

INTERNAL AFFAIRS INVESTIGATIVE REPORT

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Date IA/PSD: 05/14/2014 Date to Chain:

Date to Chief: 08/20/2014 Date Expired: 11/10/2014

Status: Reop

Status Date: 07/23/2014 Assnd To: WEILAND, J. M.

ASSOCIATED NAMES

SO KERKAU, JEFFREY D Sex: M Race: W Action: WRITTEN WARNING / TRAINING

ALLEGED RULE OF CONDUCT VIOLATED-----CLOSURE

Inefficiency In Job Performanc

Sustained

CO LITCHFIELD, BRADFORD L

Sex: M Race: W Action: NONE

SUMMARY/NOTES

On May 15th, 2014, the Internal Affairs Division received an Administrative Investigation Referral Form from Sergeant Brad Litchfield alleging potential misconduct on the part of Officer Kerkau. According to the complaint form, while tracking a felony suspect his police dog came in contact with an uninvolved juvenile and his police dog bit the juvenile. The administrative investigation was assigned to Sergeant Weiland. The scope of this investigation was to determine if there were any policy and/or procedure violations related to the incident.

The investigation associated with the incident, was documented under GPD Case Number 02-14-009093, and was completed by Lieutenant Schentrup. Initially a review of the incident, supplemental reports, photographs, and other associated documentation was completed. Sworn interviews were also completed with Lieutenant Michael Schentrup, Officer Jaime (Norwood) Hope, Officer Daniel Abbott, Officer Charles Owens (K-9 Unit trainer), Sergeant Bradley Litchfield (K-9 Unit Supervisor), Officer Edward Ratliff and Officer Jeff Kerkau (subject interview).

On May 11th, 2014, Officer Jaime Hope was investigating a noise complaint in the 2800 block of NE 11th Terrace. While trying to locate the source of the noise he turned around after a vehicle passed him. The vehicle pulled into a driveway from where the noise was coming. Officer Hope parked his marked unit and began exiting his marked unit when the driver and sole occupant of the vehicle fled on foot without provocation. Unsure why he fled, Officer Hope checked the vehicle and located narcotics. A perimeter was established and K-9 Officer Kerkau responded to the call to assist with the investigation. While on a perimeter position, Officer Ratliff was contacted by a witness and notified that he observed the suspect flee east on NE 28th Avenue and then north onto NE 12th Street. The suspect ran north and then back westbound into a yard north of NE 28th Avenue.

Officer Kerkau arrived on scene and Officer Hope confirmed he did have a felony charge. Officer Kerkau then utilized his K-9 partner "Roo" to conduct felony track. Officer Kerkau was using his 15 foot tracking leash attached to a harness. Officer Abbott assisted as his back up/support officer on the track. K-9 "Roo" tracked north onto NE 12th Street and then made a turn into a yard, later determined to be [REDACTED]. The track was

consistent with the information provided by the witness. The yard was very dark and K-9 "Roo" pulled to a van that was parked in the driveway in front of the residence. K-9 "Roo" showed a lot of interest to the van and went up along the driver's side and began jumping up on the door, giving an indication that someone was inside. Officer Kerkau utilized his flashlight to look in the van and observed a female crouched down in the front seat. The female, identified as [REDACTED], began screaming and appeared very scared. It was obvious that the subject in the car was not the suspect wanted for the narcotics charge. Officer Kerkau pulled K-9 "Roo" back towards him and began telling Officer Abbott that there was a person in the van and it was not the suspect. Simultaneously as he was backing away from the van and pulling "Roo" back he heard a noise behind him. As he turned around he noticed that K-9 "Roo" was making contact with a subject directly behind him who had been sitting on a cooler in the yard. Realizing what was taking place, Officer Kerkau attempted to pull K-9 "Roo" away from the subject but was not able to react quickly enough. K-9 "Roo" then grabbed the subject, [REDACTED], on his left thigh. Initially it was believed that contact was only made with the clothing he was wearing.

Officer Ratliff responded to the house to assist with the situation. Officer Kerkau continued his track which led to the backyard and then to a fence going to an adjacent yard. Officer Ratliff notified Officer Kerkau that [REDACTED] did have an injury on his thigh. At this point, Officer Kerkau discontinued his track and returned to the front of the residence.

It was confirmed that [REDACTED] did have punctures on his thigh consistent with a dog bite. Officer Kerkau then requested a supervisor respond to the location. Lieutenant Schentrup was already on the call and responded. Contact was made with [REDACTED]'s mother, [REDACTED], and she was made aware of the situation. EMS was also summoned to the location. ACFR transported [REDACTED] to Shands Hospital to be treated for the injury. Officer Kerkau followed Canine Procedure policy notifying his canine chain-of-command. Lieutenant Schentrup completed an initial investigation and documented the incident under GPD Case number 02-14-009093. As a part of his investigation he interviewed the involved parties. The location and [REDACTED]'s injuries were also photographed.

Based upon his investigation and also relayed in his sworn interview, Lieutenant Schentrup was able to determine that [REDACTED], [REDACTED] and Laseth Bryant were sitting in the front yard at 2824 NE 12th Street, near the sidewalk. They noticed that the K-9 was coming north on NE 12th Street from NE 28th Avenue. [REDACTED] is afraid of dogs so she decided to get into the van which was parked in their front yard. As Officer Kerkau and K-9 "Roo" made it to their location, they came into their yard. After they went up to the van and found [REDACTED], K-9 "Roo" ended up biting [REDACTED]. Lieutenant Schentrup was unsure why no one announced themselves to Officer Kerkau or Officer Abbott when they went into the yard. It is presumable that the series of events happened so quickly that they were unable to say anything. After EMS cleared the scene he requested all of the lights be turned out at the residence to re-create the scene. At the time of the incident, no exterior lights were on at the residence. According to Lieutenant Schentrup the front yard was very dark. The illumination from the street lights was shielded by trees along the roadway. This likely contributed to the situation. Lieutenant Schentrup stated that based upon his assessment, [REDACTED] being bitten was completely unintentional. Lieutenant Schentrup stated he relayed this information to the family as well.

In his testimony, Officer Abbott also stated that the front yard location was very dark. He stated as he trailed Officer Kerkau into the yard, Officer Kerkau went toward the van, he quickly peaked into the back of the van and then began scanning the front yard north of the driveway. He stated he never observed [REDACTED] or Laseth Bryant sitting near the sidewalk on the opposite side of the driveway. The first time he saw them was when K-9 "Roo" had [REDACTED]

by his pants leg. He advised that he got caught completely off guard after realizing that they were just feet away from them when they came into the yard. He too initially thought that "Roo" only grabbed [REDACTED]'s clothing and did not make contact with his leg because it happened so quickly. He stated Officer Ratliff then came up to the house and stayed with [REDACTED] and they then continued the track. Moments later they were notified that he did have injury so they returned to the front yard.

Attempts were made to interview [REDACTED], [REDACTED] and Laseth Bryant. I did speak with [REDACTED] at her residence in an attempt to solicit interviews and she referred me to her attorney, Mr. Robert Rush. After several inquiries an interview time was scheduled at Mr. Rush's office on August 4th, 2014. The family failed to show up for the appointment. Mr. Rush's staff was unable to make contact afterwards so an interview was not completed.

Officer Kerkau was interviewed on August 12th, 2014, and provided sworn testimony associated with the investigation. Officer Kerkau testified that he initiated a felony track from the traffic stop after confirming that Officer Hope had felony charges. When starting the track, information was relayed over the radio from Officer Ratliff that a witness observed the suspect run into a yard on the west side of the road north of NE 28th Avenue. He stated he utilized a fifteen foot tracking leash hooked to the tracking harness on K-9 "Roo".

Officer Kerkau stated when the track turned off of NE 12th Street and into the yard at 2824 NE 12th Street it was consistent with the information as provided by the witness. K-9 "Roo" quickly ran up to the van parked in the driveway and began alerting to the van. It was at this point that Officer Kerkau used his flashlight to light up the interior of the vehicle. He observed a female slumped over in the driver's seat. According to Officer Kerkau the subject began screaming, obviously terrified of the dog. Officer Kerkau stated he was concerned that she was going to step out of the vehicle so he began reeling in the tracking leash and backing away from the van. He stated he began telling Officer Abbott that there was a person in the driver's seat and it was not the suspect when he heard a noise behind him. He turned around to see K-9 "Roo" sniffing the leg of [REDACTED] who was sitting on a cooler directly behind him. He said out loud something to the effect of "Where did they come from!" He said that [REDACTED] used his hand to attempt to move "Roo"'s head away from his leg when "Roo" bit him on the left thigh area. Officer Kerkau stated he attempted to pull "Roo" away from [REDACTED] but it was too late. K-9 "Roo" pulled [REDACTED] off of the cooler to the ground. Officer Kerkau grabbed "Roo" and removed him from his pants leg. Officer Kerkau was unsure that [REDACTED] was injured and Officer Ratliff came up to the residence to assist. [REDACTED] stayed with Officer Ratliff and they continued their track. The track led to the backyard and then towards a fence going to another yard. The track was discontinued once they became aware that [REDACTED] did have an injury to his leg.

In his interview, Officer Kerkau was asked why he did not use a flashlight when entering the yard. He explained that when utilizing a flashlight it can diminish night vision. Additionally, it can also create a back light situation illuminating your position to a potential suspect. Officer Kerkau described this as a potential officer safety issue, particularly because at the time that the suspect ran from Officer Hope, it was unsure why he ran. Additionally when he fled he had not been searched so there was a potential of the suspect being armed. Based upon the unknowns in this situation Officer Kerkau advised that he utilized extreme caution when entering the yard because he believed the suspect entered it based upon his K-9 "Roo"'s track. Officer Kerkau stated that he utilized the knowledge and tactics that he received in training. For that reason he limited the use of the flashlight in this particular situation.

Officer Kerkau explained that clearly it was not his intent for his police dog to bite an uninvolved bystander during this incident. He believes that the suspect may have gone

through the yard at some point based on how K-9 "Roo" reacted. Once in the yard he stated everything happened so quickly that it could not be avoided. He felt the situation could have been prevented if one of the subjects in the yard announced their presence when he and Officer Abbott entered. That being said, during his interview, Officer Kerkau did take full responsibility for what occurred and stated it was his hope to learn from this situation to ensure it does not take place again. Officer Kerkau also acknowledged that the responsibility of controlling the police dog falls onto the handler.

Officer Charles Owens is the trainer for the K-9 Unit. Sergeant Litchfield is the K-9 Unit supervisor. Both were questioned about the tactics and equipment utilized by Officer Kerkau during this incident in their interviews. Both agreed that Officer Kerkau was acting within Canine Policy guidelines when and how he deployed in this situation. He had a confirmed felony which allows the ability to conduct track. He utilized a fifteen foot tracking leash with a tracking harness on the dog which too is within the canine policy. The canine policy states that the leash selection is the discretion of the handler. Even though he was using proper tactics and procedures it is the handler's responsibility to control their dogs actions at all times. It would not be unusual for property owners to be outside of their residence at any time of day or night so extreme caution must be utilized when entering private property. It was Officer Kerkau's responsibility to ensure that no innocent bystanders were readily accessible in this situation.

Regarding Officer Kerkau and K-9 "Roo"'s past performance Sergeant Litchfield has never questioned his decision making or performance as a handler. Officer Kerkau and K-9 "Roo" have certified annually meeting all Florida Department of Law Enforcement requirements, since receiving their initial K-9 Team training in 2012. In May 2014, after this incident took place, the K-9 team was evaluated again and once more satisfied all requirements as required by FDLE. In addition, the entire Canine Unit, including Officer Kerkau and K-9 "Roo", were assessed by Lieutenant Frank Glover, Lee County Sheriff's Office Canine Unit Commander as well as a certified Expert Witness in the field of police dog work. Overall, he was satisfied with the training and leadership associated with GPD's Canine Unit to include that of Officer Kerkau.

CONCLUSIONS

The scope of this investigation was to determine if there were any policy and/or procedure violations committed by Officer Kerkau with his K-9 partner "Roo" in this instance where his police dog unintentionally came in contact with an uninvolved juvenile.

The totality of this investigation came to the following conclusion. Officer Kerkau was acting within the range of responsibilities as a canine handler when he responded to assist Officer Hope. Officer Hope had a driver flee from a vehicle on foot and developed probable cause to arrest him for a felony narcotics violation. A perimeter was established. A witness observed the suspect running north on NE 12th Street and then into a yard just north of NE 28th Avenue on the west side of the roadway. Officer Kerkau conducted a felony track which led to a yard at [REDACTED]. It appears that the track was consistent with the flight path of the suspect. Officer Kerkau's police dog alerted to a vehicle in the driveway. Officer Kerkau shined his flashlight in the vehicle to reveal a female who was not the suspect laying down in the front seat. The female began screaming out of fear. Officer Kerkau responded by backing away from the vehicle and shortening the length of his leash. While notifying his back up officer of the female in the van his police dog unintentionally came in contact with [REDACTED] who was behind the vehicle. [REDACTED] was sitting on a cooler behind the vehicle. The yard was very dark due to the time of night and no exterior lights being illuminated. Officer Kerkau was using light discipline when entering the yard for officer safety reasons. Officer Kerkau did not have time to react before his dog was able

to bite [REDACTED] injuring his left thigh. Without question, [REDACTED] was not the suspect that ran from Officer Hope. It clearly was not Officer Kerkau intent for his canine partner to bite [REDACTED] and all indications were this was completely unintentional.

It is apparent that Officer Kerkau was completely within guidelines of the Canine Procedures Manual in the way that he deployed his canine partner and conducted this track. It is understood that this was a potentially dangerous situation, and caution must be employed. In the end it is the handler's responsibility to ensure that their assigned police canine is in complete control and no uninvolved or innocent bystanders are negatively impacted. Although it appears that he was using proper tactics, when entering a private residential property it is paramount to ensure safety to uninvolved parties.

The Canine Unit Procedures Manual identifies the responsibilities of members of the Canine Unit and establishes the procedures and requirements for deployments. Chapter 5.00, "Use of Canines" states "All canine handlers will have control of their assigned police canines at all times" and "In certain situations the canine officer must weigh various factors when deploying the police canine. The factors include but are not limited to threat to innocent bystanders versus the probability of success."

Although it did not appear that Officer Kerkau was being irresponsible or reckless when his police dog came in contact with [REDACTED], it was his responsibility to ensure his dog did not come in contact and have negative consequences of innocent bystanders based upon the policy. Based upon that determination, the allegation of "Inefficiency in job performance" is sustained.

Officer Kerkau's supervisor shall review the appropriate policies to ensure that he has adequate knowledge in the area identified as deficient and provide additional training if required.

"I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes."

IA#: 14069

IA Investigator:

[Signature]

DATE:

08/20/14

IA Commander:

[Signature] #450

DATE:

8/20/14

Bureau Commander:

[Signature] 126

DATE:

8/20/14

Major:

[Signature] 251

DATE:

8/20/14

Chief of Police:

[Signature]

DATE:

8/20/14