

Sacramento Police Department

Use Of Force Report

Incident Entered By: Police Sergeant Adam Vassallo - 1039
Assigned Investigator: [Incident pending assignment]

Incident Details

Date Received	Date of Occurrence	Time of Occurrence
5/9/2018	5/9/2018	13:15
Record ID #	Report Number	IA No
19868	18-138490	UOF2018-036
Date/Time Entered		
5/22/2018 06:59		

Incident Summary

See attached reports. Based on a review of ICC and BWC footage along with the crime report, this incidents has been referred to Internal Affairs for further evaluation

Incident Location

- [REDACTED] Cal Valley Way, Sacramento, CA 95822 - Location of Occurrence: 1 - Northwest - Precinct: 4B

Categories

Use of Force Specific Information

Reason for Use of Force	Service Being Rendered	
Assaulting Officer	Calls For Service	
Weather Condition	Lighting Condition	Distance to Citizen
Clear		11 feet to 14 feet
Citizen Injured	Citizen Taken to Hospital	Citizen Arrested
Yes	Yes	Yes
More than 1 Citizen Involved		
No		
Citizen's Build	Citizen's Height	
Med	5'10" to 6'0"	
Officer Assessment of Citizen Condition During Incident		
Drugs		
Officer(s) Injured	Officer(s) Taken to Hospital	
No	No	

Reporting/Involved Citizen Information

DOB: 1/3/1957 Race: Black Ethnicity: Gender: Male

Address

• [REDACTED]

Phone

- [REDACTED]

Role

- Arrested Person

Types of Resistance Citizen Used Against Officer(s)

- Other Weapon

Injuries sustained by this citizen

Injury	Regions	Injury Locations
Admitted to Hospital		
Visible Injury		

Charges against this Citizen

- Other Felony
- 148(a) PC - Misdemeanor

Involved Officers

Police Officer John Harshbarger - ABRA Number: 390

Assignment at time of incident: Title: Police Officer OSS/METRO/TRAF/AIR OPS/K9

Video Footage: Worn/Activated

Role

-

Force used by this officer against the citizen

- BeanBag - Was force effective: Yes

Force Used	Effective?	Regions	Points of contact
BeanBag	Yes		

Police Officer Joshua Smith - ABRA Number: 4027

Assignment at time of incident: Title: Police Officer OSS/METRO/TRAF/AIR OPS/K9

Video Footage: Worn/Activated

Role

-

Force used by this officer against the citizen

- K-9 - Was force effective: Yes

Force Used	Effective?	Regions	Points of contact
K-9	Yes		

Citizen Witnesses

Address

- [Redacted]

Phone

- [Redacted]

Role

-

Address

- [Redacted]

Phone

- [Redacted]

Role

-

Address

- [Redacted]

Role

-

Officer Witnesses

Police Officer Kristen Beal - ABRA Number: 3528

Video Footage [No Response]

Role

-

Police Officer C Hughes - ABRA Number: 440

Video Footage: [No Response]

Role

-

Police Officer Kelli Streich - ABRA Number: 3866

Video Footage [No Response]

Role

-

Tasks

No tasks to show

Running Sheet Entries

No running sheet entries to show

Attachments

Date Attached	Attachment Description	Attachment Type
5/22/2018	General Order	pdf
5/22/2018	Cad Call	pdf
5/22/2018	Dispatch Audio	wav
5/22/2018	K9 Red Border	pdf

Assignment History

Sent Dt	From	To
8/17/2018	Ofcr. Mark Scurria #0526	(None Specified)
<p>Assignment notes Field status changed in IAPro from To IA to Released</p>		
<p>Email sent to receiver No email sent</p>		
8/17/2018	Ofcr. Mark Scurria #0526	(None Specified)
<p>Assignment notes Released back to IAPro</p>		
<p>Email sent to receiver No email sent</p>		

Chain of Command History

Routing #1	
Sent From:	Police Sergeant Adam Vassallo
Sent To:	Police Lieutenant-Exempt Stephen Moore
CC:	(none)
Sent Date/Time:	5/22/2018 7:47 AM
Instructions from Police Sergeant Adam Vassallo to Police Lieutenant-Exempt Stephen Moore:	
Cal Valley UOF	
Comments/Response from Police Lieutenant-Exempt Stephen Moore:	
Comments: Required files attached. Event previously referred to Internal Affairs for evaluation.	

Routing #2	
Sent From:	Police Lieutenant-Exempt Stephen Moore
Sent To:	Police Captain Alisa Buckley
CC:	(none)
Sent Date/Time:	5/25/2018 7:09 PM
Instructions from Police Lieutenant-Exempt Stephen Moore to Police Captain Alisa Buckley:	
Captain, this is for your review. Evaluation of justification and policy is being conducted by IA.	
Comments/Response from Police Captain Alisa Buckley:	
Comments: Policy evaluation and the use of force involved in this incident is under IAD investigation.	

Assigned Investigator Signature Line

[Incident pending assignment]

Chain of Command Signature Lines

Police Lieutenant-Exempt Stephen Moore

Police Captain Alisa Buckley

City of
SACRAMENTO

Department of Human Resources

June 24, 2019

Sean D. Currin
1912 I Street
Sacramento, CA 95811

Dear Sean D. Currin:

The purpose of this letter is to advise you of my decision on your request for review of the letter of reprimand dated April 23, 2019.

A meeting was held on June 19, 2019, in response to the request for review in accordance with Article 21, Section 21.2(a) of the Agreement between the City of Sacramento and the Sacramento Police Officers Association. At that meeting you appeared along with Officer Josh Smith as his representative. Officer Josh Smith was also present.

After carefully reviewing this matter, I have concluded that the Police Department was justified in issuing a written reprimand to Officer Josh Smith.

Sincerely,



Dawud Brewer
Labor Relations Officer

cc: Police Personnel
Internal Affairs
Human Resources, Labor Relations

E. JOHNSON
 J. A. DIXON
 W. WELTY
 R. C. WOOD
 D. E. MASTAGNI
 J. J. ROMANSKI
 PHILLIP K.A. MASTAGNI
 KATHLEEN N. MASTAGNI STORM
 SEAN D. HOWELL
 WILLIAM P. CREGIER
 SHAN D. CURRIN
 ISAAC S. STEVENS
 PAUL T. DOLBERG
 DANIEL L. OSIER
 JUDITH A. ODBERT
 BRIN M. DERVIN
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 KIMBERLY A. VELAZQUEZ
 JOSEPH A. HOFFMANN
 DANIELLE J. WILLIAM
 MARIA S. ROSENFELT

All Correspondence in Sacramento Office
www.mastagni.com

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FACSIMILE TRANSMISSION COVER SHEET

--00000--

DATE: May 1, 2019
TO: Shelley Banks-Robinson, HR Director
 City of Sacramento
FAX NUMBER: (916) 808-1907
FROM: Jessica Delgado on behalf of
 Attorney Sean D. Currin
FAX NUMBER: (916) 446-2857
RE: Request to Appeal on behalf of Officer Josh Smith

TRANSMISSION CONTAINS TOTAL OF 2 PAGES, INCLUDING THIS COVER SHEET

IF YOU DO NOT RECEIVE ALL PAGES PLEASE CONTACT ME AT (916) 318-4645.

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MICHAEL B. BOYD
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 DANIELLE J. WILLIAMS

All Correspondence to Sacramento Office
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May 1, 2019

Sent Via Facsimile & U.S. Mail

Shelley Banks-Robinson
 Director of Human Resources, City of Sacramento
 915 I Street, First Floor
 Sacramento, CA. 95814
 Fax: (916) 808-1907

**RE: Request to Appeal on behalf of Officer Josh Smith;
 Our File No.: LDF/18-2840-C**

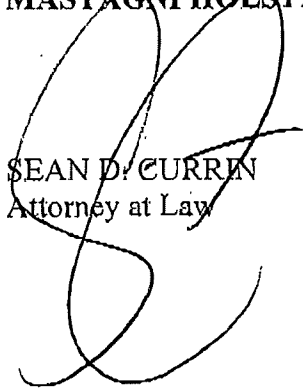
Dear Ms. Banks-Robinson:

Please accept this letter on behalf of my client Officer Josh Smith as his request to appeal his Letter of Reprimand pursuant to section 21.2 of the Memorandum of Understanding between the City of Sacramento and the Sacramento Police Officers' Association.

At this time we would like to request all documents used to rely on the Letter of Reprimand issued to Officer Smith on April 26, 2019. Please contact me at your earliest convenience so we can schedule a mutually agreeable time to meet.

Sincerely,

MASTAGNI HOLSTEDT, A.P.C.



SEAN D. CURRIN
 Attorney at Law

SDC/jd

cc: President Tim Davis

City of
SACRAMENTO
Police Department

DANIEL HAHN
Chief of Police

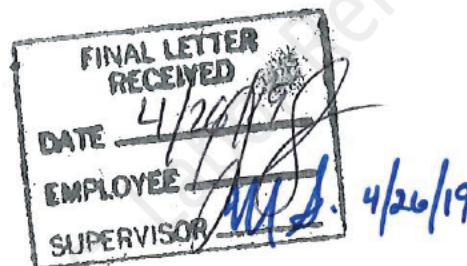
5770 Freeport Blvd., Suite 100
Sacramento, CA 95822-3516

(916) 808-0800
Fax: (916) 808-0818
www.sacpd.org

April 23, 2019

IAD2018-157

Officer Joshua Smith
5770 Freeport Blvd., Ste. 100
Sacramento, CA 95822



Dear Officer Smith:

This letter is to inform you that you are hereby reprimanded in your position as a Police Officer with the City of Sacramento. This action is based on the following facts:

1. On May 9th, 2018, at approximately 1314 hours, you responded code 3 to the area of Hing Avenue and Carnation Avenue as a K9 officer to assist Officer Hughes regarding a subject, Carl Ulmer who had armed himself with a rock/brick.
2. Upon your arrival, you deployed your assigned police service dog, "Kai" and proceeded on foot to [REDACTED] Cal Valley Way, where Officer Hughes and Ulmer were.
3. Officer Hughes advised that he did not want a "dog" (police K9) but wanted responding officers to deploy a less-lethal shotgun.
4. Officer Harshbarger retrieved his less-lethal shotgun as Ulmer continued to refuse to drop the rock/brick.
5. After giving commands to Ulmer to drop the rock/brick, and Ulmer's repeated refusals to comply, Officer Harshbarger fired his less-lethal shotgun at Ulmer. You subsequently deployed your police service dog at Ulmer, despite Officer Hughes' stating that he did not want the service dog deployed.
6. Ulmer sustained punctures and lacerations to his left leg as a result of your police service dog deployment.
7. After an internal investigation, it was determined that you used excessive force and improper tactics in your apprehension of Ulmer.
8. During a fact-finding interview conducted on October 12th, 2018, you acknowledged/admitted the following:
 - You deployed your police service dog on the above call without requesting prior authorization to deploy from the District Sergeant (page 8 of 62, line 330).
 - You stated the reason you did not ask for authorization or approval from the District Sergeant to deploy your police service dog on this call over the radio was because the call was "a rapidly evolving event....I could have asked permission, but I didn't." (page 27 of 62, lines 1173-1180).

- You indicated you did not hear Officer Hughes' request to not deploy your canine (page 13 of 62, lines 545 and 564).
- You indicated that you were preparing for "an overwhelming less-lethal incident" with your police service dog, and the less-lethal shotgun on Ulmer (page 15 of 62, lines 653-658).
- You specified that your training on "overwhelming less-lethal" was "Simultaneous canine deployments, along with a 40-millimeter, as well as beanbags, and distraction devices all at the same time" (page 16 of 62, lines 666-667).
- You stated you deployed your canine at Ulmer after Officer Harshbarger fired his first less-lethal round at Ulmer (page 18 of 62, lines 768-769).
- You stated you felt Ulmer was still a threat after going to the ground after Officer Harshbarger's less-lethal shotgun rounds were fired because Ulmer was within "a hand's reach...", of bricks (page 17 of 62, lines 727, 731-736).
- You stated you allowed your canine to stay engaged on Ulmer after he was on the ground in order to "formulate that plan of going hands-on, develop that custody team, then that's when I pull my dog off" and for "officer safety reasons" (page 37 of 62, lines 1633-1639).
- You stated it was your opinion that deploying your K9 at Ulmer was a reasonable use of force (page 57 of 62, lines 2521-2543).

Your actions constituted cause for disciplinary action pursuant to the Rules and Regulations of the Civil Service Board, specifically, Rule 12.2 (c) inefficiency; (d) inexcusable neglect of duty; (p) willful disobedience of a lawful rule, order or direction; and (w) any conduct rationally related to employment which impairs, disrupts, or causes discredit to your employment and the public service.

Your actions in this matter are in violation of the following Sacramento Police Department General Orders and California Penal Code, which states, in relevant part:

580.02
USE OF FORCE
5-16-17

POLICY

It shall be the policy of the Sacramento Police Department that officers' value and preserve the sanctity of human life at all times. Officers shall use only that amount of force necessary under the circumstances presented that the officer reasonably believes is required. Officers are expected to use de-escalation techniques when reasonably possible and without increasing the risk of harm to officers or others in an effort to reduce or eliminate the use of force. When using force, officers shall continuously reassess the perceived threat to select the reasonable use of force response.

When making use of force decisions, officers should be mindful that subjects may be physically or mentally incapable of responding to police commands due to a variety of circumstances, including, but not limited to, alcohol or drugs, mental impairment, medical conditions, or language and cultural barriers.

B. GENERAL

5. When reasonable under the totality of the circumstances and where it may be accomplished without increasing the risk of harm to officers or others, officers should attempt to de-escalate situations. De-escalation techniques include, but are not limited to, gathering information about

the incident; assessing risks; gathering resources (personnel and equipment); using time, distance, cover; using crisis intervention techniques; and communicating and coordinating a response.

580.12
LESS LETHAL WEAPON SYSTEM
10-09-12

POLICY

It shall be the policy of the Sacramento Police Department to deploy and use Less Lethal Weapon Systems as instructed in Department training in order to maximize the safety of all individuals involved in an incident.

A. DEFINITIONS

1. FLEXIBLE BATON ROUND (BEAN BAG) – A Less Lethal 2 ¾" 12 gauge shotgun round firing a Kevlar bag containing 40 grams of lead shot at a velocity of 280 feet per second (FPS). The drag stabilized projectile delivers 112 ft/lbs of energy on impact. Flexible baton rounds are discharged from a dedicated 12-gauge shotgun that is distinguishable by an orange butt stock and fore grip. This round provides accurate and effective performance when fired from the approved distance of not less than five (5) feet but not more than 50 feet from the target.

E. USE OF LESS LETHAL WEAPONS

4. Authorization to use the flexible baton or the 40mm Less Lethal weapon systems shall be made by a field supervisor.

6. When practical, prior to firing a Less Lethal weapon system, the discharging officer shall

- a. Loudly announce that a specified Less Lethal weapon system is going to be used and
- b. Instruct the Communications Center to broadcast that a specified Less Lethal weapon system is to be used. The purpose of this notification is to alert all personnel that a Less Lethal weapon is being used and to comply with case law.

F. TACTICAL CONSIDERATIONS

2. Unless extraordinary circumstances exist, consideration should be given to the following responsibilities:

a. Deploying officer(s) – at least one officer to discharge the Less Lethal weapon system. Multiple officers with Less Lethal weapon systems may be utilized in a single incident. The use of K-9 and the Conducted Energy Device may also be appropriate in concert with Less Lethal weapon systems.

3. Under exigent circumstances, nothing in this order shall prohibit an officer from deploying and discharging a Less Lethal weapon without requesting authorization or having the presence of additional officers.

580.14
USE OF CANINES
02-23-17

POLICY

It shall be the policy of the Sacramento Police Department to use only canines in appropriate circumstances and to review all injuries received from Department canines.

PROCEDURE

A. GENERAL

1. Approval shall be obtained from a field supervisor prior to using a canine to search for or apprehend an individual. Exception: A rapidly evolving situation that is within the deployment guidelines, but in which it is impractical to obtain supervisory approval.
2. It is recognized that situations may arise that do not fall within the provisions set forth in this policy; in any such case, a standard of reasonableness shall be used to review the decision to use a canine in view of the totality of the circumstances.

B. DEPLOYMENT GUIDELINES

Department canines may be used to apprehend an individual if the canine handler and approving supervisor reasonably believe that the individual has either committed or is about to commit any offense and if any of the following conditions exist:

1. There is a reasonable belief that the individual poses an immediate threat of violence or serious harm to the public, any officer, or the handler.
2. The individual is physically resisting arrest and the use of a canine appears necessary to overcome such resistance.
3. The individual is believed to be concealed in an area where entry by other than the canine would pose a threat to the safety of officers or the public.

NOTE: Absent the presence of one or more of the above conditions, mere flight from pursuing officer(s) shall not serve as good cause for a canine apprehension.

C. CONSIDERATIONS PRIOR TO DEPLOYMENT

Prior to the use of a Department canine to search for or apprehend an individual, the canine handler and/or supervisor at the scene shall consider all pertinent information reasonably available at the time. The information shall include, but is not limited to

1. The individual's age or an estimate thereof.
2. The nature of the suspected offense.
3. Any potential danger to the public and/or other officers at the scene if the canine is utilized.
4. The degree of resistance, if any, the individual has shown.
5. The potential for escape or flight if the canine is not utilized.
6. The potential for injury to officers or the public caused by the individual if the canine is not used.

Continuation of the above acts or other misconduct on your part will subject you to further disciplinary action, up to and including termination.

A copy of this letter will be placed in your personnel file. This letter will be withdrawn from your official personnel file eighteen (18) months from the date issued provided there has not been additional formal discipline imposed during the eighteen (18) month period. Pursuant to the Agreement covering your classification, you may have an administrative review of the reprimand by submitting a request in writing within seven (7) days to the Director of Human Resources at 915 I Street, Historic City Hall, First Floor, Sacramento, CA 95814.

Sincerely,



Dave Peletta, Deputy Chief
Office of Operations

cc: Human Resources - Labor Relations
Human Resources - Employment, Classification, and Development

Internal Affairs Division ~ CONFIDENTIAL ~ Labor Relations

City of
SACRAMENTO
Police Department

DANIEL HAHN
Chief of Police

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Report Number: 2018-138490

Please note that the records provided in this release do not include records or portions of records that are exempt from disclosure pursuant to applicable law. Without limiting other arguments against disclosure that may exist, the following records or portions of records are specifically prohibited or exempted from disclosure:

Records or information, the disclosure of which would compromise the anonymity of complainants or witnesses (Cal. Pen. Code § 832.7(b)(5)(B)); and

Records or information, the disclosure of which is exempted or prohibited pursuant to federal or state law (Cal. Gov. Code § 6254(k); see also Cal. Const. art. 1 Sec. 1).

Sacramento Police Department
Professional Standards Unit
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spdpasu@pd.cityofsacramento.org