

# An Independent Sufficiency Review Report Regarding the Urbana Police Department's Use of Force Investigation

Regarding the April 10, 2020 Incident with Aleyah Lewis

CONDUCTED ON BEHALF OF THE CITY OF URBANA

Final Report

September 3, 2020

*Confidential and Proprietary*



HILLARD  HEINTZE®  
Protecting What Matters®

September 3, 2020

Mayor Diane Marlin  
City of Urbana  
400 S. Vine Street  
Urbana, Illinois 61801

Dear Mayor Marlin:

We are providing the results of our independent sufficiency review of the administrative investigation and use of force review by the Urbana Police Department (UPD) conducted regarding an officer's use of force when arresting Aleyah Lewis on April 10, 2020.

We independently reviewed the UPD's internal examination of the incident as well as reports, documents, photographs, written and video evidence to assess the UPD's policies and whether the UPD's internal examination adhered to these policies. We reviewed the UPD's use of force policy and how it compares to national best practices and standards. We also engaged community stakeholders regarding their perception of and expectations for the UPD regarding use of force.

Our principle finding is that the use of force in this case was **consistent with the UPD's use of force policies** and that the UPD Use of Force Review Board's determination is **supported by a preponderance of the evidence**.

We also identified areas of improvement for policy and procedure with a goal of reflecting evolving national standards and community standards. We commend your commitment to an independent sufficiency review of the incident, which demonstrates your goals of transparency and community focus.

As with any of our reports of this nature, Hillard Heintze stands behind these findings as (1) objectively determined; (2) accurately reported; (3) legally acquired; (4) compliant with all relevant laws, policies, procedures and regulations; (5) comprehensive in scope to the best of our ability; and (6) collected with discretion, investigative diligence and professional respect – for the UPD and its employees, the involved parties and the stakeholders, including their privacy, interests and relationships.

Thank you for your trust in our team.

Sincerely,  
HILLARD HEINTZE LLC



Debra Kirby  
Senior Vice President, Operations



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## 01 Introduction

### ASSIGNMENT

On June 19, 2020, the City of Urbana engaged Hillard Heintze to conduct an independent third-party sufficiency review of the Urbana Police Department's (UPD) review of an officer's use of force during an interaction with Ms. Aleyah Lewis on April 10, 2020. The City also requested that Hillard Heintze review the UPD's use of force policies and engage with key community stakeholders to discern their perceptions of and concerns with the incident.

The City asked Hillard Heintze to provide a written report summarizing the review and its determination, as well as a summary of the community engagement.

### THE HILLARD HEINTZE TEAM

Director Mark Giuffre led the engagement with support, as needed, from Vice President Marcia Thompson, Senior Investigator Shirley Colvin, Investigator James Jones and the broader Hillard Heintze team.

Senior Vice President, Operations Debra Kirby provided management oversight for this engagement.

### ACTIONS TAKEN

#### Materials Reviewed

The UPD provided Hillard Heintze with the following materials, which we reviewed.

- Various police reports concerning the use of force incident (**Appendix A**)
- Booking photographs (**Appendix B**)
- Body-worn camera (BWC) and squad car camera footage (**Appendix C**)
- 911 call dispatch and radio traffic concerning the use of force incident (**Appendix D**)
- Publicly sourced videos of the incident (**Appendix E**)
- Training records (**Appendix F**)
- UPD use of force policies and procedures (**Appendix G**)
- Use of force investigation reports (**Appendix H**)
- Use of Force Review Board memorandum (**Appendix I**)
- Public City Council Presentation (**Appendix J**)



### **Interviews Conducted**

We interviewed the following representatives from the UPD. We have summarized these interviews in **Appendix K**.

- Sergeant Cortez Gardner, who conducted the use of force investigation
- Detective Lieutenant David Smysor, who is the supervisor of the Use of Force Review Board
- Detective Sergeant Tim McNaught, who is the coordinator of the Use of Force Review Board



## 02 Summary of the Incident

We compiled our summary of this incident based on the information the UPD provided. We provided an independent review of the internal review and did not conduct a further investigation of this incident.

### **Initial Report of Subject**

On April 10, 2020 at approximately 4:34 p.m., Champaign County 911, the police dispatch center, received a call from a person who provided her name and address. She reported that on Cottage Grove Avenue near 1102 East Colorado Avenue, she observed a young African American male wearing a black coat and blue-jean jogger who “shot himself,” had “the gun in his hand,” “hiding it in his pants” and walking up and down the street. The caller further reported that a young African American female with a ponytail and wearing a black crewneck was with the subject with a gun. The caller stated that the gun’s magazine fell out of the gun onto the ground and the subject with a gun picked up the magazine and put it back in the gun. The caller reported that the male and female were walking towards the Dollar Tree store.

At approximately 4:36 p.m., radio dispatch reported to officers a “possible shooting on Colorado and Cottage Grove.” Dispatch reported the caller “said she heard a loud pop and there was a gentleman walking up and down Cottage Grove with a gun in his hand. He looks like he is wounded and there is a black female with him.” Dispatch reported it was a, “male Black, wearing black coat, a pair of blue jean type joggers, or blue joggers. She said that the magazine fell out of the gun, he then picked it up and put it back in the gun and put the gun in his waistband. There was a Black female with him, with some sort of crew neck shirt, walking up and down Cottage Grove.” UPD officers acknowledged the information from dispatch.

### **Officers Arrive at the Scene**

Officers Kamden Kauffman, Joshua Jeffers and Oliver Marquez arrived in the area from the north near the 1700 block of Cottage Grove and saw a male and female walking north near Cottage Grove Avenue and Burkwood Drive. Kauffman, Jeffers and Marquez stopped and detained the woman, patted her for weapons and did not locate any.

Sergeant Michael Cervantes parked his squad car at an angle facing southeast on the east side of Cottage Grove Avenue at the intersection with Glenwood Oak Court and began to walk into the park to approach the male subject. At about this time, Marquez observed two additional subjects, later identified as Kamarion Busby and Aleyah Lewis, near 1806 Cottage Grove Avenue, walking on Cottage Grove Avenue in the direction of Cervantes. Busby and Lewis matched the clothing description and were in the location that dispatch had reported. At approximately 4:40 p.m., Marquez radioed his sighting of Busby and Lewis walking north on Cottage Grove Avenue. Cervantes looked in that direction and observed Busby walking with a limp. Busby was wearing a black coat and blue-jean joggers. Cervantes reported he also observed Lewis behind Busby to the left, following him and appearing to “plead” with him.



### **Detainment of Busby and Initial Interactions with Lewis**

Cervantes started to return to the front driver's side of his squad car for cover, radioed that he would be in front of Busby and Lewis, removed his handgun from his holster, pointed it towards Busby and Lewis and loudly shouted to them, "Hey buddy, show me your hands. Show me your hands. Show me your hands. Both hands! Show me your hands. Both hands. Come over this way man. Hands! Keep your hands where I can see them!"

Busby lifted his arms to his side at shoulder length. In BWC footage, Cervantes can be heard saying, "Dude, we got a report of somebody with a gun. Get down on your knees." Busby and Lewis remained standing. Busby took two steps towards Lewis. Cervantes said, "Get down on your knees. Both. Hey! Down on your knees." Lewis squatted down in a half-seated position while still on her two feet.

At approximately 4:41 p.m., Officer Eric Ruff parked his squad car next to Cervantes' car. Ruff exited his car with his patrol rifle and stood behind the passenger side rear bumper of Cervantes' car with his rifle pointed in the direction of Busby and Lewis. Ruff shouted to Busby and Lewis, "Get down on your knees right now! Down on your knees," while simultaneously pointing with his left hand in a downward motion. Busby bent down towards the pavement. Cervantes loudly stated to Busby and Lewis, "Do not reach!" Busby stood back up. Lewis said, "You do not have a description of us." Cervantes transmitted a radio request for an officer to cover Cottage Grove Avenue coming from the South side.

Ruff loudly stated, "Get down on the ground right now," Lewis said, "Fuck you." Ruff stated, "Keep your hands away from the waist." Busby walked eight steps to the side of the road and got on his stomach on the ground in front of Lewis with his hands near his body. Lewis was on the ground on her knees with her hands close to her body. Lewis and Busby were talking to each other. Cervantes asked, "Are you hurt man?" Ruff stated, "Keep your hands away from your waist." Lewis responded, "Am I hurt?" Ruff stated, "Arms out to your side!" Cervantes asked, "Dude are you hurt?" Busby and Lewis both replied, "No." Cervantes stated, "OK. You were limping a little bit." Lewis said, "You got the wrong people."

Ruff stated, "Put your arms out to your side. Thank you. Both of you." Lewis and Busby moved their arms away from their bodies. Cervantes stated, "Ma'am, get down for me. Just get all the way down." Lewis said, "Come on now," as she got on her hands and knees, then onto her stomach. Marquez arrived and stood behind and to the right of Ruff. Ruff stated, "Male, stand up for me now. Stand up for me." Marquez said, "Stand up. Walk towards us." Ruff stated, "Keep your hands away from your waist." Busby began to stand up. Ruff said, "Keep your hands away from your waist!" Marquez stated, "Stand up." Ruff stated, "Stand up." Busby stood up with his hands beside his waist. Marquez stated, "Hands above your head!" Busby stepped forward with his hands beside his waist.

Ruff shouted, "You want to get shot? I will shoot you, do you understand?" Busby raised his hands and held them at shoulder level. Marquez stated, "Walk towards us," and motioned with his hand for Busby to come forward. Lewis stated, "I hope you alls body camera is on!" Cervantes replied, "It's on." Ruff stated to Busby, "If you put your hands by your waist again, you will be shot. Do you understand?" Busby put both of his hands in the air above his head. Lewis asked, "Are you alls body cameras on?" Cervantes replied, "Yes it's on." Ruff stated, "Hands up. Walk straight towards me" Busby began





walking towards the officers with his hands above his head. Ruff stated, "You put your hands towards your waist you will get shot. Do you understand?" Busby walked slowly towards Cervantes and Ruff with both of his hands in the air

Lewis yelled, "How come you all searching us because of what somebody else said? [Inaudible], so you can get your job done and I can go the fuck home."

Busby walked with a limp and with his hands still in the air towards Cervantes. Ruff ordered him to, "Walk towards me, Towards me!" As Busby got closer, Ruff observed that Busby was stumbling from side to side and had droopy eyes. Busby was again walking towards Cervantes who was on the left, rather than towards Ruff and Marquez who were on the right. Marquez stated to Busby, "Over here, towards us." Lewis got off her stomach and onto her hands and knees. Busby continued walking towards Cervantes. Ruff told Busby, "Towards me!" Marquez loudly stated, "Over here! This side!" Ruff said, "Towards me. Keep walking!" Simultaneously, Cervantes pointed with his hand towards Ruff. Busby appeared confused and kept walking towards Cervantes. Ruff shouted, "Towards me! Hey pay attention!" Busby began walking towards Ruff. As Busby got closer, he stated, "I'm sorry sir, I just woke up not too long ago. I'm sorry."

Ruff replied, "OK, well you need to listen to instructions or you're going to get shot." When Busby reached Ruff, Ruff grabbed Busby and pulled him behind Cervantes' squad car. Marquez then held Busby and placed handcuffs on Busby's wrists behind his back. Ruff told Busby, "You're being detained right now. We tried to explain it to you, but you guys did not listen." At approximately 4:42 p.m., Ruff transmitted on the radio that they had one person detained. Ruff also transmitted on the radio for Jeffers to come to his location to assist Marquez.

#### **Further Interactions with and Detainment of Lewis**

While Ruff and Marquez were taking Busby into custody, Cervantes continued to speak with Lewis at gunpoint. Lewis demanded, "One of you officers needs to come over and explain!" Cervantes told Lewis to, "Relax." Lewis came off the ground to a crawling and then standing position, stating, "I'm gonna stand up and I don't give no fuck." Lewis began to walk towards Cervantes, who commanded she "stop walking!" Lewis then replied, "Well, I'm gonna walk home" and turned to walk away from Cervantes. Cervantes stated, "Well you ain't gonna walk home. You fixing to walk home - you fixin' to go to jail."

Cervantes holstered his weapon, walked out from behind his squad car and ran towards Lewis, who had turned back around and walked towards Cervantes. As he approached Lewis, Cervantes stated, "Come here." Lewis walked towards him and replied, "Because what, because what? You don't even know my name." Cervantes told Lewis three times to "turn around." Cervantes said in his report that he intended to handcuff her. Lewis did not turn around. Cervantes then grabbed Lewis' right wrist with his right hand and Lewis' left elbow with his left hand. Lewis pulled away and swung her left hand into the right side of Cervantes face. She then threw a punch with her right hand towards the left side of his face. Cervantes used his hip, legs and arms to take Lewis to the ground.



During the struggle, Cervantes heard a pop “noise” and felt extremely sharp pain from an injury to his right thumb. Cervantes said, “Fuck, I broke my fucking thumb.” The injury restricted Cervantes’ use of his right-hand during efforts to restrain and handcuff Lewis.

Lewis initially landed on her back, then was turned onto her stomach. Ruff ran to assist Cervantes. Ruff had his patrol rifle in front of him on a shoulder sling, maintaining grip with his left hand to ensure it was not pointed at Lewis. This left only Ruff’s right hand free to restrain and handcuff Lewis. Ruff kneeled over Lewis’ hips, facing her torso, as she was on the ground on her stomach. Ruff grabbed Lewis’ right arm. Cervantes tried to grab her left arm. Lewis tried to free her arms from their grip. Lewis was attempting to kick with her legs and feet.

Cervantes held one of Lewis’ arms and tried to put her other arm behind her back. Lewis pulled her arms away and rocked her body back and force to avoid being handcuffed. Ruff heard a radio transmission that officers found a gun on Busby. Cervantes stated, “I think I broke my fucking thumb.” Ruff observed scratches on Cervantes’ face and ears that were bleeding slightly.

Lewis continued thrashing back and forth while face down. She reached for her waist and chest areas as they tried to control her hands. Cervantes and Ruff reported that based on the call about the shooting, they considered Lewis to be possibly armed with a gun. Cervantes had temporary control of Lewis’ left arm, which she had placed under her stomach, preventing officers from handcuffing it.

After striking Cervantes in the face; refusing to allow Cervantes to pull her arm behind her back to properly restrain her; moving her arms to her waist, stomach and chest areas; rocking her body back and forth to resist; and pulling her arm from Ruff’s grip, Ruff shouted “Stop” and delivered one strike with the knuckles of his right hand to the lower back right side of Lewis’ head. Ruff reported he did this as a distraction technique to weaken Lewis’ resistance and permit officers to handcuff her. Lewis screamed, “Bitch, you just hit me on my face. I hope you got that on camera. I hope you got that on camera.” Lewis moved her body from side to side, continued pulling her arms and pulled one arm underneath her body out of the view of officers.

Sergeant James Koker arrived to assist in controlling Lewis so she could be handcuffed. Ruff loudly stated, “Stop resisting. Stop resisting right now!” Lewis screamed as officers tried to control her hands. Koker tried to grab Lewis’ right arm. Ruff stated, “Stop resisting.” Lewis continued to pull her arms away from officers. Koker pulled Lewis’ right arm behind her back and told Lewis, “Okay, just relax.” Cervantes stated, “I broke my thumb.” Ruff said, “OK.” Ruff removed his handcuffs and tried to place them on Lewis’ wrist. Lewis pulled her hand away again and pulled her left arm under her chest.

During this time frame, other officers engaged with Busby. Marquez shouted to the officers that they discovered a gun on Busby. Ruff repeated, “Stop resisting. Lewis stated, “You a racist-ass bitch and I hope you got all of this on camera.” Ruff commanded her, “Stop. Just keep your hands back here.” Lewis repeated, “I hope you got this on camera.” Lewis pulled her hand away again and stated, “Bitch, you just grabbed me for no reason. You are a racist-ass bitch!”

Lewis pulled her right arm away down towards the front of her body. Ruff told Lewis several times to stop resisting. Lewis continued to resist by moving her body. Ruff struck Lewis one time with his right



knee in her right ribcage area. Ruff reported he did this to stun Lewis so officers could handcuff her. Lewis stated, "You know you just kicked me bitch!" Ruff told her, "Put your hand behind your back." Koker and Cervantes were then able to pull Lewis' arms behind her back. Ruff told Cervantes, "I got it, I got it Mike! Get out!" Koker held Lewis' left arm with two hands as Ruff put handcuffs on both of Lewis' wrists as she continued to struggle to free her arms.

At approximately 4:44 p.m., Officer Raymond Rich transmitted on the radio that officers found a bullet hole on the first floor of 1102 E. Colorado Avenue. Officers later determined the bullet went through a window and penetrated an interior wall of an occupied apartment in the southwest corner of the building.

Ruff told Lewis to "Just relax. Calm down." Lewis replied, "How am I supposed to relax when you all scraping my face on the concrete? You fucking pigs! You fucking pig!" Lewis kicked her legs and rocked as if attempting to get onto her back. To prevent her from extending her legs, Ruff grabbed Lewis' ankles, crossed them and bent her legs at the knees so her ankles were over her buttocks. Ruff sat on Lewis ankles. Cervantes told Ruff, "She's gonna come out of this," observing that Lewis was trying to wiggle her hand out of one cuff that was not secured tight enough. Cervantes reached down and tightened the loose cuff as Koker held her arm to prevent Lewis from removing the cuff from her wrist. Lewis stated, "Because I want to ask a question." Cervantes replied, "Well, you don't approach us when we got guns and stuff, we're trying to stop people."

Lewis yelled, "Bitch, who are you? You are nobody but with a badge. You're just like me bitch, literally." Koker told Lewis, "You need to act like a lady. You're not right now." Lewis said, "Get the fuck off. I got six men on me! What's wrong with you all."

At approximately 4:44:35 p.m., Ruff transmitted on the radio, "We've got one more detained." Koker and Cervantes stood up from where they were on the ground beside Lewis.

Lewis told Ruff, "Now get the fuck off of me." Ruff double-locked the handcuffs and checked them for proper fit. Jeffers shouted to the officers that they located a gun on Busby, and they needed help. Koker ran to assist Marquez with Busby.

Lewis told Ruff, "Get off of me!" Ruff replied, "No." Lewis said, "Your ass is as big as him. And I got asthma." Lewis, who was still on her stomach, then reached up with her handcuffed hands behind her back towards the area of Ruff's weapon belt and rifle. Ruff ordered her to stop grabbing. Ruff reached to the handcuff's chain and lifted it to raise Lewis' arms straight up away from his rifle and weapon belt. Lewis screamed. Ruff repeated, "Stop grabbing me." Lewis replied, "That don't hurt. You a pussy anyway. Let me go!" Ruff lowered Lewis' arms, but kept them elevated and away from his weapon belt and rifle. Lewis' arms were in a slightly elevated position above her back to keep her hands away from his weapon belt and rifle for approximately one minute and 20 seconds.

Lewis told Ruff, "Let me go." Ruff stated, "I don't want to hurt you." Lewis replied, "Ok, then let me the fuck go." Ruff replied, "No, you're not going to be grabbing." Lewis stated, "Let me the fuck go. I didn't touch down there, one of your all cameras is there." Ruff told Lewis, "Camera's on the whole time." Lewis stated, "Let my arm go." Ruff replied, "No." Lewis again said, "Let my arm go."



As Ruff continued to sit on Lewis' ankles to prevent her from kicking again and trying to get on her back again, an unidentified civilian nearby yelled, "Do you need to sit on her? She is already cuffed. She needs to breath." Ruff replied to the civilian, "Just relax ma'am, okay? She can breathe." Ruff was not sitting on Lewis' torso or making or applying pressure onto Lewis' back or neck. The civilian responded, "Could you relax please and stop harassing her?" Lewis stated, "Can somebody record this, can you record this? He punched me in the stomach, he punched me in my stomach and I'm a whole female. He is not even supposed to be touching me because there are no females on site. Fuck is he talking about." Ruff told Lewis, "That is inaccurate, ma'am." Lewis shouted, "My name is Aleyah Lewis." Ruff said, "Okay, thank you."

Lewis warned Ruff, "[Inaudible] work at the courthouse, so you gonna be hearing!" Ruff said, "Okay. We tried to explain what's going on ma'am." Lewis stated, "Okay, well let me the fuck go. You ain't trying to explain shit. Cause, first of all, you ain't shit without a badge. You hear me?" Ruff replied, "Okay, okay, that's your opinion." Lewis continued, "You just like me, so talk to me with respect." Ruff said, "We tried. We tried."

Lewis replied, "No, you told me to 'calm the fuck down' and 'I'm a grown ass woman.'" Ruff replied, "No. I never said that." Lewis replied, "Yes you did. Yes, you did and your body camera will show that shit!" Ruff said, "Body camera will show everything. That is correct, ma'am." Lewis demanded, "Let these handcuffs go. Let these handcuffs go!"

#### **Movement with Lewis to the Squad Car**

At approximately 4:46 p.m., Ruff transmitted a request on the radio for an officer to assist in taking Lewis into a squad car. Ruff told Lewis, "Just a second, Okay?" Lewis stated, "Uhm, let me go. It's tight on my fucking wrist." Ruff replied, "Don't pull against them ma'am and they're not going to apply pressure." An unidentified civilian shouted, "Get off of her."

Rich walked up to Cervantes and Lewis. Lewis stated, "Let me the fuck go." Rich said, "Alright, stand up please." Ruff and Rich lifted Lewis to her feet. Ruff said, "Alright, we are going to walk to the car." Ruff and Lewis held each of Lewis' arms and walked on each side of her guiding her towards Rich's squad car parked nearby. An unidentified civilian said, "Can she get her shoes?" Ruff replied, "Ma'am, yes. We will." Lewis stated, "Where's my phone? Fuck that. Will you get my fucking phone?" Ruff told Lewis, "We're going to get your stuff." Lewis screamed, "Get my shit now! What the fuck!" Ruff replied, "No. That's not how that works."

As Ruff and Rich approached the squad with Lewis, she shouted, "No! Give me my shit!" Lewis lifted her foot up and kicked the passenger side of the squad car four times as she yelled for them to get her belongings. As she kicked the squad car, it shoved her backwards. Ruff stated, "Relax. Relax. Okay, relax!"

Ruff held her upper torso and Rich held her legs. Rich told Lewis, "stop kicking," as he and Ruff pushed her up against the car until the rear door could be opened. Ruff asked Lewis, "Why are you doing this? We do not want to hurt you." Lewis replied, "Cause you just came up on us for no fucking reason! That's why! That's why!"



### Interactions with Lewis in the Squad Car

Rich placed Lewis inside the rear passenger side seat of the car and said, "Have a seat. Have a seat please." Lewis continued to move around in the seat. Rich secured Lewis' seatbelt buckle and Lewis reached with her handcuffed hands to try to release the belt buckle. Rich yelled at Lewis to stop. Rich reached to hold the seatbelt buckle. Lewis lunged her face towards Rich and spit at him. Rich yelled at Lewis, "Quit!" and pushed her away.

Jeffers had arrived to assist and stood at the rear driver's side passenger area of the car when Lewis spit at Rich. Rich at the rear passenger side and Jeffers on the rear driver's side held Lewis down on the seat to prevent her from spitting again. Jeffers held her head to the seat and Rich held her arms. Lewis screamed. Lewis stated, "Let my arm go! You're breaking my fucking arm!" Rich replied, "No one is breaking your arm. You just spit. You are going to stay right there like that. Stop." Lewis stated, "Fuck you, when I spit in your face again, bitch!"

Ruff brought a spit hood to the rear driver's side of the car and placed it over Lewis' head.<sup>1</sup> At approximately 4:48 p.m., Ruff transmitted on the radio that officers put a spit hood on a subject in custody. Lewis continued to struggle and try to move around in the seat. Rich told her to "stay here."

Lewis said, "Let me out of these handcuffs before you break my fucking arm!" Rich and Jeffers tried to calm Lewis, telling her, "You've got to stay relaxed. You've got to stay relaxed." She kept yelling and thrashing her legs. Lewis stated, "I'm relaxed. Get this shit off my fucking face, first of all." Rich replied, "No, you spit on us. You get the hood."

Rich and Jeffers then tried to tighten the seatbelt on Lewis to limit her movement. Lewis moved around and stated, "Fuck you, fuck you!" Lewis kicked Rich in his chest twice. Rich then closed the rear passenger side door to prevent being kicked again. Lewis turned her legs towards the rear driver's side passenger area and kicked Jeffers in the chest with enough force to knock his body camera off of his uniform and down onto the pavement. Jeffers picked up the camera and placed it back on his chest to continue filming.

Lewis screamed, "Let me go. I need my phone. That's all I need." Ruff obtained a hobble.<sup>2</sup> Jeffers and Ruff attempted to secure Lewis' ankles with the hobble from the driver's side rear passenger area. Lewis moved her feet apart and kicked at Jeffers and Ruff, preventing them from applying the hobble. Lewis again screamed, "Give me my phone now! Give me my phone"

Ruff walked away to place his rifle in the back of Rich's squad car. Ruff then walked to the rear passenger side of the car. Rich and Ruff held Lewis' ankles down and crossed them over each other. Ruff pushed down to apply pressure to prevent Lewis from moving her legs while the hobble was wrapped around Lewis' ankles. Lewis shouted, "I'm a whole female bitch and you are handling me like

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<sup>1</sup> A spit hood is a mesh-like device intended to cover the mouth, face and head of a person in order to prevent them from spitting at or biting others.

<sup>2</sup> A hobble is a strap-like restraining device that officers can wrap around an individual's legs to prevent them from kicking officers, paramedics or car windows.



“I’m a grown-ass man!” Lewis then screamed. Ruff said, “Relax please. Thank you. Thank you.” Lewis stated, “Oh you lucky bitch. You so lucky! You so lucky!”

#### **Transport to Jail and Officer Injuries**

At approximately 4:50 p.m., Ruff transmitted on the radio that a female detainee was in a hobble. Ruff then retrieved his rifle from Rich’s squad car.

Cervantes retrieved Lewis’ shoes and gave them to Rich, who placed them in his squad car. Officers did not locate a cell phone in the area where Lewis had been taken into custody. Lewis continued to scream after being placed in the squad car. Rich transported Lewis to the Champaign County Satellite Jail.

According to correctional officers at the jail, Lewis was combative and physically resisted correctional officer.

Cervantes transported himself to the Carle Hospital emergency room, where an X-ray revealed a fracture to the base of his right thumb, requiring a cast and treatment. Follow-up treatment revealed a ruptured ulnar collateral ligament requiring surgery and at least three months of rehabilitation.



## 03 Analysis of the Incident and Officers' Response

### **SUMMARY OF THE UPD'S INTERNAL REVIEW AND FINDINGS**

Lewis did not file a complaint with the UPD alleging misconduct. Neither the UPD investigator, who conducted the follow-up investigation into the use of force incident, nor the Use of Force Board, which reviewed the use of force incident, brought forward allegations of misconduct. The Use of Force Review Board that reviewed the officers' use of force on Lewis on April 10, 2020 concluded that the officers' use of force in this incident was within UPD policy and procedure. During an April 27, 2020 public presentation of the use of force incident before Urbana City Council, Champaign County States Attorney Julia Reitz said the officers in the April 10, 2020 use of force incident involving Lewis acted appropriately under the law. After the public presentation, some members of the public raised concerns about the incident. The Urbana Code of Ordinances sections 19-28, 19-32 and 19-37 govern complaint procedures concerning police conduct. One member of the public, who was a witness to the incident, initiated a complaint but failed to follow through with the process required for filing a complaint.

### **Use of Force Investigation**

UPD policy Section 300 governs use of force investigations for UPD members. The policy requires that a shift supervisor not involved in the incident conduct a follow-up investigation into a use of force incident that involves:

- Any injury requiring medical treatment to a subject
- Any injury to an officer requiring follow-up medical services beyond initial treatment
- Any injury resulting from interaction for which the County Jail refuses to accept as a prisoner
- A baton strike on a subject
- Use of oleoresin capsicum (OC) spray on a subject
- A subject asserts a misuse of force by an officer
- Any use of force incident, which in light of facts and circumstances, may face additional scrutiny
- Use of taser

### **Use of Force Review Board**

The Use of Force Review Board (Board) is established under policy and is an internal board tasked with objectively evaluating incidents involving use of force to ensure that the UPD's authority is used lawfully and appropriately and is consistent with training and policy. Reports involving the use of force are automatically forwarded by command staff to the Board, which is empowered to conduct an administrative review and inquiry into the use of force incident. The Board may request further investigation and reports and view evidence. The Board makes one of two findings:



- The employee's actions were within department policy and procedure
- The employee's actions were in violation of department policy and procedure

### HILLARD HEINTZE REVIEW AND PRIMARY FINDING

Our review of the sufficiency of the administrative review of this incident determined that **the use of force in this case was consistent with the UPD's use of force policies and that the UPD Use of Force Review Board's determination is supported by a preponderance of the evidence.**

#### Review of Cervantes' Use of Force

##### Finding

Based on the provided follow-up use of force incident administrative investigation and information and evidence that Hillard Heintze reviewed, we find that Sergeant Cervantes' use of force **complied with applicable UPD policy regarding use of force.**

Based on the evidence, we concur with the determination of the Use of Force Review Board that **Cervantes complied with UPD policy regarding use of force.**

Cervantes was authorized under UPD policy to use force he reasonably believed to be necessary to arrest Lewis and to defend himself and others from harm while making the arrest (see UPD Policy 300.3.1, Use of Force to Effect an Arrest). Cervantes used only that amount of force that reasonably appeared necessary given the facts and circumstance he perceived at the time of the event to accomplish a legitimate law enforcement purpose (see UPD Policy 300.3, Use of Force).

##### Summary of Cervantes' Actions

Cervantes told Lewis three times to turn around. She did not do so. As Cervantes grabbed Lewis' wrist and elbow to place her arm behind her back, she pulled away and struck his face with her left hand, then threw a punch with her right hand towards his face. Cervantes stated he identified Lewis as an "active aggressor" and used his hip, legs and arms to take her to the ground in order to restrain and handcuff her.

Cervantes suffered a painful injury restricting the use of his right hand. While Lewis was on the ground, continuing to refuse commands and physically resist, Cervantes grabbed her wrist with his left hand and pushed his right knee and elbow into her back shoulder area as leverage to pull Lewis' hand behind her back so that she could be handcuffed.

##### Analysis

Based on available information, evidence and the submitted investigation, the following are statements of fact as they relate to Cervantes' and Ruff's interaction with Lewis.

- Cervantes and Ruff responded to a report of a shooting and a male with a gun whom a female was accompanying.





- The male was described as Black, wearing a black coat, a pair of blue jean-style joggers or blue joggers. The female was described as Black and wearing some sort of crew neck shirt.
- Cervantes observed Busby and Lewis in the area of the shooting, and they fit the description that dispatch provided.
- Cervantes pointed his service weapon at Busby and Lewis and ordered them to follow commands.
- Ruff saw Busby and Lewis in the area of the shooting, being given commands by another officer, and they fit the description that dispatch provided.
- Ruff pointed his duty patrol rifle at Busby and Lewis and ordered them to follow commands.
- Lewis did not initially comply with the commands to lay on the ground and move her hands away from her waist. While on the ground, Lewis and Busby talked to each other.
- Lewis started walking towards Cervantes. Cervantes ordered her to stop.
- Lewis stated she was leaving and turned to walk away.
- Cervantes told her she would be arrested if she left.
- Cervantes approached Lewis to take her into custody and Lewis turned and walked towards Cervantes.
- Cervantes gave Lewis commands. Lewis did not follow the commands. Cervantes reached to place her arm behind her back to be handcuffed.
- Lewis pulled away, struck Cervantes in the face with her left hand and swung at his head with her right hand.
- Ruff observed Lewis strike Cervantes in the face and went to assist Cervantes.
- Cervantes took Lewis to the ground using his hip, legs and arms.
- During the struggle with Lewis, Cervantes suffered a fracture to the base of his right thumb and a ruptured ulnar collateral ligament, limiting the use of his right hand
- Ruff carried a rifle on a sling across his torso, requiring the use of his left hand to keep the rifle away from Lewis. This limited Ruff's use of his left hand.
- On the ground, Lewis pulled her left wrist and arm away from Cervantes' grip to her chest, waist and under her stomach out of the view of officers as she laid face down on the ground and continued moving from side to side.
- Cervantes and Ruff reported that based on the call about the shooting, they considered Lewis to be possibly armed with a gun.
- On the ground, Lewis continued to physically resist Cervantes' and Ruff's' efforts to handcuff her.
- Lewis pulled her wrists away from both officers, moved from side to side, shifted, tried to lift her upper body and kicked her legs



- Ruff yelled at Lewis to “Stop” and struck Lewis once with the knuckles of his right hand on the lower right side of her head as a distraction technique to get her to release her arm from under her body and stop pulling her wrists away from officers.
- Lewis continued to physically resist arrest by pulling her hands away and shifting her body from side to side
- Officers told Lewis many times to “stop” and to “stop resisting.” Lewis continued to resist arrest.
- Cervantes grabbed Lewis’ wrist with his left hand and pushed his elbow and knee against her back-shoulder area to gain leverage to pull Lewis’ wrist to her back to be handcuffed.
- After telling her to stop resisting, Ruff struck Lewis’ right rib cage with his right knee to get her to release her arm and stop pulling her wrists away. Ruff was then able to handcuff Lewis’ wrists.
- Lewis continued to kick her legs, rock back and forth and appeared to be trying to roll over onto her back or get up. In response, Ruff crossed Lewis’ ankles and bent her legs at the knees, resting her ankles on her buttocks and sat on her ankles in order to prevent her from kicking her legs.
- Lewis reached up with her handcuffed hands behind her back toward Ruff’s gun belt and rifle.
- Ruff used his hand to lift the chain of the handcuffs and raised her arms straight up and her hands out of reach from his gun belt and rifle for approximately a minute.
- At the squad car, Lewis raised her legs and kicked the side of the car four times.
- While another officer attempted to put Lewis in a seatbelt, Lewis lunged her head forward and spit at the officer.
- In response, Ruff retrieved a spit hood and placed it on Lewis head.
- Lewis kicked another officer from inside the squad car.
- Lewis kicked a second officer in the chest from inside the squad car, knocking the BWC off of his uniform.
- Ruff retrieved a hobble and tried to place it on Lewis’ legs to stop her from kicking.
- Lewis separated her feet and kicked her legs, preventing officers from applying the hobble. In response, Ruff and another officer crossed Lewis’ ankles one over the other and Ruff pressed down to apply enough pressure for Lewis’ legs to remain still and apply the hobble.

### Review of Ruff’s Use of Force

#### Finding

Based upon the provided documentation, including use of force incident administrative investigation, information and evidence that Hillard Heintze reviewed, we find that **Ruff complied with applicable UPD policy regarding use of force.** Based on the evidence, we concur with the determination of the Use of Force Review Board that Ruff complied with UPD policy regarding use of force.



Ruff was authorized under UPD policy to use force he reasonably believed to be necessary to arrest Lewis and to defend himself and others from harm while making the arrest (see UPD Policy 300.3.1, Use of Force to Effect an Arrest). Ruff used only that amount of force that reasonably appears necessary given the facts and circumstance perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (see UPD Policy 300.3, Use of Force).

### **Summary of Ruff's Actions**

Ruff stated that he observed Lewis strike Cervantes in the face. Ruff reported that he used verbal commands to attempt to gain compliance from Lewis, while trying to restrain and handcuff Lewis with Cervantes, who had suffered an injury to his hand and face. Ruff said he knelt down over Lewis' hips. Ruff said that Lewis refused to remove her arm from under her body and continually physically resisted. Ruff reported that based on the call about the shooting, he considered Lewis to be possibly armed with a gun. Ruff struck Lewis once with the knuckles of his right hand on the lower right side of her head as a distraction technique to weaken her resistance and enable officers to handcuff her. Lewis continued to physically resist by pulling her arms away and rocking from side to side. Ruff told Lewis several times to "stop resisting." Ruff removed his handcuffs and tried to put them on Lewis' wrist, but she pulled her arms away and under her chest. After repeated verbal commands to Lewis to stop resisting, Ruff struck Lewis' right rib cage once with his right knee in another effort to get her to comply. Ruff was then able to handcuff Lewis' wrists with the assistance of other officers.

After being handcuffed, Lewis continued to kick her legs and rocked back and forth. Ruff believed Lewis was attempting to get onto her back and get up. Ruff crossed her ankles and bent her legs at the knees, resting her ankles on her buttocks, and sat on her shins in order to prevent her from kicking her legs. Lewis continued rocking her body back and forth and reached up with her handcuffed hands behind her back towards Ruff's gun belt and rifle. Ruff used his hand to lift the chain of the handcuffs and raise her arms up and away from his gun belt and rifle.

Ruff, Rich and Jeffers reported that while being seat belted in the squad car, Lewis lunged her head forward and spit at Rich. Ruff retrieved a spit hood and placed it on Lewis' head to prevent her from spitting at officers again.

Ruff, Rich and Jeffers reported that Lewis kicked Rich and Jeffers from inside the squad car. Ruff retrieved a hobble and tried to place it on Lewis' legs, but was unable to when Lewis kicked her legs and separated her feet. Ruff used pressure to press down on Lewis' ankles to gain compliance in order to secure the hobble.

### **APPLICABLE POLICY**

#### **UPD Department Policy 300.3 Use of Force**

Officer shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.



The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

#### **UPD Policy 300.3.1 Use of Force to Effect an Arrest**

An officer may use any force which he/she reasonably believes to be necessary to effect an arrest and may use any force which he/she reasonably believes to be necessary to defend him/herself or another from bodily harm while making an arrest (720 ILCS 5/7-5)

#### **UPD Policy 300.3.2 Factors Used to Determine the Reasonableness of Force**

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to officers or others
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of drugs or alcohol
- (e) Subject's mental state or capacity
- (f) Proximity of weapons or dangerous improvised devices



- (g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness
- (i) Seriousness of the suspected offense or reason for contact with the individual
- (j) Training and experience of the officer
- (k) Potential for injury to officers, suspects and others
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer
- (m) The risk and reasonably foreseeable consequences of escape
- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others
- (p) Prior contacts with the subject or awareness of any propensity for violence
- (q) Any other exigent circumstances



## 04 Review of the UPD's Policies Regarding Use of Force

### INTRODUCTION

The UPD is certified by the Illinois Law Enforcement Training and Standards Board (ILETSB).<sup>3</sup> The Department<sup>4</sup> has three major divisions – Patrol, Support Services and Investigations – all of which have sub-units. This is in line with a police organization of its size in the State of Illinois. The UPD has established codes of conduct, policies, procedures and general orders that dictate the actions of its officers and non-sworn staff.

We used generally accepted standards as put forth by professional law enforcement organizations and two major accreditation agencies, one national and one local to Illinois. The UPD is not accredited organization by the Commission on Accreditation for Law Enforcement (CALEA)<sup>5</sup> or with the Illinois Law Enforcement Accreditation Program (ILEAP). However, given these standards are accepted by many agencies, we used these standards as a baseline in assessing the UPD's policies.

The department has several policies that cover varying aspects of use of force and training referenced by CALEA regarding standard policy language and requirements for training. The relevant UPD policies reviewed included but were not limited to:

- 301: Use of Force Review Boards
- 302: Handcuffs and Restraints
- 303: Control Devices and Techniques
- 305: Serious Uses of Force and In Custody Deaths
- 306: Firearms
- 321: Conduct
- 202: Training

### DE-ESCALATION TECHNIQUES

The Use of Force policy does not have a reference to de-escalation, which is a standard that is growing nationally and is recommended by CALEA in the Law Enforcement Standards Manual, Chapter 4.1.1.<sup>6</sup> The commentary section for the standard specifically recommends that agencies train on de-escalation and that departmental policies include language about de-escalation, particularly as it relates to use of force.

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<sup>3</sup> <https://www.census.gov/quickfacts/urbanacityillinois>

<sup>4</sup> <https://www.urbanillinois.us/departments/police/police-divisions>

<sup>5</sup> <https://www.calea.org/calea-client-database>

<sup>6</sup> CALEA Standards Chapter 4 § 4.1.1 Use of Reasonable Force, Commentary



The UPD policy manual, Section 300 Use of Force, does not reference the word de-escalation, nor does it make a cross reference to another policy that specifically covers de-escalation. UPD does address this concept on its website and should ensure its policies and training reflect its commitment to de-escalation.<sup>7</sup>

As a part of the basic training course requirements for UPD officers at the University of Illinois, Police Training Institute academy, officers receive eight hours of classroom de-escalation training and 84 hours of instruction in which scenario-based training uses deflection language and de-escalation. After graduation from the academy, officers receive additional hours of in-service training in related topics. The UPD is commended for adopting the joint NAACP and Illinois Chiefs of Police Association's "Ten Shared Principles Regarding the Relationship Between Law Enforcement and the Community They Serve." This includes the affirmation, "We endorse using de-escalation tactics to reduce the potential for confrontations that endanger law enforcement officers and community members; and the principle that human life should be taken only as a last resort." However, the training policy does not specifically address that priority should be given to de-escalation.

The push for departments to integrate aspects of conflict resolution and de-escalation into training and policy as it relates to use of force is not a new concept<sup>8</sup> and has been researched as an effective way to avoid uses of force and build better community relations as early as 2003. In more recent years, the actual phrase and tactics of de-escalation have been promoted and praised by various divisions<sup>9</sup> within the Department of Justice<sup>10</sup> and other professional organizations<sup>11</sup> such as the Police Executive Research Forum (PERF) and the International Association of Chiefs of Police (IACP).<sup>12</sup> This practice has been increasingly placed in the policies of law enforcement agencies, beginning in 2014, after highly publicized use of force incidents, particularly officer-involved shootings, were highlighted on a national scale.

In response, the 21<sup>st</sup> Century Policing Taskforce was established to provide uniform guidance on police best practices. De-escalation was prominently highlighted in the final report and since that time, many departments across the country have continued to embrace de-escalation as a standard for training and for inclusion in their use of force policies, in addition to the policies from CALEA that address this issue.

We commend the UPD for including its commitment to de-escalation on its web page and in its training.

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<sup>7</sup> <https://www.urbanainllinois.us/PDFAQs>

<sup>8</sup> <https://www.justice.gov/archive/crs/pubs/principlesofgoodpolicingfinal092003.pdf>

<sup>9</sup> [https://cops.usdoj.gov/html/dispatch/10-2013/more\\_de-escalation\\_tactics\\_training.asp](https://cops.usdoj.gov/html/dispatch/10-2013/more_de-escalation_tactics_training.asp)

<sup>10</sup> <https://www.justice.gov/opa/pr/justice-department-applauds-adoption-police-department-wide-tactical-de-escalation-training>

<sup>11</sup> <https://cops.usdoj.gov/RIC/Publications/cops-p324-pub.pdf>

<sup>12</sup> <https://www.theiacp.org/sites/default/files/all/s/StartingwithWhatWorksBrochureWeb.pdf>



## USE OF FORCE ON INDIVIDUALS IN RESTRAINTS

In this incident, while restrained, Lewis continued to resist, kicked officers with her legs and feet, and spat at an officer. The IACP National Consensus on Use of Force<sup>13</sup> specifically outlines that physical force shall not be used on individuals in restraints, except as “objectively reasonable,” and goes on to describe the circumstances that may warrant force. It also states that force should be “minimal” to control the situation. UPD Policy 300 does not specifically address acceptable force standards for restrained subjects who resist or attempt force against officers.

## POSITIONAL ASPHYXIA

The incident involved the suspect physically resisting arrest while she was in a prone position, which increases the danger of positional asphyxiation. UPD’s use of force policy (see 300.3.2) outlines some of the factors to use when determining the “reasonableness of force” and the factors are meant to help determine when force should be used during an arrest. However, the policy does not include the danger of positional asphyxiation. As the arrest unfolded, three officers were attempting to gain control of a small-framed suspect who struggled to break free while on her stomach. When the subject pulled her hands away and shifted her body from side to side, two officers briefly pushed against her shoulder and back to try to handcuff her and prevent her from breaking free. Even after being handcuffed, Lewis was not compliant and continued to try to kick her legs and rock back and forth to get up. One officer sat on Lewis’ ankles to stop this activity and Lewis was kept on her stomach until she was walked to the squad car to be transported. This officer did not apply pressure to Lewis’ back.

This was not a violation of the UPD use of force policy. Research and progressive law enforcement training and policies recognize additional risks with individuals in a stomach-down position.

The risk for positional asphyxiation increases when engaged with intoxicated subjects or those using some form of narcotic. The following is a relevant excerpt from an article<sup>14</sup> on the topic.

“Multiple cases of death by positional asphyxia have been associated with the hog tied or prone restraint position. The risk of positional asphyxia is further compounded when a suspect with predisposing medical conditions becomes involved in a violent struggle with an officer. This is especially true when the physical restraint includes the use of behind-the-back handcuffing combined with placing the individual in a stomach down position. Many law enforcement and health personnel are now taught to avoid restraining people face-down or to do so only for a very short period of time.

“Other aspects of how the subject is restrained can also increase the risk of positional asphyxia death. Placing a knee or weight on the subject and particularly any type of restraint hold around the subject’s neck can be problematic. Research measuring the effect of restraint positions on lung function suggests that restraint that involves bending the restrained person

<sup>13</sup> <https://www.theiacp.org/resources/document/national-consensus-discussion-paper-on-use-of-force-and-consensus-policy>

<sup>14</sup> <https://www.policemag.com/524139/how-to-prevent-positional-asphyxia>





or placing body weight on them has a greater effect on breathing than face-down positioning alone.”

As mentioned, the above referenced incident did not violate the UPD’s use of force policy. The policy restricts the use of a chokehold. The policy does not restrict applying pressure to the back of suspects.

### **RETAINING DUTY RIFLES IN HANDS-ON CONTACT SITUATIONS**

We note that special circumstances impeded the officers in restraining and handcuffing Lewis:

- 1 Cervantes was restricted to effectively using only one hand after he suffered a painful injury to his thumb during the initial physical interaction with Lewis; and,
- 2 The first assisting officer to come to Cervantes’ aid, Ruff, had his duty rifle on a shoulder sling, requiring him to dedicate his left hand to keeping the rifle away from Lewis during her struggle to free herself from the officers.

As a result, each officer was primarily using only one hand while restraining and attempting to handcuff a resisting subject. Cervantes’ injury could not have been anticipated, and he immediately adapted as best he could to employ his elbow and knee to gain leverage while trying to pull Lewis’ arm from under her body while she pulled it away from him.

We note that because other officers were engaged with other aspects of the scene, Ruff was the primary officer in the detention and arrest of Lewis. UPD policy is silent as to the expectations of officers who are in possession of a duty rifle while engaging a subject. Balancing the security of the rifle with ensuring the compliance of a subject who is resisting is challenging, both from the need to secure the weapon and in effectively gaining control of a resisting subject. The direct engagement with a suspect should be limited and the rifle secured as soon as reasonably possible when an officer needs to physically engage an individual.

Those deploying duty rifles may benefit from specialized training regarding the unique issues posed by a front-slung rifle during close-up, hands-on encounters with a resisting subject. If circumstances at the scene permit, an officer may gain an advantage by quickly reverting a rifle to a temporary reverse slung position across their back. Tactical consideration should be given to the type of sling used with duty rifles. By putting the rifle in a reverse-sling position, the officer’s body serves as a barrier between the civilian and the weapon and allows the officer to use both hands.

Alternatively, if circumstances on the scene permit, after a subject is secured with handcuffs, officers may see a tactical advantage to giving custody of the rifle to another officer for temporary safekeeping while the officer remains with a subject. In rapidly changing threat environments, officers may need to immediately revert from deploying a rifle to encountering an adversary face to face. Training to address this unique challenge may benefit officers.



### USE OF VERBAL COMMANDS

We note that three officers were issuing multiple commands to Busby and Lewis during the time they were initially encountered. One officer should be designated to give all commands when officers are detaining a subject. In this incident, we did not find inconsistent commands being given; however, when multiple officers issue commands at the same time, conflicting commands could be given or the subject could become confused. This practice is especially important when a civilian is suspected of being in possession of a firearm as a misunderstanding of commands could have tragic consequences.

### VERBAL ENGAGEMENT

Our review was limited to the use of force investigation and policies. We note, however, at certain times in the encounter with Lewis, officers used language with Lewis that may be viewed as patronizing or unprofessional. For example:

- “Well you ain’t gonna walk home. You fixing to walk home - you fixin’ to go to jail.”
- “You need to act like a lady. You’re not right now.”

Officers should always be professional and cognizant of their word choice and meaning, even when interacting with civilians who are uncooperative or assailants. Highly agitated subjects may be further angered when they perceive that they are being put down or patronized by language used by those in a position of authority. If not already in place, training should be provided on how to best engage agitated subjects.

### REVIEW OF PROCEDURES

All use of force by a UPD officer is guided by policies, procedures, practices and training and is subject to departmental review. When a complaint of excessive use of force is received, the review becomes an internal affairs investigation. The latter requires a complaint or allegation, while the former is an automatic process that occurs for all instances of use of force.

The UPD followed its policies, and a shift supervisor conducted a timely follow-up investigation of the use of force on Lewis. No formal complaint alleging excessive force was received, so Internal Affairs did not investigate the incident.

Following our review of UPD’s policies, we identified four areas for consideration to improve practices already in place. We do not believe that the implementation of the practices below would have changed the UPD investigation’s outcome. However, making them a routine practice in all use of force investigations could contribute to the quality of the follow-up investigations and improve community engagement and transparency in the process.



### Canvassing

For administrative investigations, UPD policy does not require outreach to determine if civilian witnesses exist to an officer's use of force incident. Shift supervisors conducting investigations into officer use of force incidents should be required to conduct a canvass of the scene where a use of force occurred to attempt to identify civilian witnesses and ask them if they would be willing to be interviewed. This would allow for the input and perspective of those who were present and witnessed the actions, rather than just the officer and the subject. In this matter, a number of people were present who may have been able to provide detailed information. This did not occur following the use of force incident involving Lewis.

It is important to note that this canvass should be done independently from any underlying criminal investigation. Police departments canvass when attempting to determine witnesses to a crime and with a use of force incident, this is done by the criminal investigator who asks questions in search of evidence of crimes that civilians may have committed, which frequently preceded the use of force incident – in this case, use of a firearm.

As it relates specifically to the officer use of force investigation, the supervisor conducting the investigation should ask questions specific to the officer's use of force and use witness input to determine whether policy was violated or not.

In addition, the supervisor conducting the administrative investigation of use of force incidents should clearly communicate to civilians canvassed that they are conducting an administrative review focused on the officer's use of force during an incident. In the April 10, 2020 use of force incident, the supervisor conducting the administrative investigation benefited greatly from access to footage from multiple officers' BWCs, as well as civilian cell phone video recordings posted on social media that provided direct evidence to establish many relevant facts. In many use of force incidents, multiple sources of video recordings are not available to aid the investigation. Moreover, video footage is seldom able to capture a continuous 360-degree angle view of everything that happens during an incident.

During use of force incidents, it is possible that civilian witnesses observed or heard something relevant that was not captured by a video camera because it was observed from an angle on which the camera was not focused or someone in proximity to the sound heard something that the camera's microphone could not catch. For these reasons, the existence of video footage should not be the basis for discarding potential first-hand witness accounts from civilians at or near the scene.

The April 10, 2020 use of force incident occurred in a residential neighborhood near a residential building with multiple units. Although canvassing every residence in the neighborhood may not be practical, the supervisor should attempt to contact individuals at residences that best afford a view of the scene of use of force to identify anyone who saw anything and request an interview. We experienced an occasion in one of our own investigations of a use of force incident in which our canvass resulted in us discovering previously undisclosed cell phone video that a resident recorded.



The supervisor who conducts the follow-up investigation of use of force incidents, regardless of whether the canvassing efforts were successful, should document these efforts in the use of force investigations report.

By canvassing to identify and interview civilian witnesses, supervisors conducting follow-up investigations of use of force incidents demonstrate to the community that the department is transparent in its process and is seeking any and all information to obtain as complete as possible collection of evidence and facts in its inquiry.

### **Interviewing Subjects on Whom Force was Used**

Supervisors conducting the follow-up use of force investigation should make repeated efforts to interview the civilian on whom force was used. This civilian's statement is important and brings value to the investigation. The supervisor conducting the follow-up investigation of use of force should pursue the interview until such time that the civilian refuses to speak to the supervisor or the civilian's attorney has stated that they will not participate in an interview.

Although an expectation exists that the follow-up investigation of use of force incidents will be concluded in a timely fashion, expediency should not preclude completeness. Civilians who are the subject of an officer's use of force are potentially the best witnesses because of their physical proximity to the force used. They are in a unique position to hear and see the officers' actions that may not be captured by video cameras or observed by civilians or officers further away.

In this case, the investigator made two efforts to interview Lewis while she was in custody. The investigator believed Lewis was under the influence of a substance and determined that she could not properly participate in an interview because she was under the influence. However, it may have been beneficial to contact Lewis to request an interview later. The supervisor could have spoken with Lewis after any substances had worn off. Our review noted that it is not clear whether Lewis could have provided a statement that was helpful to the investigation. On April 11, 2020, during a recorded interview with an officer regarding an unrelated investigation, Lewis stated she had taken "edible Xanax" on April 10 and did not remember what happened during her interaction with officers. When told she fought with and spit at officers, Lewis apologized.

It is important that supervisors conducting follow-up investigations of use of force incidents clearly communicate that the sole purpose of the interview is regarding officers' use of force and that questions will be limited to that purview. It is common for subjects to decline interview requests due to concern that any statement the subject makes will be used in pending criminal proceedings. The specific purpose of the interview is important to communicate to the attorney as well if the subject has been represented by counsel. We have noted that sometimes, attorneys will permit and facilitate the interview if they are aware of the basis for the interview. Supervisors should attempt to interview a subject with pending criminal charges by requesting the interview through the subject's attorney and document these attempts or interviews results.



### **Training for Administrative Use of Force Investigations**

On-duty supervisors who may be called upon to conduct a follow-up investigation of a use of force incident should receive training related to the requirements for a complete, timely, accurate and sufficient investigation into use of force incidents.

UPD Policy 300.5.2, Follow-up Investigations with Use of Force Incidents calls for the follow-up investigation of use of force incidents to be a “proactive gathering of information in use of force incidents.” It specifies that the gathering of information “may include any of the following:”

- Statement from the involved subject
- Statement from the involved officer(s) or reviewing their reports in detail
- Statement from witnesses to include other officers
- Crime scene or physical evidence, including surveillance footage or still photographs

As a matter of policy wording, the UPD should consider using “should, absent specific circumstances include...” rather than “may” when directing the investigation steps. UPD does not provide ongoing training for investigations into officer use of force incidents. Because any on-duty supervisor could be called upon to conduct a follow-up investigation of a use of force incident, all supervisors, regardless of their tenure as a supervisor or assignment background, should receive investigations training that is intended to help them to succeed in conducting a follow-up use of force investigation. Alternatively, the UPD could consider assigning follow-up investigations of use of force incidents exclusively to experienced supervisors in the Investigations Division.

### **Interviewing Officers**

Supervisors assigned to conduct follow-up investigations of use of force incidents should always speak with the officers who were involved in the use of force incident. Our review determined that although reports are always reviewed, it is less common for supervisors to interview the officers involved in the use of force incident. In our experience, the spoken word can help supervisors understand the facts and circumstances surrounding events. Further, it is good practice to get the officer’s statement regarding what occurred in a use of force incident.

Although the reports officers wrote about the April 10, 2020 use of force incident contained important details about the incident, absent an interview by the investigator, important follow-up queries may not occur. For example, some reports referred to Lewis and Busby exhibiting behaviors and actions that showed they were not in a rational state. This should have been explored further to determine how that assessment influenced the use of force decisions made by the officers.



In one officer's report, he noted a potentially critical piece of information: Lewis and Busby could be heard whispering or speaking in a low voice to each other while officers gave them orders. This behavior had implications for that officers' assessment of threat and risks, such as whether the other officers involved in use of force in this incident also heard and took notice of this behavior. Details like this help inform the investigation as to what each officer was aware of and how they processed the event as it occurred. In our experience, questioning is the best way to draw out these details and is good investigative practice.



## 05 Community Perspectives on the UPD's Use of Force

### OVERVIEW OF COMMUNITY ENGAGEMENT EFFORTS

#### Key Nine Themes

After the April 10, 2020 arrest of Lewis, the City of Urbana held a public session during the April 27, 2020 City Council meeting to demonstrate and explain the arrest footage from various BWC angles and the UPD's experiences during the arrest. The UPD Chief described to the audience how they were dispatched and why they responded with the types of weapons they displayed based on the call for service. The UPD was prepared to answer questions regarding the arrest and officers' tactics.

During those Council meetings and question-and-answer sessions, community members that were present identified nine key themes and provided them as a starting point for additional conversations and sessions with community stakeholders. The nine themes are as follows:

- 1 Calls for service and dispatch procedures
- 2 De-escalation procedures
- 3 Use of rifles procedures
- 4 Use of patronizing, racist and sexist language
- 5 Excessive use of force
- 6 Possible armed subject procedures
- 7 Administrative leave procedures
- 8 Release of body camera and squad car camera footage – insufficient
- 9 Release of body camera and squad car camera footage – too much

#### Learning Sessions

Hillard Heintze invited approximately 50 people from at least 20 different organizations in the City of Urbana (e.g., faith-based, legal, advocacy and educational institutions) to attend one of three learning sessions (see **Appendix L** for the invitation). The learning sessions were designed to elicit additional feedback from a broad swath of the community on the nine key areas described above as well as to talk about ways the police and community could improve relations and build trust.

The learning sessions were held on July 28, 2020 and July 29, 2020 during the day and for one evening session on July 29, 2020 to accommodate the needs of the community.<sup>15</sup> Out of the 50 invitations sent, approximately 18 people accepted an invitation to attend one of the three sessions. Each session was intended to last 1.5 hours.

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<sup>15</sup> Given the impact of COVID-19, these learning sessions were held remotely using digital engagement, in a process that Hillard Heintze has followed with other communities and has supported engagement and input.



During the sessions, Hillard Heintze provided community members with a 15- to 20-minute PowerPoint presentation that covered the nine key themes and a few interrelated topics, and then the groups were given a questionnaire to answer both qualitative and quantitative questions regarding interactions with the UPD and their experiences with or observations of force (see **Appendix M** for the questionnaire).

After individuals completed the questionnaire, they were broken into smaller learning pods and asked to answer more open-ended questions to provide feedback to the City on how they might move forward with recommendations and suggestions for community building and strengthening police-community relations.

### **OVERVIEW OF KEY THEMES AND COMMUNITY PERSPECTIVES**

We have outlined some of the themes from the three sessions below. We defined a theme when multiple people from various sessions raised the same point or issue during a learning session. We note that every session garnered robust conversations.

We have organized the themes based on the questions that appeared to elicit them. The bullet points reflect community stakeholders' opinions or solutions to the matter reflected in the question.

**1 Under what circumstances would it be appropriate for officers to use additional restraints on a person resisting arrest?**

- Should be a last resort
- When human life is endangered
- Risk of harm should be clear, unambiguous

**2 Transparency has been raised as a concern regarding the UPD. How would you like to receive information from UPD? What type of information would you like to receive?**

Type of information community members wanted to see

- Policies and explanations available, using regular terms people can understand (community members were concerned with redactions online)
- Information on officer training, specifically how many officers are trained in de-escalation techniques and community involvement
- Better clarity on officer professional development
- A list of community members who have been involved in use of force incidents
- Information on officer conduct and use of force available on request and without fees
- Ensuring that only a City and citizen committee [e.g., Civilian Police Review Board (CPRB) can see documentation, reports and other documentation]





### How community members want to receive information

- City website
- UPD website, which should be updated with more information
- Local news
- Public library
- Responses to emails and letters from the community from the UPD and Chief, with acknowledgements

### 3 How would you recommend UPD increase transparency after an incident has occurred? For what types of incidents should this occur?

#### Types of incidents

- All incidents involving officer use of force
- Any incident involving students, so parents are aware of the incident
- Any incident where a citizen is harmed, and a report made to the CPRB

#### How to increase transparency

- **UPD community meetings** on community relations that are conducted at least a few times a year
- **Better oversight.** Review the reporting lines and implement a structure that requires more accountability for incidents and reporting to the Council and community members.
- More **citizen involvement**
  - Community groups should review new protocols such as those governing BWCs and use of force policies before they are released to the public
  - The Civilian Review Board should review cases and have more power (e.g., subpoena power) and accountability
  - Police should share their data on an ongoing basis with community groups made up of qualified individuals who understand police policies and transparency issues
- Ability of UPD to **track complaints and violence** – as demonstrated through public reports – to see patterns of misconduct and monitor and/or respond to those patterns
- Policy that reflects that **BWCs** must be turned on at all times, not just when the police officer deems necessary.
- A **video release policy** that ensures UPD videos are consistently released to the public
- Analysis of the data on **traffic stops**. Community members mentioned that racial disparities regarding who is stopped and the results of the stop continue have continued for a decade, despite community members challenging internal data, practices and lack of oversight.



- Confidence that after violent incidents, officers involved are provided with wellness and fitness for duty assessments such as:
  - Necessary services after a violent incident happens (e.g., psychological treatment). Ensure mental health support is provided to officers for potential post-traumatic stress disorder (PTSD) to ensure officers are not triggered into aggression in the future
  - Time off, instead of immediately returning to work
  - Appropriate discipline, if deemed appropriate
- Department after-action communications that focus not solely on what happened during an incident but also on what can be learned for the future and any policy changes that may be impacted

**4 Under what circumstances do you believe officers should use force?**

- As a last resort
- After using de-escalation techniques, assessing the situation, calming down, retreating and backing away
- Officers should avoid initiating contact with an aggressive stance and a mentality that force will be necessary
- Should only be used when a clear, imminent and unarguable threat is present
- Never strictly for control or routine arrests or encounters
- Should not exceed force exerted by the subject and should ideally be less force
- Only after de-escalation attempted and exhausted
- Current UPD policy language does not speak to de-escalation in strict terms, and should do so, other local departments have adopted a definition of de-escalation that is closer to best practice of assessing situation for other options when force not necessary: "taking action or communicating verbally or non-verbally during a potential encounter in an attempt to stabilize the situation and reduce the threat, so more time, options, and resources can be called upon."

**5 What do you think would help the community feel officers are being held accountable when force is used?**

- Better understanding of officer protections
- Less control allowed by the collective bargaining agreement or arbitration and better understanding of police officer protections and the public's ability to advocate for changes
- Accountability through the union itself. Community members believed that unions defend officers even when mistakes are made
- Clarity around protections in the police Bill of Rights (e.g., understand what it is and how it comes into play with police and authority)
- Solicit and receive feedback from impacted members of the community



- A better understanding how use of force cases are reviewed, how officers are held accountable and how the force continuum impacts reviews and outcomes shared
- Evaluate and enhance police training programs and ongoing professional development
- Seeing consequences for misconduct
- Department should acknowledge when an officer has acted outside of policy. Community members shared that they feel like they do not hear about how the police cause harm or the police being held accountable for wrongdoing (e.g., officer conduct is always deemed “appropriate”)

**6 What types of programs would you like the City of Urbana to create to address police community concerns?**

**Assessed and improved Civilian Review Board**

- More power, authority and ability to order administrative leave, fire officers and issue subpoenas
- Paid positions for Board members
- Funding for staff separate from the City to track and review police conduct and review personnel complaints about officers
- Have a consistent schedule for meetings and create annual reports for transparency

**An alternative response system to address majority of citizen complaints and concerns**

- Police appear to be inadequately trained to respond to the majority of these types of calls (e.g., mental health, domestic violence, neighbor disputes)
- Ensure appropriate funding to implement the programs, such as crisis teams

**UPD’s implementation of the 10 shared principles of the NAACP and Illinois Chief of Police Association**

- Go more in-depth (e.g., what looks like, what steps will take, measurable outcomes, timeline, reporting requirements)
  - As an example, the use of force policy talks about value of human life: what does that look like? Community members shared that it does not appear police are valuing human life in these encounters
- Should take place on an agreed-upon vision and mission statement for the UPD that articulates a “guardian” philosophy and welcomes community participation
- Community members should be able to provide feedback when implementation plan is released to the public



### School Resource Officers (SROs)

- Funds should be used in a different way and put towards social service programs for youth and re-entry programs
- Bring in someone with mental health or other skills instead of going punishing the youth and sending to detention
- Assess the need for SROs in schools

### Miscellaneous

- Community engagement programs should be more robust and known to the community
- Policies for hiring and promotion should align with articulated mission and principles
- Create opportunities for educational forums led by civil rights lawyers explaining the rights of community members when stopped by the police and how to proceed when one feels they have been mistreated
- City should address community members' fear of retaliation of filing complaints
- More education and community advocates to support citizens filing complaints

## 7 What could the UPD do to build or rebuilt trust with the community?

- Create opportunities for more positive contacts with the community
  - Foot or bicycle patrols
  - Neighborhood cookouts
  - UPD open houses
  - Volunteer hours working with youth programs and sports
  - Community service at club programs
  - Build relationships and partnerships with the faith-based community
  - Institute a residency requirement to have officers that are tied to the communities they serve and provide incentives to do so
- Make sure any reviews of the UPD are transparent and available to the community
- Work to address the strain between the police and Black communities
- Create a culture that doesn't view the Black community as the enemy and instead sees it as a community to better protect and serve
- Create a culture within the department that ensures officers hold each other accountable
- Provide training and education that will enhance officer's ability to have a posture of openness and non-defensiveness in difficult interactions and circumstances



## RECOMMENDATIONS TO CONTINUE TO ADVANCE POLICE COMMUNITY ENGAGEMENT

Based on our review and the responses from community members described above, we have formulated the following recommendations regarding community engagement for the City and UPD.

Rec. #	Recommendation
1	Review the policies for the use of the duty rifle and physical engagement with subjects and ensure officers are sufficiently trained on weapon control and physical engagement while armed with rifles.
2	Ensure supervisors tasked with the investigation into use of force incidents receive training specific to such investigations. Provide annual refresher training.
3	Require officer statements following use of force incidents as part of the internal review process when an Internal Affairs investigation is not required.
4	Review the training of officers to ensure that it instructs that verbal control of a subject, particularly one suspected of being armed, is directed by one officer.
5	Ensure that the concepts and goals of de-escalation are addressed within the use of force policy and provide training specific to de-escalation.
6	Include in its use of force policy and training policy information regarding the identification of and assessment for the risks of positional asphyxia.
7	Provide policy guidance, similar to that of the IACP Consensus on Use of Force, to include an “objectively reasonable” definition for use of force specifically against a restrained subject who is resisting or acting as an assailant.
8	Explore more opportunities for co-education and outreach to the community about the police department, citizens’ rights, use of force procedures, state statutes, officer protections and mechanisms to report complaints without a fear of retaliation.
9	Create a community engagement plan that has measurable outcomes and goals that are co-produced by and shared with the community.
10	Assess the current oversight mechanisms within the City and explore an enhanced oversight model for police accountability with authority and transparency in outcomes for police misconduct.
11	Create educational opportunities for the community to better understand the police complaint process and investigative process behind citizen complaints, as well as their rights to receiving feedback on outcomes.
12	Provide training for and/or share the current training the UPD receives that enhances cultural competency, empathy, procedural justice and leadership and embraces ethical standards, accountability and reporting officer misconduct.
13	Create or enhance officer wellness and mental health screening to ensure they are handling the stress of the job, particularly after an incident involving force.



14	Create partnerships with affinity organizations within the City to build trust with the faith-based community and establish better relationships with the Black community.
15	Explore the opportunity to have UPD data reviewed for any racial or ethnic disparities and use that data to embrace change in policies or procedures that may have a disparate impact on the Black community and other communities of color and contribute to the act or perception of inequitable policing practices.
16	Seek out and establish opportunities with organizations, and groups that work with youth to create more positive contact between the UPD and the community to create a relationship that is not seen as punishment-driven but as more mentoring and collaborative.
17	Work more collaboratively with the community to develop practices and policies that are in line with national best practices, such as those of the UPD that currently embrace the NAACP's 10 Share Principles.
18	Enhance transparency for police misconduct, policies, procedures and options for the community to be involved.



## Appendices

**APPENDIX A: VARIOUS POLICE REPORTS**

**APPENDIX B: BOOKING PHOTOGRAPHS**

**APPENDIX C: BODY-WORN CAMERA AND SQUAD CAR CAMERA FOOTAGE**

**APPENDIX D: CALL DISPATCH AND RADIO TRAFFIC CONCERNING THE USE OF FORCE INCIDENT**

**APPENDIX E: PUBLICLY SOURCED VIDEOS OF THE INCIDENT**

**APPENDIX F: TRAINING RECORDS**

**APPENDIX G: UPD POLICY MANUAL**

**APPENDIX H: FOLLOW-UP INVESTIGATION OF USE OF FORCE INCIDENT REPORTS**

**APPENDIX I: USE OF FORCE REVIEW BOARD MEMORANDUM**

**APPENDIX J: PUBLIC CITY COUNCIL PRESENTATION**

**APPENDIX K: INTERVIEW OF SGT. CORTEZ GARDNER, DET. LT. DAVID SMYSOR AND DET. SGT. TIM MCNAUGHT**

**APPENDIX L: HILLARD HEINTZE CITY OF URBANA LEARNING SESSIONS INVITATION**

**APPENDIX M: HILLARD HEINTZE COMMUNITY STAKEHOLDER LEARNING SESSION QUESTIONNAIRE**