

Fairfax County Police Department

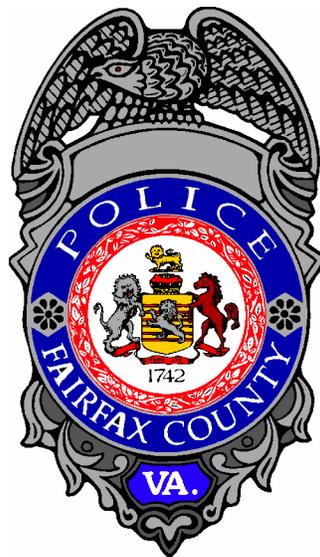
Use of Force Committee

June 8, 2012

Police Involved Shooting

April 13, 2009

Piney Grove Drive



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Table of Contents

Introduction.....	3
Incident Summary.....	3
Findings.....	7
• Training.....	8
• Policies, Procedures and Practices.....	9
• Equipment.....	10
Conclusion.....	11
Use of Force Committee.....	12
Attachment.....	13

Introduction

On May 22, 2012, the Fairfax County Police Department's Use of Force Committee met to review a deadly force incident which occurred on April 13, 2009, in the McLean District. The purpose of the committee is to review police deadly force incidents from a training, tactical, equipment, and policy standpoint. The results of this review are documented in the committee's report and details the lessons learned from this incident with the overall goal of improving officer safety and performance. The results of the review will be provided to Command Staff for distribution, discussion, and training within their respective entities.

The Use of Force Committee consists of patrol officers, first-line supervisors and commanders, who bring a variety of experience and expertise from different areas of the Department. The committee has been expanded to include a senior Master Police Officer (MPO) to add diversity, knowledge, and a line officer's perspective of deadly force incidents.

Incident Summary

In 2007, Suspect #1 befriended Victim #1 and her son Harold after she broke up with Harold's father, Witness #1. Suspect #1 paid special attention to Harold and told Victim #1 that he had romantic interests in her. Victim #1 admitted having a sexual relationship with Suspect #1 but said she broke it off when he became "*infatuated*" with her. Towards the beginning of April, 2009, Witness #1 and Victim #1 had reconciled their relationship and were spending more time together which angered Suspect #1. Suspect #1 spoke very negatively of Witness #1 when he talked to Victim #1, blaming him for abandoning Harold when they broke up in 2007.

Suspect #1 began calling Victim #1 more and more in April of 2009, often times demanding to see Harold. Victim #1 said Suspect #1 purchased tickets to the circus for her and Harold and she reluctantly went with him to the circus on April 10, 2009.

On Sunday, April 12, 2009, Witness #1 and Victim #1 were at her aunt's house for the day and returned home to Piney Grove Drive at approximately 2030 hours. Around the same time, Suspect #1 called Victim #1 demanding to see her and Harold. Victim #1 told Suspect #1 it was too late and hung up. Suspect #1 called her repeatedly until Victim #1 turned off her mobile phone. Suspect #1 began calling her house phone and on one occasion heard Witness #1 in the background which reportedly made him very angry. Suspect #1 made a total of 19 phone calls before the calls stopped at 2303 hours.

At approximately 2300 hours on April 12, 2009, Harold was asleep in his bedroom and Victim #1 locked all the doors in the house. Victim #1 went to her bedroom with Witness #1 and they had sexual relations. Witness #1 fell asleep and he was snoring loudly so Victim #1 went into her son's bedroom, got into his bed, and went to sleep. Victim #1 was only wearing panties with a towel wrapped around her when she got into Harold's bed.

On April 13, 2009 at approximately 0030 hours, Suspect #1 approached the rear door of Victim #1's house. Armed with a large combat style knife, two (2) metal pry bars, a hammer, and wearing gloves and a black knit ski mask, Suspect #1 broke into the rear sliding glass door and

walked up the stairs toward the bedroom. Suspect #1 entered Victim # 1's bedroom where Witness #1 was sleeping alone in the bed. Suspect #1 raised the combat style knife over his head and began to attack Witness #1. Witness #1 woke up just prior to the attack and was able to put up his hands and defend himself from being stabbed.

Suspect #1 and Witness #1 began fighting which woke up Victim # 1, who began screaming and shouting as the fight spilled into the hallway, causing both men to fall down the stairs onto the ground level of the house. Witness #1 found an opportunity to escape and broke contact with Suspect #1 and fled out the front door of the house and onto Piney Grove Drive. Suspect #1 began assaulting Victim # 1 while Witness #1 stood in front of the house screaming for Suspect #1 to let Victim # 1 go. The sounds of the assault and screams coming from Victim # 1's home began to wake the neighbors.

Neighbors on Piney Grove Drive woke up to the sound of a "*pounding noise*" coming from next door at Victim # 1's house. Neighbor #1 observed Witness #1 standing outside screaming which prompted him to dial 9-1-1 and report a domestic dispute in progress to the Department of Public Safety Communications (DPSC). The call was dispatched by DPSC nineteen seconds after it was entered and 331A and 330A were dispatched. 331A was parked at the Multiplex Theater on Lee Highway doing paperwork when she was dispatched. 331A marked enroute on her CAD and pulled out onto Lee Highway and headed west toward Ellenwood Drive. 331A turned left on Ellenwood Drive approximately three minutes after receiving the call and was immediately flagged down by witnesses.

While 331A was enroute, a second call was received by DPSC. Neighbor # 2 reported he saw a male and female fighting outside the Piney Grove Drive address. Neighbor # 2 also said he saw the male and female go back inside, and the female then run outside with the male chasing her. Supplements were added to the call to update the event as it was unfolding.

The investigation of this incident revealed that while Suspect #1 was continuing his assault on Victim # 1 in her home, she broke free from him and fled out of the house, down Piney Grove Drive, and ran north on Ellenwood Drive towards Lee Highway. Suspect #1 gave chase and this is what Neighbor #2 observed when he called 9-1-1. Witness #1 also fled in the same direction ahead of Victim # 1.

As the disturbance grew louder and more violent, additional calls were received by DPSC. Neighbor # 3, who lives on Ellenwood Drive, called 9-1-1 and reported she could hear screaming coming from outside, including someone yelling, "*Call the fucking police.*" Neighbor # 3 said she heard the screaming for approximately ten minutes and had just opened her window to investigate further.

At approximately 0042 hours, Suspect #1 caught Victim # 1 on Ellenwood Drive. Suspect #1 began assaulting Victim # 1 again, which included him slamming her onto the hood of a vehicle parked along Ellenwood Drive. The assault was heard by Neighbor # 4, who ran outside to observe what was happening.

At 0042 hours, Neighbor #4 called 9-1-1 while standing outside of her home. Neighbor # 4 reported there was a naked woman being assaulted by a man in front of her house. During the phone call, Neighbor # 4 and another female were heard yelling at the suspect to stop his assault. The phone call also captured the voice of Suspect #1 yelling at Neighbor # 4 and Neighbor #5. Suspect #1 can clearly be heard yelling, "*Call the police.*" Neighbor #4 reported to DPSC that the male and female were walking south on Ellenwood. At this time, Witness #1 ran up to Neighbor #4 and can be heard talking in the background. Neighbor #4 told the call taker that the man broke into the woman's house with a knife. One minute and 38 seconds into Neighbor #4's call, she stated she had lost sight of Victim # 1 and Suspect #1. Neighbor #4 explained she was with Witness #1 who is the victim's fiancé. The call taker supplemented the event with the additional information he had received from Neighbor #4. Just prior to the conclusion of the phone call, Neighbor #4 stated "*Here's the police now.*" Neighbor #4 hung up at 0045 which is the time that 331A arrived and stopped her vehicle on Ellenwood Drive to speak with Neighbor #4 and Neighbor #5.

When Neighbor #4 lost sight of Suspect #1 and Victim # 1, it was later learned that Suspect # 1 dragged Victim # 1 back into her home on Piney Grove Drive. Suspect #1 retrieved the keys to his vehicle which he had left behind and exited the residence with Victim # 1, pulling her back towards Ellenwood Drive. Suspect #1 pulled Victim # 1 down Piney Grove Drive and then headed south on Ellenwood Drive.

ST82, who was assigned to the adjoining Fair Oaks District, had been monitoring the call while scanning McLean's dispatch channel on his police radio. ST82 was traveling south on Nutley Street south of Interstate 66 when he heard the update about a possible knife being involved. ST82 knew he was in close proximity to the location of the incident and responded. Due to the close proximity, ST82 never notified a dispatcher that he was responding.

Upon arrival, 331A spoke with Neighbor # 4 and Neighbor #5 briefly to find out what was occurring. 331A did not mark on scene while she spoke with the two witnesses. After being briefed for approximately 15 seconds, 331A drove south on Ellenwood Drive to try and locate the suspect and victim. ST82 turned from Nutley Street to eastbound Lee Highway and then south on Ellenwood Drive. ST82 arrived just as 331A was pulling away from Neighbor #5 and Witness #1. ST82 stopped and asked Neighbor #5 and Witness #1 to give him a quick briefing as to what had occurred.

As ST82 was being briefed, 331A located Suspect #1 and Victim # 1 at the intersection of Ellenwood Drive and Piney Grove Drive, which is where she made first contact with them. Neighbor # 1 called 9-1-1 a second time at 0046 hours when he saw Suspect #1 dragging Victim # 1 away from her home towards Ellenwood Drive. Neighbor # 1 was updating the call taker when he stated "*Oh, it looks like the policeman just showed up.*" Neighbor # 1 further stated that he observed the officer was a female.

Upon locating the suspect, 331A parked her marked police cruiser and stated on the police radio "*Hold me out at Ellenwood and Silent Valley.*" Suspect #1 was heard over the radio yelling in the background as 331A marked on scene. 331A's vehicle was parked 75 feet south of Piney Grove Drive.

ST82 heard 331A mark out with the suspect and began heading south on Ellenwood Drive. 331A gave Suspect #1 commands to stop walking but he refused. 331A continued walking behind Suspect #1 and Victim # 1 as they walked south on Ellenwood Drive. 331A could not observe the knife in Suspect #1's hand at this point because Suspect #1 was leading Victim # 1 and she was blocking 331A's view of him. 331A followed Suspect #1 and Victim # 1 approximately 80 feet when Suspect #1 approached a 2002 Toyota Highlander parked along the curb of southbound Ellenwood Drive. Suspect #1 opened the door, continuing to disregard 331A's commands to stop. Suspect #1 forced Victim # 1 into the front seat of the vehicle. As Suspect #1 forced Victim # 1 into the vehicle, 331A noticed that Suspect #1 was carrying a large knife in his right hand. 331A drew her pistol, pointed it at him, and yelled at him to drop the knife. 331A repeated her command twice and Suspect #1 responded, *"I'm going to kill her, I'm going to kill her!"*

As this was happening, ST82 was driving south on Ellenwood Drive and observed 331A following Suspect #1 and Victim # 1 on foot. As they reached the vehicle, ST82 drove past 331A and positioned his marked cruiser at a 45 degree angle pointing towards the driver's door of Suspect #1's vehicle. ST82's vehicle was only ten feet from Suspect #1's vehicle at their nearest points.

ST82 turned his cruiser's spotlight on and pointed it at Suspect #1 to get a better view of him. When the spotlight was pointed at Suspect #1, ST82 observed the large knife in Suspect #1's right hand. Suspect #1 grabbed Victim # 1 by the back of her head with his left hand and put the point of his knife to her throat with his right hand. Realizing that he might have to shoot Suspect #1 to save Victim # 1's life, ST82 began moving around the front of his cruiser to get himself in a position to have a back drop that did not endanger Victim # 1. 331A and ST82 both gave Suspect #1 commands to drop the knife but he refused.

As ST82 reached a position that provided more safety to Victim # 1, who was still seated in the driver's seat, Suspect #1 yelled, *"I have a gun."* ST82, who was now just a few feet from the rear of the Toyota SUV with a point of aim nearly parallel to the vehicle, observed Suspect #1 pull the knife away from Victim # 1's throat and rotate his body, reaching inside the vehicle with his right hand. ST82, fearing Suspect #1 was about to produce a gun, fired one shot from his issued service pistol. The round entered Suspect #1's left shoulder, traveled through his left lung, heart, and right lung before lodging between the 6th and 7th ribs on his right side.

The gunshot caused Suspect #1 to cease all actions immediately and slump down in the door jam of the Toyota SUV, still holding the knife in his right hand. ST82 approached Suspect #1 rapidly, pistol still drawn. 331A used her police radio to reported that shots had been fired. 340A, who was also enroute to the call, heard 331A's report of shots fired, and immediately told DPSC to start rescue.

As ST82 reached Suspect #1 he holstered his weapon and grabbed Suspect #1's right wrist to control the knife. ST82 and 331A then pulled Suspect #1 out of the door jam and took him to the ground. Suspect #1 provided no resistance when the officers pulled him from the vehicle, and he fell effortlessly and landed on his stomach. The impact of Suspect #1 falling to the ground caused the knife to fall out of his hand.

331A used her handcuffs to restrain Suspect #1 as 342A and 341A arrived on scene. 331A told DPSC that ST82 was on scene with her and the dispatcher added him to the event at that time. ST82 and 341A observed Suspect #1 bleeding from his mouth and making gurgling sounds. ST82 used his pocketknife to cut off Suspect #1's shirt to better assess his injuries. ST82 and 341A rotated Suspect #1 onto his side because he was bleeding "*profusely from his mouth.*" 331A retrieved an emergency blanket from her cruiser and wrapped Victim # 1 with it. 331A walked Victim # 1 back to her cruiser and placed her in the backseat. ST82 and 341A continued their assessment of Suspect #1's injuries until relieved by Fire and Rescue units.

340A arrived on scene, and reported to the dispatcher that Suspect #1 had been shot through the shoulder and requested rescue to expedite and the helicopter to be pre-alerted. At 0050 hours, the fire department was notified that the scene was secure for them to come in. At 0052 hours, ST82 used a McLean District officer's radio to speak with the McLean dispatcher. ST82 told the dispatcher to advise rescue that the subject had been shot through his shoulder and probably both lungs. At 0052 hours, Fairfax County Fire and Rescue Medic Unit 430 arrived on scene and relieved the police units who were providing first aid.

ST82 remained in the area observing once rescue arrived but had no other official police interactions with anyone on scene. ST82 realized after this incident that his pistol was cocked in his holster so he pulled his pistol partially out of his holster, de-cocked it, and re-holstered his weapon. ST82 did not reload his weapon or alter any of his equipment at any time before he was photographed by crime scene detectives.

Medic 430 did a "load and go" on Suspect #1 to get him to the hospital as quick as possible. 330A followed the ambulance to INOVA Fairfax Hospital and remained with Suspect #1 until he was relieved by crime scene detectives later in the morning. Suspect #1 was treated at INOVA Fairfax Hospital and pronounced dead at 0112 hours.

Findings

After the case was presented to the committee, those in attendance were asked if they had any initial comments or questions concerning the presentation.

The following questions were asked:

1. Was a gun found in the suspect's vehicle?

Answer: No.

2. Did the officers use flashlights during this incident? If yes, where was the flashlight obtained from (duty belt or cruiser)? If no, what was the reason it was not used?

Answer: Neither officer utilized their flashlights, which both had on their duty belts. ST82 also had a second flashlight available in his cruiser. When 331A first observed the suspect and victim, she turned on her spotlight to illuminate both persons, and then followed them on foot. ST82 turned on his spotlight, which illuminated the suspect at his

vehicle. ST82 stated the spotlight provided ample illumination, and felt the smaller flashlight was not needed.

3. Why did ST82 utilize a McLean officer's portable radio instead of his own portable radio?

Answer: After the shooting, ST82 contacted the dispatcher for Station 8, and advised her of the situation. He then utilized a McLean officer's portable radio to notify the dispatcher for Station 3 of the situation. ST82 felt it was quicker to use the McLean officer's radio than to take the time and switch his portable to another channel.

It was also mentioned that ST82 had attended PRISM training at the Range approximately six weeks prior to this incident. A scenario similar to this incident was presented and ST82 commented after the incident that the training assisted him greatly as this event unfolded.

Training

The committee discussed what regular or yearly training officers receive related to their regular duties. For example, OCN detectives and SWAT officers regularly train at the range, and conduct training related to their job assignments, such as vehicle take-downs, vehicle extractions and dynamic entries. Although patrol officers, MCD detectives, and other specialties receive additional training related to their positions, greater benefit would be derived if the training was conducted on a more regular basis.

The following are findings by the committee which should be considered regarding training, to include range, in-service, and tactical training:

- ✚ Officers would benefit from on-going training regarding high risk vehicle and subject stops. In this incident, officers from two different police districts responded to this incident, and utilized excellent officer safety tactics and training. Although a traditional "Tactical L" position was not used by the officers in this quickly evolving event, the officers were positioned off set from each other, and both had a clear field of fire. Training that reinforces basic tactical movements, such as the "Tactical L" should be emphasized in on-going training.
- ✚ 331A maintained good distance from the suspect as he moved toward the vehicle with the victim and she did not jeopardize her safety by getting too close to the suspect. 331A followed at a distance where she could maintain visual and verbal contact with the suspect while waiting for backup to arrive. This demonstrated composure and sound officer safety tactics during a very volatile and quickly escalating situation.
- ✚ ST82 left the cover of his cruiser to move into a better position in the event he had to deploy deadly force. ST82 maintained visual contact with the suspect the entire time while moving into a better position, and he made a conscious and deliberate decision to step away from the cover of his cruiser. ST82 was aware that moving from behind

cover exposed himself to the suspect; however, he utilized excellent techniques to approach the suspect which are similar to those taught in the recent PACOPS training conducted by SWAT.

- ✚ ST82 formulated a plan based on observation of the knife, the serious injuries to the victim, and the suspect's statement that he had a gun. ST82 participated in squad level PRISM training at the Police Range approximately six weeks prior to this incident, and faced a very similar scenario as he did in this incident. ST82 relied on the training and skills he learned during the "Shoot-Don't Shoot" PRISM training, and this proved to be timely and valuable as this incident quickly unfolded.
- ✚ ST82 was cognizant of the backdrop when he made the decision to deploy deadly force. ST82 was also concerned about the position of the victim in the vehicle in relation to the suspect, as well as the presence of 331A. He fired only one round, quickly assessing the scene to determine the effectiveness of the shot. ST82's awareness of his surroundings and effectiveness of his shot demonstrated incredible patience and assessment of the situation, so that he only fired a single round. This was an important decision, as the presence of the victim and 331A so near to his field of fire could have caused his backdrop to change at any given moment.
- ✚ Neither officer had the opportunity to utilize their flashlights during this incident as the cruiser spotlight provided adequate illumination. However, many deadly force incidents occur in darkness or low light situations. Officers would benefit from regular training in the use of flashlights or other types of illumination equipment during deadly force situations so they become familiar and comfortable with using their equipment during critical incidents. Consideration should also be given to periodically reviewing the current lighting equipment provided to officers to ensure it is effective for shooting proficiently in a dark environment.

Policy, Procedures and Practices

The committee discussed policies, procedures, and practices regarding this incident. This included review of General Orders and Standard Operating Procedures, as well as "informal" common practices utilized by officers during this incident. The following are findings by the committee which should be considered regarding policies, procedures, and practices:

- ✚ Witnesses quickly approached 331A as she arrived on scene to provide her updates on the situation, and she did not mark on scene via radio or by MDT. The officer in this case did not have the opportunity to advise the dispatcher that she was in the area speaking with witnesses. While there are times when circumstances may prevent an officer from immediately notifying the dispatcher they are on scene, the ramifications of this are obvious. Officers should regularly update the dispatcher of their location and status, especially when they are actively involved in the investigation of a criminal complaint.

- ✦ ST82 did not notify his dispatcher that he was assisting on this call in the McLean District. ST82 was very close to the location when the call was dispatched, and was aware of the radio traffic because he was scanning the McLean District channel along with the Fair Oaks channel. ST82 arrived quickly on the scene, and immediately encountered a volatile, violent and rapidly evolving situation, and did not have the opportunity to advise the dispatcher that he was on scene. As a result, DPSC, McLean units and Fair Oaks units were not aware that he was on scene. Officers moving from one district to another should advise the dispatcher on both frequencies of their status. Officers who are not dispatched to a complaint, but self-initiate a response, should advise the dispatcher and other responding units of their presence. As ST82's MDT did not have him responding to the scene, he was not receiving supplemental information and important updates from DPSC.
- ✦ It is beneficial for DPSC to monitor officers and their locations, especially on high risk incidents, via the Auto Vehicle Locator (AVL) tracking capability in each cruiser. This will assist dispatchers in determining the appropriate resources to place on an incident and provide them immediate notification when an officer arrives on scene or in the area.

Equipment

Lastly, the committee discussed equipment issues related to this incident. Some of the issues discussed have already been addressed by the Department and changes were made before the committee met. The following are findings by the committee for consideration, to include those which have already been addressed, with regards to equipment:

- ✦ Patrol cruisers do not have "take-down" lights or "alley lights" as part of the emergency equipment.

This incident occurred on a residential street which did not have very good lighting. Neither officer utilized their flashlights, as the spotlights on their cruisers were used to help illuminate the area. Officers on the scene could have benefited from enhanced illumination of the subject as he stood beside his vehicle.

- ✦ Officers should be familiar with the operation and capabilities of the portable radio.

ST82 utilized his portable radio to provide an update to the dispatcher assigned to the Fair Oaks channel. He then used a McLean officer's radio to give an update to the dispatcher assigned to the McLean channel. ST82 is familiar with the operation and function of the portable radio, but found it quicker to use a radio already programmed to the McLean channel. In selecting the portable radio of the future, consideration should be given to ease of use for certain functions, such as changing channels, in high stress situations.

- ✦ Issued service weapons should be loaded to capacity.

At the conclusion of this incident, it was determined that one of the officers on the scene did not have a full complement of ammunition in their magazine, as it was one round short of full capacity. While this did not have any impact on the outcome of this incident, it serves as a reminder that officers should regularly check all of their equipment prior to the start of their shift to ensure it is functionality and effectiveness. Supervisors should also periodically inspect the weapons and equipment of their officers to ensure functionality and compliance with Department policies and procedures.

- ✦ The issued service weapon on April 13, 2009, was the Sig Sauer 40mm handgun. The single round fired by ST82 was sufficient to immediately stop the violent and aggressive action of the suspect.

Conclusion

This incident began as a domestic violence call which subsequently turned into a deadly force incident involving two police officers and the suspect. Suspect #1 was in possession of a large knife which he was using to threaten the victim. There is no doubt that Suspect #1 had the intention to seriously injure or even kill the victim. The victim was already suffering from injuries which had been inflicted by the suspect, and it appeared his intention was to leave in the vehicle with the victim.

As 331A pointed her handgun at the suspect and ordered him to drop the knife, ST82 moved from behind cover to a position that gave him an advantage to utilize deadly force. When the suspect yelled *"I have a gun!"* and made a furtive movement with his hand toward the inside of his vehicle, ST82 fired one round from his service weapon, stopping the immediate threat to the victim, 331A and himself.

ST82 and 331A were in fear for their lives as well as that of the victim. The actions taken by both officers are reflective of their training and experience, and they acted courageously and within Departmental policy with regards to the use of deadly force.

The aim of the Use of Force Committee is not to second guess the split second decisions made by officers in a deadly force situation. Rather, it is to develop "lessons learned" from the incident and develop recommendations in the area of training, equipment, policies, and procedures, with the ultimate goal of enhancing officer safety.

Use of Force Committee Members

Major Thomas Ryan, Internal Affairs Bureau

Captain Edward O'Carroll, Internal Affairs Bureau

Captain Paul Thornton, Investigative Support Division

Captain Andre Tibbs, Reston District Station

Captain Shawn Bennett, Franconia District Station

Lieutenant John Naylor, Internal Affairs Bureau

Lieutenant Christopher Marsh, Organized Crime and Narcotics Division

Lieutenant Paul Thompson, Major Crimes Division

Second Lieutenant Brian Hall, Criminal Justice Academy, Firearms Training Unit

Second Lieutenant Christopher Cochrane, Special Operations Division, SWAT

Second Lieutenant James Kellam, Internal Affairs Bureau

Sergeant Scott Moskowitz, Internal Affairs Bureau

Master Police Officer Julie Hersey, Sully District Station

Brandi Horita, Operations Support Bureau, Crime Analyst

