

March 26, 2019

TO: Marc Elrich
County Executive

FROM: J. Thomas Manger
Chief of Police

SUBJECT: Review of Officer involved shooting on June 11, 2018

REFERENCE: Officer Anand Badgujar

The purpose of this memorandum is to address the police officer-involved shooting that occurred on June 11, 2018 on Three Oaks Drive, Silver Spring, MD. This case involved Montgomery County Police Officer Anand Badgujar and Mr. Robert White.

Officer Badgujar's actions resulting in Mr. White's death constitute a use of deadly force. Accordingly, a criminal investigation was conducted by the Major Crimes Division of the Montgomery County Police Department (MCPD). Once completed, the investigation, as well as all evidence in the case, was turned over to the Howard County State's Attorney's Office (HCSAO) for review. Their review, by two senior prosecutors, concluded that Officer Badgujar's actions were justified under the circumstances. State's Attorney Dario J. Broccolino, in a July 27, 2018 letter to MCPD, advised their decision was based on video footage, forensic evidence, witness statements, interviews and crime scene photographs, including video taken by civilian witnesses. The HCSAO also consulted with the use of force training experts within the Howard County Police Department.

Following receipt of the letter, MCPD began its administrative investigation into the case.

Facts:

On June 11, 2018 at 2:14 p.m., Officer Anand Badgujar had just cleared a call for service and was driving on Sligo Creek Parkway. He observed a male subject walking near Three Oaks Drive and Sligo Creek Parkway. Ofc. Badgujar attempted to stop and speak to the man, later identified as Robert White. Over the next three to four minutes, the encounter resulted in a violent confrontation that ended with the officer's use of deadly force, resulting in Mr. White's death. Officer Badgujar's body worn camera (BWC) video has been released publicly.

Department Rules & Regulations applicable to the internal investigation:

The purpose of the administrative investigation was to determine if Officer Badgular's actions during his encounter with Mr. White were in accordance with Montgomery County Police Department Rules and Policy. Specifically:

Rule 1 – Conformance to Law

Employees are required to adhere to Departmental Rules and Regulations, Departmental Directives and Memoranda, Montgomery County Personnel Regulations, County Administrative Procedures, Executive Orders, Montgomery County Code, and to conform to all laws applicable to the general public.

Rule 5 – Abuse of Authority

The lawful authority entrusted to police officers will not be used improperly to interfere with the lawful conduct of anyone. All officers must carry out their duties in a non-discriminatory manner.

Rule 6 – Use of Force

Officers will use force only in accordance with law and departmental procedures and will not use more force than is objectively reasonable to make an arrest, and investigatory stop/detention, or other seizure, or in the performance of their lawful duties, to protect themselves or others from personal attack, physical resistance, harm or death. No officer shall use force in a discriminatory manner.

Function Code 131

Officers may use deadly force to defend themselves or another person from what they reasonably believe is an imminent threat of death or serious physical injury. The United States Supreme Court has ruled that any use of deadly force must be objectively reasonable. This standard will be applied to all uses of deadly force regardless of whether or not a suspect is fleeing when an officer employs deadly force.

Relevant Legal Standards:

When investigating any use of deadly force, it must be determined that the actions of the officer were lawful. The Supreme Court has given specific parameters with regard to the circumstances that deadly force may be used. The Court has also provided guidance on lawful searches and seizures.

- ***Tennessee v. Garner (1985):***

The Supreme Court held: A Police Officer may not seize an unarmed, non-dangerous suspect by shooting him dead. "Where the officer has the probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officers with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of the serious physical harm, deadly force may be used if necessary, to prevent escape and if where feasible, some warning has been given."

- **Graham v. Connor (1989):**
“All claims that law enforcement officers have used excessive force—deadly or not, in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘objective reasonableness’ standard, rather than under a ‘substantive due process’ approach.”
“The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight.”
“The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgments in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”
- **Terry v. Ohio (1968):**
The Fourth Amendment prohibits unreasonable searches and seizures. In this case, the Court found that when a police officer restrains a person’s freedom to walk away, they have “seized” that person. The Court ruled: “Where a reasonably prudent officer is warranted in the circumstances of a given case in believing that his safety or that the safety of others is endangered, he may make a reasonable search for weapons of the person believed by him to be armed and dangerous regardless of whether he has probable cause to arrest that individual for crime or the absolute certainty that the individual is armed.” The opinion also found, “Though the police must when practicable, secure a warrant to make a search and seizure, the procedure cannot be followed where swift action based upon on-the-spot observations of the officer on the beat is required.”

All uses of deadly force are judged on the rules of law cited above. In addition, Department policy states that officers may use deadly force to defend themselves or another person from what they reasonably believe is an imminent threat of death or serious physical injury.

In this case, to determine if Officer Badgular violated Department policy, the internal investigation looked at the following:

Summary

1) Were Officer Badgular’s actions during his initial contact with Mr. White lawful? MCPD determined that Officer Badgular’s initial contact with Mr. White was lawful.

While driving on Sligo Creek Parkway near Three Oaks Drive, Officer Badgular observed Robert White (on foot). Through his attorney, Officer Badgular provided a statement to the HCSAO stating:

“As he drove in his car past Three Oaks Drive, he observed Robert White walking north on the right side of Three Oaks Drive. His attention was drawn to Robert White as he observed that he had a large rip in the fabric on the upper back of his outer garment. As Officer Badgular passed Three Oaks Drive, Robert White continued to stare at the marked police vehicle as it traveled on Sligo Creek Pkwy.”

In response to a follow-up question by the HCSAO, Officer Badgujar's attorney stated,

“Officer Badgujar observed that Robert White was appearing as if he was going straight on foot past the dead-end on Three Oaks Drive. As Robert White observes Officer Badgujar's police presence, he abruptly turned right while in the middle of the intersection towards a foot path which appeared to go to a different neighborhood. Robert White bladed his right side away from Officer Badgujar and thrust his right hand into his right jacket pocket while raising his right shoulder. Robert White quickened his pace and began to walk toward the footpath while looking over his shoulder at Officer Badgujar.”

The officer's observations of Mr. White's movements and behavior provided reasonable justification to speak with Mr. White. These actions, in their totality, based on his training and experience, led Officer Badgujar to believe that Mr. White was armed¹ and thus provided the legal foundation for a stop.

2) Was Officer Badgujar's use of O.C. spray justified?

MCPD determined that Officer Badgujar's use of O.C. spray was justified.

3) Was Officer Badgujar's continued contact with Mr. White lawful?

MCPD determined that Officer Badgujar's continued contact with Mr. White was lawful.

Mr. White's refusal to stop after being called out to by the officer and refusal to remove his hands from his pockets were the impetus for the officer to exit his vehicle, at which time he activated his video. From the BWC video, one hears the officer call to Mr. White to stop.

The video shows Mr. White then turned around and ran at the officer. The officer ran up onto a lawn in an effort to keep distance from Mr. White. Mr. White ran up to the officer and made physical contact with the officer. This was an assault. At this point, the incident changed from an intended stop and frisk (which never occurred) to an arrest situation for second-degree assault.

Officer Badgujar called for back-up over the radio (priority response), followed Mr. White and called out “Sir”. Mr. White turned toward the officer at which time Officer Badgujar deployed O.C. spray in an effort to stop Mr. White. At this point, Officer Badgujar had the authority to arrest Mr. White. Mr. White then struck Officer Badgujar in the chest, committing an additional assault which gave the officer the further legal justification to take Mr. White into custody.

¹ A folding knife was found in Mr. White's right front pocket during a search of his clothing by Major Crimes Division detectives. The knife was not displayed during the incident.

Officer Badgujar's decision to wait for back-up, while keeping Mr. White at a distance but in sight as Mr. White walked away, was prudent. The video shows Officer Badgujar keeping Mr. White in view. The encounter took place in the parking lot of a townhouse development with other people nearby. The audio from Officer Badgujar's video shows the officer was concerned that Mr. White may have had mental-health issues and that a "suicide by cop" situation could be developing.

4) Was Officer Badgujar's use of deadly force lawful and justified?

MCPD determined that Officer Badgujar's use of deadly force was lawful and justified.

In the final moments of the video, the siren of the back-up officer can be heard. Mr. White has changed direction and walked back toward Officer Badgujar's vehicle. Officer Badgujar ran back to his vehicle to turn off the ignition. Mr. White continued to demonstrate aggressive and agitated words and behavior.

As Officer Badgujar reached into his vehicle to turn off the ignition, Mr. White moved quickly toward him. On the back-up officer's BWC video, Officer Badgujar is seen backpedaling as Mr. White advanced toward Officer Badgujar and assaulted him. Officer Badgujar fired one round, and Mr. White and the officer both fell down. Mr. White got up quickly and stood over the officer, who appeared to be in a sitting position on the ground. Mr. White is seen on the video holding the officer down while punching him in the head.

Officer Badgujar, according to information given to the HCSAO, believed that Mr. White was attempting to grab his firearm when he was knocked down. When Mr. White continued assaulting the officer, Officer Badgujar believed his life was in danger. Based on the actions of Mr. White in the video, there is ample evidence that Officer Badgujar was in danger of serious bodily harm which would lawfully justify his use of deadly force.

Conclusion

Officer Badgujar's initial observations gave him the legal authority to speak to Mr. White. It was Mr. White's assaults of Officer Badgujar that warranted the use of O.C. spray. Officer Badgujar observed Mr. White's behavior to be erratic and suggestive of a mental health issue, thus Officer Badgujar continued to observe and keep distance between himself and Mr. White. Creation of distance was used as a de-escalation technique. Officer Badgujar's belief that Mr. White was armed, his demonstration of erratic behavior of charging and retreating, as well as his assaults on Officer Badgujar, and the presence of civilians, explain why the officer stayed engaged with Mr. White and did not abandon the scene. The BWC video of two officers shows Mr. White's actions escalated the situation by attacking Officer Badgujar and putting him in grave danger. The facts and circumstances of the encounter between Officer Badgujar and Mr. White demonstrate that the use of deadly force was lawful and justified.

