

**Office Of Internal Oversight Review**  
**KEY CONCLUSIONS, RECOMMENDATIONS AND OUTCOMES OF A CATEGORICAL USE OF FORCE INCIDENT**  
**Officer-Involved Shooting-5370 E. Craig Rd- February 25, 2015**

**Purpose:**

The purpose of this report is to publish key conclusions, recommendations and outcomes of the Las Vegas Metropolitan Police Department's internal review of this incident. There are a variety of actions that can be taken administratively in response to the Department's review of a deadly force incident. The review may reveal no action is required or determine additional training is appropriate for all officers in the workforce, or only for the involved officer(s). The review may reveal the need for changes in department policies, procedures, or rules. Where departmental rules have been violated, formal discipline may be appropriate. The goal of the review is to improve both individual and the agency's performance.

**Synopsis of Event:**

On February 25, 2015 at 0020 hours, a male called 9-1-1 and advised the call taker he was going to commit suicide. The male stated that he had dishonored himself, his family, his country and he no longer wanted to live. The male indicated that he was going to kill himself over a female. The male was later identified as Francis Spivey. The call taker asked Spivey numerous times where he was but Spivey refused to answer and eventually disconnected the phone.

The call taker was able to locate Spivey at 5370 E. Craig Rd, Eagle Trace Apartments. However, as officers were arriving, they were unable to locate the exact address due to the call taker inadvertently entering three digits apartment numbers instead of four. After confirming the information, the call taker was able to pinpoint Spivey's apartment. Spivey's apartment was located on the second floor with a stairwell on both sides of the building leading to the apartment landing. Information was updated that Spivey was prior military and had a .45 caliber handgun registered to him. The lieutenant on scene advised officers not to approach the apartment and to begin setting up a perimeter around the apartment.

A sergeant arrived and contacted Spivey via telephone. The conversation was brief but Spivey was extremely agitated, remained adamant about ending his life and confirmed he had a firearm. The sergeant relayed the information over the radio, advising all units to keep their distance. A few minutes later, Spivey exited his apartment with a rifle under his chin. Spivey was dressed in a dress blue Air Force uniform. Officers recognized Spivey had the advantage of high ground and sought to find safe cover. The sergeant advised the lieutenant of a plan to set up a command post (CP). The sergeant made the decision to stay with officers while the lieutenant went to the leasing office to establish a CP.

An officer who was Crisis Intervention Team (CIT) certified, began verbal communication with Spivey from a position of cover and concealment. The officer asked Spivey to put down his weapon and come down the stairs. Spivey walked in and out of his apartment, refusing to put down his weapon and became more and more agitated. Spivey demanded to speak to a female via telephone. At that moment the Special Weapons and Tactics Unit (SWAT) was requested.

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Spivey exited his apartment yelling and screaming. On one occasion he fired several rounds from his rifle and went back inside his apartment. The sergeant and an officer found cover inside a vacant apartment. This cover allowed them to have a clear line of sight of Spivey's stairwell and landing without Spivey being able to see them. Spivey continued to walk in and out of his apartment firing the weapon several times for a total of two more volleys. The sergeant and officer were only able to see the muzzle flash from Spivey's rifle. Spivey never stepped far enough out on to the landing to make himself visible to the officers on scene.

SWAT Officer Brad Cupp arrived with his partner. Both immediately took up a position across from Spivey's apartment, allowing them a clear line of sight to the landing Spivey was using outside his apartment door. The rest of the SWAT operators and members of the Crisis Negotiation Team began to arrive and formulate a plan in attempts to talk with Spivey. Spivey exited his apartment and yelled for the CIT officer that he had previously been speaking with. Seconds later, Spivey discharged his rifle firing four to six rounds in the direction of apartments which had not yet been evacuated.

As Spivey exited and fired his rifle, Officer Cupp watched as Spivey stepped from the doorway and positioned himself in the direction of patrol officers who were approximately 30-40 yards away behind cover. As Spivey began to raise the rifle again, Officer Cupp fired one shot at Spivey. Spivey instantly disappeared from view due to a pony wall that obstructed Officer Cupp's view. Officer Cupp and his partner continued to watch for Spivey.

Due to the unknown location of Spivey, the SWAT commander continued to treat the incident as a barricaded person. Officers continued to evacuate the surrounding apartments. SWAT was able to deploy a large robot and determine Spivey was down and not moving. SWAT made entry into the apartment and Spivey was located lying on the floor with an AR15 rifle between his legs, along with several loaded AR magazines on the floor. The SWAT doctor declared Spivey deceased at the scene.

The Force Investigation Team (FIT), Critical Incident Review Team (CIRT), and crime scene analysts (CSAs) responded to the scene and received a briefing. At the completion of the briefing, the investigative units documented and processed the scene.

CSA conducted a countdown of Officer Cupp's rifle and evidence showed Officer Cupp fired one round.

**The Criminal Investigation:**

LVMPD FIT conducted the criminal investigation of this incident. Their investigation was submitted to the District Attorney's Office for review. In their examination of the FIT case submission, the District Attorney's Office determined that, "Based on the review of the available materials and application of Nevada law to the known facts and circumstances, it has been determined that the actions of the officers were reasonable and legally justified."

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**LVMPD's Critical Incident Review Process and Internal Review:**

1. The matter involving Officer Cupp was heard by the Critical Incident Review Process/Use of Force Review Board on March 31, 2016. The Board's finding was, "Administrative Approval." The Use of Force Review Board determined the officer's actions were within policy. The Sheriff approved the Board's recommendation.
2. The internal Tactical Review Board concluded Officer Cupp's performance was in accordance with Department standardized tactics and training with a few exceptions.

Below are the recommendations made after the Use of Force Review Board and the internal review were completed:

**1) Communication**

During an internal audit conducted by the Communications Bureau regarding the performance of the 9-1-1 Call Taker, the following areas were identified as not to standard. These included:

- Length of time it took to receive subscriber information reference the cell phone
- Logging the incorrect apartment number
- Not requesting a CIT officer

In this incident, CIRT concluded the Communications Bureau did not perform within standardized LVMPD training and policy. The call taker received training/counseling as a result of this incident.

During the review of the radio traffic, there appeared to be no transmitting problems between dispatch and officers. The old radio infrastructure had recently been replaced with a new infrastructure provided by the new radio system.

CIRT concluded radio traffic for this incident was to an LVMPD standard.

**2) Officers Approach**

When officers initially arrived in the area, they were not aware of the exact location of Spivey. Once officers learned Spivey's apartment number, officers already knew Spivey had the intention to commit suicide, was angry over a relationship with a female, and had access to firearms.

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After learning all the above information, the lieutenant advised officers not to approach the door of Spivey's apartment. Officers located Spivey's apartment and approached in a way that allowed them to utilize cover while still able to have a visual on their areas of responsibility. Officers worked as a team directing arriving units to establish a perimeter.

CIRT concluded the officers' approach to Spivey's apartment building was within standardized LVMPD tactics and training.

Throughout the entire incident, CIRT found all officers involved used the concept of Contact and Cover. Officers who were in verbal contact with Spivey worked as a two-man team, as well as the officers doing evacuations and the rifle/spotter teams.

CIRT concluded the contact and cover tactics utilized by officers involved were within standardized LVMPD tactics and training.

CIRT also concluded the CIT officer's decision to try and de-escalate the situation and negotiate with Spivey from a safe distance of cover and concealment, with a cover officer, was exemplary.

### **3) Tactics and Use of Force**

When Officer Cupp drew his rifle, he knew the following:

- Spivey had threatened to kill himself and was armed with an assault rifle.
- Spivey had discharged his weapon several times prior to Cupp's arrival.
- Patrol officers were in the inner perimeter, possibly in the line of fire of Spivey's rifle.
- Neighboring apartments had not been evacuated.
- Spivey had the ability and the means to use deadly force on the officers and any citizens that were in the area

CIRT concluded Officer Cupp's drawing of his rifle was within standardized LVMPD tactics, training and policy.

CIRT concluded SWAT snipers drew their rifles based on the details of the event and their observations and moved towards their positions in a manner that was within standardized LVMPD tactics, training and policy.

Officer Cupp was cognizant that the surrounding upstairs apartments had not been evacuated due to the close proximity to Spivey's residence. He knew his backdrop was an apartment directly north of Spivey's residence.

CIRT concluded Officer Cupp's assessment of backdrop, target identification, and isolation was within standardized LVMPD tactics, training, and policy.

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In this incident Officer Cupp was deployed as part of a SWAT sniper team. Officer Cupp knew before he arrived on scene that Spivey had discharged his rifle several times. Officer Cupp also knew there were several officers in the immediate area along with several apartments that had not yet been evacuated. Upon Officer Cupp's arrival, Spivey once again exited his apartment and began to discharge his rifle. Officer Cupp observed Spivey shoot in the direction of nearby officers and a neighboring apartment. At that point Officer Cupp discharged his rifle at Spivey.

CIRT concluded Officer Cupp's threat assessment was reasonable.

#### **4) Supervision (Command and Control)**

In evaluating the supervision (command and control), of this incident, CIRT noted:

- The sergeant and lieutenant arrived before contact was made with Spivey.
- The sergeant and lieutenant had a discussion about setting up a Command Post (CP) and the location.
- The sergeant stayed on the inner perimeter with officers while the lieutenant set up the CP at the leasing office.
- The sergeant made phone contact with Spivey before directing the CIT Officer to take over communications.
- The lieutenant ordered officers not to approach the front door of Spivey's apartment.
- The sergeant assisted officers by deploying his rifle when he was initially the only one safe to do so.
- A second sergeant arrived at the CP and assigned himself the Incident Commander (IC).
- The lieutenant ordered evacuations of surrounding apartments.
- The sergeant gave direction to officers on the inner perimeter and assisted them with evacuations.

CIRT concluded the lieutenant's incident management was exemplary.

The first arriving sergeant was actively engaged in the inner perimeter but he also was aware the CP had been established and was being managed by the lieutenant and the sergeant which allowed him to stay and assist his officers.

In reviewing supervisory response, CIRT concluded the sergeant's Incident Management in this incident was handled to an LVMPD standard.