



City of Tigard Memorandum

To: Mayor, Councilors and City Manager

From: Chief Kathy McAlpine

Re: Force Response Questions

Date: June 8, 2020

Introduction

The overarching point to this discussion I would offer for consideration is that force response, like much of law enforcement, cannot be effectively siloed into neat compartmentalized packages of “if this than that” responses. Because *Graham v Connor* applies the 4th Amendment objectively reasonable standard to any use of force (force response), these fall into a very much grey area when considering policy, training, and review. We write policy to this standard of law, train to the policy, evaluate actions constantly through training and review of the events in the field, and reassess at all times, the policy, training, and action of our officers. It is hard to succinctly convey this understanding to those who do not operate in this profession because it seems like a commonsense process, but that belies the nuances that have to be included or the everchanging landscape of constitutional law, federal and state statutes, and case law.

***Graham v. Connor* Standard – Objective Reasonableness Standard**

“Determining whether the force used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful balancing of ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.”

“As in other Fourth Amendment contexts, however, the ‘reasonableness’ inquiry in an excessive force case is an objective one; the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.”

“Because the test of the reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the person is actively resisting arrest or attempting to evade arrest by flight.”

“The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight.”

“The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”

1. Require Officers to De-escalate Situations

- Policy 300.3 Use of Force
- De-escalation is a result and not a tactic or process.
 - No set skill or package of learned responses can be called de-escalation.
 - Everything an officer does, from mere presence, verbal commands, up to use of deadly force, can lead to de-escalation.
 - Even using discretion to avoid contact if appropriate can lead to de-escalation.
 - Example – walking away from a person in crisis, threatening to harm themselves or the police, when they are within a confined area, and not a threat to the public or another person.
 - *Graham* Standard - We train to constantly evaluate the situation, from initial conditions to final resolution, to determine the reasonably necessary amount of force response needed to safely and effectively resolve the situation; situations change and evolve over time and require this constant evaluation; officers are expected to weigh (balance) the need and amount of force response (and it's perceived risk) against the need for governmental intrusion.
- De-escalation requires the cooperation and willingness/ability to engage from the subject as well as time.
 - Sometimes subjects are under the influences of substances or in crisis and unable/unwilling to cooperate or engage.
- Facilitated by distance or physical barriers to allow for safe interaction.
- We are constantly evaluating a force response situation to make a determination of the appropriate response to the behavior exhibited by the subject.
 - This evaluation prompts us to escalate or de-escalate based on the circumstances.
 - Officers are cognizant of those situations that do not fit “normal” interactions and usually on guard for medical intervention as quickly as possible.
 - Examples
 - Subject wearing only underwear and covered head to toe with small cuts from running through brush seen in apartment complex parking lot running into and damaging parked vehicles; subject non-communicative, only grunting; rushed headlong toward officers as they were creating a plan to safely restrain subject; guided him to the ground and cuffed him; immediately called for the medical units staged to come in; paramedics (with our assistance) had to strap him to gurney because he was continuing to struggle against handcuffs so paramedics could evaluate and transport to hospital for evaluation.
 - Subject apparently under the influence of methamphetamine reportedly kept family member from calling 911; subject found in front of convenience store and was not cooperative with police, saying he would fight us if we tried to arrest him; large, about 5-10 and 300lbs; got him into handcuffs but he actively fought against efforts to get him into the back of patrol car; after a minute of struggle, got him on to the ground; as soon as possible (less than 60 seconds) rolled him onto his side when he said he was done fighting.

- Training at Tigard
 - Individual training disciplines include component skills that lead to de-escalation in their respective environments.
 - Defensive Tactics (DT) – use of control tactics, both verbal and physical, that are not considered patently deadly.
 - EVOC (Emergency Vehicle Operations) – decision making on whether or not to engage in pursuits or when to use appropriate intervention techniques (PIT, stop sticks).
 - Firearms – shoot/no shoot decision making, verbal commands and warnings.
 - Taser – using the Taser, threatened use of Taser, display of warning arc, use of targeting laser.
 - Force on Force – inclusion of realistic scenarios that should result in de-escalation without resorting to deadly force or any physical force.
 - Trained multiple times annually and evaluated in the Force on Force session towards the end of the year.
 - Example Training Scenario
 - December 2019 Force on Force
 - Suicidal person alone in apartment.
 - Upon contact, officers typically attempted to coax the person into safely coming outside to speak with them in person or establish a plan that the person would not harm themselves but rather call 911 for more help.
 - Expectation was that officers would not enter the apartment and force a confrontation that may end in deadly or physical force; either walk away or contact a supervisor for guidance.
 - All students handled the call to this expectation.

2. Prohibiting officers to choke or strangle civilians

- Choke or strangulation is considered a deadly force application, and like all deadly force application, is restricted to circumstances when deadly force is authorized by law.
- US Const. 4th Amendment
- Oregon Const. Article 1, Section 9
- ORS 161.219
- **300.3.4 Carotid Control Hold**
 Due to the significant risk of applying pressure to a person's neck, the Tigard Police Department does not train nor authorize the carotid control hold, lateral vascular neck restraint, or other force application that constricts the circulation of blood or impairs a person's breathing as an application of force other than in any situation where the use of deadly force would otherwise be authorized (published 6/8/2020).
- **Policies 300.1 Use of Force Purpose and Scope and 300.4 Deadly Force Application**
 - We do not train choke or strangulation methods in any discipline. This was removed from our policy during our accreditation process. We did not train on this technique and so it was removed.
 - Similar to driving over someone as a deadly force application.
 - Not a trained tactic in any discipline here but may be appropriate and effective in the right circumstances (Imminent threat to life must be articulated).

3. **Requiring officers to intervene and stop excessive Force used by other officers and report these incidents immediately to a supervisor**
 - **Policy 300.2.1 Duty to Intercede**
 - **Policy 340.1.2 Standards of Conduct – Duty to Report Excessive Use of Force and Misconduct**
 - Covered in the police academy and during the recruits training program.
 - Also reinforced through realistic scenario-based training.
 - Daily Training Bulletins (DTB). Lexipol provides written scenarios for officers to apply the policy manual or case law. Some questions come shortly after a Supreme Court ruling. The Service Lieutenant selects 20-25 questions from the list provided by Lexipol and all sworn officers are required to do their DTB's each month.
4. **Restricting officers from shooting at moving vehicles**
 - **Policy 300.4.1 Shooting at or from a moving vehicle**
 - Example to use would be shooting at the driver of a vehicle being use in a mass casualty event (vehicle borne attack like driving a truck into a crowd of people).
 - This asks us to limit the ability of officers to take objectively reasonable actions to stop threats when it may be appropriate or even necessary under the circumstances.
 - Vehicle can be a weapon just the same as guns, knives, baseball bats, etc.
 - *Graham* standard application.
 - **Cannot** reasonably foresee all potential events and should not establish policy that prevents officers using an objectively reasonable amount of force.
5. **Develop a Force Continuum**
 - These were originally developed as a way to help officers understand the criteria of legal basis for force responses.
 - Started before *Graham* became the standard but certainly was used to apply the criteria of *Graham* into digestible bites.
 - Portrayed force responses as an “if this then that” decision making model.
 - In other words, if the subject is doing something, then we can do something within a spectrum of appropriate actions to counter or thwart the risk.
 - DPSST (Oregon Police Training Academy) discarded continuums from their training in 2009 to focus on a legal standard curriculum and analysis.
 - Lexipol recommendation is to discard continuums.
 - In 2016 PERF (Police Executive Research Forum) advises against having a force continuum.
 - Continuums can be construed to limit the ability of officers to respond to situations that do not fit neat silos or create the presumption that an officer's actions, though objectively reasonable under the circumstances, were outside of policies if a continuum is rigidly applied.
 - We train and evaluate force response to the *Graham* standard and policy which has incorporated this standard.
 - Training no longer includes a force continuum but emphasizes that an objectively reasonable force response is dependent on the facts and circumstances confronting the officer at the moment force is applied.
 - Firearms
 - Shoot/no shoot evaluation.

- Decision making and discretion evaluation.
 - DTs
 - Uses of lower risk tactics than can easily lead to escalated tactics to overcome resistance.
 - Force on Force
 - Scenario based with live role players to simulate the spectrum of necessary force responses.
 - Evaluation of student (officer) performance provides allowance for all objectively reasonable tactics and techniques to be employed.
 - Stress exposure.
 - Field event reviews
 - By supervisors in time proximity to the event for a thoughtful and critical analysis of the event compared to the *Graham* standard.
 - Creates a touchpoint for individual to review their actions from an external and objective standpoint.
 - Our approach to force response is more in line with the concept of Constitutional Policing.
6. **Request Officers to exhaust all other reasonable means before resorting to deadly force**
- This is covered in *Graham v Connor*
 - **Policy 300.3.2 Factors Used to Determine the Reasonableness of Force**
 - **Policy 300.4 Deadly Force Applications (Use of Deadly Force is justified in following circumstances)**
7. **Require officers to give a verbal warning**
- To the point of **300.4 b** – Fleeing subject Tigar Officer was involved in an Officer Involved Shooting incident OIS 2016 illustrates the point of deadly force being used to stop a subject fleeing on foot who had just engaged officers in a gunfire while driving down busy surface streets and freeways after firing a gun during a hotel robbery; subject was seen with gun in hand as he ran on foot at the end of the vehicle pursuit and was trying to escape over a fence.
 - We train to give verbal warning in all training disciplines (firearms, Taser, DTs, etc.).
 - **Policy 309.4 Verbal and Visual Warnings** (Electronic Control Devices Taser)
 - Standard is typically to give verbal warning if time and circumstances allow before using force.
 - Very much understood to be a reasonable step if the circumstances allow for it.
8. **Require officers to report each time force is used or threatened against civilians**
- **Policy 300.5.1 Reporting the Use of Force, Notification to Supervisor**
 - Drawing a weapon (firearm, rifle, taser) and keeping it at the low ready is not a reported use of force. The moment the weapon is pointed at a person, it is a reportable use of force.