

Fairfax County Police Department

Use of Force Committee

March 16, 2012

Police Involved Shooting

September 11, 2007

Sunrise Valley Drive/Coppermine Road



This document is FOR OFFICIAL USE ONLY and should be considered Law Enforcement Sensitive. Dissemination outside the FCPD is restricted and requires approval of a command staff officer.

Table of Contents

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

Introduction

On December 6, 2011, the Fairfax County Police Department's Use of Force Committee met to review a deadly force incident which occurred on September 11, 2007, in the Fair Oaks 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 will be provided to Command Staff for distribution, discussion, and training within their respective entities.

The Use of Force Committee consists of first line supervisors and Commanders, who bring a variety of experience and expertise from different areas of the Department. The committee will be expanded in the future to include senior Master Police Officers (MPO) and Police Officers First Class (PFC) to add diversity, knowledge, and a line officer's perspective of deadly force incidents.

Incident Summary

On September 11, 2007, at 0332 hours, 800A was dispatched to a single vehicle crash on Sunrise Valley Drive near the intersection of Coppermine Road. 800A arrived on scene of the crash at 0344 hours. 801A responded to assist 800A and arrived on scene at 0353 hours.

Sunrise Valley Drive is a six lane divided highway separated by a grassy median. During the morning of September 11, 2007, there was light rain and the roadway was damp. Sunrise Valley Drive near Coppermine Road is partially lit from street lights and the Candlewood Suites Hotel, but the area is mostly dark and flashlights would have been needed to see. The area consisted of multiple businesses, most of which were under construction. There was very light traffic on the road during this incident with only five or six vehicles driving by the entire time the officers were on scene.

When 800A arrived on scene, he observed a maroon four door Honda Accord with Virginia registration facing northbound in the middle lane of southbound Sunrise Valley Drive. The vehicle's front right tire was flat and it had damage to the left rear quarter panel where it had struck a street sign. Suspect #1 was sitting in the driver's seat of the vehicle. Suspect #1 was wearing a white tee shirt, blue jeans secured with a belt, and white Nike sneakers. Suspect #1 was noted as having mud on his sneakers and jeans.

800A approached Suspect #1 and obtained his information. Suspect #1 could not produce any identification. However, 800A was able to verify his identity through the Division of Motor Vehicle (DMV) records. Suspect #1 had a valid operator's license in the Commonwealth of Virginia.

By assessing the scene, 800A surmised that Suspect #1 was driving on northbound Sunrise Valley Drive and could not negotiate the slight right curve in the roadway. Thus, he ran over a street sign, over the grassy median, and came to rest in the southbound lanes of Sunrise Valley Drive. Initially, 800A believed Suspect #1 to be intoxicated based on the vehicle crash, his

lethargic mannerisms, and his simple one and two word answers given in response to questions. 800A did not smell any alcohol which led him to believe Suspect #1 was under the influence of some type of narcotic.

When 801A arrived on scene, 800A watched Suspect #1 while he went back to his cruiser to conduct record checks. 800A conducted record checks on both Suspect #1 and the vehicle and determined he was not wanted and the vehicle was registered to him. 800A used his Computer Aided Dispatch (CAD) to enter a wrecker request due to Suspect #1's vehicle being disabled from the crash.

800A started the process of conducting a driving while intoxicated investigation on Suspect #1. 800A approached Suspect #1 for the second time and attempted to have him to exit his vehicle. 800A was utilizing his flashlight while talking to Suspect #1. 800A did not see any weapons or anything unusual in Suspect #1's vehicle. 800A was standing at Suspect #1's driver's side door with the door partially opened and Suspect #1 was sitting in the driver's seat. 800A engaged Suspect #1 in conversation for approximately forty minutes attempting to get him to exit his vehicle. 800A explained to Suspect #1 that his vehicle was disabled due to the crash, was blocking the roadway, and he needed to exit his vehicle so it could be towed. The Wrecker Towing Company truck arrived on scene after a short period of time and while the conversation between 800A and Suspect #1 was still occurring. Wrecker Driver #1 backed his flatbed tow truck up to Suspect #1's vehicle and stayed in the tow truck. Wrecker Driver #1 turned the tow truck's rear flood lights on which illuminated Suspect #1's vehicle.

During the conversation, Suspect #1 told 800A he could not get out of the car because *"he would do something with his arm"*. Suspect #1 also asked 800A why he hadn't asked him about the mud on his pants and that maybe he *"put something over in the weeds."* Based on Suspect #1's irrational statements, 800A un-holstered his X26 CEW and handed it to 801A who was standing behind him. The battery in 800A's flashlight went dead at one point while talking to Suspect #1. 800A then utilized 801A's flashlight while continuing to attempt to get Suspect #1 to exit his vehicle.

Suspect #1 observed 800A hand 801A the CEW. Suspect #1 then asked 800A why he handed 801A the CEW. 800A explained to Suspect #1 that some of his statements were perceived as a threat. 800A further explained to Suspect #1 that he did not want to have to *"fight"* him to get him to exit his vehicle. At this point, 800A believed Suspect #1 was either going to try to *"run"* or *"fight"* him and 801A.

800A radioed the dispatcher on Fair Oaks main channel eight that he was *"10-4"* and requested another unit to respond because he believed he was going to have to use force to get Suspect #1 out of his vehicle. 981A heard the call that an additional unit was needed and responded. She arrived on scene at 0414 hours. 080A also responded and arrived on scene at 0416 hours.

981A took a position to 801A's left side and behind 800A. When 080A arrived, he approached Suspect #1's passenger window and looked into his vehicle with his flashlight. 080A did not see any weapons or anything unusual.

Due to the length of time it was taking to get Suspect #1 to agree to exit his vehicle, 801A's flashlight battery, which 800A was using, also went dead. 800A asked 981A for her flashlight; however, she told 800A that her flashlight battery had died also due to using it for a lengthy period of time on a previous call. 080A then handed his flashlight to 800A as he continued to try and get Suspect #1 to exit his vehicle voluntarily.

At one point, Suspect #1 requested to call a friend to come get him. 800A agreed to let Suspect #1 use his cellular telephone to make a call. Suspect #1 opened his cellular telephone; however, he never made a call. He kept opening and closing the telephone without scrolling through any numbers or attempting to make a call.

801A notified 080A that Suspect #1 was refusing to exit his vehicle. 800A also notified him that Suspect #1 did not smell of any alcohol, but he believed he was driving under the influence of a narcotic or that he was an Emotionally Disturbed Person (EDP).

The four officers on scene non-verbally devised a plan while standing next to Suspect #1's vehicle. All four officers knew that 800A was going to have to use force to take Suspect #1 out of his vehicle and that 801A would be ready with the CEW if Suspect #1 tried to fight or run.

800A was standing at the driver's door (which was all the way open) with 801A to his right, 981A behind 800A and 080A to 800A's left rear. At one point, Suspect #1 put both of his feet on the ground and started to stand up, but then leaned back into his car seat. 800A then stepped forward toward Suspect #1 and put one hand on his shoulder and the other on Suspect #1's arm. As soon as 800A touched Suspect #1, he stood up out of his vehicle on his own without any force from 800A. 800A then took two steps backwards to allow Suspect #1 to exit the vehicle on his own.

When Suspect #1 exited his vehicle, he pulled a handgun from his waistband and put the barrel of it to 800A's head. Suspect #1 was holding the handgun in his right hand and pushed the barrel against the left side of 800A's head (specifically his upper left cheek). 800A immediately noticed the threat as a handgun and stepped into Suspect #1 while pushing the barrel of the handgun away from his head. As 800A grabbed the handgun, he pulled it down between his body and Suspect #1's body as the two struggled for possession of the weapon.

800A took Suspect #1 to the ground (800A is unsure what method he used to do so). 800A and Suspect #1 laid parallel with each other in the roadway next to Suspect #1's vehicle with their heads pointed toward the front of the vehicle (800A's back was against Suspect #1's vehicle with Suspect #1 facing him) as they continued to struggle for possession of the handgun.

When Suspect #1 exited his vehicle, 801A saw the reflection of a silver object in the hand of Suspect #1 as it was raised to 800A's head. 801A perceived Suspect #1's actions as a threat to 800A and he immediately fired the CEW he was holding in his hand at Suspect #1. Suspect #1 did not react with the desired effect as it appears both darts from the CEW failed to make contact. 801A then realized the silver object he saw was a handgun and that Suspect #1 had the barrel of it pressed against 800A's head. 801A threw the CEW onto the ground and

transitioned to his service pistol. 801A fired four rounds from his service pistol striking Suspect #1 in his lower back and buttocks area.

When Suspect #1 exited his vehicle, 080A observed Suspect #1 pull something out of his waistband. 080A heard a metallic scraping noise which he believed to be a handgun scraping against Suspect #1's belt buckle. 080A then observed Suspect #1 put the barrel of the handgun against 800A's head. 080A drew his service pistol and fired three rounds into Suspect #1's lower back and buttocks area as 800A took Suspect #1 to the ground.

981A also drew her service pistol and pointed it at Suspect #1 as she also saw him put the barrel of the handgun against 800A's head; however, she did not fire any rounds. 981A did not have a clear shot at Suspect #1 due to her position behind 800A. 981A believed if she fired any rounds the likelihood of 800A being struck was high. 800A did not draw his service pistol from his holster at any time.

Suspect #1's threatening actions toward 800A stopped once he was shot by 801A and 080A. 800A then kicked Suspect #1's handgun away from him where it could not be reached. 800A jumped to his feet, retrieved the handgun and placed it on the hood of Suspect #1's vehicle out of his reach. The handgun was left in the condition it was retrieved and was not manipulated by anyone that was on scene until it was retrieved by the Fairfax County Crime Scene Section.

080A immediately called in "*shots fired*" to the dispatcher on the Fair Oaks main channel eight and alerted them that rescue was needed. Members of the Fairfax County Police Helicopter Unit got on the radio and gave first aid instructions to the units on the scene. They advised for units on scene to check for entrance and exit wounds on Suspect #1 and to apply direct pressure to those areas. Units on the scene provided aide and monitored Suspect #1's breathing while updating the dispatcher with his condition.

Suspect #1 was taken into custody and handcuffed by 080A while 981A and 801A searched him for more weapons. Suspect #1 was found to have cartridges of Winchester 40 S&W / Federal S&W in both of his front jean pockets. A small white rock (that later tested positive for cocaine) was found in Suspect #1's front right jeans pocket. A fire resistant safe key and a razor blade were found in his left jeans pocket. All of the items were left in the jeans which were cut off by rescue and left at the scene until they were collected by the Fairfax County Crime Scene Section.

After Suspect #1 was placed into custody at the scene, 800A was experiencing pain in his back. Unsure if he had been shot, he took off his gun belt, uniform shirt, ballistic vest, and undershirt so he could be checked for bullet holes. 800A was not struck by any bullets. 800A suffered a small abrasion to his left upper cheek believed to have been caused from the barrel of Suspect #1's handgun. 800A later responded to INOVA Reston Hospital where he was treated for his back pain.

At INOVA Fairfax Hospital, Suspect #1 underwent surgery for his injuries. A bullet fragment was removed from Suspect #1's intestines. X-rays of Suspect #1 were taken and revealed Suspect #1 had six bullets lodged in his lower torso/pelvic area. Four bullets were in his right

thigh and buttocks and two were in his back. Suspect #1's front left hip had an abrasion on it that appeared to be consistent with a bullet graze. All six bullets were left in Suspect #1's body after surgery with the exception of the small bullet fragment that was taken from his intestines. Due to the rounds being left in Suspect #1, shot placement from each officer could not be determined.

Suspect #1 survived his injuries and was charged with Attempted Capital Murder of a Police Officer and Use of a Firearm in Commission of a Felony. One year and 15 days after this incident occurred, Suspect #1 was tried and convicted of his crimes, and was sentenced to 51 years in prison.

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. Were the keys still in the ignition of the suspect's vehicle?

Answer: No

2. Were the officers asked after the incident what additional training might have assisted them in this situation?

Answer: The officers in this incident attended specialized tactical and firearms training as a squad approximately two weeks before this incident. 080A stated this training was extremely beneficial as this incident unfolded. All four officers attended post-incident training which they also felt was very pertinent.

3. Was the suspect ever asked if he was in possession of a weapon?

Answer: After arriving on scene, 080A positioned himself on the passenger side of the vehicle and shined his then working flashlight into the vehicle to check for weapons. The suspect stated "What the fuck are you looking for?" 080A stated "Weapons". The suspect did not say anything further in regards to being in possession of a handgun.

It was also mentioned that 080A responded to the Range after this incident and thanked the staff for providing close combat shooting training. He felt this training assisted him greatly as this event unfolded.

Training

The committee discussed what training officers receive while recruits in the Academy, as well as annual training related to an officer's regular duties. For example, OCN detectives and SWAT officers regularly train at the range, and conduct training related to their specific job assignments, such as vehicle take-downs, vehicle extractions and dynamic entries. Patrol officers, MCD detectives, and other specialties do not regularly receive training related to their positions.

The following are findings by the committee regarding **training**, which includes range, in-service, and tactical training:

- ✦ Officers would benefit from training in recognizing physical and verbal clues and behaviors that would indicate that a subject's behavior is different than what is normally displayed by others in similar circumstances.
- ✦ Officers would benefit from training that encompasses skills that officers utilize on a daily basis, but don't routinely review or train on.

Examples are vehicle extractions involving uncooperative subjects, defusing volatile and potentially violent situations, and tactically sound practices during traffic and/or subject stops. Officers would also benefit from practical, situational training that involves physically disarming an individual in close proximity.
- ✦ Essential job skills training for the patrol officer should be cyclical and reoccurring, so it becomes through repetition, a regular habit and practice by officers while on duty.
- ✦ The officers in this incident conducted regular tactical and squad training, and this familiarity and knowledge of each officer was a critical and beneficial factor during this incident, as it facilitated both verbal and non-verbal communication between them while on the scene. Officers would benefit from training involving communication skills between officers during an incident (verbal and non-verbal), as well as defensive tactics and interview and interrogation skills.

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**:

- ✦ The officers on this scene benefited from an experienced, tactical minded supervisor who took control of the incident and made an objective and informed decision to have the subject promptly removed from the vehicle. It is important that supervisors remain in their role and provide guidance and direction while on the scene of incidents.
- ✦ Officers, at times, will mark out on traffic stops while responding as a back-up officer on a dispatched event. Officers interrupting their response to a complaint to conduct a traffic stop delays their arrival on the scene. This can become problematic if another unit responding to the call is expecting, or in need of the backup unit. Officer safety is enhanced when officers limited the interruption of their call response to serious traffic violations. In this incident, 801A cleared a traffic stop with a suspected DWI driver so he could self-dispatch and respond as backup. This is an excellent example of sound officer safety.

- ✦ For safety reasons, consideration should be given to staging the wrecker driver away from the scene until the suspect has been removed from the vehicle and in custody.
- ✦ Officers would benefit from training regarding the documentation and preservation of evidence at the scene of police deadly force incidents, and their respective roles in this. This should include the handling and securing of any weapons left at the scene.
- ✦ There is benefit in officers taking initial photographs of the scene prior to the arrival of CSS. In this case, Rescue personnel responded and provided aid to all injured parties, and contamination of the crime scene did occur. The photographs document the condition of the scene prior to the arrival and contamination by rescue personnel.
- ✦ At the time of this incident, the Tactical Aid Kits were not provided in all police cruisers. They have since been placed in all police cruisers. Patrol officers would benefit from tactical first aid training, which would assist them when providing aid to a critically injured person.

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**:

- ✦ The batteries on three of the four flashlights used by the officers failed while on scene of this incident.

RMB currently has LED and incandescent flashlights in stock in the Quartermaster Section to be issued to officers. RMB is awaiting vehicle chargers before issuing the flashlights to officers. In this incident, the flashlight was an obvious issue that was identified during the administrative investigation. The Department has taken steps to correct this issue.

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

This incident occurred in an area that had very poor lighting, and take down lights and alley lights would have provided additional lighting to assist the officers, especially after the flashlight batteries failed. Officers on the scene would have benefited from enhanced illumination of the subject as he sat inside his vehicle.

- ✦ Only one CEW was available on scene of this incident.

All four officers were certified in the use of the CEW. This incident occurred in 2007, and at the time, the Department was transitioning to the X-26 Taser. The number of available CEW’s for officers to use at the time was significantly lower than the number

currently deployed throughout the Department. This issue has been addressed by the Department, however, officers would benefit from additional CEW allocations to maximize their presence on the street.

- ✚ Three of the four officers were wearing a ballistic vest during their shift.

Effective October 1, 2011, **ALL** patrol officers are required to wear ballistic vests, per FCPD SOP 04-002, Police Uniforms, Personal Equipment and Civilian Clothing.

- ✚ The issued service weapon on September 11, 2007, was the Sig Sauer 9mm. Officers are currently issued the Sig Sauer 40mm service weapon. This weapon and the issued ammunition have proven to be safer, more accurate, and provide substantial effectiveness in stopping violent and aggressive actions of suspects.

Conclusion

This incident began as a single vehicle accident investigation which subsequently turned into a deadly force incident involving four police officers and the suspect. Although Suspect #1 expressed to detectives investigating the shooting that he did possess a firearm, he stated he does not remember anything that occurred once he exited his vehicle.

There is no doubt that when Suspect #1 raised the firearm and placed it next to 800A's head, his intention was to shoot 800A. 800A's quick and instinctive decision to close the distance on Suspect #1 and grab the handgun was critical in this event, and undoubtedly helped save his life.

801A utilized the CEW, but quickly transitioned to his service weapon when he realized Suspect #1 was holding a handgun. 080A and 981A also transitioned to their service weapons when they became aware of the threat to 800A's life. 080A and 801A were in fear for their lives as well as their fellow officers. The actions taken by all of the officers are reflected 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.

This document is FOR OFFICIAL USE ONLY and should be considered Law Enforcement Sensitive. Dissemination outside the FCPD is restricted and requires approval of a command staff officer.

Use of Force Committee Members

Major Thomas Ryan, Internal Affairs Bureau

Captain Edward O'Carroll, Internal Affairs Bureau

Captain Andre Tibbs, Reston District Station

Captain Shawn Bennett, Franconia District Station

Lieutenant John Naylor, Internal Affairs Bureau

Lieutenant John Trace, Sully District Station

Lieutenant Christopher Marsh, Organized Crime and Narcotics

Lieutenant Paul Thompson, Criminal Investigations Bureau

Second Lieutenant Brian Hall, Criminal Justice Academy, Firearms Unit

Second Lieutenant Christopher Cochrane, Special Operations Division, SWAT

Second Lieutenant James Kellam, Internal Affairs Bureau

Sergeant Scott Moskowitz, Internal Affairs Bureau

Brandi Horita, Operations Support Bureau, Crime Analyst