

Public Report

July 19, 2021: Officer-Involved Shooting
(IPA-21-03)



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INCIDENT

At approximately 5:25 p.m. on July 19, 2021, a staff member of a group home located on Gosport Lane in Springfield, Virginia, made a 9-1-1 call to the Fairfax County Department of Public Safety Communications (hereinafter “DPSC”) advising that a resident (hereinafter identified by her initials, “JL”) of the group home was threatening to kill herself and the caller. This caller also stated that there were other people in the home who could not safely attempt to leave based on their and JL’s location within the home. The caller described a very chaotic situation and pleaded for the police to “come fast!” Almost immediately thereafter, a second 9-1-1 caller contacted DPSC and advised that she was inside the home and, based on what she heard, a resident had attacked a staff member.

While this information was being provided to DPSC, two Fairfax County police Department (hereinafter “FCPD”) canine officers were at a nearby—within one mile of the group home—park with their police canines. When the information being relayed over the officers’ computer-aided dispatch units in their patrol cruisers became more urgent, they decided to respond to the group home incident. When these officers, Police Officer First Class #1 (hereinafter “PFC#1”) and Master Police Officer #1 (hereinafter “MPO#1”) arrived at the front door, PFC#1 heard what he described as a “blood curdling scream”¹ from inside, leading him to believe someone was being attacked inside of the home. PFC#1 tried to breach the front door by kicking it 3 or 4 times, but he quickly realized it was dead-bolted.

PFC#1 and MPO#1 then went around the house to a sliding-glass door in the back. This door was open slightly, causing PFC#1 to wonder whether JL had fled. Feeling that immediate entry was needed to provide safety and medical attention to those inside, PFC#1 and MPO#1 entered through the sliding-glass door.² Upon entering, PFC#1 loudly announced, “POLICE.” PFC#1 looked to his right and saw JL in the kitchen, holding a silver knife, cutting her own arm. PFC#1 moved to a wall-opening into the kitchen, but remained approximately ten feet³ away from JL. PFC#1 again announced, “POLICE,” and then told JL to “drop the knife” several

¹ Interview of PFC#1 conducted by FCPD’s Major Crimes Bureau on July 23, 2021.

² PFC#1 activated his body-worn camera (hereinafter “BWC”) as they made entry and recorded the remainder of the incident.

³ Using a 3D laser scanner during the ensuing investigation, the FCPD determined the actual distance to be 9.68 feet.

times.⁴ PFC#1 heard JL say that she was going to “cut you” or “kill you”⁵ while looking directly at him and taking up “more of an aggressive stance.”⁶ He repeated commands for JL to drop the knife to no avail. Instead, she walked toward him before ultimately lunging at him with the knife in her hand. When she did, PFC#1 fired one round from his firearm,⁷ striking JL in her stomach. Sixteen seconds had elapsed from the time PFC#1 entered the home until he shot JL.

After being shot, JL screamed, stepped back, dropped the knife from her hand, and fell to the ground. PFC#1 holstered his weapon, pulled JL away from the knife, handcuffed her, and began to render medical aid.

From his vantage point upon entering the home, MPO#1 also saw JL in the kitchen, holding a silver knife and slashing at her own arm with it. He made a request, over his police radio, for “less-lethal.”⁸ However, within seconds, he heard PFC#1 providing commands to JL, JL saying “No” and “I’m going to kill [or stab] you,” and then saw JL run at PFC#1.

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 July 28, 2021.⁹ He also released body-worn camera (hereinafter “BWC”) footage of the incident on August 5, 2021.¹⁰

⁴ Neither PFC#1 nor MPO#1 recalled the number of times JL was told to “drop the knife,” but a review of BWC footage revealed that the command was provided 11 times.

⁵ Review of the BWC footage revealed her statement to be, “I’m going to stab you.”

⁶ Note 1, *supra*.

⁷ Using a 3D laser scanner during the ensuing investigation (note 3, *supra*), the FCPD determined the distance between PFC#1 and JL at the time of the shot to be 6.46 feet.

⁸ The request was for a “less-lethal” force option such as an electronic control weapon (hereinafter “ECW”), commonly referred to as a Taser, to be brought to the scene. While neither MPO#1 nor PFC#1 had an ECW, MPO#1 did have OC spray with him.

⁹ See, [Investigation Continues after Officer Involved Shooting in Springfield | Fairfax County Police Department News \(wordpress.com\)](#).

¹⁰ See, [Investigation Continues after Officer Involved Shooting in Springfield | Fairfax County Police Department News \(wordpress.com\)](#). Absent security or investigative concerns, BWC footage is to be released within 30 days of an officer-involved shooting.

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD conducted both a criminal 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 (hereinafter "CWA"). In an August 6, 2021, letter addressed to Chief Davis, Fairfax County CWA Steve Descano advised that no criminal prosecution of PFC#1 would be pursued because he "concluded that [PFC#1] did not commit any violation of criminal law."¹¹

JL was charged with Assault on a Law Enforcement Officer¹² for her actions during the 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"). That internal investigation into this incident was, in my opinion, complete, thorough, objective, impartial, and accurate.

In addition to keeping apprised of and reviewing the comprehensive criminal investigation conducted by the FCPD's Major Crime Bureau, including its Crime Scene Section, IAB investigators conducted administrative interviews of all parties involved in the incident, and individuals not involved in the incident but who provided relevant background information. IAB's investigation also included a review of the following: incident reports, DPSC data and 9-1-1 calls, computer-aided dispatch records, audio and video footage from BWCs worn by both PFC#1 and MPO#1, and records relating to training completed by PFC#1 and MPO#1.

The FCPD concluded that PFC#1's use of deadly force was within departmental policy, specifically FCPD General Order (hereinafter "G.O.") 540.0 on USE OF FORCE PURPOSE AND POLICY and G.O. 540.8 on DEADLY FORCE. Also, the FCPD concluded that PFC#1 and MPO#1 followed procedures in place to deal with individuals who have taken a hostage(s)

¹¹ August 6, 2021, Opinion Letter from Commonwealth's Attorney Steve Descano to FCPD Chief Kevin Davis.

¹² Va. Code §18.2-57 (C).

and/or have barricaded themselves in a location. I agree with the FCPD's conclusions and will articulate my reasons in the following section of this report.

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.

The situation under review was certainly tense, uncertain, and rapidly evolving. PFC#1 and MPO#1 responded to the scene and chose to enter the group home based on the information being provided by individuals within the home who described a very dire situation. The FCPD has an over-arching “sanctity of life” provision in the very beginning of its General Order on Use of Force. The first sentence of G.O. 540.0 II. POLICY reads: “It 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.” Additional guidance is provided in the FCPD's

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.*

procedures for resolving “hostage/barricaded persons” situations. That guidance dictates that officers prioritize their actions based on the following priority of life: 1) hostages; 2) innocent by-standers; 3) police/first responders; and, 4) suspects/subjects.²⁰ PFC#1 and MPO#1 went into the group home to save lives.

Unfortunately, the encounter with JL happened almost immediately upon entry into the home. PFC#1 had no “less-lethal” force option available to him. Even if he had, the use of deadly force was still objectively reasonable. JL made a statement that she was going to stab PFC#1, she was armed with a knife, and quickly and aggressively approached him while holding the knife. When PFC#1 shot JL, he clearly had probable cause to believe that she posed a significant threat of death or serious injury to the officer or others.²¹ Therefore, PFC#1’s use of deadly force was lawful under the Fourth Amendment.

Likewise, PFC#1’s use of deadly force complied with FCPD policy. The FCPD policy regarding the use of force—up to and including deadly force—mirrors the aforementioned pronouncements from the Supreme Court. FCPD G.O. 540.0 II. POLICY 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.”²² FCPD G.O. 540.1, 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.”²³ Finally, FCPD policy provides that “[d]eadly force shall not be used unless it is objectively reasonable. The

²⁰ FCPD Standard Operating Procedure (hereinafter “SOP”) 13-048 Special Operations Hostage-Barricaded Persons, Section III.

²¹ Note 17, *supra*.

²² FCPD G.O. 540.0 II.

²³ FCPD G.O. 540.1 I. M.

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.”²⁴ Therefore, for the same reasons that PFC#1’s use of deadly force satisfied the legal requirements for using such force, he also met the policy standards required by the FCPD. PFC#1 utilized deadly force based on an objectively reasonable belief that JL posed a significant, or imminent, threat of death or serious injury to him (PFC#1) and to others.

PFC#1 and MPO#1 also complied with the department’s procedures for dealing with a hostage situation (or barricaded subject) when they responded. Specifically, the pertinent provision contained in FCPD Standard Operating Procedure (hereinafter “SOP”) 13-048: Hostage/Barricaded Person sets out that “[u]nless immediate action is necessary to protect life, the first unit(s) on the scene shall confine activities to containment and stabilization of the situation, to include establishing a secure perimeter, remaining behind cover, establishing communication, and gaining voluntary compliance with legal authority through negotiation.”²⁵ Based on what they knew at the time of their arrival at the group home, immediate action from the officers was necessary to protect life. That same SOP goes on to prioritize the individuals involved in a hostage/barricaded subject situation. As stated earlier in this report, that prioritization is: 1) hostages; 2) innocent by-standers; 3) police/first-responders; and 4) suspects/subjects.²⁶

RECOMMENDATIONS

Although the shooting of JL was legal and within FCPD policy, the FCPD is taking several measures to avoid the use of deadly force in similar situations in the future. The IAB investigation explored the possibility of PFC#1 or MPO#1 using less-lethal force options to resolve the threat from JL armed with the knife. Although neither PFC#1 nor MPO#1 was equipped with an ECW, a certified use of force trainer and “master” ECW instructor was interviewed by IAB and he opined that using an ECW would likely have proven ineffective in

²⁴ FCPD G.O. 540.8 I. A.

²⁵ SOP 13-048, IV. A. 2.

²⁶ Note 20, *supra*.

this situation.²⁷ I agree with that assessment. Nevertheless, the IAB investigation included a recommendation that ECWs “*should* be available for all officers to carry *if desired* and that ECWs be purchased for the K9 section to use.” Chief Davis has gone farther than IAB’s recommendation. During the October 26, 2021, Board of Supervisors’ Public Safety Committee meeting, Chief Davis advised the Board that every individual holding the rank of 2nd Lieutenant and below, as well as the four Captains assigned as “duty officers” would be personally issued a Taser.²⁸ I agree with this decision, as well as the *non-discretionary* carry of an ECW for any officer working in an operational capacity.

A second department initiative began in April, 2022, when the FCPD began piloting a “force prevention” device called the BOLAWrap. According to its website, the “BolaWrap remote restraint device is a patented, hand-held pre-escalation apprehension tool for police that discharges a Kevlar cord to restrain noncompliant individuals or persons in crisis from a distance. The BolaWrap’s surprising sound and ability to restrict an individual’s movement buys officers time and makes it safer for them to approach and gain control of individuals.”²⁹ The outcome of the incident under review may not have been different had one or both of the responding officers been equipped with the BOLAWrap. In the future, though, the BOLAWrap may provide officers an additional option to consider when responding to incidents like this one.

Finally, this incident is an example of the potential value of having a “co-responder” model available to a law enforcement agency. A co-responder approach is a coordinated response to certain calls for service wherein both law enforcement and mental health professionals respond to the call.³⁰ While it would not have been appropriate for a mental health professional to enter the group home initially because of the dangerousness and volatility of this situation, it is worth noting that the FCPD has already completed the first phase of a co-response

²⁷ The master ECW instructor noted the configuration of the space they were in, objects which likely would have prevented the two prongs of the ECW from making the necessary contact with JL, and the likelihood that JL could still have swung the knife even if the prongs had made contact.

²⁸ The 10/26/2021 Public Safety Committee meeting can be accessed at http://video.fairfaxcounty.gov/ViewPublisher.php?view_id=9. Chief Davis’s comments begin at 36:23.

²⁹ <https://wrap.com/bolawrap/>, accessed on July 20, 2021.

³⁰ For a detailed discussion of the implementation of the “co-responder” model in Fairfax County, see the “Proposed Response to Behavioral Health Crisis Calls” presentation provided to the Board of Supervisors during its September 28, 2021, Public Safety Committee meeting. The presentation can be accessed at [Update on Response to Behavioral Health Crisis Calls Public Safety Committee Meeting September 28, 2021 \(fairfaxcounty.gov\)](https://www.fairfaxcounty.gov/public-safety/behavioral-health-crisis-calls-public-safety-committee-meeting-september-28-2021).

pilot, is deploying co-responder teams on a limited basis, and will be increasing the co-responder program in the future.

The nature of this call for service and the ensuing response to it prompts re-visiting a policy recommendation I made to the FCPD resulting from an April 2017 incident.³¹ At the time of this incident, the FCPD’s list of factors to consider when determining whether a particular use of force was objectively reasonable included the three so-called Graham factors first identified in Graham v. Connor,³² which are: 1) whether the individual poses an immediate safety threat to the officer or others; 2) the severity of the crime at issue; and, 3) whether the individual is actively resisting or attempting to evade arrest.³³ The FCPD’s list of factors also includes: 4) weapon(s) involved; 5) presence of other officers or individuals; 6) training, age, size, and strength of the officer; 7) training, age, size, and perceived strength of the individual; and, 8) environmental conditions.³⁴ The FCPD policy makes clear that the listed factors are not exhaustive, and that objective reasonableness is ultimately determined by examining the “totality of circumstances in each particular [use of force].”³⁵

Because a number of recent police shootings nationwide involved people who were not engaged in criminal activity—but rather people who were suffering from a medical or mental health crisis—some federal courts have recognized that the Graham factors are not helpful in those circumstances. Based on these federal court opinions, I recommended that the FCPD add new, non-criminal factors to its list of factors found in G.O. 540.5.³⁶ Using Estate of Corey Hill v. Miracle³⁷ as an example, I provided justification for adding non-criminal factors to the list of factors to consult when considering whether an officer’s use of force was objectively reasonable when that force was deployed against a person in crisis, rather than engaged in crime. The suggested new factors, as provided by the judge writing for the court in Miracle, were the following:

³¹ See [OIPA Incident Report: April 14, 2017: Deployment of Electronic Control Weapon](#) and [2017 Annual Report of the Fairfax County Independent Police Auditor](#).

³² Note 13, *supra*.

³³ FCPD G.O. 540.5 I., taken from Graham v. Connor, note 13, *supra*.

³⁴ FCPD G.O. 540.5 I.

³⁵ *Id.*

³⁶ Note 31, *supra*.

³⁷ 853 F.3d 306 (6th Cir. 2017).

- 1) was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of harm to himself or others?
- 2) was some degree of force reasonably necessary to ameliorate the immediate threat?
- 3) was the force used more than reasonably necessary under the circumstances (i.e., was it excessive)?³⁸

Responding to my recommendation, the FCPD did not add the suggested language to its G.O. 540.5, but rather explained that its list is not meant to be exhaustive or all-inclusive. Based on the incident currently under review, I again recommend adding non-criminal factors—with the explicit language provided above—to consider when determining whether force was objectively reasonable during a non-criminal situation, or when the individual is experiencing a medical or mental health crisis while engaged in criminal activity.

An alternative to adding these non-criminal factors to the existing list of factors already in G.O. 540.5 would be to simply eliminate all delineated factors and emphasize that the reasonableness of any particular use of force is determined by examining any and all, or the *totality of*, the circumstances. I have learned that this alternative is the approach the FCPD will take.

Shortly after the FCPD adopted minor revisions to its Use of Force policy on March 1, 2021 (consequently, the policy in effect when the incident under review occurred), Chief Davis authorized a process to revise the 55-page Use of Force General Order in an effort to create a more manageable and understandable policy. The result is now a 19-page streamlined Use of Force DRAFT General Order, which is currently pending final approval and is expected to take effect during the Fall of 2022.

The DRAFT revised General Order on Use of Force eliminates any list of factors to consider when determining objective reasonableness. Rather, DRAFT G.O. 540 IV. GENERAL USE OF FORCE OPTIONS A. Force Options simply dictates that “[t]he use of all force options must be objectively reasonable based upon the *totality of the circumstances* known by the deploying officer at the time force is applied.” Likewise, DRAFT G.O. 540 VII. USE OF DEADLY FORCE A. reads, “[t]he use of deadly force is only permissible where an officer

³⁸ *Id.*, at 314.

reasonably believes, based upon the *totality of the circumstances* known at the time, that deadly force is immediately necessary in order 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 options have been exhausted, do not reasonably lend themselves to the circumstances, are not feasible, or have already proven to be ineffective.” In my opinion, this removal of all listed factors is an appropriate change and an improvement to FCPD’s G.O. 540.

Because of the FCPD’s rollout of ECWs for all operational officers, its piloting of the BOLAWrap device, its expansion of its “co-responder” approach, and its overhaul of Use of Force guidance, I have no recommendations to make based on my review of the investigation into this incident. I believe that these advancements already being undertaken by the FCPD are warranted and will only improve the FCPD response to difficult and challenging incidents like this one in the future.

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.

