

Date: 2/1/12
To: James E. Craig, Police Chief 
From: Lt. Colonel Richard Janke
Copies to:
Subject: FIREARM DISCHARGE BOARD SUMMARY OF FINDINGS: 11-PI-02

The following is a summary of the findings of the Firearm Discharge Board (FDB) on the incident that occurred on April 18, 2011, at 1833 Chase Avenue, involving Sergeant Andrew Mitchell and Mr. David Hebert.

The Firearm Discharge Board is tasked with determining the following issues:

- 1) Whether all uses of force during this encounter were consistent with Police Department policy, procedures, and training.
- 2) Whether the involved officers employed proper tactics.
- 3) Whether lesser force alternatives were reasonably available.

1) Regarding whether all uses of force during this encounter were consistent with Police Department policy, procedures, and training, the FDB determined the use of force against Mr. David Hebert by Sergeant Andrew Mitchell was appropriate and necessary in response to an immediate deadly threat and was in compliance with the Cincinnati Police Department's policies, procedures, and training.

2) Regarding whether the involved officers employed proper tactics, the FDB determined:

- Sergeant Mitchell utilized good tactics when acting as the cover officer for Officer Johnson and he was justified in firing the shots at Mr. Herbert due to the immediate threat of serious physical harm or death that Mr. Hebert posed to Officer Johnson while advancing towards him with the knife.
- The officers employed basic contact and cover tactics according to Police Department training.
- Given that the initial information broadcast involved a cutting offense that was confirmed, the suspects were armed with either a sword or knife, and Mr. Herbert and Ms Hutchinson matched the suspect descriptions, **a better tactical approach option for the officers to consider would have been to hold off before immediately**

2/24 Copy to Training Section &
Lt. Whalen,
SNA on recommendations

Chief
FDB
2/1/12

walking up to the suspects and questioning them until after they were secured and handcuffed.

- *More communication between the officers on the scene may have been beneficial when approaching the suspects. More communication may have lead to the officers standing back from a position of cover and giving verbal orders for Mr. Herbert and Ms. Hutchinson to stay on the ground and to put their hands behind their backs. The officers could then move in to handcuff them before having the suspects stand up for questioning or searching.*

3) Regarding whether lesser force alternatives were reasonably available, the FDB determined that due to the suddenness of Mr. Herbert's actions of pulling a knife from his pocket and immediately advancing towards Officer Johnson in a threatening manner that lesser force alternatives in this incident were not reasonable. Sergeant Mitchell's actions were within Cincinnati Police Department policy, procedure and training.

FDB Recommendations

The Firearm Discharge Board recommends that the facts and recommendations of this critical firearm discharge be incorporated into Police Department training for use by sworn personnel and recruits particularly as it relates to tactical communication between officers at a scene and tactical approaches to suspects. Specifically the Firearm Discharge Board recommends:

That the District Commander of the involved officers reviews this report with the officers involved as it relates to tactical communication between officers at a scene and tactical approaches and securing of possibly armed suspects before questioning or pat down searches.

That the Police Department's Training Section emphasize and reinforce tactical training scenarios in roll call training scenarios, simulation training, and firearms training as it relates to the importance of tactical communication, suspect approaches and teamwork during suspect encounters.

RJ

Date: 1/15/12
To: James E. Craig, Police Chief
From: Captain Andrew G. Raabe, Inspections, Policy and Procedure Section Commander
Copies to:
Subject: **Firearm Discharge Board Review – Police Sergeant Andrew Mitchell 11-PI-02**

This report was prepared pursuant to requirements in Procedure 12. 550; Discharging of Firearms by Police Personnel.

The Firearm Discharge Board met on this matter on December 22, 2011 and reviewed a critical firearm discharge involving Sergeant Andrew Mitchell. (S87). At the time of this incident, Sergeant Andrew Mitchell was on-duty in uniform assigned to District Five.

The incident occurred at 1833 Chase Avenue in District Five on April 18, 2011 at 0310 hours. The Cincinnati Police Department's Criminal Investigation Section's Homicide Unit conducted a criminal investigation. An administrative review was conducted by the Cincinnati Police Department's Internal Investigation Section.

On August 23, 2011, Hamilton County Prosecutor Joseph Deters reviewed the investigative report prepared by the Criminal Investigation Section and determined that Sergeant Andrew Mitchell was justified in his actions and did not violate any criminal statutes.

The Firearm Discharge Board received the Internal Investigation Section's report on November 23, 2011 and the Criminal Investigation Report on August 30, 2011.

The Firearm Discharge Board Members who reviewed this incident are listed as follows:

Lieutenant Colonel James Whalen, Patrol Bureau Commander
Captain David Bailey, District Five Commander
Captain Kimberly Frey, Training Section Commander
Captain Andrew Raabe, Inspections Section Commander (Chairperson)
Ms. Katherine Miefert, City Solicitor's Office.

The Firearm Discharge Board reviewed both the Criminal Investigation Section and the Internal Investigation Section reports to **evaluate the accuracy, completeness and consistency of both reports.** Additionally, the Firearm Discharge Board also conducted a summary review of **all relevant evidence, proposed findings, and analysis to support those findings.**

In particular, the Firearm Discharge Board determined whether all uses of force during the encounter were consistent with Police Department policy and training, whether the involved officers employed proper tactics, and whether lesser force alternatives were reasonably available.

INCIDENT DESCRIPTION:

Note: This incident description is based on information contained within the investigative report of the Cincinnati Police Department's Homicide Unit and the administrative review conducted by the Cincinnati Police Department's Internal Investigations Section.

On April 18, 2011, at approximately 0222 hours, the Emergency Communications Center received an Emergency "911" call from Mr. Steve Yonder regarding a domestic disturbance inside the basement apartment at 4352 Virginia Avenue. Mr. Yonder cancelled the call for service while speaking to the Emergency Communications Center prior to officers being dispatched, stating there was no longer a disturbance.

On April 18, 2011, at 0259 hours, the Emergency Communications Center received an Emergency "911" call from Mr. Weller. Mr. Weller reported that a white male individual known as "Bones" and an unknown white female attacked him with a sword inside his basement apartment at 4352 Virginia Avenue.

Bones and the white female fled from the apartment. Mr. Weller was injured in the attack; however, he was able to provide Emergency Communications Center with a physical and clothing description of the two individuals. The description was: Suspect #1, "Bones," white male in his forties, five feet ten inches tall, ninety pounds, wearing all black clothing. Suspect #2 was a white female in her twenties, one hundred twenty pounds, wearing unknown clothing. Suspects took the weapon with them and were last seen in an unknown direction.

At approximately 0259 hours, the Emergency Communications Center broadcast the description of Mr. Hebert and Ms. Hutchinson and dispatched Sergeant Mitchell, Officer Pierson, and Officer Johnson to 4352 Virginia Avenue to investigate the reported felonious assault.

At approximately 0310 hours, Officer Kneller observed Mr. Hebert and Ms. Hutchinson at 1833 Chase Avenue. Officer Kneller advised the Emergency Communications Center, via police radio, of Mr. Hebert's and Ms. Hutchinson's location.

Officer Kneller exited his police vehicle and approached Mr. Hebert and Ms. Hutchinson. Mr. Hebert was seated on the sidewalk on the south side of Chase Avenue with Ms. Hutchinson standing next to him.

Sergeant Mitchell, Officer Johnson, and Officer Stavale arrived at 1833 Chase Avenue to assist Officer Kneller and took cover positions around Mr. Hebert. Officer Johnson began questioning Mr. Hebert about the location of the knife used in the assault of Mr. Weller. Mr. Hebert denied he possessed a knife. Officer Johnson told Mr. Hebert to stand up. As he

stood up, Mr. Hebert reached into his right front pants pocket. Officer Johnson ordered Mr. Hebert twice to remove his hand from his pants pocket.

Mr. Hebert disregarded Officer Johnson's orders and produced a switchblade knife, which was opening as Mr. Hebert pulled the knife from his pocket. Mr. Hebert stepped toward Officer Johnson while slashing the knife, back and forth at Officer Johnson.

Officer Johnson began backing up from Mr. Hebert to create distance and started to remove his Department issued firearm from the holster. Sergeant Mitchell, who had taken a cover position behind Mr. Hebert, drew his Department issued firearm from the holster and fired two shots striking Mr. Hebert in the chest and left arm. Upon impact of the rounds, Mr. Hebert threw the knife breaking the front window at 1833 Chase Avenue. Mr. Hebert then fell to the ground.

Sergeant Mitchell advised the Emergency Communications Center, via police radio, that shots had been fired which had taken effect and requested the Cincinnati Fire Department respond to the scene for medical assistance. At approximately 0316 hours, Cincinnati Fire Department personnel arrived at 1833 Chase Avenue. Cincinnati Fire Department personnel pronounced Mr. Hebert dead at the scene.

Note: The Criminalistics Squad's Leica Geo systems laser scans of the police intervention scene measured the distance between Sergeant Mitchell and David Hebert at approximately 9 feet.

Note: The Criminalistics Squad's examination of Sergeant Mitchell's Department issued firearm, ammunition and recovered casings revealed Sergeant Mitchell discharged his firearm two times during the incident.

INCIDENT AND CRIME SCENE MANAGEMENT:

The Firearms Discharge Board reviewed the Communication CAD printouts, and radio transmissions along with the Internal Investigations Section report and the Criminal Investigation Section Executive Summary of this incident. The review confirms that after Sergeant Mitchell advised the Emergency Communications Center that shots had been fired that had taken effect; he then requested Fire Department response. The review confirms that Lieutenant Joseph Milek of District Five arrived on scene to take command. Lieutenant Milek identified the officers involved, established the crime scene perimeters, coordinated street closures, and designated staging areas for both police and the media. Lieutenant Milek also requested standby officers from other districts to assist with securing the crime scene and to handle calls for service in the District Five area.

The Internal Investigations Sections report confirms that District Five officers were assigned to posts around the inner perimeter of the incident scene. The scene was secured with crime scene tape. Traffic posts were established on the outer perimeter. Police Officer Jarrod Cotton, Badge: P375, District Five maintained a crime scene log of personnel who entered and exited the incident scene.

The staging area for police personnel was established at Chase Avenue and Florida Avenue. A media staging area was established at Chase Avenue and Kirby Avenue. Police Sergeant Danita Kilgore, Badge: S711, Public Information Office, responded to the media staging area and addressed requests from the media.

Captain Jeffery Butler, Night Chief, arrived on the scene and conferred with Lieutenant Milek before assuming command of the incident. **Captain Butler assigned the following control supervisors to the officers involved** in the incident:

- Sergeant John Hudson, Badge: S88 District Three was assigned as the control supervisor for Sergeant Mitchell.
- Sergeant Jeffery Battison, Badge: S151, District Two and Sergeant **Donnan Murnan**, District Two were assigned as control supervisors for Officer Johnson.
- Sergeant Troy Bastin, Badge: S238, District Four and Sergeant **Jennifer Jones**, Badge: S911, District Four were assigned as control supervisors of Officer Stavale.
- Sergeant Anthony Faillace, Badge: S93, District One, and Captain Butler were assigned as control supervisors for Officer Dawson.
- **Lieutenant Milek** was assigned as the control supervisor for **Officer Kneller**.

The Internal Investigations Section's report confirms that witnesses and officers were transported to the Criminal Investigation Section offices where they were interviewed. Criminalistics investigators collected and recorded evidence from the scene in accordance with Police Department policy and procedure. Criminalistics investigators utilized the Leica Geo systems laser scan system for crime scene mapping, diagrams and measurements.

Internal Investigations Section also noted that they responded to the Criminal Investigation Section office and monitored the interview process.

EVIDENCE:

Evidence Placard # 1 – Body of David Paul Hebert

Evidence Placard # 2 – Personal property of David Paul Hebert (wallet, lighter, misc. keys, cellular phone, Top cigarette papers and a pouch of tobacco, Louisiana and Oregon driver's licenses)

Evidence Placard # 3 - Colt 45 Malt Liquor bottle, 40 oz.

Evidence Placard # 4 – 9mm Winchester casing

Evidence Placard # 6 – 9mm Winchester casing

Evidence Placard # 7 – Switchblade knife marked "Frank B Italy" with 6 inch blade and 7 inch handle

DOCUMENTATION:

The Firearm Discharge Board examined both the Internal Investigations Section and the Criminal Investigation Section reports and except as otherwise noted, found both the investigations and subsequent reports to be well written, accurate and complete.

The Criminal Investigation Section Shooting Book supplied the following documentation:

- A. Executive Summary
- B. NIBRS/Offense Report
 - 1. Felonious Assault of Police Officer Lawrence Johnson
 - 2. Aggravated Robbery/Felonious Assault of Jason Weller
- C. Computer Aided Dispatch (CAD) Radio Traffic and Transcripts
- D. Autopsy Report and Diagram
- E. Report of Investigation (ROI)
- F. Deceased Suspect-David Paul Hebert
 - 3. BMV Photograph
 - 4. Criminal History
 - 5. Portland, Oregon Incident Reports
- G. Crime Scene Log
- H. Police Officers and Canvass Notes
- I. Evidence Exam Worksheets
- J. Property Reports
- K. Evidence Submission Sheets
- L. Firearm Report
- M. Tow Report (Form 369) – 1995 Mercury Villager, Ohio VBP 100
- N. Crime Scene Diagram and True view disk

O. Civilian Witnesses-Transcribed Statements

6. Jason Weller
7. Megan Hutchinson
8. Jessica Baum (typed interview notes only)

P. Police Officers Transcribed Statements

9. Sergeant Andrew Mitchell
10. Police Officer Lawrence Johnson
11. Police Officer Brian Kneller
12. Police Officer Nicolino Stavale
13. Police Officer Anthony Dawson
14. Captain Jeffrey Butler
15. Lieutenant Joseph Milek
16. Sergeant Donnan Murnan
17. Sergeant Jennifer Jones
18. Sergeant Anthony Faillace
19. Sergeant John Hudson
20. Sergeant Troy Bastin
21. Sergeant Jeff Battison

Q. Crime Scene Photographs

22. 1833 Chase Avenue
23. 4352 Virginia Avenue
24. Involved Officers, Scene Diagram, and Duty Weapons

R. Mobile Video Recorders (MVR)

- Police Equipment 03387 – operated by P.O. Kneller
- Police Equipment 08320 – operated by P.O. Stavale
- Police Equipment 08370 – operated by P. O. Johnson
- Police Equipment 50832 – operated by Sgt. Mitchell
- Police Equipment 06328 – operated by P.O. Dawson
- Police Equipment 06326 – operated by P.O Abrams
- Police Equipment 08372 – operated by P.O. Cotton
- Police Equipment 05317 – operated by P.O. Neal
- Police Equipment 10318 – operated by Lt. Milek

INVESTIGATION:

The Firearm Discharge Board found that except as otherwise noted, the investigation by the Internal Investigations Section and the Criminal Investigation Section was detailed, accurate and comprehensive.

Both Homicide and Personnel Crimes Unit personnel canvassed the area and surrounding streets to attempt to locate any additional witnesses who may have witnessed the encounter between Mr. Hebert and the police. The canvass for additional witnesses did not lead to any new witnesses who actually saw the encounter but it did produce several new witnesses who heard the gunshots. The officer's canvass notes were documented within the Criminal Investigation Section Shooting Book. While these additional witnesses did not see the encounter, identifying and interviewing them did help to clarify the timeline of the events and documented and confirmed that the Criminal Investigation Section was following proper Police Department policy and investigative standards by canvassing the area for all possible witnesses.

The Firearm Discharge Board noted that the Criminal Investigation Shooting book documented that weapons of the involved officers on the scene were checked, photographed, and documented within the Shooting Book. The Firearm Discharge Board reviewed the interview transcripts of the police personnel along with the civilian witnesses from this incident. The Firearm Discharge Board determined that the Homicide investigators did a thorough job of asking pertinent questions to determine the events which occurred on this date as well as following Police Department policy and procedure during the interviews.

It was also noted by the Firearm Discharge Board's review that a follow-up interview with Ms. Hutchins was conducted by Homicide investigators after the initial interview on the night of occurrence in an attempt to provide further clarity of the events. Follow-up with Criminal Investigation Section confirmed that the second interview was conducted with Ms. Hutchinson due to her apparent level of intoxication during the first interview where she was having trouble concentrating on the facts.

FIREARM DISCHARGE BOARD FINDINGS AND DETERMINATIONS"

The Firearm Discharge Board was tasked with determining the following issues:

- Whether all uses of force during this encounter were consistent with Police Department policy, procedures, and training.
- Whether the involved officers employed proper tactics.
- Whether lesser force alternatives were reasonably available.

Use of Force:

A review of the Criminal Investigation Section's investigation confirms that Sergeant Mitchell was engaged in the lawful performance of his duties when he was responding to 4352 Virginia Avenue Apartment # 5 at 0259 hours in response to an Emergency "911 call from Mr. Jason Weller in reference to a white male individual known as "Bones" (later identified as Mr. David Hebert) and an unknown white female (later identified as Ms.

Megan Hutchinson) who had attacked him with a sword inside of his apartment at that location.

The investigation confirms that Mr. Weller was cut and injured in the attack and the suspects had fled from the apartment. Mr. Weller was able to provide a description of the suspects to the Emergency Communications Center. The description was Suspect # 1 "Bones," white male in his forties, five feet ten inches tall, ninety pounds, wearing all black clothing. Suspect # 2 was a white female in her twenties, one hundred twenty pounds, wearing unknown clothing. The suspects were reported to have taken the weapon a sword or knife with them and were last seen in an unknown direction.

As Sergeant Mitchell was responding to the radio run, Officer Kneller observed two individuals who were later identified to be Mr. Hebert and Ms. Hutchinson at 1833 Chase Avenue. The investigation confirms that Officer Kneller advised Police Communications of his location and that he had located two suspects who fit the broadcasted description. Officer Kneller exited his police vehicle and approached Mr. Hebert who was seated on the sidewalk on the south side of Chase Avenue with Ms. Hutchinson standing next to him.

Sergeant Mitchell, Officer Johnson, and Officer Stavale arrived at 1833 Chase Avenue to assist Officer Kneller and took cover positions around Mr. Hebert. Officer Johnson began questioning Mr. Hebert about the location of the knife used in the assault of Mr. Weller.

Officer Johnson told Mr. Hebert to stand up. As he stood up, Mr. Hebert reached into his right front pants pocket. Officer Johnson ordered Mr. Hebert twice to remove his hand from his pants pocket. Mr. Hebert disregarded Officer Johnson's orders and produced a switchblade knife, which was opening as Mr. Hebert pulled the knife from his pocket. Mr. Hebert stepped toward Officer Johnson while slashing the knife, back and forth at Officer Johnson.

Officer Johnson began backing up from Mr. Hebert to create distance and started to remove his Department issued firearm from the holster. Sergeant Mitchell, who had taken a cover position behind Mr. Hebert, drew his Department issued firearm from the holster and fired two shots striking Mr. Hebert in the chest and left arm. Upon impact of the rounds, Mr. Hebert threw the knife breaking the front window at 1833 Chase Avenue. Mr. Hebert then fell to the ground.

A review of the interview transcripts of Officer Johnson confirms that after Officer Johnson warned Mr. Hebert twice to remove his hands from his pockets. Officer Johnson observed Mr. Hebert to remove a silver and black triangle shaped object from his pocket that he identified as a knife that was opening up. Officer Johnson related that Mr. Hebert was stepping towards him with the knife. Officer Johnson's interview also confirms that he stated the he could see Mr. Hebert's eyes get big and that he felt Mr. Hebert was coming towards him with the knife to hurt him. Further review of Officer Johnson's interview transcripts confirms that Officer Johnson stated that he was about an arms length away from Mr. Hebert and that Officer Johnson started to reach for his duty weapon and took a

step back towards a cement wall when he heard the two shots ring out and observed Mr. Hebert to fall to the ground.

A review of Officer Kneller's interview transcripts confirms that Officer Kneller's description of the incident was consistent with Officer Johnson's. Officer Kneller stated that after Mr. Hebert stood up at the request of Officer Johnson; he observed Mr. Hebert's hand to disappear either under his waistcoat or into his waistband to come up with something in his hand which he started to wave around and then turn towards Officer Johnson with the object while he was flaring it around. Further review of Officer Kneller's interview confirms that Officer Kneller could not tell what the object was but he believed it was probably the weapon used in the earlier offense. Officer Kneller stated at that time he began to reach for his service weapon when he heard two shots ring out from his right side. Officer Kneller then stated he observed Mr. Hebert to throw the knife towards 1833 Chase and then fall to the ground.

A review of Officer Stavale's interview confirms that Officer Stavale's description of the incident was also consistent with both Officer Johnson's and Officer Kneller's interviews. Officer Stavale stated that when he arrived at the scene he observed Mr. Hebert sitting on the sidewalk and that Officer Johnson was talking to him. Officer Stavale stated he observed Mr. Hebert to stand up and then walk forward towards Officer Johnson. Officer Stavale stated Officer Johnson started to back up. Officer Stavale stated he heard Officer Johnson give two verbal commands for Mr. Hebert to take his hands out of his pocket. Officer Stavale further stated that he observed Mr. Hebert to reach into his right pocket and take out a silver instrument which he believed to be a knife and that Mr. Hebert started to swing the knife towards Officer Johnson. Officer Stavale stated that at that point he heard two gunshots and then observed Mr. Hebert throw the knife towards the residence at 1833 Chase Avenue. Mr. Hebert then fell to the ground.

A review of Officer Dawson's interview confirms that Officer Dawson was just pulling up to the area of 1833 Chase Avenue when heard two gun shots. Officer Dawson stated he was still in the car when he heard the gun shots and he was not able to observe the interaction between Mr. Hebert and Officer Johnson and he did not know who fired the shots.

A review of Sergeant Mitchell's interview confirms that Sergeant Mitchell had responded to the original radio run at 4352 Virginia Avenue for a report of a felonious assault called in by Mr. Weller. Sergeant Mitchell stated that he arrived on the scene and confirmed that Mr. Weller had been cut and that he claimed to have had his wallet taken as well. Sergeant Mitchell confirmed the description and stated he believed he had seen two subjects matching the description on his way to the radio run. Sergeant Mitchell stated that Officer Pierson arrived and remained on the scene while he broadcast over the radio about the two subjects he had seen while en-route to the radio run. Sergeant Mitchell heard a District Five car come on the radio and stated that they had the subjects stopped on Chase Avenue. Sergeant Mitchell responded to that location. Sergeant Mitchell stated that when he arrived at 1833 Chase Avenue he observed Mr. Hebert sitting on the sidewalk with Officer Kneller talking to him. Sergeant Mitchell stated he took a cover position on the sidewalk area right before the grassy area between the street and the curb next to a tree.

Sergeant Mitchell stated he was not sure which officers were asking Mr. Hebert and Ms. Hutchinson questions but that Mr. Hebert stood up and he put his right hand into his pocket. Sergeant Mitchell further stated that he heard an officer tell Mr. Hebert several times to keep his hands out of his pockets. Sergeant Mitchell stated that his awareness level spiked because he felt strongly that these were the suspects who were involved in the cutting offense and that Mr. Hebert could very well be armed with a knife or edged weapon used in the offense. Officer Mitchell confirmed in his interview that he was not the contact officer but in the cover role and that he was very focused on Mr. Hebert's actions. Sergeant Mitchell stated that he observed Mr. Hebert to suddenly pull out a long object from his pocket that was silver and shiny and there was no doubt in his mind that it was a knife. Sergeant Mitchell confirmed that at that point he drew his service weapon and pointed it at Mr. Hebert.

Sergeant Mitchell's interview confirmed that Sergeant Mitchell observed that Mr. Hebert raised the knife up and stepped towards the officer. Sergeant Mitchell's interview confirms that he felt this was an overt aggressive act and that he felt that Officer Kneller's life was in danger. A review of Sergeant Mitchell's interview confirms that this was when Sergeant Mitchell took a half step to his right and fired two shots at Mr. Hebert and that Mr. Hebert then fell to the ground. (Note: a review of all the interviews confirms that it was actually Officer Johnson who Mr. Hebert stepped towards with the knife and not Officer Kneller as Sergeant Mitchell thought)

The Firearm Discharge Board reviewed the Homicide interviews of Ms. Hutchinson. During her interviews, Ms. Hutchinson admitted to being very intoxicated through drinking and consuming mushrooms throughout most of that day. Ms Hutchinson was interviewed by Homicide investigators on April 18th, 2011 and again on April 20th, 2011 in an attempt to gain more clarity. A review of the interviews confirms that Ms. Hutchinson remembers being stopped by the police on Chase Avenue and that she remembers Mr. Hebert sitting down on the sidewalk to roll a cigarette. Ms. Hutchinson's interviews confirm that Ms. Hutchinson cannot remember if officers asked her or Mr. Hebert any questions or if they asked Mr. Hebert to stand-up. Ms. Hutchinson stated she thought she was handcuffed and placed in a police vehicle and when she was in the police vehicle she remembers hearing some shots. Ms. Hutchinson stated she remembers Mr. Hebert lying on the sidewalk but she was not aware he was shot.

A review of Ms. Hutchinson's interviews confirms that at one time Ms. Hutchinson stated she was standing next to Mr. Hebert when she heard the shots and at other times during the interviews she stated she was in the police car when she heard the shots. Ms. Hutchinson stated she may have blanked out at some point because she does not remember any interactions or questions from the police. Ms. Hutchinson stated she did not know who shot Mr. Hebert or why and that she was very confused over what had happened.

Further review of Ms. Hutchinson's interview confirms that Ms. Hutchinson does not remember Mr. Hebert pulling out a knife during the encounter but that she did remember him having a switchblade knife on his person earlier in the day.

The Firearms Discharge Board followed up with Homicide investigator William Hilbert who interviewed Ms. Hutchinson. Police Specialist Hilbert confirmed that Ms. Hutchinson appeared to be highly intoxicated on the night of the first interview and that she was very confused and could not remember much about the shooting when they interviewed her two days later.

The Firearm Discharge Board noted that the Homicide Unit also interviewed a Ms. Jessica Baum whom was not at the incident when it occurred but was communicating on Face book about the incident. Ms. Baum was a friend of Mr. Hebert and she stated she had seen Mr. Hebert with a knife with a six inch blade on April 15th at the Northside Tavern. The interview confirms that investigators showed Ms. Baum a picture of the knife recovered at the scene on April 18, 2011 and that she confirmed that it was the same knife she saw Mr. Hebert with on April 15, 2011.

The Firearm Discharge Board determined that the evidence located at the scene along with the interviews, evidence, and investigative material documented within the Criminal Investigation Section's Shooting Book supports the statement of Sergeant Mitchell that Mr. Hebert pulled a knife from his pocket and stepped towards Officer Johnson with the knife out.

The investigation documents that all of the officers at the scene were consistent with their statements that Mr. Hebert pulled out a knife and advanced towards Officer Johnson in a threatening manner and that Officer Johnson's life **was** in danger.

The Firearm Discharge Board determined that the use of Force against Mr. David Hebert by Sergeant Andrew Mitchell was appropriate and necessary to an **immediate deadly threat** and was in compliance with the Cincinnati Police Department's policies, procedures, and training.

Tactics:

The Firearm Discharge Board reviewed the initial approach of the officers to Mr. Hebert and Ms. Hutchinson when they were first encountered on Chase Avenue. A review of Officer Kneller's, Officer Johnson's, Officer Stavale's, and Sergeant Mitchell's account of the incident was **found to be consistent with the facts that each officer gave separately during their interviews.** The interviews confirmed that Officer Kneller was the first officer to spot and then approach Mr. Hebert and Ms. Hutchinson on Chase Avenue. Officer Kneller stated that he broadcast his location over his police radio and that he was out with the suspects. Officer Kneller then exited his police vehicle. Officer Kneller stated that he approached within a few feet of the Mr. Hebert who was sitting on the sidewalk and that he told Ms. Hutchinson to sit down as well. A review of the interviews confirms that Officer **Kneller did not try to approach any closer to the subjects due to the fact that he felt they may have still had a weapon on them.** Officer Kneller stated that he was waiting for back-up to arrive before moving any closer. Officer Kneller began to ask them where they were coming from when other officers showed up at his location.

The review confirms that when Officer Johnson arrived on scene that Officer Johnson did walk up to within an arms length away from Mr. Hebert and Ms. Hutchinson and started to ask them if they still had the knife or sword on them that was used in the offense. Mr. Hebert denied he had a knife or sword on him. Officer Johnson's interview confirmed that he wanted to search Mr. Hebert so he told him to stand up. Officer Johnson further stated that Mr. Hebert stood up and began to reach into his pockets.

A review of the interview transcripts confirms that after Officer Johnson warned Mr. Hebert twice to remove his hands from his pockets. Officer Johnson then observed Mr. Hebert to remove a silver and black triangle shaped object from his pocket that Officer Johnson identified as a knife that was opening up. Officer Johnson related that Mr. Hebert was stepping towards him with the knife. Officer Johnson's interview also confirms that he could see Mr. Hebert's eyes get big and that he knew Mr. Hebert was coming towards him with the knife to hurt him.

Further review of Officer Johnson's interview transcripts confirms that Officer Johnson stated that he was about an arms length away from Mr. Hebert and was reaching for his gun while backing up towards a cement wall. Officer Johnson then heard two shots ring out and observed Mr. Hebert to fall to the ground.

The review confirms that during Sergeant Mitchell's interview he articulated that he was acting in the cover capacity to ensure the safety of the other officers who were in contact with Mr. Hebert. The review confirmed that Sergeant Mitchell stated that he made sure that from his position near the tree that he had a clear backdrop with the cement wall and step area behind Mr. Hebert and that no other officers were in a cross fire position between himself and Mr. Hebert during the encounter. Sergeant Mitchell articulated that he observed Mr. Hebert to reach into his pocket, pull out a knife, and then raise the knife up and step towards the officer. Sergeant Mitchell further stated that he felt the officer's life was in danger and that was when he fired the two shots at Mr. Hebert.

The review confirmed that Sergeant Mitchell articulated that he had a clear field of fire when he fired the two shots. A review of the investigation and the Leica Geo systems lasers scans and crime scene diagram completed by the Criminal Investigation Section Criminalistic's squad measured the distance between Sergeant Mitchell and Mr. Hebert to be approximately 9 to 11 feet when the shots were fired. The Firearm Discharge Board found the Leica Geo systems laser crime scene diagram and criminalistics crime scene diagram to be consistent with the general location and placements of officers as relayed in their interviews.

The Firearm Discharge Board determined that the investigation confirms that Sergeant Mitchell utilized good tactics when acting as the cover Officer for Officer Johnson and that he was justified in firing the shots at Mr. Hebert due to the immediate threat of serious physical harm or death that Mr. Hebert posed to Officer Johnson while advancing towards him with the knife.

The Firearm Discharge Board determined that during this encounter the officers did employ basic contact cover tactics according to Police Department training. However, the Firearm Discharge Board determined that with the initial information that was put out in the radio broadcast that a cutting offense was confirmed, that the suspects were armed with either a sword or knife, and that Mr. Hebert and Ms Hutchinson matched the suspect descriptions, that a better tactical approach option for the officers to consider would have been to hold off immediately walking up to the suspects and questioning them until after they were secured and handcuffed.

The Firearm Discharge Board determined that more communication between the officers on the scene could have assisted with a better tactical option when approaching the suspects. This would include the officers standing back from a position of cover and then giving verbal orders for Mr. Hebert and Ms. Hutchinson to stay on the ground and to put their hands behind their backs. The officers could then move in to handcuff them before having the suspects stand up for questioning or searching.

The Firearm Discharge Board found that except as otherwise noted the tactics utilized during this encounter were within Cincinnati Police Department policy, procedure and training.

Lesser Force Alternatives:

The Firearm Discharge Board determined that due to the suddenness of Mr. Hebert's actions of pulling a knife from his pocket and immediately advancing towards Officer Johnson in a threatening manner that lesser force alternatives in this incident were not reasonable. Sergeant Mitchell's actions were within Cincinnati Police Department policy, procedure and training.

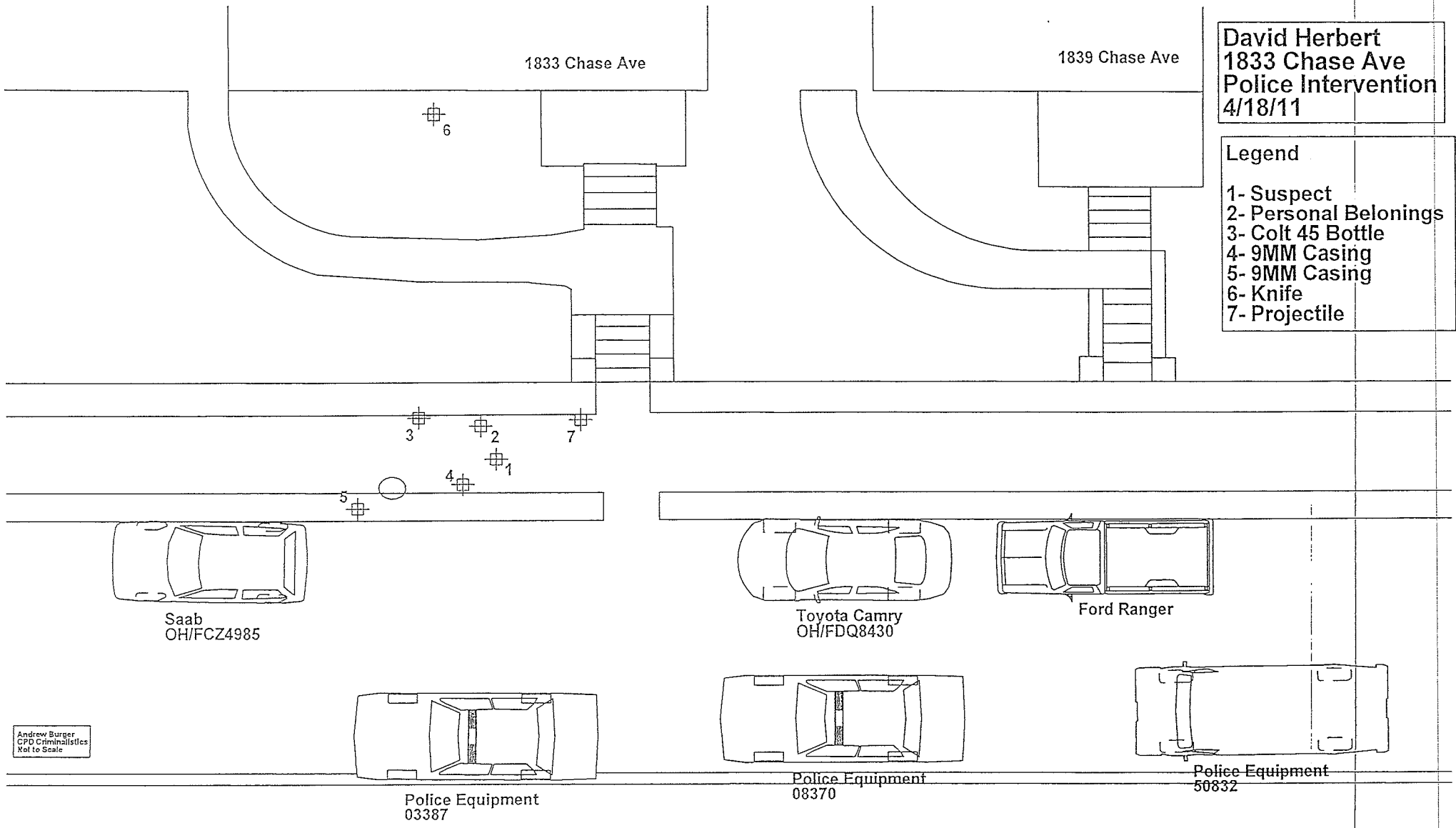
RECOMMENDATIONS:

The Firearm Discharge Board recommends that the facts and recommendations of this critical firearm discharge be incorporated into Police Department training for use by sworn personnel and recruits particularly as it relates to tactical communication between officers at a scene and tactical approaches to suspects. Specifically the Firearm Discharge Board recommends:

That the District Commander of the involved officers reviews this report with the officers involved as it relates to tactical communication between officers at a scene and tactical approaches and securing of possibly armed suspects before questioning or pat down searches.

That the Police Department's Training Section continues to emphasize and reinforce tactical training scenarios in roll call training scenarios, simulation training, and firearms training as it relates to the importance of tactical communication, suspect approaches and teamwork during suspect encounters

AGR



David Herbert
 1833 Chase Ave
 Police Intervention
 4/18/11

- Legend**
- 1- Suspect
 - 2- Personal Belongings
 - 3- Colt 45 Bottle
 - 4- 9MM Casing
 - 5- 9MM Casing
 - 6- Knife
 - 7- Projectile

Andrew Burger
 CPD Criminalistics
 Not to Scale

Saab
 OH/FCZ4985

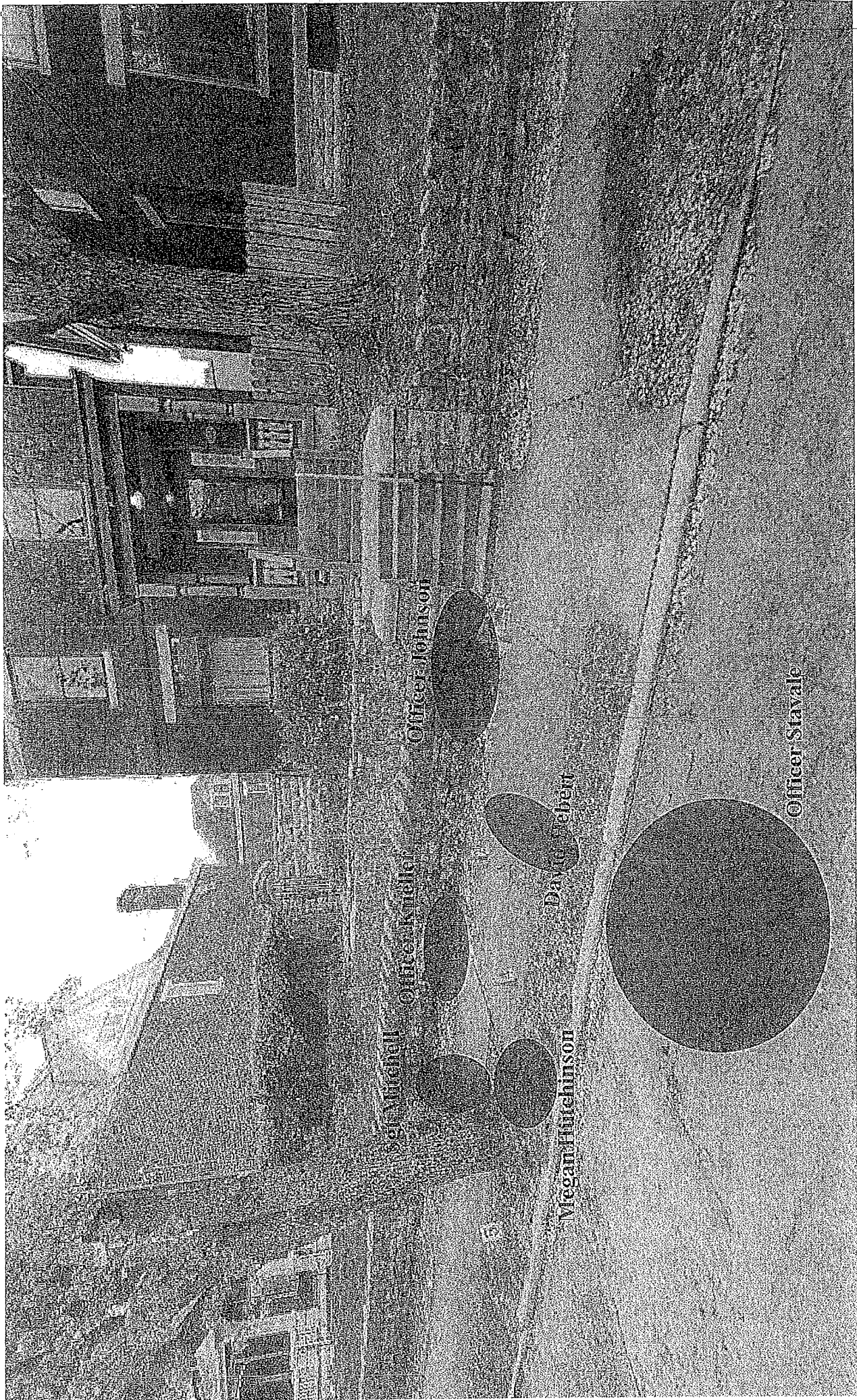
Toyota Camry
 OH/FDQ8430

Ford Ranger

Police Equipment
 03387

Police Equipment
 08370

Police Equipment
 50832



Officer Mitchell

Officer Mueller

Officer Johnson

Dave Deffen

Megan Hutchinson

Officer Stayale