



USE OF FORCE REVIEW

Incident: Police Officer Involved Use of Force
Case Number: 2012-102556
Date of Incident: July 07, 2012
Dates of Review: November 16, 2012
December 02, 2012
Date Report Completed: January 15, 2013

USE OF FORCE REVIEW

PURPOSE:

The purpose of this review is for an incident of use of force by a sworn officer of the Kenosha Police Department.

The Use of Force Review evaluated, in a fact-finding manner, each aspect of the officer-involved use of force reported on July 07, 2012 at 0434 hours, under Kenosha Police Department case number 2012-102556.

The evaluation included, but was not limited to the following:

- A thorough review of the investigative reports
- A review of the in-car video camera recordings
- A review of the dispatch audio recording
- Kenosha Police Department Policy and Procedure

The Use of Force Review sought to develop findings and make recommendations to the Chief of Police in the following areas:

1. Whether the use of force was within policy, outside of policy, or accidental
2. Tactical and training considerations
3. Potential disciplinary considerations

ACTIONS:

The Use of Force Review included: a DVD containing the in-car video recording from Officer Ruha's squad and a CD containing radio traffic between dispatch and officers, a CD of the 911 call and officers' reports which were made available during the incident review.

The Use of Force Review Board developed findings and recommendations, which will be outlined in the remainder of this report.

POLICY REVIEW:

The Use of Force Review developed the Kenosha Police Department Policy and Procedure manual and we believe the following policies are relevant to this incident:

- 1.3 Use of Force
- 2.2 Law Enforcement Jurisdiction
- 21.14 Job Specification-Police Officer
- 41.1 Patrol
- 41.10 Police Reports-Completion, Submission, Approval and Distribution
- 53.1 Uniforms, Inspection of Personnel and Officer Equipment
- 81.1 Police Radio Communication

FINDINGS:

1. Whether the use of force was within policy, outside of policy or accidental:

- Mr. Smith was engaged in a physical altercation with Mr. Gaston
- Mr. Smith displays early warning signs and pre-attack postures to Officer Ruha
- Mr. Smith demonstrated he was an articulable threat of harm to Mr. Gaston and Officer Ruha
- Mr. Smith precipitated an attack on Mr. Gaston and continued to advance on Mr. Gaston in spite of Officer Ruha's attempts to stop the attack through presence and dialogue.
- Officer Ruha's firing of his electronic control device constituted use of less-lethal force and was appropriate and in accordance with department policy 1.3, Use of Force.
- Officer Ruha was acting within policy while using less-lethal force throughout the incident by Mr. Smith, as he believed Mr. Smith was an articulable threat to Mr. Gaston as well as to himself.
- After a comprehensive examination of all reports and videos, it is my opinion that the actions of Officer Ruha were within Kenosha Police Department policies and procedures relative to use of force.

2. Tactical and training considerations:

It is the finding of the Use of Force Review that Officer Ruha utilized appropriate tactics throughout this incident. Officer Ruha and Officer Niebuhr were dispatched to 2227-54 Street in reference to a disorderly complaint that was taking place in the roadway, located within the corporate limits of the City of Kenosha. Officer Ruha was in regulation Kenosha Police Department uniform and was in a marked squad car. This area is a higher crime area and both officers were assigned to third shift patrol.

As Officer Ruha approaches in his squad car, he observed two subjects matching the caller's description actively hitting one another with fists in the roadway. These two subjects are Mr. Smith and Mr. Gaston. Mr. Smith is shirtless and wearing jeans while Mr. Gaston is also shirtless wearing white shorts. There is a third subject wearing a pink top and white shorts. Officer Ruha activated his emergency equipment in a manner consistent with training. Video from the in-squad camera show all three subjects move from the roadway to the sidewalk with the third subject going off camera view.

Mr. Gaston was backing up and retreating from Smith down the sidewalk. Mr. Gaston continues to face Mr. Smith versus turning and walking away. This shows that Mr. Smith, while retreating, is fearful of being physically attacked again if he turns his back to Mr. Smith. The mere presence of Officer Ruha's squad car with activated red and blue lights in an area of darkness did not deter Mr. Smith from actively pursuing Mr. Gaston to assault him further. One can see the squad car lights oscillating off trees and residential homes. Officer Ruha drew his electronic control device upon exiting his squad car due to the fact that Mr. Smith was continuing to pursue Mr. Gaston.

Kenosha Police Department Policy and Procedure 1.3 states that the use of a conducted energy weapon/ electronic control device (Taser) may be used when a subject poses an articulable threat of harm to another person or to the officer. Officer Ruha turned the electronic control device's safety off, allowing the laser and flashlight to operate as he was in front of Mr. Smith. Officer Ruha kept Mr. Smith and Mr. Gaston in a line as well as the other subjects off camera view.

- When dealing with more than one adversary, an officer wants to have the subjects linear because all can simultaneously attack, but all potential assaults are at least in the officers' vision.
- This is located under Tactical Deployment of the Disturbance Resolution in Defensive and Arrest Tactics Manual (DAAT).

Officer Ruha aimed the laser on Smith's chest (top probe). Officer Ruha gave a lawful order and ordered Mr. Smith to get on the ground or he would be tased. Mr. Smith then conspicuously ignores Officer Ruha's order. This is an early warning sign and falls under Threat Assessment Opportunities.

- Threat Assessment Opportunities are located within Tactical Evaluation under Approach Considerations in Disturbance Resolution per DAAT standards.
- An early warning sign is a certain behavior that is often associated with a high level of danger to officers. It should increase the officer's level of perceived threat.

Smith turned, looked at Officer Ruha and squared up to him. Officer Ruha perceived the squaring up as a pre-attack posture.

- Pre-attack postures are physical postures that may indicate the subject is about to fight with the officer.
- Pre-attack postures are within the DAAT system under Tactical Evaluation.
- The purpose of Tactical Evaluation is to provide the officer with as much information as possible as to whether the subject poses a threat to him/her.

Officer Ruha gave one final order for Mr. Smith to get on the ground or he would be tased. Mr. Smith continued to ignore Officer Ruha's order and continued to just stare at him. Mr. Smith ignored Officer Ruha's presence and dialogue (the first two steps of the Intervention Option within the DAAT system). Mr. Gaston begins to get on the ground and as Mr. Smith blades his left foot back, another pre-attack posture, Officer Ruha perceived Mr. Smith was going to assault him as well. Officer Ruha deploys his electronic control device for one-5 second cycle. This was confirmed through the Taser download record.

Standing approximately 5 feet from Mr. Smith, Officer Ruha struck Mr. Smith with both probes (chest/abdomen) and got Neuro-Muscular Incapacitation (NMI). NMI overrides the command and control systems of the body to impair muscular control, causing Mr. Smith to fall to the ground. Mr. Gaston did not ever go prone on the ground and continues to crawl towards Mr. Smith and Officer Ruha.

Officer Niebuhr arrives as Officer Ruha's back up officer and enters the camera. A fourth subject comes towards officers' from the left side of the screen. Officer Niebuhr points as though for that subject to get back and that subject leaves the camera's view. Officer Ruha stated that commands were given for numerous others on a front porch to stay back. Both officers have yet to secure Mr. Smith in handcuffs and to control the scene.

- Officer/subject factors are how many officers' are there compared to the number of subjects.
- Once officers' are outnumbered, their perceived threat level will be higher than if officers' outnumber subjects.
- Also within officer/subject factors are the subject's ability to fight (Officer Ruha witnessed this upon arrival).
- Officer/subject factors are under Approach Considerations in the Disturbance Resolution per DAAT manual.

Officer Ruha was initially dealing with Mr. Smith, Mr. Gaston; a third subject that left the camera view as well as numerous people on a front porch. After Mr. Smith was tased, Officer Ruha notifies dispatch of his Taser deployment and needing an additional squad. Officer Niebuhr secured Mr. Smith into handcuffs. Once at the squad, officers' completed proper probe removal and Mr. Smith attempts to pull away while a search of his person was being conducted. Mr. Smith was then secured in Officer Ruha's squad.

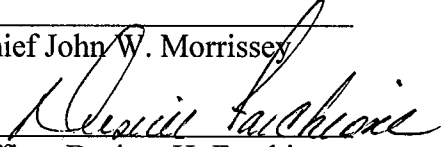
3. Potential disciplinary considerations:

No disciplinary recommendations are made.

Personal Credentials:

I am employed with the City of Kenosha Police Department for 14 years and serve as a patrol officer. Since 2002, I have been a Use of Force Instructor for the State of Wisconsin in Defensive and Arrest Tactics. I have also been a Taser Instructor since 2004.

Chief John W. Morrissey



Officer Desiree H. Farchione