



City of Seattle

Office of Professional Accountability

October 18, 2016

Chief Kathleen M. O'Toole
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2016OPA-0462)

Dear Chief O'Toole:

The Office of Professional Accountability (OPA) recently completed an investigation into the fatal officer-involved shooting that took place on December 6, 2015. In particular, OPA investigated the use of deadly force by an officer who was part of a SWAT team that made contact with a subject who had endangered the lives of the public and police officers alike while engaged in a crime spree ranging from the Belltown neighborhood north of downtown Seattle, to the Laurelhurst/Wedgwood neighborhoods of northeast Seattle. The suspect committed acts of armed carjacking and drove in a manner that displayed an utter disregard for the lives of other motorists and pedestrians. A large number of Seattle Police Department (SPD) officers pursued, followed and attempted to stop him. More than once, the suspect fired a weapon at pursuing SPD officers. The evidence from the extensive investigation by the Force Investigation Team (FIT) leaves little doubt the situation caused by the actions of this one person was extremely dangerous and, for some time, created the threat of death or great bodily harm to officers and the public. It is also a fact that the actions of the subject created a dynamic and rapidly changing environment in which police commanders, supervisors and officers made split-second decisions.

Earlier this year I wrote to you about this incident and made two Management Action Recommendations regarding command and control of complex incidents and SPD's various policies concerning the use of police vehicles to end pursuits (see: Management Action Recommendation (2016OPA-0469) dated June 29, 2016).

I write today to renew my previous recommendation to form “an internal SPD “Study Team” to carefully examine the command, control and individual actions that made up the many attempts to stop and capture the suspect in this incident,” and to add emphasis to it in light of what OPA learned during its most recent investigation into this incident.

Following is the recommendation I made in June.

Recommendation #1: I recommend the formation of an internal SPD “Study Team” to carefully examine the command, control and individual actions that made up the many attempts to stop and capture the suspect in this incident. Several times throughout the incident, SPD officers actively pursued the vehicle being driven by the subject. A SPD lieutenant took command of the police response, including but not limited to the pursuit aspect of it. Based on the FIT and OPA investigations and drawing on the discussions conducted by the Force Review Board during their

deliberations, I believe the Department will gain great insight into how command and control of such events can be improved. For example, the lieutenant acting as the overall incident commander also held the role of “controlling supervisor” of the on-again/off-again pursuit of the suspect. The supervision of the pursuit itself required close attention and split-second, life and death decisions. It would be very easy for an incident commander in a situation such as this to become overwhelmed by the complexity of the incident and the increasing number of responsibilities required by policy and the reality of the situation. In this particular incident, the incident commander might have benefited by delegating certain responsibilities to others, a key element of the Incident Command System (ICS) used by SPD and most emergency services throughout the country¹. It is my hope, should SPD decide to form such a “Study Team” and act on its insights and suggestions, the Department will be prepared in the future to exercise even better command and control over similar or worse situations (e.g., a coordinated crime spree or a Mumbai/Paris-style terrorist attack).

To objectively assess the use of deadly force by a member of the SWAT team, OPA inquired into the decisions and actions of other officers and supervisors that ultimately placed the officer face-to-face with an armed, demonstrably dangerous subject. While the officer was not responsible for the actions and decisions of others, the options available to him at the time he decided to use deadly force were directly impacted by what preceded.

The OPA investigation found that the decision to form the team and proceed to make contact with the subject inside the car was made by the team leader. The team leader was a SWAT officer, not a sergeant or command level supervisor. It is not clear whether a SWAT sergeant was on the scene before the team began to move towards the subject’s vehicle and it appears neither of the two lieutenants who were there were asked for or gave explicit approval before the SWAT team began advancing on the subject’s vehicle.

The purpose of the team in approaching the subject’s vehicle, as understood by those interviewed by OPA, was to end the deadly threat posed by the subject. Both the officer who used deadly force and the SWAT team leader stressed to OPA their concern the subject could at any moment drive the vehicle towards officers or members of the public and/or fire his weapon from inside the car at the surrounding officers and bystanders. At that moment, the officers had no means to assess the condition of either the subject or his vehicle. When asked why the SWAT team did not wait for additional commanders, officers and equipment to arrive so as to increase the options available for resolving the situation, both officers stressed their concern the subject could at any moment begin driving and/or firing. They emphasized the large number of exposed officers and members of the public in the surrounding area.

Senior police commanders (lieutenants and above) are expected to take command of major incidents so their experience and training can be brought to bear on the problems at hand. They are expected to assess threats to officers and public safety, coordinate the actions and placement of officers and resources, and formulate plans to address the many problems presented. There

¹ “ICS is a standardized on-scene incident management concept designed specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.”
https://www.osha.gov/SLTC/etools/ics/what_is_ics.html

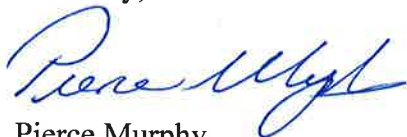
were two lieutenants at the scene prior to the movement of the SWAT team towards the subject's vehicle. One of the two lieutenants at the scene should have taken control of the incident and exercised command over the assembled officers. Certainly, the SWAT lieutenant, who was right there, could have taken command of the SWAT officers at that location and coordinated a plan to deal with the subject while seeking to minimize the danger to officers, the public and the subject. Based on my review of the OPA investigation, neither lieutenant was visibly in charge, nor was either of them coordinating overall police activities before the SWAT team began their movement toward the subject's vehicle. The SWAT team acted on its own, the officers convinced they had to act immediately.

It seems insufficient time and opportunity may have been taken to consider a wide range of possible scenarios, as well as other options available to bring this situation, so full of danger for officers and the public, to a resolution before the SWAT team began their move towards the subject's vehicle. Once the SWAT team arrived at the driver's window tightly grouped together and face-to-face with the subject, any movement by the subject, even movement to comply with the shouted orders to show his hands, could reasonably be seen as a threat. The decision to move up to the subject's vehicle and confront him at the driver's window, made in the absence of a clear command presence at the scene, set in motion a series of actions that ended in the use of deadly force.

While it is impossible to know how or even if the outcome would have been different had command of the incident been more clearly established, I believe much can be learned from this incident and applied to the training and development of SPD commanders.

Thank you very much for your prompt attention to this matter of public trust and confidence in the professional conduct of the SPD and its employees. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Sincerely,



Pierce Murphy

Director, Office of Professional Accountability