

September 4, 2014

Report of Robert M. Bragg, Jr. in the **Use of Force Incident 14C21483**

My name is Robert M. Bragg, Jr. and I am currently, and have been since 1981 the Washington State Criminal Justice Training Commission's Program Manager of Fitness and Force Tactics training. I was retained by Mike Gridley and the City of Coeur d'Alene to review and render an opinion with regard to the use of a force by Officer Dave Kelley on the day of July 09, 2014. I have testified on such matters in state and federal courts in both civil and criminal cases.

**MATERIALS REVIEWED**

In order to make this report I have reviewed the following:

1. Lead investigator Lt. Robert Turner's report
2. Coeur d'Alene PD Policy ~ Use of Force 300.1 ~ 300.4
3. Coeur d'Alene PD Policy ~ Shooting Policy 301.1
4. Coeur d'Alene PD Policy ~ Required Activation of Body Worn Camera 446.5.4
5. Coeur d'Alene PD Policy ~ Member Conduct –Attention to Duty and Job Performance 101.1 101.2.5
6. Officer Dave Kelley's Police Report for CDA Incident 14C21483
7. Officer Kelley interviews 1 & 2 by Sgt. Walther
8. Officer Weidebush interview by Sgt. Walther
9. Use of Force (UOF) supplement by Sgt. Walther
10. Officer Rios interview
11. Dave Paterson interview
12. Photos Kelley and Turner
13. Walther Report
14. AC Officer Laurie Deus interview
15. Craig Jones (dog owner) interview
16. Dispatch log and radio traffic

**Summary**

In brief, I agree with the conclusions reached by lead investigator Lt. Robert Turner that Officer Dave Kelley's use of force was unreasonable and his tactics were questionable.

**Basis for opinion**

The facts that I considered in forming my opinion are as follows. On July 9, 2014, at approximately 1123 hours Officers Kelley and Weidebush responded to essentially a suspicious vehicle radio call but what Officer Kelley believed to be an in-progress "enticement call in the parking lot of 819 Sherman Ave." Once on site and identifying a van similar to one associated with enticement (as noted by Officer Weidebush) the pair took a cautious if not stealthy approach, Officer Kelley approached on the driver's side while Officer Wiedebush walked around on the on the passenger side. Officer Kelley decided not to announce his police presence in order to keep the element of surprise.

Unable to see inside the van, due to the heavy tint on the windows, Officer Kelley drew his handgun to deal with what he perceived as a possible threat associated with the possible crime since he felt the need to clear the van.

Positioned near the partially open driver's window Officer Kelley was startled by a dog lunging from the same driver's window within inches of Officer Kelley's face. In reaction to the perceived threat of being bitten on the face, Officer Kelley fired a single shot "from the hip" through the window killing the dog.

## **Background Information**

During a citizen contact or investigatory situation, especially those involving a possible arrest, officers are trained to be keenly aware of their surroundings and the behavior of individuals in close proximity. As a result the totality of the environmental circumstances affects the officer's actions in a given situation. Many considerations (as noted in CDAPD policy) must factor into an officer's decision to act and should be based on the officer's training, experience and reasonable perception of the threat posed by the situation.

While law enforcement officers are trained to respond to each situation based upon their perception, their perceptions must be reasonable. Thus they must consider the totality of the facts and circumstances confronting them at the time that they take action such as the officer's environmental observations, information from departmental dispatch, witnesses, the officer's prior knowledge of the suspect(s) or the situation, the physical characteristics of the scene, the time of day, actions of third parties, the nature of the situation, the severity of the possible crime, the threat posed by a suspect to the police or to others, physical characteristics of the officer(s) and the suspect(s) such as size, skill, or strength mismatches, suspect's use of drugs and/or alcohol, and the officer's training and experience.

Officers working in the 9<sup>th</sup> Federal District Court are not only directed by the *Graham* case but also the other relevant Circuit Court cases regarding the police use of force.

## **OPINIONS**

I did not have a complete training history that Officer Kelley has been provided in regard to patrol tactics and the use of deadly force which are relevant consideration when judging the reasonableness of force applications. As a result the following opinions regarding this case are based on my training and experience, and the information provided. Additional opinions may develop should additional information becomes available.

While this appears to be essentially a property seizure, the deployment and ultimate use of deadly force against the dog was inconsistent with what would commonly be expected from a similarly experienced officer. I believe Officer Kelley failed to fully consider the totality of the circumstances presented at the time which resulted in unreasonable use of force.

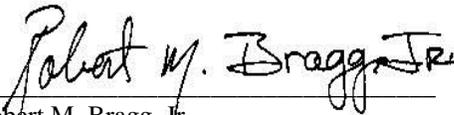
Officer Kelley's tactics were questionable in response to a suspicious vehicle call with no report that there was anyone who posed a serious or deadly threat.

- I saw insufficient reasons why Officer Kelley chose not to announce his presence or knock on the van to elicit a response in order to clear the van. As such his approach created the jeopardy he asserts existed at the time he fired his weapon.
- I saw no reasonable explanation as to why Officer Kelley did not simply take evasive movement in order to avoid the perceived threat.
- I did not find evidence that Officer Kelley discussed a plan of action with Officer Weidebush prior to approaching the van and therefore did not advise Officer Weidebush ahead of time that he was drawing his gun or was clearing the van through the windshield.
- The weather was good and I am unsure how Officer Kelley expected to see into an unlit van with heavily tinted windows.

Officer Kelley's application of his awareness of his "backstop" and beyond appeared to be limited.

- Officer Kelley reported that there were multiple vehicles in the parking lot and "a lot" of people in the area.
- While Officer Kelley stated that he knew Officer Weidebush was on the passenger side behind the B Pillar or by the passenger door, it is unlikely he had visual confirmation at the time he fired his gun.

Finally, I strongly suggest a full assessment of Officer Kelley's tactics and training to ensure that they are consistent with Coeur d'Alene Police Department Policy, current case law and patrol tactics.

  
Robert M. Bragg, Jr.