



February 5, 2015

**Findings and Determinations
Officer Involved Shooting
Court Security Officer Stephen P. Howard**

In accordance with Centralia Police Department (CPD) Policy 4.1.3 IV.B.2 (Review of Pursuits, Use of Force, and Internal Investigations), the following is the determination by the Chief of Police as to the officer involved shooting incident involving Court Security Officer Stephen Howard on December 16, 2014. This determination is made based on a review of the case reports (Lewis County Sheriff's Office [LCSO] and CPD), the written determination by the Lewis County Prosecuting Attorney (LCPA) as to the incident, a review of the report filed by the Shooting Review Board (SRB), a review of the transcript of the SRB's interview with Officer Howard, along with appropriate CPD Policies and Procedures, Standards of Conduct, and General Orders.

The SRB, in accordance with its purpose and procedures, determined that, "While Officer Howard's discharge of his weapon may have been lawful; the Board found that it was not an appropriate application of force. Further, it was clear that reasonable alternatives to the use of deadly force existed." The SRB also made other determinations and recommendations as to policies and training surrounding this incident.

FINDINGS AND DETERMINATION

I concur with the recommendation of the SRB and find that the use of deadly force by Court Security Officer Stephen Howard was not within CPD policy guidelines. While the use of force was legal under Washington State Law as stated in the January 7, 2015 letter from LCPA Jonathan Meyer, the application of use of force in this incident is not in accordance with CPD Policies 3.1.1 Use of Force and 3.1.2 Use of Deadly Force.

As to the determinations and recommendations regarding policy and training, I concur in part with the SRB but have additional determinations and findings.

NEW POLICIES NEEDED: The Board did not identify the need for the creation of any new policies as a result of this incident.

I concur with the SRB that no new policies are needed.

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REVISION TO EXISTING POLICIES: The Board felt that the policy that addresses foot pursuits could use some modification. While Centralia Police Department Policy #15.1.10 Foot Pursuits, addresses the issues of "Deciding Whether to Pursue" and "Factors to Consider When Initiating / Continuing a Foot Pursuit", neither paragraph specifically states that if the suspect is known to the officer(s) and later apprehension is likely, discontinuing the foot pursuit may be favorable. Likewise, while it would seem to be a matter of common sense, there is no language to specifically indicate that officers should consider the seriousness of the predicate offense in deciding whether to initiate or continue a foot pursuit. This addition of these two points would bring the Foot Pursuit policy more closely in line with Centralia Police Department Policy #15.1.6 Motor Vehicle Pursuits.

I concur with the SRB that minor modifications to the Foot Pursuit Policy should be made as set forth in the recommendation. I would add that a modification to General Order 35 Municipal Court Security needs to be made to provide more specific direction to the Court Security Officer as to pursuits from those who flee from Municipal Court.

Specifically, Section IV.E.4 states, *"When an individual is to be remanded during court proceedings, the Court Security Officer should, whenever possible, call for another officer to make the actual arrest. This allows the Court Security Officer to focus their attention on the overall security issues of the court, as well as minimizing the wait for transportation."* While the order clearly sets forth the priority of overall security to the Court Security Officer, it should expressly prohibit leaving the post to pursue an escapee, as doing so leaves the entire courtroom unsecured, the magnetometer unattended, as well as necessitating the re-screening of all attendees at court.

TRAINING RECOMMENDATIONS: The Board determined that the manner in which Court Security Officer Howard responded to this incident was not due to training deficiencies.

I concur with the SRB Officer Howard's training for his assigned duties was sufficient. However, I do believe that greater documentation and formalization of the training and orientation afforded to Officer Howard should have been completed. Orientation sessions with the current Court Security Officer occurred and are known within the department, but those sessions were not documented and made a part of the training file. The orientation of departmental use of force policies, while it occurred, again was not documented and made a part of the training file. The Court Security Officer should be required to complete the same written examination (with entry into the training record) of CPD Use of Force Policies as the regular police officers.

DISCUSSION

The decision to use deadly force by a police officer is one of the most serious and potentially life-changing events an officer will ever face. That is why departmental policies are much more restrictive than state law. CPD Policy 3.1.1 (Use of Force) states in part that:

II. POLICY

It is the policy of the Centralia Police Department that officers use an amount of force which is reasonable and necessary to effect an arrest, carry out a lawful duty, or defend themselves or another from physical harm or death, or to assume or maintain lawful control over a person or situation. Officers shall use force only in a lawful manner. This means the unnecessary use of force or the use of force in an excessive or unreasonable amount or the use of force to punish a person is an unjustified use of force. The preservation of innocent life is more important than either the apprehension of criminal offenders or the protection of property. This includes the officer's lives, as well as the lives of others. However, in some situations, the preservation of innocent life requires the use of deadly force to stop or apprehend criminal offenders.

The policy continues:

B. General Rules Governing Use of Force

1. In all cases involving the use of force, officers will consider the severity of the suspected criminal activity, whether there is an immediate threat to officers or other persons, and the type of resistance being offered, whether active, passive or attempting to evade arrest by flight.
2. Officers will use necessary force when no reasonably effective alternative to the use of force appeared to exist and the amount of force used was reasonable to affect the lawful purpose intended.

In reviewing any application of force, such application is to be viewed in the following light:

Objectively Reasonable - This term means that, in determining the necessity for force and the appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and the level of threat to the community.

CPD Policy 3.1.2 (Deadly Force) states in part:

Necessary Force - No reasonably effective alternative to the use of force appeared to exist and the amount of force used was reasonable to effect the lawful purpose intended.

Further restriction on the use of deadly force is set forth in 3.1.2.IV.A

1. It is the policy of the Centralia Police Department to afford officers discretion in the use of force to the extent permitted by Washington State Statutes which authorize peace officers acting in the line of duty to use deadly force when necessary:
 - a. For self-defense in situations where there is an imminent threat of serious injury or death to the officer.
 - b. To defend another person who may be in peril of serious injury or death.
 - c. To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility.
 - d. To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony.
 - e. To lawfully suppress a riot if the participant is armed with a deadly weapon.

CPD 3.1.2.IV.B:

2. In considering whether to use deadly force to arrest or apprehend any person for the commission of a crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:
 - a. The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening.
 - b. There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

In this case, the individual being pursued was a known misdemeanor suspect who had appeared in court on a Centralia charge; then found to have a misdemeanor warrant from the Chehalis Municipal Court. Upon learning of this, that individual fled from the courtroom. The primary concern of the Court Security Officer must be the security of the judge, the court employees, and the court attendees. Pursuing a known misdemeanor suspect at the expense of leaving the court unattended was an incorrect decision.

As the foot pursuit continued, Officer Howard made the decision to un-holster his weapon contemporaneous with the suspect entering the vehicle and closing the driver's door. Apparently he equated the suspect being in a motor vehicle with deadly force. While there have been numerous cases where a vehicle was used as a weapon and officers have used deadly force in response to such, it is not objectively reasonable to equate the mere entry into a motor vehicle with deadly force.

Some witnesses specifically state that they observed Officer Howard striking the vehicle driver side window with his firearm. Officer Howard advised that it was his "recollection that it did not occur." Physical evidence on the lower portion of the window below the bullet strike as well would tend to support the recollection of witnesses. Officer Howard does state that he tried to open the door with his left hand and as the vehicle began to move, he stepped back and fired.

Striking a vehicle window with a firearm is inherently dangerous and an inappropriate tactic as there exists a propensity for an accidental discharge, or, if the window is broken by such action, the officer's firearm is presented within reach of the suspect. Attempting to open a door with one hand while holding a firearm in the other is also a questionable tactic. Success could lead to a close struggle with the officer attempting to hold a firearm in one hand and attempt to restrain/arrest with the other - such attempt to arrest would again be for a misdemeanor offense.

Notwithstanding Officer Howard's statement, based on the physical evidence (the trajectory of the bullet) and the statements from witnesses, it is quite possible that the discharge was

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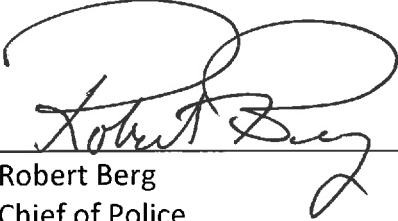
accidental and not an intentional act. This is NOT to question the veracity of Officer Howard; rather it is an acknowledgement that memory is not exact, as evidenced by varying accounts of the incident from the perspective of the witnesses interviewed.

Officer Howard's self-described position relative to the motor vehicle indicates that he was adjacent to the driver's door. While it is arguable as to whether or not the vehicle was driven forward, lurched forward, or only moved backwards; any such movement by the vehicle would not have placed Officer Howard in further jeopardy. Officer Howard's belief that he was facing deadly force (a moving motor vehicle being used as a weapon) when he states he fired his weapon is not objectively reasonable.

In summary:

- While documentation of training by CPD was lacking, sufficient training and orientation for the duties assigned to Officer Howard did occur. Moreover, Officer Howard was a well-trained retired police officer with 28 years of law enforcement experience.
- The decision to pursue is understandable though it does not comport with the purpose and intent of the court security officer position.
- The decision to un-holster the weapon while in pursuit of a known misdemeanor suspect, who posed no immediate threat to the officer or the public, was not objectively reasonable.
- The decision to either use the firearm as a battering device against the window or to attempt to open the car door with the left hand with the firearm in the right; either is an unsound tactic.
- The location of Officer Howard relative to the motor vehicle when it moved was such that it would have been impossible for the vehicle to strike him. His belief, while probably sincere, was not objectively reasonable.

The final disposition of this incident as a personnel matter will be determined after discussion with Officer Howard.



Robert Berg
Chief of Police



January 23, 2015

Chief Bob Berg
Centralia Police Department

Subject: Use of Force Review Board (Case #14A-20576)

I. Background

On Tuesday, January 13, 2015 at 1300 hours, a Use of Force Review Board convened at the Centralia Police Department conference room to review the circumstances surrounding the discharge of a firearm by Court Security Officer Stephen P. Howard on December 16, 2014 (Centralia Police Department Case #14A-20576 & Lewis County Sheriff's Office Case #14C-13630) that resulted in minor injuries to an individual named Phillip A. Pinotti, a 22 year old Adna man.

In addition to me, members of the Board were Commander Dave Ross, Centralia Police Department, Commander Joe Upton, Lacey Police Department, Commander Dusty Breen, Lewis County Sheriff's Office, and Sergeant Kurt Reichert, Centralia Police Department, a peer member selected by Officer Howard. Each member of the panel was provided with a packet (**Attached**) containing copies of the following documents:

1. Lewis County Sheriff's Office Incident Report (Case #14C-13630) prepared by Detective Dan Riordan, summarizing the findings of their investigative efforts.
2. CPD Incident Report (Case #14A-20576) with supplemental narratives
3. Officer Statements
4. Witness Statements
- 5.. Selected CPD Policies
6. A black and white aerial photo depicting the area involved

Additionally, each member of the Board was given a photocopy of the letter (**Attached**) prepared by Mr. Jonathan Meyer, Lewis County Prosecuting Attorney, dated January 7, 2015, to Chief Berg in which he found Officer Howard's use of deadly force would not result in the filing of criminal charges.

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Our Mission

Work in partnership with our community to protect life and property, reduce crime, and enhance the security and quality of life in our city.

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II. Process

All panel members first made their introductions and I explained that the purpose of the review was threefold. We would be examining the materials and hearing from involved individuals to determine if:

- a) Court Security Officer Howard's use of deadly force was appropriate per Centralia Police Department policy,
- b) Court Security Officer Howard or other employees of this department violated any Centralia Police Department policy,
- c) To identify any policy issues which should be modified or focused upon in future training.

Any recommendations would be forwarded to the Chief of Police for his review and consideration.

Each panel member took approximately 30 minutes to review the provided materials.

Using the photocopies from the PowerPoint slide presentation prepared by Detective Riordan and previously presented to Chief Berg and Prosecutor Meyer, Commander Breen presented a summary of the LCSO investigation in the form of a concise, chronological account of the incident beginning with Officer Howard's initial contact with Mr. Pinotti inside the Centralia Municipal Courtroom through the events that ultimately led to the firing of a single gunshot and the escape of Mr. Pinotti.

At the conclusion of Commander Breen's presentation, Officer Howard was asked into the conference room to give his version of the events in question. Commander Ross turned on the digital recorder and once it was established that everyone was aware of the recording, I advised Officer Howard of his employee rights in an administrative investigation under *Garrity*, since he is an employee of city government. I did not include the *Weingarten* provisions since Officer Howard is a part time, temporary employee and not a member of the collective bargaining unit.

Over the next hour and thirteen minutes, Officer Howard was afforded the opportunity to describe the events from his own perspective, with questions from all of the board members. At one point, Officer Howard was asked to draw the scene of the encounter with Pinotti on the white board for a visual reference (Attached). He drew the Pearl Street / Maple Street intersection with both Pinotti's vehicle and the one that had been parked in front of it. Later, Commander Upton drew a depiction of Pinotti's car in green and asked Officer Howard to indicate his approximate position relative to the car. Howard placed a blue 'X' beside and slightly forward of the center of the front, driver's door, but behind the front wheel.

Following the interview of Officer Howard, the panel heard from a witness who had not previously been interviewed as part of this investigation.

Mr. Gerardo G. Ayala, of Rochester, had been travelling southbound in the 400 block of North Pearl Street when he observed two men running across Pearl Street. He described one as 'younger' and the other as the 'white haired officer'. He described how they ran from east to west in front of traffic, then between two cars parked along the curb on the Maple Street side of the Chronicle building. The younger man got into the second car and the officer was slightly behind him. He said he saw the officer hit the driver's window "several times" with his gun while yelling at the younger man. While striking the window, he said he saw the gun "go off".

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He went on to say that the officer appeared startled and stood looking at his firearm for what seemed like a few seconds while the car sped off in reverse. Mr. Ayala explained that he had stopped to watch the incident unfold and pulled over to the curb, where he gave his name and contact information to an officer in plain clothes, but said no one ever contacted him for an interview.

III. Discussion

The Lewis County Sheriff's Office investigation and the review by the Lewis County Prosecuting Attorney had already established the material facts of this case, so the Board focused primarily on the question of whether any department policies had been violated and whether proper procedures had been followed.

ISSUE: Pinotti had entered the courtroom voluntarily. At the conclusion of the proceeding against him, the judge announced that a warrant existed for Pinotti's arrest. This was a misdemeanor warrant for Failure to Comply with a Court Order in connection with an original charge of Theft 3rd degree, issued by Dale McBeth in Chehalis Municipal Court on December 10, 2014 with a bail amount of \$2,000.

Officer Howard began walking with Pinotti to the lobby area outside the courtroom with the intention of taking him into custody for the warrant. Instead, Pinotti chose to flee out the front doors of City Hall and make his escape.

CONCERN: While the court computer system indicated the presence of a warrant from another jurisdiction, it is common practice to confirm the validity of those warrants while detaining the individual prior to making a physical arrest. This is done for several reasons, including the fact that the two systems may not be accurately portraying the most recent information and the fact that some jurisdictions choose not to extradite on certain warrants, or limit their extradition range. A warrant may be valid, but if the issuing agency refuses to extradite, making an arrest for the warrant alone, absent any new, local charges, would be improper.

RESULT: The entire chain of events that followed, including the foot chase through traffic, discharge of the firearm by Officer Howard, and Pinotti's flight in his vehicle, took place without confirming the validity of the warrant or verifying its extradition status. Officer Howard acknowledged during this review that he was aware that outside jurisdictions sometimes refuse to confirm warrants, indicating that he had recently experienced just such a situation in which he ended up releasing a woman, despite the fact the Court had told him she had a warrant.

CONCERN: Centralia Police Department *General Order #35: Municipal Court Security* paragraph IV.E.1. directs that the "Court Security Officer should remain in the foyer area during the Court proceedings." This is to allow for "greater vigilance over the area inside the Court room..... and serve as a deterrent to those who might attempt to escape the Court Room". Paragraph IV.E.4. says:

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4. *When an individual is to be remanded during Court proceedings, the Court Security Officer should, whenever possible, call for another officer to make the actual arrest. This allows the Court Security Officer to focus their attention on the overall security issues of the Court, as well as minimizing the wait for transportation.*

Officer Howard was, by his own admission, watching the court proceedings from inside the courtroom. When the judge informed him of the warrant, Howard chose to take Pinotti into custody himself, rather than call for an on-duty officer. Officer Howard acknowledged that he was familiar with the policy, and indicated that he had previous experience with court security, including providing security for the California State Supreme Court.

RESULTS: Because of Howard's position beside Pinotti, there was no visual deterrent between them and the front door, perhaps playing a key role in Pinotti's decision to flee.

Once Howard chased Pinotti out of the City Hall building, the Court and its participants were left without any security.

ISSUE: When Pinotti made the decision to flee the Court, Howard chose to pursue him, rather than remain at his post inside the Court area.

CONCERN: Officer Howard acknowledged that he was aware of the General Order directing that he remain focused on the security of the court, but on page 16 of the transcript of the Board's interview, he was asked by Commander Breen whether he gave thought to remaining in the Court area, or pursuing Pinotti. He answered:

Howard: I thought of that in the -

Breen: Aftermath?

Howard: -- if this happened today, I mean I've - a lot of things; what could I have done, should have done, might have done; but again it was instinct. He took off and I took off after him.

Breen: Okay. Thank you.

Howard: And it was just pure instinct. It was nothing -

Breen: Okay.

Howard: No thought process.

RESULT: Howard's decision to leave the Court area and pursue Pinotti outside left the judge, court staff, staff and attendees inside the courtroom without security.

CONCERN: Centralia Police Department *Policy #15.1.10 Foot Pursuits* states in its Purpose that:

The Centralia Police Department has the duty and responsibility to pursue and apprehend offenders. Foot pursuits must be conducted in such a way so as to minimize the risks to department personnel and citizens.

The authority to pursue a fleeing suspect on foot is explained under section IV.A. *Deciding When to Pursue*, paragraph 1:

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1. An officer has the authority to stop any person reasonably suspected of having committed or is about to commit a crime, violation or traffic violation. While it is the sworn member who initiates the stop, it is the suspect who initiates the foot pursuit by fleeing.

However, the notion that foot pursuits must be conducted as safely as possible is addressed further under section IV.A. *Deciding When to Pursue*, paragraph 2:

2. The decision to pursue should be made with an awareness of the degree of risk to which the officer exposes himself/herself and others. No officer shall be criticized for deciding against initiating, discontinuing his/her involvement in, or terminating a foot pursuit.

RESULT: Chasing Pinotti meant running across a relatively busy, two-laned, one-way street. Not only did Pinotti expose himself to the hazards of vehicular traffic, but Howard likewise put himself in danger by pursuing him. At the same time, those motorists were also placed at risk by being forced to avoid two men suddenly running in to traffic. As mentioned previously, Howard's absence from his post left the court staff and attendees vulnerable, as well.

ISSUE: Pinotti was able reach the vehicle and get inside before Howard caught up to him. Pinotti then locked the door and started the engine. Howard stated that he immediately changed his mind set at that point and viewed the vehicle not as a means of escape, but a weapon.

CONCERN: Officer Howard told the Board, "The door closed and my gun was coming out. And then it was like, don't do it, I will shoot you". He reiterated that he believed that if the vehicle moved forward, his life would be in danger, though he was unable to articulate how the vehicle posed a threat to his life when he was standing beside it.

This was similar to a statement that Howard provided to investigating detectives on December 18, 2014, when he said "I'm pulling my weapon and I'm yelling at him, "Don't fucking do it. I will shoot you"

Centralia Police Department *Policy # 3.1.1 Use of Force* section IV.B, paragraph 7 *Threatening the Use of Force* states:

An officer may announce to another his or her intention to use only that type and degree of force that may reasonably be necessary under the circumstances. This provision should not be construed to authorize or endorse the use of discourteous, abusive or unprofessional language.

CONCERN: None of the witnesses reported seeing the vehicle move forward. Instead, they all reported seeing it accelerate rapidly in reverse, away from Howard. Officer Howard maintains that the forward movement may have been merely a lurch, but contends that there was, nonetheless, some forward movement, however slight and brief.

RESULT: Officer Howard seems to have formulated a preconceived plan of action in his mind that he intended to shoot Pinotti if and when the vehicle began to move. Whether such action represented a real or even perceived threat to Howard's safety was never clearly established. In fact, on page 26 of the transcript of the Board's interview, Howard said,

"You know I know the perception and - of what other people saw but I know my perception was that vehicle was running, it jerked forward and I felt that I was in fear - and it was coming toward my

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direction. Now, whether if he had pulled out all the way forward and was able to strike me, I don't know if he could have or, or couldn't have, and at that time I really didn't want to find out."

This description of the event suggests a lack of situational awareness and threat assessment on Officer Howard's part.

CONCERN: Part of the difficulty in evaluating whether Pinotti would have had adequate clearance to pull forward to escape, or whether any forward progress would have been prevented by the car parked in front of him, even with his wheels turned to the extreme left, was due to the fact that the vehicle parked in front of him had been allowed to leave prior to the completion of the crime scene examination.

RESULT: The Board was left with a wide range of witness accounts that placed the gap between the vehicles at anywhere from several inches, to up to twenty feet. Consequently, assessing the likelihood that Pinotti could have caused any harm by moving forward was not possible.

CONCERN: Several independent witnesses, all with different vantage points, provided accounts of the event that included seeing Officer Howard striking the driver's window of Pinotti's vehicle while yelling at him, followed by the single gunshot as the vehicle rapidly moved backwards, in reverse. Mr. Ayala described seeing Howard's weapon discharge while he was striking the window, adding that he saw Howard stare at the weapon as if he was startled.

When asked if he had been striking the window as alleged by witnesses, Officer Howard, said that his "recollection is it did not occur." He went on to reiterate, "And I'm not going to say it didn't occur, but I'm going to say it didn't occur and this is why..." He then described an event from the early 1990's wherein he suffered a damaged tendon in his hand from striking the window of a fleeing suspect.

He did describe how he had reached out with his left hand to try the door handle and as the vehicle began to move, stepped back, raised his weapon with one hand and fired a single shot directly into the car through the driver's side window.

Several members of the Board had agreed that the most logical explanation for these facts was that the gunshot was the result of an accidental discharge while striking the window with his firearm, rather than an intentional application of deadly force.

Similarly, some members of the Board hypothesized that while this may not have been an accidental discharge, per se, it may have been due to a startle reflex.

When specifically asked, however, Howard stated with certainty, "I did not have an accidental discharge", and later repeated that "...I can tell you adamantly it was not an AD".

RESULT: The entry point of the bullet was approximately centered, side to side and slightly above the midline of the driver's window, though the trajectory was up and to the right, as evidenced by the hole in the headliner and accompanying bullet impact point in a roof support bracket just above and behind the driver's seat.

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Though bullets can take odd trajectories after striking glass, especially a windshield or curved window, the Board would have expected that Howard's bullet, if fired as he described at a flat, side window, would likely have had a more level, lateral path, perhaps entering through the driver's side window and travelling through to the passenger side door or window.

ISSUE: Court Security Officer Howard used deadly force against another person in the conduct of his duties by discharging his firearm one time into the vehicle occupied by Pinotti.

CONCERN: Centralia Police Department *Policy # 3.1.1 Use of Force*, section II Policy, states:

It is the policy of the Centralia Police Department that officers use an amount of force which is reasonable and necessary to effect an arrest, carry out a lawful duty, or defend themselves or another from physical harm or death, or to assume or maintain lawful control over a person or situation. Officers shall use force only in a lawful manner. This means the unnecessary use of force or the use of force in an excessive or unreasonable amount or the use of force to punish a person is an unjustified use of force....

Section IV.B General Rules Governing Use of Force states:

1. In all cases involving the use of force, officers will consider the severity of the suspected criminal activity, whether there is an immediate threat to officers or other persons, and the type of resistance being offered, whether active, passive or attempting to evade arrest by flight.

And

2. Officers will use necessary force when no reasonably effective alternative to the use of force appeared to exist and the amount of force used was reasonable to affect the lawful purpose intended.

Centralia Police Department *Policy # 3.1.2 Deadly Force*, section IV, paragraph A *Use of Deadly Force* states:

1. It is the policy of the Centralia Police Department to afford officers discretion in the use of force to the extent permitted by Washington State Statutes which authorize peace officers acting in the line of duty to use deadly force when necessary:

- a. For self-defense in situations where there is an imminent threat of serious injury or death to the officer.
- b. To defend another person who may be in peril of serious injury or death.
- c. To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility.
- d. To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony.
- e. To lawfully suppress a riot if the participant is armed with a deadly weapon.

2. In considering whether to use deadly force to arrest or apprehend any person for the commission of a crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

- a. The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening.
- b. There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

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For clarification, the following definitions are provided in the Centralia Police Department's *Use of Force* policies:

Deadly Force - Defined in RCW 9A.16.010 as the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. Deadly force should be considered only when all other reasonably effective means have been exhausted.

Necessary Force - No reasonably effective alternative to the use of force appeared to exist and the amount of force used was reasonable to effect the lawful purpose intended.

RESULT: When viewed in its entirety, this incident does not justify the application of deadly force. The severity of the suspected criminal activity was low, Pinotti's escape did not present an apparent threat to the public, Pinotti was not attempting to escape from a qualifying correctional facility or custody status, and Court Security Officer Howard was not actually in a position that would have allowed him to be struck by any forward or reverse motion of Pinotti's car.

Finally, it was the belief of the Board that reasonable alternatives to the use of force did, in fact exist. While Officer Howard had no duty to retreat under state law, he did have the option of simply stepping backwards and disengaging from contact with the vehicle; contact that Howard, himself, chose to engage in.

IV. Summary

Pinotti was known to both Howard and court staff. The predicate offense that led him to flee from Howard's custody was an unconfirmed misdemeanor warrant for a relatively minor charge of Theft 3rd Degree.

The legal standard by which the Lewis County Prosecutor's Office examined this incident led Mr. Meyer to conclude that Howard's actions were not criminal. However, he also pointed out that it was not his "...office's role to determine if this chain of events could have, or should have been avoided."

This board addressed, but did not focus on, the question of whether Officer Howard was, or was not, in fear of his life at the time of the incident. There is no objective means by which to quantify such an emotion, nor is there a means by which others can accurately evaluate the actual or perceived danger felt by Howard at the precise time and place in which the incident occurred.

However, we did evaluate the circumstances that led up to the firing of the gunshot and examined, at length, the reasonableness of Howard's actions in light of the totality of the circumstances.

Officer Howard was not, by his own admission, standing either in front of or behind Pinotti's vehicle but was, instead, standing to the side of the car; slightly forward of the driver's door but behind the front wheels. The Board felt that an officer with Howard's years of experience and training knew, or should have known, that the only way he could have been struck by Pinotti's vehicle was if that vehicle was somehow capable of sideways movement.

Contrary to Howard's account of the incident, and despite Howard's inability to recall striking the driver's window of Pinotti's vehicle with his pistol, the Board concluded that the consistency of the

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individual witness accounts, as viewed from several perspectives, left no doubt that he had, in fact, used his pistol to attempt to break the window.

In short, the Board felt that Officer Howard could not satisfactorily defend his use of deadly force against Pinotti.

V. Conclusion

While Officer Howard's discharge of his weapon may have been lawful, the Board found that it was not an appropriate application of force. Further, it was clear that reasonable alternatives to the use of deadly force existed.

VI. Recommendations


NEW POLICIES NEEDED: The Board did not identify the need for the creation of any new policies as a result of this incident.

REVISIONS TO EXISTING POLICIES: The Board felt that the policy that addresses foot pursuits could use some modification. While Centralia Police Department *Policy #15.1.10 Foot Pursuits*, addresses the issues of 'Deciding Whether to Pursue' and 'Factors to Consider When Initiating / Continuing a Foot Pursuit', neither paragraph specifically states that if the suspect is known to the officer(s) and later apprehension is likely, discontinuing the foot pursuit may be favorable. Likewise, while it would seem to be a matter of common sense, there is no language to specifically indicate that officers should consider the seriousness of the predicate offense in deciding whether to initiate or continue a foot pursuit. This addition of these two points would bring the Foot Pursuit policy more closely in line with Centralia Police Department *Policy #15.1.6 Motor Vehicle Pursuits*.

TRAINING RECOMMENDATIONS: The Board determined that the manner in which Court Security Officer Howard responded to this incident was not due to training deficiencies.

However, it was felt that since the *Foot Pursuit* policy is relatively new and our officers have received only minimal training on the topic, refresher training should be added to the list of critical skills subjects covered by annual, in-service training.

Respectfully Submitted,



James M. Rich
Police Commander

ATTACHMENTS:

1. Use of Force Review Board Packet
2. LCPA Letter
3. Photograph of conference room white board
4. Transcribed interview of Howard

Below is a photograph of the dry-erase board in the Centralia Police Department's conference room. The drawings were used to help illustrate aspects of CPD Case #14A-20576 in which Court Security Officer Stephen Howard discharged his duty weapon at Phillip A. Pinotti on December 16, 2014

