

Public Report

October 21, 2019: Officer-Involved
Shooting



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IPA-19-07

A Public Report by the
Fairfax County Independent Police Auditor

Publication Date: July 30, 2021



A Fairfax County, Va., Publication

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INCIDENT

Shortly after 9:00 p.m. on October 21, 2019, Fairfax County Police Department (hereinafter "FCPD") patrol officers assigned to the West Springfield District Station were dispatched to an address on Wicklow Drive in Burke, Virginia, to respond to a domestic violence call. The incident was quickly elevated to a "person shot" call when the 9-1-1 caller, who was at the location, screamed to the call-taker that her son was going to shoot her, and then two gunshots were audible on the 9-1-1 call. Another individual (hereinafter identified by the initials "WB") was able to get away from the house and call 9-1-1 from a neighbor's home. WB told the call-taker (and soon thereafter responding officers) that his uncle (hereinafter identified by the initials "MB") had shot WB's grandmother (MB's mother) and WB's brother (hereinafter identified by the initials "SB"). WB advised that he believed SB was still alive in the house.

After obtaining the information from WB, responding officers remained a safe distance away from the house and organized themselves into a team to make entry into the home. Before trying to make entry, however, numerous attempts were made to communicate with MB to convince him to surrender. These attempts were unsuccessful because MB did not answer phone calls or respond to public address system pleas. Based on WB's expressed belief that his brother, SB, was still alive inside the house, the officers decided to enter.

A Second Lieutenant (hereinafter "2LT#1") led the entry team of officers. When the team tried to enter through a sliding glass door in the rear of the house, MB fired multiple gunshots at them from inside. In response, 2LT#1 fired several shots from his handgun in the direction of MB, allowing the other entry team officers to escape any additional gunfire from MB. 2LT#1 was injured during the gunfire when either shrapnel or glass struck his eye. The ballistic shield being used for protection by the entry team member directly in front of 2LT#1 was also struck by MB's gunfire. 2LT#1 was guided away from the home by fellow officers and was taken to a hospital for treatment of his injuries. Two other entry team officers sustained minor injuries. At this point, the officers decided to wait for specially-trained personnel from the FCPD's Special Operations Division, specifically members of the Special Weapons and Tactics Team (hereinafter "SWAT") to make entry. At 11:06 p.m., SWAT officers entered the home

and found three deceased individuals (SB, MB, and MB's mother), all of whom had been shot. MB's death was the result of a self-inflicted gunshot.¹

RELEASE OF INVOLVED OFFICER'S IDENTITY

FCPD Chief EDWIN C. ROESSLER Jr. 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 2LT#1's identity on October 25, 2019.

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD conducted both a criminal and an administrative investigation into 2LT#1's use of deadly force. The results of the criminal investigation were provided to the Office of the Commonwealth's Attorney (hereinafter "CAO"). On December 19, 2019, the Chief Deputy Commonwealth's Attorney for Fairfax County advised that the CAO would not pursue criminal charges against 2LT#1 or any other officer involved in the incident. Rather, he expressed the following opinion after reviewing the investigation: "[2LT#1] certainly did not commit any crime but rather he and the other officers shot upon are victims of attempted capital murders. These officers acted bravely and with the intent to save lives that night in the face of losing their own. Their actions were heroic and not criminal."²

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.

¹ On October 23, 2019, the medical examiner conducted an autopsy on MB. On December 18, 2019, the medical examiner advised that none of the rounds fired by 2LT#1 struck MB, and that the cause of his death was suicide.

² December 19, 2019, Opinion Letter from Chief Deputy Commonwealth's Attorney Casey Lingan to FCPD Chief Edwin Roessler.

In addition to keeping apprised of the comprehensive criminal investigation, IAB investigators conducted administrative interviews and reviewed the following: incident reports, the medical examiner's report, 9-1-1 calls to the Department of Public Safety Communications (hereinafter "DPSC"), computer-aided dispatch records, audio and video footage from numerous in-car video systems, video footage provided by private community members, and training records relating to training completed by 2LT#1.

The FCPD concluded that 2LT#1's use of deadly force was within departmental policy, specifically FCPD General Order (hereinafter "G.O.") 540.0 and G.O. 540.8. Also, the FCPD concluded that he and other officers followed procedures in place to deal with individuals who have taken a hostage(s) 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. Connor³ 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."⁴ In the same opinion, Chief Justice William Rehnquist firmly stated that the Fourth Amendment to the United States Constitution⁵ 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 force⁶ 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."⁷ Finally, probable cause is based on the "totality of the

³ 490 U.S. 386 (1989).

⁴ *Id.* at 397.

⁵ 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.

⁶ See GLOSSARY.

⁷ Tennessee v. Garner, 471 U.S. 1, at p. 4 (1985).

circumstances,”⁸ known to the officer at the time, and the probable cause [to believe] standard is met when there is a “fair probability”⁹ that the belief is accurate.

The situation under review was certainly tense, uncertain, and rapidly evolving. And, 2LT#1 had ample probable cause to believe that MB posed a significant threat of death or serious injury to himself (and to his fellow officers) when 2LT#1 fired his weapon at MB. 2LT#1 knew that MB had shot multiple family members and was firing his weapon at 2LT#1 and other approaching officers when 2LT#1 returned fire. Therefore, 2LT#1’s use of deadly force was lawful under the Fourth Amendment.

The FCPD policy regarding the use of force—up to and including deadly force—mirrors the aforementioned pronouncements from the Supreme Court. FCPD General Order (hereinafter “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.”¹⁰ 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.”¹¹ 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.”¹² Therefore, for the

⁸ *Illinois v. Gates*, 462 U.S. 213 (1983).

⁹ *Id.*

¹⁰ FCPD G.O. 540.0 II.

¹¹ FCPD G.O. 540.1 I. L.

¹² FCPD G.O. 540.8 I. A.

same reasons that 2LT#1's use of deadly force satisfied the legal requirements for using such force, he also met the policy standards required by the FCPD. 2LT#1 utilized deadly force based on an objectively reasonable belief that MB posed a significant, or imminent, threat of death or serious injury to him (2LT#1) and to others.

2LT#1 and the other FCPD officers who responded to this incident also complied with the department's procedures for dealing with a hostage situation or a barricaded subject. Specifically, pertinent provisions contained in FCPD Standard Operating Procedure (hereinafter "SOP") 13-048: Hostage/Barricaded Person set 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;"¹³ that "[i]f the situation involves a hostage or the suspect/subject demonstrates the means and intent to use deadly force, SOD [Special Operations Division] resources shall immediately be requested;"¹⁴ that "[a]ttempts to communicate with the suspect/subject should be made;"¹⁵ and that "[p]ersons in the immediate vicinity of where the suspect is located should be moved to a safe area . . . [but that] [a]ny movement which exposes persons to the subject's field of fire must be avoided."¹⁶

Officers who responded to the incident requested a reverse 9-1-1 notification be made to neighbors in the vicinity advising them to remain inside their homes. Through DPSC, numerous calls were made to the phone number associated with the residence in which MB was located as well as to MB's cell phone, with messages left on each asking for him to surrender to police. Before attempting to enter the house, additional pleas for MB to surrender were made using the public address speaker system in one of the police vehicles at the scene. Finally, SWAT personnel were called to respond to the location. Entry was attempted prior to the SWAT personnel's arrival only because of the perceived necessity for immediate action to protect SB's life.

¹³ SOP 13-048, IV. A. 2.

¹⁴ SOP 13-048, IV. A. 3.

¹⁵ SOP 13-048, IV. A. 8.

¹⁶ SOP 13-048, IV. A. 9.

RECOMMENDATIONS

The factual recitation of this incident in the INCIDENT section of this reports makes clear that this was a very volatile and fast-moving situation with multiple lives potentially at risk. Quick decisions were made by officers, to include 2LT#1, with the hope of saving lives. Tragically, despite the officers' efforts, MB killed two family members before taking his own life, and three FCPD officers sustained injuries during the incident.

The FCPD policies in place to address hostage or barricaded subject situations were followed during this incident, and they possibly prevented additional injury or death. Furthermore, 2LT#1 complied with FCPD policy addressing the use of deadly force, and his doing so also likely prevented additional injury or death. These 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.¹⁷ In this incident, multiple decisions were made in rapid succession by responding officers, to include 2LT#1's decision to use deadly force. The FCPD analyzed each of these decisions by examining them against the policies in place. The investigation determined that the actions taken during this incident were lawful and complied with departmental policy. I agree with those conclusions for the reasons stated in the preceding section of this report, and I have no recommendations to make based on this incident review.

¹⁷ 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*).

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.

