

Public Report

June 25, 2019: Officer Involved
Shooting-Domesticated Animal



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INCIDENT

On June 25, 2019, a Fairfax County Police Department (hereinafter “FCPD”) officer (hereinafter “PFC#1”) assigned to the Mason District Station responded to Green Spring Gardens, a Fairfax County public park located at 4603 Green Spring Road in the Alexandria section of Fairfax County. PFC#1 went to the park after hearing over his police radio that a 9-1-1 caller had advised that two large dogs were running loose in the park. Before arriving, another officer already at the scene radioed that two people had been bitten by one of the loose dogs—a German shepherd (hereinafter “Snow”), and that the dogs were “actively biting people.”

PFC#1 responded to the situation without being dispatched to it because he had previous animal control training and had worked frequently with the FCPD’s Animal Services Division. By the time he arrived, several individuals had sought shelter inside a building to avoid the dogs’ aggressive behavior. PFC#1 walked in the direction of the dogs and began to put gloves on. He started to whistle to attract the dogs’ attention. The two dogs immediately responded by walking towards him. Then, the dogs charged at PFC#1 and he feared they were going to maul him. The dogs advanced on him too quickly for him to use OC spray¹ or his baton to stop them. While back-pedaling away, he fired one round from his service weapon. Snow was struck in her left front leg. After discharging his weapon, PFC#1 fell back and hit his head on the ground. He heard a yelp and saw the dogs run away from him. He immediately notified the Department of Public Safety Communications (hereinafter “DPSC”) that he had discharged his firearm and requested medical assistance for his head.

During a subsequent interview, PFC#1 was unable to estimate the distance between him and Snow when he fired his weapon. He did not recall aiming but felt that he fired downward in order to hit Snow. Furthermore, he believed the dog knocked him down by making contact with him. Finally, he stated that, before firing his weapon, he had considered whether anyone would be in danger beyond where he would be shooting.

An Animal Protection Police Officer (hereinafter “APPO#1”) arrived after the shooting and quickly located the nearby home to which the dogs had returned. Snow’s owner, accompanied by APPO#1, took Snow to an animal hospital where a veterinarian advised that the

¹ See GLOSSARY.

injury to her was not life-threatening. Nonetheless, the owner requested that the veterinarian euthanize Snow.

RELEASE OF INVOLVED OFFICER'S IDENTITY

FCPD Chief EDWIN C. ROESSLER, Jr. complied with departmental policy directive—to release the name(s) of officers involved in an officer involved shooting within 10 days of the incident—by releasing a statement and PFC#1's identity on July 3, 2019.

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD conducted both a criminal and an administrative investigation into PFC#1's use of deadly force against the domesticated animal. The results of the criminal investigation were provided to the Office of the Commonwealth's Attorney (hereinafter "CAO"). On July 25, 2019, the Deputy Commonwealth Attorney for Fairfax County advised that the CAO would not pursue criminal charges against PFC#1.

INTERNAL ADMINISTRATIVE INVESTIGATION

Because this incident involved an officer-involved shooting, an internal administrative investigation began immediately and was conducted by the FCPD's Internal Affairs Bureau (hereinafter "IAB").² The internal investigation into this incident was, in my opinion, complete, thorough, objective, impartial, and accurate. All appropriate interviews were conducted, and all potential evidence was pursued. While no one witnessed the actual shooting of Snow, witnesses to and victims of the dogs' aggressive behavior were interviewed and all described a very chaotic and dangerous situation.

The FCPD concluded that the use of deadly force against Snow was within departmental policy. Specifically, the FCPD concluded that PFC#1 complied with FCPD General Order

² FCPD General Order (hereinafter "G.O.") 540.11 II. A. states that "[t]he use of deadly force against any domesticated animal that results in an animal's death or injury shall be investigated by the Internal Affairs Bureau (IAB)."

(hereinafter “G.O.”) 540.0 and G.O. 540.10 when he shot the dog. I agree with that conclusion and will articulate my reasons in the following section of this report.

CONCLUSIONS

FCPD G.O. 540.0 on **USE OF FORCE** states, in relevant part, “Force is to be used only to the extent it is objectively reasonable to defend oneself or another; [f]orce should be based upon the totality of the circumstances known by the officer at the time force is applied, without regard to the officer's underlying intent or motivation, and weighs the actions of the officer against their responsibility to protect public safety; [f]orce shall not be used unless it is reasonably necessary in view of the circumstances confronting the officer; [t]he application of deadly force should only be used in the most extreme circumstances where all lesser means of force have failed or could not reasonably be utilized.” FCPD G.O. 540.1 defines “Objectively Reasonable” as follows: “The level of force that is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same set of circumstances. Objective reasonableness is not analyzed with the benefit of hindsight, but rather takes into account the fact that officers must make rapid and necessary decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations.” Finally, and specific to the incident under review, FCPD G.O. 540.10 A. mandates that “[d]eadly force may be used against any animal that is attacking or threatening to attack any individual or another domestic animal.” Applying these provisions to the incident under review makes it clear that PFC#1’s actions were permitted by departmental policy.

PFC#1 arrived at a situation that was clearly tense, uncertain, and rapidly evolving. Patrons of the park at Green Spring Gardens had been bitten by loose and aggressive dogs, while others scrambled to avoid them. To prevent further injury to anyone, PFC#1 took immediate action when he arrived by calling for the loose dogs. However, when the dogs charged at him, he made a split-second decision to deploy his firearm to protect himself. The dogs’ immediate attack provided PFC#1 no time to attempt less-lethal force options. FCPD G.O. 540.10 B. provides that “[w]hen an animal is attacking, force should be used progressively by officers to protect a domestic animal, another individual, or themselves, from an attacking animal. Other less lethal options may include striking instruments, Oleoresin Capsicum (OC), Electronic

Control Weapons (ECW), physical barriers, or catch poles.” While officers *should* use progressive levels of force to protect themselves from an attacking animal, there is no requirement to do so in a situation like the one PFC#1 confronted.³ PFC#1 determined that there was no time for him to try to use his baton or OC spray before shooting Snow; and, because an aggressive German shepherd can cause serious injury (or even death) to people,⁴ PFC#1’s decision to use deadly force against Snow to prevent her from attacking him was objectively reasonable.

Finally, FCPD G.O. 540.10 C. states that “[i]n any situation where an officer is otherwise justified in using deadly force against an animal, the officer shall not use deadly force recklessly or in any manner where injury or death to any individual is foreseeable.” PFC#1 considered what was behind where he shot, and he even recalled shooting in a downward direction to strike the dog. In no way, therefore, was his decision to use deadly force a reckless decision.

RECOMMENDATIONS

FCPD policy thoroughly addresses the possibility of its officers using force (including deadly force) on animals. This includes force (including deadly force) being used on non-domesticated injured animals, on rabid animals, and on animals that are attacking an individual or other domestic animals.⁵ The policy also calls for strategizing to use non-deadly force (as opposed to deadly force) on domesticated animals if the presence of those animals is anticipated when planning operations⁶ (e.g., the planned execution of a search warrant in a location where dogs are known to be). These policy provisions are sound and considered to be best practice, and PFC#1 complied with them. Therefore, I have no recommendations to make based on this incident review.

³ The IAB investigation of this incident included an article showing that the average German shepherd is capable of running approximately thirty miles-per-hour. In addition, Snow weighed 69.8 pounds on the date of this incident.

⁴ During the 15-year period between 2005 to 2019, 521 Americans suffered death due to dog bite injury. Of those deaths, 22 (4.2%) were caused by German shepherds. <https://www.dogsbite.org/pdf/15-year-dog-bite-fatality-chart-dogsbite.org.pdf>, accessed on March 12, 2021.

⁵ FCPD G.O. 540.10 I. A.

⁶ FCPD G.O. 540.10 I. B.

APPENDIX: GLOSSARY OF TERMS

FCPD – Fairfax County Police Department

FCSO – Fairfax County Sheriff's Office

G.O. – General Order

SOP – Standard Operating Procedure

UOF – Use of Force

BWC – Body-worn Camera

ICV – In-Car Video

ADC – Adult Detention Center

CWA – Commonwealth's Attorney

Fourth Amendment to the United States Constitution - The right of the people to be free in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Force – defined in Fairfax County Police Department General Order 540.1 I. G. as any physical strike or instrumental contact with an individual, or any significant physical contact that restricts an individual's movement. Force does not include escorting or handcuffing an individual who is exhibiting minimal or no resistance. Merely placing an individual in handcuffs as a restraint in arrest or transport activities, simple presence of officers or patrol dogs, or police issuance of tactical commands does not constitute a reportable action.

Less-Lethal Force – defined in Fairfax County Police Department General Order 540.1 I. I. as any level of force not designed to cause death or serious injuries.

Deadly Force – defined in Fairfax County Police Department General Order 540.1 I. B. as any level of force that is likely to cause death or serious injury.

Serious Injury – defined in Fairfax County Police Department General Order 540.1 I. Q. as an injury which creates a substantial risk of death, disfigurement, prolonged hospitalization, impairment of the functions of any bodily organ or limb, or any injury that medical personnel deem to be potentially life-threatening.

ECW – Electronic Control Weapon; considered less-lethal force. Defined in defined in Fairfax County Police Department General Order 540.1 I. C. as a device which disrupts the sensory and motor nervous system of an individual by deploying battery-powered electrical energy sufficient to cause sensory and neuromuscular incapacitation. Often referred to as a Taser.

Empty-Hand Tactics – considered less-lethal force. Described in Fairfax County Police Department General Order 540.4 II. A. 2. as including strikes, kicks, and takedowns.

OC Spray – Oleoresin Capsicum; considered less-lethal force; often referred to as “pepper spray.”

PepperBall System – defined in Fairfax County Police Department General Order 540.1 I. N. as a high-pressure air launcher that delivers projectiles from a distance. Typically, the projectile contains PAVA powder which has similar characteristics to Oleoresin Capsicum. Considered less-lethal force.

Passive Resistance – defined in Fairfax County Police Department General Order 540.4 I. A. 1. as where an individual poses no immediate threat to an officer but is not complying with lawful orders and is taking minimal physical action to prevent an officer from taking lawful action.

Active Resistance – defined in Fairfax County Police Department General Order 540.4 I. A. 2. as where an individual’s verbal and/or physical actions are intended to prevent an officer from taking lawful action, but are not intended to harm the officer.

Aggressive Resistance – defined in Fairfax County Police Department General Order 540.4 I. A. 3. as where an individual displays the intent to cause injury, serious injury, or death to others, an officer, or themselves and prevents the officer from taking lawful action.

