

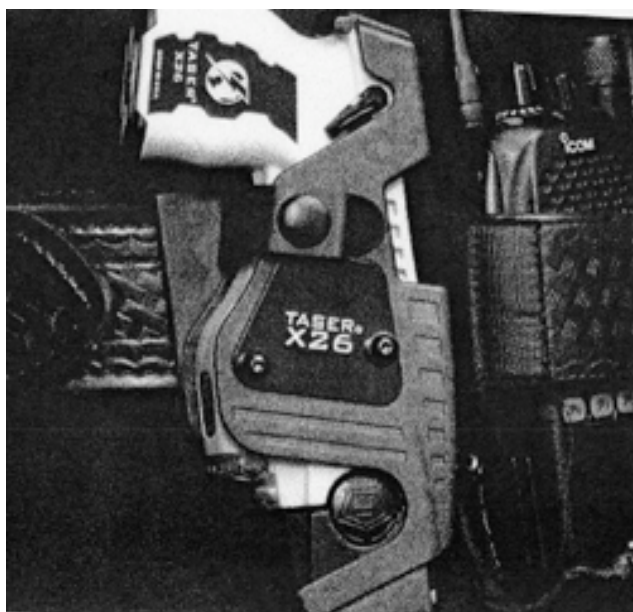
USE OF LESS THAN LETHAL FORCE

SUMMARY

During the past year, the Grand Jury received two critical incident reports from the Sonoma County District Attorney, arising out of officer involved deaths, that occurred in Rohnert Park. In both cases the non-use or ineffective-use of Tasers were involved and both decedents exhibited signs of excited delirium. On November 9, 2008, four officers of the Rohnert Park Department of Public Safety (RPDPS) attempted to subdue and arrest an out of control man who was confronting patrons in the parking lot of a WalMart store and in possession of goods stolen from the store. Two officers attempted, unsuccessfully, to use Tasers, which were not fully functional, due to lack of a full charge. He was manually restrained and later died of asphyxiation.

On March 16, 2008, a RPDPS officer shot and killed a woman. She was out of control, exhibited signs of excited delirium, mutilated herself and cornered the officer with a blade in her hand and refused to stop. He did not carry a Taser; it was in his patrol car uncharged.

Tasers are just one tool used by law enforcement to subdue an out of control person. They can, like anything else, be successfully used or misused. The alternative is often a bullet. The use of Tasers has become a national issue with a great deal of discussion about their effectiveness. Some police departments do not issue them to their officers. The RPDPS policy is to issue Tasers but the officers are not required to carry them. If Tasers are to be issued as a less-than lethal means to subdue persons who are a threat to themselves or others, those officers should carry them on their service belt, fully functional, and on the weak side. The officers should be well trained, by the department employing them, in the use and maintenance of the Tasers. When Tasers are used properly, they can be effective with little risk to the officer or suspect.



REASON FOR INVESTIGATION

The California Penal Code authorizes that a fatal incident investigation be conducted by an independent law enforcement agency and reviewed by the District Attorney for criminal liability [1]. The Sonoma County Civil Grand Jury is authorized by state law to review all officer involved fatal incidents that occur in Sonoma County.

BACKGROUND

GUY JAMES FERNANDEZ

On November 9, 2008, RPDPS dispatched officers to the Walmart Store in Rohnert Park to arrest an out of control man who had stolen goods from the store and was harassing other patrons in the parking lot. Mr. Fernandez was hostile, waving a pole and trying to evade the police. One PSO of the four involved, attempted to tase Mr. Fernandez. The deployed Taser [2] was not sufficiently charged for the weapon to be effective. A second PSO did not have a Taser; a third PSO kept his Taser in his vehicle and the fourth PSO drew his Taser but re-holstered it because he was not in a favorable position to employ the device. Fernandez was eventually manually restrained by four PSOs and subsequently died from asphyxiation. An examination of the Taser used in connection with the Fernandez death was conducted by the Sonoma County Sheriff's Department.

HEATHER BILLINGS

On March 16, 2008, Patty Smith called 911 to report, her daughter, Heather Billings, was out of control, after several days of escalating alcohol and drug abuse. She was previously diagnosed with severe borderline personality disorder. Ms. Smith believed her daughter was a serious threat to herself, her mother and her eleven year old son.

RPDPS dispatched officers (PSOs) to the home. The PSO first on scene entered the residence to find Ms. Billings, holding a utility knife blade she had used to self-inflict severe cuts to her arm and was bleeding profusely. The PSO ordered her to drop the

[1] The Sonoma County Enforcement Chiefs Association Employee Involved Fatal Incident Protocol. (01/2009)

blade; she did not do so and advanced toward him. The PSO estimated that the decedent was within four to six feet of him, at which time he shot and killed her. The PSO believed that the non-lethal weapons he carried would not have stopped her. He was not carrying his department issued Taser; it was in his patrol car uncharged.

RPDPS follows Use of Force Policy §300 and is responsible for:

1. Equipping PSO's with effective, less-than lethal force alternatives, to be used in compliance with the Use of Force Policy. Each officer is "expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy." (§300.2)
2. Training PSO's in the exercise of judgment regarding use of reasonable force and on officer response to "excited delirium." [3]

Chargers for the Tasers were available only at the RPDPS station. Patrol PSO's are directed to test their department issued Tasers at the beginning of each 40-hour shift cycle. If the battery requires charging, it is placed on a charger. There were no alternative fully charged batteries available for immediate use. As a result, in the Billings case, the PSO involved did not have a functional Taser on his person, at the time of the incident. The Taser had been left uncharged in his vehicle, its battery left on the station's charger. In the Fernandez case, the officers attempted to use Tasers that were uncharged or inoperable. Sonoma County Sheriff's Department has a policy (§309) for dealing with "excited delirium" which is described as a "state of extreme mental and physical excitement, sometimes associated with drug use and characterized by exceptional agitation, hyperactivity, overheating, excessive tearing of the eyes, hostility, super-human strength, high pain tolerance, aggression, acute paranoia and endurance without apparent fatigue." Both decedents appeared to be experiencing these phenomena.

Dispatch responsibility, deputy responsibility and supervisor responsibility are all outlined in the Sheriff's "excited delirium" policy, including, requiring a minimum of four deputies be employed when subduing such an affected individual. Each deputy should be armed with a fully functional Taser. The device should be used to create a window of disablement, during which deputies can gain physical control of the subject. If possible, multiple applications of the Taser should be avoided. Deputies should be responsible for ensuring that their Taser is properly charged and maintained and in good working order at all times. The Taser can be carried as a part of a uniformed Deputy's equipment in an approved holster. The RPDPS, at the time of the incident, did not have any written policy on "excited delirium." In fact, the Grand Jury was informed that the primary PSO involved in the Billings case was unfamiliar with the term and was not trained on how to respond in a case involving "excited delirium."

INVESTIGATIVE PROCEDURES

The Grand Jury took the following steps to investigate the two cases involved herein:

- Interview of officer involved in shooting in Billings case.
- Interview of a second officer in Billings case.
- Review of Sonoma County Sheriff's Dept., policy on "excited delirium."
- Review of Sonoma County Sheriff's Dept., policy on less-than lethal control devices.
- Review of Sonoma County Sheriff's Dept. use of force policy.
- Review of Rohnert Park Dept. of Public Safety use of force policy.
- Review of District Attorney's Reports.
- Review of Santa Rosa Police Dept., investigation of the shooting death of Heather Billings.
- Review of Sonoma County Sheriff's Dept., report of in custody death of Guy James Fernandez.
- Sonoma County Enforcement Chief's Association Employee Fatal Incident Protocol (1/2009).

FINDINGS

F-1 Reviewed of both incidents and found all of the officers involved absolved of any criminal liability and not in violation of Department Policy.

F-2 The factor of "excited delirium" was apparent in both incidents and the decedents were out of control and a danger to themselves and others.

F-3 In the Fernandez case, one PSO fired a Taser which was not functional due to lack of a full battery charge and, therefore, failed to subdue him. The other PSO's Tasers were unavailable.

F-4 Mr. Fernandez was attempting to leave Walmart with stolen goods and exhibiting signs of excited delirium. He was confrontational to others and waving around a pole. He was later manually restrained by the officers and died of asphyxiation while restrained.

F-5 One incident involved the fatal shooting of a female citizen on 03/16/08. The officer responded to a family disturbance call. At the house Ms. Billings approached the PSO with a utility blade and failed to respond to directions to drop the blade. When the decedent was within four to six feet, the PSO fired his gun. Ms. Billings was struck and killed.

F-6 The PSO in the Billings case was a lateral transfer to the RPDPS for eleven months, had four weeks of supervised training, rather than the departmental policy standard of sixteen weeks of supervised training.

F-7 In Billings case, the PSO's department issued Taser was inoperable due to a lack of battery power and was left in his patrol car.

[2] A fully charged M26 Taser should spark at twenty pulses per second but the PSO's Taser was functioning at only four pulses per second. The newer X26 Taser has an LED readout to inform the user it is fully charged. At the time of the two incidents, RPDPS had issued M26 Tasers.

[3] RPDPS current policy manual includes a section on "excited delirium".

CONCLUSIONS

It must be emphasized that Tasers and their use is a highly controversial issue nationwide. Many police agencies will not issue them to their officers and Taser International, the largest producer of Tasers, is constantly issuing new guidelines for Taser use. Tasers must be considered potentially lethal weapons. Although their use does not often result in a fatality, they do occasionally, and in that context, they must be used as carefully as a side arm. Give the police an alternative to a lethal outcome in any situation and they will welcome it. However, Tasers must be carried, be fully functional and, above all, the training must be intense and thorough.

RECOMMENDATIONS

R-1 Tasers issued to RPDPS PSO's should be fully charged and checked at the beginning of each shift. It should be carried at all times, on the officer's service belt, in a proper holster on the weak side. PSO's should leave on each shift with a fully functioning device. Replacement Tasers or fully charged batteries should be available at all times.

R-2 That RPDPS adopt a policy similar to the Sonoma County Sheriff, relating to "excited delirium" with frequent retraining, to sharpen judgment in stressful situations, with regard to the use of less-than lethal force, particularly in situations involving "excited delirium."

R-3 Probationary PSO's be supervised for a full sixteen week period, without reduction for lateral transfers. The training officer should be recognized as experienced, and with a history of exercising excellent judgment.

Responses to Findings:

Rohnert Park Department of Public Safety F-1, F-2, F-3, F-4, F-5, F-6, F-7

Required Responses to Recommendations:

Rohnert Park Department of Public Safety – R-1, R-2, R-3