



City of Davis

INDEPENDENT POLICE AUDITOR
REVIEW OF CANINE / SWAT CASE

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OIR

GROUP

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Incident Overview

On the date of the incident, an alarm company contacted the Davis Police Department (DPD) regarding an alarm activation at an office building. The alarm company employee reported to dispatch that he heard one male possibly speaking to a second male within the building, stating that he was armed and would shoot at police officers through an open window “until they [were] done.”¹

DPD dispatched four officers to the location, including one canine unit. They set up a perimeter around the exterior of the building. The officers made announcements using a P.A. for several hours, stating:

"Subjects in [the] building. This is the Davis Police Department. We know you are inside. The building is surrounded, and we are not leaving. If you attempt to flee the Police K-9 will bite you and additional force may be used against you. We want to resolve this peacefully. You are ordered to exit the building with your hands up, or you may call the Davis Police Department, or 911, so we can start a dialogue and give you further direction."

The alarm company continued to monitor the situation inside using their interior active listening device and reported updates to dispatch, who relayed the live updates to the officers on scene.² Around 9:40PM, the alarm company reported hearing one male state that he would open the door to “see what happen[ed],” threatened to set a fire inside, and commented that he could hear dogs barking. Other officers reported that they heard a male state that he would “die shooting.”

The alarm company also reported that they could hear the police announcements from inside the building.

At this point, DPD determined that they needed additional resources on scene. The joint SWAT unit,³ Explosives Ordnance Disposal (EOD) team, and Crisis Negotiation Team

¹ In listening to the alarm company’s audio after the incident, DPD determined that there was only one subject in the building who may have been speaking to someone else on a phone or talking to himself.

² This allowed the alarm company to hear what was happening inside the building once the alarm was activated.

³ SWAT is jointly made up of officer from the Davis and West Sacramento Police Departments. Typically, a WSPD lieutenant commands the unit, with a DPD lieutenant acting as his back-up.

were activated. One DPD lieutenant arrived, followed closely by a second, who took over tactical command of the operation. The SWAT team leader was a DPD sergeant; a second DPD sergeant was his assistant team leader.

At approximately 1:20AM, at the direction of a DPD supervisor, SWAT opened the front door of the building using a key provided by an employee. The EOD team deployed a robot with audio and video equipment to the interior to conduct a search. Via the robot, officers made announcements to surrender and again advised that a canine would be deployed. They did not make contact with the subjects.

The EOD determined that the robot was ineffective. At 1:50AM, SWAT entered the building, using the DPD canine to conduct a search for the subjects. Once inside, officers discovered that several ceiling tiles had been damaged and a room where medication was stored had been forced open. The officers believed that the subject(s) had gained access to the crawl space between the ceiling tiles and the roof.

The DPD canine began barking in the northeast side of the building and holding his head up toward the ceiling, indicating to his handler that he had located an “odor” at that location. The DPD canine officer advised the SWAT team leader.⁴

The West Sacramento Police Department (WSPD) canine unit then entered the building at the request of the DPD supervisor to determine if it would be feasible to send one dog into the ceiling. The WSPD canine officer determined it was not. His dog also searched the immediate area and indicated that a subject was in the ceiling. Without having eyes on the subject(s), the WSPD officer instructed the subject(s) through the ceiling tiles to surrender, told them that officers knew they were in the ceiling, and that the dog would bite if the dog found them.

Other SWAT officers attempted to see into the ceiling crawl space by using a Pole Cam (a video camera on an extension pole). They observed one subject and instructed him to show his hands. According to the officers, the subject did not comply and crawled further back into the space. As he crawled, he dislodged ceiling tiles. A WSPD officer used the Pole Cam to dislodge additional tiles in an effort to get a clearer view of the subject(s).

Meanwhile, the DPD supervisor called for the DPD canine unit and instructed both canine units to “double dog,” or use both canines in the operation. Specifically, he

We note here that OIR Group also acts as the Independent Oversight entity for the WSPD and will be reporting on WSPD’s performance as part of that responsibility.

⁴ The DPD canine officer is the spouse of the DPD SWAT supervisor. As we report later, DPD determined that both employees violated the Department’s nepotism policy because the officer took direct commands from a DPD supervisor, the officer’s spouse.

directed the canine officers to use the dogs for subject apprehension. The canine officers positioned themselves opposite each other under where the subject was hiding. While some officers provided lethal cover, a DPD detective unholstered his Taser and again instructed the subject to surrender, stating “lay down, put your hands out.” The subject did not.

The detective fired his Taser but could not tell if the darts had made contact. The subject began to scream as officers commanded him to “get down.” It appeared as if the subject was lowering himself onto the ground when a duct on which the subject was hanging broke, and the subject fell onto the ground into a seated position in the northeast corner of the hallway. The subject pulled his knees up to his chest, bent his elbows and placed his hands in front of his face as if in a defensive position.

According to the DPD canine officer, as she observed the suspect falling, she immediately commanded her dog to bite the subject because, she stated, the subject was still concealing his hands and trying to roll away. At the same time, the WSPD canine officer commanded his dog to bite.⁵ Neither officer issued any commands immediately prior to releasing their dogs.

The DPD dog immediately bit the subject, but the WSPD dog momentarily wandered away. The WSPD officer then directed the dog’s attention to the subject and both officers continued to command their dogs to bite. The subject rolled to his left side onto his stomach with both hands visible above his head.

In the first several seconds, no one gave the subject any commands. Then, officers commanded the subject to “show us your hands,” which the subject did. But, for a total of nearly 50 seconds, both canine officers instructed their officers to bite the subject without giving the subject an opportunity to surrender or comply. Each time the dogs released their bite, the officers directed the dogs to re-engage, despite the subject’s hands being visible for a majority of this time (at various moments, the subject appeared to be attempting to protect himself from the dog bites).

The subject was handcuffed, escorted out of the building, and briefly treated by paramedics on scene. Officers learned that he had an outstanding arrest warrant. The subject was then transported to the hospital by a DPD officer.

Once at the hospital, the DPD canine officer read the subject the Miranda warning. She then asked the subject if he wanted to provide a statement; the subject spit on the ground. The DPD canine officer took photos of the subject. Later, an uninvolved DPD sergeant asked the subject for an administrative statement regarding the use of force. The subject stated that he wanted to be caught and confirmed that the Taser did strike

⁵ We did not assess WSPD’s involvement in this incident in this Report.

him, though could not recall where the darts hit. The sergeant did not see any visible attachment points.

In the ensuing weeks, the DPD canine officer learned that the WSPD canine officer's body-worn camera battery had died during the incident. The DPD officer copied her own body-worn camera footage and sent it to the WSPD officer.

Appropriate Accountability

DPD leadership appropriately recognized the performance issues identified in the investigation and imposed serious discipline as a result of those shortcomings. DPD is to be commended for its important remedial actions as set out further below. The other issues we identify are worthy of further discussion but the Department's resolve toward ensuring that there be serious accounting of the most serious performance failures is the critical takeaway in evaluating this incident.

DPD Administrative Process

Third-Party Investigation

Because this was a joint operation involving two agencies, the departments determined that the best way to investigate would be to hire an outside, third-party investigator: a retired police officer with expertise in canine deployments. This investigator conducted the majority of the investigation for both departments, including all interviews with involved officers and reviews of body-worn camera footage, related documentation, and department policies. The investigator provided a detailed report to each department with his findings for each involved officer.

The interviews were conducted in the presence of a supervisor who read Miranda and Lybarger Admonitions, and each subject officer was represented by one or more attorneys. Prior to their interviews, the DPD officers were allowed to view body-worn camera footage related to the incident; DPD stated that it did so to allow the officers opportunity "to prepare."⁶ During the course of some interviews, the investigator also presented key footage from the officer's own or other's body-worn cameras for review.

⁶ We noted that one DPD supervisor stated that he did not watch any body-worn camera footage prior to his interview.

Ordinarily, DPD policy is for investigators to obtain a pure statement from the officer before providing an opportunity to review any audio/video of the incident. In this case, however, the concerns relating to the uses of force and other issues were not evident immediately after the incident. As a result, involved officers had already reviewed body worn camera footage as they were preparing their reports.

DPD Internal Review

Using the investigative material collected by the investigator, a member of DPD command staff drafted an internal use of force memo for each of the involved officers and supervisor, including an analysis of the incident, possible policy violations, recommended findings and rationale.

DPD considered the performance of all seven officers who were directly involved in this incident. Their findings were as follows:

- **Canine officer.** DPD determined that the use of the canine by the canine officer was out of policy and displayed a serious lack of judgment. The officer also violated DPD's nepotism policy when the officer took direct orders from the officer's spouse regarding the canine's deployment; DPD noted that the officer had previously been advised to report to another SWAT supervisor. Further, DPD found that the officer relied on this faulty direction from the officer's spouse rather than relying on the officer's own experience and training as a handler. The officer failed to fully document the incident in the officer's own Incident Report and the Department's require use of force report. And finally, the officer violated policy when the officer copied and shared body-worn camera footage of this incident with other officers both inside and outside of DPD.

DPD removed the officer of canine handler duties and imposed significant discipline.

- **Supervisor.** DPD determined that the supervisor failed to appropriately direct the incident, supervise officer safety, moderate the uses of force, and intercede when he observed the length of the canine bites. The supervisor also was in direct command of a spouse during this incident, despite being aware of the conflict of interest.

DPD demoted the supervisor.

- **Taser officer.** DPD determined that the use of the Taser was appropriate given the circumstances and made no formal finding on this use of force.

- **Other involved officers.** DPD determined that the remaining four involved officers acted in accordance with DPD policy. Specifically, the Department evaluated each officers' duty to intercede and determined that these officers did not have sufficient knowledge or opportunity to intercede in the use of force.

As to the use of the canine, we concurred with DPD that there were significant performance issues on behalf of both the handler and the supervisor and concur with DPD's accountability determinations as to both of them.

Since the incident, the joint SWAT team between DPD and West Sacramento PD has been disbanded. West Sacramento joined the Yolo County Sheriff's SWAT Team. Currently, DPD has no members on the County SWAT Team.

Moreover, since the incident, DPD no longer has an active K-9 unit.

Additional Issues for Consideration

DPD took firm and decisive action with regard to the use of the K-9 in this case against both the handler and the supervisor. However, there were additional issues presented in this case worthy of further analysis and potential remediation.

Supervisor Response in Force Reporting

In this case, the DPD canine officer responded to the hospital, issued the Miranda warning, and took photographs. As a result, the canine officer conducted important parts of the initial force investigation. An uninvolved supervisor also responded to the hospital and completed the additional requirements for the initial force investigation, including an administrative interview of the subject.

We were advised that because of this incident, DPD leadership recognized the need to clarify in policy that supervisors and/or uninvolved officers be involved in the aftermath of any use of force and modified DPD policy accordingly. As a result, there are now requirements that "an **uninvolved** officer shall be responsible for transporting, booking, photographing, interviewing, and further contact with the person. It is the specific intent of this provision to strictly limit contact between the person in custody and the officer(s) who used force against the person." DPD should be commended for their important adjustment in policy to the collection of information and other tasks subsequent to a use of force incident.

Review of Taser Deployment

While the Taser was in this case effective in removing the subject from the ceiling, we have identified two areas of improvement with the Department's assessment of its use: namely, that DPD document its consideration of two factors related to Taser deployment.

First, the DPD's evaluation did not discuss the policy requirement to issue a verbal warning before deployment of the Taser, or document any reason why a verbal warning was not issued, as listed in the Department's **Use of Force Policy (3.05-A)**:⁷

When feasible, a verbal announcement of the intended use of the CED shall precede the application of a CED. The fact that a verbal and/or other warning was given or reasons it was not given shall be documented in any related reports.

Second, the assessment did not consider if the use of the Taser was appropriate on a subject who was in a high, elevated position (e.g., the ceiling). **Policy 3.05** states:

The use of the CED device on certain individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the officer, the individual or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the device.

- *Individuals whose position or activity may result in collateral injury (e.g., falls from height, fall from running, operating vehicles).*

At least one supervisor acknowledged that use of the Taser in this type of circumstance was "discouraged" and that DPD did not train officers on using Tasers in these circumstances.

Officers had different views on whether the subject fell or lowered himself onto the ground after the Taser was deployed.⁸ DPD determined that its use was "reasonable" given the circumstances. However, because a Taser is designed to incapacitate an individual and limit motor skills, deploying the Taser at an individual who is in elevated space can (and has) had dire consequences. The mere fact that it "worked out" in this

⁷ Similarly, in our use of force audit conducted earlier this year, we found additional instances in which use of the Taser was not preceded by verbal warnings yet no analysis as to this policy requirement.

⁸ When interviewed, the subject refused to answer most of the supervisor's questions. The subject stated that he had been Tased but did not know where the Taser had struck him, and that he wanted to get caught. He did not specify if he fell or lowered himself down, nor if he intended to surrender.

case is insufficient to overlook whether all requirements of current policy were met in its deployment.

As noted above, DPD did not make a formal finding on use of the Taser. When assessing the deployment of any force tool, DPD should consider all policy requirements related to its use and make a formal finding in its Force Review memo, evaluating whether each requirement was met.

We made similar recommendations following our use of force audit that post-dated this incident; we have been advised that those concepts are now incorporated into the use of force review. This incident provides another example of the need for a more robust use of force review process and we appreciate the recognition of that need by DPD.

Officer Safety

From the officer interviews and viewing the available body-worn camera footage, we observed the officers taking what appeared to be a less alert tactical approach rather than being “at the ready” in tactical formation with appropriate cover and contact roles once they cleared the ground floor of the building. On body-worn camera footage, we observed officers standing casually, leaning on tables, and so on. One supervisor stated that this was because they did not believe that the subjects could still be in the building; he and others described the officers’ demeanors as “lax.” Another supervisor reported that officers “were tired.”

When the subject was eventually located in the ceiling, several officers reportedly unholstered their firearms. However, due to the small space and their poor tactical formation, their positioning left them vulnerable to crossfire if any had fired their weapon.

And, once they had located the subject in the ceiling, the officers’ positioning left them vulnerable if a second subject had been in the building as initially reported.⁹ The officers also did not deploy tactical shields during any portion of the incident; one supervisor stated that this was a conscious decision to be lighter and faster.

These were significant officer safety concerns that DPD did not consider in its administrative investigation. The officers were responding to a high-risk call, searching for at least one subject who was armed and had threatened to shoot at officers.

DPD *did* consider and evaluate the officer safety concerns related to the two canine officers. Namely, once the subject fell from the ceiling, the two canine officers placed

⁹ Some officers were deployed to the front of the building threshold, but the alleged second subject could have still been inside the building.

themselves between the officers providing lethal cover and the subject, essentially preventing the cover officers any ability to cover them and moving directly in line of a possibly armed subject.

Use of force reviews should consider all officer safety issues when they arise, especially if the concerns apply to the actions of an entire team (here, SWAT) to ensure that these are appropriately debriefed and trained for future deployments.

RECOMMENDATION 1

DPD should consider all officer safety issues in Use of Force reviews to ensure that these are appropriately debriefed and trained for future deployments.

Consideration of De-escalation

The “lead up” to the force deployment, including announcements to surrender, tactical planning, and searching for the subjects lasted several hours; the agencies had time on their side and offered ample opportunities for the subject to surrender. But the pace escalated quickly once the subject was located in the ceiling and attempted to crawl away. Within seconds of locating the subject, one officer deployed the Taser, which resulted in the subject dropping from the ceiling, and the canine officers immediately deployed their dogs. Several officers reported that the incident took on a “rapid pace” or was “rapidly evolving,” and pointed to the fast pace as rationale for the less desirable tactical decisions and positions described above. Given these circumstances, several officers stated (when asked explicitly in their interviews) that de-escalation was not even a possibility.

While acknowledging the reality of this fast pace and the risk of taking additional time with a potentially armed subject in a position of advantage, we also noted that there was time for at least *consideration* of de-escalation or other tactics, especially in the earlier hours of tactical planning. For example, one supervisor reported that no one on the team had been designated as the communication/contact officer. This resulted in two extremes: various officers yelling commands at some points, and, conversely, *no* officers giving commands (for several seconds after the subject landed on the ground and the dogs were biting, officers did not issue any commands). Similarly, other options, such as tactical repositioning, waiting longer or use of chemical munitions, were, according to one supervisor’s interview, not considered feasible options once the search team had entered the building.

Once the subject came down from the ceiling after being Tased, there was a potential opportunity to slow down and allow the subject to comply; in fact, the subject physically appeared to be giving up by placing his hands up. Instead, believing the subject was

armed and still “resisting,” and without issuing any warnings, the canine officers (arguably at the animated direction of their supervisor) immediately deployed their dogs.

Finally, the canine officers themselves failed to re-assess the circumstances before subsequent canine orders. From the video footage and related reports, the dogs were directed to engage in what appeared to be numerous and repeated bite attempts (in one report, potentially up to nine) because they had not successfully implemented a “bite and hold” technique. Before directing each of these bites, the canine officers should have re-assessed the circumstances before re-engaging the subject and considered alternative responses.

In its force review memos, DPD carefully evaluated and made formal findings on factors other than the force itself, such as the officers’ duty to intervene. In our use of force audit, we recommended that DPD explicitly review de-escalation as part of the force review process, considering both any de-escalation that was used/considered and any rationale for why those options were not utilized. And when appropriate, in addition to an “out of policy” finding for the use of force, DPD should expressly document any failure to fully consider de-escalation principles as part of the performance failure. This incident, while predating our recommendations, is another example of the importance of expressly considering de-escalation in the initial report writing and in the force review process. We appreciate that DPD is committed to increased robustness, specificity, and holistic review in that process.