



Coeur d'Alene Police

Protect and Serve

Chief Ron H. Clark

3818 SCHREIBER WAY
CCEUR D'ALENE, ID 83815
208/769-2321 – FAX 208/769-2307
www.cdapolicy.org

MEMORANDUM

TO: Ron H. Clark
Chief of Police Department

FROM: Robert Turner
Lieutenant

SUBJECT: Use of Force Investigation, Case Number 14C21483 (14U-021)

DATE: August 26, 2014

Introduction:

Chief Clark directed me to complete a use of force investigation (14U-021), related to incident number 14C21483.

Notes:

I spoke to Sgt. Walther on July 15, 2014 the day he interviewed Officer Kelley. I made some suggestions to Sgt. Walther as to what needed to be done. I told him we should examine the van owned by Craig Jones, and we should examine the dog. I learned that the dog was at the Kootenai Humane Society (KHS) and he was frozen. I suggested the dog be thawed for examination purposes.

Sgt. Walther conducted the interviews of Officer Kelley, Officer Wiedebush, Officer Rios, Animal Control Officer Laurie Deus, and phone interviews with the owner of the dog and other witnesses as listed in the investigation file.

On July 17, 2014, Sgt. Walther and I responded to the KHS and examined the dog. The dog was in a cage, double bagged in two black garden type plastic bags. I opened the bags and examined the dog along with Sgt. Walther. I examined the entry and exit wounds on the dog. I noted the following measurements:

Length of dog:	Head to hind. Approximately 28.5" to 30"
Thickness of neck:	Approximately 6" back to front and 5.5" in width across back.
Thickness of dog:	Top of back to bottom of mid-section. 10" to 11"
Front and back legs:	Approximately 12-15"
Total height of dog:	Approximately 25"
Bottom of mouth:	Approximately 10.5"
Exit wound:	Approximately 18.5"



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I noticed the entrance wound on the dog was in the pit area between the left leg and the chest area. The exit wound was near the top of the back towards the back and to the right (as you look straight down on the dog from the tail end). Refer to photos of the dog which shows entry and exit wounds. I also took a photo with a rod over the dog, illustrating trajectory.

On July 17, 2014, I responded to 819 E. Sherman to examine the scene and to determine the distance the spent shell casing was located in the parking lot in relationship to the van. Because no measurements were taken at the time, I had to rely on photographs to get the approximate location in relation to the parked van. The single spent shell casing was approximately 13 feet west and 10 feet south of the front bumper (reference point) of the van. It was approximately 15.5 feet drawing a straight line from the shell casing to the driver's side front tire.

I ran the license plate on the van owned by Craig Jones. I obtained this license plate from the report and call screen from dispatch. I ran Colorado license plate _____ which returned to Craig Jones. The registration read as follows: Year 1999; Make: Ford; Model: 250; VIN:

I attempted to examine the van. I called Craig Jones on Monday, July 21, 2014. I spoke to Mr. Jones about looking at the van and he said we could, he just wanted someone else to examine it first. I told him he could be there with me. He said something to the effect that he was waiting for the person he hired to return to this area. He should know by the end of the week. I know Mr. Jones said essentially the same thing to Sgt. Walther the prior week (Week ending July 18). Mr. Jones was contacted by Sgt. Walther on July 9, July 16 and July 31. I emphasized the importance of getting this done. Mr. Jones preferred to wait. At the end of my work week (July 24), I still had not heard back from Mr. Jones. I asked Sgt. Walther to keep contacting Mr. Jones and to document his efforts, which is documented in the investigation file.

Because I could not examine Mr. Jones' van, I found a similar van to take measurements. I contacted _____ He owns a 1999 Ford Van. The cab was standard; however, the back area was modified. I measured the driver's side window, door, height of the van, and the windshield. I noted the following measurements to _____ 1999 Ford van: The driver's side window has five basic sides as the front is slanted in one area. The bottom of the window was 28.5" across. The tallest height of the window was 21.5", the top was approximately 18" across, then the slant was approximately 14" and the front of the window (closest to the windshield) was approximately 12". _____ van, from the ground to the top of the van measured approximately 78". I measured approximately 8" from the seat to the arm rest and approximately 4.5" from the arm rest to the bottom of the driver's side window frame. From the bottom of the door to the bottom of the window, I measured 35 ¼".

These measurements were later compared to the CDA PD Task Force van, which is a 2009 Ford Van and the window measurements were the same. The height of the Task Force van compared to the 1999 Ford van was within two inches. The Task Force van was a total height of 79-80".



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I was attempting to document the approximate entry of the bullet through the driver's side window to correspond with the entry/exit to the dog and the trajectory of the bullet once it exited the dog.

Sgt. Walther and I met with Officer Kelley on July 28, 2014 to walk me through the event as he remembered it, using a van we had at the CDA PD. The Task Force van used had nearly the same measurements as the 1999 Ford van. The van was approximately 78" from ground to top and the windows were the same as the 2009 DTF van. The DTF van measured at a height of approximately 79-80" and had the exact same measurements on the window of the 1999 Ford Van. I wanted to measure the distance Officer Kelley was from the van when he was confronted by the dog and when he fired his weapon. Officer Kelley was measured at a height of 5'08" or 68" with shoes on. He mentioned to me that he was not wearing his work boots at the time of the measurement, so his height should reflect a half inch, give or take.

The walk through and interview of Officer Kelley was recorded by Sgt. Walther. I had Officer Kelley show me where he was approximately when he was confronted by the dog. This was later transcribed and is in the investigation file.

Officer Kelley said he was fairly close to the van when the dog came out of the window. He showed me an approximate distance. His head would have been approximately 10.5" away from the window and his body was approximately 8.5" away from the van. Officer Kelley said he was not sure and this was only an estimate. Officer Kelley said he remembered Officer Wiedebush was on the other side of the van behind the B post. Officer Kelley was not sure of his exact position; however, he remembers seeing him over there.

On August 5th, 2014 Sgt. Walther and I were able to examine Mr. Jones' van and take measurements. We met with Ted Pulver, a private investigator who was hired by Mr. Jones, in the parking lot of Hayden City Hall. I was able to determine the window was rolled down approximately 9.5". The driver's side window was broken and laid over, however, the tint was attached to the remaining glass and it could be lifted up to show the position it was in during this incident. The window measurements were the same exact measurements of the two previous mentioned vans as documented in the investigation file. The driver's side window was 21.5" in height. The window was up approximately 12", which would put the space open at approximately 9.5". The bullet entry hole on the window was approximately 5" to 6" above the bottom of the window. The corresponding entry hole to the dog was consistent with the dog's front legs being inside the van on the arm rest. The arm rest is approximately 5" below the bottom window frame. From the entry hole on the dog, to the bottom of his mouth, measured approximately 10.5". The dog's nose/mouth area measured at approximately 2".

On August 18, 2014, I sent Officer Kelley an email requesting his response to a couple unanswered questions that I had regarding the incident. In an earlier interview, Officer Kelley said there were a lot of people out. I wanted to know where the people were on that day and how many he remembered. Officer Kelley responded on his first day back, August 23, 2014.



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Kelley, Monday August 25, 2014.

I was able to speak directly to Officer

I asked Officer Kelley to tell me about the people he saw. He said he reviewed his report and he could not see where he put that in there. I reminded him that it was in the interview. Officer Kelley said he probably was referring to the people at the restaurant when he pulled in. He said when he was at the van, he did not remember people being around. I showed him an aerial shot of the Java and I asked him to point out where he parked his Patrol car. Officer Kelley marked where his car was and initialed the photo. This is the same spot he described. This photo will be included in the investigation file.

Documents and Information Reviewed:

- a. Officer Dave Kelley's Police Report 14C21483
- b. Interview of Officer Kelley by Sgt. Walther
- c. Interview of Officer Wiedebush by Sgt. Walther
- d. Officer Wiedebush's Police Report
- e. Animal Control Officer L. Deus Police Report
- f. Examination of photos
- g. Measurements of vans
- h. Use of Force supplement by Sgt. Walther
- i. Dispatch log and radio traffic
- j. Interview of Animal Control Officer Laurie Deus
- k. Examination of dog
- l. Interview of dog owner, Craig Jones
- m. Coeur d'Alene Police Department Policy ~ Member Conduct -Attention to Duty and Job Performance 101.1 ~ 101.2.5
- n. Coeur d'Alene Police Department Policy ~ Use of Force 300.1 ~ 300.4
- o. Coeur d'Alene Police Department Policy~ Shooting Policy 301.1

Policy:

COEUR D'ALENE POLICE DEPARTMENT POLICY 300.4: FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE.

When determining whether or not to apply any level of force and evaluating whether a Member has used reasonable force; a number of factors should be taken into consideration. These factors include, but are not limited to:

- a. The conduct of the individual being confronted as reasonably perceived by the member at the time.



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- b. Member versus subject factors such as age, size, relative strength, skill level, injury and exhaustion.
- c. The number of members versus subjects.
- d. Whether the subjects are under the influence of drugs or alcohol.
- e. The mental capacity and mental stability of the subjects.
- f. Proximity of weapons.
- g. Time and circumstances permitting, the availability of other options.
- h. What resources are reasonably available to the member under the circumstances.
 1. Seriousness of the suspected offense or reason for contact with the individual.
 - i. Training and experience of the member.
 - j. Potential for injury to citizens, members and suspects.
 1. Risk of escape.
- k. Other exigent circumstances.

It is recognized that members are expected to make split-second decisions and that the amount of a member's time available to evaluate and respond to changing circumstances may impact the member's decision. While various degrees of force exist, each officer is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

It is recognized, however, that circumstances may arise in which members reasonably believe it would be impractical or ineffective to use any of the standard tools, weapons, or methods provided by the department. Members may find it more effective or practical to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree reasonably necessary to accomplish a legitimate law enforcement purpose.

Reasonableness of the Use of Force Analysis:

In forming my professional opinion to determine the reasonableness of Officer Dave Kelley's actions, I considered the following facts:

On July 9, 2014 at approximately 1123 hours, Officer Kelley received a radio call of a suspicious van that may be involved in child enticing in the parking lot of 819 Sherman Ave. CDA, ID. Officer Kelley felt, after reading the call screen, the possible child enticing could be in progress. Police Recruit Officer Wiedebush was observing Officer Kelley that day. They were in the same patrol unit.

According to Officer Kelley's report and oral interview, there were numerous vehicles in the parking lot and "a lot" of people around as the weather was good.

Officer Kelley drove half way into the parking lot on what he felt was an in progress call. He parked next to the curb line in the middle section of the parking lot. He noticed the suspicious



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van parked on the north end of the parking lot, facing north. He approached on foot from the south, on the driver's side. Officer Wiedebush walked around from the south on the passenger side.

Both Officer Kelley and Officer Wiedebush described the van as a Ford cargo style van with Colorado license plates. Both described the driver's side and passenger's side windows as being rolled down at least half way. Both described the windows as tinted to the point you could not see inside. There were windows on the back and three on the passenger side and one on the driver's side door.

Officer Kelley stated he felt he needed to clear the van, however, due to the tinted windows he could not see through. Due to his height, he could not see over the driver's side window. If he raised himself up on his toes, he would be exposing his head before his eyes. For this reason, Officer Kelley decided to clear the van by walking in front of the van. He drew his service handgun as he was still on the driver's side door area.

Officer Kelley described his position as being inches away from the door and window. It was determined to be 8-10 inches by description, but he could not say for sure. Just as he was about to approach the front of the van, a barking and growling dog emerged or "lunged" out the window within inches of Officer Kelley's face. Officer Wiedebush was unable to hear the dog barking or growling. Officer Wiedebush told Sgt. Walther that he only saw the van shift right before he heard the gun fire.

Officer Kelley said he was trained to keep his handgun in a low ready position canted outward in a 90 degree position. He was trained in the academy this way. Once the dog lunged out, Officer Kelley described fear of getting bit in the face and he was forced to make a split second decision to stop the threat. Officer Kelley described thinking that the dog was about to bite him and the window was rolled down far enough that the dog could get out.

Prior to this, Officer Kelley stated that he knew Officer Wiedebush was on the passenger side behind the B Post or next to the passenger door, but south of him. He also described seeing "a lot" of people around, but during the time the dog came out, there were no citizen's around.

Officer Kelley described training in LA as a K9 agitator and he knows the force a dog bite can inflict. He described his career in law enforcement as being over 15 years.

Officer Kelley did not announce his presence as he wanted to keep the element of surprise.

Officer Kelley made no communication to Officer Wiedebush that he was drawing his gun to clear the van through the windshield.



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Conclusion:

Officer Kelley responded to a call for service regarding a suspicious van where a man was possibly enticing children.

Officer Kelley did not announce his presence once he got to the van. He kept quiet and walked up to the driver's side door. Once he drew his weapon and was confronted by the dog, Officer Kelley made a conscious decision to fire his weapon through the driver's side window, killing the dog, with Officer Wiedebush on the other side of the van.

Officer Kelley said he made a split second decision in a rapidly evolving situation when he fired his weapon. There is no dispute that when Officer Kelley fired his weapon, it was a split second decision. After close examination of all the facts, I cannot dispute the dog's head came out of the window and came close to Officer Kelley. When Officer Kelley made the conscious decision to shoot the dog, the mass of the dog was behind the window. The question is, was Officer Kelley's decision to fire his weapon, reasonable at the time. It is my professional opinion that it was not reasonable. Officer Kelley, a seasoned officer of over 15 years of experience, was in an open parking lot with an open business, in the middle of the day, with citizens around (Officer Kelley told me on an interview on August 25, 2014 that he did not remember any citizens around the van when he pulled his gun) and Officer Wiedebush on the other side of the van. This was a case where Officer Kelley did not have anything behind him to prevent him from gaining distance, it was daylight when he was confronted by a barking, growling dog in a van.

The majority of the dog was still in the van, and behind the window. It is reasonable to conclude that an accustomed officer given the same situation would not have fired their weapon and instead would have moved back and assessed the situation after being startled by the dog. This is illustrated by the dog being shot center mass in the chest, clearly still inside the van and not jumping out. As a seasoned Officer, I expect more discipline and better assessment.

Based on my review of all the facts and documents, as well as other research, it is my professional opinion that Officer Kelley was not within the Coeur d'Alene Police Department's Use of Force Policy in his use of force.