



OMBUDSMAN'S REPORT

Critical Incident Investigation & Findings

OMB07/0040 – June 23, 2008

EXECUTIVE SUMMARY

Two Boise Police Department (BPD) officers (Officer #1 and Officer #2) fired a total of three shots at a fraudulent check suspect (the Subject) after the Subject threatened the officers with a knife. The Subject was struck by all three of the bullets fired from the weapons of Officer #1 and Officer #2. The Subject later died as a result of one or more of these gunshot wounds. This took place on April 2, 2007, inside the Fred Meyer store on Federal Way in Boise.

The Ada County Critical Incident Task Force (CITF), the BPD Office of Internal Affairs and the Office of the Community Ombudsman each conducted independent investigations into the incident.

The CITF investigation report was forwarded to the Ada County Prosecutor, who appointed the Bannock County Prosecutor as Special Prosecutor to review the incident for consideration of any charges. Following his review, the Bannock County Prosecutor announced that it was his finding that neither Officer #1 nor Officer #2 had engaged in criminal conduct in connection with the shooting death of the Subject.

As a result of the ombudsman's independent investigation, both officers were found to have complied with the requirements of BPD policy in their use of deadly force. As a result, the ombudsman issued a finding of exonerated for each officer.

The ombudsman also commended Officer #1 for placing the safety of others above his own.

THE SITUATION

On April 2, 2007, at about 10:49 p.m., an employee of the Fred Meyer store on Federal Way in Boise called the Ada County Dispatch Center and reported that the Subject was in the store attempting to use a fraudulent check. The employee advised Dispatch that the Subject had a history of passing bad checks and that a BPD detective was looking for the Subject. Dispatch was able to confirm the existence of a valid felony arrest warrant for the Subject.

Officer #1 and Officer #2 were dispatched to this call and, while en route, communicated by phone with the store employee and via radio with Dispatch. Through this communication, both officers gathered more details about the situation in the store, the Subject's criminal history, and the existence of the outstanding arrest warrant. In addition to learning that there was a valid and confirmed felony arrest warrant outstanding for the Subject, the officers were informed by Dispatch that the Subject's criminal history included a charge of Battery on a Correctional Officer. Officer #1 and Officer #2 also spoke with each other via the police radio and discussed their tactical plan for approaching the store.

Officer #1 was the first police officer to enter the store. Immediately after entering the store, Officer #1 encountered the Subject who was attempting to leave. Officer #1 told the Subject that he was under arrest and attempted to gain physical control of him. A struggle ensued and Officer #1 took the Subject to the ground. Officer #2 entered the store as Officer #1 was attempting to gain control of the Subject on the floor. Both Officer #1 and Officer #2 gave verbal commands to the Subject to stop resisting and to show them his hands.

While Officer #1 and Officer #2 attempted to gain control of the Subject's arms so they could handcuff him, the Subject produced a knife, holding it in his right hand.

Both Officer #1 and Officer #2 stood up, moved back from the Subject, and drew their handguns. At the same time, the Subject stood up, faced the officers for a moment, and then

moved further back into the store and away from the officers. The Subject still had the knife in his right hand.

The Subject moved past the Customer Service counter and turned left at the bank branch, heading east towards the area of the store's pharmacy. Officer #1 and Officer #2 lost sight of the Subject for a few moments as they followed the Subject. When the two officers rounded the corner by the bank, they caught sight of the Subject again. They saw the Subject turn towards them, with the knife still in his right hand. Perceiving that the Subject was threatening them with the knife, Officer #1 fired two rounds from his handgun and Officer #2 fired one round from hers.

The Subject was struck by all three rounds fired by the officers and later died as a result of one or more of these gunshot wounds.

REASON FOR THE INVESTIGATION

Boise City Code defines the authority and duties of the Community Ombudsman. Boise City Code § 2-22-04 (H) grants the ombudsman the authority to investigate and evaluate the performance of officers whenever certain criteria are met:

Critical Incidents

In the event that an employee of the Boise Police or the Airport Peace Officers Division of the Aviation and Transportation Departments is involved as a principal, victim, witness or custodial officer, where death or bodily injury results, the Community Ombudsman shall be notified immediately and shall act as an observer to any criminal, administrative or civil investigation conducted by or on behalf of the such Departments. The Office of Community Ombudsman may also conduct an independent administrative investigation into such a critical incident. The Community Ombudsman shall assess the conduct of the Boise City law enforcement officer or police employee in light of the facts discovered through the investigation, the law, and the policies and

training of the relevant department, and shall further make recommendations for personnel action to be taken. The report of investigation and recommendations shall be given to the relevant Department Head for purpose of discipline and/or commendation when warranted, and for use in the development of the affected law enforcement officer or police employee's formal personnel evaluation. A law enforcement officer, police employee, or citizen may waive their personal privacy right. Critical incidents include but are not limited to situations involving the following:

(i) Use of force or any other Department action that results in death or serious bodily injury. (Serious bodily injury is an injury that results in the subject being admitted to a hospital.)

(ii) Use of Deadly Force where only minor bodily injuries occur.

(iii) Intentional use of Deadly Force but no injury occurs (excluding animals).

(iv) Vehicle pursuits, roadblocks or intercepts resulting in death or serious bodily injury.

(v) Police employee involved in a traffic accident resulting in death or serious bodily injury, while operating a city vehicle or a private vehicle while on City business.

FOCUS OF THE INVESTIGATION

This investigation had, as its primary focus, the following acts and related sections of the BPD Policies and Procedures Manual (P.M.) in force at the time of this incident.

Officer #1

This officer's use of deadly force, specifically a firearm, on the Subject.

Officer #2

This officer's use of deadly force, specifically a firearm, on the Subject.

THE INVESTIGATION

A few minutes after Officer #1 and Officer #2 had fired their weapons, BPD notified me that a critical incident had taken place. I responded to the area and waited until it was safe for me to go into the crime scene. I observed the CITF conducting their examination of the scene and identification of evidence. I also had an opportunity to personally inspect the scene and view the evidence.

Once the CITF completed their investigation and issued a report, I reviewed the report and all associated evidence and documents.

In the course of my investigation, I interviewed the following persons:

1. Officer #1.

2. Officer #2.

3. Five store employees

I reviewed the digital audio recording made by Officer #1 from the time he entered the store until after the shooting.

I also contracted with a forensic video examiner to review and analyze the store security video tape that had been collected as evidence by the CITF. This expert was able to isolate those video frames that captured images of the Subject and his interactions with Officer #1 and Officer #2 from the moment of their initial contact until after the shooting. I have attached a copy of this expert's report as an appendix.

WHAT THE INVESTIGATION FOUND

Based on the preponderance of the evidence reviewed and obtained in the course of this investigation, I have reached the following findings of fact:

1. On April 2, 2008, shortly before 11:00 p.m., Officer #1 was notified by Dispatch that a valid felony warrant existed for the arrest of the Subject. Officer #1 was also informed by Dispatch that the Subject was in the Federal Way Fred Meyer store at that time.
2. As Officer #1 looked inside the store through the glass doors at the west entrance/exit to the store, the Subject left the customer service desk, turned around, and began walking towards the west entrance/exit.
3. Officer #1, dressed in a standard BPD uniform with clearly visible police insignia, entered the store, approached the Subject, and announced to him that he was under arrest.
4. Officer #1 took hold of the Subject's arm and began to take him into physical custody.
5. The Subject physically resisted Officer #1's attempt to control him.
6. Officer #1 used physical force to push the Subject to the floor and turn him over onto his stomach.
7. As Officer #1 worked to get the Subject's right arm out from underneath the Subject's body and behind his back for handcuffing, Officer #2 entered the store and assisted Officer #1 by grabbing the Subject's left arm and trying to get it out from

underneath the Subject's body. Officer #2 was dressed in a standard BPD uniform with clearly visible police insignia.

8. The Subject physically resisted both officers' efforts to gain control of his arms.
9. The Subject drew his right hand out from under his body and displayed a folding knife, opening and exposing the blade at the same time.
10. Both Officer #1 and Officer #2 got up from the ground, drew their .45 caliber Glock handguns, and backed away from the Subject.
11. The Subject rose to his feet and, still holding the knife in his right hand, faced the two officers.
12. The Subject ran south, towards the customer service desk and further back into the store.
13. Officer #1 and Officer #2 followed the Subject.
14. Before the Subject reached the customer service desk, he turned to his left and ran past the bank branch, momentarily disappearing from the officers' view.
15. Officer #1 and Officer #2 followed the Subject around the corner.
16. As the officers rounded the corner, the Subject was standing less than ten feet from them and was turning to his right in a clockwise motion to face the officers.
17. As the Subject turned to face the officers, he still held a knife in his right hand.

18. Officer #1 fired two rounds from his handgun at the Subject.
19. Officer #2 fired one round from her handgun at the Subject.
20. The Subject was struck by all three rounds. One round entered the inside of the Subject's upper left arm and exited out the back of the arm. Another round entered the Subject's upper back on the left side and did not exit. The remaining round entered the Subject's lower right back and did not exit.
21. The Subject later died as a result of one or more of these gunshot wounds.

OMBUDSMAN'S ANALYSIS

The BPD Policy and Procedures Manual (PM) in force at the time of this incident authorized BPD officers to use force in § 1.01.02 (as modified by Special Order #0607, effective November 1, 2006) as follows:

An officer shall use only the amount of force that is reasonable and necessary to protect life, effect a lawful arrest, and/or gain control in any lawful circumstance. An officer may use deadly force when necessary to defend himself/herself or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. An officer may also use deadly force when necessary to effect the capture or prevent the escape of a subject, whose freedom is reasonably believed to represent an imminent danger of death or serious bodily injury to the officer or to others. When authorized techniques are not available or practical, an officer may also use any other reasonable force to gain control of the situation.

PM § 1.01.03 (as modified by Special Order #0607, effective November 1, 2006) authorized BPD officers to discharge a firearm on duty as follows:

An officer shall be authorized to discharge firearms in the line-of-duty under the following conditions:

- *To use his/her firearm to protect himself/herself or others from what he/she reasonably believes to be an imminent danger of death or serious bodily injury*
- *To use his/her firearm to effect the capture or prevent the escape of a felony suspect whose freedom is reasonably believed to represent a significant threat of serious bodily injury or death to the officer or other persons*
- *During firearms training sessions as directed by the firearms instructors*
- *To shoot an animal as outlined in **11.03.24 Treatment of Animals***

An officer shall not discharge firearms:

- *As a warning*
- *In any misdemeanor case*
- *When the discharge of the weapon may unreasonably endanger the lives of persons not involved in the commission of the crime in progress*

PM § 1.01.04 (as modified by Special Order #0607, effective November 1, 2006) placed restrictions on officers' use of force as follows:

Criteria for Use of Force

The appropriateness of an officer's actions will be determined by the totality of the circumstances and by the reasonableness of the officer's perceptions at the time of the incident. The criteria for determining use of force shall include, but not be limited to,:

- *The nature and extent of the threat posed by the suspect*
- *The severity of the crime(non-violent vs. violent, non-criminal mental hold, etc.)*
- *The degree to which the subject resists arrest or detention*
- *Attempts by the subject to evade arrest by flight*
- *Other factors, including*
 - *Nature and quality of intrusion upon the individual*
 - *Duration of that intrusion*
 - *Severity of injuries inflicted, if any*
 - *Officer/subject size and other physical attributes*
 - *Environmental considerations*
 - *Reaction time*
 - *Totality of circumstances*

Officer #1's use of soft empty-hand force

It should be noted at the outset that, in addition to deadly force, Officer #1 used soft empty-hand force at the beginning of his encounter with the Subject. Officer #1 grabbed the Subject's arm, applied force in order to gain control, and then pushed the Subject to the ground in response to the Subject's attempt to break free of Officer #1's grasp. Once on the ground with the Subject, Officer #1 continued to use soft empty-hand force to hold the Subject down and attempt to bring the Subject's arm out from under the Subject's body.

At the time Officer #1 first made contact with the Subject near the store exit, Officer #1 knew that a valid felony warrant existed for the arrest of the Subject. Based on the information provided to Officer #1 by Dispatch, Officer #1 reasonably believed that the Subject was the person named in the arrest warrant. For these reasons, Officer #1 had the authority to place the Subject under arrest and use reasonable force to effect that arrest.

Upon entering the store and encountering the Subject, Officer #1 greeted the Subject by name and told him that he was under arrest. Officer #1 then took hold of the Subject's arm and began the process of taking him into physical custody. This use of force, sometimes referred to as a "police lead," was consistent with how BPD officers are trained to gain physical control of a person. The hold is designed to signal to an arrestee that the officer is taking control. It also gives the officer leverage should the arrestee become resistive or combative. Officer #1's use of this type and degree of force under the circumstances was both reasonable and necessary. Had the Subject cooperated with Officer #1, no injury would have resulted. The Subject did not cooperate with Officer #1, instead trying to break free of Officer #1's control by twisting and pushing. Officer #1 responded to this resistance by pushing the Subject and causing him to fall to the floor. While still a form of soft-empty hand force, taking the Subject to the ground represented an increase in the degree of force employed by Officer #1.

The Subject's resistance to Officer #1 by twisting away from the hold and bumping against Officer #1 could be characterized as either "defensive" (at the very least) or "active aggressive" resistance, as defined in PM § 1.01.01 Definitions, which is quoted (in part) below:

- *Defensive: Any action by a subject that attempts to prevent an officer from gaining control of the subject. It is not an attack on the officer.*
- *Active Aggression: Physical actions or assaults against the officer or another person with less than deadly force (e.g., advancing, challenging, punching, kicking, grabbing, wrestling, etc.).*

By twisting and attempting to break free from Officer #1, the Subject clearly was engaging in "defensive" resistance. The Subject also rammed his shoulder into Officer #1, an act consistent with the definition, above, of "active aggression." In either case, but certainly in response to a display of "active aggression," BPD officers are trained to consider taking a person to the ground as a viable control technique. Once a physically resistant person is on the ground and in a prone position, an officer has increased leverage and ability to control the person's movements. For these reasons, I find that Officer #1's use of force that resulted in the Subject falling to the floor was reasonable and necessary under the circumstances.

Officer #1 told the Subject to put his hands out where he could see them. Officer #1 repeated the command, saying, "Put your hands out." The Subject did not comply. In response, both Officer #1 and Officer #2 used soft empty-hand force (grabbing the Subject's arms with their hands and pulling) in an attempt to get the Subject's arms out from underneath his body. BPD officers are trained to be concerned when a suspect's hands are not visible. Officers are taught that, until a person has been searched for weapons, there is a danger that a hidden hand may contain a gun, knife, or some other dangerous object. As a consequence, BPD officers are trained to use reasonable and necessary force to get a person's hands out into the open as quickly as possible. For these reasons, it was reasonable

for both officers to grab the Subject's arms in an attempt to pull them out from underneath his body.

Officer #1's use of deadly force (a firearm)

Officer #1 reported that, as he and Officer #2 struggled to get the Subject's hands out from underneath the Subject's prone body, he (Officer #1) saw the Subject's right hand come out holding a black object. Officer #1 and Officer #2 both reported hearing a metallic click that they instantly recognized as that of a folding knife blade locking into place. Both officers saw the knife with its blade exposed in the Subject's right hand. The store security video does not show whether the Subject had a knife in his right hand because the Subject's right side and hand were obscured from the camera's view.

Officer #1 was on the Subject's right side and his head was in close proximity to the Subject's head and shoulder area. Officer #2 was on the Subject's other side. This is the testimony of both officers. Officer #2 also recalled seeing the Subject jabbing the knife towards Officer #1. There is no doubt that the presence of that knife in the hand of the Subject in such close proximity to Officer #1's head constituted an imminent danger of death or great bodily harm to Officer #1 and, potentially, to Officer #2.

BPD trains its officers that, when they find themselves in close quarters with a person who produces a knife or other dangerous object (other than a firearm), one tactic to consider is to push the person away to create distance. This gives an officer the time and space needed to draw his or her firearm. This is precisely what Officer #1 and Officer #2 did when they saw the knife in the Subject's hand. They pushed back, stood up, and drew their handguns. At the same time, the Subject stood up and faced the two officers, still holding the knife in his right hand.

Officer #1 reported that, at the moment the Subject faced him while holding a knife, he feared that the Subject was about to stab him. Officer #1, who already had his gun pointed at the Subject, considered firing at him. Officer #1 testified that he decided not to shoot because he was afraid that one of his rounds might hit the store manager who was standing just a few feet away, on the other side of the Subject and “downrange” from Officer #1’s line of fire. Officer #2 reported a similar decision not to fire at the Subject.

The moment passed and the Subject turned and ran away from Officer #1 and Officer #2. The statements of both officers and several of the store employees, along with the video evidence, confirm that the Subject ran towards the manager and the other store employees. When the Subject reached the bank, he turned the corner and continued into the store where additional employees were located.

The video evidence shows that the Subject turned and faced the two officers somewhere near the bank and right before he turned the corner. This is consistent with the officers’ recollections and the statements of some of the witnesses that the Subject turned one or more times to face the officers before he turned left at the bank branch.

Officer #1 reported that he was concerned that the Subject might grab the store manager or another employee and hold someone hostage with the knife. As a result, Officer #1 recalled telling the manager and nearby employees to get back as he pursued the fleeing Subject. On his audio recording, Officer #1 can be heard shouting several times, “Get back.” Officer #1 had good reason to be concerned about the safety of the employees in the store. In addition, Officer #1 correctly felt a duty to take what steps he could to prevent the Subject from harming the employees or taking any of them hostage.

When Officer #1 turned the corner and caught sight of the Subject once again, the Subject was a short distance (six to ten feet) away and beginning to turn towards Officer #1. This fact is supported by the testimony of both officers and some, but not all, of the store

employees who were in a position to see the Subject at this point. Most persuasively, the security video shows that, just a moment before Officer #1 fired his first round, the Subject's right side was facing Officer #1, indicating that he had turned or was turning to face Officer #1. The following is an excerpt from the report of the expert who examined the video:

Camera 1 on Tape B-2 shows the only image of the pursuit at 23:02:37, a moment before the first shot is fired.

Officer [#1] calls out "[the Subject's first name]." This image shows [the Subject]'s right side is facing Officer [#1].

[The Subject] is moving toward the camera. This image shows his left shoulder is closest to the camera and his right shoulder is facing Officer [#1].

Since this image is a still-image, it does not show motion. However, this image is recorded a brief moment before the first shot is fired.

According to the Ada County Coroner's report, [the Subject] was shot by Officer [#1] in the upper part of his left arm. The video clearly shows that [the Subject] had the right side of his body facing Officer [#1] a brief moment before the shot was fired. Since the video is conclusive in this regard, [the Subject] would have to be turning to his right toward Officer [#1] in order for Officer [#1]'s bullet to strike [the Subject]'s upper left arm.

The video evidence is not able to show if the Subject ever had a knife in his right hand. At this particular moment, as the Subject's right side was turned towards Officer #1, the only camera angle available shows the Subject's left side and his right arm and hand are blocked from view by his body. However, both Officers recall seeing the knife in the Subject's hand, although none of the store employees noticed the knife until after the Subject was shot and fell to the ground.

Officer #1 found himself fewer than ten feet from a wanted felon who was armed with a knife. The Subject was turning to his right, towards Officer #1, with a knife held in his right hand. At that moment, according to Officer #1, he thought the Subject might be preparing to stab him. Officer #1 called out the Subject's name but the Subject continued turning towards

Officer #1. Officer #1 waited a fraction of a second more so that his movement and that of the Subject would reduce the likelihood that any store employees were “downrange” from Officer #1’s line of fire. Then, believing that he was in imminent danger of being stabbed by the Subject, Officer #1 fired his gun two times. Officer #2 fired once.

One round entered inside of the Subject’s upper left arm and exited out the back of the arm, finally coming to rest when it lodged in a wooden cabinet. The other two rounds entered the Subject’s back, one in the upper left and one in the lower right.

Based on the autopsy report, the testimony of the officers and witnesses, and the available video evidence, it seems likely that the first round fired by Officer #1 struck the Subject in his upper left arm and spun him around to his left. As the Subject rotated to his left, Officer #1 fired a second time and Officer #2 fired once. It is probable that these two rounds struck the Subject in the back. The video evidence to support this is compelling. The forensic video expert’s report continues:

The next image is recorded one half of a second later although the time-stamp shows 23:02:40 (the discrepancy of the time-stamp is common and relates to the refresh rate of the cameras and the refresh rate of the time-stamp. When calibrated to real-time, the actual time delay between the last two images from this camera is exactly 13/30th of a second.)

This image is recorded a moment after the first shot is fired. It is difficult to see [the Subject]’s exact body posture, although he appears to be positioned such that his left side is facing the camera. In this position, he would be turning his right side toward Officer [#1].

Officer [#1]’s arms are extended toward [the Subject].

The next image from Camera 1 is recorded 16/30th of a second later. This image shows that [the Subject]’s body spins quickly to his left after the first shot.

The 2nd and 3rd shots are fired simultaneously 18/30th of a second after the first shot.

The image was recorded at about the same time as the 2nd and 3rd shots are heard.

In this image, [the Subject]'s right back area is exposed to Officer [#1]. [The Subject]'s left back area is exposed to Officer [#2].

Although the video images are recorded in 'time-lapse', the camera positions, the number of cameras and Officer [#1]'s personal-audio-recorder combine to provide enough visual and audio information to accurately align the exhibits and offer an accurate record of the incident. Ombudsman Murphy's request to determine the actions of each of the parties can be accurately accomplished, as outlined in this report. The exhibits clearly support the officers' statements that [the Subject] turned toward them in a "lunge" motion prior to the shots being fired. The video does not provide enough visual resolution quality to answer the question of whether or not [the Subject] was carrying a knife in his hands at the time of the shooting. It is important to note that just because the knife cannot be seen does not indicate he did not have a knife in his hand.

When Officer #1 decided to fire his gun at the Subject, Officer #1 was faced with two alternatives, use deadly force to stop the threat of a knife attack or retreat and attempt to elude the Subject.

Current case law and BPD policy do not impose on officers a duty to retreat, although this is an option an officer may consider if circumstances allow. However, in this particular case, Officer #1 was duty bound to consider the safety of Officer #2 and the store employees. Retreat may have enabled the Subject to harm someone else or take an employee hostage at knifepoint.

Given the totality of the circumstances it was reasonable for Officer #1 to conclude that deadly force was reasonable and necessary to protect his life and the lives of those around him. His use of deadly force was consistent with the requirements of BPD policy and the training he had received.

For all the reasons stated above, I have issued a finding of exonerated with regard to the use of deadly force by Officer #1 on April 2, 2007.

Officer #2's use of soft empty-hand force

The only soft empty-hand force that Officer #2 employed was when she took hold of the Subject's left arm and tried to pull his hand out from underneath his body. For all the same reasons cited above in my review of Officer #1's similar use of soft empty-hand force to pull the Subject's right arm out from underneath his body, I find that Officer #2's use of force in this regard was both reasonable and necessary to control the Subject and take him into custody.

Officer #2's use of deadly force (a firearm)

As Officer #2 was on the ground grappling with the Subject to gain control of his left arm, she heard a sound that she later described as being like, "a knife opening." Officer #2 looked in the direction of the sound and saw the Subject holding a black folding knife with the blade exposed in his right hand.

Officer #2 and Officer #1 both reacted to seeing the knife by getting up and creating some distance between themselves and the Subject. Similar to the recollection of Officer #1, Officer #2 saw the Subject get up and face her, still with the knife in his right hand. Although Officer #2 felt threatened by the knife, she did not use deadly force at this point because of the store employees who were visible to her behind the Subject.

A few seconds later, after turning the corner by the bank in pursuit of the Subject, Officer #2 and Officer #1 faced the Subject a second time. The Subject still had a knife in his right hand and was threatening the two officers with it. In response to what she perceived as an immediate and real danger to her life, Officer #2 fired a single shot at the Subject from her hand gun.

For the same reasons given above in my analysis of Officer #1's use of deadly force against the Subject, I find that it was reasonable for Officer #2 to conclude that her life and that of Officer #1 were in imminent danger. For this reason I have issued a finding of exonerated with regard to the use of deadly force by Officer #2 on April 2, 2007.

OMBUDSMAN'S FINDINGS

Officer #1

§ 1.01.02 (Use of Force) Authorization & PM § 1.01.03 Use of Firearms in the Line-of-Duty

EXONERATED

Officer #2

§ 1.01.02 (Use of Force) Authorization & PM § 1.01.03 Use of Firearms in the Line-of-Duty

EXONERATED

OMBUDSMAN'S COMMENDATION

In the midst of this rapidly evolving and ever more dangerous event, the actions of Officer #1 stand out as particularly worthy of commendation. Both officers faced a resistant and aggressive individual who was armed with a knife capable of killing or seriously wounding anyone in that store. As the Subject stood holding that knife just a few feet away from the two officers, both officers recognized that they faced a situation that might require them to use deadly force to protect their lives. Realizing that the store manager and other employees

were close by and might accidentally be struck by an officer's bullet, neither officer fired a shot and the Subject turned to run away.

A few seconds later, after pursuing the Subject around the corner by the bank, the two officers came face to face with the armed Subject a second time. As Officer #1 saw to his great horror that the Subject was turning and moving towards him with the knife in his hand, he shouted the Subject's name, hoping even then that the Subject would surrender.

Of the two officers, Officer #1 stood closest to the knife the advancing Subject was swinging towards him. Officer #1 decided that it was necessary to shoot the Subject to stop him from stabbing someone. Separated by fewer than ten feet from the deadly threat the knife posed, Officer #1 noted the presence of additional store employees behind the Subject. Despite the looming threat to his own safety, Officer #1 waited a fraction of a second until the Subject's position removed innocent bystanders from the line of fire. Only then did Officer #1 fire his first round.

For placing the safety of others above his own in the face of an immediate and deadly threat, I commend Officer #1.



Pierce Murphy
Community Ombudsman
P.O. Box 500
Boise, Idaho 83701-0500
(208) 395-7859
mailbox@boiseombudsman.org

**Evidence of Grant Fredericks
Forensic Video Analyst**

On November 12, 2007, I was contacted by Boise City Community Ombudsman Pierce Murphy in relation to a fatal police shooting incident at a Boise Fred Meyer Store involving the Boise Police Department. Mr. Murphy stated he was conducting an inquiry into the circumstances of the shooting and requested my assistance in processing and examining the video and audio evidence.

Over the next few weeks, I received three separate packages containing exhibits for my review:

On November 19, 2007, I received a US Post package from Mr. Murphy. The package contained four items:

- Item #1** CD with digital photographs of the scene,
- Item #2** CD with audio recorded by Officer [REDACTED] during the incident,
- Item #3** Hand written work request notes,
- Item #4** Various documents relating to incident, including press release, CAD printout, transcript, store diagram and others.

Items 1, 3 & 4 were used for reference purposes for this report. Item #2, which contained an audio record of the contact between the officers and [REDACTED], the deceased, was used to help align video images from the Fred Meyer visual security system.

On November 23, 2007, I received a US Post package from Mr. Murphy. The package contained one item:

- Item #5** Photographs of the interior of the Fred Meyer store near the area of the incident.

Item #5 was used as a reference to help establish a relationship among the camera views.

On December 5, 2007, I received a Federal Express Package from [REDACTED] of the Garden City Police Department. The package contained six items:

- Item #6** T-160 VHS multiplexed videotape, marked 'A2'.
- Item #7** T-160 VHS multiplexed videotape, marked 'B2'.
- Item #8** T-160 VHS multiplexed videotape, marked 'C2'.
- Item #9** T-160 VHS, which was de-multiplexed copy of Items 6, 7 & 8.
- Item #10** CD containing digital video images from the Washington Mutual Bank security camera located inside the Fred Meyer store
- Item #11** DVD containing a copy of the contents from Item #9

Items 9 and 11 were duplicates of the other exhibits and were therefore not used in the preparation of this report.

Item #10 contained digital video images from the Washington Mutual Bank, which is also located in the Fred Meyer Store. The digital video images recorded images that did not assist in the examination requested and are therefore not used for this report.

Examination

Items 6, 7 and 8 are analog videotapes containing original recordings from three independent multiplex encoding systems. The videotapes contain video images from multiple cameras located in the Boise Fred Meyer store. Each of the recordings contain date, time and camera information encoded into a bar-code at the top of each image. In order to view the actual time, date and camera information, a multiplexer must be used to decode the data. A Pelco GENEX multiplexer was used to decode the data for this examination.



Bar-code at the top of each image

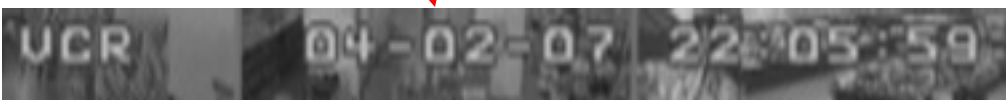
The multiplexer can allow the viewer to examine all of the camera views on each exhibit on a single screen, or it can allow the viewer to isolate any specific camera so that it can be displayed in full-screen mode.

The date and time information can be displayed at the top of each image when using the multiplexer.



In the preparation of this report, the multiplexer was used to identify the specific times on each videotape in order to accurately align the events from tape to tape. However, the use of a multiplexer also reduces the image resolution. In order to maintain the original resolution quality, a forensic demultiplexing tool was used to capture the original images and separate and align the camera views. The time stamp, generated via the multiplexer was aligned and over-laid on the forensic images. The result is that the images examined for this report are of the original quality while the time code alignment remained accurate.

The accurate alignment of time is critical to this examination, since Mr. Murphy's work-request seeks to determine the positioning of the police and the deceased as shots were fired. The methodology used for this examination provides the opportunity to accurately determine each person's position in relation to the shots, within the limitations of the original recording system.



The original recording system recorded the video images at a 24 hour time-lapse mode. At a 24 hour time-lapse mode, each VCR records approximately ten images per second. Those ten images are sampled from the cameras that are connected to each of the three multiplexers. Each of the multiplexers contained fifteen individual cameras. Some of the cameras were refreshed by the multiplexer based on motion sensitivity. The motion sensor caused some cameras to be refreshed more often than other camera views. The result is that some camera views are recorded more frequently than others, providing a more accurate representation of events within certain camera views. In some cases, several seconds elapse between the last recording of a camera view and the next recording of that same camera view. It is important to note that if the multiplexer did not sample a camera view at a particular moment in time, the VCR did not record that event and that event cannot be reproduced.



For the purpose of this report, the time-stamp has been decoded from the bar-code and has been placed at the bottom of the images for identification.

On Tape C-2, Camera 13 shows the deceased, identified to me as [REDACTED], entering the store at 22:06:52 on April 2, 2007. The time is intended to indicate 10:06PM and fifty-two seconds.



[REDACTED] is in the store for a lengthy period of time. He appears on a number of camera views, including Camera 1 from Tape A-2 at 22:37:16, when he is seen placing a large box on the Customer Service Counter.





At 22:49:37, [REDACTED] leaves the Customer Services Counter briefly. He is seen on Camera 13 on Tape C-2, recovering a shopping cart. He then returns to the Customer Service Counter.



At 23:02:02, [REDACTED] leaves the Customer Service Counter and walks toward the exit doors. He had been at the counter for approximately twenty-five minutes.



At 23:02:04, Officer [REDACTED] is recorded to Camera 13 on Tape C-2 as he enters the store. [REDACTED] and the officer are approaching each other.



Officer [REDACTED] is seen 'tapping' the front of his shirt. At this moment, his personal audio recorder begins to record audio. The camera view and the audio recorder are aligned from this moment.



At 23:02:08, Officer [REDACTED] calls out [REDACTED]'s first name and tells him he is under arrest. The officer lays his left hand on [REDACTED]'s right hand and then states [REDACTED]'s first and last name and tells him again he is under arrest. [REDACTED] is heard to state "Whoa, for what?"

Ombudsman Murphy provided a transcript of the brief conversation between Officer [REDACTED] and [REDACTED]. The transcript is an accurate record of what is heard on the officer's personal audio recorder.

As the officer gives [REDACTED] verbal commands to put his hands behind his back, he takes control of [REDACTED]'s right hand. The video shows that [REDACTED] attempts to spin away from the wrist lock applied by the officer.



At 23:02:17, [REDACTED] had moved to his right in a direction that would make the officer's compliance technique ineffective. At this time, Officer [REDACTED] moved behind [REDACTED] and pulled him to the ground.

The officer rolled [REDACTED] over to his stomach and continued to attempt to gain control of his hands.





At 23:02:21, Camera 12 on C-2 shows [REDACTED] on his back prior to being rolled onto his stomach. Officer [REDACTED] is attempting to get control of [REDACTED]'s hands. [REDACTED] is holding his left hand under his body. It is not possible to see if [REDACTED] is holding anything in his hand.



At 23:02:24, Officer [REDACTED] is seen on Camera 13 as she enters the store and moves forward to assist Officer [REDACTED].



At 23:02:30, [REDACTED] continues to demand that [REDACTED] puts his hands behind his back. [REDACTED] is seen bringing his left leg under his body as he twists away from the officers. His hands are not visible.





At 23:02:32, both Officer [REDACTED] and Officer [REDACTED] quickly move away from [REDACTED] at the same moment. Both officers are seen on Camera 12 reaching for their service weapons at the exact same moment. Their actions are consistent with perceiving a deadly threat at the same time.



A moment before this image is recorded, [REDACTED] is heard saying "Get off me." Officer [REDACTED] is then heard saying "Get back." An instant later, the above image is recorded.

[REDACTED] is seen moving quickly to his feet. His right hand is not visible in any of the following images.

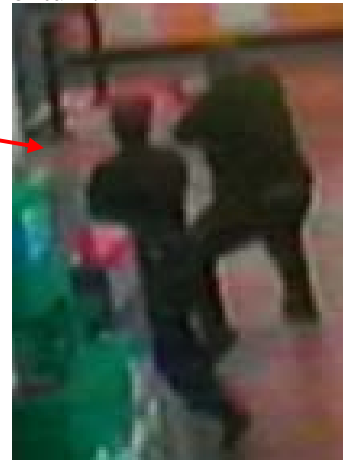


The next few images show the officers removing their guns from their holsters. [REDACTED] raises his left hand over his face and holds it in that position as he begins to run back into the store. While he begins to run, he appears to keep his right hand at his right side and concealed from the officers.





At 23:02:35, the officers are seen giving chase to [REDACTED]. At this moment, Officer [REDACTED] follows around the corner near the entrance to the Washington Mutual Bank. [REDACTED] appears to hesitate as he rounds the corner and for a brief moment, he assumes a 'Weaver Stance,' while halting his forward momentum.

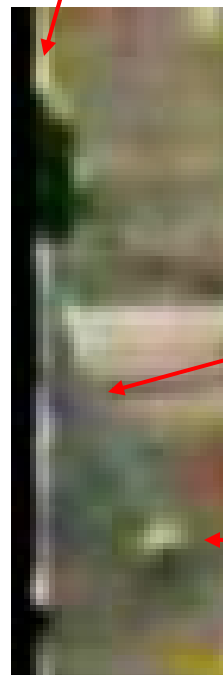


At this same moment, Camera 1 from Tape A-2 shows [REDACTED] at the extreme left side of the image. [REDACTED]'s right leg and the right side of his back are facing the camera. The back of [REDACTED]'s right heel is facing directly at the camera, indicating his right foot is turned toward the officers.



This image shows that [REDACTED] was turned to his left and was facing toward the officers as they pursued him.

Officers are located off camera to the left of this image



[REDACTED]'s right leg

[REDACTED]'s right heel

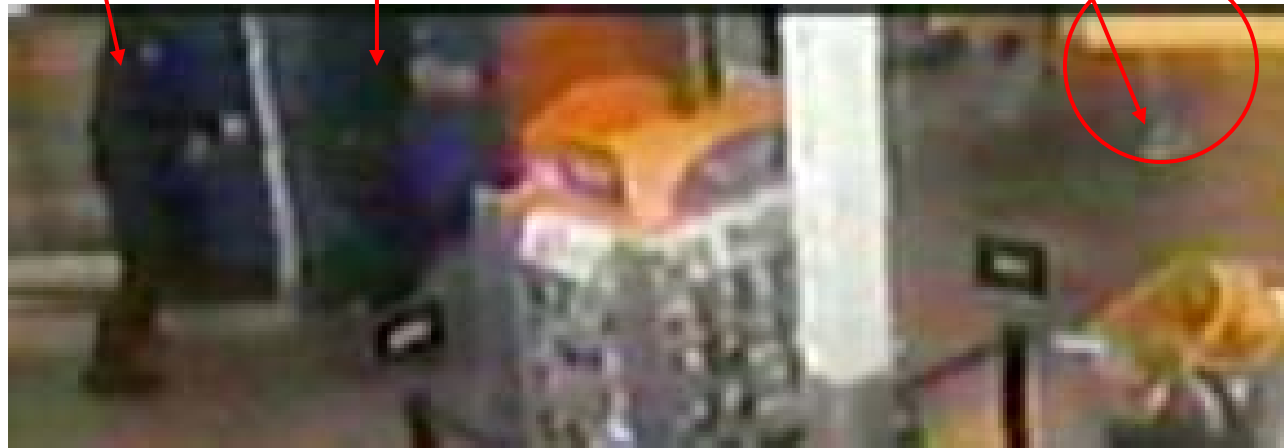


At 23:02:37, Camera 1 on Tape A-2 shows [REDACTED] has turned again into the store and has continued to run from the officers.

[REDACTED]'s right foot can be seen moving forward and away from the officers.

Both officers are in pursuit.

Officer [REDACTED] Officer [REDACTED]

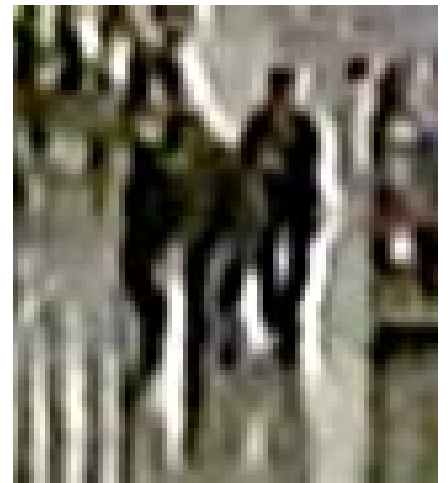


[REDACTED]'s right foot



Camera 1 on Tape B-2 shows the only image of the pursuit at 23:02:37, a moment before the first shot is fired.

Officer [REDACTED] calls out "[REDACTED]." This image shows [REDACTED]'s right side is facing Officer [REDACTED].



Officer [REDACTED]

Officer [REDACTED]



[REDACTED] is moving toward the camera. This image shows his left shoulder is closest to the camera and his right shoulder is facing Officer [REDACTED].

Since this image is a still-image, it does not show motion. However, this image is recorded a brief moment before the first shot is fired.

According to the Ada County Coroner's report, [REDACTED] was shot by Officer [REDACTED] in the upper part of his left arm. The video clearly shows that [REDACTED] had the right side of his body facing Officer [REDACTED] a brief moment before the shot was fired. Since the video is conclusive in this regard, [REDACTED] would have to be turning to his right toward Officer [REDACTED] in order for Officer [REDACTED] bullet to strike [REDACTED]'s upper left arm.



The next image is recorded one half of a second later although the time-stamp shows 23:02:40 (the discrepancy of the time-stamp is common and relates to the refresh rate of the cameras and the refresh rate of the time-stamp. When calibrated to real-time, the actual time delay between the last two images from this camera is exactly 13/30th of a second.)

This image is recorded a moment after the first shot is fired. It is difficult to see [REDACTED]'s exact body posture, although he appears to be positioned such that his left side is facing the camera. In this position, he would be turning his right side toward Officer [REDACTED].

Officer [REDACTED] arms are extended toward [REDACTED].





The next image from Camera 1 is recorded 16/30th of a second later.

This image shows that [REDACTED]'s body spins quickly to his left after the first shot.

The 2nd and 3rd shots are fired simultaneously 18/30th of a second after the first shot.

The image was recorded at about the same time as the 2nd and 3rd shots are heard.

In this image, [REDACTED]'s right back area is exposed to Officer [REDACTED]. [REDACTED]'s left back area is exposed to Officer [REDACTED].

Officer [REDACTED]

Officer [REDACTED]



[REDACTED]

Officer [REDACTED] is then heard broadcasting 'shots fired' and requests an ambulance.

Opinion

Although the video images are recorded in 'time-lapse', the camera positions, the number of cameras and Officer [REDACTED] personal-audio-recorder combine to provide enough visual and audio information to accurately align the exhibits and offer an accurate record of the incident. Ombudsman Murphy's request to determine the actions of each of the parties can be accurately accomplished, as outlined in this report. The exhibits clearly support the officers' statements that [REDACTED] turned toward them in a "lunge" motion prior to the shots being fired. The video does not provide enough visual resolution quality to answer the question of whether or not [REDACTED] was carrying a knife in his hands at the time of the shooting. It is important to note that just because the knife cannot be seen does not indicate he did not have a knife in his hand.

Included with this report is a video copy of the aligned images and audio information.