

Re: City of Lorain Police Department

Incident Date: July 2, 2023

Expert Report

Date: August 18, 2023

To: Chief of Police Jim McCann
City of Lorain Police Department
100 West Erie Avenue
Lorain, Ohio 44052

Prepared by:

Scott L. Hughes
SKCC LTD.

1. INTRODUCTION

I have been asked to provide my expert opinion in the shooting of a dog by Officer Elliott Palmer on July 2, 2023. All the opinions that I express in this report are made to a reasonable degree of certainty in the field of police patrol tactics and police procedures. I reserve the right to supplement and/or amend my report should new or different facts come to light.

2. QUALIFICATIONS

My name is Scott Hughes. I have been a police officer since 1997, and I am actively involved in the review and training of police practices and law enforcement policies. I am currently the Chief of Police in Hamilton Township, (Warren County) Ohio. Hamilton Township is a growing suburb located near Cincinnati, Ohio with a population of nearly 30,000 residents covering 36 square miles. Currently, the Hamilton Township Police Department is comprised of 28 employees: 27 police officers and one civilian employee.

I have been an instructor in the Ohio Peace Officer Training Academy since 2000 and have instructed thousands of police recruits and current police officers throughout the State of

Ohio. Since 2013, I have been an international instructor for Calibre Press – one of the country’s largest law enforcement training companies. I have graduated from several advanced law enforcement training classes including the Supervisor Training and Education Program, the Police Executive Leadership College, and I am a Certified Law Enforcement Executive. I serve as an active member of the Ohio Association of Chiefs of Police, including as the chairperson for the Professional Services Committee and a member of the Education Committee. I am an active member of the Association of Force Investigators and the International Association of Chiefs of Police.

I am an instructor in the Ohio New Chief’s Training, which is mandatory for all newly appointed police chiefs in Ohio, where I instruct use of force, de-escalation, and best practices for new police chiefs. I have works published in various publications. There is a complete list of my publications, lectures, and instruction on my Curriculum Vitae.

I have been qualified as an expert in Police Patrol Tactics and Reponses, Use of Force, Police Procedures, and Police Practice and Policy. A more detailed summary of my qualifications is included in my Curriculum Vitae.

3. FACTUAL BASIS FOR MY OPINIONS SUMMARY OF FACTS

This summary is provided for convenience and does not necessarily itemize every fact relied upon by this expert in the formation of my opinions and conclusions in this matter. It is based on my review of the records and materials identified herein below. I do not contend to have direct personal knowledge of the incident facts.

On July 2, 2023, at approximately 1258 hrs., Officer Palmer was patrolling the area of Oberlin Avenue and West 8th Street. Officer Palmer observed several large dogs running at large. Officer Palmer did not observe any collars on the animals, and it appeared that three individuals were attempting to control the dogs by grabbing their tails. Based on this assessment, Officer Palmer stopped his patrol vehicle to speak with the individuals.

As Officer Palmer exited his cruiser, he observed one of the females with a fresh laceration on her forearm¹. Officer Palmer assumed that this injury occurred as the result of trying to corral the dogs. At the same time, Officer Palmer observed one of the dogs to be

¹ LPD Report #2023-00022429 p.2

“hyper-focused²” on him. In less than one second, the dog immediately charged at Officer Palmer forcing Officer Palmer to defend himself and discharge his department issued firearm. These rounds incapacitated the animal.

A. Summary of Key Facts

The following facts or records contained herein held particular significance to my analysis.

1. Case Facts Considered in this Analysis

The following facts and circumstances were known by Officer Palmer at the time of the incident. These facts were considered in the review and analysis of this case. Please note; only information known to Officer Palmer or information that should have been known at the time of his response is considered in this analysis. This analysis is not intended to determine what the officer involved “could have,” or “should have” done differently. Rather, why the officer perceived the information he did given the totality of facts and circumstances known to the officer at the time. This review of the evidence and identification of irrefutable facts is to determine whether Officer Palmer’s actions were reasonable and consistent with established policies, procedures, and police protocols.

2. Facts

The following list of facts are either undisputed or supported by the evidentiary record:

- a. Officer Palmer is a sworn Ohio Peace Officer and certified by the State of Ohio.
- b. Officer Palmer was employed by the City of Lorain (OH) Police Department on July 3, 2023.
- c. Officer Palmer was operating a marked Lorain Police Department cruiser and in a police uniform.
- d. Officer Palmer was assigned to uniform road patrol.
- e. Officer Palmer had been a police officer since 2021.
- f. Officer Palmer has a bachelor’s degree in Russian Translation and a minor in Pre-Legal Studies.
- g. Officer Palmer observed several dogs running at-large while sitting at a traffic light.
- h. Officer Palmer noticed several individuals struggling to corral the dogs.

² LPD Case 2023-00022429

- i. Officer Palmer observed an injury to a female who was attempting to gain control of the dogs.
- j. Officer Palmer stops his marked cruiser and instructs the individuals to control their animals.
- k. One of the dogs' charges Officer Palmer in a threatening manner.
- l. Officer Palmer attempts to put distance between himself and the animal prior to discharging his weapon.
- m. From the moment Officer Palmer arrived on the scene, to when the dog charged Officer Palmer was approximately six seconds.

3. EXPERT ANALYSIS, OPINIONS, AND CONCLUSIONS

Based upon the records and evidence in this case, and other files listed within this report, and based on my background, training, education, and experiences, these are the opinions I have rendered thus far in this matter:

A. Executive Summary of Opinions

1. **Opinion – Probable Cause to Investigate.** Officer Palmer was on routine patrol when he observed several dogs running at-large³ in the vicinity of 710 Oberlin Avenue. Upon stopping his patrol car to investigate further, he perceived a female with an injury to her forearm⁴. Based on these observations, Officer Palmer would be expected to investigate and issue citations to the owner of the dog(s).
2. **Opinion – Documented Training.** Officer Palmer's actions were consistent with policy, training, and accepted police procedures. The documents provided show Officer Palmer graduated from Kent State University in 2020 with a bachelor's degree. Following

³ Lorain City Ordinance #505.03 - Animals Running At Large.

(a) No person being the owner of or having charge of any cat or other animal, whether wearing a registration tag or not, shall permit it to run at large upon any public place or upon the premises of another.

(b) The running at large of any such animal in or upon any of the places mentioned in this section is prima facie evidence that it is running at large in violation of this section.

⁴ LPD Case 2023-00022429

college, Officer Palmer attended the Lorain County Community College Police Academy and graduated on April 12, 2021.

3. **Opinion – Ohio Revised Code.** A dog that is chasing or approaching in a menacing fashion or apparent attitude of attack, that attempts to bite or otherwise endangers, or that kills or injures a person or dog that chases, threatens, harasses, injures, or kills livestock, poultry, other domestic animal, or other animal, that is the property of another person, except a cat or other dog, can be killed at the time of that chasing, threatening, harassment, approaching, attempt, killing, or injury. If, in attempting to kill such a dog, a person wounds it, the person is not liable to prosecution under the penal laws that punish cruelty to animals⁵.

Based on the Ohio Revised Code, Officer Palmer was acting within the parameters of the law when he discharged his firearm killing the animal.

4. **Officer’s Training and Experience.** At the time of the encounter, Officer Palmer had been a police officer for 2.5 years. During that time, Officer Palmer had successfully completed all required OPOTA mandated training, including dealing with companion animals.

Three months before this encounter, Officer Palmer encountered another dog that violently attacked him causing significant injuries. Officer Palmer had to be admitted to the hospital where he spent two days in the Intensive Care Unit (ICU). He also had to undergo painful surgery and IV antibiotics for several weeks to address the infection that the dog had caused⁶. Officer Palmer missed a significant amount of work, and at one point, doctors told him that he had a “50/50” chance of losing his hand.

5. **Opinion – Use of Force.** Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for

⁵ O.R.C. §955.28

⁶ LPD Investigative Summary p. 41

the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving⁷.

The following Use-of-Force Matrix outlines the core of my analysis regarding the actions of Officer Palmer. My analysis incorporates the applicable sections of the matrix and aligns with my opinions and conclusions in this incident.

- a. *All legitimate uses of force in law enforcement are ultimately justified by an articulable need to exert some level of control over another person, or in this case an animal.*
- b. *It was the actions of the dog (and its' owner) that dictated the quality and quantity of force used by Officer Palmer in order to exert control.*
- c. *The need to exert control is often characterized by rapid and unpredictable changes requiring Officer Palmer to continually reassess the animal's actions as well as his response to those actions.*
- d. *A proper application of force in any given set of circumstances is as much influenced by the quality of the force applied, and by the timeliness with which it is applied, as it is by the quantity of force applied.*
- e. *The decision to use force is not progressive in nature. Rather, the use of force inquiry focuses on the reasonableness of the force options actually employed.*
- f. *The use of force inquiry focuses not on what the most prudent course of action may have been, but instead whether the seizure actually effectuated falls within a range of conduct which is objectively reasonable.*
- g. *The appropriateness of a use of force decision is properly judged on the basis of the reasonableness of an officer's perception of the animal's actions with which he/or she was confronted at the time the decision was made to use force rather than upon absolute fact.*
- h. *The appropriateness of a decision to employ a particular tool in response to a perceived threat depends on the degree of control which is reasonably likely to*

⁷ LPD Use of Force policy #300

result based on all the circumstances known to the officer at the time the tool is employed.

- i. The degree of force which can be appropriately used to respond to a threat increases proportionally in relation to the degree of threat reasonably perceived by an officer, and to the immediacy of the response required.*

Police officers have a legal right to use force, including lethal force, when it is reasonable to do so. The Supreme Court detailed the standard to be used in determining whether a police officer's use of force is legal in *Graham v. Connor* (1989). The court had earlier held in *Tennessee v. Garner* (1985) that the Fourth Amendment was implicated in a police shooting. In effect, a shooting was a seizure and, therefore, must be "reasonable." In *Graham*, the Court held that the force used by an officer must be "objectively reasonable" in light of the facts and circumstances confronting him. Furthermore, reasonableness should be judged "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight," (*Graham v. Connor*, 1989, p. 396). An officer may shoot when there is an imminent risk of harm to self or others, or to stop someone who poses a danger to others if allowed to escape.

The reasonable officer standard is seen as an objective standard used to determine whether the use of force by an officer is a "good shooting." The reasonable officer represents the average, prudent, well-trained officer. It is not a subjective test (which would consider the specific characteristics, perceptions or abilities of the officer involved in the shooting); however, an objective standard would incorporate situational variables known to affect all or most officers in similar circumstances⁸.

It would not be feasible for an officer to resort to pepper spray, taser, baton, or any other less-than-lethal force option in this situation. A dog attacking an officer (or a civilian) is immediate grounds for the use of deadly force.

6. Opinion – Use of Force; Reaction Time

An officer dealing with a threat is going to react slower to that threat if they are not anticipating it or prepared for it. The general conclusion from research is that an officer must first perceptually and attentionally recognize that the subject (animal) has ceased to be a threat before the officer can then begin to alter his or her response to the threat.

⁸ Reasonableness and Reaction Time; *Police Quarterly* 14(4) 323–343

This process takes time and can result in many rounds being fired at the threatening subject (animal) for some period of time after the subject (animal) has ceased to be a recognizable threat.

The delay in noticing any change in the nature of the threat and having the officer change his behavior in response to that threat could theoretically take the average officer a second to a second and a half in a dynamic, “real-world,” life-threatening encounter if the officer did not expect that the threat would cease. This process alone could be the reason for an extra three to six rounds being fired by the officer after the threat ceased—particularly if the officer was shooting as quickly as possible, was focused on shooting to save his own life, or emotionally recoiling in response to that threat and simultaneously involved in assessing the threat. Of course, the more an officer is directly focused on the threat, the quicker a change can be identified and the officer can stop shooting. Officers will both start and stop shooting based on a variety of factors, including their visual angle on the incident and their ability to perceive the threat, their attentional and reactive capabilities, their weapon skills, and their psychomotor movement times⁹.

In layman’s terms: It takes the brain time to process that the threat no longer exists. It is not a magic button that is pressed and the officer suddenly stops pulling the trigger. The brain processes that the threat no longer exists, and then “tells” the finger to stop pulling the trigger. This can take approximately one second. The average officer can fire one round every .25 second. Therefore, for the brain to process a threat no longer exist, and for the officer to stop pulling the trigger, he or she will oftentimes involuntarily fire 2-4 additional rounds – after the subject (animal) is down¹⁰.

B. Extended Analyses, Opinions, and Conclusions

- 7. Summary of Video Analysis.** The attack on Officer Palmer by the dog was captured on a body worn camera (BWC). Based upon the statements and other supporting data, there is consistency between data that is available on video, and statements made by Officer Palmer. Everyone involved has a different perspective than the lens of the

⁹ New Developments in Understanding the Behavioral Science Factors in the “Stop Shooting” Response

¹⁰ <https://www.youtube.com/watch?v=DcrsrglxmeQ>

BWCs; therefore, the visible data from the camera's perspective is not the same as the visible data Officer Palmer could have been processing. BWC video cannot be used as standalone evidence.

8. **Analysis of Movement and Time Compression.** To identify the movements and the succession of movements between the dog and Officer Palmer, a frame-by-frame analysis has been conducted and focused on the time and circumstances regarding Officer Palmer's reaction to the dog. Under the compression of time, Officer Palmer was making decisions to react and respond at the time, based on his perceptions and the actions of the dog. In this incident, time compression does not allow for the analytical problem-solving model trained in non-critical incidents. In a critical incident, when decisions are being made rapidly, it is important to remember that these decisions take time, and these increments of time must be recognized and considered in the reconstruction and the analysis of this force incident. I have identified the window of time where the decision and action have occurred, and confirmed the account perceived by Officer Palmer. Time compression played a role in the decision-making process and is largely dependent on the information being perceived by the officer in real time.

Hindsight bias: The term "hindsight bias" refers to the tendency people have to view events as more predictable than they really are. Before an event takes place, while you might be able to offer a guess as to the outcome, there is really no way to actually know what's going to happen. After an event, people often believe that they *knew* the outcome of the event before it actually happened. This is why it is often referred to as the "I knew it all along" phenomenon¹¹.

When reviewing a police use of force case, it is important to remember that the viewer *already knows* the outcome. The officer involved may not have had pre-existing information which *you* now possess. For example, if you have seen a video before, you already have prior knowledge which can create bias. If you have seen an interview with the family or officers involved in a case, that too, can create a bias. The more you watch a video of an incident, the more you will "see things" which the officer involved would not have detected.

¹¹ <https://www.verywellmind.com/what-is-a-hindsight-bias-2795236>



Female observed struggling to contain the dogs.

The dog at the bottom of the photograph is NOT the animal who ended up charging Officer Palmer. The dog that charged Officer Palmer is seen in the photograph with the female.



Officer Palmer giving commands to control the dog.



Both dogs appear to be focused on Officer Palmer. Officer Palmer described the dog as “hyper-focused”¹².

¹² 2023-00022429

Based on this still photo, it appears that both dogs have broken free from the female who was attempting to contain them.



Dog breaks free and begins charging Officer Palmer.



Dog begins charging Officer Palmer



Officer Palmer draws his firearm

Time elapsed = less than one second



The dog appears to be preparing to attack Officer Palmer's lower extremity



Officer Palmer moves to his right to create distance between himself and the animal. The dog only changes direction after being shot. In my opinion, the dog was focused on attacking Officer Palmer. Had Officer Palmer not deployed his weapon, I believe the animal would have bitten Officer Palmer.

9. **Conclusion:** Officer Palmer followed best practices during the encounter with the dog on July 3, 2023. Officer Palmer was conducting a lawful investigation for a witnessed crime, and had probable cause to investigate further. Officer Palmer had recently been attacked by a dog, hospitalized, and told he may lose his hand: this prior encounter cannot be discounted, and should have weighed heavily on his perception of this event. During this investigation, a dog charged him, causing Officer Palmer to fear for his safety.

Had Officer Palmer failed to investigate these dogs-at-large – and one or more of those dogs had gotten loose and attacked an innocent civilian – officer Palmer could be looking at potential dereliction of duty charges, or other administrative penalties.

OPINION: Based on my professional review, I find Officer Palmer's actions consistent with what another reasonable police officer would do in a similar situation.

4. RIGHT TO AMEND

I reserve the right to amend this report. Should any additional materials be produced, I reserve the right to submit a supplemental report, should any subsequent information or evidence be produced to me that may materially affect or alter any of my opinions in this case.

Scott L. Hughes