

Public Report

Feb. 15, 2022: Officer-Involved Shooting
IPA-22-02



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INCIDENT

On February 15, 2022, Fairfax County Police Department (hereinafter “FCPD”) Police Officer First Class #1 (hereinafter “PFC#1”) and Officer #1 (hereinafter OFC#1) responded to a call to the Fairfax County Department of Public Safety Communications (hereinafter “DPSC”) reporting a “suspicious vehicle/person”¹ on Fitt Court in Lorton, Virginia. PFC#1 arrived at 8:12 a.m. and OFC#1 arrived at 8:15 a.m. Both officers were accompanied by FCPD recruits getting ready to begin their initial training to become officers at the Fairfax County Criminal Justice Training Academy.

The officers located the vehicle—a passenger van—and noticed that it had very dark tinted windows and curtains inside the vehicle which separated the driver and passenger compartments. They knocked loudly on the van and announced themselves as FCPD officers. They received no response.

PFC#1 and OFC#1 determined that the license plates affixed to the van had been reported stolen. Based on this information, and suspecting that the van itself was also stolen, they requested a tow truck to respond to the location. While waiting for the tow truck to arrive, the officers opened the unlocked rear hatch and PFC#1 announced “Police” five more times. He also advised anyone inside to make themselves known, but still got no response from anyone inside the vehicle. The officers did find a Virginia license plate inside of the van. The Virginia license plate matched the vehicle identification number of the van. They then contacted the registered owner of the van to determine who may have been driving it.

While PFC#1 spoke to the registered owner of the van, the tow truck driver arrived and opened the driver’s door. OFC#1 pushed a button inside the van to open the rear sliding doors; and, as the driver’s side rear sliding door opened, she saw a man holding what she believed to be a carbine-type rifle.² The individual (later identified as bearing the initials—and hereinafter identified as— “MV”) appeared to be trying to get out of the van while holding the weapon.

¹ The caller reported that the vehicle had been there overnight, that he had seen it in the neighborhood before, that he suspected one or more persons was living in it, and that it had been there for at least 24 hours.

² The weapon was, in fact, a carbine rifle, and was determined to have been loaded at the time of the incident. MV also had two additional loaded magazines for the rifle, as well as a BB gun similar in appearance to a semi-automatic handgun secreted in his belt.

OFC#1 immediately yelled to PFC#1, “he’s got a gun,” and got herself and the tow truck driver away from the van and in front of the tow truck to use for cover.

Upon hearing the warning from OFC#1, PFC#1 got out of his patrol cruiser—inside of which he had been talking on the phone to the van’s owner—and provided multiple commands to MV while PFC#1 retreated to the rear of his cruiser. The commands included, “Hey, do not move!” and “don’t move!” MV did not comply. Rather, he began to raise the rifle in an apparent attempt to fire it at OFC#1, the tow truck driver, PFC#1, or the two recruits who were on the scene. PFC#1 fired three shots from his handgun at MV. After being struck, MV dropped the rifle and fell to the ground.

PFC#1 and OFC#1 began to render aid to MV as soon as they got him from within reaching distance of his rifle. MV survived the gunshots and was transported to a hospital for treatment. He was released from the hospital two days later and transported to the Fairfax County Adult Detention Center (hereinafter “ADC”).

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 February 17, 2022. He also released the body-worn camera (hereinafter “BWC”) footage within thirty days of the incident on March 16, 2022.

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD conducted a criminal investigation and an administrative investigation into PFC#1’s actions during this incident. The results of the criminal investigation were provided to the Office of the Commonwealth’s Attorney for Fairfax County. In a March 15, 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.”³ It should be noted

³ March 15, 2022, Opinion Letter from Commonwealth’s Attorney Steve Descano to FCPD Chief Kevin Davis.

that the criminal investigation included voluntary statements provided by both PFC#1 and OFC#1 prior to them reviewing their BWC footage of the incident.

MV was initially arrested on February 16, 2022 (while he was in the hospital) based on outstanding warrants for failure to appear and a probation violation. He was subsequently charged with several additional crimes, including two counts of assault on a law enforcement officer⁴ based on his actions during this incident.

INTERNAL ADMINISTRATIVE INVESTIGATION

Because this incident involved an officer-involved shooting, an internal administrative investigation was conducted by the FCPD Internal Affairs Bureau (hereinafter “IAB”). 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 FCPD did conclude, however, that OFC#1 violated the departmental policy on BWC activation. When interviewed, OFC#1 stated that she thought she activated her BWC upon arrival to the call, but that she had turned it off when she thought there would be no interaction with a community member during the call.⁵ The BWC data revealed that she did not activate her BWC during this incident until she noticed that her BWC was not on when she began to render aid to MV. She then kept it on for the remainder of the incident.

CONCLUSIONS

In its landmark Graham v. Connor⁶ opinion, the United States Supreme Court analyzed the use of force by law enforcement officers in this country and recognized that “police officers

⁴ Va. Code §18.2-57 (C).

⁵ Apparently, when providing her statement to investigators, OFC#1 confused this call for service with the one to which she responded immediately prior to this one. During that response, she had started and stopped her BWC.

⁶ 490 U.S. 386 (1989).

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.”⁷ In the same opinion, Chief Justice William Rehnquist firmly stated that the Fourth Amendment to the United States Constitution⁸ 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 force⁹ 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.”¹⁰ Finally, probable cause is based on the “totality of the circumstances,”¹¹ known to the officer at the time, and the probable cause [to believe] standard is met when there is a “fair probability”¹² that the belief is accurate.

The situation under review was certainly tense, uncertain, and rapidly evolving. PFC#1 and OFC#1 had knocked on the doors and windows of the van, had issued loud announcements that they were the police, and had even opened the rear hatchback door of the van and made additional announcements. With ample indication there were no people inside of the van, OFC#1 remained vigilant when the tow truck driver opened the driver’s side doors. Despite the unexpected appearance of MV holding a rifle, she retreated and ensured the safety of the driver. PFC#1 responded to a very rapidly evolving situation when MV immediately began to raise his rifle in an apparent attempt to shoot. This provided him ample “probable cause to believe that [MV] pose[d] a significant threat of death or serious injury to [him] or others.”¹³ Therefore, PFC#1’s use of deadly force was lawful under the Fourth Amendment.

Similar to the pronouncements in Graham v. Connor,¹⁴ 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

⁷ *Id.* at 397.

⁸ 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.

⁹ See GLOSSARY.

¹⁰ Tennessee v. Garner, 471 U.S. 1, at p. 4 (1985).

¹¹ Illinois v. Gates, 462 U.S. 213 (1983).

¹² *Id.*

¹³ Note 10, *supra*.

¹⁴ Note 6, *supra*.

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.”¹⁵ 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.”¹⁶ 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 imminent death or serious injury to any individual(s) exists and that all other force options to control the individual(s) are not feasible, or have already proven to be ineffective.”¹⁷ 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 reasonable belief that MV posed a significant, or imminent, threat of death or serious injury to him (PFC#1) and to several others.

RECOMMENDATIONS

FCPD policies thoroughly address the use of both deadly and “less-lethal” force, align with constitutional standards, and provide FCPD officers extensive guidance on resolving incidents with the concept that the sanctity of life is always paramount.¹⁸ In this incident, a seemingly mundane event became a life-or-death situation in an instant. Both OFC#1 and

¹⁵ FCPD G.O. 540.0 II.

¹⁶ FCPD G.O. 540.1 I. L.

¹⁷ FCPD G.O. 540.8 I. A.

¹⁸ 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*).

PFC#1 reacted appropriately and according to their training.¹⁹ The FCPD investigation determined that the use of deadly force during this incident was lawful and complied with departmental policy. 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.

¹⁹ OFC#1's failure to timely activate her BWC was identified during the internal investigation and has already been addressed in this report.

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.

