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USING FORCE EARLY

By Ed Flosi

SITUATION:
An officer has a person lawfully detained for a minor traffic offense. During the course of the investigation, the officer develops probable cause to arrest the suspect for being under the influence of a controlled substance. The officer tells the suspect that he is under arrest and directs him to put his hands behind his back. The suspect becomes defiant and it appears that he will not be arrested without physical resistance.



The officer in this situation will act in the manner in which he was trained. There are different schools of thought on how to handle this scenario. Some defensive tactics instructors would advocate moving in to control the suspect with a joint manipulation technique in order to handcuff him. Others would rather have the officer create distance and explore other options, and if appropriate, possibly use a low-level force option early to resolve the problem. Based on basic tactical principles, it would be safer for the officer and suspect to do the latter.

Many officers are hesitant to use force early, even when it would be deemed completely reasonable. Some of the reasons for this may be fear of reprisal, either administrative or civil, or not having a solid understanding of use-of-force laws. This hesitation could have serious implications and lead to tragic results.

Most states have statutory laws that define when an officer may use reasonable force to effect an arrest, overcome resistance and prevent escape. The right of self-defense is an ancient and esteemed right, which often permits an officer to use force independent of any other circumstances. The traditional right to use the same amount of force permissible in self-defense to protect third persons, is of course, applicable to the police, who have the authority to protect the public.

In determining if a force application is reasonable, the courts will apply a test, which is sometimes referred to as the **Graham Inquiry of Reasonableness**. Factors that will be examined include:

prominent options are OC spray and the Taser. These options are seen as low-level force options by most jurisdictions. They can be deployed at a distance rather than at close-quarter range. These force options should be used as soon as reasonable with a potential physically resistive suspect. In doing this, the officer can solve the problem early with a lower level of force, rather than letting the situation worsen, requiring higher levels of force.

One motivation for using a lower level of force early, and as soon as reasonable, to end physical resistance is that it is safer for suspects. These force options have a low likelihood of permanent or serious injury. If the situation were allowed to worsen, a higher level of force would most likely be needed. This would have a higher likelihood of permanent or serious injury. Low-level force options will not be reasonable for all situations with a potential physically resistive suspect. In many cases, it would be more appropriate to go directly to a higher level force option.

The courts have clearly stated that officers need not use the least-intrusive or minimal level of force. The force need only be reasonable based on the facts and circumstances known to the officer.

Officer Safety Perspectives

Using these low-level force options at a distance is not only safer for the suspect;

it is much safer for the officer. With distance, an officer can maintain sound tactical principles that should be habituated on every approach and contact. These principles, listed below, are described in detail in the following paragraphs.

1. Maximizing distance from the threat
2. Minimizing yourself as a target
3. Maneuver

Gauging and gaining compliance at a distance will lessen the likelihood of injury. Distance is time and action beats reaction. Maximizing distance will give the officer more reaction time to choose the most reasonable course of action. Conversely, close quarter fights often result in the use of



1. The severity of crime at issue (the crime the officer is immediately responding to with force, not necessarily the original crime).
2. The threat of the suspect to officer(s) and citizens.
3. The active resistance of the suspect to arrest/escape.

When these factors are found to be low or minor, a low-level force option would be a reasonable force option.

Low-Level Force Options

Police officers have many low-level force options available. Two of the more

impact weapons, which have a higher likelihood of permanent or serious injury to the suspect. When more than one officer is involved in an impact weapon application, the risk to other officers increases due to unintentional strikes. Close quarter fights often end up with the suspect and the officer going to the ground. This can cause injury to the officer(s) and to the suspect. Ground fighting is extremely dangerous and leaves the officer vulnerable to being disarmed. Minimizing yourself as a target is also a function of maintaining distance. If the suspect, at a distance, were to attempt an attack on the officer by any mode, he is less likely to be successful. Maintaining distance allows the ability and time to maneuver to cover or escape if needed. The principle of maneuvering is best applied by moving laterally or on angles to confuse or defeat the suspect's attack.

Signs of Physical Resistance

There are some obvious signs of physical resistance. Sometimes a suspect makes his intentions to resist clear with a verbal warning. In this case the officer should attempt to recall exactly what was said and the manner in which it was spoken. There are other ways a suspect can indicate that he is going to fight. Pre-assault indicators are numerous, but often subtle and overlooked. Nonverbal communications can impart a suspect's intention. With this in mind, officers must pay close attention to the suspect's body language. When signs of potential physical resistance are observed, the officer should consider himself in imminent danger of attack. The time to stop the assault is before it occurs. Waiting for the suspect to actually throw a punch may be too late.

Documentation

Statistically, when officers use force, it is overwhelmingly reasonable and justifiable. A recent study indicates the number to be 99.58% of the time that force is used, it is reasonable and justifiable. As high as this number is, there are a significant number of judgments handed down against the police due in some part to improper or inadequate documentation. There is no data relating specifically to the frequency that plaintiffs prevail in use-of-force incidents. In published civil rights violations cases, which include excessive force claims decided by the federal district courts between 1980 and 2000, the plaintiffs prevailed 49.6% of the time. There are however, specific numbers regarding the average award in

excessive force claims. From 1978 to 1996, the average award was \$178,878. With any use-of-force incident, the force option must be justified and properly documented, no matter what level of force is used.

The FBI and DOJ are charged with color of law investigations in which police officers are alleged to have used excessive force. Although officers cannot prevent these types of complaints, they can take steps to ensure that their actions do not place them in jeopardy. When reviewing a complaint, the investigating officials rely almost exclusively on reports to make an initial judgment. In many cases, the lack of information in reports triggers an investigation when, in fact, the officers did nothing wrong. Here is an example of how a low-level force option, such as OC spray or a Taser can be documented:

"I told the suspect that he was under arrest. I directed him to turn around and place his hands behind his back. He stepped back with his right foot, turning his body at approximately a 45 degree angle to me. He clenched both hands into fists along side his body and pushed his chest outward toward me. His facial muscles became tense and he spoke in a deliberate and pushed voice saying, 'I ain't going to jail.'

In order to maintain a safe distance from the suspect, I stepped back, deployed my (OC spray/

Taser) and asked the suspect if he planned to fight with me. He replied, 'Let's see what happens.' I warned the suspect that I would use the (OC spray/Taser) if he did not comply with my orders. The suspect continued to fail to comply with my lawful orders and continued to display the same physical behaviors, leading me to believe he was about to physically attack me or would physically resist my efforts to arrest him.

In order to (overcome his resistance/ effect his arrest/prevent his escape) I (describe which force option and how it was used). I did this to prevent injury to myself and to the suspect by quickly resolving the situation."


Post-force care must be documented according to the type of force used and according to established procedures. An officer using force should be familiar with these guidelines and document the care given to the suspect in the primary offense report. ☆

About the Author

Ed Flosi is a police sergeant for the San Jose PD in California and has been involved with defensive tactics and use-of-force training for the last eight years. He is on the California POST Perishable Skills Program Advisory Board for Force Options Simulation Training.

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