



PUBLIC REPORT

OMBUDSMAN'S CRITICAL INCIDENT INVESTIGATION

OFFICER-INVOLVED SHOOTING

December 6, 2000

RAND STREET

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by

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INCIDENT SYNOPSIS

At approximately 7:31 p.m. on Wednesday, December 6, 2000, the Ada County 911 Dispatch Center received notification of the activation of a domestic violence "AWARE" alarm at a residence on Rand Street in Boise. "AWARE" alarms are installed when the police believe that the victim may be in serious danger. Shortly after receiving the call from the alarm company, the dispatch center received a call from inside the same residence. The caller reported that her sister's former boyfriend had entered the house and was currently in the garage with her sister. The caller indicated that also in the house was her mother and a baby. The caller told the dispatcher that the subject had threatened to kill her sister and that she thought the man might be armed.

A "tone alert" was broadcast on the primary police channel indicating the need for officers to respond with emergency lights and sirens to an "AWARE" alarm at the address. The responding officers knew that the victim in this case had recently received death threats from her former boyfriend. They also knew that he had recently attempted to purchase a handgun.

As the first officers arrived on the scene, two of them approached the front door of the house with their handguns drawn. One of the women inside the house opened the front door of the house and exited as the two officers entered. The officers confronted the subject inside the house and the subject pulled a 9 mm. semi-automatic handgun from behind his back. Both officers fired their weapons and the subject was wounded several times. No one else was struck or injured. The subject survived his wounds.

OMBUDSMAN'S INVESTIGATION

Section 2-22-04 (H) of the Boise City Code gives the Community Ombudsman the authority to conduct an independent administrative investigation whenever deadly force is used by a Boise Police officer. As a result of the officer-involved shooting on December 6, 2000, I conducted such an investigation.

During the course of this investigation I interviewed all of the eye witnesses to the shooting itself, with the exception of an infant who was also present. These witnesses included the two officers who fired their weapons, the three women in the house at the time, and the person who was shot. I also interviewed eight additional officers who responded to the scene either before, during, or shortly after the shooting. Finally, I interviewed the Boise Police Department's domestic violence coordinator who had been involved in the police handling of the stalking case against the subject prior to the shooting incident.

During the investigation I inspected the scene of the shooting on two separate occasions, once on

December 6, immediately following the incident, and again on March 9, 2001. I read the entire police investigative report on the shooting and listened to the recordings made by dispatch and officers at the time of the incident. I examined 300 crime scene photographs taken by police investigators, reviewed the wounded subject's medical records, and read the ballistics report produced by the Idaho State Police crime lab.

FACTUAL FINDINGS

Based on the preponderance of the evidence available to me in this investigation, it is my finding that the following facts are true:

1. The Ada County Emergency Dispatch Center received a call from an alarm company at approximately 7:31 p.m. on December 6, 2000 indicating that a domestic violence alarm had been activated within a particular residence on Rand St. in Boise.
2. At about the same time, or shortly thereafter, the Ada County Emergency Dispatch Center received a call placed by a woman from inside the residence on Rand St. During this call, the woman told the dispatcher that a person who had been stalking her sister was currently in the residence and that he might be armed.
3. On-duty officers of the Boise Police Department were advised via police radio that the alarm had been activated and that a caller from inside the house had confirmed that the suspect was in the residence. Officers were also advised that the subject might be armed.
4. Officers had prior knowledge, before receiving this call from dispatch, that the subject had attempted to purchase a gun and had threatened to shoot his former girlfriend and other members of her family.
5. Two Boise Police officers approached the front door of the residence at 1711 Rand with their .45 caliber handguns drawn.
6. The subject, who was inside the residence, recognized the emergency lights of police vehicles outside of the house and verbalized his understanding that the police had been summoned to the residence.
7. As the two officers reached the front door a woman opened the door from inside and ran out of the house.
8. As the woman exited the doorway, first one officer and then the other entered the house.
9. The first officer ordered the subject to get down.

10. The subject did not get down. He reached behind his back with his right hand and produced a handgun which he pointed in the direction of the two police officers.
11. Upon seeing the subject reach behind his back and bring out a gun, both officers fired their .45 caliber handguns. The first officer fired his weapon twice and the second officer fired a total of seven times.
12. The subject was struck several times and survived approximately six gunshot wounds, involving the chest, abdomen, hands, arms, and legs.
13. Following the shooting incident, one of the two officers who fired a weapon was permitted to be in the same room as an officer who had been outside the residence at the time of the shooting and who was considered to be an eye witness to the incident.

ANALYSIS

In evaluating the use of deadly force in this situation by the two Boise Police officers, the salient questions are:

1. What were the officers' perceptions of the situation and conclusions about the dangers posed to them and/or others as they encountered the suspect in the living room of the house?
2. Based on the facts determined by the investigation, were the perceptions and conclusions of each officer reasonable given what each officer knew at the time, his training, and his experience?
3. Finally, assuming that each officer's perception and conclusion were reasonable, given the totality of the circumstances, was each officer's use of deadly force reasonable and necessary as defined by Section 1.0101 of the Boise Police Policies and Procedures manual, which reads, in part:

Officers shall use only the amount of force that is reasonable and necessary to protect life, affect a lawful arrest, and/or gain control in any lawful circumstance. Officers may use deadly force when necessary to defend themselves or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. Officers may also use deadly force when necessary to effect the capture or prevent the escape of a suspect whose freedom is reasonably believed to represent an imminent danger of death or serious bodily injury to the officer or to others . . . The appropriateness of an officer's actions will be determined by the totality of the circumstances and by the reasonableness of the officers perceptions at the time of the incident.

Both officers entered the situation with prior knowledge about the subject and the threats he had made to his former girlfriend. Both officers believed that the subject had previously attempted to purchase a handgun. They had been told by the girlfriend that the subject had claimed to have bought a gun and had threatened to shoot her, her baby, and others.

On December 6, 2000, while en route to the address on Rand St. on the report from dispatch that an AWARE alarm had been activated at that address, the two officers were told by dispatch that a caller from inside the house had stated that the subject was inside the house and might have a gun.

As the two officers approached the front door they had their weapons drawn. This was a reasonable precaution given the nature of the situation and the possibility that the subject was armed. As the officers prepared to knock, they were confronted with the sudden opening of the door by a woman inside the house. She indicated to them that the subject was inside and then ran out of the house.

As the first officer entered the room, with the second officer close behind him, they both saw the subject in the room. The subject was standing between the two officers and the two women inside the house, one of whom was holding a baby. The first officer shouted, "Get down." Both officers and the two women saw the subject sweep his right hand to the small of his back and bring it back out with a gun in it. Even the subject admitted to reaching behind his back and producing the gun. While the subject claims that he did not point the gun at the officers, both officers and the two women say that they saw him bring the gun up in front of himself and point it directly at the two officers.

Both officers concluded that the subject was about to shoot one or both of them. They reported being afraid that they would be killed. The officers fired their weapons based on this belief and in order to protect themselves and others from death or serious bodily injury.

Within minutes after the shooting, the two officers who had fired their weapons were separated from each other and transported separately by uninvolved escort officers to another location. They were kept separate from each other until each officer was interviewed by Boise Police and Idaho State Police investigators. In this regard, the Boise Police Department's policy regarding the handling of principal officers (those who fired their weapons) was followed.

A third officer, who was at the scene and outside of the house at the time of the shooting, was also transported by an escort officer to the same location where the two principal officers had been taken. Due to the fact that no other room at that location was immediately available, this officer was allowed to wait for several minutes in the same room as one of the two principal officers. A supervisor arrived shortly thereafter and directed that the officer be taken to a different location.

The policy and procedures of the Boise Police Department governing critical incidents require

that all involved officers be separated while they are waiting to be interviewed by investigators. In this case a principal officer (one who had fired a weapon) and an officer who was an eye witness were not kept separated prior to their interviews. However, both escort officers were present during the entire time that the two involved officers were in the same room and there is no indication that any discussion of the incident itself took place during that time.

POLICY FINDINGS

Based on the preponderance of the evidence produced during this investigation, it is my finding that the use of deadly force by both Boise Police officers on December 6, 2000 inside a residence on Rand Street was both reasonable and necessary given the totality of the circumstances and as defined in section 1.0101 of the Boise Police Department's Policy and Procedures Manual.

Furthermore, it is my finding that the critical incident procedures of the Boise Police Department were not followed with regard to the requirement for separation of all involved officers (i.e., principals and eye witnesses). However, this failure to follow procedure did not bring the principal officers into contact with each another. It also did not result in any adverse impact to the quality and integrity of any of the investigations into the shooting incident. I have encouraged the Boise Police Department to make certain that, in the future, involved officers are taken to a location where there is adequate space to keep them separate from each other.

OBSERVATION OF CRIMINAL AND POLICE INTERNAL INVESTIGATIONS

Based on my personal observation and review of the criminal and internal affairs investigations conducted by the Boise Police Department, it is my opinion that both investigations were thorough, objective, and complete.