

Officer Involved Shooting

INCIDENT DETAILS

The claimant is a retired police officer and military veteran. Subsequent investigation into the claimant's background indicates that he was being treated for PTSD and had a valid firearm carry permit in the State of Connecticut.

The claimant's wife located various computer storage cards in claimant's duffle bag. During her review of the files of the computer storage cards, the wife located a video of her and her husband's nude fourteen-year-old daughter. The video depicted the claimant's daughter in sexually provocative positions.

The wife transported the duffle bag and its contents to a family member's house and contacted the local police department, prompting an investigation by the department. In the course of this investigation, the local police department secured a search warrant for claimant's residence. The search of his home led to the discovery of child pornography, such as a video of claimant's naked fourteen-year-old daughter and other items, all of which were seized. Based on the videos discovered by the wife and her sworn written statement, a felony warrant for the arrest of the claimant was applied for and issued. Between the time claimant became aware of the arrest warrant and his arrest, he sent his wife numerous text messages, which she perceived as indicating an intent to harm himself and resist arrest.

The Defendant Police Department received a call from the warrant-issuing Police Department requesting its assistance in locating and apprehending claimant. The "Issuing Police Department" informed the Defendant Department that the claimant was in their town at a local movie theater – his location was known by tracking his mobile phone, which indicated his last known location. The Issuing Department also informed the Defendant Department:

"...that the claimant was determined to harm himself and would take someone out with him..."

Other than this statement by the claimant, which was communicated to the Issuing Department by his wife who was filing for divorce, there were no other indications that the individual was violent or would resist arrest.

The Defendant Police Department dispatched two officers to the "last known location" and found the claimant's vehicle in the theater's rear parking lot. This was further confirmed by the Defendant Department "running" the vehicle's registration and it coming back to the claimant as the registered owner. It was then determined by these officers that the claimant was inside the theater watching a movie.

At this time the officers contacted the on duty Sergeant and a plan to apprehend the claimant was formulated. This plan included additional resources from the department and the Issuing Department. The plan was essentially to "box in the claimant" and take him into custody as he approached his vehicle. The area where the vehicle was parked has low light and is away from the main entry.

At 2:00 a.m., the claimant was observed exiting the theater and proceeding to his vehicle where he was observed unlocking his vehicle with a remote key fob: a small black object. At this time, two officers from the Defendant Department began to run up behind the claimant with their firearms in the "low ready" position. They identified themselves as police and commanded the claimant to get down. The claimant, hearing the movement and commands, turned around and faced the officers. The officers state that this is when the claimant reached into his waistband area as if he was retrieving a firearm, causing both officers to discharge their weapons:

- A total of ten shots were fired – five from each of the Defendant Department's officers involved.
- The claimant was struck in the left foot.
- Two other police officers on scene were injured: one sustained a gunshot wound to the forearm and the other sustained shrapnel injuries.
 - This was the result of the apprehension plan positioning, which put the officers at risk of injury from "cross-fire."

The claimant was taken into custody and transported to a local hospital for treatment where it was determined that he sustained a single gunshot wound to his left foot, causing:

- Comminuted fractures of the metatarsals;
- Status post wound debridement and removal of bullet fragment; and
- Residual shrapnel in the left foot.

The claimant was treated and released by the hospital and taken into custody. The claimant pleaded guilty to felony risk of injury to a child and was sentenced to five years in prison, execution suspended after twenty-one months.

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INVESTIGATION AND DAMAGES/INJURY

The claimant continues to complain of pain in his left foot, numbness, and a feeling of having a drop-foot. His doctor has assigned a 23% impairment rating for loss of function of the foot and ankle.

Medical specials are \$30,341. The claimant also alleges loss of wages of \$64,000; however, since he was incarcerated shortly after this event for the child pornography charges, this wage loss is not supported. Furthermore, there is a State lien to recoup the cost of his imprisonment in the amount of \$77,947 for his incarceration so he was obligated to pay the lien or 50% of any recovery he obtained in this case.

CIRMA LIABILITY ASSESSMENT

Liability was viewed as problematic for the Defendant Department in several areas.

According to the officers, the verbal plan was developed by the on-duty Sergeant whose subsequent suicide precludes any ability to question his process for implementing the arrest plan. However, the plan was described by the patrol officers on scene to be aggressive, as evidenced by officers approaching the plaintiff from behind, in the dark, yelling at the plaintiff with guns drawn.

- There were no allegations in the warrant or by the Issuing Department that the plaintiff was carrying a weapon or was considered dangerous other than the statement from the wife.
- The plan further placed other officers in a cross-fire situation, as evidenced by the other two officers who sustained gunshot and shrapnel injuries.
- The number of shots fired could be considered excessive.

The claimant alleges that he heard yelling as he was walking to his vehicle with his hands by his sides, turned around and saw two people approaching him with guns drawn and yelling at him. The claimant states that, when he saw the guns pointed at him, he raised his hands in the surrender position. He states that he still had his key fob in his hands. The claimant denies that he reached into his waistband, denies that he pointed anything toward the police, and denies that he was trying to commit "suicide by cop."

While the claimant, who is a convicted sex offender, wouldn't have made a likable witness for himself, he is educated and articulate. He was not armed when the incident occurred and the numerous questions of fact in this case survived summary judgment.

Because of the adverse climate with regard to law enforcement officer involved shooting (OIS) cases, combined with the questions of fact, it was decided to reach a settlement with the claimant.

KEY RECOMMENDATIONS/ACTION ITEMS

Based on the facts outlined in this scenario, the below recommendations are being offered for consideration to reduce potential officer injuries and liability planning the apprehension of an unknown violent/non-violent suspect wanted on a felony warrant in a publicly located area with multiple risk factors.

- Complete the warrant risk analysis prior to serving the felony warrant in a public location. Based on the point value, determine if a public location is the appropriate place to execute the warrant.
- Utilize body-worn camera technology, video camera, or CCTV to record the tactical actions utilized. This will provide a record that can be used in defense of any potential liability claims.
- Review the apprehension plan to ensure that positioning of officers reduces the likelihood of cross-fire injuries.
- Consider the use of less lethal ammunition, if available.
- Consider the use of an Emergency Response Team.
- Obtain a copy of the text messages and include them in the officer's report.
- Consider conducting "apprehension" planning training to Supervisor's and officers as an elective for recertification.
- Conduct an agency After Action Report (AAR) to identify additional training and planning needs.

Questions? Ask your Supervisor or contact your CIRMA Risk Management Consultant at (203) 946-3700.