

Public Report

Oct. 24, 2017: Officer Involved
Shooting – Domesticated Animal



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INCIDENT

On October 24, 2017, Fairfax County Police Department (hereinafter “FCPD”) officers assigned to the Mount Vernon District Station’s Neighborhood Patrol Unit (hereinafter “NPU”) arrested S.C. based on an active arrest warrant (out of Washington, D.C.) for armed robbery. Before being apprehended, S.C. fled from officers and a foot chase ensued. During the foot pursuit, an FCPD officer shot and killed S.C.’s dog. The shooting of the dog was investigated as an officer-involved shooting of a domesticated animal.

During a briefing prior to the arrest on October 24, 2017, NPU officers learned that drug activity was possibly occurring at a specific address on Brick Hearth Court in the Alexandria section of Fairfax County. The information provided during the briefing identified S.C. as an individual possibly associated with the address and as being wanted (based on an arrest warrant) for an armed robbery in Washington, D.C. A physical description and photograph of S.C. were provided to the NPU officers. The outstanding arrest warrant for S.C. was confirmed.

The second lieutenant (hereinafter 2LT#1) in command of the NPU directed the unit to set up a perimeter near the neighborhood and to observe the address on Brick Hearth Court. While conducting surveillance on the address, officers saw S.C. exit the home and start walking his dog. 2LT#1 got out of his car, approached S.C. from behind, and called out his name. S.C. turned back to look at 2LT#1, and then immediately ran from him. An NPU member, Police Officer First Class (hereinafter “PFC#1”), joined 2LT#1 in chasing S.C.

S.C. advised, during an interview with FCPD Internal Affairs Bureau (hereinafter “IAB”) personnel, that his dog was an albino pit bull. He indicated that as he walked his dog on a leash, a vehicle pulled up, and he heard someone say his name out loud. He then ran with his dog on the sidewalk. When he heard one of the people chasing him yell, “Drop it,” he knew they were police officers chasing him. S.C. ran to a fenced-in courtyard and estimated being 100 feet away from a portion of the wooden fence when he heard either one or two gunshots. S.C. believed that his dog had continued running with him toward the fence; and, therefore, the dog would have been shot in the back near the hind legs. After hearing the gunshot(s) and fearing that he would be shot, S.C. continued to run and climbed over the wooden fence. He was

arrested a short time later. While being arrested, he heard an officer state, "The dog lunged at me."¹

In an interview conducted by IAB, PFC#1 advised that after joining the foot chase, he observed a large white pit bull running with S.C. He recalled a leash being attached to the dog's collar, but that S.C. was not holding the leash while being pursued. PFC#1 also remembered that a correction collar was attached to the dog's neck. When questioned about the purpose of a correction collar, PFC#1 answered that they are used to impose discomfort on a dog to correct its behavior, and can be indicative of an aggressive dog.

As the foot pursuit of S.C. continued toward the fenced-in courtyard, PFC#1 yelled to 2LT#1 to be aware of the dog because the dog was not secured by S.C. As he entered the courtyard, PFC#1 observed that it was surrounded by a 6-foot tall fence. PFC#1 saw both S.C. and 2LT#1 climb over the fence, leaving the dog behind. PFC#1 slowed down and continued to watch the dog as he approached the fence. He believed that the dog was "tracking back and forth along the fence line."² PFC#1 then pulled his firearm from his holster with his right hand and placed it down into a "ready gun" position.³ PFC#1 continued to approach the fence to climb over it so that he could assist 2LT#1 and pursue S.C. He observed the pit bull to the right of him, and then "very quickly the dog came back towards my right leg."⁴ PFC#1 perceived this to be an aggressive action by the dog, and he was afraid that the dog was about to bite him. With the dog approximately three feet away from him, PFC#1 pointed his firearm at the pit bull and fired one round at its head. The shot struck the dog and it fell onto its left side. After shooting the pit bull, PFC#1 climbed over the fence and continued to pursue S.C. S.C. was arrested by 2LT#1 and PFC#1 shortly thereafter.

In his interview with IAB, 2LT#1 advised that while he was pursuing S.C., he recognized that S.C. was not holding the dog's leash, but the dog continued running directly behind S.C. 2LT#1 pursued S.C. into the fenced-in courtyard. After S.C. scaled the 6-foot tall fence, 2LT#1 also scaled it. The dog was to the right of 2LT#1, and did not interfere with his scaling the fence. As 2LT#1 climbed over the fence, he heard one loud bang. He initially thought that S.C.

¹ Internal Affairs Bureau (hereinafter "IAB") interview of S.C. on October 24, 2017.

² IAB interview of PFC#1 on December 6, 2017.

³ FCPD General Order 540.1 I. P. defines the ready gun position, in part, as when a "firearm [is] presented toward a threat area with the muzzle lowered from the officer's eye level sufficient to see the threat area clearly."

⁴ *Supra*, note 2.

had either intentionally shot at him or had unintentionally discharged a round when he (S.C.) fell after climbing over the fence and landing on the ground.

S.C. continued fleeing, so 2LT#1 continued to pursue him and yelled for him to stop. Soon, PFC#1 was just behind 2LT#1, and 2LT#1 heard him say, "I had to shoot the dog. He came at me."⁵ After hearing this, 2LT#1 realized that the prior gunshot he heard had been fired by PFC#1 rather than by S.C. Shortly after this, S.C. was caught and arrested. After S.C. was secured in handcuffs, 2LT#1 delegated officer responsibilities at the scene, which included the initiation of an officer-involved shooting investigation, and attending to the now deceased dog. He notified appropriate FCPD personnel, and requested FCPD Animal Protection Police to respond.

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD conducted an administrative investigation into PFC#1's use of deadly force against the domesticated animal. No referral regarding PFC#1's actions was made to the Office of the Commonwealth's Attorney.

The FCPD arrest of S.C. was initially based on the outstanding armed robbery arrest warrant from Washington, D.C. A criminal detainer was issued for that charge, and additional charges were lodged against S.C. by Fairfax County based on what occurred during this incident.

INTERNAL ADMINISTRATIVE INVESTIGATION

Because this incident involved an officer-involved shooting, an internal administrative investigation commenced immediately and was conducted by the FCPD IAB. 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)."

The internal investigation into this incident was, in my opinion, complete, thorough, objective, impartial, and accurate. All appropriate interviews were conducted, and all potential

⁵ IAB interview of 2LT#1 on November 2, 2017.

evidence was pursued. Relevant in-car video⁶ was reviewed which captured PFC#1 explaining to S.C. shortly after the incident why he felt he needed to shoot the dog.⁷ A necropsy performed on the deceased dog confirmed that the gunshot entered the dog's head and not the back/hind legs area as had been stated by S.C.

The FCPD concluded that PFC#1's use of deadly force against the domesticated animal was within departmental policy. Specifically, FCPD concluded that he complied with FCPD 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 part: "Force is to be used only to the extent it is objectively reasonable to defend oneself or another, to control an individual during an investigative or mental detention, or to lawfully effect an arrest. Force 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 as well as the individual's civil liberties. Force shall not be used unless it is reasonably necessary in view of the circumstances confronting the officer. The 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, 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.

⁶ This incident pre-dated the FCPD's pilot body-worn camera program.

⁷ PFC#1 can be heard on the video telling S.C., "Your dog came at me."

PFC#1 engaged in a foot pursuit of a person wanted for armed robbery who was being chased by another member of the department. During the chase, he was confronted by the wanted person's pit bull after the dog's owner had scaled a six-foot tall fence and left the dog behind. PFC#1 shot the dog only when it showed aggression toward him. While law enforcement officers assume certain reasonable risks by virtue of their chosen profession, they are not required to assume unreasonable risks. Because an aggressive pit bull can cause serious injury (or even death) to people,⁸ PFC#1's decision to use deadly force against the dog to prevent it from attacking him was objectively reasonable.

Although the use of deadly force was objectively reasonable to prevent attack, FCPD policy does mandate that force should be used progressively when confronting an attacking animal. Specifically, FCPD G.O. 540.10 I. 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. Less-lethal force strategies should be developed to establish control over domesticated animals when planning all operations." Unfortunately, in this rapidly evolving and unexpected situation, PFC#1 did not have a less-lethal force option available.⁹

FCPD policy further dictates that "[i]n any situation where an officer is 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."¹⁰ There was no foreseeable risk to any individual when PFC#1 fired the one round at the dog because there were no other individuals near them in the direction in which he fired.

RECOMMENDATIONS

⁸ In the 13-year period of January 1, 2005 to December 31, 2017, canines killed at least 433 Americans. Pit bulls contributed to 66% of those deaths. Rottweilers, the second leading canine killer, inflicted 10% of attacks that resulted in human death. <https://www.dogsbite.org/dog-bite-statistics-multi-year-fatality-report-2005-2017.php>, accessed on August 24, 2018.

⁹ PFC#1 was not equipped with an Electronic Control Weapon, and his baton had fallen off of his equipment belt during the foot pursuit of S.C.

¹⁰ FCPD G.O. 540.10 I. C.

FCPD policy thoroughly addresses the possibility of its officers using force (including deadly force) on animals. This includes force/deadly force being used on non-domesticated injured animals, on rabid animals, and on animals that are attacking.¹¹ A policy provision 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 operations.¹² In the incident under review, the decision was made to arrest S.C. while he was outside in the neighborhood walking his dog. The presence of the dog had not been anticipated. Had the officers allowed S.C. to re-enter the house with his dog, they then could have developed a strategy to deal with the dog while planning the arrest of S.C. However, encountering S.C. away from the residence was an immensely safer alternative than allowing him to re-enter the residence and apprehending him there. Arresting him away from the house prevented him from gaining access to any weapons potentially located in the house. For this reason, in fact, 2LT#1 had decided before even approaching S.C. that any stop of S.C. by the NPU would occur only if he was away from the residence. Had the NPU verified S.C. being in the house without him later leaving it, 2LT#1 planned to contact the FCPD Special Operations Division to plan a possible entry and arrest. I believe that these policies and tactical considerations are sound and considered best practice. Therefore, I have no recommendations to make based on this incident review.

¹¹ FCPD G.O. 540.10 I. A.

¹² FCPD G.O. 540.10 I. B.

