



Memorandum

Date: April 18, 2013
To: Sheriff John Urquhart
From: Sgt. Jesse Anderson- Major Crimes Unit
Re: MCU REVIEW & RESPONSE TO PARC OIS REVIEW

Via: Chain

CAPT [Signature]
4/19/13

On April 10, 2013 the Major Crimes Unit (MCU) received the Merrick Bobb Police Assessment Resource Center (PARC) review of the officer involved shooting of Dustin Theoharis. MCU has completed a thoughtful and comprehensive response to the PARC review- see attachment.

During the MCU review I noted the Major Crimes points of concern and met with Sgt. Tony McNabb and Major Crimes detectives to discuss the issues. A significant amount of constructive discussion took place for each Major Crimes investigative concern identified. Members contributed by providing productive feedback on areas for improvement. We identified those areas where we can improve with an explanation for changes. If we didn't see a need to change we gave an explanation why the task was not completed or could not be carried out. Most of those noted deficiencies were either not applicable to this investigation or are contrary to what we have been advised are best practice standards.

Specifically, I documented the review into three categories for each Investigative Critique and Review Concern as follows:

1. Recommendations for change
2. Changes already implemented
3. Reason(s) for not following recommendations during this OIS investigation.

It's important to note that the Major Crimes Unit is always open for suggestions on continuous improvement. Major Crimes personnel are continuously critical of their investigative work, and we appreciate feedback from other law enforcement professionals to help improve our investigative procedures and practices. As you know, Major Crimes has an excellent reputation with the King County Prosecutor's Office and we intend on keeping it that way!

Attachment: Merrick Bobb Critique of Major Crimes Unit Investigation

Merrick Bobb Critique of Major Crimes Unit Investigation

Investigative Critique	Review Concerns	Recommendations for Change	Changes already Implemented	Reason(s) for not following recommendations during this OIS inv.
<p>Pg 23: Investigation Concerns/Areas for Improvement.</p> <p>Involved Officer Interviews</p>	Failure to compel interviews at scene ASAP.	Compelling deputy statements on serious use of force ASAP after incident.	In-process	Department Major Crimes procedures require a meeting with Command & Legal prior to ordering statements.
<p>Pg 25: Crime Scene Processing</p> <p>Evidence Overlooked</p>	Failure to collect metal flashlight (mini mag light).	None. This was identified at the Major Crimes investigative meeting when brought to our attention by the newest member of MCU. Major Crimes realized the oversight and made immediate plans to return to the scene to collect it.	Emphasized the importance of communication at the scene when unsure about the status of an item.	The relevance of the evidence didn't become apparent until the investigators' meeting.
<p>Pg 25: Evidence Overlooked</p>	Bullet from nightstand.	None- See above. Not discovered until we lined up the trajectory at the Property Management Unit. The nightstand was checked at the scene by detectives who did not locate the bullet. The nightstand and bed were placed by MARR detectives at the scene so the exact position was known for a reconstruction for trajectory analysis at PMU.	Every effort will be made to conduct the trajectory reconstruction at the scene.	<p>The bed and nightstand were prematurely moved prior to giving clear direction to do the trajectory work up.</p> <p>Not all evidence is found during initial searching. It's dependent on the condition of the scene, including movement at scene after the incident.</p>
<p>Pg 26: Evidence Overlooked</p>	Why was a metal detector not used.	None.	Major Crimes recently acquired a new metal detector primarily for outdoor scenes.	The use of metal detectors indoors is usually not successful due to a variety of metal objects it detects; including nails, staples, plumbing, and rebar.
<p>Pg 26: Moved Shell Casings</p>	Moved three casings and used one evidence marker.	Use evidence marker on each shell casing, unless circumstances dictate otherwise. Occasionally there are reasons for using one evidence marker, such as when the casings are grouped closely together in a pile.	Continue standard operating procedures.	It was already documented. The casings were found in layers of bedding and not readily obvious to set up placards for the individual locations. The layers had to be carefully examined to find the casings, which required

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				<p>movement preventing exact location for marking. Evidence placards are not always used to mark each individual evidence item. One placard can mark more than one item in a location or can be used to mark locations of items not collected (i.e., stains, fixtures, etc.) The placards don't necessarily show the original location of the item. The detective taking the role of the scene manager decides what format the placards are to be used and will later testify to that in court. Courtroom testimony provides for an explanation of the procedures used.</p>
Pg 26: Crime scene diagram accuracy.	Due to the movement of casings the diagram is not accurate.	None. See above. The MARR Unit Total Station diagram is accurate whenever possible and practical.		It was impossible to place casings in exact location due to the above conditions.
Pg 26: No Evidence Markers on Comforter or Bed.	No markers used to ID item or measurements included in report. In complete diagram.	None. MCU uses placards for each item when necessary.	MCU followed crime scene processing procedures.	There was no need for a marker on the bed. The bed is included in the Total Station diagram that shows the furniture in the room. Items were piled & moved on the bed from their original location.
Pg 27: Scene Measurements; Diagram	Diagram in MCU file contains no measurements for any of the evidence marked.	None. MCU has access to the evidence measurement diagram when/if needed for court. The diagram is prepared showing exact measurements. Standard paper is too small to include all the measurement, it would be too cluttered. They have to use the plotter to produce the image	Standard practice.	The MARR Unit didn't provide it, but it is available. Merrick Bobb must not have been provided with a copy.

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Pg 27: Rough Sketching	That it's a fairly standard practice, why don't we (KCSO) do it.	Merrick Bobb is looking for. None.	Standard practice when necessary. These are handled as notes for use by the detective only for interviewing and briefing.	On occasion we complete rough sketches/diagrams; however, these sketches are not accurate. We rely on the Total Station diagram for accuracy, in addition to photos and video.
Pg 27: Trajectory Analysis	Not sound or at least not well documented.	Conduct trajectory work at the scene unless circumstances prohibit or do not necessitate this investigative step at the scene. The items were placed by MARR so that we could reconstruct the scene at PMU. A 3D scanner would help facilitate this process, but at a cost of about \$135K.	Detectives have been given direction.	Bed and nightstand were moved prior to giving clear direction on completing trajectory. Environment was not ideal for doing trajectory at scene.
Pg 27: Trajectory Analysis	No indication investigators used any measurements to reconstruct scene in evidence room.	None. Accurate information and measurements were taken and documented in detective follow up reports.		It was completed and documented in detective follow up reports.
Pg 27: Trajectory Analysis	Does not account for the possibility or likelihood that Detective X was on the mattress when shots were fired.	None. There is no reasonable or accurate method of showing weight distribution for a detective standing on the bed. In addition, MCU didn't have access to this location/placement information from officer statements.		The officer and detective statements were not provided to MCU until long after the scene investigation was completed. MCU didn't know where they were positioned. There is no method to accurately recreate on a mattress exact movement, placement, position, weight, and weight distribution.
Pg 27: Trajectory Analysis	No dummy or weights were used to compress mattress to account for the weight of Theoharis.	None. See above.		There is no accurate method for measuring body position and exact distribution of weight based on movement. See above.

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Pg 27: Trajectory Analysis	Type of mattress to determine bullet channel. Foam type or springs & coils.	Document mattress composition in reports, including any trajectory deflection as a result of the material in the mattress.		There was no indication the bullet hit any hard material in the mattress that would alter the bullet path. Trajectory rod went straight through mattress without striking any hard material.
Pg 28: Crime Scene Video	Lack of time & date stamp.	None		Best industry practice for forensic videographers is to not use date & time stamp. It obstructs images and is not always accurate.
Pg 28: Crime Scene Video	Video was not recorded continuously.	None. Video should not be taken while in movement unless it's to show a path/direction taken by an individual.		Again, industry best practice standards apply. Continuous video recording would produce hours of unnecessary footage of the same views over and over. Expensive (tape usage) & time consuming for the videographer and viewer. Videographer occasionally has additional assigned tasks that don't involved video recording.
Pg 28: Crime Scene Video	No audio recording.	None.		Again, this is not best practice. It's not recommended. Discussions include many theories/ideas that are ultimately not an accurate account of the incident.
Pg 28: Crime Scene Video	Portions of video are difficult to decipher.	Continue to take both wide angle and close up footage for full identification, along with placement and orientation.	Direction provided to videographer detective.	Two party consent. We would have to continually stop recording to get consent. MCU is not aware of what is being referred to for this concern. My guess is that it's a small oversight that wasn't recognized at the time.

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Pg 28: Crime Scene Video	Inconsistencies in wearing of boot/shoe coverings.	Occasionally boot/shoe coverings are not necessary. Booties are primarily for trace evidence preservation. When those conditions are present all MCU personnel will wear the coverings. Trace preservation is usually not an issue for OIS investigations because of the known individuals involved. Booties are often worn for protection while working in biohazard conditions.	Direction given to detectives.	Detective was likely working in the non-biohazard (blood stained) area and didn't feel the need for coverings.
Pg 29: Crime Scene Video	Doesn't continuously record the evidence collection.	Stop recording collection of most evidence. Some evidence, such as removal of pieces of walls or other structures, will be recorded to show the dismantling process.	The videographer probably took too much video at this scene. We will instruct them to only take the initial video and then maybe one with all placards in place. Then no further video unless specifically asked to by a detective.	Logistically, our sole videographer is unable to be at multiple locations simultaneously to record all evidence gathered.
Pg 29: Crime Scene Video	Video should have been taken using the same two flashlight models used by DOC officer and detective.	Good suggestion. We have taken video under various conditions such as this, so MCU will continue this practice when we have this type of information available to us.	MCU routinely shoots video in various lighting conditions to recreate the scene as it was during the incident.	MCU was unaware of the DOC officer and detective's exact positions or how/if the flashlights were used until much later in the investigation. Its' a Garrity/compelling issue.
Pg 29: Medical Evidence	Detectives' reports do not reflect any analysis of the records or location of gunshot wounds. MCU should have outlined the evidence so that others could form their own opinions.	None. Detectives routinely provide their non-expert initial observations of gunshot wounds; however, MCU relies on the Medical Examiner or medical staff reports to provide expertise and specifics.	No changes necessary, already in practice.	Unable to determine a conclusive number for how many times Theoharis was struck by bullets or the trajectories. The expert opinion of the ME is what MCU relies on. Multiple uneducated opinions create confusion.
Pg 30: Witness Interviews	Numerous unrecorded interviews.	Interviews that are not recorded should include a detailed summary in follow up	Direction given to re-affirm the importance of this	Detectives used their judgment on what documentation to include

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		reports. Often, as evidence or facts are gathered, witnesses need to be re-interviewed.	documentation.	<p>based on the value of the info obtained. Those who had little relevant info were not recorded or summarized in detail.</p> <p>As a witness is recorded again & again they become more apprehensive in making statements.</p> <p>Using our limited clerical resources for unnecessary transcriptions is not an efficient or cost effective use of resources and creates a significant backlog. Detectives determine which interviews merit recording. Starting a recording without building a rapport and trust, or finding out what info the person can provide, is not practical and can negatively impact the interview. They are less likely to provide complete information and maybe uncooperative. In addition, we don't have the admin resources to transcribe unnecessary lengthy interviews. Detectives are well trained/experienced interviewers and know when it's appropriate to ask leading questions.</p>
Pg 31: Pre-Interview	Pre-interviews should be recorded.	None. With all respect this is unrealistic. It's MCU's opinion that detectives will not and should not record pre-interviews.		
Pg 31: Interview Tone/Neutrality	Avoid leading questions.	None. Only one example is mentioned in the report.		<p>It's the detectives' opinions the interviews were thorough given the information that they had at</p>
Pg 31: Thoroughness of Recorded Interviews	Brief interviews by MCU the night of the incident.	None. We continue to insure thoroughness of interviews with detailed questions and answers.	Detectives understand the importance of detailed interviews, so they were	

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			reminded of this concern. MCU detectives are well trained in interview techniques.	that time. Follow up interviews are often necessary.
Pg 32: Interview sketches	Should have asked each witness to sketch out where everyone was located.	Good recommendation, especially for eye witnesses. MCU does this on occasion when they believe it's important. Perspective photos are also taken.	Standard practice	MCU detectives didn't take this step because all of the witnesses were relatively close together in the living room to hear the noises downstairs. No one was able to visually witness the shooting. Locations were documented in detective follow up.
Pg 32: Witness Interviews	Detectives didn't ask whether the radio or TV were on.	Incorrect. Witnesses were asked about the volume of the TV and it was answered. There is documentation in the detective follow up report.	This part of a detailed interview.	N/A
Pg 33: Specific questions not asked by detectives.	See bulleted list on pg 33. These questions are mixed between IIU/Admin and MCU related questions.	Ensure detailed interviews.	Discussed conducting detailed interviews.	Follow up interviews are often necessary as new information is discovered. MCU typically doesn't ask IIU/Admin policy questions during interviews.
Pg 34: Interview Coordination	MCU only took recorded interviews of the house occupants the night of the incident, and didn't coordinate the info obtained during the interviews.	Good recommendation. MCU will strive to improve in this area. Limited staffing and workload are an obstacle.	Discussed with detectives and will begin immediately.	Time constraints and limited personnel resources to conduct all the different scene tasks.
Pg 36: Contents not numbered	Documents not sequentially numbered.	None		MCU uses an index for case files/binders. MCU doesn't use a Bates number stamp. Continuously adding reports makes this system inefficient.
Pg 36: Handwritten notes missing	No deputy or detective handwritten notes in the	None		KCSO detective practice is to transfer notes to follow up report

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	case file.			and then destroy. The notes only help the author to recall facts for his/her report. The notes are not understandable to others.
Pg 36: Insufficient scene sketches or diagrams	No annotated sketches or diagrams from witnesses to show where they were positioned.	None. When appropriate MCU will ask witnesses to sketch the scene and their location.	Current practice.	See above under interview sketches. None of the witnesses in this case were eyewitnesses, so there was no scene to sketch.
Pg 36: Failure to address evidentiary conflicts.	Several conflicts emerged during the investigation and MCU didn't take any effort to pursue them or flag them.	MCU will carefully compare notes and witness information to sort out the facts and address discrepancies. This was done in meetings & follow up.	MCU detectives routinely follow this investigative step.	Attention was focused on listening to the family. There were discrepancies between witnesses. Those are documented and sorted out later by MCU detectives. Both examples involve Detective A stating that he did not have any knowledge that the two officers were going downstairs to contact another subject and that investigators never questioned him on this. In his statement, Detective A said that he was involved in a conversation with another family member when the officers went downstairs. The two witnesses were also unsure of when or whom they told about Theoharris being downstairs.
Pg 37: Proof charts		Bobb recommends investigators use proof charts to lay out witness testimony regarding key issues. MCU recognizes the importance of this organizational documentation. At times actual charting or listing is done for the use of the specific detective organizing the information.	MCU has historically documented this information in reports. Used when appropriate.	

