



OFFICE OF THE STATE ATTORNEY
SIXTEENTH JUDICIAL CIRCUIT
INVESTIGATIVE DIVISION

INVESTIGATIVE REPORT

SA CASE #: 2014-SA-00086-A-K

OTHER CASE #: 2011-MM-00952
KWPD 01-11-2065

COMPLAINANT(s): Internal

REFERRED BY: Internal

DATE OF INCIDENT: 04/16/2011

DATE REPORTED: 05/28/2014

SUBJECT/SUSPECT: Case Review

VICTIM(s): Case Review

WITNESS(s): MCSO Det. Vince Wiener

KWPD Det. Mark Siracuse

KWPD Capt. Scott Smith

Ofc J. Dean

Sgt. Areaka Jewell

Jason Moffat

Jennifer Sprouse

Beverly Anderson

EVIDENCE: Initial Report

Arrest Warrant

RRI Report

LOCATION OF OFFENSE: 335 Duval St. Key West, Fl. 33040

ALLEGATION/COMPLAINT: Public Record Request/Case Review

CHARGES: Initial complaint §784.03 MM Battery resulted in an active arrest warrant
Subject currently hospitalized

DISPOSITION: Closed, no further action

INVESTIGATOR: Weber , Christopher

PREDICATE/SYNOPSIS

The Office of the State Attorney received a complaint from the Law Offices of Horan, Wallace and Higgins regarding an allegation of the KWPd refusing to provide a public record. The record requested is KWPd report # 01-11-2065, which cleared with an arrest. Inv. Weber contacted KWPd and requested a copy of the report. KWPd Lt. Kathleen Reams provided the report for release to the SAO and said that she would look for additional documents. KWPd has at this point provided the same records as requested in the public records request to Horan, Wallace and Higgins.

Attorney Horan is alleging that the aforementioned case has similar circumstances to the 2013 Charles Eimers case wherein the actions of the KWPd are alleged to have eventually caused the death of the defendant Charles Eimers. The defendant in this case, Matthew Shaun Murphy, has also suffered health consequences and is currently hospitalized.

Although the initial complaint appears to have been satisfied by the actions of KWPd. The similarities in the two cases warrant a review of the facts of this case.

INVESTIGATION

This investigation will focus on KWPd case number 01-11-002065, which resulted in the issuance of an arrest warrant for the suspect Matthew Shaun Murphy.

Synopsis of KWPd 01-11-002065

KWPd Ofc Mark Siracuse reported that he responded to a verbal altercation on Duval St. at 0340 hrs. on 04/16/2011. Upon arrival on scene, he observed a physical altercation between two parties. Ofc Siracuse identified himself ultimately using a TASER to subdue the aggressor Matthew Murphy. The TASER probes hit Murphy on the front right shoulder and upper left leg, Murphy fell to the ground which is when Ofc Siracuse and Ofc. Dean were able to subdue Murphy and handcuff him. Ofc Siracuse wrote that immediately after being hand cuffed, Ofc. Dean removed the TASER probes.

"Murphy laid back on the sidewalk and lost consciousness but was still breathing. Murphy began bleeding from the nose and vomited a small amount on the sidewalk. Officer T. Stutz, D. Hall, J. Valdes and Sgt. A. Jewell arrived on scene. Myself and other officers placed Murphy on his left side in a recovery position to monitor his breathing and prevent him from choking on his vomit or blood. Key West MED 1 arrived on scene and took over treatment of Murphy.

...Key West MED 1 transported Murphy to the Lower Keys Medical Center. After collecting all pertinent information and evidence, I went to the emergency room to check on Murphy. I was informed by E.R. staff Murphy was awaiting transportation via Lifenet helicopter to the Ryder Trauma Center in Miami due to a brain bleed."

Sgt. A Jewell requested that Ofc Valdes respond back to the scene to survey the area a second time. Ofc Valdes wrote in a supplemental report that after a survey of the scene he did not observe anything that would indicate Murphy striking his head or his finding any additional evidence of injury.

Ofc Valdes then went to the Lower Keys Medical Center.

Ofc Valdes wrote, "Murphy was inside the emergency room and was unconscious. Murphy was being treated in exam room B. I photographed Murphy as I found him at the Emergency Room. Murphy did not have any lacerations, bruising or swelling about the head or face and I was advised by the Emergency Room staff he had no visible exterior injuries. As I was leaving the Emergency Room Murphy was being prepared to be airlifted to Miami for further treatment."

The last entry in the case report, which included supplemental reports, is from KWPD Ofc Jennifer Lohman, who took the witness statement from Marie Annulyse. The report was completed at 1200 on the same day. Marie Annulyse was the girlfriend of Matthew Murphy who, according to witnesses, fled the scene. There was no information in the report to indicate why she fled or decided to return to the KWPD to provide a statement.

The initial call and the outcome of the initial call are documented regarding the actions of Matthew Murphy and the responding officers. There is also follow-up as the condition of the suspect after he is transported to Lower Keys Medical Center. There is however, no follow-up available in the initial case report regarding any other action taken by Ofc. Siracuse or any other member of the KWPD.

Court documents show that April 26, 2011 Ofc Siracuse applied for and received a warrant for the arrest of Matthew Murphy for the battery that occurred on April 16, 2011. There is no mention in the original report to suggest that the Florida Department of Law Enforcement was made aware of the incident.

6/1/2014

Chief Investigator Weber spoke to Marty Murphy the father of Matthew Murphy. He said that Matthew is in what the hospital calls a vegetative state and communicates through eye movement. Marty Murphy said that he would not object to the SAO getting medical records regarding his son's condition. A certified letter giving Mr. Murphy ten days to object to the request was mailed to Marty Murphy. In addition, a subpoena for records was prepared for both Lower Keys Medical Center and Jackson Memorial Hospital.

7/2/2014

The certified letter sent to Murphy was returned to the SAO unclaimed. Marty Murphy never picked up the certified letter regarding the State Attorney subpoena for the medical records. In addition, he has not returned any recent phone calls placed by Chief Investigator Weber. Without Murphy's acceptance of the letter, the Office of State Attorney cannot review the medical records of Matthew Murphy when he was admitted to the Lower Keys Medical Center and eventually flown to Ryder Trauma Center. The medical records have not been subpoenaed.

Interviews

FDLE SAS Carole Frederick

06/01/2014

It should be noted that, SAS Frederick was not the supervising agent at the time the incident was reported. SAS Frederick said that on April 16, 2011, the FDLE supervisor for the Florida Keys field office was SAS Vince Wiener. SAS Frederick also said that the MOU with FDLE and KWPD et al, says “*great bodily harm*” as opposed to the often assumed “*in-custody death*” as the parameter for FDLE involvement.

SAS Frederick requested a current database search through FDLE, using the search parameter of Matthew Murphy. A record from the same period was located which can be attributed to the KWPD case. SAS Frederick requested and had forwarded a copy of the redacted duty agent daily activity report. The report included an entry regarding Matthew Murphy. According to SA Paul Marcus, he was requested to assist the Key West field office on April 18, 2011 to check on the condition of Matthew Murphy, a patient at Jackson Memorial Hospital.

SA Marcus reported in his daily activity log the following:

“SA Marcus and SA Ojeda responded to JMH, ICU and spoke with the attending nurse who advised that Murphy was listed in Critical Condition and observed to be on a ventilator. According to the attending nurse [redacted.] The next of kin information was provided as; Marty Murphy, (Father) 3638 Cyrus Creek Road, Bar Bourville [sic], West Virginia 25504, cellular number (304)617-0645, home number (304)733-2373. Mr. Murphy was at the hospital, however was not contacted by FDLE agents.

SA Marcus contacted SAS Wiener via phone to provide the patient status update. No other investigative steps were taken.”

Detective (SAS) Vince Wiener

06/03/2014

Former SAS Wiener is now employed by the Monroe County Sheriff's Office in the capacity of a detective. Detective Wiener said that he remembers being contacted by KWPD Captain Scott Smith about the incident. That phone call prompted then SAS Wiener to request a status update of Matthew Murphy by FDLE Miami. Once the medical status of Matthew Murphy was confirmed, SAS Wiener contacted Captain Smith and advised of the same. There was no other request for assistance by KWPD and FDLE did not open a case nor make any other requests for follow-up. Det. Wiener's recollection is consistent with the information provided in the daily activity log provided by FDLE.

06/19/2014

A subpoena was issued to Det. Wiener for an interview on 06/27/2014.

06/27/2014

Det. Wiener complied with the subpoena and met with Chief Investigator Weber. Detective Wiener repeated his initial statement where he said that on June 16, 2011 he received a call from KWPD Captain Scott Smith, regarding possible assistance. Det. Wiener does not recall speaking with Sgt. Jewell regarding the facts of the case nor the status of the crime scene. He does recall asking FDLE Miami to follow up on the condition of Matthew Murphy. He said that he thought there was further follow-up on the condition of Murphy but he is unsure of the source or the content of the information. Det. Wiener further said that any decision to assist would have been documented elsewhere other than through the daily activity report. He is sure that no assistance was requested other than the initial call from Captain Smith.

KWPD Chief Donald Lee

06/05/2014

KWPD Chief Lee called Chief Investigator Weber and said that he would like to cooperate with any inquiry into the case involving Matthew Murphy. Chief Lee said that he had the Response to Resistance (RRI) reports in addition copies of the original report and witness statements.

Chief Lee provided the RRI report per the request of Chief Investigator Weber. This appears to be all of the documentation that KWPD has involving the case, which is the subject of this inquiry. All information has been provided to Horan, Wallace and Higgins.

Captain Scott Smith

06/10/2014

Captain Scott Smith contacted Chief Investigator Weber and agreed to provide a statement.

Captain Smith recalls receiving a call from Sgt. Jewell advising him about the injury of Matthew Murphy. He in turn contacted SAS Vince Wiener and told him about the incident. Rather than Captain Smith acting as the intermediary, he put SAS Wiener directly in touch with Sgt. Jewell so she could brief him about the incident.

Capt. Smith is unclear as to whether Sgt. Jewell called SAS Wiener or whether SAS Wiener called Sgt. Jewell. Captain Smith recalls being told Murphy was still alive and being treated in Miami, but he is unsure who relayed this information to him.

Captain Smith said that, until recently, the understanding of the FDLE MOU was that FDLE was to be notified in the case of an in-custody death or in the possibility of imminent death. He continued in saying that this understanding was the same across the member agencies. This seems to be a common theme as the MOU itself is often referred to as "In-custody death memo." According to Captain Smith when he heard that Matthew Murphy was still alive, the assumption across all staff was that FDLE was not involved.

Recent events have led to a better understanding of the MOU, throughout the member agencies.

In this case, FDLE was notified in a timely manner and was in contact with the on-scene commander during the incident even though there was no reported in-custody death. However, once it was determined that Mr. Murphy would likely survive, no further action was requested or expected of FDLE.

Jason Moffat

06/13/2014

The listed victim in this case agreed to provide a sworn interview regarding the events of April 16, 2011. Moffat said that he and his then girlfriend were on the 300 block of Duval St. When a group of young men and a black female came walking by their location.

Moffat said that Anderson is racist and had some words for the interracial couple. Matthew Murphy took offense to the comments and approached Moffat, who tried to diffuse the situation.

An argument ensued and was about to get physical when Moffat observed a KYPD officer approaching from the four hundred block of Duval St. to their location. Almost immediately Murphy punched Moffat in the mouth, he then saw that Murphy had been shot with the TASER and fell to the ground. He said that he never heard the officer say anything or give any warnings.

He said that shortly after the TASER was used other officers arrived and started to move the crowd to the other side of the street. Sometime later, after Murphy was treated and transported from the scene. Moffat said, he gave a quick statement to an officer and immediately left the area.

When Chief Investigator Weber asked whether he remembered Murphy removing his shirt and coming towards him, Moffat said that he was focused on Murphy's eyes and wondering what was going to happen next. I then asked him if he thought that Murphy could have been hit in the chest by the TASER. Moffat said, there would be no way for Murphy to have been hit in the front by the TASER as the officer was approaching Murphy from behind.

When I explained that Murphy was hit by the TASER in the front shoulder and leg, Moffat said that there must have been another cop that I did not see.

Moffat continued in saying that he was never contacted again by anyone about this until recently. Moffat provided a written statement to the events as described.

Detective Mark Siracuse

Subpoena accepted: 06/19/2014

On 06/20/2014, PBA Attorney Andrew Axelrod spoke to Chief Inv. Weber and said that although he would recommend that his clients provide a statement, he wanted to be with them when they did so. Atty. Axelrod wanted to put off the interviews until late July. He was told through email that the subpoenas were served and they could be represented by whomever they wished.

06/27/2014

On the advice of PBA Attorney Andrew Axelrod, Det. Mark Siracuse did not comply with the subpoena and did not provide a statement to the facts as requested.

06/30/2014

A new subpoena was issued for 7/11/2014

07/11/2014

Det. Mark Siracuse provided a sworn recorded interview with Chief Investigator Weber. PBA Attorney Axelrod was in attendance during the interview. Det. Siracuse offered the below information in response to interview questions. He said that he was on bike patrol when the call came out for a verbal disturbance. He approached the disturbance from the north and the subjects were facing north/south, he moved into more of an easterly approach when he became close enough. He verbally announced his presence and saw the suspect strike Moffat in the face; he then drew his TASER and fired on Murphy who was the aggressor. Murphy fell backwards, towards the building, next to a wall and near the sidewalk in front of the business "Flirt."

After Murphy was subdued he (Murphy) was communicative with the officers and shortly thereafter fell again and vomited what appeared to a clear liquid mixed with what appeared to be blood. Det. Siracuse said that Murphy never stopped breathing. Both Ofc. Siracuse and Ofc. Dean rendered whatever aid they could which was minimal as there were no outward injuries and the subject was still breathing. Rescue was requested and asked to expedite. Ofc Siracuse went to the hospital a short time later and learned that Murphy was being airlifted due to a brain bleed. Det. Siracuse said that there was no mention of any visible head trauma by anyone on scene or reported by any medical personnel.

Officer Jeffrey Dean

Subpoena accepted: 06/19/2014

On 06/20/2014, PBA Attorney Andrew Axelrod spoke to Chief Inv. Weber and said that although he would recommend that his clients provide a statement, he wanted to be with them when they did so. Atty. Axelrod wanted to put off the interviews until late July. He was told through email that the subpoenas were served and they could be represented by whomever they wished.

06/27/2014

On the advice of PBA Attorney Andrew Axelrod, Ofc. Jeffrey Dean did not comply with the subpoena and did not provide a statement to the facts as requested.

06/30/2014

A new subpoena was issued for 7/11/2014

07/11/2014

Ofc. Jeff Dean provided a sworn recorded interview with Chief Investigator Weber. PBA Attorney Axelrod was in attendance during the interview. Ofc. Dean said that he was on foot patrol when the call came out for a verbal disturbance. He approached the disturbance from the 200 Block of Duval St. (North.) When he arrived, he was a good distance away when he saw one of the subjects strike the other one. He then saw Ofc. Siracuse fire his TASER and the subject went down. Ofc. Dean said that Murphy was on the sidewalk with his feet towards the street. He and Ofc. Siracuse then subdued the subject and were able to handcuff him.

The subject (Murphy) then sat up said something that he does not remember and quickly fell back again and vomited. Rescue then arrived on scene and transported the subject to the hospital. Ofc Dean does not remember interviewing any witnesses and was not close enough to see if Murphy fall.

Sgt. Areaka Jewell

Subpoena accepted: 06/19/2014

On 06/20/2014, PBA Attorney Andrew Axelrod spoke to Chief Inv. Weber and said that although he would recommend that his clients provide a statement, he wanted to be with them when they did so. Atty. Axelrod wanted to put off the interviews until late July. He was told through email that the subpoenas were served and they could be represented by whomever they wished.

06/27/2014

Sgt. Areaka Jewell was unavailable for the interview and will reschedule.

06/30/2014

A new subpoena was issued for 7/11/2014

07/11/2014

Sgt. Areaka Jewell provided a sworn recorded interview with Chief Investigator Weber. PBA Attorney Axelrod was in attendance during the interview. Sgt. Jewell offered the below information in response to interview questions. She said that she was the patrol supervisor when the call came out for a verbal disturbance. She responded to the call after Ofc. Sircuse requested a supervisor to respond. Sgt. Jewell said that it is not normal procedure for command staff to be noticed when a TASER is deployed, but after she learned that the subject was being airlifted out she contacted Lt. Vasquez and Capt. Smith to advise them of the situation. Captain Smith replied and put her in contact with SAS Vince Wiener. Sgt. Jewell spoke directly to SAS Wiener on two occasions, firstly to tell them of the situation. SAS Wiener asked her to re-secure the scene and secondly to tell him what steps were completed to document the incident, at which time he told her that the scene could be released.

Sgt. Jewell then completed the RRI report and forwarded it to professional standards for review. Sgt. Jewell did not hear or speak to anyone about this incident subsequent to her turning the report to professional standards.

Witness Jennifer Sprouse

06/23/2014

Chief Inv. Weber spoke with Jennifer Sprouse. She is currently living in Des Moines, Iowa. In April 2011, Sprouse was living in Key West. Sprouse said that on April 16, 2011 she was alone and walking home when she happened on a disturbance on Duval St. She said that her memory is not great due to the time since the incident. She did say that she did not know any of the people involved in the incident. She recalls that someone told her that someone's dog was kicked and a fight started. She remembers seeing a bike patrol officer coming from the 200 block of Duval St.

The officer approached the men who were fighting, she didn't hear a warning from the officer but saw the subject Murphy fall backwards, after he was shot with the TASER by the officer. She said that he fell backwards onto some steps.

She does remember seeing another officer on scene but cannot remember what direction he came from, whether he was a bike officer or which officer fired the TASER. She said that her statement that she gave that night would be better because of the time involved since the incident occurred. She said that after the man was treated she provided a statement to the police about what she witnessed. She further said that it did not take long and she continued home.

Witness Marie Annulyse

Marie Annulyse has not responded to letter communication or return phone calls to the Office of the State Attorney.

Witness Tammy L. Rotenberry

Tammy Rotenberry has not responded to letter communications and cannot be located.

Witness Beverly Anderson

Beverly Anderson is reportedly living on a vessel moored off Wisteria Island. She responded to a communication and came into the Office of the State Attorney to provide a statement.

Regarding the incident that occurred on April 16, 2011 where she was a witness, Anderson said that the event happened three years ago, her memory was a little fuzzy and she was intoxicated at the time. She knew that it had been in the news recently. She provided a sworn written statement wherein she said that she and her then boyfriend were on Duval St., when a verbal altercation occurred. A police officer came on a bicycle and unannounced, "tasered the young black male." Then the officers told her and Jason to leave.

Upon further questioning, Anderson said that she did not see any physical altercation, there was only one officer, the young black man was tasered three times, neither her nor Jason made a statement to any officers and that she did not call 911. Anderson also said that she was not interviewed at the time of the incident.

Although Beverly Anderson is a primary witness to the events of April 16, 2011, her memory to the event is contrary to all information received regarding this incident, specifically to her not calling 911 and the suspect Matthew Murphy being a black male. Her only consistency is that the officers did not announce their arrival verbally; she did however see them arrive on scene.

Media Review

TASER Videocam

The TASER video cam is one minute and 41 seconds (1'41") in length. The video itself is not very clear and is jumpy. It starts with the immediate engagement of the suspect by Ofc. Siracuse. The TASER can be heard cycling through its five second burst. The suspect can be observed on the sidewalk with Ofc. Siracuse issuing directives to gain compliance. Murphy complies as ordered with no further cycling of the TASER being necessary. Murphy can be seen moving and heard twice saying "I didn't punch nobody" and Beverly Anderson can be heard in the background yelling about calling 911.

Moffat can be heard saying, *"Can I press charges against this man, I didn't do it."*

Ofc Dean can be heard saying, *"Please stick around though ok."* to which Moffat says *"oh yeah, no, I'm pressing charges, he punched me in the face."* Ofc Dean then says, *"I know I saw it."*

911 Calls

There are three 911 calls made regarding the incident. The first call is made by Beverly Anderson; in the background, you can hear her yelling racial slurs at the group who was allegedly approaching her. She is unresponsive to the 911 operator and was eventually disconnected. She calls back a second time and continued to be unresponsive to the operator. The third call is an independent witness who wanted to remain anonymous; she tells the 911 operator about the physical fight and says that in her opinion a medical response was not necessary.

Document Review

Medical Records

A certified letter was sent to Marty Murphy, the father of the respondent Matthew Murphy. The letter gave notice as to the States intent to subpoena the medical records of Matthew Murphy. The certified letter was returned to the SAO unclaimed, as Marty Murphy never picked it up.

Further attempts to obtain his acknowledgement as to the intentions to review the medical records were unsuccessful. In addition, he has not returned any recent phone calls placed by Chief Investigator Weber. Without his acceptance of the letter, the Office of State Attorney has been unable to review the medical records of Matthew Murphy.

Criminal Case File

The arrest warrant and affidavit in this case were signed and filed on 04/26/2011. Misdemeanor number 2011MM00952AK was assigned. This case was never received by the SAO and remained in warrant status without a criminal case file at the SAO. In March 2013, an unknown party called the SAO and requested information on the case. The SAO became aware at this time and SAO Intake Clerk Cece Niles requested the information from the Office of the Clerk of Courts.

On 03/20/2013, Niles received the records and opened the warrant case in the SAO Records Management System (STAC.) Niles requested the KWPD report and added it to the file. ASA Scull received the file and filed the required information with the court. ASA Scull then placed the file in the active warrant section of the SAO.

The above procedure would have been the normal course of business if the record would have been received from the Clerk of Courts in a timely manner. When an arrest warrant is filed with the Clerk of Courts either a felony or misdemeanor number is generated and a file is created which includes the warrant itself and the affidavit.

Incident Report w/Supplements

The KWPD records division provided the incident report and supplements when Chief Investigator Weber requested the report(s). Included were the original incident reports and supplements from the date of the incident.

The incident report includes narratives from KWPD Ofc's Siracuse, Dean, Valdes, Celcer and Lohman. Ofc's Siracuse and Dean were on-scene within seconds of each other and Ofc's Celcer, Valdes and Lohman provided support to the primary officer in securing the scene and taking statements. Both Ofc's Siracuse and Dean reported seeing Murphy commit the battery on Moffat, with Ofc. Siracuse deploying the TASER to subdue the aggressive behavior of Murphy.

All supplements to that report were completed by 1200 hrs. on April 16, 2014. There is no mention of a response to resistance report, or a follow-up with a warrant. The original report and supplements made no mention of the file being forwarded for follow-up to FDLE or for referral to the detective division for follow-up.

FDLE Daily Activity Log

On April 18, 2011, then, SAS Vince Wiener requested that a SA from the Miami Field Office go to Jackson Memorial Hospital to confirm the status of Matthew Murphy. SA Marcus and SA Ojeda confirmed that Murphy was still a patient and was listed in critical condition. JMH supplied the next of kin information to the agents. They ended their report as no other investigative steps taken.

Response to Resistance / KWPD General Orders

Sgt. Jewell, immediately following the incident, filed the RRI report. The report is dated 4/16/2011 and is written in a timeline format according to the actions of the responding officers. The report was never attached nor referenced in the original incident report.

The report acknowledges the deployment of the TASER after Ofc Siracuse identifies himself and witnesses the suspect(Murphy) strike the victim(Moffat) with a closed fist. According to the report, Ofc. Siracuse is present and sees Murphy strike Moffat once and then prepares to strike Moffat a second time when Ofc. Siracuse deployed his TASER.

KWPD General Orders include the following:

AGGRESSIVE BEHAVIOR “02.08.04.02C, *A person makes attacking movements likely to cause death or great bodily harm to the officer or another.*”

OFFICER RESPONSE OPTIONS 02.08.04.03 “*Officers do not need to apply force in gradually increasing steps in order to justify physical control or even deadly force. Instead officers need to respond with all the force reasonably necessary for the circumstances in each specific situation.*”

ELECTRONIC CONTROL WEAPON No 03-29 “*The TASER® device may be used to control an actively resisting or potentially violent subject when deadly physical force does not appear to be justified and/or necessary; or attempts to subdue the subject by other conventional tactics have been, or will likely be ineffective in the situation confronting the officer, or there is a reasonable expectation it will be unsafe for officers to approach within contact range of the suspect.*”

The report indicates that the TASER probes entered in Murphy’s right shoulder and left thigh. The strike area of the TASER probes would indicate that Ofc. Siracuse was facing Murphy when the TASER was deployed.

Ofc. Siracuse reports that Murphy fell backwards onto the ground while the TASER cycled through its five second burst. After which, Ofc’s Siracuse and Dean physically controlled Murphy and were able to handcuff him. Shortly thereafter Murphy lost consciousness, vomited and started to bleed from the nose. Ofc. Siracuse requested that rescue expedite their response. Rescue (Med1) arrived on scene moments later and rendered aid until transported to the hospital.

Sgt. Jewell continues in her RRI report:

04:21 “*Officer Siracuse went to the hospital to gather additional information on Murphy. Murphy had not regained consciousness and was being treated for his condition by ER physicians.*”

04:55 “*I also responded to the ER and spoke to ER physician, Dr. Erlandson, who told me they detected a brain bleed through a CAT scan and were prepping him to be airlifted to Ryder trauma Center.*”

Once Murphy had been transported to Lower Keys Medical Center (LKMC), the on-scene officers interviewed the witnesses to the incident.

Three statements were taken at the time of the incident and a fourth was taken later that morning. All of the statements were consistent in content, but sparse in detail. The consistency lies in the aggression of Murphy towards Moffat, and his striking Moffat in the mouth and then being “Tazed.” Two of the four statements appear to have been written by independent parties. Marie Annulyse, the girlfriend of the suspect Murphy, provided the fourth statement. She provided the statement to KWPD at the police station approximately 1200 that morning.

Annulyse was present when the incident occurred but fled the scene for an unknown reason. She later, through the social worker at Ryder Trauma Center, indicated that she wished to speak with KWPD. KWPD Ofc. Lohman took the statement from Annulyse but did not interview her regarding the incident.

Sgt. Jewell continues in her RRI report that she contacted both Lt. Vazquez and Captain Smith to advise them of the situation.

Sgt. Jewell writes:

07:17 "I again called Captain Smith to give him an update on the case. Captain Smith, made contact made notification to FDLE. I relayed all information known at the time to Agent Vince Wiener."

07:19-9:52 " the incident scene at 330 Duval Street was secured by Officers Lohman and Wanciak, until it was determined by Agent Wiener it had been sufficiently documented."

Sgt. Jewell followed-up with Ryder Trauma Center regarding the status of Murphy.

08:13 " I made contact with Social Worker at Ryder trauma Center, Jaclyn, (305)585-1148)) to establish lines of communication and get updates on Murphy's condition."

09:47 " I spoke with Jaclyn again, and she told me Murphy just went into the operating room and he was still listed in critical condition. Jaclyn also relayed to me, she had identified Murphy's next of kin as his parents in West Virginia..."

10:38 " Jaclyn called me to relay that Murphy's father, Marty(304-617-9645) had been in contact with her and was requesting to speak to me regarding what happened to his son. I called Marty and told him the best and most up-to-date information on the condition of his son would come from Jaclyn at Ryder Trauma Center and that our investigation was on going. I also told him, Murphy's girlfriend Marie was on-scene and could possibly provide him with the details he was looking for."

The RRI general order is very specific as to the information obtained subsequent to the deployment of a TASER®. Included in the order, section 02.08.01 C, includes the supervisor identifying several aspects of its deployment.

Including:

- TASER serial number
- TASER Cam serial number
- TASER Cartridge serial number
- Type of contact utilized
- Did probes penetrate skin
- Target distance at launch
- Distance between probes
- Name of person who removed probes
- Name of Supervisor who downloaded the device
- Target distance at launch

All of the above information was included in the RRI report. The report and the supervisor incident report was provided to command staff on 04/16/2011

KWPD/FDLE/MCSO/KCB/SAO MOU

The memorandum of understanding between its member agencies was reviewed for content and responsibilities by each member agency. The original MOU appears to have been prepared by FDLE and approved during the month of August 2003. The included agencies are FDLE, KWPD, MCSO, Key Colony Beach (KCB) and the SAO.

The primary purpose of the MOU is to allow for an independent review of member agency actions that may have resulted in either serious bodily injury or death to a person while acting in the capacity as law enforcement officers.

The MOU is specific in its inclusion of predicate events which “WILL INITIATE” the involvement of FDLE. Paragraph 6 is also specific in that it states: “*shoots a person, or when an arrestee expires while in the custody of a law enforcement or corrections officers.*”

Paragraph six of the MOU states:

WHEREAS, the parties agree that the Florida Department of Law Enforcement, because of its investigative resources and expertise is an appropriate and impartial agency to conduct investigations for the City of Key West Police Department, the City of Key Colony Beach Police Department, the Monroe County Sheriff's Office and the Monroe County State Attorney's Office in investigating instances in which a law enforcement officer acting in the line of duty, shoots a person, or when an arrestee expires while in the custody of a law enforcement or correction officer.

NOW THEREFORE, the parties agree as follows:

1. The occurrence of any of the following predicate events will initiate the involvement of the Florida department of Law Enforcement:

- a) The infliction of serious bodily injury to a person by a...*
- b) The shooting of a person...*
- c) The death of an arrestee...*
- d) The death of an arrestee shortly after being in the care, custody or control of...*
- e) The death of an arrestee during the apprehension by...*

Although the predicate acts are specific as to serious bodily injury and death, paragraph six is also specific as to shoots a person or when an arrestee expires while in-custody. These statements are somewhat in conflict with each other and upon scrutiny, may be construed as somewhat ambiguous.

DISPOSITION/CONCLUSION

The original complaint, that precipitated this investigation, included the alleged failure of the KWPD to provided records in a timely manner. This inquiry led to a more complete investigation into the facts of the initial case itself

All cases involving police interaction should be documented on a consistent basis from incident to incident. This documentation is often covered by policy or general orders or is sometimes governed by common sense. When police encounter resistance, there are enhanced reporting requirements for both line staff and first line supervisors that must be adhered to for all incidents.

The standard used by police to determine resistance is one of, **“Objective Reasonableness,”** which must be determined often in a split second upon arrival during an incident. In addition, the advance reporting requirements are required whether an arrest or warrant has been made or is evident, and are outlined in the “Response to Resistance” general order.

Firstly, regarding the initial complaint, there is no evidence that KWPD failed to provide public records when requested. The Key West Police Department has complied with the request of Horan, Wallace and Higgins and supplied all of the documents required of Florida Statute §119.

The allegation of failure to provided public records is unfounded.

Secondly, the investigation into the facts of KWPD Case # 01-11-2065, have been reviewed with the following conclusions.

Use of Force and Response to Resistance

The question of whether KWPD acted outside their scope of authority when deploying the TASER to stop the actions of Matthew Murphy should be addressed.

Based on the standard of “Objective Reasonableness” it appears that KWPD Ofc. Mark Siracuse acted within his authority as a law enforcement officer in deploying the TASER in stopping the aggressive behavior of Matthew Murphy. In addition, the use of the TASER is consistent with the KWPD “RESPONSE to RESISTANCE” No 02-09 dated 04.20.2010 and ELECTRONIC CONTROL WEAPON No 03-29 dated 03.26.2009.

In support of this conclusion, there are witness statements in addition to the reports of KWPD Ofc’s Siracuse and Dean.

KWPD Sgt. Jewell acted in accordance with KWPD procedure in securing the scene and providing follow-up.

Recent statements from the victim Jason Moffat are that the officer arrived and immediately fired his TASER without warning. The facts support that two officer's arrived on scene almost at the same time. Both officers observed Murphy strike Moffat and since Ofc. Siracuse was in a better position, engaged Murphy from his front side, which was out of the line of sight of the victim Moffat.

In addition to Moffat, the witnesses Jennifer Sprouse and Beverly Anderson said that they did not hear any warnings by the officer prior to the firing of the TASER. Sprouse is unsure which officer fired the TASER but her memory of the event would be consistent with the TASER being fired by Ofc. Siracuse.

Observations

Office of the State Attorney

The Office of the State Attorney received a phone call requesting information on a case that could not be located in their RMS (STAC.) It is unknown who took that phone call and more importantly, who called and requested the information. Although not governed by policy this is an area where common sense should prevail and the information recorded for follow-up.

Florida Department of Law Enforcement

FDLE has entered into an agreement MOU with the Key West Police Department and other agencies throughout Monroe County wherein they agree to assist those agencies in the event of an in-custody death or in-custody great bodily harm.

In this case, FDLE was notified and they did make an inquiry into the status of the defendant Matthew Murphy. However, this was the extent of the involvement by FDLE. The MOU specifically states, "Will initiate." This is a vague term, whether further follow-up by FDLE was required as per the MOU is not part of this investigation.

Clerk of Courts

The Clerk of Courts is the repository of all records produced for Monroe County. In this case, the Clerk of Courts failed to provide the Office of the State Attorney a copy of the filed arrest affidavit and warrant. This oversight caused the SAO not to file the required information until almost two years after the issuance of the warrant

Key West Police Department

This incident documented in KYPD 01-11-2065 began with an altercation between parties resulting in the interdiction of the KYPD. The chain of events led to the tragic injury that occurred to the suspect Matthew Murphy.

There is a dispute as to whether the responding officers announced their presence on arrival and whether Ofc. Siracuse announced the possibility of his using the TASER to gain compliance. Although officer presence, is the first step in the FDLE Matrix for response to resistance, with verbal commands being the second step, KYPD policy is specific that *"Officer's do not need to apply force in gradually increasing steps in order to justify physical control."*

KWPD appears to have acted in a professional manner in their approach to the initial call which includes; the use of force used to gain compliance, the rendering of aid once compliance was achieved, and the treatment of the suspect and the victim from initial involvement to Murphy being airlifted to Jackson Memorial Hospital.

Supervisory Sgt. Areaka Jewel acted in accordance with KWPD procedure in notifying command staff of the injury to the suspect Murphy.

The RRI was not included with the original incident report nor was it mentioned in any supplemental report. It was however, sent to professional standards for review and filed accordingly.

Subsequent to the incident, Ofc. Siracuse obtained an arrest warrant for Matthew Murphy ten days after the incident. Ofc. Siracuse did not document the original incident report with a supplement indicating his obtaining the arrest warrant for Murphy. In this case, there was no indication that an arrest warrant was obtained except for the fact that the Monroe County Sheriff's office listed the warrant for Murphy as active.

The follow-up regarding the placement of paperwork by all involved parties resulted in an incomplete picture upon initial inspection by investigators.

The Office of the State Attorney has reviewed all aspects of the case, and finds no cause for further action.

End of report.



Weber, Christopher
Chief Investigator

14 July 2014
Date: