximately 0129 hours, Kabahit pointed his rifle at Fernandez.
- At approximately 0129 hours, Kabahit pointed his rifle at [b][5][C]
- At approximately 0129 hours, Kabahit pointed his rifle at Meza-Hernandez
- At approximately 0129 hours, Ladd pointed his rifle at Fernandez.
- At approximately 0129 hours, Ladd pointed his rifle at [b][5][C]
- At approximately 0129 hours, Ladd pointed his rifle at Meza-Hernandez
- At approximately 0129 hours, Singh pointed his rifle at Fernandez.
- At approximately 0129 hours, Singh pointed his rifle at [b][5][C]
- At approximately 0129 hours, Singh pointed his rifle at Meza-Hernandez
At approximately 0129 hours, Cavins pointed his rifle at Fernandez.

At approximately 0129 hours, Cavins pointed his rifle at Meza-Hernandez.

This investigation revealed the following, regarding the above officers pointing their firearms:

On 17 Apr 19 at approximately 2208 hours, Kofford and Peng were dispatched to the area of Golf Links Road and Grass Valley Road on a report of an armed robbery. Kofford was aware of a recent crime trend involving multiple armed robberies committed by male Hispanics in the area. While searching for the victim and or suspects of the dispatched robbery call, Kofford observed several male Hispanics in front of a residence on Skyline Boulevard. These males were also observed to be in or around two separate vehicles located on Skyline. These vehicles we later determined to be stolen.

As Kofford and Peng attempted to contact the males, one of the males fled down a hillside into a residential neighborhood. The remaining males were detained and handcuffed. A search of the area revealed a BB gun hidden under some loose tree bark. This information was broadcast over the radio to units searching for the outstanding suspect. CHP air support advised that they had possible suspects hiding near 4970 Scotia.

At approximately 2300 hours, officers observed a possible suspect and initiated a foot chase. The suspect (Castillo) ran and hid in the yard of 5007 Scotia. CHP air advised that they had two separate locations where suspects were hiding.

Sergeant Leal composed a Search Team to conduct searches at both locations for possible armed robbery suspects. The Search Team consisted of a canine, less lethal options as well as a primary rifle option. Numerous canine announcements were given at both locations ordering the suspects to surrender, but they did not. Two slow and methodical searched were conducted and four suspects were located (Castillo, Fernandez, Meza-Hernandez, and Kabahit, Ladd, Singh, and Cavins pointed their firearms at the suspects during the searches.

Kabahit’s Pointing of his Firearm at Castillo (5007 Scotia)

During his IAD statement, as well as his written report, Kabahit believed Castillo posed a threat to himself as well as others as he conducted his yard search. Kabahit gave the following reasons:

- Castillo was considered as a fleeing armed and dangerous robbery suspect.
- Castillo had been given multiple commands to surrender.
- Castillo may have been lying in wait in the backyard to ambush officers.
- Castillo had been observed running into the yards by officers so Kabahit believed it was not a random person in the backyard.
- Castillo matched the clothing description that Kabahit was provided prior to making entry into the yard.
- Castillo hadn’t been searched for any weapons.
The following conditions existed at the time of the pointing of the firearm:

**The severity of the crime:**
- Castillo was believed to be an armed suspect involved in a series of armed robberies (211PC). Leal broadcast this information over the radio to all officers on the scene.

**Whether the Subject posed an immediate threat to the safety of officers or others:**
- Kabahit believed that Castillo may be armed and lying in wait to ambush officers. CHP Air confirmed that Castillo was lying in the prone position which may have allowed him to conceal a weapon. A BB gun was found prior to the yard search. Although not a real firearm, a BB gun is still a weapon and it does not preclude the suspects from possessing real firearms, particularly since they were reported to have been armed with firearms during the commission of past robberies. Castillo had fled from officers on foot and refused to surrender when multiple canine announcements were given. Upon contact, Castillo refused to show his hands for an extended amount of time.

**Whether the subject was actively resisting arrest or attempting to evade arrest by flight:**
- Castillo fled on foot from two uniformed OPD Officers into the yard.
- Castillo remained hidden and refused to surrender after multiple canine announcements.

Kabahit was found to be credible in this investigation, and based on the totality of the evidence, it is reasonable to believe that Kabahit perceived the threat as he described it. Therefore, his use of force was found to comply with the law and OPD policy.

This investigation found that the involved member’s actions leading up to the use of force did not aggregate the situation, or make the use of force more likely to occur. The actions also did not create the circumstances that lead to, or contributed to the use of force. As soon as Kabahit could see that Castillo was not armed with anything in his hands, he stopped pointing his firearm at him. This is a proper and reasonable de-escalation of force.

**IAD Recommendation:**
- Based on the evidence and factors above, this investigation recommends a finding for Kabahit’s Use of Force on Castillo (Level 4, Type 22) as “EXONERATED.”

Kabahit’s Pointing of his Firearm at Fernandez, [b][5][C] and Meza-Hernandez (4975 Stacy)

During his IAD statement as well as his written report, Kabahit believed Fernandez, [b][5][C] and Meza-Hernandez posed a threat to himself as well as others as he conducted his yard search. Kabahit gave the following reasons:
- Fernandez, [b][5][C] and Meza-Hernandez were considered as fleeing, armed and dangerous robbery suspects.
- Fernandez, [b][5][C] and Meza-Hernandez had been given multiple commands, via the canine announcements in both English and Spanish, to surrender.
- Fernandez, [b][5][C] and Meza-Hernandez may have been lying in wait in the backyard to ambush officers.
• Fernandez, [redacted] and Meza-Hernandez were in an elevated position which provided them a tactical advantage over the Search Team.

• Fernandez, [redacted] and Meza-Hernandez hadn't been searched for any weapons.

The following conditions existed at the time of the pointing of the firearm:

The severity of the crime:
• Fernandez, [redacted] and Meza-Hernandez were believed to be armed suspects of a series of armed robberies (211PC).

Whether the Subject posed an immediate threat to the safety of officers or others:
• Kabahit believed that Fernandez, [redacted] and Meza-Hernandez may be armed and lying in wait to ambush officers. CHP Air confirmed that possibly two suspects (large heat source) had been seen fleeing from officers and hiding in an elevated position in the rear of 4975 Stacy. A BB gun was found prior to the yard search. Although not a real firearm, a BB gun is still a weapon and it does not preclude the suspects from possessing real firearms, particularly since they were reported to have been armed with firearms during the commission of past robberies. Fernandez, [redacted] and Meza-Hernandez refused to surrender when multiple, specific canine announcements were given. The hillside where Fernandez, [redacted] and Meza-Hernandez were hiding offered them concealment as well as an elevated tactical advantage.

Whether the subject was actively resisting arrest or attempting to evade arrest by flight:
• Fernandez, [redacted] and Meza-Hernandez refused to surrender after multiple specific canine announcements were given in both English and Spanish.

Based on the totality of the evidence, it is reasonable to believe that Kabahit perceived the threat as he described it. Therefore, his use of force was found to comply with the law and OPD policy.

This investigation found that the involved member’s actions leading up to the use of force did not aggravate the situation, or make the use of force more likely to occur. The actions also did not create the circumstances that lead to, or contributed to the use of force. As soon as Kabahit could see that Fernandez, [redacted] and Meza-Hernandez were not armed with anything, he stopped pointing his firearm at them. This is a proper and reasonable de-escalation of force.

IAD Recommendation:
• Based on the evidence and factors above, this investigation recommends a finding for Kabahit’s Use of Force on Fernandez, [redacted] and Meza-Hernandez (Level 4, Type 22) as “EXONERATED.”

Ladd’s Pointing of his Firearm at Fernandez, [redacted] and Meza-Hernandez (4975 Stacy)

During his IAD statement as well as his written report, Ladd believed Fernandez, [redacted] and Meza-Hernandez posed a threat to himself as well as others as he conducted his yard search. Ladd gave the following reasons:
• Fernandez, [redacted] and Meza-Hernandez were considered as fleeing, armed and dangerous robbery suspects.
• Fernandez, [redacted] and Meza-Hernandez had been given multiple canine commands to surrender in both English and Spanish.

• Fernandez, [redacted] and Meza-Hernandez may have been lying in wait in the backyard to ambush officers.

• There was poor lighting making it difficult to observe the suspects.

• There were thick trees and brush which made it difficult to observe Fernandez, [redacted] and Meza-Hernandez lower body/waistline that may have allowed them to conceal a weapon.

• Fernandez, [redacted] and Meza-Hernandez hadn't been searched for any weapons.

The following conditions existed at the time of the pointing of the firearm:

The severity of the crime:
• Fernandez, [redacted] and Meza-Hernandez were believed to be armed suspects of a series of armed robberies (211PC).

Whether the Subject posed an immediate threat to the safety of officers or others:
• Ladd believed that Fernandez, [redacted] and Meza-Hernandez may be armed and lying in wait to ambush officers. CHP Air confirmed that possibly two suspects (large heat source) had been seen fleeing from officers and hiding in an elevated position in the rear of 4975 Stacy. A BB gun was found prior to the yard search. Although not a real firearm, a BB gun is still a weapon and it does not preclude the suspects from possessing real firearms, particularly since they were reported to have been armed with firearms during the commission of past robberies. Fernandez, [redacted] and Meza-Hernandez refused to surrender when multiple, specific canine announcements were given. The hillside where Fernandez, [redacted] and Meza-Hernandez were hiding offered them concealment as well as an elevated tactical advantage. This concealment prevented Ladd from being able to observe Fernandez, [redacted] and Meza-Hernandez waistbands.

Whether the subject was actively resisting arrest or attempting to evade arrest by flight:
• Fernandez, [redacted] and Meza-Hernandez refused to surrender after multiple specific canine announcements were given in both English and Spanish.

Based on the totality of the evidence, it is reasonable to believe that Ladd perceived the threat as he described it. Therefore, his use of force was found to comply with the law and OPD policy. This investigation found that the involved member's actions leading up to the use of force did not aggravate the situation or make the use of force more likely to occur. The actions also did not create the circumstances that lead to, or contributed to the use of force. As soon as Ladd could see that Fernandez, [redacted] and Meza-Hernandez were not a threat, he stopped pointing his firearm at them. This is a proper and reasonable de-escalation of force.

IAD Recommendation:
• Based on the evidence and factors above, this investigation recommends a finding for Ladd's Use of Force on Fernandez, [redacted] and Meza-Hernandez (Level 4, Type 22) as "EXONERATED."
Singh’s Pointing of his Firearm at Fernandez, [b](5)[C] and Meza-Hernandez (4975 Stacy)

During his IAD statement as well as his written report, Singh believed Fernandez, [b](5)[C] and Meza-Hernandez posed a threat to himself as well as others while providing cover from an Overwatch position. Singh gave the following reasons:

- Fernandez, [b](5)[C] and Meza-Hernandez were considered as fleeing, armed and dangerous robbery suspects.
- Fernandez, [b](5)[C] and Meza-Hernandez had been given multiple canine commands to surrender in both English and Spanish.
- There was poor lighting making it difficult to observe the suspects.
- There was thick trees and brush which made it difficult to observe Fernandez, [b](5)[C] and Meza-Hernandez. (Singh’s elevated Overwatch position gave him a limited view of the hillside and suspects)

The following conditions existed at the time of the pointing of the firearm:

**The severity of the crime:**
- Fernandez, [b](5)[C] and Meza-Hernandez were believed to be armed suspects of a series of armed robberies (211PC).

**Whether the Subject posed an immediate threat to the safety of officers or others:**
- Singh believed that Fernandez, [b](5)[C] and Meza-Hernandez may be possibly armed. CHP Air confirmed that possibly two suspects (large heat source) had been seen fleeing from officers and hiding in an elevated position in the rear of 4975 Stacy. A BB gun was found prior to the yard search. Although not a real firearm, a BB gun is still a weapon and it does not preclude the suspects from possessing real firearms, particularly since they were reported to have been armed with firearms during the commission of past robberies. Fernandez, [b](5)[C] and Meza-Hernandez refused to surrender when multiple, specific canine announcements were given. The hillside where Fernandez, [b](5)[C] and Meza-Hernandez were hiding offered them concealment as well as an elevated tactical advantage. Singh’s elevated Overwatch position gave him a limited view of the hillside and suspects.

**Whether the subject was actively resisting arrest or attempting to evade arrest by flight:**
- Fernandez, [b](5)[C] and Meza-Hernandez refused to surrender after multiple specific canine announcements were given in both English and Spanish.

Based on the totality of the evidence, it is reasonable to believe that Singh perceived the threat as he described it. Therefore, his use of force was found to comply with the law and OPD policy.

This investigation found that the involved member’s actions leading up to the use of force did not aggravate the situation, or make the use of force more likely to occur. The actions also did not create the circumstances that lead to, or contributed to the use of force. As soon as Singh lost visual sight of Fernandez, [b](5)[C] and Meza-Hernandez, he stopped pointing his firearm at them. This is a proper and reasonable de-escalation of force.
IAD Recommendation:

- Based on the evidence and factors above, this investigation recommends a finding for Singh’s Use of Force on Fernandez, Meza-Hernandez (Level 4, Type 22) as "EXONERATED."

**Cavins’ Pointing of his Firearm at Fernandez, Meza-Hernandez (4975 Stacy)**

During his IAD statement as well as his written report, Cavins believed Fernandez, Meza-Hernandez posed a threat to himself as well as others while providing cover from an Overwatch position. Cavins gave the following reasons:

- Fernandez and Meza-Hernandez were considered as fleeing, armed and dangerous robbery suspects.
- Fernandez and Meza-Hernandez had been given multiple canine commands to surrender in both English and Spanish.
- There was poor lighting making it difficult to observe the suspects.
- There was thick trees and brush which made it difficult to observe Fernandez and Meza-Hernandez. (Cavins’ elevated Overwatch position gave him a limited view of the hillside and suspects)
- Cavins observed Fernandez continually reach under his body where a possible weapon could have been concealed.

The following conditions existed at the time of the pointing of the firearm:

- **The severity of the crime:**
  - Fernandez and Meza-Hernandez were believed to be armed suspects of a series of armed robberies (211PC).

- **Whether the Subject posed an immediate threat to the safety of officers or others:**
  - Cavins believed that Fernandez and Meza-Hernandez may be possibly armed. CHP Air confirmed that possibly two suspects (large heat source) had been seen fleeing from officers and hiding in an elevated position in the rear of 4975 Stacy. A BB gun was found prior to the yard search. Although not a real firearm, a BB gun is still a weapon and it does not preclude the suspects from possessing real firearms, particularly since they were reported to have been armed with firearms during the commission of past robberies. Fernandez and Meza-Hernandez refused to surrender when multiple, specific canine announcements were given. The hillside where Fernandez and Meza-Hernandez were hiding offered them concealment as well as an elevated tactical advantage. Singh’s elevated Overwatch position gave him a limited view of the hillside and suspects.

- **Whether the subject was actively resisting arrest or attempting to evade arrest by flight:**
  - Fernandez and Meza-Hernandez refused to surrender after multiple specific canine announcements were given in both English and Spanish.

Based on the totality of the evidence, it is reasonable to believe that Cavins perceived the threat as he described it. Therefore, his use of force was found to comply with the law and OPD policy.
This investigation found that the involved member’s actions leading up to the use of force did not aggravate the situation, or make the use of force more likely to occur. The actions also did not create the circumstances that lead to, or contributed to the use of force. As soon as Cavins lost visual sight of Fernandez, [b][5][C] and Meza-Hernandez, he stopped pointing his firearm at them. This is a proper and reasonable de-escalation of force.

**IAD Recommendation:**
- Based on the evidence and factors above, this investigation recommends a finding for Cavins’ Use of Force on Fernandez, [b][5][C] and Meza-Hernandez (Level 4, Type 22) as “EXONERATED.”

**Use of Force Assessment (Canine Bite)**

The courts have determined that a use of force qualifies as seizure of a person under the 4th Amendment. The 4th Amendment states in part that citizens shall be, “secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, which shall not be violated, and no Warrants shall issue, but upon probable cause…”

**DGO K-03 (Use of Force) states in part the following:**

A Use of force is any physical or mechanical intervention used by a member or employee to defend, control, overpower, restrain or overcome the resistance of an individual.

DGO K-03 defines **reasonable force** as:

> Reasonable force is that amount of force that is objectively reasonable to affect a lawful police purpose and protect the safety of members or others based upon the totality of the circumstances.

> The determination of reasonableness is not based on the 20/20 vision of hindsight.

DGO K-03, regarding a use of force, uses Graham v. Connor to analyze uses of force under a reasonableness standard as defined by the U.S. Supreme Court.

Graham v. Connor factors:

1. The severity of the crime
2. Whether the subject poses an **immediate threat** to the safety of officers or others
3. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.

DGO K-03 defines **immediate threat** as:

A person is an immediate threat if the person is reasonably perceived by a member or employee to have the present intent, means, opportunity and ability to complete the threat, regardless of whether the threatened action has been initiated.

*DGO K-03 goes on to define intent, means, opportunity and ability:*

1. **Intent:** The subject’s apparent desire, which can be indicated by words, body language or actions.
2. **Means**: The instrument, mechanical or physical, that may be used to cause injury.

3. **Opportunity**: The time and/or place which allows the subject to use the means to cause injury.

4. **Ability**: The subject has the capability to carry out the action or threat.

Use of Patrol Canines:

Per DGO K-03, the use of Police Canines is considered an **intermediate force** level that may inflict serious injury. DGO K-09 speaks to the general purpose of canines:

1. The primary purpose of Patrol Canine deployments is to search for, locate and assist in the apprehension of criminal suspects.
2. Canine handlers may deploy their canines to search for or bite a suspected criminal suspect.

**DGO K-09** describes in section III, A, 2, the criteria for deploying a canine, in part, as follows:

> The Department authorizes the deployment of Patrol Canines under the following circumstances:

> a. To search for and assist in the apprehension of criminal suspects when there is reasonable suspicion to believe they committed a forcible violent crime, burglary or a weapon-related offense.

And, with regard to deployment authorization, DGO K-09 states in part:

> A supervisor or commander shall authorize all deployments of Patrol Canines in accordance with deployment criteria listed in III, A, 2, a, above.

**DGO K-04** (Reporting and Investigating the Use of Force) states in part:

**DGO K-04** defines, in part, a Level 1 Use of Force as:

> Serious bodily injury, to include:

> a. Any use of force resulting in the loss of consciousness; and [emphasis added]

> b. Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis.)

**DGO K-04**, as it relates to canine bites, defines, in part, a Level 2 Use of Force as occurring when:

> A police canine bites the clothing or the skin of a subject, or otherwise injures a subject requiring emergency medical treatment (beyond first-aid) or hospital admittance.

This investigation revealed one (1) Level 2 Canine Bite Use of Force and two (2) Level 1 Canine Bite Uses of Force:

Officer M. Neff – Level 2 canine bite Use of Force on Castillo at 5007 Scotia.

Officer M. Neff – Level 1 canine bite Use of Force on Fernandez at 4975 Stacy.
Sergeant A. Leal – Level 1 canine bite Use of Force on Fernandez at 4975 Stacy

An analysis of how the canine bite on Fernandez was determined to be a Level 1 is discussed later in this report.

Analysis of Neff’s Level 2 Canine Bite at 5007 Scotia

This investigation evaluated the events leading up to Neff deploying his canine and the subsequent bite on Castillo. In this incident, there was one (1) Level 2/Type 14 UOF (Neff) and one (1) Level 4/Type22 UOF (Kabahit;). Note: an analysis of Kabahit’s use of force was analyzed earlier in this report.

The following occurred:

- At approximately 2351 hours, Neff, along with his dog Bas, begin to search the rear of 5007 Scotia.
- At approximately 2352 hours, Neff deployed Bas, off leash, to search for the suspect.
- At approximately 2355 hours, Bas located and bit Castillo.
- At approximately 2357 hours, after multiple commands, the Search Team detained Castillo and Bas was removed from the bite. (approximate duration of bite: 01:24)

This investigation revealed the following, regarding Neff’s Level 2 Dog Bite UOF at 5007 Scotia:

On 17 Apr 19 at approximately 2208 hours, Kofford and Peng were dispatched to the area of Golf Links Road and Grass Valley Road on a report of an armed robbery. Kofford was aware of a recent crime trend involving multiple armed robberies committed by male Hispanics in the area. While searching for the victim and or suspects of the dispatched robbery call, Kofford observed several male Hispanics in front of a residence on Skyline Boulevard. These males were also observed to be in or around two separate vehicles located on Skyline. These vehicles we later determined to be stolen.

As Kofford and Peng attempted to contact the males, one of the males fled down a hillside into a residential neighborhood. The remaining males were detained and handcuffed. A search of the area revealed a BB gun hidden under some loose tree bark. This information was broadcast over the radio to units searching for the outstanding suspect. CHP air support advised that they had possible suspects hiding near 4970 Scotia.

At approximately 2300 hours, officers observed a possible suspect and initiated a foot chase. The suspect (Castillo) ran and hid in the yard of 5007 Scotia. CHP air advised that they had two separate locations where suspects were hiding. (Note: CHP used plain English at this location to describe Castillo’s location “Hey, the fence you guys are in front of, he’s hiding right behind that.”) CHP Air support advised that the suspect was laying down along the east side of 5007 Scotia.

At approximately 2320 hours, Leal communicated his authorization to use a canine for the search.

A perimeter was quickly established and secured. Leal composed a Search Team to conduct a slow, methodical search for Castillo. Leal assigned roles and established a search route. The Search Team consisted of Leal, Officer M. Neff with his Canine Bas, Officer R. Kabahit (Rifle),
Officer K. Au (Rifle), Officer R. Gerrans (FTO) with his Trainee, Officer D. Simas, Officer A. Andrews (Less Lethal Shotgun), and Officer I. Harris.

There was also an auxiliary DAT Team, positioned across the street from 5007 Scotia that consisted of Lieutenant B. Wehrly, Sergeant M. Cardoza, Officer M. Smith (FTO) with his Trainee, Officer I. Cardenas, and Officer D. Jenkins. A medical response had been established and CHP Air was monitoring from their fixed wing plane (FLIR).

At approximately 2325 hours, Canine Announcements were given (in English) by Gerrans over his vehicle’s PA System. Gerrans drove the perimeter while issuing ten (10) of these announcements over the span of three minutes. The canine announcement was as follows:

“This is the Oakland Police Department Canine Unit. Give yourself up before I release the dog. The dog will find you and the dog may bite you. When the dog finds you, do not move or attempt to run because the dog will bite you. Residents, stay inside your homes.”

Note: DGO K-03 states in part:

To the extent possible and without ever compromising safety, members are required to use verbal commands to accomplish the police objective before resorting to physical force.

By Gerrans giving multiple Canine Announcement over the vehicle PA system, this requirement was satisfied.

It was later discovered through suspect interviews by CID that Fernandez, and Meza-Hernandez, while hiding in the rear of 4975 Stacy, could hear the announcements for the Scotia search.

Note: DGO K-09 policy states in part:

The warning announcement shall be made, in English, in a loud and clear voice or over a public-address system, when appropriate (i.e., considering time of day, search area, building configuration, atmospheric conditions, and geographic location.)

If there is information that the subject or residents in the affected area understand a language other than English, a reasonable attempt shall be made to summon a police officer qualified to translate the warning announcement in that language.

Leal stated the following during his IAD interview:

“But then the canine drove and for this first perimeter we did the announcements in English and per policy they should be made in English per our canine policy, they should be made in English unless we have reason to believe that the area residents speak any other language, which in this case, in my experience when I work Beat 35, I’ve worked roughly in this area for 15 plus years. This is not a predominantly, or this is a predominantly English speaking neighborhood. So, I was very comfortable at doing the announcements in English. As far as the Hispanic suspects, that would be the only information I had leading me to believe that they spoke Spanish was just, uh, um, by the race that was being put out over
Leal identified the geographical area to be predominately English speaking and that he had no articulable facts to know that Castillo only spoke Spanish. Castillo had fled from uniformed officers just prior to the yard search and could reasonably understand that the police presence was for him. Once Castillo was detained it was identified that he claimed not to understand English. With this new information, Leal then elected to give canine announcements in English and Spanish at the next search location. This decision was prudent and within OPD policy.

At approximately 2335 hours, Leal and Neff discussed planning and contingencies with the Search Team. The following is a list of contingencies that were provided during Neff and Leal’s IAD interviews as well as PDRD footage:

- Give announcements (in this case canine announcements) in hopes of the suspect coming out and surrendering.
- Conduct a slow and methodical search.
- Makes sure that officers are not concentrating on the dog. Officers should be watching areas of coverage and concern; 360-degree coverage.
- If there is an officer down, the next two people behind that officer, jump over that officer provide lethal cover or address the threat if necessary. The next two people, pull the person out, bring him back to the last known cover area and then reassess if this is a “throw and go” situation (meaning transport the officer to the hospital in a police vehicle rather than wait for EMS).
- If the suspect jumps over the fence towards Scotia, the Auxiliary DAT will address and handle.
- If the suspect jumps into another yard, officers will not follow but contain and reassess.
- Neff is to give commands to the suspect to prevent confusion.
- If officers can safely get the suspect back to them and take him into custody, that’s ideally the best situation.
- If safe to do so, officers will move up and apprehend the suspect.

Gerrans spoke to the homeowner of 5007 Scotia, provided warnings to stay towards the front of the residence, and received a key to unlock the gate, located on the south-west corner of the residence. At approximately 2351 hours, the Search Team unlocked the gate and made entry into the yard. This information was broadcast over the radio.

At approximately 2352 hours, about twenty-four minutes after the end of the canine announcements, Neff released Bas into the yard.

At approximately 2355 hours, Castillo was heard screaming. The Search Team members approached the north-east corner of the residence (in the rear yard) in an attempt to gain visual

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Transcription of Leal’s IAD Interview (Page 40)
contact with Castillo. Upon the Search Team’s arrival at the north-east corner of the building, they could see down the side of the house that Bas was biting Castillo. Neff ordered Castillo to show his hands and reinforced the bite command, “Dirsch”. Neff advised the Search Team that Castillo was moving around and that he may be hitting the dog. Neff continued to reinforce the bite command to Bas. Castillo’s hands were not visible at this point.

The east side of the residence appeared to be approximately 5-6 feet wide with several items obscuring the view (water hose, fountain, plastic pool) down towards Castillo who is approximately 20-25 feet away. Castillo appeared to be struggling with Bas as he stood up, spun and removed his jacket. As the jacket came off, Castillo was momentarily separated from Bas who then re-engages, by biting him in the upper, inner thigh area. Neff told Castillo to get on the ground with his hands up.

Neff asked the Search Team members if they could see Castillo’s hands from their vantage point and Leal said “Yes.” Neff then directed the Search Team to approach Castillo. The Search Team members physically attempted to take control of Castillo. Castillo appeared to be struggle (refusing to remove his hand away from under his body) with the Search Team members who were attempting to handcuff him. Neff physically removed Bas from Castillo by grabbing the dog’s collar, at which point the dog released the bite, and pulling him away from Castillo as officers handcuffed him. Castillo was escorted to an ambulance on scene where he was transported to ACH for medical treatment for his injuries.

Neff’s Level 2 Canine Bite UOF of Castillo (5007 Scotia)

DGO K-04 describes a Level 2 Use of Force, with regard to a canine, as follows:

A police canine bites the clothing or the skin of a subject, or otherwise injures a subject requiring emergency medical treatment (beyond first-aid) or hospital admittance.

In his IAD statement as well as his report, Neff believed Castillo to be an immediate threat.

1. **Intent:** The subject’s apparent desire, which can be indicated by words, body language or actions.
   - Castillo was believed to be possibly armed with a firearm.
   - Castillo was believed to have recently committed several violent crimes.
   - Castillo knew that he was wanted by police after being chased into the yards.
   - Castillo refused to comply to verbal commands to give up prior to the search.
   - Given these circumstances, a reasonable officer would believe that Castillo would commit a violent act against officers to evade arrest to avoid jail.
   - Given these circumstances, a reasonable officer would believe that Castillo would commit a violent act against area residents (break in, hostages) to hide from officers and evade arrest.

2. **Means:** The instrument, mechanical or physical, that may be used to cause injury.
   - Castillo was believed to be possibly armed with a firearm.
During the length of time hiding from officers, Castillo could have fashioned and/or utilized an impromptu weapon found or made from items in the yard.

3. **Opportunity**: The time and/or place which allows the subject to use the means to cause injury.

   o Castillo had been hiding for an extended amount of time and refused to surrender after multiple announcements were made. This time could have been utilized to formulate a plan of attack against officers.
   
   o Castillo was in close proximity to officers both in front of the residence as well as the Search Team.

4. **Ability**: The subject has the capability to carry out the action or threat.

   o Castillo was young and able-bodied as evidenced by his flight from officers on foot and over fences.
   
   o Castillo fled and got away from pursuing officers on foot over fences and through yards.
   
   o Castillo was believed to have recently committed several violent crimes.
   
   o Castillo had been given numerous verbal warnings that police were present and appeared to be lying in wait to possibly ambush officers.
   
   o Castillo was believed to be possibly armed with a firearm.

Neff’s report (draft) outlined his reasoning for deploying Bas. He wrote that he considered Graham v. Connor as well as the canine deployment criteria outlined in DGO K-09. (Violent Forcible Crime

For purposes of this policy (K-09), a Violent Forcible Crime is defined as the commission or attempted commission of: 1. Murder; 2. Manslaughter; 3. Mayhem; 4. Kidnapping; 5. Robbery; …

Neff described the following in his report:

- The suspects were believed to have been involved in multiple armed robberies which included victims being pistol whipped. The suspects just fled from a stolen vehicle and that a replica firearm had been recovered.
- The suspect fled on foot from a uniformed police officer into the yards of area residents. Suspects were given multiple canine announcements over the PA system to give up and surrender, which they failed to do.
- Suspects were involved in multiple armed robberies in the city and may have additional firearms or other weapons on their person. The suspects were in a large residential area. Suspects could enter an area residents home and take hostage. Our location was known, whereas the suspects location was uncertain.

**Note**: Neff’s report is in the ‘draft’ status because, at the time of the incident, it was being investigated as a Level 2 Use of Force, which would require Neff to author a report. Once the investigation was raised to a Level 1, he was put on Administrative Leave and was unable to complete his report.
The following conditions existed at the time of the deployment of the canine:

The severity of the crime:
- Castillo was believed to be an armed suspect of a series of armed robberies (211PC).

Whether the Subject posed an immediate threat to the safety of officers or others:
- CHP Air confirmed that Castillo was lying in the prone position which may have allowed him to conceal a weapon. A BB gun was found prior to the yard search. Castillo had fled from officers on foot and refused to surrender when multiple canine announcements were given. Neff believed that Castillo could enter the residence and hold hostages. Upon contact, Castillo refused to show his hands for an extended amount of time.

Whether the subject was actively resisting arrest or attempting to evade arrest by flight:
- Castillo fled on foot from two uniformed OPD Officers into the yard.
- Castillo refused to surrender after multiple canine announcements.

DGO K-09 states in part:

Canine handlers shall closely monitor and maintain reasonable control of their canine during the deployment.

1) Once the canine locates a criminal suspect, and depending on the suspect’s location and actions, the canine may bark, make physical contact with the suspect, or bite the suspect.

   • Bas was observed traveling along the east side of the residence. Bas found and bit Castillo. Although it is unknown what caused Bas to bite Castillo, the policy accepts that any one of these outcomes are acceptable and to be expected.

2) Upon locating a criminal suspect, the canine handler or other Search Team members shall verbally challenge and give instructions to the suspect unless doing so would increase the danger to the canine handler or the Search Team. If a challenge and/or instructions were not provided, Canine Handlers shall document the reason in their report.

   • As soon as Castillo started to yell, Neff and the Search Team moved up and observed Castillo who appeared to be fighting with the canine. Neff gave several verbal commands to Castillo to show his hands (“Let’s see your hands.” [2 times]; and “Let me see both of your hands.” [2 times]). Castillo did not comply with this order for an extended amount of time.

3) Upon locating a criminal suspect, the canine handler shall consider whether the continued use of the canine is appropriate under the circumstances, and take appropriate action with regard to the canine based on their training. Factors to consider include, but are not limited to, whether the suspect continues to resist, evade arrest, or presents an immediate threat to officers or others.

   • Upon arrival to the northeast corner of the residence, Neff’s first observation of Castillo showed that he appeared to be struggling with the canine. Neff
issued several verbal commands to Castillo to show his hands. (this was important because it was unknown if Castillo was armed with a weapon at this point). Neff stated in his IAD interview that up to that point, he had not clearly seen both of Castillo’s hands, which is consistent with statements he made on PDRD. It was for this reason that Neff continued to reinforce the bite command. It was not until Neff was advised by Leal that he had seen both of Castillo’s hands with no weapon in them that the Search Team approached Castillo and Neff physically removed Bas, thus de-escalating the force.

4) If a canine bites a suspect, the handler shall immediately call off the canine when:
   - The handler reasonably believes the subject has submitted to lawful authority;
   - The handler reasonably believes a different force option is more appropriate; or
   - The handler reasonably believes no further force is appropriate.

   - The approximate duration of the bite of 01:24 was reasonable and lawful for several reasons.
     o Castillo was located and bitten on the southeast side of the residence. Once it was known that Castillo was being bitten (audible noise), Neff and the Search Team traveled to the northeast corner from the northwest corner of the residence (approximately 40 feet). This movement was not rushed due to the potential of additional unknown armed suspects and/or obstacles in the yard.

     o Upon visual contact with Castillo, Neff gave several commands to Castillo to show his hands. Castillo did not immediately comply and instead appeared to stand up in an attempt to remove Bas. Bas was temporally separated from Castillo when his jacket was removed as he stood up. Bas quickly re-engaged Castillo with another bite to the upper, inner thigh area pursuant to Neff’s command to bite.

     o Once Castillo’s hands were visible, for a brief amount of time, Neff and the Search Team elected to traverse the narrow pathway towards him. This was done due to the possibility of Bas’ re-engagement with Castillo if Bas was verbally called off the bite and called to a heel. (Neff said during his IAD Statement, “I could visually see down there. I didn't want the dog to out, listen to my command, and then again, it's an animal. It's his first bite. Re-engage the suspect when I gave him the out command. I -- I thought it was safe enough -- safe enough for our team to approach, since I can clear everything pretty much.”

   Bas was ultimately physically removed from Castillo.

After exhausting all practical, logical and sensible means to get the hidden felony suspect Castillo to comply and surrender peacefully (multiple verbal canine announcements), the next logical and reasonable step was to use Bas as a search tool and, possibly, as an intermediate force option which is not likely to result in death or serious bodily injury, to gain compliance. Once Bas located and bit Castillo, other Force Options (such as DSLL rounds, Taser, OC, and baton) were considered but were limited due to distance, physical obstructions and potential injury to the suspect, officers, and/or the canine.

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Neff evaluated Graham v. Connor throughout the entire length of this bite as documented in both his report and his statement to IAD. Neff de-escalated the force as soon as practical when the Search Team correctly decided to move forward and physically control Castillo while he was distracted with Bas. This tactical decision of moving forward and physically removing Bas from the bite once the officers had control of Castillo was the right decision which ultimately resulted in a shorter bite time with no officer injuries.

Based on the totality of the evidence, it is reasonable to believe that Neff perceived the threat as he described it. Therefore, his use of force was found to comply with the law and OPD policy.

This investigation found that the involved member’s actions leading up to the use of force did not aggravate the situation, or make the use of force more likely to occur. The actions also did not create the circumstances that lead to, or contributed to the use of force. Neff physically removed Bas from Castillo once it was safe to do so. This is a proper and reasonable de-escalation of force.

**IAD Recommendation:**
- Based on the evidence and factors above, this investigation recommends a finding for Neff's Use of Force on Castillo (Level 2, Canine Bite) as “EXONERATED.”

**Analysis of Neff’s Level 1 Canine Bite at 4975 Stacy**

This incident was originally classified as a Level 2 Use of Force by Wehrly at the scene. Due to the significant injury sustained by Fernandez, it was elevated to a Level 1 the next day. This report will later discuss and analyze the Level 2/Level 1 adjustment.

This investigation evaluated the events leading up to Neff deploying his canine and the subsequent bite on Fernandez. In this incident, there were two (2) Level 1 UOF (Neff and Leal) and twelve (12) Level 4/Type22 UOF (Kabahit, Ladd, Singh, and Cavins).

The following occurred:

- At approximately 0125 hours, Neff, along with his dog Bas, begin to search the rear of 4975 Stacy.
- At approximately 0129 hours, Neff deployed Bas to search for what they believed at the time to be two suspects hiding in the yard.
- At approximately 0131 hours, Bas located and bit Fernandez.
- At approximately 0132 hours, and Meza-Hernandez appeared.
- At approximately 0133 hours, Leal directed Neff to keep Bas to stay on the bite as they dealt with and Meza-Hernandez.
- At approximately 0133 hours, Neff gave Bas the heel command and Bas released his bite on Fernandez. (approximate time on bite 02:24)
This investigation revealed the following, regarding Neff’s Level 1 Dog Bite UOF at 4975 Stacy:

On 17 Apr 19 at approximately 2208 hours, Kofford and Peng were dispatched to the area of Golf Links Road and Grass Valley Road on a report of an armed robbery. Kofford was aware of a recent crime trend involving multiple armed robberies committed by male Hispanics in the area. While searching for the victim and or suspects of the dispatched robbery call, Kofford observed several male Hispanics in front of a residence on Skyline. These males were also observed to be in or around two separate vehicles located on Skyline. These vehicles were later determined to be stolen.

As Kofford and Peng attempted to contact the males, one of the males fled down a hillside into a residential neighborhood. The remaining males were detained and handcuffed. A search of the area revealed a BB gun hidden under some loose tree bark. This information was broadcast over the radio to units searching for the outstanding suspect. CHP air support advised that they had possible suspects hiding near 4970 Scotia.

At approximately 2300 hours, officers observed a possible suspect and initiated a foot chase. The suspect (Castillo) ran and hid in the yard of 5007 Scotia. CHP air advised that they had two separate locations where suspects were hiding.

A containment perimeter, supervised by Sergeant Fleming, was set around the Stacy location as the search of 5007 Scotia commenced. (See above for further details)

Officers left the Scotia scene and relocated to 4975 Stacy. The CHP Air support fixed wing airplane (AIR31) was replaced by their helicopter (H32).

At approximately 0025 hours, Leal briefed the Search Team on the plan as well as possible contingencies. Since the second Search Team appeared to contain all the members of the first Search Team, the brief was limited and covered similar plans and contingencies. There was one major change in their tactics due to the possibility of multiple suspects in an elevated position. The general plan developed by Leal and Neff was to call the suspects down and not to approach them on the hillside. This was also the case if the canine bit a suspect during the search. The suspect would be ordered to come down the hillside while still on the bite as opposed to the officers going up the hillside to address the suspect(s).

This was due to:

- Unknown number of suspects
- Unknown number of weapons (concealed on their person or concealed close by)
- Suspects were hiding in an elevated position which put the Search Team at a tactical disadvantage.
- The hillside was dark and covered with thick brush.
- If officers were to move up the steep, terraced hillside, it may mask the Overwatch element who would be providing lethal cover.

Leal advised radio that it was a priority for medical to stage prior to the second search.
At approximately 0038 hours, Kabahit advised that a rear DAT had been established on Scotia (directly behind 4975 Stacy). Leal requested that Kabahit discuss deconfliction and other contingencies with the rear DAT (crossfire issues). Leal then discussed priorities between his Search Team and the rear DAT. Fleming acknowledged Leal's information via the radio.

The Rear DAT team consisted of Fleming, Officer I. Anderson (FTO) with his Trainee, Officer A. Smith (Less Lethal Shotgun), Officer T Latibeaudiere (Rifle), Officer M. Rosas, and Officer A. Mann. Their main function was to deal with the suspects if they elected to flee through the yard back towards Scotia.

Leal elected to have the canine commands issued in both English and Spanish due to the response of Castillo on the prior search and the probability that the other suspects may not be able to understand English. Leal asked Dispatch for a Spanish speaking officer but quickly realized that he already had one with him on scene at the Scotia location, Trainee Officer, Cardenas (No longer with OPD).

Note: Leal stated during his IAD interview that he chose Cardenas because he observed him speaking Spanish as Castillo was receiving medical aid. He further stated that he knew Cardenas was in Field Training, but believed it would provide him with valuable experience.

At approximately 0043 hours, Lieutenant Wehrly advised H32 that they would conduct more canine announcements at the Stacy location (English - Gerrans and Spanish - Cardenas) and requested if they could observe and identify any suspect(s) movement.

Gerrans stated that in addition to the standard canine announcement, the following specific canine announcement was given in both English and Spanish (Approximately forty-nine (49) minutes after the first canine announcement began on Stacy. The suspects did not surrender at this point.):

“**This is the Oakland Police Department K-9 Unit. We know you are in the rear of 4975 Stacy, the grey house with the white trim. We see you on the top of the hill. Give yourself up now before we send the dog, with your hands in the air and nothing in your hands come walking down. The dog will find you and the dog may bite you. When the dog finds you do not attempt to run or move or the dog will bite you. All Oakland residents in the area stay inside your homes.**”

Note: At approximately 0049 hours, H32 advised that the suspects were huddled close together under some dense brush near the Northeast section of the yard. H32 used true compass directions and not “OPD Directions”and/or plain talk directions as the CHP fixed wing [Air 31] had done earlier on Scotia.

This advisement of location by CHP caused confusion when the suspects were ultimately discovered in the Northwest portion of the yard. Both Leal and Neff believed that the suspects were hiding in the Northeast portion of the yard using “Oakland directions” (Right side of the yard as opposed to the left).

This confusion caused some officers to believe that there could possibly be additional suspects hiding in the yard. Leal said in his IAD interview, when asked if he confirmed what type of directions CHP was using, said, “No, and that's the training point I have for myself. I absolutely should have clarified that, but I didn't. Um, and also this was in that transition period from the fixed wing to the helicopter. So, this was a different pilot I was
talking to now at this point who was using real Northeast, South directions versus, “Hey, he's right behind this fence that you're looking at. Which is very helpful. I'm not a knock on the pilot, they did a great job, but that is totally on me to realize that transition and clarify that. That's completely my fault.”

This issue did not cause a significant disruption and/or prolong the UOF and will be addressed in the training portion of this report.

At approximately 0057 hours, Leal asked Dispatch for additional PROs from BFO 1. The PROs would be used as an Overwatch element on the roof of 4975 Stacy. Leal authorized “Code3” driving due to H32’s low fuel status (approximately thirty-five (35) minutes left of fuel at this point). Three (3) PROs advised they would be en-route from West Oakland. Leal advised units via radio about his intentions with the Overwatch element.

At approximately 0109 hours, Leal authorized the use and second deployment of an OPD Canine during the search on Stacy.

At approximately 0122 hours, Cavins advised Leal that the Overwatch element was in place, on the rooftop of 4975 Stacy Street. The Overwatch element consisted of Officer K. Singh (Rifle), Officer S. Triana (Spotter), Officer T. Cavins (Rifle), Officer M. Reiton (Spotter).

Their objective was to provide lethal cover from an elevated position while the Search Team conducted their search. Leal provided them a basic plan but stated in his IAD interview that he did not provide contingencies since they were trained PROs and should know what to do in an Overwatch position. Leal did tell them to place their PDRD in a place that would capture a better angle of the incident, which is permitted by DGO I-15.1 PORTABLE VIDEO MANAGEMENT SYSTEM.

Prior to the search, Gerrans spoke to the homeowner (Mack McCathrion) and advised him to stay towards the front half of the residence. The homeowner advised that the best access to the rear yard would be along the east side of the home. Medical was also confirmed as staged. Lieutenant Wehrly and Sergeant Cardoza were situated behind cover and positioned across the street to the east of 4975 Stacy.

At approximately 0125 hours, Leal advised Dispatch that Search Team was starting the search of 4975 Stacy.

Search Team Members: Sergeant A. Leal, Officer M. Neff with his Canine Bas, Officer R. Kabahit (Primary Rifle), Officer K. Au (Rifle), Officer R. Gerrans (FTO) with his Trainee, Officer D. Simas, Officer A. Andrews (Less Lethal Shotgun), Office I. Harris (Throw and Go), Officer J. Ladd (Rifle) with his Trainee, Officer A. Amores, Officer M. Smith (FTO) with his Trainee, Officer I. Cardenas (Spanish), Officer B. Olson, and Officer D. Minor

The Search Team walked up and approached the south-east side of 4975 Stacy. Leal directed Kabahit to temporarily unscrew neighboring flood lights for officer safety reasons. Once the lights were removed, Leal told Neff to release Bas to search for the suspects. Bas is observed by members of the Search Team walking along the east side of the residence, making a left into the back yard and then eventually out of their sight. Bas returned to the Search Team that was still

9 Transcription of Leal’s IAD Interview (Page 123)
staged at the south-east corner of the residence with negative results. Leal then lead the first five members of the Search Team to move forward towards the north-east corner of the residence.

At approximately 0126 hours, Leal, Neff and the Search Team began a slow and methodical search for the suspect(s) as well as any possible evidence along the east side of the residence (narrow pathway). Upon arrival to the north-east corner of the residence, they hold their position. The Search Team then fanned out into the rear yard. Search Team members are observed (PDRD) scanning the terraced hillside adjacent to the back patio, intermittently illuminating the area with their flashlights and/or weapon mounted lights. A large wood awning on the north-east section of the residence appears to prevent Search Team members from observing the hillside in full.

At approximately 0126 hours, Leal requested (via radio) that the second half of the Search Team relocate to the backyard/patio area. Sergeant Leal directed the first half of the Search Team to position along the north-west portion of the backyard and advised that he would place the second half of the Search Team along the north-east portion of the backyard (under the awning).

Canine SME (Canine Tactical Operations & Consulting) Smith described the Search Team's positioning in the yard as “vulnerable” due to:

The suspects can see and hear the officers.

The suspects knew the officers were 35-40 feet away from them.

The suspects knew a K9 had just been used to search the lower portion of the backyard and the K9 will soon be used to search the hillside for them.

The suspects could be lying in wait to ambush the officers as they made entry into the backyard.

Knowing all of this, the suspects still refuse to make themselves known and peacefully surrender so no force is used. [This point was also articulated by Neff in his IAD statement.]

At approximately 0128 hours, Leal told Neff that he could deploy Bas. Neff walked up closer to the foot of the terraced hillside and Bas was released. Bas started searching the hillside.

At approximately 0129 hours, Fernandez can be heard moaning and yelling in Spanish. Neff yelled out to Fernandez, “Come out with your hands up.” (Approximate time on bite 00:00)

Note: Fernandez had been hiding in a thick Pampas Grass plant that was approximately 10-15 feet high and approximately 35-40 feet up the west side of the hillside.

CHP (FLIR) video shows at approximately the 07:26 mark, Bas finding and biting Fernandez’ leg. Fernandez is observed turning his body, and crawling with his hands, headfirst downhill, towards the Search Team. Fernandez appears to briefly slide down the hill for approximately 10-15 feet as he comes to rest, in front of shrubbery.

Note: Neff explained the following in his IAD interview:

“I see the tree, it looked like it was shaking and in the back of my mind again I'm thinking is he - did he [Bas] make contact with a cat or is something going on, but then I heard -- heard some sort of groaning. So, at some point I gave the sus --
come out with your hands up and then at some point I see -- let's see -- I don't know if the suspect -- I can't remember if the dog was -- I could see the dog pulling. It looked like he had the pant leg or the shoe of a suspect. Then I could see what -- I could see -- I could tell it was a male Hispanic or male at that point. I didn't know he was Hispanic for sure. And I said crawl down to us, crawl down to us because I wanted to see -- I wanted to get him out of this bush in this area where they could have, number one other suspects, but they could have firearms. And I couldn't see both of his hands because visually there was brush in the way. So, I'm telling him, come down to us, come down to us and then do you want me to just keep going or -- And then let's see, at some point -- or then the Spanish speaking officer, I can't remember where they were. They're right over here. They started giving commands. So, I tell him to come down to us, come down to us. I think he's telling him get down here. You know, crawl down to us and at some point, he's -- the dog -- he is not making a -- he is like grumbling like (inaudible). So, I'm thinking, Oh the dog screwing around. Maybe he got his pant leg. He's just trying to take off his -- you know, pulling off his jeans, got the material ripping it or his shoe because I could see his shoe -- or his leg went up and I could see the dog at some point had his jeans. I'm like, okay.10

Leal reminds the Search Team about 360 degrees security. Leal provided an update via radio cautioning units on scene that they had only found one suspect at that point. Gerrans told Cardenas to yell commands in Spanish. (Approximate time on bite 00:16)

Neff indicated in his IAD interview that he was unsure if Bas had actually bitten a part of Fernandez’ body or just his clothing. This was due to Fernandez’ somewhat muted demeanor and his apparent lack of screaming. Neff went on to say that Fernandez' behavior was not typical of someone being bitten by a canine. Neff went on to say, “I believe he was trying to listen to our commands but he wasn't -- based on his just groaning number one, I didn't believe the dog even had contact with his skin. So, I thought he was -- I don't know if he was playing around and trying to ruse us. I didn't know. But he didn't get to a spot where I could see his hands and then call the dog off.”11

At approximately 0130 hours, Leal asked Fernandez in Spanish, “Where is your friend?” in an apparent attempt to gain information on the other suspects whose location was not known at that point.

As the Search Team was dealing with Fernandez, and then a few seconds later, Meza-Hernandez both emerged from behind a thick Pampas Grass plant. Both and Meza-Hernandez can be seen on PDRD standing with their hands up.

Neff said in his IAD interview, “I think at that point I didn't know how many people were coming out of these bushes, if we could safely somehow -- I mean that's why he's the tactical sergeant. He knows if we wanted to set up an Overwatch, bypass him, point the gun and then try to take him off, but I think that's way too dangerous and he probably knew

10 Transcription of Neff’s IAD Interview (Page 81)
11 Transcription of Neff’s IAD Interview (Page 86)
that based on the terrain and everything.” Neff went on to say that he asked Leal this question because Leal was an experienced, tactical supervisor and that he may have a different visual perspective. Neff ultimately stated that, at that point in time, it was not safe to approach the suspect and/or call the canine off because they did not have visual of Fernandez’ hands and therefore did not know if he was armed.12

Leal said in response to Neff’s question, “Hey, let’s call the second dude out. Leave that dog on that bite. Call that second dude out.” (Approximate time on bite 00:44)

Note: Although Cardenas was giving Fernandez commands in Spanish, Fernandez’s responses were not translated back into English for Leal or Neff.

Approximately thirteen (13) seconds later, Leal said, “Hey, hey, we’re gonna take number two into custody. Leave the dog on the bite.” (Approximate time on bite 00:57)

Neff said in his IAD interview that he agreed with Leal’s assessment in leaving Bas on the bite and calling the other suspects back to them because there were very limited options at that point and he could not see Fernandez’ hands.

Leal went on to tell Cardenas, “You’re gonna give him high risk commands to walk down these stairs.” Neff confirmed with Leal that there were three (3) suspects in total.

At approximately 0131 hours, Leal said to Cardenas, “So tell him [D/D/C] to stop right now. We need a lull.” Leal then went on to ask Neff, “Matt, if you call your dog off, do you think this dude will stay there, or do you want to keep him on the bite?”

Approximately nine (9) seconds later, Neff said, “I can probably call him off as long as I can see his right hand, I can’t see his right hand.”

Neff said in his IAD interview that it is important to see suspects hands because “hands are what can kill you, weapons kill, guns kill.” Neff stated that Fernandez’ body position (lying on stomach) coupled with the thick foliage on the hillside prevented him from seeing Fernandez’ hands. When asked if it was a possibility that the dog’s bite was preventing the Fernandez from showing his hands, Neff’s response was, “I don’t believe so at all. No. Because he is biting the lower pant leg of the suspect, so the suspect could easily roll on his back, lift both of his hands up and clearly show us.”13

Leal then said, “Well alright, let’s keep him on the bite until the two suspects are away from him.” (Approximate time on bite 01:32)

Neff said in his IAD interview that again he agreed with Leal’s assessment and did not believe it was a direct order (supervisor to subordinate) issued by Leal. Neff went on to explain, “Well, I wanted him on the bite still because I could not clearly see that he had nothing in his hands, no weapons. Because there were suspects coming down the hillside

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12 Transcription of Neff’s IAD Interview (Page 97)
13 Transcription of Neff’s IAD Interview (Page 100)
right near where the dog would have been outing from the suspect and he could have reengaged in one of those suspects."

Neff assessed the situation and felt that there were no other options at this point in time.

At approximately 0132 hours, Leal said, “Get the guy in the gray to walk down these stairs. The guy in the black shirt (Meza-Hernandez) keep him right there exactly how he is.”

Leal asked the Search Team for his Less Lethal Shotgun. is observed (PDRD) walking down the hillside (It took approximately forty (40) seconds to walk down the hillside) past Fernandez as he is being issued directions from Cardenas. is directed into a handcuffing position at the foot of the hillside. Leal directs Andrews (Less Lethal Shotgun) to focus on Fernandez and Meza-Hernandez. Meza-Hernandez is observed standing with his hands up next to Fernandez.

Approximately forty-five (45) seconds later, Neff gave Bas the “Heel” command “Fuss.” Bas released his bite on Fernandez and is observed (PDRD), to walk back, past towards Neff. Neff advised that he had control of the dog. (Total approximate time on bite 02:24)

Note: Bas immediately released his bite of Fernandez after one Fuss (heel) command from Neff. As Bas started moving down the hillside his head turned to his right and look at Meza-Hernandez as if he might bite. Neff immediately gave Bas a second Fuss (heel) command to keep Bas from biting Meza-Hernandez. Bas continued down the hillside towards Neff again gave Bas four (4) more Fuss (heel) re-affirmation commands (and one "leave it" command) to insure Bas did not bite (Gerrans’ BWC). This evidence supports Neff’s stated concern that the dog may either re-bite Fernandez, or bite Meza-Hernandez or

Neff said in his IAD interview that at that point he was finally able to see both of Fernandez’ hands and immediately called off Bas. When asked if the length of time on bite was ever a consideration in calling off Bas Neff responded with, “I just didn't believe it was safe for me to take the dog off the bite at that time until I saw both of his hands and knew that it was safe to do so.” When asked how he assessed the force during the bite, Neff stated, “Well these are possibly armed suspects, multiple, elevated position, the dog’s on the bite, I can't see suspect's hands. I don't know if he has a weapon on the ground near him, in his waistband and so when I deemed -- or when I was able to see both of his hands clearly that's why I called the dog off.” When asked if the length of time on bite was reasonable, Neff responded with, “Because that was the length it took for me to get the suspect in a position where I could clearly see his hands and keep everyone as safe as I possibly could.” Neff later stated in his IAD interview that, at the time, he believed the bite only lasted for about one minute.

Leal then directed the members of the Search Team to continue to give commands to the suspects. is handcuffed and escorted from the backyard. Leal advised Dispatch that they had a dog bite on one suspect, (Fernandez) and that all suspects are being compliant at this point.

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14 Transcription of Neff’s IAD Interview (Page 101)
15 Transcription of Neff’s IAD Interview (Page 104)
16 Transcription of Neff’s IAD Interview (Page 104)
17 Transcription of Neff’s IAD Interview (Page 110)
He went on to say that they had one (1) in custody and were trying to call the other two (2) down.

At approximately 0133 hours, Leal told the Search Team members to give commands to Fernandez first, due to his injuries. Fernandez advised that he was stuck on something and that he could not move down the hill as requested. Leal then directed his Search Team members to issue commands to Meza-Hernandez. Leal asked Dispatch for medical to make their location for Fernandez.

At approximately 0135 hours, Search Team members gave commands to Meza-Hernandez. Meza-Hernandez walked down the hillside from where Fernandez was located with his hands raised to the lower level/patio level of the backyard. Meza-Hernandez was directed by Search Team members into a position for handcuffing. Meza-Hernandez was handcuffed and removed from the backyard.

At approximately 0136 hours, Leal advised Dispatch that Fernandez was apparently stuck and that they would need to go up the hill to retrieve him. Wehrly acknowledged Leal's update. Leal ordered Fernandez to crawl down the hillside. Cardenas advised Leal that Fernandez claimed to be stuck. Leal then elected to approach Fernandez with members of the Search Team. They approached Fernandez, and as they got close, Leal said out loud the Fernandez was indeed stuck. Leal told Cardenas, “Keep the Spanish rolling. Tell him he’s gonna be alright and just listen to everything we say.”

At approximately 0138 hours, Leal advised Dispatch that they moved up the hill and contacted and handcuffed Fernandez. Cardoza advised that medical was prepared to receive Fernandez as soon as he is walked out. Wehrly advised that medical (Paramedics Plus) would bring a gurney into the backyard.

At approximately 0143 hours, Wehrly told units to stay on scene until all administrative functions could be completed including a debrief. Leal advised the unit at ACH (3J25) that they would also be receiving and monitoring Fernandez as well as Castillo. Leal asked Search Team members if they needed anything. Kabahit advised that he was attempting to place a tourniquet on Fernandez. Leal directed Simas to apply the tourniquet.

At approximately 0144 hours, Wehrly advised Dispatch to go Code 4/Code34 (normal radio traffic). Leal advised Dispatch that there was a delay removing Fernandez from the hill and that they are applying a tourniquet due to apparent blood loss. The Search Team members successfully applied the tourniquet to Fernandez’ leg. The Search Team members then lifted Fernandez and carried him down the hillside to an awaiting gurney.

Neff’s Level 1 Canine Bite UOF of Fernandez (4975 Stacy)

In his IAD statement as well as his report, Neff believed Fernandez to be an immediate threat.

1. **Intent**: The subject’s apparent desire, which can be indicated by words, body language or actions.
   - Fernandez was believed to be possibly armed with a firearm.
   - Fernandez was believed to have recently committed several violent crimes.
- Fernandez refused to give up prior to the search despite twenty-three verbal commands (in both Spanish and English) given via a vehicle PA system over the span of an hour.
- It appeared that Fernandez took the opportunity to position himself in an elevated position giving him a better tactical advantage.
- Given these circumstances, a reasonable officer would believe that Fernandez would commit a violent act against officers to evade arrest to avoid jail.
- Given these circumstances, a reasonable officer would believe that Fernandez would commit a violent act against area residents (break in, hostages) to hide from officers and evade arrest.

2. **Means:** The instrument, mechanical or physical, that may be used to cause injury.
   - Fernandez was believed to be possibly armed with a firearm.
   - During the length of time hiding from officers, Fernandez could have fashioned and/or utilized and impromptu weapon found or made from items in the yard.

3. **Opportunity:** The time and/or place which allows the subject to use the means to cause injury.
   - Fernandez had been hiding for and extended amount of time and refused to surrender after multiple announcements were made. This time could have been utilized to formulate a plan of attack against officers.
   - Fernandez was hiding behind dense shrubbery, in close proximity to officers with limited visibility (low light).
   - Fernandez could have used his elevated position to ambush officers who had limited cover.
   - Fernandez could see where the officers where located as they conducted their search, the officers could not observe Fernandez from their vantage point. This provided Fernandez with an advantage that increased the likelihood he could successfully assault the officers.

4. **Ability:** The subject has the capability to carry out the action or threat.
   - Fernandez was young and able-bodied as evidenced by his flight from officers on foot and over fences.
   - Fernandez fled on foot over fences and through yards.
   - Fernandez was believed to have recently committed several violent crimes.
   - Fernandez had been given numerous verbal warning that police were present and appeared to be lying in wait to possibly to ambush officers from an elevated position.
   - Fernandez was believed to be possibly armed with a firearm, thus increasing his ability to assault the officers.
Neff’s report (draft) outlined his reasoning for deploying Bas. He wrote that he considered Graham v. Connor as well as the canine deployment criteria outline in DGO K-09. *(Violent Forcible Crime For purposes of this policy (K-09), a Violent Forcible Crime is defined as the commission or attempted commission of: 1. Murder; 2. Manslaughter; 3. Mayhem; 4. Kidnapping; 5. Robbery.)*

Neff described the following:
- The suspects were believed to have been involved in multiple armed robberies which included victims being pistol whipped. The suspects just fled from a stolen vehicle and that a replica firearm had been recovered.
- The suspect fled on foot from a uniformed police officer into the yards of area residents. Suspects were given multiple canine announcements over the PA system to give up and surrender, which they failed to do.
- Suspects were involved in multiple armed robberies in the city and may have additional firearms or other weapons on their person. The suspects were in a large residential area. Suspects could enter an area residents home and take hostage. Our location was known, whereas the suspects location was uncertain.

Canine SME Smith Described in his report:

This rapidly evolving and ever changing high risk incident creates numerous deployment and officer safety issues for DAT. Some of the issues are:

*Based on the information received from CHP Air 31, DAT was under the impression two armed robbery suspects were hiding in an elevated position in the upper right side of the backyard.

However, these three armed robbery suspects were found in the upper left side of the backyard.

S-5 Fernandez is not acting like S-4 Castillo did when he was bitten by the same dog. Sgt. Leal state of mind and some of DAT thought S-5 Fernandez might be under the influence (Refer to Sgt Leal’s PDRD 1:53:23).

Because S-5 Fernandez is no longer coming down the hillside, it would have been unsafe for DAT to approach all three robbery suspects with a large portion of the hillside not searched or cleared.

The following conditions existed at the time of the deployment of the canine:

The severity of the crime:
- Fernandez was believed to be an armed suspect of a series of armed robberies *(211PC)*.

Whether the Subject posed an immediate threat to the safety of officers or others:
- CHP Air confirmed that a large heat source was spotted and that it may have indicated more than one suspect hiding on the hillside. A BB gun was found prior to the yard search. Fernandez ignored almost three hours of multiple commands in English and Spanish to surrender without incident. Fernandez was in an elevated position surrounded by thick vegetation which gave him the opportunity to conceal weapons. Neff believed that Fernandez could enter the residence and hold hostages. Upon contact, Fernandez refused to show his hands for an extended amount of time.
Whether the subject was actively resisting arrest or attempting to evade arrest by flight:
- Fernandez had been hiding for almost three hours and refused to surrender after multiple announcements were made in both English and Spanish.

DGO K-09 states in part:

**Canine handlers shall closely monitor and maintain reasonable control of their canine during the deployment.**

*Once the canine locates a criminal suspect, and depending on the suspect’s location and actions, the canine may bark, make physical contact with the suspect, or bite the suspect.*

- Bas was utilized as a search tool and was released towards the middle of the yard as he traversed the steep hillside. Bas ultimately found and bit Fernandez who had been hiding behind a large grass plant in the western portion of the yard (Approximately 40 – 50 feet away from Neff with approximately 20 feet of elevation along an approximately 45-50° slope). Although it is unknown what caused Bas to bite Fernandez, the policy accepts that any one of these outcomes are acceptable and to be expected.

*Upon locating a criminal suspect, the canine handler or other search team members shall verbally challenge and give instructions to the suspect unless doing so would increase the danger to the canine handler or the search team. If a challenge and/or instructions were not provided, Canine Handlers shall document the reason in their report.*

- As soon as Fernandez started to groan, Neff issued verbal orders to come out with hands up. Additionally, Cardenas gives multiple orders to Fernandez in Spanish to come down the hillside. While this is happening, and Meza-Hernandez appear behind Fernandez. Officers on scene continued to issue verbal commands to all three and Bas is ultimately released from the bite after Neff is able to see both of Fernandez’ hands.

*Upon locating a criminal suspect, the canine handler shall consider whether the continued use of the canine is appropriate under the circumstances, and take appropriate action with regard to the canine based on their training. Factors to consider include, but are not limited to, whether the suspect continues to resist, evade arrest, or presents an immediate threat to officers or others.*

- Neff continually monitored Fernandez while on bite but advised that due to multiple circumstances including distance, elevation, lighting, foliage, close proximity to additional suspects (Bas may have reengaged with either or Meza-Hernandez) as well as Fernandez’ own physical actions (hands underneath his body at certain points in time), he left Bas on the bite until he had a clear view of both of Fernandez’ hands at which point he deescalated the force by ordering Bas to heel.

*DGO K-09 further states:*

*If a canine bites a suspect, the handler shall immediately call off the canine when:*
  - The handler reasonably believes the subject has submitted to lawful authority;
The handler reasonably believes a different force option is more appropriate; or
The handler reasonably believes no further force is appropriate.

After exhausting all practical, logical and sensible means (multiple verbal canine announcements in Spanish and English), to get the hidden felony suspect Fernandez to comply and surrender peacefully, the next logical and reasonable step was to use Bas, an intermediate / moderate non-deadly force tool to gain compliance and is not likely to result in death or serious bodily injury. Other Force Options (such as DSLL rounds, Taser, OC, and baton) were considered but were limited due to distance, physical obstructions (plants and thick shrubbery), steep terrain, lighting, and potential injury to the suspects, officers, and/or the canine.

In his statement to IAD, Neff said he was constantly evaluating Graham v. Connor throughout the entire length of this bite. Neff advised that due to numerous circumstances including distance, elevation, lighting, foliage, close proximity to additional potentially armed, robbery suspects (Bas may have reengaged with either Meza-Hernandez or Meza-Hernandez who had been complying at this point) as well as Fernandez’ own physical actions (hands underneath his body at certain points in time), he elected to leave Bas on the bite until he believed it was safe and prudent to release the canine. Neff believed the following:

- Fernandez may have been concealing a weapon and/or in close proximity to one, and without visual confirmation, Neff elected to keep Bas on bite for the safety of all parties involved.
- Neff was uncertain if Bas had actually made contact with Fernandez’ body (possibly only his pant leg) due to Fernandez’ lack of verbal and/or muted response (no significant yelling or screaming).
- Neff did not believe Leal gave an order to leave Bas on the bite and stated that he (Neff) is ultimately in charge of his canine.
- Neff believed that the dog bite was only one minute in length (time distortion).

Neff was ultimately able to obtain a clear view of Fernandez’ hands (no weapons observed) and immediately called Bas to heel.

Neff de-escalated to situation as soon as practical. It was discussed prior to entry into the yard that the Search Team plan was to call the suspect(s) down, off the hillside, even on a bite, due to multiple issues including, but not limited to; terrain, lighting, number of suspects, and the fact that they did not want to “mask” Overwatch. The Search Team attempted to call Fernandez down, off the hillside, but was ultimately unsuccessful due to Fernandez getting stuck (unbeknownst to the Leal, Neff, or any member of the Search Team) on a metal rod. The decision to leave Bas on Fernandez while the Search Team negotiated with the remaining two suspects was made because of the following:

- It was unknown if Fernandez was concealing weapons.
- It was unknown if weapons were concealed in close proximity to the three suspects.
- Fernandez appeared to be unwilling to show both of his hands.
- Neff was unsure if Bas was only biting Fernandez’s pant leg, or his actual leg.
- It was unknown the severity of the injury being caused by the bite.
- It was unknown at that time if there were additional suspects in the yard who may have been lying in wait to ambush officers.
• If Bas was released from Fernandez in close proximity to the other suspects, there would be a high probability that Bas could reengage with either and/or Meza-Hernandez causing additional uses of force on subjects who were clearly surrendering.

• At that time, Neff was not able to see Fernandez’ hands.

Neff stated in his IAD interview that the decision to leave the dog on the bite was solely his, and was based on his analysis of the situation as it happened, not Leal’s. He further stated that the decision to call the dog off the bite was also based on his own assessment.

Based on the totality of the evidence, it is reasonable to believe that Neff perceived the threat as he described it. Neff followed DGO K-09, by closely monitoring and maintaining control of Bas. Therefore, his use of force was found to comply with the law and OPD policy.

The length of time Bas was on the bite (2:24) was reasonable, based on the circumstances and, when those circumstances changed (i.e. when Neff saw his hands), there was an immediate de-escalation.

This investigation found that the involved member’s actions leading up to the use of force did not aggravate the situation, or make the use of force more likely to occur. The actions also did not create the circumstances that lead to, or contributed to the use of force. Neff verbally heeled Bas from Fernandez once it was safe to do so. This is a proper and reasonable de-escalation of force.

IAD Recommendation:
• Based on the evidence and factors above, this investigation recommends a finding for Neff’s Use of Force on Fernandez (Level 1, Canine Bite) as EXONERATED.

Analysis of Leal’s Level 1 Canine Bite at 4975 Stacy

This incident was originally classified as a Level 2 Use of Force by Wehrly at the scene. Due to the significant injury sustained by Fernandez, it was elevated to a Level 1 the next day. This report will later discuss and analyze the Level 2/Level 1 adjustment.

During the canine search and subsequent bite of Fernandez, Leal told Neff to “Leave the dog on the bite” three (3) separate times during the course of the canine engagement. It is because of this statement that Leal was classified as a subject to the use of force. This section will analyze and assess Leal’s accountability in this Level 1 UOF.

In his IAD statement, Leal believed Fernandez to be an immediate threat.

1. Intent: The subject’s apparent desire, which can be indicated by words, body language or actions.
   • Fernandez was believed to be possibly armed with a firearm.
   • Fernandez was believed to have recently committed several violent crimes.
   • Fernandez refused to give up prior to the search despite twenty-three verbal commands (in both Spanish and English) given via a vehicle PA system over the span of an hour.
o It appeared that Fernandez took the opportunity to position himself in an elevated position giving him a better tactical advantage.

o There was a high probability that Fernandez would commit a violent act against officers to evade arrest to avoid jail.

o There was a high probability that Fernandez would commit a violent act against area residents (break in, hostages) to hide from officers and evade arrest.

2. **Means:** *The instrument, mechanical or physical, that may be used to cause injury.*

   o Fernandez was believed to be possibly armed with a firearm.

   o During the length of time hiding from officers, Fernandez could have fashioned and/or utilized and impromptu weapon found or made from items in the yard.

3. **Opportunity:** *The time and/or place which allows the subject to use the means to cause injury.*

   o Fernandez had been hiding for and extended amount of time and refused to surrender after multiple announcements were made. This time could have been utilized to formulate a plan of attack against officers.

   o Fernandez was hiding behind dense shrubbery, in close proximity to officers with limited visibility (low light).

   o Fernandez could have used his elevated position to ambush officers who had limited cover.

   o Fernandez could see where the officers where located as they conducted their search, the officers could not observe Fernandez from their vantage point.

4. **Ability:** *The subject has the capability to carry out the action or threat.*

   o Fernandez was young and abled bodied as evidenced by his flight from officers on foot and over fences.

   o Fernandez fled on foot over fences and through yards.

   o Fernandez was believed to have recently committed several violent crimes.

   o Fernandez had been given numerous verbal warning that police were present and appeared to be lying in wait to possibly to ambush officers from an elevated position.

   o Fernandez was believed to be possibly armed with a firearm.

At approximately thirty-eight seconds on the bite, Neff said to Leal, “Do you want to move up to him, Sarge?”

Leal said in response to Neff’s question, “Hey, let’s call the second dude out. Leave that dog on that bite. Call that second dude out.” (Approximate time on bite 00:44) And approximately thirteen (13) seconds later, Leal said, “Hey, hey, we’re gonna take number two into custody. Leave the dog on the bite.” (Approximate time on bite 00:57)
Leal said in his IAD Statement in response to why he did not want to approach Fernandez on the hillside, “Um, because it goes against every single thing we train in every fiber of training that I have ever developed, uh, when we have multiple high risk suspects in a yard. Um, if the terrain which would require a lot of flat open area to call them all and put them into a position to go up and handcuff all of them sequentially. Um, that obviously wasn't the case. So ideally it's to call him down and handcuff him behind cover. And that's how we train.” Leal went on to say in regards to leaving Bas on the bite (at this point), “Yeah, but leave him on the bite meant, bring them down that level like we had talked about. And so, whether it's a drag or a stationary bite it's still considered a bite. So yeah, my verbiage of the leave them on the bite meant keep dragging the guy down the hill.”

At approximately one minute and twenty seconds, Leal asks Neff, “Matt, if you call your dog off, do you think this dude will stay there, or do you want to keep him on the bite?”

Approximately nine (9) seconds later, Neff said, “I can probably call him off as long as I can see his right hand, I can’t see his right hand.”

Leal then said, “Well alright, let’s keep him on the bite until the two suspects are away from him.” (Approximate time on bite 01:32)

Leal said in his IAD Statement in response to why he told Neff to leave Bas on the bite, “Well, again, I'm still dealing with two suspects who peacefully surrendered, in close proximity. I didn't know close proximity to any potential weapons that were in the yard. Um, and Matt said that he can't see the guy's right hand. People are predominantly right-handed. Um, and uh, the, if he can't see his hand, the immediacy of the, the threat still there until we can get that proper assessment. It's the same, uh, in a sterile training environment. If you talk to the DT guys teach at high risk now, uh, the same, same concept, they hands up when you're assessing that waistband, you're getting that fair assessment. That may take a minute based on lighting and terrain. And until you can get that fair assessment, that's when you make your decisions and put that next piece of the puzzle in play. But it could be very quick. It's a please, don't move. And then you're looking at the hands, okay, the hands look clear. Get your hands up. Now I'm assessing everything else in a sterile training environment, it looks like that happens quick. In reality when there's low light terrain, multiple suspects, high stress, the reality of it all, and you're searching for armed robbers, um, it's gonna delay your decision-making process a little bit just because you have to process everything and then rely on your training and experience to, you're putting the right plan in place to where this gets ended peacefully, and no cops get hurt.”

Leal went on to say in reference to focusing on [DISC] and Meza-Hernandez, “Um, so I believe that was in the middle of me talking to my Spanish translator when Matt yelled at across the yard. So, uh, I don't want to sound like (inaudible) on that, but he told me I can't see the guy's hands, even though I wasn't looking at it. I've worked with Matt long enough for almost the last two decades. If he tells me he can't seize [sic] the guy's hands, I trust him. And that's a fair assessment. To me, the immediacy of the threat is still there.

18 Transcription of Leal’s IAD Interview (Page 148)
19 Transcription of Leal’s IAD Interview (Page 141)
20 Transcription of Leal’s IAD Interview (Page 150)
based on everything I already said. Um, and then I went right back to talking to the Spanish translator.” Leal goes on to say, “And a couple things on that. The last, the last update I got about that guy was, “Hey, I could probably call the dog off, but I can’t see his hand.” Well, based on that, it’s still an immediate threat until we can clear those hands. So, I’m fine with leaving the dog on the bite when I said that to him. Two, every position that Matt was in, I asked him to be in that position, and deploy the dog in that manner. And I know it said it before, but I just want to hammer that point home. Every he was in and how that dog was used was my call, he was the handler there to help facilitate what I want.”

The following conditions existed at the time of the deployment of the canine:

The severity of the crime:
- Fernandez was believed to be an armed suspect of a series of armed robberies (211PC).

Whether the Subject posed an immediate threat to the safety of officers or others:
- CHP Air confirmed that a large heat source was spotted and that it may have indicated more than one suspect hiding on the hillside. A BB gun was found prior to the yard search. Fernandez ignored almost three hours of multiple commands in English and Spanish to surrender without incident. Fernandez was in an elevated position surrounded by thick vegetation which may have allowed him to conceal weapons. Leal stated that the steep elevated terrain was a game changer by giving the suspects a superior tactical advantage.

Whether the subject was actively resisting arrest or attempting to evade arrest by flight:
- Fernandez had been hiding for almost three hours and refused to surrender after multiple announcements were made in both English and Spanish.

Leal evaluated Graham v. Connor throughout the entire incident. Leal advised that due to numerous circumstances including terrain, lighting, foliage, close proximity to additional, potentially armed robbery suspects (Bas may have reengaged with either Bas or Meza-Hernandez who were cooperating and surrendering at this point) as well as Fernandez’ own physical actions (Neff advised that he was unable to see his right hand), Leal elected to order Neff to leave Bas on the bite at that point in time. Before Leal could reassess Fernandez’s actions, Neff was able to obtain a clear view of Fernandez’ hands (no weapons observed) and called Bas to heel (de-escalation).

With regard to why Leal directed Neff to keep Bas on the bite, Leal stated he believed the following:
- Fernandez may have been concealing a weapon and/or in close proximity to one, and without visual confirmation (Neff advised that he could not see his right hand), Leal elected to order Neff to keep Bas on bite, at that point in time, for the safety of all parties involved.

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21 Transcription of Leal’s IAD Interview (Page 151)
22 Transcription of Leal’s IAD Interview (Page 142)
• Leal believed if Bas was called off the bite, at that point in time, that there may be a chance for him to re-engage and bite the two complying suspects (strikeout and Meza-Hernandez).
• Leal gave Neff an order to leave Bas on the bite. (Note: Leal believed he was giving an order; Neff did not believe it was necessarily an order, as his belief was that he was ultimately responsible for the actions of his dog.)
• Leal only observed the beginning of the bite of Fernandez as he turned his attention to (strikeout) and Meza-Hernandez. Leal stated that he trusted Neff’s assessment and judgment in regards to de-escalating the use of force when it was safe to do so.
• Leal believed that the dog bite was much shorter in duration (time distortion).
• Leal referenced “OODA Loop” (observe–orient–decide–act) numerous times throughout his interview. This strategic assessment during this this rapidly evolving, ever changing and stressful situation assisted Leal in his decision making but may have slightly slowed down reaction time.

Based on the totality of the evidence listed above, it is reasonable to believe that Leal perceived the threat as he described it (Neff was unable to see Fernandez’ hands) at the time he told Neff to leave Bas on the bite. Although this order to leave Bas on the bite may have extended the duration of the total time on bite, it was a reasonable order given the totality of the circumstances. Other Force Options were considered but were limited due to distance, physical obstructions (plants and thick shrubbery), steep terrain, lighting, and potential injury to the suspects, officers, and/or the canine.

Canine SME Smith, in his analysis of this incident, provided several alternative options that could have been considered. Smith documented in his IAD SME report the following:

*Because there is not just one way to handle some incidents, there are a few other options DAT and Officer Neff could have resolved this incident. Each way is correct.*

**Option 1:**
Handle the incident the way they did.

**Pros:** Officers remained safe and were able to get everyone into custody.

**Cons:** The bite happens over a longer period of time.

**Option 2:**
When S-5 Fernandez first comes out of the bushes, (1:32:35) recall Bas.

**Pros:** Bas would have been on the bite for approximately 30 second.
May causes less damage or the damage may have already been done.

**Cons:** When Bas releases his bite, there is the possibility of an accidental re-bite of S-5 Fernandez if he moves.
The location of other two suspects were not known.
If armed, S-5 Fernandez may have armed himself.
Now that Bas is no longer biting him, S-5 Fernandez might have tried to escape.
If S-5 Fernandez refused to come down the hill or runs, Bas may have been resent to bite S-5 Fernandez causing more injuries.
Once Bas was recalled, if S-5 Fernandez refused to come down the hill, officers may have been forced to climb the hillside not knowing where the other suspects were and putting officers lies in danger.
Option 3:
Handle the incident the way they did. Knowing there are two additional suspect within very close proximity to S-5 Fernandez and discussing whether to leave Bas on the bite or recalling Bas. But instead of calling S-6 down the hill at 1:33:50 hours, Bas could have been recalled at this point.

**Pros:** Bas would have been on the bite for approximately 1 minute 40 second.
May causes less damage or the damage may have already been done.

**Cons:** When Bas releases his bite, there is the possibility of an accidental re-bite of S-5 Fernandez if he moves.
The right side of the hillside had not been searched and cleared.
With two suspects standing so close to S-5 Fernandez, Bas would have seen the two other suspects standing very close to him and may bitten S-6 or S-7 Hernandez.
(Option 2 Con's also apply to Option 3)

Option 4:
At the 30 second bite mark, leave Bas on the bite and have DAT approach S-5 Fernandez and take him into custody.

**Pros:** Bas may or may not have been on the bite for a shorter period of time.

**Cons:** DAT is leaving whatever little cover they had on the patio and are now exposed.
The right side of the hillside had not been searched and cleared.
To react to whatever happened, DAT no longer has time = safety to their advantage.
They would not have known about the other two suspects within very close proximity until they got very close to S-5 Fernandez.
Once they got closer to S-5 Fernandez, DAT or the additional suspects may be startled.
If the additional suspects were found as DAT approached S-5 Fernandez, DAT would have stopped their movement towards S-5 Fernandez and tried to control the additional suspects which would have made the bite continue for a longer period.
If one of the suspects made a movement that one of the DAT officers perceived as aggressive, additional force may have been used.

Option 5:
At the 1 minute 40 second bite mark, leave Bas on the bite and have DAT approach S-5 Fernandez and the other suspects to take them into custody.

**Pros:** Bas may or may not have been on the bite for a shorter period of time.

**Cons:** DAT is leaving whatever little cover they had on the patio and are now exposed.
To react to whatever happened, DAT no longer has distance = time = safety to their advantage.
The right side of the hillside had not been searched and cleared.
If the additional suspects were found as DAT approached S-5 Fernandez, DAT would have stopped their movement towards S-5 Fernandez and tried to control the additional suspects which would have made the bite continue for a longer period.
If one of the suspects made a movement that one of the DAT officers perceived as aggressive, additional force may have been used.
This use of force was found to comply with the law and OPD policy. This investigation found that the involved member’s actions leading up to the use of force did not aggravate the situation or make the use of force more likely to occur. The actions also did not create the circumstances that lead to or contributed to the use of force.

**IAD Recommendation:**
- Based on the evidence and factors above, this investigation recommends a finding for Leal’s Use of Force on Fernandez (Level 1, Canine Bite) as **EXONERATED**.

**Understanding the Canine’s Capability Assessment**

Prior to conducting a search of 4975 Stacy, Leal and Neff have the following contingency discussion (Wehrly was present):

**Neff:** “How do you want to tackle where if the dog is up there and he is engaged with one of the suspects?”

**Leal:** “Ya.”

**Neff:** “We are challenging the suspect and we can’t, all you see is the dog in the bush yelling and screaming.”

**Leal:** “Uh-Uh, and we have an outstanding dude still.”

**Neff:** “Yah, who’s tech., potentially right next to him I don’t feel comfortable moving up.”

**Leal:** “Well, we got to get up to the dog on the bite or can the dog drag him out.”

**Neff:** “I can try to have him do that or he would do that on his own so then again if we see one of the suspects-”

**Leal:** “Right.”

**Neff:** “There is still an outstanding who could be potentially right there, how do you want to tackle, or should I try to out the dog from a distance, bring him back down to me?”

**Leal:** “Uh.”

**Neff:** “We can re-access or since he is engaged with one keep him on that and we’ll just”

**Leal:** “Yep.”

**Neff:** “Move up to try to get-”

**Leal:** “Plan A: we bite him, he comes out, kinda like we tried with that guy, and then this guy kinda stood up and you saw him try to fight the dog a little bit, um, and then bad stuff happened to him. So same thing here. Plan A, if the dog finds him and then engages in a bite, uh, we have the dog try to drag him out from that bush ideally, and then as we have to go up and secure this guy we need 360 security big time and we’re going to move into this yard with two rifles. We’ve got rifles on over-watch for this exact reason, so if we are going to have the dog pull him out and have him deal with him I wanna pull him downhill to our level so that outstanding dude, the over-watch guys still have an eye or, uh, absolute worst case scenario they have a clear shot and we are not in the way, we are not masking them.”

**Neff:** “Ok, ok.”

**Leal:** “So again we engage pull him downhill with the dog and then same arrest plan like we had on that guy.”

: “Ok.”

**Leal:** “Um, and then for S-2 we will just reset, we get one, we pull him out, we’ll come back here, we’ll re-launch the dog, and then here we go again.”

**Neff:** “Ok.”
It appears from the above conversation that Leal’s intent, if there was a bite, was to move the suspect downhill to take him into custody, and he believed the canine could physically drag the suspect down the hill. Neff says that he can try to have the dog do that, or that it might just happen on its own.

Based on his statement to IAD and the above conversation with Neff at the scene, Leal was under the belief that dragging a suspect out of a hiding spot was a specific task that the dog could be directed to do.

Canine Coordinator Patterson advised during his second CID interview that OPD canines are not specifically trained to drag suspects, but that sometimes it happens naturally while the dog is on the bite. If a canine does happen to drag a suspect while it is on the bite, it is considered an acceptable outcome. (Patterson CID Interview 2)

Neff understood that the dog cannot be specifically directed to drag a suspect. Neff said in his IAD interview that he understood the goal was to have the suspect come down the hill – either voluntarily or while the dog was on the bite – to take him in custody rather than the search team moving up the hill.

Neff's intention was to have the suspect crawl/walk down the hill towards the Search Team. This is supported by the immediate commands Neff gave to Fernandez at the onset of the bite, which for him to come down the hillside.

CHP FLIR video shows Fernandez crawl down the hillside until he gets stuck. This further supports that the intended strategy by Neff and Leal, which was to have Fernandez come to them while the dog was on the bite, was reasonable and possible.

IAD Recommendation:
• Provide training to all OPD Supervisors (CPT) on the capabilities and the parameters on what a canine is capable and/or permitted to do, during a deployment.
• Provide training to Canine Handlers on making sure they relay the canine’s capabilities to members of the Search Team/DAT, prior to a deployment.

Communication During Search Assessment (4975 Stacy)

Cardenas was assigned to give commands in Spanish during the second search (4975 Stacy). Upon canine contact with Fernandez, Gerrans and Leal provided Cardenas instructions to give to Fernandez commands in Spanish. (Translation)

Fernandez: “Ay me agarró el perro. Hey, hey” (Translation from Spanish: = Hey, the dog caught me!)

Leal: “There he is. He’s speaking Spanish.”

Fernandez: “Ey, ¡Ayúdenme! ¡Ayúdenme!” (Translation from Spanish: “Hey, help me, help me!)

Neff: “Hey, come out with your hands up.” (speaking over each other, multiple conversations)
Leal: “75, we have contact with at least one suspect. Guys, as to remind you, 360 security, we’ve only found one.” (speaking over each other, multiple conversations)

Fernandez: [Inaudible, yelling in the background] (speaking over each other, multiple conversations)

Neff: “Come out with your hands up.” (speaking over each other, multiple conversations)

Fernandez: “¡Ayúdenme! ¡Ayúdenme! Ey.” (Translation from Spanish: “Help me, Help me, hey!”) (speaking over each other, multiple conversations)

Gerrans: “Cardenas, yell ‘Come out with your hands up.’ Yell that.” (speaking over each other, multiple conversations)

Fernandez: [Inaudible] (speaking over each other, multiple conversations)

Cardenas: “¡Ey sal con las manos arriba!” (Translation from Spanish: “Hey, come out with your hands up.”)

Leal: “Louder.”

Gerrans: “Come down the hill with your hands up.”

Neff: “Let’s see your hands. Come down the hill with your hands up.”

Cardenas: “¡Ey sal con las manos arriba, con nada en tus manos!” (Translation from Spanish: “Hey come out with your hands up with nothing in your hands.”)

Gerrans: “Come down the hill with your hands up.”

Fernandez: “No tengo arma, no tengo arma, el perro me esta [Inaudible] mi hueso.” (Translation from Spanish: “I don’t have a gun, I don’t have a gun, the dog it’s [Inaudible] my bone.”)

Gerrans: “Come down the hill with your hands up. Come down the hill with your hands up.”

Cardenas: “¡Baja, baja con las manos arriba, baja la montaña con las manos arriba!” (Translation from Spanish: “Come down, come down with your hands up, come down the hill with your hands up”) (speaking over each other)

Fernandez: “No, si [Inaudible].” (Translation from Spanish: “No, yes -”) (speaking over each other)

Cardenas: “¡Pon las manos hacia arriba!” (Translation from Spanish: “Get your hands up”) (speaking over each other)

Fernandez: “¿Si me pueden venir a quitar el perro por favor?” (Translation from Spanish: “Can you take the dog off, please?”) (speaking over each other)
Cardenas: “¡Pon las manos arriba!” (Translation from Spanish: “Get your hands up”) (speaking over each other)

Fernandez: “Sí, tengo manos [yells in pain]” (Translation from Spanish: “Yes, I have hands.”)

Leal: “¿Dónde está tu amigo?” (Translation from Spanish: “Where is your friend?”)

Fernandez: “Aquí.” (Translation from Spanish: “Here”)

Cardenas: “¿Dónde está tu amigo?” (Translation from Spanish: “Where is your friend?”) (speaking over each other multiple conversations)

Gerrans: “Ask him where’s - where’s his friend, ask him where his friend -” (speaking over each other multiple conversations)

Fernandez: “Están arriba, ¿Si me pueden quitar el perro por favor?” [inaudible].” (Translation from Spanish: “They are above. Can you get the dog off me, please?”) (speaking over each other multiple conversations)

Cardenas: “He said that he’s up high. He says he’s up high.” (speaking over each other multiple conversations)

Neff: “Do you want to move up to him, Sarge?” (speaking over each other multiple conversations)

Leal: “Hey, let’s call the second dude out. Leave that dog on that bite. Call that second dude out.” (speaking over each other, multiple conversations)

Fernandez: “Ey, ¿Si me pueden quitar el perro? [inaudible]” (Translation from Spanish: “Hey, can you get the dog off me? [inaudible]”) (speaking over each other)

Cardenas: “Okey, el otro amigo, si estás arriba, ¡sal con las manos arriba!” (Translation from Spanish: “The other friend, if you’re up there, come out with your hands up”)

Fernandez: “Ey, ¡sal, ¡salgan! ¡salgan! [Inaudible]” (Translation from Spanish: “Get out, get out [inaudible]”)

Gerrans: “Tell him to come down” (speaking over each other)

Cardenas: “¡Sal con los manos arriba!” (Translation from Spanish: “Come out with your hands up”) (speaking over each other)

Fernandez: “Ey, ¿Si me lo pueden venir a quitar por favor?” (Translation from Spanish: “Can you get it off me, please?”) (speaking over each other)

Leal: “Hey, hey, we’re gonna take number two into custody. Leave the dog on the bite.” (speaking over each other)
Fernandez: “Ey [inaudible] [yelling in pain]” (speaking over each other)

Cardenas: “¡Sal con las manos arriba, con nada en tus manos!” (Translation from Spanish: “Come out with your hands up with nothing in your hands”)

Fernandez: “Ey, ¿Si me lo pueden venir a quitar? [yells in pain]” (Translation from Spanish: “Can you come and get it off me?”) (speaking over each other)

Leal: “You’re gonna give him -”

Cardenas: “¡Sal con manos arriba!” (Translation from Spanish: “Come out with your hands up.”)

Leal: “You’re gonna give him high risk commands to walk down these stairs.”

Fernandez: “Ey, ¿Si me lo pueden venir a quitar?” (Translation from Spanish: “Hey, can you come and get it off me?”) (speaking over each other)

Neff: “We got three total guys.” (speaking over each other)

Fernandez: [Inaudible] (speaking over each other)

Leal: “There’s three suspects, ok, alright.”

Cardenas: “Okey, el de gris, ¡baja de arriba, con manos arriba! ¡baja!” (Translation from Spanish: “Ok, the one in grey, come down from up there with your hands up, come down”)

Fernandez: “Ey, ¡salgan!” [Inaudible] (Translation from Spanish: “Hey, come out!” [Inaudible])

Leal: “How many more, how many more?”

Cardenas: “¿Cuántos son en total?” (Translation from Spanish: “How many are there in total?”)

Fernandez: “Tres, tres, tres” (Translation from Spanish: “Three, three, three”)

Cardenas: “Three in total. Sal con las manos. ¡Baja con las manos arriba!” (Translation from Spanish: “Come out with your hands. Come down with your hands up”) (speaking over each other)

Leal: “So, so tell him to stop right now. We need a lull” (speaking over each other)

Fernandez: “¿Si me lo pueden venir a quitar? Que me está cortando el pie.” (Translation from Spanish: “Can you came and get it off me? It is cutting my foot!”) (speaking over each other, multiple conversations)
Cardenas: “I’ll get the guy in the grey” (speaking over each other, multiple conversations)

Leal: “Matt, if you call your dog off do you think this dude will stay there, or do you want to keep him on the bite” (speaking over each other, multiple conversations)

Fernandez: “[Inaudible] ¡Salgan para abajo! ¡Salgan abajo!” (Translation from Spanish: “Come on down, Come down”)

Neff: “I can probably call him off as long as I can see his right hand. I can’t see his right hand” (speaking over each other, multiple conversations)

Fernandez: “Ey, ¿Si me lo pueden venir a quitar? Ey, por favor.” (cries in pain) (speaking over each other, multiple conversations) (Translation from Spanish: “Hey, can you come and get it off me? Please!”)

Leal: “Well alright, let’s keep him on the bite until the two suspects are away from him” (speaking over each other, multiple conversations)

Cardenas: “Ok, I’ll get the guy in the gray down first” (speaking over each other, multiple conversations)

Neff: “You sent me over here” (speaking over each other, multiple conversations)

Fernandez: “Ey, ¿Si me lo pueden venir a quitar?” (speaking over each other, multiple conversations) (Translation from Spanish: “Hey, can you come and get it off me?”)

Leal: “Get the guy in the gray to walk down these stairs. The guy in the black shirt, keep him right there exactly how he is” (speaking over each other, multiple conversations)

Neff: “Can anyone see? I can see his left hand; I don’t know where his right hand is.” (speaking over each other, multiple conversations)

Cardenas: “El de camiseta negra ¡quédate ahí! El de camiseta negra ¡quédate! Solamente el del suéter gris baja estas gradas con las manos arriba.” (Translation from Spanish: “You in the black shirt stay right there. You in the black shirt stay right there. Only you in the grey sweater come down the stairs with your hands up.”) (speaking over each other, multiple conversations)

Leal: “Arrest team, arrest team, come up here. Where’s, where’s my shotgun? Fellas, where’s my less lethal shotgun? Step over here” (speaking over each other, multiple conversations)

Fernandez: “Ey ¿Si me lo pueden venir a quitar [Inaudible], que me está cortando el pie.” (speaking over each other, multiple conversations) (Translation from Spanish: “Hey, can you come and get it off me [inaudible], it is cutting my foot”).
Neff: “Do you want them just to come right here - want them to just come right down - right down this fence line right to him?” (speaking over each other, multiple conversations)

Fernandez: “¡Salgan hacia abajo! [Inaudible]” (Translation from Spanish: “Go down there”)

Leal: “Uh, ya, that’s fine, that’s fine. Where’s my shotgun?” (speaking over each other, multiple conversations)

Cardenas: “Sigue bajando. ¡Quédate con tus manos arriba! [Inaudible] manos arriba!” (Translation from Spanish: “Keep coming down. Stay with your hands up, [Inaudible] hands up” (speaking over each other, multiple conversations)

Fernandez: “Ey, ¿Si me lo pueden venir a quitar por favor?” (Translation from Spanish: “Hey, can you come and get it off me, please?”)

Neff: “I don’t want him crossing my - let’s go, hurry up.” (speaking over each other, multiple conversations)

Cardenas: “El del negro ¡quédate ahí! El del negro ¡quédate ahí! El del negro ¡quédate ahí! Sigues.” (Translation from Spanish: “You in the black stay right there! You in the black stay right there! You in the black stay right there! Continue.’) (speaking over each other)

Unknown Officer: “Ok, I have a guy up high, I have a guy up high”

Neff: “Ya, I don’t want the dog -”

Cardenas: “Baja, baja, volvéate, volvéate, volvéate, okey. ¡Quédate ahí!” (Translation from Spanish: “Come down, come down, turn around, turn around, turn around, ok. Stay right there.” (speaking over each other, multiple conversations)

Fernandez: “Ey, por favor, ¿Si me pueden venir a quitar el perro?” (Translation from Spanish: “Hey please, can you come and get the dog off me?” (speaking over each other, multiple conversations)

Leal: “My shotgun, stay on that corner, keep fixed on those guys. You’re at a good distance for bean bags if you need to. Get with someone who has a gun now.” (speaking over each other, multiple conversations)

Leal: “Drop him down to his knees.” (speaking over each other, multiple conversations)

Cardenas: “Okey, Okey, Okey, ¡para ahí! ¡Para ahí! ¡Para ahí! Okey, ¡bájate a las rodillas!” (Translation from Spanish: “Ok, stop right there, stop right there, stop right there! Ok, get down on your knees”) (speaking over each other, multiple conversations)

Neff: “Bas, fuss, fuss, fuss” (K-9’s name Bas, K-9 command fuss = heel) (speaking over each other, multiple conversations)
Note: K-9 is released from the bite by Officer Neff. No further K-9 bite occurs during incident.

Cardenas continues to speak with Fernandez who eventually tells him that he was stuck and that he was unable to move down the hill as directed.

Leal said the following during his IAD statement in regards to using Cardenas, “I don’t, but I did factor in that he was a rookie and this was a high tense and rapidly evolving situation and may have been the first time he ever seen something like this. And so, the stress levels high, so having that person, uh, behind you telling you what to say is very helpful. I’ve been that rookie officer, I remember back then, and we have guys like Mick Riley and Pat Gonzales and, and very tactical guys. They would do that. These guys, these recruits need the exposure to get in on these searches and it’s up to the supervisor and the FTOs to make sure they’re exposed to these situations in the safest way possible and that’s what I felt I was doing. That’s something very basic giving commands. Like I told you, I’m confident in my skills and my ability. I could have handled that in a heartbeat, but I’m the supervisor. My role is to supervise that scene. I realized his stress levels were high, “Hey kid, come here. This is what I want you to say.”

It appears that Cardenas provided commands in Spanish to the best of his ability during this rapidly evolving incident but failed to relay any pertinent information about what Fernandez was saying back to the Search Team. Fernandez’s comments were not known to either Leal or Neff during their decision-making process while the canine was on the bite. However, it is unknown whether that relayed information would have changed the outcome of the incident. Furthermore, although Fernandez said that the dog was “cutting” his foot, even if that had been translated and communicated to Leal or Neff, it would not have revealed to them the severity of the injury he was sustaining. Ultimately, Neff released the canine off bite when he was able to see that Fernandez did not pose a threat to officers on scene.

Leal was asked in his interview why he elected to use Cardenas for translation rather than a more experienced, Spanish-language certified officer. Leal indicated the following:

- Cardenas was already oriented to the situation because he had debriefed Castillo from the previous search. The other Spanish-speaking officer was on a perimeter post.
- The commands that Leal expected Cardenas to give were relatively routine for taking someone into custody and are extensively practiced in the Academy.
- Leal thought that by placing Cardenas on the Search Team, he was providing the new officer in training with valuable experience that he would benefit from.

IAD Recommendation:

- Provide training to all OPD Members on the importance of giving clear and concise commands, in any language, as well as making sure all information obtained from a suspect(s) is relayed when prudent and safe to do so.
- Provide training to OPD Supervisors to consider using OPD Certified Native Language (Spanish, Mandarin, Vietnamese) speakers when attempting to translate during high stress incidents.

23 Transcription of Leal’s IAD Interview (Page 137)
Equipment Assessment

Kabahit, Ladd, Singh, and Cavins are all Patrol Rifle Officers (PRO). They have been assigned the following:

- Kabahit (#b(5)(D)) Colt AR-15, Model 6920, Caliber 5.56 (Surefire Lighting Systems)
- Ladd (#b(5)(D)) Colt AR-15, Model 6920, Caliber 5.56 (Surefire Lighting Systems)
- Singh (#b(5)(D)) Colt AR-15, Model 6920, Caliber 5.56 (Surefire Lighting Systems)
- Cavins (#b(5)(D)) Colt AR-15, Model 6920, Caliber 5.56 (Surefire Lighting Systems)

As part of this administrative investigation, the Subject’s work cell phones were recovered (Upon notification from IAD Command). Internal Departmental phone records as well as the individual officers’ phones were examined for communication information in regards to this incident.

- 18 Apr 19 at 1431 hours: Wehrly had a text exchange with Captain T. Jones in regards to the administrative assignments for the canine UOF.

There was no information identified that violated OPD policy.

- **Note:** During this investigation, it was identified that M. Smith took a photograph of Fernandez’ injury with his personal cell phone. During his IAD interview, Smith stated, in regards to taking the photo, “I thought it would better serve documentation for my reports to have a visual representation of the injury.” Smith advised that he did not post it on social media and that he ultimately provided the picture to CID Investigator Vass for his investigation. Smith’s taking and usage of the photograph did not violate OPD policy.

During this investigation, it was determined that the Bearcat may have provided equipment that could have been utilized during this incident (stretcher). During Leal’s IAD interview, he advised that, although he did not request it, the Bearcat would have proven useful during this event. He went on to say that although it may not have been beneficial during the yard search (cannot drive an armored vehicle into the backyard), the equipment located on and inside the Bearcat, may have helped throughout the duration of this incident. Below is the equipment located inside and on the Bearcat:
(Ram, Hook, Hooligan, Bolt Cutters, Break and Rack Tool, Pike Pole Tool, Level 3A Ballistic Shield, Level 4 Ballistic Shield, 12-gauge Flexible Baton Munitions, 40mm Impact Munitions Liquid CS Launch-able Munitions, Burning CS Hand Thrown Munitions, Hand Thrown White Smoke Munitions, OC, Remote OC Delivery System, Spike Strip, Stop Sticks, Medical Kit Stretcher, Portable Flood Lights, 3 Dedicated High Def PDRDs w/ Magnetic Mounts, and a Magnetic White Board for Op Planning)

IAD Recommendation:
• Provide training to all OPD Members on the Equipment (including use of) located inside the Bearcat.

PDRD Assessment

This investigation evaluated the apparent compliance of involved officers’ PDRD recordings during both yard searches. The PDRD evidence captured both incidents, including the aftermath of both canine bites, involved officer’s genuine reactions, the medical care provided to Castillo and Fernandez, as well as pertinent officer discussions in regards to planning and tactics. All the associated PDRD footage was instrumental and aided this investigation. However, this investigation revealed instances where PDRD policy was not adhered to.

Overwatch member Triana was assigned to cover PRO Singh during the search of 4975 Stacy. Overwatch was positioned on the roof and had a limited view of the rear yard. As the canine searched and located Fernandez, Triana was observed on his PDRD footage (at the 08:42 mark) removing his personal mobile phone. Triana then goes on to record a portion of the canine bite with his phone.

**OPD DGO I-15.1 (Portable Video Management System) stats in part:**

*F. Personnel are prohibited from wearing or using personally owned video recording devices in place of or in conjunction with an assigned PDRD.*

In his IAD statement, Triana advised that he recorded the footage in hopes of using it later as a training video and that it was strictly for educational purposes. Triana advised that he deleted the footage a few days after the incident because it was not clear. He went on to state that he did not share the video with anyone nor did he save the video on any device.

Prior to the canine searches, Au and Mann (2A33) were directed by CHP Air support to an area with suspected heat sources. Au and Mann then advised of a foot pursuit of one suspect (Castillo). CHP Air provide the direction of flight which allowed officers on scene to establish a quick perimeter. It appears that Au failed to activate his PDRD during the foot pursuit (appears to be activated after Castillo enters the yards).

Additionally, when Kofford parked and exited her vehicle in an attempt to contact the male Hispanics she observed loitering on Skyline, Peng elected to join her during this preliminary investigation. It appears that Peng failed to activate his PDRD during this contact.

**OPD DGO I-15.1 (PDRD) all involved officers shall activate his/her camera prior to making contact in any of the following incidents:
“Any investigative encounter to confirm or dispel a suspicion that the person may be involved in criminal activity. This includes detentions, vehicle stops, walking stops and consensual encounters (contacts”).

OPD DGO M-03 (Complaints Against Departmental Personnel or Procedures) stats in part:

Class II misconduct may be addressed through non-disciplinary corrective action if all of the following criteria are met:

- The misconduct is discovered during the normal course of supervision, an investigation of other alleged misconduct, or an incident review or assessment; and
- The conduct does not indicate a pattern of misconduct, as confirmed by the member’s primary supervisor and a review of the member’s disciplinary history dating back no more than five years; and
- The conduct is not a failure to accept or refer a complaint.

A review of Triana and Au’s VISION database information does not show a pattern of similar misconduct. (Au received a training SNF [#SN-2015-11426] for a similar PDRD violation in 2015. This span of time between incidents does not show a pattern)

A review of Peng’s VISION database information does not show a pattern of similar misconduct.

It should be noted that Leal advised units on scene to clearly separate the two canine bite incidents, by turning off their PDRD, when appropriate by policy. This practice makes clear and concise video files which provided the investigator more organized information. This practice should be implemented during future deployments on large, complicated scenes.

Recommendation:

- Provide a Training SNF to Triana in regards to PDRD policy as well as addressing his Officer Safety (distracted while providing cover).
- Provide a Training SNF to Au in regards to PDRD policy.
- Provide a Training SNF to Peng in regards to PDRD policy.
- Recognize Leal for his recommendation on separating the PDRD files for ease of the investigation.

MEMBER/SUPERVISORY ACCOUNTABILITY

Leal and Wehrly’s supervision were assessed as part of this investigation.

Leal was the supervisor for the Search Team at 5007 Scotia as well as 4975 Stacy.

OPD Manual of Rules states in part:

285.00 SUPERVISORS

285.01 AUTHORITY AND RESPONSIBILITIES – In addition to the general and individual responsibilities of all members and employees, each supervisor is specifically responsible for the following:
285.14 SUPERVISION – A supervisor may be assigned to field or staff duties. During his/her tour of duty, he/she shall closely supervise the activities of subordinates, making corrections where necessary and commending where appropriate.

285.28 LEADERSHIP – Effective supervision demands leadership. Provision of leadership shall include on-the-job training as needed for efficient operation and coordination of effort when more than one member or employee is involved.

285.42 DIRECTION – Supervisors shall exercise direct oversight in a manner that ensures the good order, conduct, discipline and efficiency of subordinates. Exercise of authority may extend to subordinates outside his/her usual sphere of supervision if the police objective or reputation of the Department so requires, or if no other provision is made for personnel temporarily unsupervised. This authority shall not be exercised unnecessarily.

Leal was working at the Eastmont Sub-Station working on a Level 2 Use of Force that happened earlier in the shift when he heard, over the radio, Kofford advise of a “Code 7” (gun recovery). A few moments later, Leal advised radio that he was en-route to the scene. Leal asked what type suspects were involved and Kofford provided information related to possible robbery suspects as well as the recovery of a BB gun. Au and Mann advised of a foot pursuit and as Leal was driving to the scene, he told units on scene, over the radio, to allow CHP Air to establish a perimeter and requests to have an OPD Canine respond to the scene. Leal then told Au to shore up the perimeter and that he will brief everything once on scene.

Leal said in his IAD statement the following:

“Yes. I was driving up Golf Links, matter of fact, at that time. Um, and then it started hitting me about some e-mails that it came out, uh, earlier, uh, and I couldn't remember how recent they were, but I didn't remember seeing any canceled the want e-mails on these. And it was a robbery crew. There was up in the Skyline and Grass Valley area, which is generally a very, uh, very peaceful, uh, quiet neighborhood. And for these armed robbers to go up there and do rat pack armed robberies on people, it's pretty devastating to the community.”

Leal arrived on scene, speaks with Au, and quickly established two perimeters around scenes where CHP Air support had identified “Hot Spots.”

Leal then began to establish a Search Team for 5007 Scotia. Leal managed the following:

Prior to search

- Requested additional units (via radio) to help with securing perimeter.
- Met and briefed with Au (confirmed CID information in regards to Hispanic robbery crew).
- Met and briefed with Neff (discussed tactics and contingencies using canine).
• Met and briefed with Wehrly (IC) and Cardoza (report writer).
• Requested units (via radio) to help secure secondary perimeter around 4975 Stacy.
• Provided multiple informational updates (via radio) to keep units on scene informed and engaged.
• Authorized the deployment of the OPD canine.
• Authorized the deployment of rifles.
• Advised secondary perimeter (4975 Stacy) DAT (Anderson) to develop a plan to address and/or accept/arrest suspect(s) if needed.
• Established a Search Team to include, but not limited to: a canine, a rifle and a less lethal shot gun. Provided contingencies and a general search plan to the team.
• Established an Auxiliary DAT (offset from 5007 Scotia) to accept/arrest the suspect if needed.
• Advised units (via radio) to stay out of the yards.
• Advised radio that loud and clear canine announcement have been given.
• Confirmed medical had been staged prior to search.
• Designated a “throw and go” car.
• Confirmed the suspects’ location with CHP Air.
• Confirmed that a BB gun was located.
• Allowed for enough time to transpire to give the suspect an opportunity to surrender.
• Advised radio that the Search Team had made contact with the homeowner of 5007 Scotia.
• Confirmed the search plan with Wehrly.
• Coordinated and confirmed PDRD activation.

During Search

• As a Search Team supervisor, directed members to conduct a slow, methodical search.
• Reminded Search Team of noise and light discipline as well as 360-degree coverage.
• Directed rifles up to the front of the Search Team.
• Advised radio that the search had commenced.
• Directed Neff to not provide an additional canine announcement for officer safety reasons.
• Continued to remind the Search Team of tactical/search plans.
• Updated radio that the canine had been deployed.
• Reminded members to hand-check searched areas.
• Once Bas bit Castillo (yelling), Leal advised all members of the Search Team that the dog had made contact.
• Advised radio that the canine made contact with suspect and that they would be moving towards the dog.
• Took a position behind officers (overview) and advised the Search Team that Neff was to give commands.
• Requested that the less lethal Taser officer to be prepared.
• Directed the Search Team to move up and approach Castillo.
• Gave orders to Castillo to show his hands and to lay on his stomach.
• Directed the members to conduct a high-risk search of Castillo
• Asked if Castillo spoke English
• Advised radio that they had one dog bite and one in custody.
• Directed medical to his location to render aid to Castillo.
• Directed officers to conduct an article search of the back yard.
• Directed CHP Air to relocate to the Stacy location.

Leal then relocated to 4975 Stacy. Leal managed the following:

Prior to search

• Directed the Scotia perimeter units to re-deploy to the Stacy location.
• Directed canine announcements be given in both English and Spanish.
• Conducted a reconnaissance of the adjacent rear yard (Scotia) with Kabahit.
• Elected to establish a rear DAT (Fleming) to prevent suspects from fleeing northbound. Directed Kabahit to brief the DAT.
• Advised Anderson that he wanted a senior Officer to be involved with the rear DAT and provided brief instructions. Directed the less lethal shotgun Officer for the rear DAT to PDRD his safety check.
• Designated a “throw and go” car.
Directed the Spanish speaking Officer (Cardenas) to be on scene during the
search to assist with translation.

Reviewed contingencies dealing with multiple suspects. Planned to bring the
suspect down the hillside with dog.

Advised over radio regarding deconfliction and crossfire issues with the rear DAT.

Requested multiple ETA updates for a second medical response.

Advised Wehrly and Neff that the search plan and contingencies were similar to
the first search on Scotia.

Requested additional PROs to assist with the rear DAT.

Advised radio that he copied all rifle deployments and that they were at his
direction.

Personally provided informational updates to several area residents.

Confirmed that the rear DAT was established before specific canine
announcements were given (Spanish and English). Confirmed that the rear DAT
heard the announcements.

Confirmed with CHP Air that the suspects did not change location in addition to
how close the suspects appeared to be together.

Directed Gerrans to make contact with the homeowner of 4975 Stacy.

Directed Au to conduct a reconnaissance on the best approach to the rear yard.

Organized an Overwatch element for the roof of 4975 Stacy (4 Officers),
Requested PROs from Area 1. Authorized “Code 3” due to limited CHP air time
and distance.

Cancelled Christensen (Technician) from Overwatch (sniper element) due to
issues from previous OIS (Las Vegas).

Provided multiple situational awareness updates (via radio) to keep units on scene
informed and engaged.

Authorized a second deployment of the canine.

Allowed for enough time to transpire to give the suspect an opportunity to
surrender.

Confirmed that PDRDs were activated and provided a quick re-brief. Asked officers
if there were any questions and/or concerns.

Confirmed medical was staged prior to beginning the search.

Confirmed search plan with Wehrly and Cardoza.
During Search

- As a Search Team supervisor, directed members to conduct a slow, methodical search.
- Advised radio that the search had commenced.
- Split up the Search Team into two smaller elements for officer safety reasons.
- Directed Kabahit to unscrew neighboring flood lights for officer safety reasons.
- Directed Neff to release dog at the entry point to clear the long narrow eastern pathway.
- Provided tactical updates to Search Team members.
- Directed the first five Search Team members to move up and conduct a slow methodical search.
- Tactically positioned the five Search Team members along the norther portion of the residence in order to obtain the best viewing angle of the hillside. Reminded officers of 360-degree security coverage.
- Directed the remaining members of the Search Team (via radio) into the rear yard and positioned them accordingly.
- Advised radio that the canine made contact with one suspect. Reminded the Search Team that they only found one suspect at that point.
- Directed Cardenas to give louder commands in Spanish.
- Positioned himself in the middle of the back yard to give him an overview of the entire Search Team.
- Directed the Search Team to take [b][S][C] into custody while the dog was on bite.
- Directed Cardenas to give high risk commands to the suspects.
- Sought input from Neff on whether they should recall the canine and Neff advised that he was unable to see Fernandez’ hands. Directed Neff to keep the canine on the bite.
- Directed Arrest Team to accept [b][S][C] Asked for the Less Lethal Shot gun to assist with the remaining suspects.
- Gave directions to Cardenas on how to position the suspects. Gave reaffirmation to Cardenas.
- Advised radio that they had one dog bite and that all three suspects were compliant at that point.
- Requested medical for Fernandez.
• Devised a tactical plan to approach Fernandez on the hillside utilizing the Overwatch element.
• Continually advised radio of the Search Team’s situational updates.
• Confirmed with CHP Air that there were no additional heat sources.
• Directed officers to conduct an article search of the hillside.
• Advised that perimeter units could secure.
• Advised radio that it was secure for medical to make entry into the rear yard.
• Asked PMP if they had a rig to help Fernandez off the hill.
• Directed Amores (Trainee) to apply a tourniquet to Fernandez.
• Provided water to Fernandez.

Leal went on to confirm with Wehrly that it was a CID callout. Leal then directed all members involved to relocate to their location to conduct a de-brief as well as take care of administrative duties.

Leal elected to start providing supervision while en-route to the scene instead of waiting until he arrived at the location. This proactive and pre-emptive strategy helped secure the perimeter and his knowledge of area crime trends provided vital information to units on scene.

Once on scene, Leal met with the appropriate personnel in order to obtain the best and most current intelligence. Leal then elected to formulate a systematic and reasonable tactical plan that included the creation of a well-structured and purposeful Search Team. Leal conveyed his “initiative based tactics” plan to each member in a clear and concise manner. Leal solicited feedback and suggestions from units on scene in hopes of providing the best and safest outcome. Leal analyzed Graham v Connor throughout the entire incident and incorporated these factors into his contingencies and search plan. Leal's time management was prudent and appropriate considering all factors including, but not limited to; CHP air time and patrol resources. Leal placed the highest priority on the safety of all parties involved and mandated that a medical response be set and ready prior to any search.

During both searches, Leal effectively and appropriately directed the members of his Search Team into advantageous positions in order to provide the highest probability for a tactically sound and safe outcome. Leal gave clear direction and advice during these chaotic scenes. Leal took a position that provided him with an overview of the entire scene, allowing him to disseminate directives effectively to his Search Team members. Leal constantly provided radio updates which allowed all parties on scene, including the Incident Commander, to stay engaged and informed. Leal provided positive affirmation as well as constructive criticism during and after the searches. Leal used his vast tactical experience to help facilitate an efficient and thoughtful search.

This investigation found that Leal’s supervision, leadership and direction during this incident was exceptional and noteworthy. Leal did not violate policy and/or procedure as it pertains to a supervisor’s responsibility.

25 Initiative-based tactics are tactics that are driven by the actions and initiative of the individual.
IAD Recommendation:

- Based on the evidence and factors above, this investigation recommends a finding for Leal’s Supervision as “EXONERATED.”

Per previous EFRB recommendations, Lieutenant T. Mork analyzed Wehrly’s role as an Incident Commander during this event.

The following is Mork’s assessment:

Did Lt. Wehrly properly command this incident in accordance with the law and OPD policies?

This investigation looked at the overall command of this incident as to whether the Commanding Officer, Lt. Wehrly, conducted overall command as directed by policy.

234.00 COMMANDING OFFICERS

234.01 AUTHORITY AND RESPONSIBILITIES – Subject to direction from higher command, a commanding officer has direct control over all members and employees within his/her command. In addition to the general and individual responsibilities of all members and employees and supervisory officers, a commanding officer is responsible for the following:

234.12 COMMAND – The inspection, direction, and control of personnel under his/her command to assure the proper performance of duties and compliance with established rules, regulations, policies and procedures. Providing for continuation of command and/or supervision in his/her absence.

When evaluating if Wehrly properly and effectively supervised this scene, this investigation looked at the following.

1. How Wehrly became aware of the incident and what brought him to the scene.
2. How Wehrly supervised the scene up to the point of the k-9 UOF.
3. How Wehrly supervised the scene post UOF.

Lt. Wehrly was assigned as the Area 2 Watch Commander (3L82) on the night of this incident. He was responsible for the overall supervision of all Area 2 resources. He stated that he heard the dispatched call of a robbery in the area of Grass Valley Road and Skyline Boulevard. He also heard Officer Kofford come on the air and advise of Code 33. In his statement, Wehrly said that he responded to the area of the call about 10 minutes after the incident began. He stated that, “…I started making my way up there given the sheer nature of, uh, just the amount of resources that were going up there, right. There was a lot of resources. Headed up that way. And uh, I felt it was in the best interest of, uh, uh, of everyone to have, uh, overall, uh, senior supervision.” This statement indicates that Wehrly was actively monitoring the situation as expected of the watch Commander. Once on scene, Wehrly met with Sgt. A. Leal who was the on-scene supervisor.

Once on scene Wehrly advised radio that he was on scene and was talking over command of the incident. Wehrly met with Leal, who had established a DAT, and was briefed on the incident. Wehrly stated that based on the fact that they had reasonable suspicion that the suspects were wanted for armed robbery, as well as the fact that a firearm had been recovered and that the suspects matched the description from a recent series of robberies from the same area, he
authorized the use of the K-9 for the search of the suspects. Prior to deploying the Search Team, Wehrly ensured that medical was staged with visual confirmation of the ambulance. Additionally, Wehrly assigned Sgt. Cardoza as the perimeter supervisor and Sgt. Fleming as the supervisor of the Stacy Street location.

Wehrly ensured that prior to the search that the pre-search announcements were given in English prior to initiating the yard search of 5007 Scotia. Once suspect(s) was taken into custody, Wehrly was advised of the Level 2 UOF K-9 bite. The suspect was transported to ACH for medical clearance. Wehrly indicated that they moved the Search Team to the second location, 4975 Stacy St., where a briefing was held by Sgt. Leal. Based on the fact that the first suspect spoke only Spanish, Wehrly had Ofc. Gerrans and Ofc. Cardenas give the pre-deployment announcements in English and in Spanish. Wehrly stated that they waited for approximately 30 min after the announcements were given before conducting the search to provide the suspects ample time to surrender. Wehrly indicated that based on the terrain of the back yard, they requested additional resources to the scene to provide Overwatch for the Search Teams. Since the search element/DAT was now at Stacy St., Wehrly had Sgt. Fleming assemble a second DAT and placed them at the rear of the search location to address any suspects that fled on foot. Prior to the search for the suspects, Wehrly again ensured that an ambulance was on scene by visually confirming they were present. The Search Team was deployed, and three suspects were located and taken into custody. One suspect was bitten in the lower calf by the K-9. The bite wound was severe and the suspect was transported to ACH for medical attention.

After all the suspects were arrested, Wehrly began to evaluate whether this incident was going to be Level 2 UOF investigation or a Level 1 UOF investigation. Wehrly reviewed DGO K-4 and also consulted with BFO 1 Watch Commander, Lt. Lozares, on his interpretation of the policy. Wehrly was aware that Lozares was the coauthor of the UOF policy DGO K-4. Wehrly stated that he ultimately decided that this case would be investigated as a Level 2 UOF based on the fact that the criteria for a level 1 UOF had not been met because Fernandez, although he sustained a serious injury, he did not lose consciousness. So, based on the fact that DGO K-4 states that a K-9 bite is a level 2 UOF, he assigned Sgt. Cardoza as the investigator.

Based on the totality of the incident, Lt. Wehrly was actively involved in this incident from the beginning to the end. He heard the call on the radio and made the proper assessment that he should respond and assume command. He met with and received a briefing from Sgt. Leal on the contingencies for the Search Team. He also properly assessed the need for a dedicated radio channel and for all non-incident related radio traffic to be handled on Patrol 1. He assigned supervisors to cover the perimeter and second search location. He ensured proper pre-K-9 search announcements were given at the first location and waited 30 minutes for the suspects to surrender prior to beginning the search. He recognized that the first suspect was Spanish speaking only, so he had the next pre-search announcements given in English and Spanish languages. He again received a briefing from Sgt. Leal on the contingencies and waited for at least 30 minutes after the announcements to begin the search. Wehrly also ensured that an ambulance was on scene prior to beginning the search at both locations. After the incident was concluded Wehrly began to assess if this should be a Level 1 UOF investigation. Wehrly reviewed the policy and consulted with the other on duty Lieutenant. He took about 30 minutes to make the decision that this would be a Level 2 UOF.
DGO K-04 defines, in part, a Level 1 Use of Force as:

Serious bodily injury, to include:
   a. Any use of force resulting in the loss of consciousness; and [emphasis added]
   b. Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis.)

OPD contracted with K-9 Subject Mater Expert (SME) Brad Smith who, as part of his analysis of this incident, provided an opinion on whether this incident should have been a level 1 UOF or a Level 2. Smith stated in his written report that this incident was a level 2 UOF incident.

Based on the investigation, Wehrly was actively in command of this incident. He made clear and thoughtful decisions and followed all policies. His interpretation of K-04 was correct and his not elevating this incident to a Level 1 UOF was reasonable. Based on the above, the most appropriate finding is **EXONERATED**.

**DEPARTMENT POLICY AND PROCEDURE REVIEW**

A goal of the review is to determine if there was compliance with existing policy and procedures. Part of this assessment may include the need for revisions to policy, procedure and training. In addition to training, policy will also be examined when necessary. As part of their examination, FIS determines if the Department General Orders are being properly translated through training into practice in Field Operations. A list of department publications reviewed for this investigation include:

- **Oakland Police Department General Order K-03** (Use of Force)
- **Oakland Police Department General Order K-09** (Canine Program)
- **Oakland Police Department General Order K-04** (Reporting and Investigative Use of Force)
- **Oakland Police Department General Order I-15.1** (Portable Video Management System)
- **Oakland Police Department General Order M-03** (Complaints Against Departmental Personnel or Procedures)
- **Oakland Police Department Training Bulletin I-M** (Contacts, Detentions, and Arrests)
- **Oakland Police Department Information Bulletin** (Perimeters – Supervisor responsibilities)
- **Oakland Police Department Information Bulletin** (High Risk Incident Response)

This investigation identified a key directive in DGO K-04 that appeared to be the determining factor in deciding the ultimate level of force classification of the second canine bite. DGO K-04 states in part the following:

Serious bodily injury, to include:
   a. Any use of force resulting in the loss of consciousness; and
b. Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis.)

The use of “and” instead of “and/or” was the deciding factor in determining the level of force (canine bite of Fernandez) to be a Level 2 instead of a Level 1. Wehrly believed that a loss of consciousness must be in conjunction with serious disfigurement in order for the force to be identified as a Level 1.

Although Wehrly did not violate policy and or procedure, this decision potentially compromised the administrative function of this investigation, by two (2) days, to include:

- Immediate sequestering of parties involved.
- Expeditious voluntary CID statements.
- Immediate lockdown of all associated PDRD video.
- Immediate retrieval of members work phones.
- Immediate examination of location and witnesses by CID as well as IAD.

It is recommended that the Department review DGO K-04 to determine if the above conjunction (and) was written intentionally and for a specific reason, with the understanding that the use of the word “and”, rather than “or”, led to this incident being investigated as a Level 2 at the outset.

This investigation reviewed OPD DGO K-09 in reference to canine announcements. K-09 states in part:

The warning announcement shall be made, in English, in a loud and clear voice or over a public-address system, when appropriate (i.e., considering time of day, search area, building configuration, atmospheric conditions, and geographic location.)

If there is information that the subject or residents in the affected area understand a language other than English, a reasonable attempt shall be made to summon a police officer qualified to translate the warning announcement in that language.

During the first set of canine announcements at 5007 Scotia, it was unknown to officers, at that point in time, that Castillo did not understand English and claimed to only speak Spanish.

Leal stated in his IAD interview, “Those announcements were only done in English. I had, uh, had no corroborating evidence to think that anyone spoke a different language other than English up there. I’m familiar with the neighborhood for the past 15 plus years and it’s definitely not a predominant, uh, or it’s a predominant English speaking neighborhood. Uh, once that person was taken into custody, that’s when I realized that he was acting like he didn’t speak English. And then we made that adjustment for the next search and we did announcements in English and Spanish.”

Both English and Spanish announcements were given at 4975 Stacy.

SME Smith advised that the Los Angeles County Sheriff utilizes a pre-recorded canine announcement in both English and Spanish.
Due to the large number of different cultures and languages spoken in Oakland, it was recommended (during a case update meeting) that a pre-recorded message be transmitted on all future canine deployments and that the policy should be updated to reflect these changes.

On 21 Aug 19, Canine Division Sergeant, J. Perrodin sent the following email to all active Canine Officers:

*Sgt. Inez Ramirez has sent a link to audio announcements which will be accessible via box.com. Please use before any search deployments, per Lt. Gonzales. Announcements are available in English, Spanish, Cantonese and Vietnamese.* ([Link](#))

These languages were chosen as they are the most commonly spoken languages in the City of Oakland.

This investigation also identified several issues associated OPD’s Canine Division. A review of numerous documents, including but not limited to: policies and procedures of the canine unit, a review of training records of canines and handlers, a review of how canines are certified or de-certified, a review of how canine handlers are certified or de-certified, as well as a review of the command and control of the canine unit identified potential deficiencies with the Division, as a whole. This investigation identified the following:

- Lack of a fulltime Sergeant assigned to the unit for supervision.
- Training records lacking in specific information.
- Lack of clear policy on certification/de-certification of canines.
- Lack of clear policy on certification/de-certification of canine handlers.
- Lack of policy that covers who is in charge during a canine deployment.

This information, along with a formal request (memorandum) to conduct an audit, was provided to Chief Kirkpatrick on 31Jul19. On 11Aug19, Lt. Mork advised that the Chief approved the memo and forwarded it to the Office of the Inspector General (OIG) to conduct a comprehensive audit of the canine program.

**DISCREPANCIES**

The following discrepancies were discovered, evaluated and determined to be consistent with auditory, perceptual and visual discrepancies that can occur during high stress critical incidents. They did not affect the investigation or the recommendations. The below discrepancies have been clarified based on PDRD/surveillance footage, statements and CAD:

OPD Dispatch advised officers that the suspect of the robbery call was a Male Black.
- This issue was addressed above in what appears to be a translation issue with the third-party translation service. The suspect was ultimately determined to be a dark skinned Male Hispanic.

OPD Dispatch advised officers during the incident that area residents had called describing possible Male Blacks in their backyards.
- This again was not the case as PDRD coupled with positive identification showed that the suspects were male Hispanics.
During his CID Witness interview, Pacely said that he observed officers point their guns at Castillo.
- Reports and PDRD footage show that only Kabahit pointed his firearm during this incident.

During his IAD interview, Neff was unsure if the Bearcat or the Armored Suburban may have been on scene during the incident.
- The Bearcat and the Armored Suburban where not utilized during this event.

During his IAD interview, Neff stated that he was unable to clearly see both of Castillo’s hands during the dog bite. This statement is supported by, and consistent with, PDRD footage in which Neff is repeatedly saying that he can’t see Castillo’s hands. The discrepancy lies in Neff’s report, which states, “It looked like the S1 was punching “Bas” in the face area with one hand while the other hand was holding his collar.” The report goes on to say, “I gave S1 multiple commands to show us his hands. S1 did not comply.” By Neff writing that one of Castillo’s hands was on the collar and one was hitting the dog, he gives the impression that both hands are accounted for. However, it is more likely than not that Neff’s statement to IAD that he could not see both of Castillo’s hands is accurate based on the following:
- Neff was found to be credible in his statement to IAD
- Neff’s statements on PDRD were considered to carry more weight as they were spontaneous in the moment.
- Neff’s report was in the ‘draft’ status, and he had not been given the opportunity to proofread or make clarifying edits to his report prior to being put on Administrative Leave.

During his IAD interview, Leal said that during the second search (4975 Stacy), he believed that there were no new officers on the Search Team that were not on the Scotia search.
- PDRD and CAD information shows that there were new members on the second search to include Cardenas as well as the Overwatch element.

During her IAD interview, Kofford said that the Toyota Camry was parked behind the Infinity. Kofford’s report stated that the Toyota was in front of the Infinity.
- PDRD video shows that the Toyota was parked in front of the Infinity.

**TRAINING RECOMMENDATIONS**

A global analysis on tactics and training is an important aspect of the review process. In addition, a vital theme that should run through the whole review process is, how do we, as an agency, take constructive steps to improve in areas that have been identified as in need of repair or refinement? This is a systematic approach, ensuring that the lessons learned - both successes and failures - are identified and followed up on.

Prior to this incident, all the individuals received OPD Departmental training via Basic Police Academy, Power DMS and/or Continued Professional Training.

This investigation determined that the following recommendations did not contribute to OPD using force, nor did they create a situation where OPD was compelled to use force during this incident.
This investigation has made the following recommendations regarding this incident for the EFRB to consider and address.

- It is recommended that the Department provide training to OPD Supervisors (via Continuing Professional Training) on the capabilities and the parameters on what a canine is capable of and/or permitted to do, during a deployment.

- It is recommended that DGO K-04 be reviewed to understand if the conjunction “and” (as noted earlier in this report), was written purposely for a specific reason. If no specific reason is identified it is recommended that the policy to be changed to reflect the more appropriate verbiage to judiciously identify correctly, future Uses of Force.

- It is recommended that the Department provide a reminder to Canine Handlers on making sure they relay the canine’s capabilities to members of the Search Team/DAT, prior to a deployment.

- It is recommended that the Department provide training to all OPD Members on the importance of giving clear and concise commands, in any language, as well as making sure all information obtained from a person(s) in a language other than English is relayed back to officers on scene, in English, when prudent and safe to do so.

- It is recommended that the Department provide training to all OPD Members on the importance of confirming directions (OPD directions versus true compass direction) with outside agencies before conducting any yard search (consider using plain speak).

- It is recommended that the Department provide training to OPD Supervisors to consider potentially sequestering involved members when a Use of Force is being evaluated for the appropriate force level.

- It is recommended that the Department provide training to OPD Supervisors to consider using OPD Certified Native Language (Spanish, Mandarin, Vietnamese) speakers when attempting to translate during high stress incidents.

- It is recommended that all OPD personnel receive formalized training on the Equipment (including use of) located inside the Bearcat. (Excluding equipment that is only authorized to be used by the Tactical Team)

- It is recommended that all OPD personnel receive refresher training on utilizing a Ballistic Shield (when available) to provide cover when there are limited cover options available.

- It is recommended that all OPD personnel receive refresher training on considering using the Bearcat and/or the Armored Suburban as rolling cover for Designated Arrest Teams.

- It is recommended that the Department provide training to all OPD Members to consider requesting more than one ambulance when there is a potential for more than one subject to get injured.
• It is recommended that Triana receive training regarding PDRD policy as well as addressing his Officer Safety (distracted while providing cover).

• It is recommended that Au receive training regarding PDRD policy.

• It is recommended that Peng receive training regarding PDRD policy.

• It is recommended that Dispatcher 7 (C. Martinez 4178) receive training regarding relaying all pertinent information provided by a victim of a violent crime and the implications it may have on officer safety.

• It is recommended that the Third-Party Translator Service be contacted and addressed about the Departments concerns in clearly clarifying words that may have more than one meaning and the implications it may have on officer safety.

• It is recommended that Kabahit receive positive recognition for his tactical and medical aid contributions during this incident (application of a tourniquet).

• It is recommended that Leal receive positive recognition for his tactical leadership during this prolonged incident.

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APPENDIX A

All additional electronic audio/video media files, documents, policies, and reports that are linked to in this report are contained in the folder “190416_Links” on the hard drive where this report resides. **NOTE**: Do not change the name of this folder, the name of any of the files, or the location of these files. Doing so will prevent the links from working as designed.

All additional electronic audio/video media files, documents, policies, and reports relevant to this report, but not directly linked to in this report, are contained in the folder “190416_Appendix Documents” on the hard drive where this report resides.