

# CONFIDENTIAL

## ADMINISTRATIVE INVESTIGATION REPORT

San Leandro Police Department  
Officer-Involved Shooting, April 18, 2020  
April 2021

Contract Investigators:  
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## OVERVIEW OF INVESTIGATION:

On April 18, 2020, Officer Jason Fletcher of the San Leandro Police Department (“SLPD”) used deadly force in a confrontation with an individual named Steven Taylor at the Walmart on Hesperian Boulevard. The second SLPD officer on-scene was Stefan Overton, who used his Taser seconds after the shooting in further response to Mr. Taylor’s actions. The two officers then approached Mr. Taylor, handcuffed him, and began to render medical aid. Mr. Taylor was transported to the hospital but died from a single gunshot wound to his chest.

In keeping with standard protocols in Alameda County, a criminal investigation was immediately initiated. This included a response by detectives from SLPD’s “Crimes Against Persons” division, and notification of the relevant representative from Alameda County’s Office of the District Attorney, which is responsible for conducting a “parallel but separate” investigation into the incident.

Here, a significant amount of evidence was available and obtained by the handling investigators. This included forensic evidence of various kinds, audio recordings of 911 calls and radio traffic, and audio/video recordings from the two involved officers and from a bystander who recorded the event on her cell phone. Additionally, investigators interviewed 10 eyewitnesses who had been in the Walmart when the shooting occurred and said they had seen relevant aspects of the incident. Finally, the two officers who used force (Jason Fletcher and Stefan Overton) sat for separate, voluntary interviews with the investigative team.

The completed SLPD criminal investigation was submitted to the Alameda County District Attorney’s Office for review. On September 2, 2020, District Attorney Nancy O’Malley announced that her Office was charging Officer Fletcher, who fired the single shot that struck and killed Mr. Taylor, with Penal Code Section 192(a): Voluntary Manslaughter.

Apart from that prosecution (which is still pending at the time of this Report’s preparation), San Leandro Police Department Policy requires an administrative investigation of involved officers “to determine conformance with Department policy.” (Policy 305.7). In conjunction with the City, the Department delegated the responsibility for that investigation to OIR Group, an independent team of police practices experts that is located in southern California. Acting under the authority of the Chief of Police, OIR Group members Michael Gennaco and Stephen Connolly conducted the investigation that produced this Report.

## METHODOLOGY:

Investigators Gennaco and Connolly were provided with access to the complete criminal investigation file that was compiled by detectives from the San Leandro Police Department.<sup>1</sup> Apart from reviewing those materials, they interviewed SLPD Officers Dennis Malley (who was asked to be a witness in his capacity as a subject matter expert and trainer for the Department in the area of Taser use) and Stefan Overton (who was a subject of this investigation based on his response to the scene and his own use of less lethal force in the incident). These interviews were conducted remotely and recorded digitally.<sup>2</sup> Each was also transcribed by Cron & Associates Transcription, Inc.<sup>3</sup>

Though Officer Jason Fletcher's retirement from the Department meant he was no longer obligated to cooperate with the administrative investigation, Gennaco and Connolly contacted him through his counsel to request an interview. He declined to participate.<sup>4</sup> Nonetheless, consistent with best practices and based on the available evidence, this Report includes an analysis of Officer Fletcher's actions<sup>5</sup> in light of SLPD Policy as it existed on the day of the incident.<sup>6</sup>

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<sup>1</sup> The detective investigative report and exhibits is attached to this report as Attachment A.

<sup>2</sup> The recordings of those interviews are attached to this report as Attachments B and C respectively.

<sup>3</sup> The transcripts of those interviews are attached to this report as Attachments D and E respectively. However, the most accurate record of those interviews are the recordings themselves.

<sup>4</sup> A copy of the letter confirming Fletcher's decision not to cooperate is attached to this report as Attachment F.

<sup>5</sup> Because Fletcher is no longer employed by the San Leandro Police Department, he cannot be subjected to adverse disciplinary consequences as a result of any finding of policy violations. However, an analysis of his conduct to Departmental policy and expectations is important for other reasons including providing important "lessons learned" for current and future members of SLPD.

<sup>6</sup> Several relevant SLPD policies have been updated/revised since April 18, 2020 to reflect new state standards for the use of force and other operational issues. A copy of the SLPD "Use of Force" and "Conducted Energy Device" policies that were in effect at the time of the incident is attached to this report as Attachment G; others that are referenced are unchanged since the date of the incident and are part of the current SLPD manual.

## FACTUAL BACKGROUND:

On April 18, 2020, SLPD received a call for service from the Walmart located on Hesperian Boulevard. The call involved an individual later identified as Steven Taylor, age 33, who was allegedly shoplifting and had brandished a bat at a store employee.

Former Officer Jason Fletcher had been parked behind the store and was the first Department member on-scene. He re-parked in front and approached the Walmart as Dispatch updated the call details; it was approximately 3:12 PM. After speaking just outside the store with a security employee who had called 911 and gaining more information about the subject (including that he was still in the store, and that he had been “hostile” with the bat toward a store associate), Former Officer Fletcher entered the Walmart to contact another security officer and ascertain the subject’s specific location. He noted the arrival in the parking of a partner officer, Stefan Overton, before making entry.

Soon after entering the store, former Officer Fletcher realized that the subject was near the check stands at the front of the store and approximately 15 feet away from him. Mr. Taylor was holding a metal baseball bat in his right hand. Former Officer Fletcher immediately approached him and attempted to take the bat from Mr. Taylor, first grabbing his forearm and then grabbing the bat itself. Taylor refused to comply, instead raising the bat, and taking a few steps back as Fletcher repeatedly instructed him to drop the bat.

Officer Fletcher had withdrawn his firearm from its holster with his right hand as Taylor initially stepped away from him; within seconds, he also took out his Taser with his left hand. He activated the Taser trigger and Taylor took steps backward in response, but continued to hold the bat as Officer Fletcher advanced on him and deployed the Taser a second time.

Taylor bent over, still holding the bat in two hands and continuing to focus on Fletcher, and then took several halting steps in Fletcher’s direction as the officer issued more commands. When Taylor was some six or seven feet from him, Officer Fletcher fired one round from his duty weapon and struck Taylor in the chest. Less than 40 seconds had passed since Officer Fletcher’s initial arrival inside the Walmart.

Running from his own car in response to the radio communications (which included Officer Fletcher announcing he had used his Taser), Officer Stefan Overton was just entering the Walmart as the shot was fired. (He later said he mistook the noise for another Taser activation by Officer Fletcher.) Overton came up to a position a step or two nearer to Taylor than Officer Fletcher was positioned and withdrew his own Taser.

As Fletcher radioed “shots fired” and as Mr. Taylor staggered back, rotated away from the officers, dropped the bat, and took a few halting steps away from the officers, Officer Overton deployed his own Taser. Officer Fletcher then initiated a third trigger activation of his Taser as Mr. Taylor dropped to the ground.

The two officers worked together to handcuff Taylor and then began to render medical aid. Mr. Taylor died at the scene.

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## APPLICABLE POLICIES:

This investigation addressed the actions of the two officers who used force. Officer Jason Fletcher activated his Taser three times, and fired one fatal shot with his duty weapon. Officer Stefan Overton activated his Taser a single time.

Those force deployments are assessed below in the context of the officer’s tactics, decision-making, and obligations under state law and SLPD Policy. Specifically, the investigation reaches conclusions about whether the uses of force were or were not justified and consistent with the following, as they existed and applied on April 18, 2020.

California Penal Code 835(a)

SLPD Policy 300: Use of Force, with specific reference to

- 300.3: Use of Force
- 300.3.2: Factors Used to Determine the Reasonableness of Force
- 300.4: Deadly Force Applications
- 300.4.2: Force De-Escalation

SLPD Policy 304: Conducted Energy Device, with specific reference to

- 304.4: Verbal and Visual Warning
- 304.5.1: Application of the Taser Device

SLPD Policy 426: Portable Audio/Video Recorders, with specific reference to

- 426.3: Policy

## INTERVIEWS OF INVOLVED OFFICERS:

### **Officer Jason Fletcher**

Officer Fletcher was interviewed on April 19, 2020 by SLPD detectives and representatives from the Alameda County District Attorney's Office. A summary and transcription of that interview is included within Attachment A (SLPD investigative case file and exhibits).

In February of 2021, Officer Fletcher – now retired – was contacted through his attorney about participating in the administrative review process. Citing the pending criminal case, the lawyer informed us that Fletcher would not be available for an interview.

### **Officer Stefan Overton**

Officer Stefan Overton was interviewed on April 19, 2020 by SLPD detectives and representatives from the Alameda County District Attorney's Office. A summary and transcription of that interview is included within Attachment A (investigative case file and exhibits).

Officer Overton was initially interviewed as a subject of this administrative investigation on February 24, 2021. The interview was conducted remotely. A transcript and recording of that interview are attached as Exhibits C and E. The following is a summary of that interview:

Officer Overton was hired by SLPD in 2018, went through the academy, and completed his field training in July of 2019. He was also asked about the Taser he deployed during the incident. The Department had received new Tasers in January of 2020, and Officer Overton described the differences between the new and prior models.

Asked about the day of the incident, Overton recounted that it was his normal shift and assignment. He described Officer Fletcher as his "beat partner" because of their adjoining areas of responsibility in the city. He talked about hearing the call at Walmart come out over the radio, and his thoughts as he responded, and some confusion as to the specific nature of the suspect's behavior. He spoke of being on the radio with Officer Fletcher when he was "about 15 seconds out" from arriving on scene, and hearing Fletcher respond he was "at the check stands." He said he was still in his car and arriving when he heard "Taser deployed" over the radio.

Officer Overton attributed Fletcher's not waiting for him, or otherwise communicating a plan with him, to the happenstance that Fletcher was already on-site. He said he assumed Fletcher was "probably trying to figure out the exact problem." After hearing "Taser deployed," he had a number of questions, but: "All I knew is I'm here now so I need to get in there as quick as I can to help him out or help someone out if they're hurt or if the Taser deployment is successful and they're on the ground, get this person handcuffed so we can get them detained..."

He went running into the location to assist. As he crossed the threshold of the doorway, he heard a loud "pop" that he interpreted as a second Taser deployment by Officer Fletcher. As he oriented himself to the scene and observed Fletcher and Mr. Taylor, he noticed Taylor "wielding the bat in his hand in a bladed stance" and visually "locked in" on Fletcher in what Officer Overton described as an "angry glare." He also noticed a Taser wire connected to Taylor and assumed that deployment had not been successful.

He explained that he then decided to use his own Taser with an eye toward trying to achieve the "neuromuscular incapacitation" of Taylor that Fletcher's Taser use had seemingly not accomplished. He described his next actions as follows:

So, that's when I withdrew my taser, with my off-hand, switched it over to my right, activated it, and the subject, when he had the bat in his hand, starts walking -- starts to his right, and towards the remainder of the store. I used my taser and the subject goes down immediately, so I knew I had an effective taser deployment. (Overton First Administrative Interview at 17.)

Officer Overton was then asked clarifying questions about specific aspects of his account. He explained in more detail his perception that additional force was needed, citing the fact that Taylor was still holding the bat, that the previous Taser deployments had seemingly not affected him, and that he was within six or seven feet and "could easily start attacking Officer Fletcher." He also cited the potential threat to the crowd of bystanders in the store.

Asked about his perception of Fletcher's gun shot as a second Taser deployment, Officer Overton speculated that his expectation, based on past experience, was that a firearm would have been definitively louder, particularly indoors.

He then explained that he opted for a Taser over his own firearm because of his confidence in that option and his belief that supplementing Officer Fletcher's prong could achieve incapacitation. He said that had Taylor's actions been more aggressive

(as in “charging” or “in mid-swing”) he would have switched to his gun.

Officer Overton said Taylor’s actions after his deployed his Taser led him to believe it had been effective. He was then asked about timing issues in relation to other observations (including the hole he observed in Taylor’s chest and hearing Fletcher say “Shots fired”). He said that he noted the hole “almost instantaneously” after his Taser activation, then heard Officer Fletcher and realized that a shot had been fired.

He talked as follows about Taylor’s movements after the Taser was activated:

So, my recollection is when my taser was deployed, bat was in the subject's hand, and that he took a step back and then fell to the -- and turned to the right and fell straight forward, so landed on his chest. (Overton First Administrative Interview at 25.)

He also expressed his belief that an additional Taser deployment by a second officer would be consistent with Department policy under the relevant circumstances.

He then briefly described his additional actions in assisting with the handcuffing process, putting out additional radio traffic, running out to his car to obtain a trauma kit after backup officers arrived, and applying a chest seal.

He said he activated his body-worn camera as he was exiting his car upon arriving at the Walmart.

Officer Overton was then asked some procedural questions about the investigation and incident aftermath. He said he had not been interviewed by anyone apart from the statement he gave to detectives on the day after the incident. He described giving his “public safety statement” to the sergeant who responded in the field that afternoon, and then driving himself back to the station, where another officer sat with him until he was informed that that interview would be the next day and he could go off-duty.

The interview then re-visited certain aspects of his actions during the incident. He re-described making entry into the Walmart, hearing the “pop” while still well behind Officer Fletcher and with an obstructed view, and then drawing even with him by the time he took hold of his own Taser and then deployed it. He talked about focusing on the subject and not remembering a view or impression of Fletcher at that point.



Next was a discussion of the Department's use of force policy as it applies to Tasers and the factors that influenced Officer Overton's decision to deploy. He again listed the metal bat (and its extended reach), the proximity of Taylor to Officer Fletcher, the concerns about the ineffective Taser use by Fletcher, the possibility that Taylor was under the influence of a narcotic or otherwise "fighting through" the Taser, his uncertainty about what had happened prior to the officers' arrival on scene, and the need to get Taylor "safely detained."

Under additional questioning, Officer Overton described the bat as a "factor" in his threat perception. He went on:

...for me, the most significant part of it was the fact that I perceived two taser deployments were done by the time that I had arrived and that the subject was either fighting through it or they weren't successful and that he presented a threat to Officer Fletcher prior to my arrival and, I think, that was more so the most significant part and just having a metal bat on top of that is what encapsulates it all together. (Overton First Administrative Interview at 45-46.)

Asked about his reliance on Officer Fletcher's earlier efforts and threat perception, Officer Overton described his understanding of the need to "make the decision on my own," but described Fletcher's apparent prior assessment as "one of the factors that I was putting in the perspective with knowledge I had."

He was then asked about whether the bat was "significant" to his threat assessment, and he replied that it was.

Officer Overton was then asked about his understanding of the "warning" component of the Department's Taser policy, and explained the rationale behind it. He then said that his own choice not to issue a warning in this instance was driven by his recognition that Fletcher's deployment had already occurred without prompting Taylor's compliance, and that he was therefore unlikely to surrender regardless of that step. He then added he did not believe he had time.

Officer Overton then acknowledged his understanding that, per policy, "mere flight" would not suffice as a justification for Taser use.

Asked about guidelines or restrictions on Taser use by multiple officers, Officer Overton said he had been trained that deployments should not exceed a total of three, and should not involve simultaneous cycles. He said he believed Officer Fletcher's (mistakenly perceived) second deployment cycle as being over by the time he activated his own Taser.

After a discussion about the “laser pointer” capability of the new Taser model, Officer Overton said he did not recall exactly where the laser indicators were in this instance. He also said he did not notice any blood stains on the floor until after he deployed, and described stepping over blood as he himself moved forward as the cycle continued.

Officer Overton then responded to another question about the bat by saying it fell to the ground after his deployment.

He also denied having any familiarity with a technique that would involve a single officer having both a Taser and a firearm in different hands at the same time, saying that he had never been trained in that.

He also discussed some of the advantages of developing a plan with a partner officer or officers before engaging with a subject.

He was also reminded of his interview for the criminal investigation, when he had the opportunity at the end to review his body-worn camera footage for the first time. He had no additional information to offer at that time, and reiterated that position here, saying “It doesn’t change my recollection of the events.”

Officer Overton’s attorney then asked a series of questions about the qualities of the Taser, the factors and information affecting Officer Overton’s sense of urgency in responding to the scene, the officers’ familiarity with the Walmart as a source of calls for service, and his observations upon arriving into the store. All were consistent with earlier statements.

Asked whether he heard either Officer Fletcher or Taylor say anything before hearing Fletcher say, “Shots fired,” Officer Overton said no. Nor did he himself say anything before deploying his Taser.

After some final questions about the medical aid that was rendered, in keeping with training and expectations, the interview concluded.

#### *Follow-Up Interview*

On March 25, 2021, investigators conducted a second administrative interview of Officer Overton to address a specific issue: the discrepancies between Officer Overton’s description of the incident and the relevant recorded evidence, including his own body-camera recording. The interview was conducted telephonically, and Officer Overton was again represented by his attorney. A transcript and recording of the interview are attached as Attachments H and I respectively. The following is a summary of that interview:

Officer Overton explained that he had last reviewed his body-worn camera recording prior to the interview on February 24. He was asked whether he remembered it sufficiently to answer questions about it, or whether he would like to take time to see it again. He said he had a “clear recollection” of the video.

Asked about the sequence of events as reflected in the video, and whether he concurred that Mr. Taylor had in fact dropped the bat and turned away from the officers prior to Officer Overton’s Taser deployment. After some attempts at clarification the following exchange occurred between Officer Overton and his counsel:

SHEA: Let's -- so, why don't we ask, and forgive me for interrupting, but Officer Overton, do -- based on what you know sitting here today, is there -- is there a significant distinction between what you viewed on the video and your recollection of the incident?

OVERTON: No, sir. (Overton Second Administrative Interview at 6.)

From there, Officer Overton’s lawyer led him on a review of his mindset and responses in responding to the call, entering the Walmart, and encountering Mr. Taylor. Officer Overton restated his recollection of the timing of events. He described Taylor rotating to his right, but maintained that his recollection was that the bat was in his hands, and that the bat dropped “simultaneously” with his activation, or “as a result” of the activation.

Under further questioning from his lawyer about other potential considerations, apart from the bat, Officer Overton mentioned the potential danger to the public and the possibility that he was armed with something else. He was then asked again, and directly, about the video:

SHEA: Okay. And then in reviewing the body-worn camera video, what's your recollection in reviewing it as to the relationship in time to when he drops the bat and when you deploy your Taser?

OVERTON: From my recollection of the video, it's almost simultaneously.

(Overton Second Administrative Interview at 6.)

Asked for further clarification as to Mr. Taylor’s turning to his right as he was establishing a target with his Taser, Officer Overton described this as accurate, and maintained that Taylor’s stance with the bat meant he perceived him to be ready to swing as a baseball player would.

He was asked one last question about the body-worn camera recording, and responded as follows:

CONNOLLY: I'm just going to try this one more time and I'll try to be as simple and straight forward as possible, and I really just want to focus on the -- on the body-worn camera video and -- and Officer Overton's having reviewed it. So, my question is after having watched the video, was there any aspect of that that was surprising to you or differed in a significant way from your actual recollection, or your original recollection or perception of events?

OVERTON: No. (Overton Second Administrative Interview at 17.)

# INVESTIGATIVE FINDINGS: Former Officer Fletcher

## ***Use of Deadly Force:***

The key issue in this administrative investigation is whether former Officer Fletcher's use of deadly force against Steven Taylor complied with applicable Department policy at the time of the incident. The Department's Use of Force Policy (300.3) makes reference to the following core principle:

Officers shall use only that amount of force that reasonably appears necessary given the facts and the totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. (Penal Code Section 835a.)

Separate sections of SLPD policy pertained to the factors used to determine the reasonableness of the force (300.3.2) and the justification for applications of deadly force. The policy manual also contained a section dedicated to "Force De-escalation" (300.4.2). It began as follows:

De-escalation tactics and techniques are those actions undertaken by an officer(s) to avoid physical force during confrontations unless physical force is immediately necessary to protect someone or stop dangerous behavior. De-escalation tactics and techniques shall be employed to increase the likelihood of voluntary compliance and cooperation and thereby avoid force, especially deadly force, but only when the totality of the circumstances and time permit de-escalation methods that may be safely utilized by officers.

Significantly, the SLPD force policy made overt reference to Penal Code Section 835(a), which became the state's prevailing legal standard on January 1, 2020. That section refines the prior standard by incorporating an overt definition of the "totality of the circumstances" that is to be used to assess the reasonableness of a given force deployment. It reads as follows:

"Totality of the circumstances" means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of force.

Put another way, it incorporates factors prior to the actual “moment of trigger pull” as a means of expanding the frame in determining the reasonableness and necessity of the force per statute.

This notion of “totality of the circumstances” bears on the analysis in this case. As Officer Fletcher stated in his voluntary interview, he perceived an imminent threat from Mr. Taylor based on the subject’s proximity, his lack of compliance with orders to drop the bat, and his brandishing of the bat that was consistent with an intent to assault him with it. He articulated his perspective in the following passage:

I was - it was - he was comin' to kill me. He - he's not comin' to give me a hug. He's not comin' to say, hey sorry about that. He's got wires in him. I've shocked the shit out of him twice. I don't know if he's crazy. I don't know if he's on drugs. He's comin' to kill me. And I'm not gonna die in a fuckin' Walmart.

(Fletcher Criminal Investigation Interview Transcript at 33.)

These elements go to the officer’s state of mind that is a well-established aspect of deadly force. However, the *overall* reasonableness of the deadly force turns also on Officer Fletcher’s decision-making, his failure to de-escalate, and the extent to which his own actions contributed to the final sense of threat he experienced when firing the fatal round. We discuss these factors below.

### **A. Failure to Wait for Backup**

As detailed above, former Officer Fletcher told detectives that he waited until he saw the backup officer drive into the Walmart parking lot before he entered the store. Fletcher said that he decided to then enter the store to talk to security to learn where the subject was located. Fletcher said the security guard pointed out the subject (later identified as Steven Taylor) close to the front of the store. Fletcher immediately engaged the subject, closed distance, and grabbed the bat. According to Fletcher, Taylor jerked the bat away, asked Fletcher “what are you gonna do, shoot me” and “do it”, and Fletcher said he told Taylor that was not “part of the plan”, ordered him to drop the bat, and deployed his Taser without warning.<sup>7</sup> Fletcher then repeatedly instructed Taylor to “get

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<sup>7</sup>Because Fletcher did not timely activate his body-worn camera, the audio of the initial conversations between the officer and Taylor were not captured. A cell phone recording of the incident that was posted on Twitter picked up the following audio exchange:

Fletcher: “put the bat down, if you don’t drop that bat.”

Taylor: “bust then n\*\*\*\*\*, bust then, bust then bro.”

Fletcher: “drop the bat, drop the bat.”

Taylor (after Officer Fletcher draws his taser): “you going to have to, you going to have to.”

the bat down” and “drop the bat”. Fletcher activated his Taser again, and then when Taylor moved forward fired one shot.<sup>8</sup> Officer Overton was entering the store at this point and running toward the encounter; still several feet behind Fletcher, he mistook the sound of Fletcher’s shot for an additional Taser deployment. Fletcher then activated his Taser a third time after Officer Overton had deployed his own Taser on Taylor.<sup>9</sup>

As the above description details, Officer Fletcher initiated the encounter and exercised multiple force options before Overton had arrived or was in position to assist. Accordingly, Fletcher’s decision-making left him to deal with Taylor without the presence or assistance of a backup officer, thereby narrowing his tactical options and contributing to his own perception of elevated threat.

For example, the lack of a backup officer on scene removed the opportunity for lethal cover as Fletcher deployed the Taser. During his interview, Fletcher expressed concern that Taylor might strike him with the bat and take his firearm, a possibility that would have been greatly reduced by a second officer’s presence. Fletcher’s stated concern that Taylor would aggress the crowd would also be better addressed if a second officer was already on scene.

The decision to enter Walmart alone also took away the chance to coordinate with Officer Overton. The chance to plan helps officers to engage more effectively and increases the chances of safe incident resolution. Instead, Officer Fletcher’s hasty solo entry not only left himself at a disadvantage but also put Officer Overton in a position of spontaneously reacting to a dynamic situation, with a deficit of knowledge as to what had transpired. This posed obvious challenges to Officer Overton’s “read” of the situation; in fact, he mistook Fletcher’s deployment of deadly force for a second Taser activation.

As officers are universally taught, two officers on scene increases the availability of other tactical options. Two officers on scene also increase the likelihood that a subject will voluntarily acquiesce to instructions and increase officer safety. As a result, the diminished threat when two officers are on scene reduces the likelihood that the officers will need to resort to deadly force.

Here, Officer Fletcher’s decision to enter the scene by himself instead of waiting the few additional seconds that it would have taken for Officer Overton to join him, and which

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<sup>8</sup>SLPD investigators calculated that Taylor staggered forward approximately six feet before Fletcher fired.

<sup>9</sup> Former Officer Fletcher did not recount this third activation of the Taser when he spoke to detectives.

was not otherwise warranted by exigency,<sup>10</sup> was tactically flawed in ways that contributed to his eventual perceived need to use deadly force.

## **B. Failure to Effectively Deploy De-Escalation Tactics.**

At the time of the incident, California Penal Code Section 835(a) required that peace officers use “deadly force only when necessary in defense of human life,” and accordingly, that officers use “other available resources and techniques,” such as tactical repositioning or de-escalation, if it is “reasonably safe and feasible to an objectively reasonable officer.” And, as detailed above, SLPD policy similarly required that de-escalation tactics and techniques be employed to increase the likelihood of voluntary compliance and cooperation and thereby avoid force, especially deadly force, when feasible.

Even though former Officer Fletcher advised interviewing detectives that he had been trained in principles of de-escalation, he did not effectively deploy de-escalation tactics after he arrived at the Walmart. As detailed above, instead of waiting for his backup officer to arrive, Fletcher entered the store and encountered Mr. Taylor within seconds. Then, instead of giving Taylor instructions, Fletcher immediately approached Taylor, closed distance, and grabbed for the bat.

Former Officer Fletcher said that he calmly told Taylor to put the bat down and when Taylor asked if he was going to shoot him, told Taylor “that’s not part of the plan, man,” as examples of his trying to de-escalate the situation.

However, instead of trying to further reason with Taylor, Fletcher admittedly and immediately deployed his Taser twice without providing a warning on either occasion and in contravention of Department policy. SLPD’s Taser use policy advises officers to provide a verbal warning prior to deployment:

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

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

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<sup>10</sup> In fact, Officer Fletcher explained in his interview that his intention was to speak with security as to the subject’s location.



Once the Taser was deployed, Fletcher told detectives he closed distance between himself and Taylor to within three to five feet. As a partial consequence of this proximity, once Taylor staggered toward Fletcher, the officer deployed deadly force instead of attempting to create distance or seek cover.

Consistent with principles of de-escalation, SLPD's use of force policy (Section 300.3) contains an express advisement that prior to the application of force, officers should give a warning when feasible.

If feasible, prior to using force which carries a significant risk of serious injury, officers are recommended to give warning that such force may be used.

In contravention of this policy, former Officer Fletcher did not provide a warning to Mr. Taylor prior to the application of deadly force. In his interview with detectives, Fletcher said there was no time to do give such a warning. However, the reason there was not time to provide Mr. Taylor with a warning was due to Fletcher's precipitous choice to close distance and engage.

Fletcher failed to use time, distance, conversation, or other de-escalation tactics in his encounter with Taylor. As detailed above, Fletcher failed to slow down the encounter so that his backup officer could arrive to assist. As a result, Fletcher placed himself in a vulnerable position, alone and close to an individual armed with a bat. Due to Fletcher's tactical decision-making, when Taylor moved toward Fletcher, the officer immediately responded with deadly force.

### **C. Failure to Deploy Crisis Intervention Techniques.**

Former Officer Fletcher admitted that he had received departmental training in crisis intervention techniques and had received certification for completing a course designed to provide officers awareness and tactical tools in dealing with those going through mental health crises. While Fletcher told detectives that he had no information that the subject was mentally ill, in his interview with detectives, Officer Fletcher cited numerous examples of how Taylor was not behaving rationally:

Normally you don't rob a store with a bat unless you're willing to bash somebody's head in. And it's the equivalent to killing a fly with a hammer. You can strong arm it, but there's no need to bring a bat, especially in a store like Walmart where it's very well known that they're hands off.

[...]

And he said, "What are you going to do, shoot me?"

[...]

And he's yelling, "Do it. Do it then."

[...]

I don't know if its drugs. I don't know if it's crazy, but it is not typical behavior when you're confronted by a police officer.

[...]

He wanted me to shoot him.

[...]

I don't know if he's crazy. I don't know if he is on drugs.

Despite these repeated assertions that the subject was acting irrationally, and a belief that he wanted the officer to shoot him, Fletcher said he had no information regarding any potential mental illness. More significantly, there is no evidence that Fletcher availed himself of any different tactics or approaches in dealing with those in mental health crises commensurate with the crisis intervention training he had received. As a result, all of the learning provided Fletcher that individuals going through mental health crisis may behave irrationally, not be able to comply with orders, and may react poorly to shows of force and barking orders was not implemented by the former officer in dealing with Mr. Taylor. Had a different approach been taken, the use of deadly force might have been avoided altogether.

#### **D. Use of Taser and Firearm Simultaneously in Contravention of Policy and Training.**

Video of the incident shows that after the initial confrontation with Mr. Taylor, former Officer Fletcher drew his firearm and kept it unholstered until he fired. Shortly thereafter, Fletcher unholstered his Taser with his left hand and deployed it on Taylor, with his gun still unholstered. Fletcher activated the Taser a second time and then with the Taser still unholstered, fired his gun, killing Taylor.

SLPD policy (Policy 304(c)) and training disapproves of an officer having his gun and Taser unholstered simultaneously:

Officers should not hold both a firearm and the TASER device at the same time.

The reason that this deployment is not approved is that when an officer has both weapons out, there is a significant likelihood of confusion under stress and the resultant deployment of a different weapon than the officer intends. Per Officer Dennis Mally's witness interview:

MALLY: We should avoid doing it -- it doesn't say "shall." It says that we "should" avoid it so there's no accidental discharge if you meant to -- if you meant to discharge your taser, that you're not sympathetic with the opposite hand and using your firearm at the same time. We discourage it, we don't have it as a "shall not," but "should not."

GENNACO: And you don't train that way? Is that right?

MALLY: Correct. We do not. (Mally Interview Transcript at 16.)

Former Officer Fletcher told detectives that he practiced with both weapons out of the holster "on his own" and had been provided such training by SLPD although he admitted that such use was not "preferred." However, as indicated by Officer Mally, SLPD does not train officers to deploy with both weapons out of the holster. And it is improvident and contrary to the concept of unified procedures for an officer to "practice" a technique that is expressly disapproved in his agency's policy and training.

Fletcher told detectives that he kept both weapons out of his holster because of "exigent circumstances". However, it was Fletcher's actions that created those exigent circumstances. Had Fletcher waited a few more seconds before engaging with Mr. Taylor, he could have planned an approach with Officer Overton. As noted above, with two officers, one could assume the role of "lethal cover", freeing the second officer to deploy a Taser. In fact, Officer Mally advised that this approach was part of the training that has been provided to SLPD Officers. The fact that an "exigency" created by Fletcher's rushed engagement with Taylor does not provide a justification to go outside SLPD policy and have both weapons out of the holster at the same time.

And while former Officer Fletcher denied that he mistakenly shot Mr. Taylor when he intended to deploy the Taser a third time, his mere denial is not sufficient to eliminate the strong possibility of a mistaken discharge of his firearm.<sup>11</sup> There was little difference presented in threat level presented by Taylor between the second activation of the

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<sup>11</sup> In fact, he was asked about whether he considered trying a third activation prior to using deadly force, his stated rationale was as follows:

He was too close, and I had already gone through two cycles with him. The efficacy of the taser declines after each time - each cycle that you go through. Um, and he had fought through two already. The second one seemed to affect him less than the first one. And he was still coming at me with the bat. (Fletcher Criminal Investigation Interview Transcript at 43.)

This explanation, however, is inconsistent with his subsequent third deployment of the Taser, which is discussed in more detail below.

Taser and the use of deadly force, other than Taylor taking a staggered couple steps toward Fletcher. While the prior deployment of the Taser did not have the desired effect of neuromuscular capacity, Fletcher admitted that it did have some observable painful effect on Taylor but that he had “powered through” the initial deployment. The fact that Fletcher only fired one round is further evidence that Fletcher may have actually intended to activate his Taser a third time; officers rarely fire only one round when deploying firearms. Even Officer Overton mistakenly thought that Fletcher had activated his Taser as he came up on the scene based on the information he was processing. Perhaps most significantly in this regard, Fletcher did in fact activate his Taser a third time *after* he shot Taylor.<sup>12</sup>

### Pertinent Provisions of SLPD Policy

SLPD’s Use of Force Policy recognizes that officer decision-making and the way they decide to approach situations is a key factor in whether the use of force becomes necessary:

300.3 USE OF FORCE: Officers have the ability to impact the direction and outcome of many situations they handle, based on their decision making and tactics they choose to employ.

The policy further recognizes how distance can be effectively used by officers to keep them safer while they devise more effective force options.

[O]fficers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of force options.

As detailed above, SLPD further advises officers to provide a warning to a subject before application of force, something that former Officer Fletcher did not do prior to the first application of the Taser, the second application of the Taser, the use of deadly force, and the third application of the Taser.

SLPD’s use of force policy at the time of the incident expressly stated that one of the factors (Policy 303.3.2 (j)) in considering the reasonableness of the force is:

The availability of other reasonable and feasible options and their possible effectiveness.

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<sup>12</sup> Pursuant to a detailed analysis of both officers’ Taser data that was conducted by the manufacturer at SLPD’s request, it was determined that Officer Fletcher “trigger activated” his Taser three times. There was a 13-second delay between the first and second activations, and a 14-second delay between the second and third.

In this case, there were other options available to former Officer Fletcher. First, he could have waited for his backup officer to arrive, increasing the opportunity for planning, reducing the risk to both officers, and providing more tactical options short of the application of force. Second, he could have slowed down the encounter, using time, distance, reasoning, and other de-escalation skills in an effort to resolve the conflict short of force. Fletcher could also have taken advantage of his crisis intervention training and considered alternative approaches to immediately encountering Mr. Taylor and forcing the eventual conflict. Fletcher could also have created a scenario whereby warnings could have been safely and effectively conveyed to Mr. Taylor prior to deployment of both the Taser and the firearm. And finally, Fletcher could have deployed his Taser and firearm consistent with policy and training to avoid the possibility of mistakenly using one weapon when the intent was to deploy the other.

Former Officer Fletcher advised detectives that he used deadly force because the use of the Taser did not stop the threat presented and Mr. Taylor began to advance on him holding the baseball bat. Fletcher estimated that Taylor was three to five feet from him, but the video evidence places the two men farther apart when Fletcher shot Taylor.

Fletcher said the bat was down by his side, but that Taylor was beginning to bring up the bat. While it cannot be denied that a bat can be a weapon capable of inflicting serious injury, the fact that Fletcher found himself in the situation that he did, as explained above, was largely a result of decisions he made prior to the use of deadly force. It was Fletcher that chose to immediately engage Taylor rather than wait for backup, not maintain distance and a position of safety, not attempt to use de-escalation or crisis intervention tactics to defuse the situation and place himself in a position of peril. As a result, when Taylor staggered a couple of steps toward Fletcher, that forward movement could be perceived as a deadly threat. Even then, and perhaps because he was now holding both weapons, Fletcher apparently did not consider creating distance from Taylor as the man staggered forward, choosing to discharge his firearm instead.

Under a “totality of circumstances” analysis, precipitous conduct by officers that increases the threat to them should be considered in evaluating the reasonableness of the use of deadly force. Here, there were numerous decision-points preceding the application of deadly force where Fletcher did not consider ways of handling the situation that could have precipitated a different result. As a result, former Officer Fletcher should be found to have violated the relevant SLPD policy regarding the use of deadly force.

### ***Third Activation of Taser***

Former Officer Fletcher's use of the Taser is also subject to review pursuant to the Department's Use of Force Policy and, specifically, its "Conducted Energy Device" policy. Given the circumstances with which former Officer Fletcher was presented, his use of the less lethal Taser for two activations in an effort to subdue Mr. Taylor and take him into custody were justified,<sup>13</sup> though the aforementioned lack of a verbal warning, failure to wait for back up, failure to use de-escalation techniques, and failure to take advantage of his crisis intervention skills are also problematic with regard to the use of the Taser for the reasons described above. Most significantly, the third activation is differently situated and particularly problematic.

As noted above, former Officer Fletcher activated his Taser a third time after he had shot Taylor. By then, the bat had fallen to the floor, Taylor had staggered away from the officers, and Officer Overton had deployed his Taser. This fact was not realized by the investigators until after receiving the data analysis from the Taser manufacturer. (This was on April 29, 2020 – eleven days after the shooting. See footnote 11, above.)

In his voluntary statement for the criminal investigation, Officer Fletcher's apparent belief was that he had only activated the Taser twice. Officer Fletcher's unavailability for additional questioning obviously limits the analysis as to his rationale for the third activation. However, the objective evidence that *is* available indicates for various reasons that the threat level justifying the use of the Taser per SLPD Policy was no longer applicable to Mr. Taylor.

Accordingly, Fletcher should be found to have violated the applicable provision of the Department's "Conducted Energy Device" policy regarding the third deployment of his Taser. (304.5.1)

### ***Portable Audio/Video Recorder Activation***

San Leandro Police Department policy regarding the use of Portable Audio/Video Recorders is found at 426.3:

Unless it is unsafe or impractical to do so, personnel shall make a reasonable effort to activate their PVRs [Portable Video Recording System] cameras *prior to making contact* in any of the following incidents:

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<sup>13</sup> This conclusion in no way should undercut the conclusion reached here that Fletcher's use of deadly force was not appropriate: the authorized use of the Taser requires a significantly lesser degree of threat and is assessed under different standards.

- (a) Enforcement encounters where there is a reasonable suspicion the person is involved in criminal activity. This include, but is not limited to, dispatched calls as well as self-initiated activities. [Emphasis added.]

As detailed above, former Officer Fletcher was outside the back of the Walmart when he heard a radio call regarding criminal activity inside the store involving a man wielding a baseball bat. After Fletcher entered the store, he made contact with Mr. Taylor and immediately tried to take enforcement activity by reaching for Taylor's arm and the bat that Taylor was holding. As he admitted during his interview to detectives, Fletcher turned on his PVRS when he parked his patrol car, but did not activate his PVRS until after he deployed his Taser. As a result, the PVRS did not capture the audio of Fletcher's initial encounter with Mr. Taylor.

Fletcher told detectives that he did not activate his PVRS until *after* he made contact with Taylor because he had not expected to make that contact as soon as he did. Fletcher said that Taylor was much closer to the entrance of the store than what he had been told, and that, accordingly, there was not sufficient time to activate his PVRS.

Fletcher's explanation for not activating his PVRS sooner does not align his actions with Department policy or expectations. Though he may have been surprised to be encountering Mr. Taylor so soon after entering Walmart, Fletcher could have, and should have, activated his PVRS as he initially responded to the call for service and made his way toward the store's entrance. The radio dispatch provided information that an individual at the location was involved in "criminal activity" (petty theft upgraded to robbery). Officer Fletcher's activating of his PVRS as soon as he received the call and began to respond to it, or at least as soon as he arrived at the dispatch location, would obviously have eliminated the issues of safety and impracticability that are recognized as exceptions to the policy requirements.

On this issue, the comparison between Officer Overton and former Officer Fletcher on their activation of their PVRS devices is instructive. Officer Overton activated his PVRS as he responded to the Walmart call and while still in his patrol car. As a result, there is a video and audio account of Officer Overton as he parked his car and entered the store. In contrast, because former Officer Fletcher did not timely activate his PVRS device, critical audio information regarding the encounter between him and Mr. Taylor were not captured.

Former Officer Fletcher should be found to be in violation of San Leandro PD Policy 426.3 for his failure to timely activate his Portable Video Recording device.

# INVESTIGATIVE FINDINGS: Officer Overton

## *Use of Taser*

### Officer Overton's Description of Events:

As detailed above, Officer Overton responded to the Walmart to a brandishing a bat call. As he told detectives, as he was pulling into the parking lot, he heard former Officer Fletcher broadcast that he had deployed his Taser. Officer Overton said he ran from his car and entered the Walmart where he saw Fletcher with a subject (later identified as Steven Taylor) holding a bat. Body-worn camera recordings show him hurrying to reach Fletcher's location as the fatal shot is fired. Overton then moved slightly ahead of his partner officer, drew his Taser, deployed it at Mr. Taylor, and then assisted Fletcher with securing the fallen subject and beginning to render aid.

Describing his own actions for the criminal investigation, Officer Overton inaccurately recalled being side by side with former Officer Fletcher as he first got into position after arrival, with Taylor about seven feet away from them. Overton said he then heard a pop and believed that Fletcher was deploying his Taser again, but it did not seem to affect Taylor. Overton said he deployed his Taser at that point. He said that he then realized that Taylor had a hole in his chest, heard Fletcher say, "shots fired," and only then recognized that Fletcher had shot Taylor with his firearm. Officer Overton said that Taylor had walked away from the use of deadly force as if very unfazed by it, but that he saw Taylor fall to the ground after he deployed his Taser.

In his administrative interview, Officer Overton presented a more accurate version of his initial positioning. He said that he heard the "pop" that he thought was a second Taser deployment as he crossed through the doorway of the Walmart, a point at which he could only see the back of Officer Fletcher's head as a result of dividers obstructing his view, and could not see Taylor. Here, his version largely re-aligned with his initial statement. He said he then ran up to where Fletcher was standing, was side by side with him and seven feet away from Taylor, unholstered his Taser and then deployed it on Taylor, causing the subject to go down immediately. Officer Overton said that Taylor was stationary when he was first able to visualize him and then recalled Taylor's taking a step or turning his body to his right.

As with his statement to criminal investigators, Officer Overton said that *after* he deployed his Taser, he heard Officer Fletcher radio "shots fired," saw a hole in Taylor's chest, and saw blood on the floor as his Taser was still cycling.



Officer Overton said that in assessing the threat level presented by Taylor, he considered the fact that there had been two unsuccessful prior Taser deployments by Officer Fletcher and the fact that Taylor was still armed with a bat. Officer Overton said he did not believe he had time to issue a warning to Taylor, as encouraged by SPLD policy.

Officer Overton said he understood that SPLD policy did not authorize the deployment of a Taser for “mere flight.”

Additional Evidence:

A review of Officer Overton’s body-worn camera footage establishes that the sound of a shot occurs as he was running and just entering the Walmart store. Officer Overton then continued to run up to and a bit past Fletcher’s location. At that point, Officer Overton unholstered his Taser with his left hand and transferred the weapon to his right; blood from Taylor’s wound was already clearly visible around his position on the white floor.

As Officer Overton raised the Taser to a shooting stance and turned it on, Taylor appeared to flip the aluminum bat away, where it clattered to the floor in Fletcher’s direction. Taylor then took a step or two away from the officers, with blood on the floor in his wake, and Fletcher broadcast “shots fired” over the radio. It is then, after more steps away by Taylor, that Officer Overton trigger activated his Taser; he then instructed Taylor to “go down” (as did Fletcher). Mr. Taylor then fell to the floor.

Approximately three seconds transpired between the time the bat is dropped and when Officer Overton activates his Taser. At the time of the Taser deployment, Taylor is clearly no longer holding a bat, has moved some distance away from both the bat and officers (but not in the apparent direction of any other individuals in the store), and is bleeding profusely and visibly from his gunshot wound.

As Officer Overton is running to assist former Officer Fletcher, he has limited information about Taylor. He has been advised over the radio that the subject was carrying a bat. As he arrives at the parking lot, Fletcher radios that he had deployed his Taser. As he enters the store, he hears what he believes to be a second Taser deployment, but is in fact a gun shot.

Officer Overton runs up to, and a bit past, where Fletcher is standing without communicating with Fletcher or obtaining information from his partner about the threat level presented by the subject. Instead, Officer Overton unholsters his Taser, transfers

it to his right hand, brings it up to a ready position, and then deploys. However, *before* the deployment of the Taser by Officer Overton, several relevant things have occurred. Already shot by Fletcher, Taylor has begun to bleed visibly on the floor, has flipped the bat out of his own hands and sent it clattering to the floor, has turned away from the officers, and has taken a couple of halting steps away from them.

Each of these factors is objectively discernible from a review of the video recordings.

In this case, the greatly diminished threat presented to Officer Overton by the time he discharges his weapon is apparent. And Officer Overton cannot rely on the fact that Fletcher had deployed his Taser to justify his own deployment without additional information. In fact, Officer Overton received no information about the observations made by his partner officer that caused him to deploy his Taser (and his firearm) and made no effort to obtain that information. And had Officer Overton slowed down his response, it would have given him time to fully process that Fletcher had just shot Taylor.

Most significantly, at the time Officer Overton discharged his Taser, the threat level presented by Taylor was significantly diminished. The bat had fallen to the floor, Taylor had been grievously wounded and was moving away from the officers, in an apparent attempt to flee the weaponry that had been used on him. As detailed above, under SLPD policy, mere flight is insufficient to justify use of the Taser.

Nor was there any information to indicate that after Taylor was shot, he presented a viable threat to either the officers or the other individuals in the Walmart, since there was no indication that he was otherwise armed and since the shot to his torso had neutralized any threat. Finally, Officer Overton did not provide a warning to Taylor before he deployed the Taser or consider use of other de-escalation techniques; if he had, he would have had more time to fully assess the threat level presented after his partner had shot Taylor. In sum, the threat level confronted by Officer Overton when he did activate his Taser had diminished past the point of its being justified or consistent with policy.

While there was an insufficient basis to justify the Taser deployment by Officer Overton, it should be noted that in responding to the incident, he was sufficiently disadvantaged by the decision-making of his partner, former Officer Fletcher. As detailed above, instead of providing the opportunity for his backup officer to arrive on scene, formulate a plan, and coordinate a safer detention strategy, Fletcher unnecessarily forced the response by himself, requiring Officer Overton to respond to tactical decision-making and weaponry deployment that he had no ability to observe first-hand or assist. While

the tactical disadvantage caused by former Officer Fletcher limited Officer Overton's response options, it does not excuse Overton's inappropriate use of his Taser, but should be rather seen as mitigating that decision.

We find that the facts establish that Officer Overton's deployment of the Taser against Mr. Taylor violated SLPD's use of force and use of Taser policies.

**FINDINGS: Violation of SLPD Conducted Energy Device Policy (304.5.1): SUSTAINED  
Violation of SLPD Use of Force Policy (300 et al): SUSTAINED**