

Public Report

June 22, 2017: Use of
Precision Immobilization Technique



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A Public Report by the
Fairfax County Independent Police Auditor

Publication Date: March 2, 2018



A Fairfax County, Va., Publication

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INCIDENT

On June 22, 2017, at approximately 9:54 p.m., a Fairfax County Police Department (hereinafter “FCPD”) Police Officer First Class (hereinafter “PFC#1”) assigned to the Mount Vernon District Police Station, was driving southbound on Richmond Highway when he observed what he described as an older model sedan (later determined to be a 1996 4-door Buick Century) pass his police cruiser. PFC#1 was driving a clearly marked FCPD Ford Interceptor, equipped with an in-car video (hereinafter “ICV”) system. PFC#1 queried the registration for the vehicle based on its displayed license plate through his Computer Aided Dispatch system and determined that the vehicle had been entered into a law enforcement database as a stolen vehicle. PFC#1 immediately used his police radio to inform the FCPD dispatcher of his location and to request confirmation of the stolen vehicle notification. PFC#1 then positioned his vehicle behind the car to follow it.

Shortly after getting behind the sedan, the driver made a left turn onto Reddick Avenue and pulled into a BP service station. At this point, PFC#1 decided to initiate a traffic stop by activating his emergency lights. PFC#1 chose to conduct the stop because he feared the driver would attempt to flee otherwise, and also because he wanted to activate his ICV. Because he was alone in his vehicle and because PFC#1 had ascertained that there were three occupants in the sedan, PFC#1 planned to await the arrival of backup FCPD officers before approaching the stopped vehicle. However, without any commands to do so, the driver got out of the car. PFC#1 immediately ordered the driver back into the car so that PFC#1 could maintain control of the situation and the movements of the car’s occupants. Initially, the driver complied and returned to the vehicle. PFC#1 then directed the occupants of the vehicle to put their hands in the air. They did not, and instead the driver placed the car in drive and fled from the service station at a high rate of speed.

PFC#1 activated his full emergency equipment, began pursuing the driver, and followed the vehicle onto northbound Richmond Highway. PFC#1 also announced over his police radio that he was in pursuit and updated his location. An FCPD second lieutenant (hereinafter “LT#1”) heard the announcement and immediately took command of the pursuit. Based on the time of night, traffic conditions, clear weather, and the calm demeanor of PFC#1 on the police radio, LT#1 authorized the pursuit to continue. LT#1 also requested assistance from the FCPD

aviation unit and to have a K-9 respond to assist if needed. LT#1 then left his location and drove in the direction of the pursuit. Also within seconds of PFC#1 announcing his pursuit over the police radio, a second FCPD Police Officer First Class (hereinafter PFC#2) joined the pursuit and advised that he would assume the duty of reporting updates over the police radio to relieve PFC#1 of that responsibility.

The pursued driver drove over fifty miles per hour and was observed weaving through traffic. As the pursuit continued northbound on Richmond Highway and passed Sherwood Hall Lane, PFC#1 noticed that the driver of the suspect vehicle would have to slow down because of congestion at an upcoming traffic signal. Based on his familiarity with the location, PFC#1 knew that after getting through the congested intersection, the next stretch of Richmond Highway would be a safe location to attempt a maneuver known as the Precision Immobilization Technique (hereinafter "PIT")¹ on the fleeing car. After making his way through the congested intersection with the traffic signal, PFC#1 visually confirmed that there were no pedestrians nor any hazards in the next stretch of roadway. With PFC#2 now directly behind PFC#1, PFC#1 decided to attempt the PIT maneuver.

Before executing the PIT, PFC#1 matched the speed of the fleeing vehicle, which was then in the extreme left lane of the roadway. PFC#1 made contact with the left front fender of his cruiser at the right rear fender of the fleeing vehicle. Although PFC#1 was "PIT certified" and had recently been re-certified after attending "Mandatory Emergency Vehicle Operations & P.I.T. Refresher" training, he applied his brakes and did not follow through completely with his steering wheel to execute a proper PIT. The driver apparently tried to overcome the actions of PFC#1, causing the fleeing vehicle to rotate across northbound Richmond Highway and to hit the curb on the right shoulder of the roadway. When the driver further lost control, the car struck a utility pole beyond the curb. The resulting impact caused the vehicle to split in half and one occupant was ejected. The driver, however, got out and fled into the adjacent wood line. PFC#1 immediately advised other responding officers of the driver's escape into the wooded area, and he remained at the scene of the crash. Both PFC#1's and PFC#2's ICV systems recorded the PIT

¹ FCPD General Order 501.1 IV. F. states that the Precision Immobilization Technique is "[t]he intentional act of using a police vehicle to physically force a fleeing vehicle from a course of travel in order to stop it. PIT is a specific, technical maneuver which requires advanced practical training prior to use."

and captured footage of the impact. LT#1 was close enough to hear the impact of the crash, allowing him to arrive at that location almost immediately afterward.

PFC#1 quickly called for rescue personnel to respond to the scene. The ejected passenger was transported to INOVA Fairfax Hospital and admitted to the Intensive Care Unit in stable but critical condition. The second passenger in the vehicle was transported to INOVA Fairfax Hospital, was treated for minor injuries, and released on June 23, 2017.

After initially fleeing into the wooded area, the driver of the vehicle was apprehended by FCPD officers, and was airlifted to INOVA Fairfax Hospital because of a suspected head injury. He was treated and released from the hospital on June 23, 2017, but remained in the custody of the FCPD. He was transported to the Fairfax County Adult Detention Center, where he was charged with Receiving Stolen Property and Speed to Elude.

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD Crash Reconstruction Unit (hereinafter “CRU”) conducted an accident investigation (criminal) into the crash resulting from the PIT maneuver. In my opinion, the criminal investigation conducted by CRU was thorough, complete, accurate, objective, and impartial.

The findings of that criminal investigation were presented to the Deputy Commonwealth Attorney for Fairfax County on July 21, 2017. The Deputy Commonwealth Attorney determined that PFC#1 acted lawfully and within his scope of authority when he executed the PIT maneuver on the fleeing vehicle. Therefore, no criminal charges were pursued against PFC#1 stemming from his use of force (i.e., the PIT).

Separately, a criminal investigation conducted by the FCPD’s Criminal Investigations Bureau (hereinafter “CIB”) into the driver’s actions resulted in additional charges of Identity Theft and Providing False Information to Police being lodged against him.

INTERNAL ADMINISTRATIVE INVESTIGATION

Due to the severity of the crash and the injuries sustained by one of the passengers in the fleeing vehicle, the FCPD Internal Affairs Bureau (hereinafter “IAB”) responded to the scene of

the incident and immediately initiated an internal investigation into PFC#1's use of the PIT.² The IAB investigation incorporated the CRU investigative findings, and pursued additional administrative inquiries to determine whether there were any FCPD policy violations during the incident.

PFC#1 was "PIT certified," and had been re-certified after attending "Mandatory Emergency Vehicle Operations & P.I.T. Refresher" training on February 15, 2017. In spite of this, IAB's investigation revealed that his execution of the PIT did not meet FCPD's training standards.³ PFC#1 acknowledged that he applied his brakes and did not follow through fully with his steering before completing the PIT. The FCPD supervisor in charge of the Emergency Vehicle Operations Center (hereinafter "EVOC") at the Fairfax County Criminal Justice Academy reviewed the ICV footage of the PIT and pointed out that students often apply their brakes and fail to follow through with their steering when using the PIT maneuver because they fear crashing their vehicle.

In reviewing the ICV of the PIT, the supervisor also noted that at the time the PIT was attempted, PFC#1 was traveling 71 mph. The supervisor acknowledged that while results of the PIT maneuver are unpredictable when the vehicle upon which the PIT is used is traveling over 45 mph, there is no speed cutoff prohibiting the PIT contained in FCPD policy. Because the vehicle subjected to the PIT in this incident was going approximately 71 mph at the time of the PIT, the EVOC supervisor opined that even if PFC#1 had not applied his brakes and had followed through with his steering during the PIT, the result could have been the same. PFC#1 indicated that he was not aware of the vehicle's speed when he executed the PIT maneuver because he was concentrating on what was in front of him and had not looked at his speedometer before attempting it.

Based on his review of the ICV footage of the PIT, the EVOC supervisor further opined that PFC#1 drove his vehicle safely during the pursuit, but that the driver of the pursued vehicle

² FCPD General Order 501.1 VIII. C. 3. a. provides that "The Internal Affairs Bureau, with the assistance of the Crash Reconstruction Unit, shall investigate the following specific types of crashes or incidents: All crashes, uses of the Precision Immobilization Technique, or incidents resulting from or involving a police vehicle coming into contact with another vehicle, object, or person as a direct result of the intentional actions of the officer, **which result in death or serious physical injury.**"

³ After viewing ICV footage of the PIT attempt, the FCPD supervisor in charge of the Emergency Vehicle Operations Center at the Fairfax County Criminal Justice Academy advised that PFC#1's PIT would not have resulted in a passing grade in PIT training.

drove in a reckless manner. He based this opinion on the driver's speed during the pursuit and on his passing other vehicles both on the road's shoulder and in passing lanes. He concluded that the pursued driver posed a danger to himself, to the other occupants in the vehicle,⁴ and to other motorists on the road.

The EVOC supervisor also reviewed the location in which PFC#1 initiated the PIT. He expressed that the location was a desirable area for the PIT because it appeared to be free from pedestrian and vehicular traffic, and there were no major obstacles on or off the road. Plus, the road consisted of three lanes going in either direction with a positive median strip.

The IAB investigation included interviews of all officers involved in the incident; interviews of all occupants of the pursued vehicle; examination of all ICV footage of the incident; a review of that footage and an examination of the location chosen for the PIT maneuver conducted by the FCPD training supervisor for the PIT; and, a review of weather conditions at the time the PIT was conducted. The conclusion of the IAB investigation was that no policy violations occurred. Based on my review, I conclude the internal investigation into this matter was thorough, complete, accurate, objective, and impartial.

CONCLUSIONS

In its 2007 Scott v. Harris opinion,⁵ the United States Supreme Court held that “[a] police officer’s attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.”⁶ The situation in Harris was analogous to the incident under review, but certainly not identical. First, the pursued driver in the Harris case, Victor Harris, was being pulled over for speeding (clocked at 73 mph on a road with a 55-mph speed limit). The pursued driver in the incident under review was subjected to a traffic stop for being in a stolen vehicle. Second, the pursuit in the Harris case continued for six minutes and nearly ten miles; the pursuit under review lasted for two minutes and covered one-and-a-half miles.

⁴ In fact, during a subsequent interview with the FCPD, one occupant of the vehicle expressed relief that the FCPD terminated the pursuit by utilizing the PIT, stating, “I’m thankful that the police did what they did because the way he was driving, somebody would have got killed eventually.”

⁵ 127 S.Ct. 1769 (2007).

⁶ *Id.* at 1779.

Finally, while the deputy involved in the Harris pursuit originally intended to attempt a PIT (referred to in the Supreme Court opinion as a “Precision Intervention Technique”), he ultimately chose to intentionally ram the vehicle rather than to attempt the PIT. In the incident under review, PFC#1 did, in fact, attempt a PIT. Under the circumstances in Harris, the Supreme Court found that the deputy who intentionally rammed Harris’ vehicle was entitled to summary judgment based on qualified immunity because his use of force was reasonable and not a violation of the Fourth Amendment. Based on this precedent, the actions reviewed in this incident were reasonable and do not constitute a Fourth Amendment violation.

Separate from the legal inquiry, two provisions of FCPD policy are applicable to the incident under review: first, the policy on pursuits in general; and second, the policy which governs use of the PIT maneuver. The FCPD policy on “Operation of Police Vehicles” addresses the “Pursuit of Violators” in Section XI.⁷ That section of the policy dictates that “[a]

pursuit is justified when the officer knows or has reasonable suspicion to believe that a suspect has committed or is attempting to commit a crime or traffic infraction and refuses to stop when given a signal to do so and the necessity of immediate apprehension for the crime or traffic infraction outweighs the level of danger created by the pursuit. Supervisors and pursuing officers must take into consideration the potential risk of death or serious injury to any person created by the pursuit itself.

As soon as the pursuit is initiated, the pursuing officer must advise the police radio dispatcher immediately of the pursuit and the reason for the pursuit. A first line supervisor will also be notified as soon as practical, via the Department of Public Safety Communications (DPSC). The supervisor is required to acknowledge awareness of the pursuit and assume incident command verbally, either through the voice radio or another oral communications device. As soon as practical thereafter, a supervisor shall give specific direction that either: (a) the pursuit may continue or; (b) the pursuit shall be terminated. This provision does not preclude the termination of a pursuit by a supervisor or officers at any time within the criteria set forth in this order. A supervisor actively involved in the pursuit may assume command and control of the pursuit. This does not preclude a higher ranking supervisor or the duty officer from taking command of the pursuit.”⁸

PFC#1 had reasonable suspicion that the driver of the vehicle he chose to pursue had committed a crime; that driver refused to stop when given a signal to do so; and, PFC#1 weighed the level of risk generated by a pursuit against the need for apprehension. He immediately notified the police dispatcher that he had initiated pursuit of the stolen vehicle when the driver sped away

⁷ FCPD General Order 501.1, Section XI.

⁸ *Id.*, ¶ A. and B.

from the BP service station, and that notification was acknowledged by LT#1 who authorized the pursuit to continue based on his independent assessment of the situation. PFC#1 clearly complied with the provisions of the FCPD policy when he first pursued the fleeing vehicle.

The second policy applicable to this incident is the FCPD policy on the use of the PIT technique. FCPD General Order 501.1 XI. M. dictates that “[i]f, in the judgment of the police

officer or officers in pursuit, the fleeing vehicle must be stopped immediately to safeguard life and preserve the public safety, the Precision Immobilization Technique (PIT) may be used. Only those officers who have successfully completed training in PIT shall utilize it. This decision may be made by the pursuing officer. The decision to use the PIT must take into account the safety of bystanders and the risk of physical injury to the occupant(s) of the fleeing vehicle, as well as the police officer. The Precision Immobilization Technique shall be considered Non-Deadly Use of Force. The use of PIT within the prescribed training guidelines of the Fairfax County Police Department is not likely to cause serious bodily injury or death. The decision to do so shall be reviewed on a case by case basis to determine whether it meets the criteria herein established. The review shall be conducted as specified in Section VIII of this policy.”

PFC#1 also complied with this FCPD policy provision. He considered that a prolonged pursuit allowing the pursued driver’s evasive actions to continue would have put innocent people at risk. He chose the location of his PIT maneuver based on the expanse of the roadway and the lack of pedestrian and vehicular traffic in that particular stretch of Richmond Highway. He was certified, and had recently been re-certified, in the use of the PIT. And, the policy allowed for his discretion to use the PIT without explicit supervisory approval to do so. PFC#1 complied with all aspects of the policy regarding the use of the PIT technique.

RECOMMENDATIONS

While the legal and policy analysis of this matter resulted in the aforementioned conclusions, a department policy may be crafted to discourage, or even prohibit, pursuits in situations where the Supreme Court would find them lawful. In fact, after conducting its “Use-of-Force Policy and Practice Review of the Fairfax County Police Department,” the Police Executive Research Forum recommended that the FCPD discontinue use of the PIT maneuver.⁹

⁹ Recommendation #54, Police Executive Research Forum, “Use of Force Policy and Practice Review of the Fairfax County Police Department,” Final Report, June 2015.

On the other hand, the Fairfax County Ad Hoc Police Practices Review Commission disagreed with discontinuing the use of the PIT, instead recommending that the FCPD “complete an analysis for approval by the Board of Supervisors on whether or not to maintain or restrict PIT use.”¹⁰

After receiving these divergent suggestions, the FCPD and the Fairfax County Board of Supervisors (hereinafter “BOS”) initiated a study into the use of the PIT and the policy regarding it and pursuits in general. On January 9, 2018, two separate DRAFT policies -- one for “Vehicle Pursuits” and one for “Vehicle Stopping Techniques” -- were presented by the FCPD to the BOS. These new DRAFT policies are more detailed and comprehensive than the policy in effect on the date of the incident currently under review. One feature of the “Vehicle Stopping Techniques” DRAFT policy will apply to future uses of the PIT technique in situations like the one currently under review. That draft provision explicitly recognizes that “[w]hen utilizing a PIT at speeds less than 45 miles per hour, the trajectory of the fleeing vehicle is very predictable. When utilizing a PIT at speeds in excess of 45 miles per hour, predicting the trajectory of the fleeing vehicle diminishes.”¹¹ A second notable provision, contained in the “Vehicle Pursuits” DRAFT policy, mandates that “[i]f an officer has any doubts on whether the necessity for apprehension outweighs the level of danger created by the pursuit to the public, officers, and offender, including passengers, then the officer shall defer to the safety of all and not pursue.”¹² While these same considerations are included in current policy as being factors to consider when deciding whether to initiate or continue a pursuit,¹³ mandating that termination of a pursuit be the default decision when there is any doubt is affirmation of the FCPD’s belief that the sanctity of all human life is paramount.

One addition to the DRAFT “Vehicle Stopping Techniques” policy that I recommend is including language that encourages officers to provide prior notification, when feasible, that they intend to use the PIT. Before attempting the PIT, the officer already “has determined that the offender, including passengers, present a clear and immediate threat to the sanctity of human life and, therefore, the necessity of immediate apprehension outweighs the level of danger created by

¹⁰ Ad Hoc Police Practices Review Commission, Final Report, October 8, 2015 at p. 18.

¹¹ DRAFT General Order 504.7 I. B. 3.

¹² DRAFT General Order 503.2 I. N.

¹³ General Order 501.1 XI. C. states that “[i]n many circumstances, the decision by an officer to abandon a pursuit may be the most prudent course of action[.]”

[continuing] the pursuit.”¹⁴ The DRAFT General Order then allows the officer to decide whether to utilize a PIT; and if so, when and where to utilize it.¹⁵ While these crucial decisions must continue to be made by the officer, notification via the police radio that the decision to attempt a PIT has been reached could prove beneficial to others involved in the pursuit. The current DRAFT policy requires that officers who use any vehicle stopping technique promptly inform their on-duty supervisor after its use.¹⁶ The current DRAFT also requires officers who decide to deploy Stop Sticks¹⁷ to advise a dispatcher of their intention to deploy them.¹⁸ Similarly, “[p]rior to, and during a rolling roadblock, the officers participating in a rolling roadblock shall continually communicate via the police radio.”¹⁹ Finally, DRAFT General Order 504.8 I. D. states “[o]fficers shall request supervisor approval, via the police radio, before establishing a stationary roadblock (emphasis added).”²⁰ Providing advance notification of a PIT, when feasible, only adds the preference for prior notification to the use of this particular technique and makes it consistent with the use of other vehicle stopping techniques. Including the caveat that prior notification should only be provided *when feasible* recognizes that the pursuing officer may not be able to safely provide prior notice via the police radio in every situation in which the PIT is deployed.

¹⁴ DRAFT General Order 504.7 I. B.

¹⁵ DRAFT General Order 504.7 I. B. 1. a. and b.

¹⁶ DRAFT General Order 504.4 I. A.

¹⁷ A Stop Stick Tire Deflating Device is “designed to create a controlled release of air from a target vehicle’s tires, usually within 20-30 seconds after impact.” DRAFT General Order 504.5 I. C.

¹⁸ DRAFT General Order 504.5 I. E. 4.

¹⁹ DRAFT General Order 504.6 I. F (emphasis added). DRAFT General Order 504.1 I. E. defines a Rolling Roadblock as “[a] pursuit stopping technique involving officers who are positioned in front of, behind, and alongside the fleeing vehicle in order to gradually reduce their speed in a coordinated manner, eventually bringing the police vehicles and the fleeing vehicle to a stop.”

²⁰ A stationary roadblock is defined in DRAFT General Order 504.1 I. F. as “[a]ny method, restriction, or obstruction utilized for preventing free passage of a pursued motor vehicle in order to cause the apprehension of the fleeing driver and/or passengers. This is used as a last resort.”

