

Public Report

Jan. 4, 2022: Officer-Involved Shooting
IPA-22-01



Richard G. Schott
Fairfax County
Independent Police Auditor

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A Public Report by the Fairfax County
Independent Police Auditor

Publication Date: April 28, 2023



A Fairfax County, Va., Publication

Office of the Independent Police Auditor
12000 Government Center Parkway, Suite 233A
Fairfax, VA 22035

www.fairfaxcounty.gov/policeauditor

Contact Us: IPAPoliceAuditor@fairfaxcounty.gov

To request this information in an alternate format, call 703-324-3459, TTY 711.

NOTE TO THE READER:

The Fairfax County Police Department revised its policy on use of force after this incident occurred. That revised General Order (General Order 540) took effect on August 12, 2022. The force used during this incident will be analyzed using the policy provisions that were in effect on January 4, 2022 (i.e., General Order 540, effective March 1, 2021).

INCIDENT

On January 4, 2022, at approximately 8:32 a.m., Fairfax County Police Department (hereinafter “FCPD”) Police Officer First Class #1 (hereinafter “PFC#1”) and two other officers from the FCPD’s Sully District station went to a residence on Briarton Drive to investigate a domestic incident call for service. After speaking with the three occupants of the residence—an adult son (hereinafter identified by his initials, “RJ”) and his parents—the officers determined that no crime had been committed, nor could they take custody of RJ for mental health purposes without first obtaining a court order.¹ Therefore, the officers asked RJ to voluntarily seek mental health services. He angrily refused and made the following statements while speaking to the officers: “Get ready to unholster because this shit is going to get real when you put cuffs on me;” “Don’t come back;” “Get the fuck out;” and, “I’m going to offer you an opportunity to get the fuck out of here.”²

Because RJ refused to seek treatment voluntarily, and because both the officers and RJ’s parents were concerned about RJ’s mental health, the officers explained the process of obtaining an Emergency Custody Order (hereinafter “ECO”)³ to RJ’s parents before leaving the home.

RJ’s father did, in fact, obtain an ECO issued by a magistrate. At approximately 12:15 p.m., PFC#1, Master Police Officer #1 (hereinafter “MPO#1”), Master Police Officer #2

¹ Va. Code § 37.2-808 G. authorizes “[a] law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody . . . [to] take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization.” Conversely, Va. Code § 37.2-808 A. authorizes “[a]ny magistrate [to] issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, . . . an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.”

² Heard on the audio from body-worn camera footage.

³ Note 1, *supra*.

(hereinafter “MPO#2”), and Police Officer First Class #2 (hereinafter “PFC#2), returned to the residence with the ECO in their possession. After being joined by their supervisors—a Sergeant (hereinafter “SGT#1) and a Second Lieutenant (hereinafter “2LT#1”)—the group of officers entered the home after RJ’s father unlocked the door for them.

RJ was in the basement of the home, which is where he lived. From the top of the stairs leading to the basement, the officers explained that an ECO had been obtained and that RJ needed to come up. He refused, and for approximately fifteen minutes, yelled loudly and complained about a prior incident involving his mother. Additional verbal threats he made during this time included, “This ends today;” “Okay, here we go;” “It ends here today;” “I’m going to heaven, and you’re going to hell;” “Take [RJ’s mother] with you [or] I’ll kill her before she wakes up tomorrow;” and, “I’m going to kill people who put their hands on me.” He made additional threats to kill the officers’ family members.⁴

Contact was made with the FCPD Duty Officer (a Captain and hereinafter “CAPT#1”) to request additional resources, to include negotiators. Based on the information provided to him, CAPT#1 directed all FCPD officers to leave the residence. They did so at 12:38 p.m., closing the door to the basement and leaving the front door to the house open. The officers then took positions that offered them the ability to visually observe the house. PFC#1 and MPO#1 got behind a marked FCPD Sport Utility Vehicle (hereinafter “SUV”) across the street, from where they could see the front door. PFC#1 retrieved his departmental-issued rifle. Meanwhile, PFC#2 retrieved his .40 MM impact launcher⁵ and took a position behind his police cruiser on Briarton Drive at an angle away from the house. MPO#2 took a position behind the residence. At approximately 12:58 p.m., PFC#1 and MPO#1 walked to the back of the house to deliver a patrol jacket to MPO#2. While walking back to their original staged position, RJ came out of the front door armed with a compound bow⁶ and arrow. MPO#1 hastily took cover near PFC#2 at his vehicle, while PFC#1 made it back to his original position behind the police SUV.

⁴ Note 2, *supra*.

⁵ At the time of the incident under review, FCPD General Order (“G.O.”) 540.19 I. described “kinetic energy impact systems as being “designed to provide a less-lethal force alternative when the use of deadly force is not immediately necessary.” Current G.O. (effective August 12, 2022) 540 III. 12. Defines a “kinetic energy impact system” as a “[l]ess-lethal force instrument that utilizes flexible or non-flexible projectiles with reduced potential for death or serious injury in order to gain compliance or temporarily incapacitate an individual.”

⁶ Initially, some officers and media reports referred to the bow as being a crossbow. It was, in fact, a compound bow, which is a “bow which uses a system of cables and pulleys to make the bow easier to draw.” See, [Compound bow | weapon | Britannica](#), accessed on March 20, 2023.

RJ “nocked”⁷ an arrow in his compound bow and scanned the different officers. Between 12:59:17 p.m. and 12:59:48 p.m., the following verbal exchanges were captured on body-worn camera footage:

PFC#1: “Hey, put it down. Put it down. Hey—compound bow—he is (sic) got a compound bow. Put it down!”

RJ: “Fuck you, leave!”

PFC#1: “Put it down.”

RJ: “Fuck you, leave, you don’t belong here.”

PFC#1 (over police radio): “He has his bow out.”

PFC#1: “Put it down.”

MPO#1 (over police radio): “He is drawing back and pointing.”

RJ: “Fuck you, put it down. Yours was drawn first.”

PFC#1 (over police radio): He is aiming it!”

RJ: “Law enforcement and me here. I ain’t putting shit down. Fire me up, motherfucker!”

At 12:59:49 p.m. PFC#1 fired one round from his service rifle, striking RJ and causing him to fall to the ground on the front porch of the home. Officers cautiously approached, rendered aid, and took custody of RJ. He survived the shooting.

RELEASE OF INVOLVED OFFICER’S IDENTITY

FCPD Chief Kevin Davis complied with departmental policy directive—to release the name(s) of officers involved in an officer involved shooting within 10 days of the incident—by releasing a statement and PFC#1’s identity on January 14, 2022.⁸ He also released the body-worn camera (hereinafter “BWC”) footage within thirty days of the incident on February 2, 2022.⁹

⁷ Defined as “to fit (an arrow) against the bowstring.” See, [Nock Definition & Meaning - Merriam-Webster](#), accessed on March 20, 2023. In essence, this is the loading of the bow with an arrow.

⁸ [Man Charged After Officer-Involved Shooting | Fairfax County Police Department News](#).

⁹ [Chief Davis Releases Body-Worn Camera Footage from Officer-Involved Shooting | Fairfax County Police Department News](#).

CRIMINAL INVESTIGATION/PROSECUTIVE DECISION

The FCPD conducted both a criminal investigation and an administrative investigation into PFC#1's actions during this incident. The results of the criminal investigation—conducted by the department's Major Crimes Bureau (hereinafter "MCB")—were provided to the Office of the Commonwealth's Attorney for Fairfax County. In a February 1, 2022, letter from Fairfax County Commonwealth Attorney (hereinafter "CWA") Steve Descano, CWA Descano advised that no criminal prosecution of PFC#1 would be pursued because he "concluded that [PFC#1] did not commit any violations of criminal law."¹⁰

RJ was charged with three counts of Felony Assault against a Law-Enforcement Officer¹¹ and three counts of Attempted Aggravated Murder of a Law-Enforcement Officer.¹²

INTERNAL ADMINISTRATIVE INVESTIGATION

Because this incident involved an officer-involved shooting, the internal administrative investigation was conducted by the FCPD Internal Affairs Bureau (hereinafter "IAB"). The entire criminal investigation was shared with the IAB investigator conducting the administrative investigation. It should be noted that the criminal investigation included a voluntary statement provided by PFC#1, and that he was interviewed separately by IAB investigators. Also, RJ was afforded the opportunity to speak to IAB investigators on two separate occasions, but chose not to be interviewed.

Following its internal/administrative investigation into this incident, the FCPD determined that PFC#1's use of deadly force was objectively reasonable and, therefore, his use of deadly force complied with departmental policy. Specifically, the FCPD concluded that PFC#1's use of deadly force complied with FCPD General Order (hereinafter "G.O.") 540.0, 540.1, and 540.8. I agree with this conclusion and that it was based on an investigation that was complete, thorough, objective, impartial, and accurate.

The criminal and administrative investigations into this incident included: a review of all Incident Reports prepared; a full crime scene examination; a review of Fairfax County

¹⁰ February 1, 2022, Opinion Letter from Commonwealth's Attorney Steve Descano to FCPD Chief Kevin Davis.

¹¹ Va. Code § 18.2-57 (C).

¹² Va. Code §§ 18.2-26 and 18.2-31 (6).

Department of Public Safety Communications data, including computer-aided dispatch information and radio communications from the Sully District station dispatch and Fairfax County Fire and Rescue dispatch; a review of all BWC footage captured during the incident; and numerous interviews, including those of PFC#1, and all other officers on the scene during the incident; and, records relating to training completed by PFC#1.

CONCLUSIONS

In its landmark Graham v. Connor¹³ opinion, the United States Supreme Court analyzed the use of force by law enforcement officers in this country and recognized 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.”¹⁴ In the same opinion, Chief Justice William Rehnquist firmly stated that the Fourth Amendment to the United States Constitution¹⁵ is the standard by which an officer’s actions in these situations must be judged. Because it is the Fourth Amendment standard, an officer’s use of force must be objectively reasonable to be lawful. The use of deadly force¹⁶ is objectively reasonable when an “officer has probable cause to believe that the suspect poses a significant threat of death or serious injury to the officer or others.”¹⁷ Finally, probable cause is based on the “totality of the circumstances,”¹⁸ known to the officer at the time, and the probable cause [to believe] standard is met when there is a “fair probability”¹⁹ that the belief is accurate.

In this incident, the officers on the scene were instructed by CAPT#1 (the FCPD Duty Officer) to leave the residence. Furthermore, negotiators were summoned to the house; and, with RJ alone in the house, officers established a perimeter around the residence. Clearly, they were trying to avoid the type of “tense, uncertain, and rapidly evolving” situation the Supreme Court

¹³ 490 U.S. 386 (1989).

¹⁴ *Id.* at 397.

¹⁵ Amendment IV to the U.S. Constitution: The right of the people to be free in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

¹⁶ See GLOSSARY.

¹⁷ Tennessee v. Garner, 471 U.S. 1, at p. 4 (1985).

¹⁸ Illinois v. Gates, 462 U.S. 213 (1983).

¹⁹ *Id.*

recognized in Graham.²⁰ When RJ came out of the house onto the front porch, nocked an arrow in his compound bow and scanned the different officers, he became a “significant threat of death or serious injury”²¹ to the officers forming the perimeter around the house. When he aimed the compound bow, he became an immediate threat of death or serious injury to them. PFC#1’s single shot from his rifle was objectively reasonable and, therefore, lawful under Fourth Amendment analysis.

Similar to the pronouncements in Graham v. Connor,²² FCPD G.O. 540.0 on USE OF FORCE states, in part: “Force is to be used only to the extent it is objectively reasonable to defend oneself or another, to control an individual during an investigative or mental detention, or to lawfully effect an arrest. Force should be based upon the totality of the circumstances known by the officer at the time force is applied, without regard to the officer's underlying intent or motivation, and weighs the actions of the officer against their responsibility to protect public safety as well as the individual's civil liberties. Force shall not be used unless it is reasonably necessary in view of the circumstances confronting the officer.”²³ FCPD G.O. 540.1, Use of Force-Definitions, goes on to define “Objectively Reasonable” as follows: “The level of force that is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same set of circumstances. Objective reasonableness is not analyzed with the benefit of hindsight, but rather takes into account the fact that officers must make rapid and necessary decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations.”²⁴ Finally, FCPD policy provides that “[d]eadly force shall not be used unless it is objectively reasonable. The officer must believe, based on the totality of the circumstances known at the time, that deadly force is immediately necessary to protect the officer or another person, other than the subject of the use of deadly force, from the threat of serious bodily injury or death and that all other force options to control the individual(s) are not feasible, or have already proven to be ineffective.”²⁵ Therefore, PFC#1’s use of deadly force satisfied the policy standards required by the FCPD for the same reasons he met the legal requirements for using such force. PFC#1 utilized deadly force based on an objectively

²⁰ Notes 13 and 14, *supra*.

²¹ Note 17, *supra*.

²² Note 13, *supra*.

²³ FCPD G.O. 540.0 II.

²⁴ FCPD G.O. 540.1 I. M.

²⁵ FCPD G.O. 540.8 I. A.

reasonable belief that RJ posed a significant and immediate threat of serious bodily injury or death to him (PFC#1) and to several other officers.

RECOMMENDATIONS

The FCPD policy on the use of force thoroughly addresses the use of both deadly and “less-lethal” force, aligns with the constitutional standards, and provides FCPD officers extensive guidance on resolving incidents with the concept that the sanctity of life is always paramount.²⁶ This incident began with a call for service based on a domestic incident. Responding officers quickly recognized that RJ was in distress and suggested that his parents consult a magistrate to obtain an ECO. When officers returned to serve the ECO on RJ, they tried to convince him to seek help and were careful not to escalate the situation. Several of the officers were, in fact, trained in crisis intervention. When RJ refused to cooperate, the officers withdrew from the house to await the arrival of negotiators and other specialists. They established a perimeter and ensured that less-lethal force options were available. These actions conformed with the department’s sanctity of life principle and its de-escalation policy.²⁷

Unfortunately, the situation changed dramatically when RJ came out of the house and proceeded to nock and aim his compound bow. PFC#1 fired one round, striking RJ and eliminating the threat he posed. PFC#1 reacted appropriately and according to his training. The FCPD investigation determined that the use of deadly force during this incident was lawful and complied with departmental policy.²⁸ I agree with that conclusion for the reasons stated in the preceding section of this report, and I have no recommendations to make based on this incident review.

²⁶ FCPD G.O. 540.0 II. states that “[i]t is the policy of the Fairfax County Police Department that officers hold the *highest regard for the sanctity of human life, dignity, and liberty of all individuals.*” (*emphasis added*).

²⁷ FCPD G.O. 540.2 provides that “[w]hen possible, officers should seek to utilize de-escalation strategies to prevent situations from deteriorating to the point where they would need to use force. Officers should attempt to gain voluntary compliance and reduce the level of force required in a situation through verbal communication efforts. When force is applied, officers will adjust the amount of force used to overcome an individual’s resistance and to gain control.

²⁸ In April 2022, the Auditor provided input to the FCPD as it thoroughly revised the department’s G.O. 540 on Use of Force. The revised G.O. 540 streamlined the prior 55-page policy on Use of Force down to a more manageable 19 pages, keeping all critical components of the prior policy which was in effect at the time of the incident under review.

APPENDIX: GLOSSARY OF TERMS

FCPD – Fairfax County Police Department

FCSO – Fairfax County Sheriff's Office

G.O. – General Order

SOP – Standard Operating Procedure

UOF – Use of Force

BWC – Body-worn Camera

ICV – In-Car Video

ADC – Adult Detention Center

CWA – Commonwealth's Attorney

Fourth Amendment to the United States Constitution - The right of the people to be free in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Force – defined in Fairfax County Police Department General Order 540.1 I. G. as any physical strike or instrumental contact with an individual, or any significant physical contact that restricts an individual's movement. Force does not include escorting or handcuffing an individual who is exhibiting minimal or no resistance. Merely placing an individual in handcuffs as a restraint in arrest or transport activities, simple presence of officers or patrol dogs, or police issuance of tactical commands does not constitute a reportable action.

Less-Lethal Force – defined in Fairfax County Police Department General Order 540.1 I. I. as any level of force not designed to cause death or serious injuries.

Deadly Force – defined in Fairfax County Police Department General Order 540.1 I. B. as any level of force that is likely to cause death or serious injury.

Serious Injury – defined in Fairfax County Police Department General Order 540.1 I. Q. as an injury which creates a substantial risk of death, disfigurement, prolonged hospitalization, impairment of the functions of any bodily organ or limb, or any injury that medical personnel deem to be potentially life-threatening.

ECW – Electronic Control Weapon; considered less-lethal force. Defined in defined in Fairfax County Police Department General Order 540.1 I. C. as a device which disrupts the sensory and motor nervous system of an individual by deploying battery-powered electrical energy sufficient to cause sensory and neuromuscular incapacitation. Often referred to as a Taser.

Empty-Hand Tactics – considered less-lethal force. Described in Fairfax County Police Department General Order 540.4 II. A. 2. as including strikes, kicks, and takedowns.

OC Spray – Oleoresin Capsicum; considered less-lethal force; often referred to as “pepper spray.”

PepperBall System – defined in Fairfax County Police Department General Order 540.1 I. N. as a high-pressure air launcher that delivers projectiles from a distance. Typically, the projectile contains PAVA powder which has similar characteristics to Oleoresin Capsicum. Considered less-lethal force.

Passive Resistance – defined in Fairfax County Police Department General Order 540.4 I. A. 1. as where an individual poses no immediate threat to an officer but is not complying with lawful orders and is taking minimal physical action to prevent an officer from taking lawful action.

Active Resistance – defined in Fairfax County Police Department General Order 540.4 I. A. 2. as where an individual’s verbal and/or physical actions are intended to prevent an officer from taking lawful action, but are not intended to harm the officer.

Aggressive Resistance – defined in Fairfax County Police Department General Order 540.4 I. A. 3. as where an individual displays the intent to cause injury, serious injury, or death to others, an officer, or themselves and prevents the officer from taking lawful action.

