

**UNITED STATES DISTRICT COURT
Eastern District of Virginia
Richmond Division**

DERRICK WILLIAMS

Plaintiff,

v.

Civil Action No.: 3:24-cv-00696

GORDON J. PAINTER

Defendant.

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO DEFENDANT’S
MOTION TO DISMISS**

COMES NOW the Plaintiff, Derrick Williams (“Plaintiff” or “Mr. Williams”), by counsel, and submits this memorandum in Opposition to Defendant’s Motion to Dismiss Count I of the Plaintiff’s Complaint, and in support thereof, Plaintiff incorporates his Amended Complaint and states as follows:

INTRODUCTION

This matter comes before the Court on Defendant’s Motion to Dismiss. Despite a very lengthy Memorandum, the Defendant’s argument boils down to one issue, whether on its face were his actions objectively reasonable allowing him the protection of qualified immunity. None of the additional facts that have been put forward by the Defendant demonstrate that objective reasonableness nor do they change any of the well plead facts in the Plaintiff’s Amended Complaint. In fact, the Defendant’s facts open the door to even more questions such as if the Defendant issued a warning command regarding the dog, why did he do this behind the door’s threshold in the hallway where the Plaintiff could not have heard him rather than issuing clear commands in the room? This is evidenced by Defendant’s ex. 3. Just this one fact alone demonstrates that the officer did not act reasonably as his command was for not. Many of the

other facts raised by the Defendant also are more than just a different interpretation, they are squarely in dispute of which it is up to a trier of fact to then determine what truly occurred.

LAW

A. Legal Standard for Rule 12(b)(6) Motions.

To withstand Rule 12(b)(6) scrutiny, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face,” so as to “nudge [his] claims across the line from conceivable to plausible.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (citation omitted). “This necessarily requires that a plaintiff include factual allegations for each essential element of his or her claim.” *Georgia Carry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1254 (11th Cir. 2012). Thus, minimum pleading standards “require more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, supra 550 U.S. at 555.

The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint; “importantly, [a Rule 12(b)(6) motion] **does not** resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Republican Party v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). Accordingly, a Rule 12(b)(6) motion should only be granted if, after accepting all well-pleaded allegations in the plaintiff’s complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff’s favor, it appears **certain** that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief. *See id. Edwards v. City of Goldsboro*, 178 F.3d 231, 243-44 (4th Cir. 1999).

Furthermore, when as here, a Rule 12(b)(6) motion is testing the sufficiency of a **civil rights** complaint, "we must be especially solicitous of the wrongs alleged" and "must not dismiss the complaint unless it appears to a certainty that the plaintiff would not be entitled to relief *under any legal theory which might plausibly be suggested by the facts alleged.*" *Harrison v. United States Postal Serv.*, 840 F.2d 1149, 1152 (4th Cir. 1988) *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999).

B. Qualified Immunity and the Objective Reasonable Standard.

Defendant Painter argues he is entitled to qualified immunity based on the facts presented on his Body Worn Camera footage of the incident. This contention is obviously disputed by the Plaintiff and is the fact at issue sought to be resolved by the fact finder, in this case, the jury. It is the Plaintiff's position that the merits of this case should be argued at trial and cannot be properly adjudicated by and through a Motion to Dismiss.

Qualified immunity does not apply where "it would have been clear to a reasonable officer that the alleged conduct was unlawful in the situation he confronted." *Ziglar v. Abbasi*, 137 S. Ct. 1843 at 1867, 198 L. Ed. 2d 290 (2017). The standard is one of objective reasonableness, "Whether a reasonable officer could have believed [the conduct at issue] to be lawful, in light of clearly established law and the information the . . . officer possessed." *Anderson v. Creighton*, 483 U.S. 635, 641 (1987).

Police Departments have relied upon General Police Orders (GPO) or General Standing Orders (GSO) in Defenses before the Courts to establish that their actions were objectively reasonable. This is obvious since the orders are issued by the Chief officers of their department. In *City of Cleveland v. Graham*, 2024-Ohio-336, 235 N.E.3d 487 (Ct. App.), the Court considered the General Police Orders issued with regard to the use of force. *Id.* at 498-495. In that case "With

respect to the first factor, Officer Samis testified that he followed department procedures, and that K-9 Riley performed according to training during the arrest.” *Neeley v. Samis*, 183 F. Supp. 2d 672, 680 (D. Del. 2002). The Court in *Neeley* considered department policies when evaluating objective reasonableness of the officer’s actions.

Applying qualified immunity on a motion to dismiss involves a two-part analysis: first, whether the evidence, “[t]aken in the light most favorable to the party asserting the injury ..., shows the officer’s conduct violated a constitutional right,” *Saucier v. Katz*, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001); and, second, whether the right at issue, when the evidence is viewed in the light most favorable to the plaintiff, was “ ‘clearly established’ ” at the time of the violation. *Tolan v. Cotton*, 572 U.S. 650, 655-56, 134 S.Ct. 1861, 188 L.Ed.2d 895 (2014) *256 (quoting *Hope v. Pelzer*, 536 U.S. 730, 739, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002)).

Once a claim of qualified immunity is raised, the court may then require a Plaintiff to file a responsive pleading under Rule 7 of the Federal Rules of Civil Procedure tailored to the assertion of qualified immunity. *Schultea v. Wood*, 47 F.3d 1427 at 1433 (5th Cir. 1995). Plaintiff is not required to anticipate this defense in the pleading of his or her original complaint. *Id.* at 1430. If some minimal discovery is necessary to uncover facts to be relied upon or raised in support of a Motion for qualified immunity or Response thereto, the court may order such limited discovery as necessary. *Id.* at 1432, 1434.

In other words, the plaintiff must not only allege 1) the deprivation of an actual right, but also 2) that this right was “clearly established” at the time of the alleged violation. *Shipp v. McMahon*, 2000 WL 178679, (5th Cir. 2000). The second hurdle requires the plaintiff to show that the officer’s conduct was not objectively reasonable at the time of the incident. Plaintiff Williams alleges that Defendant Painter violated his Fourth Amendment rights by applying excessive

force. To prevail on an excessive-force claim, he must show "(1) injury, (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable." *Elizondo v. Green*, 671 F.3d 506, 510 (5th Cir. 2012) (quoting *Collier v. Montgomery*, 569 F.3d 214, 218 (5th Cir. 2009)). *Cooper v. Brown*, 844 F.3d 517, 522 (5th Cir. 2016).

ARGUMENT

Plaintiff Williams' right to be free from the application of excessive force under the Fourth Amendment is clear. Applying the facts as plead demonstrates that Defendant Painter's actions were not objectively reasonable under the circumstances. The question that always exists in the context of excessive force is when is force reasonable to be applied and the Courts have consistently held that when the alleged suspect neither made any threats nor is fleeing, then force is objectively unreasonable, just is the case here. First, we should look at what the Court in *Cooper v. Brown*, 844 F.3d 517 (5th Cir. 2016) discussed when applying force and with a K9 which laid out a good illustration of when force should be applied. Citing the case:

In *Cooper v. Brown*, Cooper's right was clearly established. Our caselaw makes certain that once an arrestee stops resisting, the degree of force an officer can employ is reduced. "[A]lthough the right to make an arrest necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it, the permissible degree of force depends on [the *Graham* factors]." *Bush v. Strain*, 513 F.3d 492, 502 (5th Cir. 2008) (internal quotation marks omitted). In *Bush*, we held that it was objectively unreasonable for an officer to slam an arrestee's face into a nearby vehicle when the arrestee "was not resisting arrest or attempting to flee." *Id.* Similarly, we declared in *Newman*, 703 F.3d at 762, that tasing an arrestee was objectively unreasonable where "[t]he videos d[id] not show Newman attempting to strike either officer, holding a weapon, or even reaching for his waistband," and "[t]he officers did not try to warn each other . . . that Newman had a weapon, which might be expected if either officer truly thought that at the time."

In the same way, Cooper was not attempting to resist arrest or flee, and Brown had no reason to think that he posed an immediate threat. Moreover, the fact that *Bush* and *Newman* are not dog-bite cases does not shield Brown. "Lawfulness of force . . . does not depend on the precise instrument used to apply it. Qualified immunity will not protect officers who apply excessive and unreasonable force

merely because their means of applying it are novel." *Id.* at 763-64 (footnotes omitted). Thus, Brown had "fair warning" that subjecting a compliant and non-threatening arrestee to a lengthy dog attack was objectively unreasonable.

This comports with decisions of sister circuits that have considered similar facts. In *Priester v. City of Riviera Beach*, 208 F.3d 919, 923-24 (11th Cir. 2000), the Eleventh Circuit held that it was objectively unreasonable for officers to allow a dog to bite and hold a suspect for two minutes—which it described as "an eternity"—where he was compliant with orders and not resisting arrest. The Eleventh Circuit confronted the question a second time in *Edwards v. Shanley*, 666 F.3d 1289 (11th Cir. 2012). There, a man was pulled over for a traffic violation and fled on foot. When the officers encountered him, he was lying on his stomach with his hands exposed. The man verbally surrendered, shouting, "[Y]ou got me. I only ran because of my license." Nonetheless, the officers released their dog and permitted it to continue biting him for five to seven minutes. *Id.* at 1292-93. The court held that the officers' conduct violated the constitution. Its application of the *Graham* factors is instructive: *Cooper v. Brown*, 844 F.3d 517, 524-25 (5th Cir. 2016).

The *Cooper* case is instructive in the application of the *Graham* factors and that a K9 is an instrumentality to be considered when reviewing the force used by an officer. Analogous to the *Cooper* and the cases the Court cites is the fact that Mr. Williams showed no aggression, was not a risk, was not fleeing nor could Mr. Williams even flee as he was in an apartment, that the police had surrounded and contained. As we continue our analysis, we should apply the *Graham* factors to the case at hand and the facts that are known and pled.

In *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865 (1989), the Court established a three part test in determining the objectiveness of an officer's actions in the context of an excessive force claim under the Fourth Amendment. These factors are: 1. The severity of the crime at issue, 2. Whether the suspect poses an immediate threat to the safety of the officers or others, and 3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

I. Severity of the Crime.

First, let's look at the severity of the crime at issue. The Defendant attempts to mislead the court by claiming that it was believed that a violent crime was in progress. That is not the case by any stretch. According to the Defendant's Ex. 1, the CAD sheet, Officer Painter was responding to a call to a person in a home, the person was in a bed with a blanket and no weapons were seen. That is the extent of the report. When a person is committing a burglary, they are not in a home, with a locked door with the chain on it, asleep in a bed, wrapped in a blanket. Common sense, not even utilizing any experience as a police officer, would have told Officer Painter that this is not a burglary in progress. In fact, according to VA. Code sec. 18.2-92, the statute explicitly states, "If any person break and enter a dwelling house while said dwelling is occupied, either day or nighttime, with the intent to commit any misdemeanor except assault and battery or trespass, he shall be guilty of a Class 6 felony. In this case there was no evidence that Mr. Williams had broken and entered into the premises, he was sleeping and committing no crime and at worst he was trespassing by sleeping in the dwelling of which trespass is excluded from being considered a felony. Based upon the report to Officer Painter and the evidence at the scene there were no facts to lead him to any reasonable basis that a burglary was in progress, at best it would be trespass, which is a misdemeanor that would not justify deadly force.

Further, if we look at the at the incident report, Plaintiff's Exhibit 1A, the leasing office told Officer Claud that before the police were called, the woman who called the

police did not have a key to the unit, she came in for a spare key and admitted that she knew “my ex-boyfriend moved somebody into my house”. She asked the office to call the police, and the office refused. If the officers had just stopped by the leasing office before setting up a perimeter and going in with a K9, they would have known that the complainant had lied to them and that Mr. Williams, was likely lawfully inside.

Based upon the objective facts present at the time, there was no reasonable basis to believe that a serious crime was at hand. The only potential crime they had evidence of was trespass and there was no evidence of any violence or violent crime.

II. Whether the Suspect Poses an Immediate Threat to the Safety of the Officers or others.

With regard to the second part of the test, the Defendant argues that he was justified because he was allegedly investigating a burglary, this is not enough. Of course, when an officer has contact with a suspect, they have that contact because they are investigating a crime, there must be more than just an investigation to justify force. As we have seen in the cases cited throughout this brief, there must be a threat to safety by use of a weapon, flight or direct threat. None of that existed here. It is not disputed by the Defendant that there was no report of a weapon, see Defendant Ex. 1, we know there was no act of any violence or threat of violence to others. see Defendant Ex. 1, the suspect was asleep in a bed with a blanket. See Defendant Ex. 1. The Defendant does not dispute that there was no threat made to the officers. The area was secured by a perimeter and there were no other persons in the apartment and finally Mr. Williams came out slowly and peacefully as we can see from the video. Given these facts, there was no reasonable basis to use force on

Mr. Williams. The use of a K9, just like the use of a taser or another instrument was objectively unreasonable.

Further, to illustrate what are reasonable actions for an officer to follow, it is reasonable to look at the general orders. First, the general orders in Plaintiff's Ex. 2A, define what a reasonable basis is, "A belief, based on specific and articulable facts, which, taken together with the rational inferences from those facts reasonably warrants and officer's actions". Taking the totality of the facts as discussed and drawing a rational inference from them that there was a person asleep in a bed, it was not objectively reasonable to release a K9 to attack Mr. Williams.

Next the general orders establish the "policy" for using force, see Plaintiff's Ex.

3A:

Policy-Force may be used only to the extent reasonable to accomplish lawful objectives. All officers have an affirmative duty to prevent, intervene in and report any excessive use of force. Reasonableness will be judged based upon the totality of the circumstances at the time force is used. In determining whether or not force is reasonable, officers shall consider: 1. The severity of the crime at issue; 2. Whether the suspect poses an immediate threat to the safety of officers or others; 3. Whether the suspect is actively resisting arrest or lawful detention; or 4. Whether the suspect is attempting to evade apprehension by flight; and 5. The special vulnerabilities of young, frail or disabled persons.

In addition, the use of deadly force and less-than-lethal force is outlined in the general orders for the Defendant of which none of the circumstances applied in the present matter, of which the deployment of a canine falls under the Use of Force Policy, see Plaintiff's Ex. 4A and 5A.

Deadly Force - Deadly force is permitted only when it can be used without unreasonably endangering third parties. Deadly force is permitted only under the following circumstances: 1. When an officer reasonably believes that they are in imminent danger of death or serious injury, or when the officer reasonably believes that another person is in imminent danger of

death or serious injury. 2. To effect an arrest or prevent the escape from custody of a suspect whom the officer has probable cause to believe: a. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon and continues to pose an imminent threat of death or serious injury to the officer or others; b. Is attempting to escape by the use of a deadly weapon, or c. Is imminently likely to cause death or serious physical injury to another person unless apprehended without delay. Simply fleeing in a vehicle, even at high speeds, does not activate this subsection.

Less-than-Lethal Force-General 1. Officers are authorized to use approved, less-than-lethal force techniques in which they have been trained, and according to that training, and in which they have been deemed proficient by the department to: a. Protect themselves or another from physical harm; b. Restrain or subdue a resistive individual; or c. Bring a dangerously disorderly situation safely and effectively under control.

Finally, Defendant Painter tries to justify his use of the canine by stating he called out a verbal warning. Despite a warning, he needed to have a reasonable basis to use force, which we have established, he had none. Next, the warning would need to be clear and effective. We know from Officer Wilson's body camera in Defendant Ex. 6 and from Officer Painter's body camera in Defendant Ex. 3 that Defendant Painter was behind the threshold, crouched down. In fact, you cannot even clearly hear what he is saying in the hallway over the police radio. This taken in conjunction with the fact that Mr. Williams was asleep in the bedroom, which Defendant knew, made any attempt at a warning ineffective. Further, her gave no opportunity for anyone to respond. Looking at Defendant Ex. 3, it was 33 seconds from the time Defendant Painter released the K9 to Mr. Williams getting bitten, 33 seconds! How is it objectively reasonable to allow someone to react from a back bedroom in that time? That is a question for a jury.

III. Whether the Suspect is Actively Resisting Arrest or Attempting to Evade Arrest by Flight.

As we know from all the facts and the videos, at no time did Mr. Williams ever resist arrest nor did he ever evade arrest or flee. In fact, he could not have fled since a complete perimeter was established as evidenced in Plaintiff's Ex. 1A.

IV. Injury

Finally, with regard to injury, there is also no question in this regard. We see that Mr. Williams is bitten by the K9. As pled, he has sustained serious and permanent injury. Despite the Defendant attempting to minimize the Plaintiff's injury without any basis, it is pled that his injury is permanent and in fact he does have scarring and nerve damage, all of which will be supported through medical testimony.

CONCLUSION

WHEREFORE for the foregoing reasons, Plaintiff Derrick Williams requests that the Court Deny Defendant Gordon Painter's Motion to Dismiss Count I of the Plaintiff's Complaint.

Respectfully Submitted,
DERRICK WILLIAMS

Electronically Signed
By: /s/ Phillip S. Georges
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing along with Exhibits 1A-5A was sent via the ECF filing system and Email, on the 17th day of December 2024 to the following:

JulieA. C. Seyfarth (VSB #46207)
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Katherine C. Gill (VSB #87409)
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Respectfully Submitted,
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Chesterfield County Police
Incident Full Report
Incident Number: PD2210110254
Case Status: Unfounded

Incident Information

Miscellaneous-Suspicious Person/Vehicle/Situation

Location

5741 Quiet Pine Cir Apt

Time of Occurrence: 10/11/2022 12:10:00 PM Tuesday

Beat 81

10/11/2022 12:16:00 PM Tuesday

Subdivision

Dispatch: 10/11/2022 12:17:35 PM

Cross Street

Arrive: 10/11/2022 12:20:56 PM

Primary Detective:

Assignments:

Incident People:

Victim(s):

Witness(es):

Lead(s)/Offender(s):

Arrestee(s):

Other(s):



Name: Williams, Derrick

DOB: 3/17/1986

Age: 36

Sex: Male

Race: Black or African American

Ethnicity:

Height:

Weight:

Eye Color: Brown

Hair Color: Brown

Offenses:

Completed: No Miscellaneous-Suspicious Person/Vehicle/Situation

Residence/Home

Weapons:

Personnel:

| | | |
|---------------------------|-------------------|-----------------------|
| 0403 - Gunn, Curtis R | Primary Officer | 10/11/2022 1:38:47 PM |
| 2009 - Cash, Ashleigh F | Assisting Officer | 10/11/2022 1:38:47 PM |
| 0509 - Hlava, Eric M | Assisting Officer | 10/11/2022 1:38:47 PM |
| 1420 - Wilson, Shawn J | Assisting Officer | 10/11/2022 1:38:47 PM |
| 1709 - Mannino, Maxwell J | Assisting Officer | 10/11/2022 1:38:47 PM |
| 1957 - Claud, William B | Assisting Officer | 10/11/2022 1:38:47 PM |
| 1708 - Badgerow, Andrew J | Assisting Officer | 10/11/2022 1:38:47 PM |
| 0913 - Bowen, Daniel L | Assisting Officer | 10/11/2022 1:38:47 PM |
| 9001 - Morton, Timothy D | Assisting Officer | 10/11/2022 1:38:47 PM |
| 0707 - Donivan, Jonathan | Assisting Officer | 10/11/2022 1:38:47 PM |
| 0806 - Bowen, Jessie M | Assisting Officer | 10/11/2022 1:38:47 PM |
| 0717 - Painter, Gordon J | Assisting Officer | 10/11/2022 1:38:47 PM |
| 0608 - Windnagle, Kent A | Assisting Officer | 10/11/2022 1:38:47 PM |
| 0203 - Otero, Adrian | Assisting Officer | 10/11/2022 1:38:47 PM |

Property:

| Property Status | Property | Quantity | Value | Property Remarks |
|-----------------|----------|----------|-------|------------------|
|-----------------|----------|----------|-------|------------------|

PD21:

| Status | Description | Property Type | Lab Number |
|--|------------------|---------------|------------|
| Evidence (Including Weapons And Other Seized Property) | 6 digital photos | Photograph | |

Warrants:

| Warrant Type | Warrant Status | Warrant Number | Offense | Full Name |
|--------------|----------------|----------------|---------|-----------|
|--------------|----------------|----------------|---------|-----------|

Initial Narrative:

On 10/11/22 I responded to 5741 Quiet Pine Circle apartment in response to a Breaking and Entering. When I arrived on scene, I spoke with who stated that she left her apartment on 9/5/22 and has been living in and came back today to get the rest of her belongings. Her address was verified on her ID. stated that when she tried to open the apartment door, she realized she forgot her keys in , so she had to go to the leasing office to get a spare. then stated that when she opened the door the chain latch was across the door and the TV was on. said then she kicked in her door and then noticed a black male laying in her bed, screamed, and then ran outside and called 911. When asked if anyone else had a key or if it was possible that she knew them said no.

Responding Units set up a perimeter around the apartment and waited for K4. Once K4 arrived, units entered the apartment, and the dog performed a successful bite to the individual in the bed's upper left arm. The individual inside the apartment was then identified as Derrick Williams. Williams stated that he was inside the apartment because it belonged to his uncle, . Williams said he had been living there since 9/16/22.

Through further investigation is ex-boyfriend who had a key to the apartment. is not on the leases for the apartment but is listed as emergency contact and has been paying all the bills for the apartment since November of 2021 and has the credit card statements to prove it. stated he continued to pay because he thought he was on the lease and did not want the impact of bad credit.

Officer Claud went and spoke with who works in the leasing office at the apartment complex. stated that came in to get a spare key for her apartment and stated that someone was inside of her apartment and to call the police. told that she was the one who needed to call the police. then stated, "my ex-boyfriend moved somebody into my house." completed a voluntary statement that I will be scanning to add to the report.

I then spoke with the on-call attorney Collins-Meredith who advised that we do not have enough to charge Williams with breaking and entering or for false summoning. Collins-Meredith stated that depending on statement to dispatch it could be possible to move forward with charges for her. Sgt Bowen then called dispatch and had the call requested to be saved. Williams removed his belongings from the apartment and was transported by EMS to the hospital to get stitches. My BWC was on and recording while on scene.

NFD

Officer Narratives:

| Entered On | Entered By | Narrative Type |
|--|--------------------------|----------------|
| 10/12/2022 12:00:00 AM | 0717 - Painter, Gordon J | K-9 Narrative |
| <p>Ofc Painter 4 0717 BWC Crim Fel I was dispatched to assist patrol with a Break and Entering in progress. When I arrived I spoke with Sgt Hlava who informed me that the resident came home and found a male subject naked in her back bedroom, no one should be in the residence, and that no one else is on the apartment lease. I verified that the back door to the apartment was closed. When I arrived at the door was it was shut but unlocked, I pushed the door open and gave three loud K9 Warnings instructing whoever was inside to speak out or they would be bit by the police K9. I deployed K9 to search the residence for the Breaking and Entering suspect who had not acknowledged my warnings. He initially began searching the kitchen which was to the left and the open living room to the right. I recalled K9 and gave an additional warning before redeploying him in the direction of the hallway. As K9 was going the searching the hallway the suspect came out of the back right door just in front of K9. Ofc Wilson challenged the subject and K9 bit the suspect in the bicep area. The suspect was handcuffed and brought out of the residence and received medical treatment. NFD</p> | | |
| 10/11/2022 2:18:12 PM | 0806 - Bowen, Jessie M | Forensic |
| <p>Bowen JM B0806 On Oct. 11th 2022 while on scene of this call at 5741 Quite Pine Cir, I was requested to take photos of the injuries to the subject who was bite by K9. I observed an adult black male with several lacerations on his left tricep. I took six photos total including the photo board. I have uploaded the photos to the drive and emailed the PD71 to the forensic email account.</p> | | |

specifically authorized in this policy. Officers shall promptly notify a supervisor and submit a Use of Force Report **for any officer action that is outside of compliant handcuffing.** <4.1.1>

III. Terminology

Deadly Force: Any force likely to cause death or serious physical injury. The discharging of a firearm at a person is always considered deadly force except when an officer is discharging a less-than-lethal option pursuant to department policy. Deadly force is permitted only when it can be used without unreasonably endangering third parties.

Less-than-Lethal or Non-Deadly Force: Any force application that is not reasonably likely to cause death or serious injury. Force that is not likely to cause death or serious physical injury, but unexpectedly results in death or serious injury is not considered deadly force.

Reasonable belief (Reasonableness): A belief, based on specific and articulable facts, which, taken together with the rational inferences from those facts, reasonably warrants an officer's actions.

Serious Physical Injury: Bodily injury that creates a substantial risk of death; causes serious or permanent disfigurement; or results in a protracted loss or impairment of the function of any bodily part, member or organ.

Reportable Force: Force that when used requires administrative reporting by the officer (s).

IV. Procedures

A. General Considerations <4.1.1>

When and to the extent reasonable under existing circumstances, officers shall:

- a. Identify themselves as police officers and convey their purpose and reason for the use of force;
- b. **De-escalation is an outcome, not the process of de-escalation. Use of force can be a means to de-escalate a situation. Officers are expected to deescalate any situation based on the circumstances they are given at that time.**
- c. If feasible and reasonable under the circumstances, give a warning before using any force including deadly force;
- d. Evaluate the individual's need for medical attention any time force is used and summon appropriate medical assistance as necessary (See the policy on First Aid and Medical Attention);
- e. Advise any other person taking custody of a prisoner of the type and degree of force used and any symptoms or complaint of injury.



I. Purpose and Discussion

This policy provides officers with rules and guidelines on the reasonable use of force, including departmental philosophy on use of less-than-lethal force alternatives in some situations where deadly force might be authorized. It will allow officers to protect themselves and others by using force competently and confidently as is reasonable under existing circumstances. <1.3.4>

It is impossible to determine the reasonableness of a force action without an assessment of the totality of the circumstances in which the force was used. Simply characterizing the individual's behavior does not provide a satisfactory guide.

Officers shall consider the force factors present in determining an appropriate response to resistance and assaultive behavior and shall escalate or deescalate the type and degree of force applied during the force event as is reasonable.

II. Policy

Force may be used only to the extent reasonable to accomplish lawful objectives. All officers have an affirmative duty to prevent, intervene in and report any excessive use of force. Reasonableness will be judged based upon the totality of the circumstances at the time force is used. In determining whether or not force is reasonable, officers shall consider:

1. The severity of the crime at issue;
2. Whether the suspect poses an immediate threat to the safety of officers or others;
3. Whether the suspect is actively resisting arrest or lawful detention; or
4. Whether the suspect is attempting to evade apprehension by flight; and
5. The special vulnerabilities of young, frail or disabled persons.

- a. When officers take juvenile offenders into custody, particularly status offenders such as runaway juveniles, officers shall use the least coercive methods among reasonable force alternatives in accordance with department policy and law which is consistent with preserving public safety, order, and individual liberty. Therefore, if the only custodial offense is for being a runaway and the juvenile does not pose an immediate threat to the safety of the officer, themselves, or others, the officer should exercise mere presence, verbal commands, and physical force to take the juvenile into custody and avoid other use of force alternatives when possible.

The department favors certain less-than-lethal alternatives where they can be used in reasonable safety though deadly force may be authorized. Deadly force may be used only to combat an immediate threat of death or serious physical injury and shall be used only as



B. Deadly Force <4.1.2>

Deadly force is permitted only when it can be used without unreasonably endangering third parties. Deadly force is permitted only under the following circumstances:

1. When an officer reasonably believes that they are in imminent danger of death or serious injury, or when the officer reasonably believes that another person is in imminent danger of death or serious injury.
2. To effect an arrest or prevent the escape from custody of a suspect whom the officer has probable cause to believe:
 - a. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon and continues to pose an imminent threat of death or serious injury to the officer or others;
 - b. Is attempting to escape by the use of a deadly weapon; or
 - c. Is imminently likely to cause death or serious physical injury to another person unless apprehended without delay. Simply fleeing in a vehicle, even at high speeds, does not activate this subsection.
3. A verbal warning should be given, if feasible, prior to the use of deadly force.
4. Choke holds, vascular neck restrictions and/or any other control technique that restricts the intake of oxygen or disrupts the blood flow for the purposes of gaining control is prohibited, unless deadly force is applicable. <4.1.6, 4.1.7>
 - a. The use of a neck restraint by a law-enforcement officer is prohibited unless the use of a neck restraint is immediately necessary to protect the law-enforcement officer or another person from death or serious bodily injury. (VA Code 19.2-83.4)
 - b. "Neck restraint" means the use of any body part or object to attempt to control or disable a person by applying pressure against the neck, including the trachea or carotid artery, with the purpose, intent, or effect of controlling or restricting the person's movement or restricting the person's blood flow or breathing, including chokeholds, carotid restraints, and lateral vascular neck restraints. (VA Code 19.2-83.3)

This section is not intended to prohibit an officer from putting a hand on the back of subject's neck in order to gain control or assist in the takedown of the suspect, so long as the airway is maintained. Nor does this section prohibit an officer from placing hands on the back of a subject's head in order to gain control or compliance, so long as the airway is maintained.



C. Less-than-Lethal Force-General

1. Officers are authorized to use approved, less-than-lethal force techniques in which they have been trained, and according to that training, and in which they have been deemed proficient by the department to:
 - a. Protect themselves or another from physical harm;
 - b. Restrain or subdue a resistive individual; or
 - c. Bring a dangerously disorderly situation safely and effectively under control.
2. Attempts to Swallow Drugs and all other evidence – Force shall not be applied directly or indirectly to a person to prevent the concealing or swallowing of drugs once the substance has entered the mouth. EMS shall be summoned due to the possibility of an adverse reaction.

D. Discharge and Display of Weapons

1. Officers may discharge their firearm to defend against an animal when it is reasonably believed the animal poses an imminent threat of serious physical injury and no other reasonable means of protection is available.
2. Officers may discharge their firearm to dispatch a suffering animal for humane purposes, but only as a last resort. Reasonable efforts shall be made to appropriately involve the Animal Services Unit, or any veterinary services that volunteers on-call services in the case of domestic animals.
3. Negligent or careless use, discharge, or display of weapons is strictly prohibited.
4. Police officers shall not discharge their firearm under the following circumstances:
 - a. At or from a moving vehicle, unless deadly force is being used against the officer or another person and the officer reasonably believes that no other option is reasonably available;
 - b. To only protect or prevent damage to real or personal property; or
 - c. When based on the totality of the circumstances, discharging a firearm would constitute a greater risk to innocent human life than do the individual's actions.
 - d. Warning shots are prohibited. <4.1.3>

E. Medical Assistance <4.1.5>

Officers shall provide appropriate first aid and medical attention to individuals who are injured or complain of injury or otherwise reasonably appear to be in need of medical attention. All individuals on whom force has been used and/or taken into custody shall be monitored closely for medical distress and, at the first sign of such distress, shall be

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I. Policy

Members shall interact with and utilize police canines only in accordance with this Policy.

II. Purpose

This Order establishes rules and guidelines for the utilization of the **Special Operations Division (SOD), Tactical Operation Unit (TOU)** Canine Section teams and for proper interaction with department canines.

III. Procedures

A. Command and Supervision Responsibilities <41.1.4a>

1. The Canine Section sergeant shall report to the Tactical Operations Unit (TOU) Lieutenant. Patrol canine handlers and drug detection canine handlers, **Bloodhound canine handler, Explosive Ordinance handlers**, and drug detection canine handlers report to the canine sergeant.

B. Use of Force <41.1.4a>

The deployment of a canine as a use of force shall conform to the principles and guidance of Use of Force Policy 2.2.02.

1. The canine **handler** is responsible for the control of their canine.
2. The mere presence of a police canine or its use in searching buildings and other areas is not, in itself, use of force, but canines shall nonetheless be deployed only if it is reasonable under prevailing circumstances.
3. Use of a police canine to make physical contact with an individual may be a significant use of force and shall be done only in relatively serious situations and where lesser means of force are not available or reasonably practical.
4. The canine **handler** must determine if it is safe to release a canine and if the potential use of force is reasonable for the situation.
5. Justification for using a police canine in this manner may include, but is not necessarily limited to, the following:

