



Tactical Disengagement

Presented by:
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PC 835a (a)(2):

"...it is the intent of the Legislature that peace officers use deadly force only when **necessary** in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each **case, and shall use other available resources and techniques if reasonably safe and feasible** to an objectively reasonable officer."

PC 835a (c)(1)

"...a peace officer **is justified** in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force **is necessary** for either of the following reasons:

PC 835a (c)(1) (A)

To defend against an **imminent** threat of death or serious bodily injury to the officer or to another person.

PC 835a (c)(1) (B)

- To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer **shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer** and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

PC 835a (c)(2):

A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

5150 WI

Important to remember – a detention under the 5150 WI code is permissive but not mandatory.

If the circumstances give the option, disengagement might be something to consider.

Estate of Rudy Escobedo v. Martin Bender (2010)

- Fort Wayne Police Department (Indiana 2005)
- Escobedo called 911 at 0430 to say he was going to kill himself with gun, he was high on cocaine and he did not want to hurt anyone else
- CNT was called and negotiated
- Tactical team decided to use hot gas and flashbangs – no communication with CNT
- Tac team went into apartment, found Escobedo in closet with gun pointed to own head
- Shot him in fear that Escobedo would shoot officers
- Courts ruled in favor of Estate AND since Constitutional violation was made – NO QUALIFIED IMMUNITY

Public Duty Doctrine

The so-called public duty doctrine provides that “absent a **special relationship** between the governmental entity and the ... individual, the governmental entity will not be liable for injury to an individual... the governmental entity owes a duty to the public in general.

In other words: Deputies must understand that they have no obligation to protect any one individual unless a “**special relationship**” exists. Rather, an officer’s sworn duty is to the general public.

DeShaney v. Winnebago Cty. DSS, 489 U.S. 189 (1989)

- Winnebago County, Wisconsin
- Divorced Father beating up son
- Department of Social Services took various steps to protect young child
- Father beat son so severely, son suffered permanent brain damage that left him profoundly retarded
- Mother sued
- Courts ruled in favor of summary judgement for respondents (defendants – County of Winnebago)
- Court of Appeals affirmed.

Warren v. District of Columbia 444A. 2d 1,8 (D.C. 1981)

- 2 females sleeping on third story of home
- 1 female sleeping with four-year-old daughter second story
- 2 suspects break into house / rape female on second story
- Females upstairs call 911 / 3 units arrived, drove by front and rear of home (slowed with window down), knocked on front door. No answer, so 10-8
- Called again, police were never dispatched to the call.
- Males find 2 upstairs, kidnap, rape and prevent escape for next 14 hours.
- Court found D.C. owed duty to the victims – reversed on appeal, based on the public duty doctrine.

Special Relationship

- 1) Makes a representation (expressed or implied) that is detrimentally relied upon and causes a foreseeable harm
- 2) Where the deputy engages in an affirmative act that increases the foreseeable risk of harm to the individual.

Special Relationship was established when:

- Morgan v. County of Yuba (1964)
 - Ashby threatened to kill Morgan
 - Deputies respond, arrest Ashby and promise to let Morgan know if Ashby gets out of jail (**Special Relationship established**)
 - Ashby got out of jail, returned and killed Morgan. Deputies never called to warn.
 - County of Yuba held responsible

Special Relationship was established when:

- Mann v. State of California (1977)
- CHP placed patrol veh. with flashing lights behind two stalled cars on freeway (**Special Relation established**)
- After tow truck arrived, CHP left scene without warning (e.g., pilons, flares, etc...) to warn oncoming vehicles.
- One of cars were then sideswiped, injuring person.
- State of California held liable.

What to do if a Special Relationship has been made?

... and you have taken into consideration the Laws and Public Doctrine,
...And you made the decision to disengage.

Make sure to end the contact (usually with third parties) by telling them what your plan is going to be.

Do not make promises

Consider reading a script before leaving

Capture on BWC

Tactical Disengagement

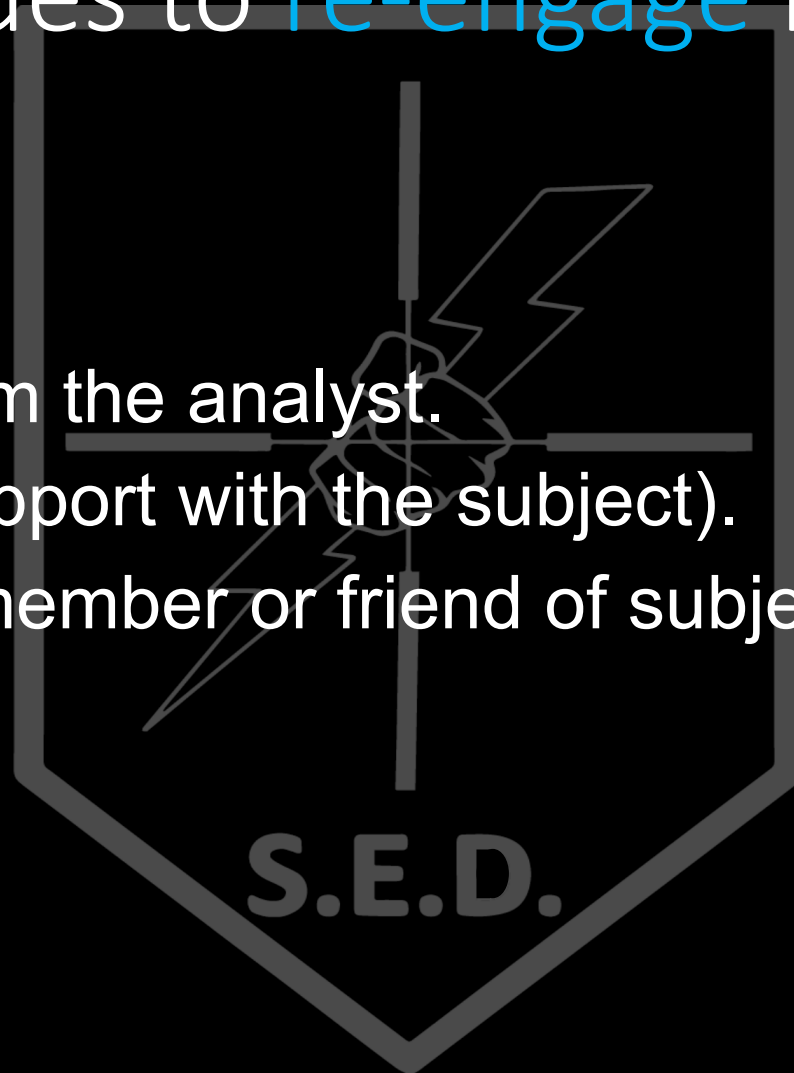
- Involves making a decision to leave, delay contact, delay custody, or plan to contact a subject at a different time and under different circumstances.
- This may be a tactical option when the person is not an imminent threat to the general public and law enforcement reasonably believes that continued contact may result in an unreasonable risk to the subject, the public, and/or department members.
- Risk outweighs the need to apprehend

Before a supervisor decides to disengage, ask the following:

- Is the subject threatening suicide?
- Does the subject appear to require immediate medical care?
- Did the person commit an egregious crime before deputies arrived? After deputies arrived?
- Is the victim(s) cooperating with law enforcement personnel?
- Is the subject having a psychiatric emergency?
- Have reasonable negotiations been attempted by law enforcement? Has CNT been summoned? If so, has CNT had any success after initiating a dialogue?
- Have all applicable resources been utilized such as K-9, SED, etc?
- **Based on the totality of circumstances, is there an imminent threat (something that is "occurring now" or "instantly") to the community?**
- Would other law enforcement personnel in the same situation believe that the subject has the immediate ability to cause serious harm or threat to deputies or someone else?
- Has law enforcement spoken with third parties on scene who know the subject?
- Is there an immediate need to arrest the person? Or can the arrest be at a future time when it may be safer for all involved?

Supervisor will consider resources when he/she decides to **re-engage** in the future:

- PERT.
- Detectives.
- Data collected from the analyst.
- CNT (to build a rapport with the subject).
- Contact a family member or friend of subject.
- GVRO service.



QUESTIONS



THANK YOU



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