



WEST ALLIS POLICE DEPARTMENT

Patrick S. Mitchell
Chief of Police

Robert Fletcher
Deputy Chief of Police

Christopher Marks
Deputy Chief of Police

TO: Chief Patrick Patton

FROM: Lieutenant James Cato

DATE: 10/30/2023

SUBJECT: Use of Force Review

I, Lieutenant James Cato, am writing to present an independent review of a recent use of force incident involving Kenosha Police Department (KPD) officers. This review was conducted to determine if the actions of the officers were objectively reasonable and justified, and to identify opportunities for improvement in areas such as post incident aftercare, retraining, and the documentation of use of force incidents. The Kenosha Police Department provided reports, squad video, body camera video and other materials.

I, Lieutenant James Cato, am currently a City of West Allis police officer, have been employed in this capacity for 19 years, and have held the position of police supervisor for 10 years. I am Wisconsin State Certified Defensive and Arrest Tactics (DAAT) Instructor of approximately 11 years.

In *Graham v. Connor*, the Supreme Court gave law enforcement several factors to examine when evaluating an officer's force option including, but not limited to: the severity of the crime at issue, whether the suspect poses an imminent threat to the safety of officers and/or others, and the level of resistance offered by the suspect or if he/she is attempting to evade arrest by flight.

The reasonableness of a specific use of force should be evaluated based on what a reasonable officer would perceive at the scene, rather than using the benefit of hindsight. When determining the reasonableness, it's essential to consider that police officers frequently have to make quick decisions in high-pressure, uncertain, and rapidly changing situations regarding the level of force required. The standard of reasonableness cannot be precisely defined or applied mechanically.

Presence

On July 2nd 2023 KPD officers responded to a rollover accident (hit and run) at the intersection of Green Bay Road and S 75th St. The information was real time and pertinent to the investigation, the initial officer at the scene described the suspects as a black couple with a baby fleeing towards Kohl's or Menards. Additionally, specific features were described, with the female described as wearing red, having her hair in a bun style and a scarf. A passerby informed Dispatch of black males, and a black female with a baby fleeing the accident scene, matching the description given to officers. An Applebee's staff member reported a nervous looking couple with a baby at a table. Applebee's is located at 6950 S 75th St between Kohl's and Menards. In response to this description, officers in full uniform drove to Applebee's in their marked squads.

Dialog

KPD Officer Luke Courtier and KPD Officer Michael Vences spoke with Shanya BOYD f/b 9/26/2001 and Jermelle ENGLISH M/B 4/2/1999, and a baby seated at a table. Officer Courtier skipped the formalities and immediately asked the couple if they had been in an accident to which they denied involvement. Meanwhile, KPD officers arrived and began clearing the restaurant. Officer Courtier then questioned the couple about their vehicle for the investigation but despite explanations and requests for cooperation,



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Boyd and English refused to help. English tried to leave with the baby. Officer Courtier informed English he was being detained. The detention was lawful because of the hit and run roll-over accident, the description of the couple with a baby running from the scene of the accident, and the Applebee's staff member reporting a nervous looking couple with a baby at a table. In the Terry v. Ohio case, the Supreme Court established that for an officer to conduct a stop, they must possess specific and describable facts, which can be combined with reasonable references.

Officers blocked his path reiterating English was being detained. Boyd and English remained uncooperative, declining to provide further information. While English walked past officers in the opposite direction with the baby to avoid them, the officers used this opportunity to separate the couple, a standard de-escalation technique, intended to speak with them individually, gather information, and seek cooperation. Unfortunately, Boyd and English chose not to cooperate with the officers.

CONTROL ALTERNATIVES (KPD OFFICER COURTIER)

The use of force applied by Officer Courtier was justified based upon BOYD's active resistance, continued resistance, assaultive behavior and her threats. KPD Officers (Courtier, Roepke, Karaway, Thorpe) and Pleasant Prairie Police Department (PPPD) Officer Quilling used dialog: verbal commands, control alternatives: escort holds, decentralization and Oleoresin Capsicum (O.C.) spray to arrest Boyd.

Boyd was instructed to stay with Officer Courtier but disregarded the orders. Recognizing her non-compliance, Officer Courtier decided to detain her with handcuffs. Officer Courtier attempted to grab onto the right arm to handcuff Boyd, but struggle ensued as Boyd resisted arrest by pulling away, sitting in the booth/table and displayed assaultive behavior by kicking, pushing and hitting at Officer Courtier. Officer Courtier issued commands to stop but Boyd continued to resist, even while standing on the table with her right hand handcuffed. Officer Courtier was concerned with Boyd potentially using the handcuff as a weapon. There were potential risks of harm to both Officer Courtier and Boyd as they could fall off of the table and booth area causing injury. Additional officers arrived to assist in getting Boyd off of the table, but her uncooperative behavior continued, leading to Officer Courtier deploying O.C. spray to overcome her active and continued resistance. With the combined efforts of multiple officers, Boyd was eventually successfully handcuffed while on the ground. Officer Courtier assisted Boyd to her feet and escorted her out of the restaurant, placing her in the back seat of his marked police squad. Although he informed other officers inside about the need for Boyd's decontamination from the O.C. spray, he left her unattended in the vehicle. Shortly thereafter Officer Courtier came back to transport Boyd to jail, despite her mentioning the effects of the O.C. spray. Regrettably, no aftercare was provided.

According to the DAAT manual appropriate after care:

- Use Professional Communication skills to calm and reassure the subject, who may feel quite panicked. Tell the subject that the effects will wear off in 30-45 minutes.
- Ask the subject if he/she is wearing contact lenses, and if so, allow him/her to remove them
- If the subject is wet with OC, dry him or her before transporting.
- Encourage the subject to open his or her eyes and blink. This will encourage tearing, which will help wash out the OC.
- If possible, remove the subject to fresh air, and face him or her into the wind.
- Rinse the subject's face and eyes with cool water, preferably from a running tap or hose. Dipping the face into standing water will contaminate the water and result in re-exposure. Advise the subject not to rub his or her eyes.



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- If available, use (non-lotion) soap and water to remove the resin from the skin, but do not use salves, creams, or lotions. These will trap the OC against the skin.
- Get medical assistance under any of these circumstances: - If the subject requests it - If symptoms do not visibly improve after 45 minutes - If you observe any other problem or feel that medical assistance is warranted (DAAT manual, pg.52).

CONTROL ALTERNATIVES/ PROTECTIVE ALTERNATIVES (KPD OFFICER VENCES)

The use of force applied by Officer Vences was justified based upon the active resistance of ENGLISH, continued resistance and his threats. Officer Vences and (PPPD) Lodygowski used dialog: verbal commands, escort holds, modified decentralizations, and active countermeasures: focus strikes to arrest English.

Although officers explained, requested cooperation, and informed English of his detainment, he tried to leave. Due to the totality of the circumstances, Officer Vences considered these circumstances the rollover accident, no cooperation, the unpredictable behavior of the attempts to leave by English and the welfare of the child (possible trauma/injuries). Officer Vences attempted a modified escort hold, but English resisted, leading to a struggle. Officers positioned themselves on each side of English, giving commands to stop resisting and to release the baby. Officer Vences was concerned with the safety of the baby, displaying apprehension over the potential escalation of force prompted by the decisions of English, all to prevent any harm to the baby. Officers guided English to a seated position on the ground, while he was still holding on to the baby. Officers felt resistive tension in the arms of English as he pulled away and squeezed the baby. English continued to resist, refusing to comply as officers tried to safely remove the baby from his arms. Eventually, officers successfully retrieved the baby, which was then taken by an employee.

Officers decentralized English to the ground from a kneeling position. PPPD Sgt. Lodygowski grabbed ENGLISH's left arm to place it behind his back. Officer Vences, with his left hand, grabbed the back of ENGLISH's shirt to hold him down while delivering multiple focus strikes with his right hand, including four strong hand strikes and four forearm strikes aimed at creating temporary dysfunction in the ability of English to resist or assault. Simultaneously, Officer Vences issued commands for English to place his hands behind his back. Following these strikes, Officer Vences succeeded in securing English's right arm behind his back. Officer Vences attempted a knee strike to English's shoulder, but it appeared to lack force and effectiveness. After being handcuffed, English initially remained motionless but soon exhibited signs of distress, including heavy breathing and snoring-like sounds, indicating possible loss of consciousness potentially due to the multiple strikes. In response, officers repositioned English into a recovery position and called for an ambulance to provide necessary medical attention.

While I believe the use of force by Officer Vences was justified, there is room for improvement in assessing similar situations. When applying focus strikes, officers should continuously evaluate their effectiveness. In this instance Officer Vences delivered multiple focus strikes. After two to three strikes, it is important to assess their impact and consider alternative methods, such as pressure points or other available tools like O.C. spray and the electronic control device (ECD), commonly referred to as "Taser". In this dynamic situation, Officer Vences solely relied on focus strikes in each control attempt, neglecting the utilization of other available options.



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Report Documentation

Officer Vences did not document the instances of hair-pulling and the knee strike applied to English during the use of force incident. To address this, a thorough review of the body camera footage is recommended along with a debriefing of the incident amongst officers.

Conclusion

The use of force by the officers was objectively reasonable and justified as they successfully detained and arrested the subjects due to the directly relevant information provided, their non-cooperation, active resistance, continued resistance, and assaultive behavior, employing their presence, dialog, control, and protective alternatives

Respectfully Submitted,

Lieutenant James Cato
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West Allis Police Department

Kenosha County Eye