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TACTICAL TEAM BASICS: WARRANTS

By Jeff Noble

We sometimes lose sight of the basics in law enforcement. When a sporting team fails at the basics, its odds of winning are dramatically reduced. The basics involve simple things, things we do everyday. In football, an early snap may cause the quarterback to drop the ball. When the ball is loose, everyone dives to the ground to recover the ball and the play is over. In sporting events you may lose a play or even a game, but in law enforcement the loss may be much greater.

Tactical teams work very hard at the basics: containment, evacuation, negotiation, and if necessary, execution of a tactical plan. Teams spend hours on the range, practicing containment strategies, scouting missions, communication methodologies, and entry techniques. Every element is well choreographed, rehearsed, and ready for deployment at a moment's notice.

When the basics fail in law enforcement, someone gets hurt. Sometimes those injuries are physical; sometimes they're not. Consider this scenario:

Your tactical team is called out to a residential neighborhood. A man and his wife had an argument and during the dispute the man hit his wife with a baseball bat numerous times, seriously injuring her. The wife was able to escape just prior to the first officers' arrival and has since been transported to a local hospital. The patrol officers tell you they believe the man is still inside the house, but they have had no contact with him, and they have seen no movement from inside the house.

As you deploy your tactical team, detectives interview the wife. You learn the injuries are not life threatening, but sufficient for a felony arrest. She tells detectives that her husband has been to prison in the past, although he is not currently on parole or probation, and has made statements that he would "shoot it out" with police rather than to go back to jail. She also states that there are numerous firearms inside the residence.

You successfully meet your first objectives of containment and evacuation. As the incident continues, you attempt negotiations. Negotiators call in non-stop on the phone, team members use bullhorns, but there is still no contact and no movement from inside the house. Fortunately, you have a very supportive command staff that tells you to take as much time as you need. Four hours pass since the incident began.

As you read this scenario, most tactical team members and leaders consider all sorts of alternatives and contingencies. That is where training comes in. We think of these types of incidents before they happen to improve our response when they do occur. Good leaders pray they will never have to make entry on an armed subject who would like to "shoot it out" with police, but they also recognize that sometimes there is no alternative. This is especially true in the case described above where you are not even certain the subject is still in the house.

CONSIDER THE BASICS

The question in some of these cases is not the tactical plan, or the execution of the plan, but rather how many team leaders consider the injuries to team members by failing to complete the basics. Not the consideration of physical injuries, but the "other" potential injuries. Have you considered the emotional and financial injuries that the lawsuits will bring? We all know that as police officers we are often the targets of lawsuit. Let's face it, anyone can sue anyone at anytime. It is not being sued that bothers us. It's losing that hurts.

So have you done the basics to prevent an easy angle for the lawyers? Did you get a search warrant for the house and an arrest warrant for the subject? Not necessary you say? After all there is exigent circumstances and the wife will give consent anyway. Is this article starting to sound like another lawyer suggesting that law enforcement should over-scruti-

nize situations before any action, thus bringing on some form of paralysis by analysis? I hope not, but let's review the facts of our scenario.

You need to remember where you are going to enter. It's not a car, a business, or a public building, but rather it is someone's home. Under our Constitution, a person's home is the most protected location in the country. Remember, the general rule to all searches and arrests that occur in someone's home are to do so with a warrant. It's that simple, a warrant is the rule, and everything else is an exception. You should never rely on an exception to avoid the rule; exceptions are created because compliance isn't practical, or because the rule is not necessary due to consent.

When the basics fail in law enforcement, someone gets hurt. Sometimes those injuries are physical; sometimes they're not.

Exigent circumstances are a perfectly valid exception to the warrant rule. The basis of an exigent or emergency search is that there is a substantial and immediate threat to life, health or property. In our scenario, after four hours, the victim gone, no one else in the house and no contact with the suspect, is there still an emergency? Maybe. How about after six, or eight hours? Am I suggesting that the officers simply leave? No. Even worse, am I suggesting that you never take action without a warrant? Absolutely not!

Let me make something very clear. If at anytime the suspect does anything that requires an immediate response and that action threatens the life, health or property of another, you should handle the situation accordingly.

Consent is another exception that is frequently brought up in these situations. Consent is also a perfectly valid exception to the warrant rule. But consent carries a lot of baggage. Consent must be voluntary. Although knowledge of the right to withhold consent is not a prerequisite to establishing voluntariness, it must be clear what the person is consenting to. In our scenario, if the wife

consents to the entry, what can she consent to? Certainly all common areas and areas she has access to. What if he has a den that only he uses and that he always keeps locked? What if he is inside that room? What if she is under medication due to her injuries when she gives consent? Will that have an affect on her ability to give consent?

What if the situation was changed a little bit and she was still at an area near the home. You rely on her consent and make a probing entry to determine if he is in the house. You check about half the house and she changes her mind and revokes her consent. Perhaps you make some noise, break a window, force entry to a door, set off a flash-bang and she changes her mind. Are you going to back out of the house? Are you prepared for that alternative?

REVIEW EXPECTATIONS

What I am suggesting is that these scenarios be considered before they happen. Just as tactical teams work in partnership with negotiation teams, you should practice with your investigative team prior to a major incident. Review expectations and responsibilities to ensure communication flow and proper investigative techniques. If the investigative team knows that you will want a warrant on these types of situations, it can begin the process almost immediately after a call out has been initiated.

During the time you set the perimeter, evacuate neighbors, attempt negotiations and the myriad of other responsibilities that you have as a tactical leader, your investigators should be doing their job by not only interviewing involved parties, but by also attempting to obtain a warrant. If something should happen in the interim — solve it, that's your job. But many of us recognize that these events frequently take many hours, more than enough time for a competent investigator to obtain a warrant.

Will a warrant alone prevent a lawsuit? Of course not. Remember anyone can sue anyone else at anytime for anything. But the advantages of an operationally-detached magistrate ordering you to make entry into a home and to return the suspect and evidence to his court are great. Would you prefer being described in court and to the media as a rogue team of pajama-clad, masked men, whose impatience and inexperience led to an injury, or a deliberate, skilled team that made every effort to solve the situation peacefully and even went to the extent to give the facts to a judge prior to making an entry?

Your responsibility as a team leader is the safety of your team members, your community, and the successful completion of your mission. When tragedy occurs, the investigators who told you not to worry about a warrant will not be there. You'll be there along with your team members. It is your responsibility to ensure your team members safety throughout the entire operation, not just the tactical portion. ■

ABOUT THE AUTHOR

Jeff Noble is a sergeant with the Irvine PD. He has been with the department for 15 years and is currently assigned to Professional Standards. Noble is the tactical team leader for the department's Special Operations Unit. He has a bachelor's degree in criminal justice from California State University at Long Beach and a juris doctorate from Western State University. Noble is an attorney licensed in California.

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