

Public Report

Feb. 22, 2023: Officer-
Involved Shooting
IPA-23-01



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A Public Report by the Fairfax County
Independent Police Auditor

Publication Date: April 7, 2025



A Fairfax County, Va., Publication

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NOTE TO THE READER: The Fairfax County Police Department revised its comprehensive policy addressing the use of force on April 29, 2024. The actions of the officers involved in this incident will be analyzed using the policy provisions that were in effect on February 22, 2023 (i.e., General Order 540, effective August 12, 2022).

INCIDENT

On February 22, 2023, the Fairfax County Police Department's (hereinafter "FCPD") "Tysons Urban Team" (hereinafter "TUT") was operating—to detect, deter, and investigate criminal activity—out of a satellite police office located in Tysons Corner Center. Sergeant #1 (hereinafter "SGT#1") and Police Officer First Class #1 (hereinafter "PFC#1") were both assigned to the TUT on February 22, 2023. SGT#1 was in a police uniform and outfitted with a body-worn camera (hereinafter "BWC"), while PFC#1 was in plainclothes and, therefore, was not wearing a BWC.

Between 6:00 p.m. and 6:30 p.m., the TUT was notified by the security team from Nordstrom's that an individual (hereinafter identified by his initials, "T.J.") appeared to be engaged in shoplifting sunglasses from their store. Although Nordstrom's security soon thought T.J. had returned the sunglasses, he set off the anti-theft alarms when he left the store through an exit that opened onto a bridge leading to a parking garage. After leaving the store, T.J. began running. Several FCPD officers actively attempted to locate and detain T.J., but only SGT#1 and PFC#1 chased him on foot and subsequently deployed force against him. After T.J. ran through the parking garage, he ran along a road and entered a parking lot near Bloomingdale's before crossing over Fashion Boulevard and into an undeveloped area with "relatively thick underbrush."¹ SGT#1 and PFC#1 continued chasing T.J. into the undeveloped area, with SGT#1 getting there before PFC#1. Shortly after entering the undeveloped area, SGT#1 unholstered his service weapon and fired two rounds. PFC#1 got to the undeveloped area immediately after hearing the shots that were fired. He saw SGT#1 on the ground and fired one shot from his weapon.² T.J. was struck once in the chest.

¹ Testimony of PFC#1 on September 19, 2024, during SGT#1's criminal trial in Fairfax County Circuit Court.

² SGT#1's and PFC#1's articulation for using deadly force will be described in the CONCLUSIONS section of this report.

The video footage from SGT#1's BWC is extremely difficult to make out, even after the F.B.I. enhanced what was captured. However, the following audio can be heard on the BWC footage at the noted times (p.m.):

6:31:00: "He's crossing over, guys."

6:31:02: "Get on the ground!"

6:31:04: "Get on the ground!"

6:31:07: "Going into the woods."

6:31:10: "Through the woods."

6:31:11: "Get on the ground!"

6:31:12: "Get on the ground!"

6:31:13-14: Two shots are fired

6:31:15: "Stop reaching!"

6:31:17: "Stop reaching!"

Also audible on SGT#1's BWC footage—at 6:31:40—is SGT#1 saying, "He was reaching;" and, at 6:32:42, T.J. saying to officers providing emergency medical care to him, "I'm not reaching for nothing. I had nothing." In fact, T.J. was not armed with any weapon.

T.J. was pronounced deceased at 7:15 p.m. at Fairfax Hospital.³

RELEASE OF INVOLVED OFFICERS' IDENTITIES

FCPD Chief Kevin Davis released the identities of SGT#1 and PFC#1 on March 4, 2023,⁴ thereby satisfying the departmental policy directive to release the name(s) of officers involved in an officer involved shooting within 10 days of the incident.⁵

He also released the available BWC footage of the incident during a press conference on March 23, 2023.⁶

³ SGT#1 fired the one bullet that struck and killed T.J.

⁴ [Officer-Involved Shooting in Tysons | Fairfax County Police Department News](#)

⁵ Subject to a delay beyond the 10 days if the Chief of Police determines there could be a credible threat by releasing the name(s) or that more than ten days is needed to assess such potential risk.

⁶ [Press Conference: McLean OIS 2.22.23](#)

CRIMINAL INVESTIGATION/PROSECUTIVE DECISION

The FCPD conducted both a criminal and an administrative investigation into the shooting of T.J. PFC#1 agreed to be interviewed for the criminal investigation—conducted by the FCPD’s Major Crimes Bureau (hereinafter “MCB”)—on February 28, 2023. On July 31, 2023, Fairfax County Commonwealth’s Attorney (hereinafter “CWA”) Steve Descano advised that his office would decline any criminal prosecution of PFC#1.

SGT#1 also agreed to be interviewed for the criminal investigation, and his MCB interview took place on March 9, 2023. The evidence against SGT#1 acquired during the criminal investigation was presented to a regular grand jury in April 2023. That grand jury declined to indict him. On October 12, 2023, a special grand jury convened by CWA Descano returned an indictment⁷ charging SGT#1 with involuntary manslaughter⁸ and reckless handling of a firearm.⁹ Following a jury trial, the jury acquitted SGT#1 of involuntary manslaughter but convicted him of reckless handling of a firearm in October 2024.

On February 28, 2025, Fairfax County Circuit Court Judge Randy I. Bellows sentenced SGT#1 to five years, three years in prison and two years suspended. On March 2, 2025, Virginia Governor Glenn Youngkin commuted the sentence and SGT#1 was released from the Fairfax County Adult Detention Center that same day.

INTERNAL ADMINISTRATIVE INVESTIGATION

Because the incident under review was an officer-involved shooting, the internal administrative investigation was conducted by the FCPD’s Internal Affairs Bureau (hereinafter “IAB”). IAB investigators interviewed PFC#1 on March 8, 2023. The FCPD concluded that PFC#1’s use of deadly force was within departmental policy, specifically FCPD General Order (hereinafter “G.O.”) 540.0 and G.O. 540.8.

IAB investigators interviewed SGT#1 on March 10, 2023, and again on March 21, 2023. On March 30, 2023, Chief Kevin Davis provided an “unsatisfactory service separation”¹⁰

⁷ See [CA Descano Announces Indictment in Tysons Mall Shooting](#).

⁸ Va. Code § 18.2-36.1.

⁹ Va. Code §18.2-56.1 A1.

¹⁰ Section 9.5 County of Fairfax, Virginia – Personnel Regulations.

notification to SGT#1. The bases for the service separation were twofold: 1) inconsistent statements made to MCB and IAB investigators; and 2) an inability to articulate the rationale for discharging his firearm when he fired it.¹¹

Based on the Fifth Amendment to the United States Constitution¹² and first recognized in the Garrity v. New Jersey Supreme Court decision,¹³ when a public employee is compelled by his employer to provide a statement about his actions, neither the statement nor any evidence derived from the statement can be used in a subsequent criminal prosecution against that employee. The compelled information, however, can be used by the employer to take administrative action against the employee. The FCPD did so in this matter.

In addition to staying apprised of and reviewing the comprehensive criminal investigation conducted by the MCB, IAB investigators conducted an extensive administrative investigation into this incident. That internal investigation was, in my opinion, complete, thorough, objective, impartial, and accurate.

CONCLUSIONS

When SGT#1 and PFC#1 pursued T.J. from the mall into the undeveloped area, they had probable cause to believe he had shoplifted sunglasses. The FCPD determined that SGT#1's and PFC#1's decision to pursue T.J. from the mall—and even into the wooded area where they ultimately both shot at T.J.—was consistent with the training they received as officers and as members of the TUT. Apart from the training, there was no foot pursuit policy in place at the time of this incident, meaning there was no policy against which their actions could be judged. I will address the lack of a foot pursuit policy in the final section of this report.

Their use of deadly force, however, was only legal and within departmental policy if it satisfied the well-established legal and policy requirements for using such force. In its Graham v. Connor opinion,¹⁴ the United States Supreme Court analyzed the use of force—including deadly force—by law enforcement officers in this country and recognized that “police officers

¹¹ [Opinion Letter](#) of Fairfax County Circuit Court Judge Stephen C. Shannon in Wesley Shifflett v. Bryan J. Hill et al., Case No. CL-2023-8048, dated July 6, 2023.

¹² Amendment V to the U.S. Constitution: “No person . . . shall be compelled in any criminal case to be a witness against himself . . .”

¹³ 385 U.S. 493 (1967).

¹⁴ 490 U.S. 386 (1989).

are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”¹⁵ In the same opinion, Chief Justice William Rehnquist stated that the Fourth Amendment to the United States Constitution¹⁶ 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 force¹⁷ is objectively reasonable when an “officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”¹⁸ Finally, probable cause is based on the “totality of the circumstances,”¹⁹ known to the officer at the time, and the probable cause [to believe] standard is met when there is a “fair probability”²⁰ that the belief is accurate. The FCPD’s policy requirements for using deadly force closely parallel these legal mandates.

Therefore, for their use of deadly force to be lawful and satisfy their department’s policy, SGT#1 and PFC#1 had to have an objectively reasonable belief—satisfying the “fair probability”²¹ standard—that T.J. posed a “significant danger of death or serious physical injury”²² to themselves or others when they fired their weapons.

SGT#1 was consistent when he recounted what led him to the decision to use deadly force. In his voluntary statement made to MCB investigators, in his compelled statements provided to IAB investigators, and in his sworn testimony provided during his criminal trial, he stated that he saw T.J. trip and fall to the ground and roll to his knees; that T.J. used his left arm to “clear” his baggy clothing to give him access to his waistband area; that he made a “back-and-forth” or “digging” motion in the waistband area with his right hand; and that, based on his training²³ and experience, he concluded that T.J. “was about to pull a firearm out” and “was

¹⁵ *Id.* at 397.

¹⁶ 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.”

¹⁷ See GLOSSARY.

¹⁸ *Tennessee v. Garner*, 471 U.S. 1, at p. 1 (1985).

¹⁹ *Illinois v. Gates*, 462 U.S. 213 (1983).

²⁰ *Id.*

²¹ *Id.*

²² *Supra*, note 18.

²³ Police officers (including FCPD officers) are trained that handguns are often secreted in the waistband.

going to start shooting at any moment.”²⁴ SGT#1 also stated that he moved to his right, “drew [his] firearm and pointed it in [T.J.]’s direction,” and fired two rounds.²⁵ Finally, he stated that he tripped over “some type of brush” and “fell to the ground” after shooting T.J. SGT#1 acknowledged that he did not give the command to “stop reaching” until after he had shot, as heard on the BWC footage.²⁶ It is worth noting that he gave the first “stop reaching” command within one second of firing his second round. While it can be argued that SGT#1 provided the “stop reaching” commands to cover an unjustified shooting, it is also recognized that “[h]igh-stress situations can impair reaction time through physiological effects such as tunnel vision, auditory exclusion, and decreased fine motor skills.”²⁷ Although SGT#1’s stated belief that T.J. was armed and trying to access a weapon proved to be incorrect, my opinion—based on the limited information available (including the minimally helpful BWC footage)—is that his belief was objectively reasonable at the time.²⁸

It is important to recognize that Chief Davis provided an “unsatisfactory service separation” notification to SGT#1 based on inconsistent statements he made to MCB and IAB investigators, and his inability to articulate the rationale for discharging his firearm when he did,²⁹ but not for having used objectively unreasonable force. There were inconsistencies in the statements provided by SGT#1, but not in relation to his articulation for his decision to use deadly force.³⁰

PFC#1’s statements to FCPD’s MCB and IAB investigators and his sworn testimony at SGT#1’s criminal trial were also consistent. PFC#1 stated that when he reached and entered the undeveloped area, he heard gunshots and saw SGT#1 on the ground. PFC#1 thought SGT#1 had been shot and killed. He looked at T.J., “saw an arm coming up . . . going from . . . where [SGT#1] was, coming towards . . . where I was.” He could not see a weapon in T.J.’s hand, but believed he had one.³¹ PFC#1 fired one shot at T.J., which did not hit him. Based on what

²⁴ See [FE-2023-812 Commonwealth of Virginia v. Wesley Shifflett](#) at 14.

²⁵ *Id.* at 15.

²⁶ *Id.*

²⁷ See, for example, [The Significance of the Reactionary Gap in Self-Defense](#).

²⁸ It is worth noting that the jury in SGT#1’s criminal prosecution acquitted him on the involuntary manslaughter charge.

²⁹ *Supra*, note 11.

³⁰ While I was provided access to SGT#1’s compelled statements made to IAB investigators—and I recognize the inconsistencies between them and the statement provided to MCB investigators—I am prohibited from disclosing details as they constitute “personnel information” pursuant to Virginia Code § 2.2-3705.1.

³¹ *Supra*, note 24 at 18.

PFC#1 described seeing and hearing, my opinion is that he had probable cause to believe that T.J. posed a significant threat of death or serious injury to him when he used deadly force, and that his belief was objectively reasonable. Although this belief proved to be incorrect, “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”³²

Additionally, the officers’ decision to pursue T.J. based on the belief that T.J. had shoplifted sunglasses may be criticized,³³ but that decision remains separate from the decision to use deadly force based on what transpired at the conclusion of the foot pursuit. As has recently been pointed out in the Barnes v. Felix opinion,³⁴ “[i]n this circuit,³⁵ ‘it is well-established that the excessive-force inquiry is confined to whether the officers or other persons were in danger at the moment of the threat that resulted in the officers’ use of deadly force.’”³⁶ The Barnes opinion points out that “[t]his ‘moment of threat’ test means that ‘the focus of the inquiry should be on the act that led the officer to discharge his weapon,’”³⁷ and that “[a]ny of the officers’ actions leading up to the shooting are not relevant for the purpose of an excessive force inquiry in this Circuit.”³⁸

The FCPD’s policy does not allow for the use of deadly force merely to prevent a fleeing person (neither a felon nor a misdemeanor) from getting away from pursuing officers. This makes it important to note that SGT#1 did not unholster his weapon during the foot pursuit itself but did so in response to the actions he described T.J. taking when they were in the undeveloped area. FCPD General Order (hereinafter “G.O.”) 540 VII. B. provides that “[d]eadly force shall never be used to apprehend a fleeing misdemeanor (*unless they pose an imminent threat of serious physical harm or death to the officer or others*), and may only be used to apprehend a fleeing felon” when, among other factors that need to be satisfied, “[t]he felon’s escape *poses a*

³² Graham v. Connor, *supra*, note 14 at 396.

³³ See, for example, [‘He’s dead from shoplifting’: Mother questions why police shot her son - The Washington Post](#) and [Statement to NAACP Members - Officer-Involved Shooting](#).

³⁴ 91 F.4th 393 (5th Cir. 2024), cert. granted, Barnes v. Felix, No. 23-1239 (Oct. 4, 2024). The Supreme Court heard oral arguments on January 22, 2025.

³⁵ While the Barnes case is out of the Fifth Circuit Court of Appeals, which hears appeals from Louisiana, Mississippi, and Texas, the same “moment of threat” principle is applied in the Fourth Circuit Court of Appeals, which hears appeals from Virginia, West Virginia, Maryland, North Carolina, and South Carolina. Likewise, the Second and Eighth Circuit Courts of Appeals follow the “moment of threat” principle.

³⁶ *Supra*, note 34 at 397 (quoting Amador v. Vasquez, 961 F.3d 721, 728 (5th Cir. 2020)).

³⁷ *Id.*

³⁸ *Supra*, note 34 at 397 (quoting Harris v. Serpas, 745 F.3d 767, 772 (5th Cir. 2014)).

significant threat of serious injury or death to the officer or others.”³⁹ Therefore, when deadly force is used on a person—whether that person is fleeing or not fleeing—it is only authorized by FCPD policy when “an officer 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”⁴⁰ This makes FCPD policy on the use of deadly force consistent with the Supreme Court pronouncement in Tennessee v. Garner.⁴¹ However, there may be a more direct way to express the “danger of death or serious injury” requirement in FCPD policy, and I will address this in the final section of this report.

RECOMMENDATIONS

The FCPD’s policy on the use of force contains an over-arching “sanctity of life” provision. G.O. 540.0 II. POLICY reads, in part: “It is the policy of the Department that all members hold the highest regard for the sanctity of human life and respect the dignity and liberties of all individuals. The use of all force options by officers shall never be performed in a reckless manner and shall only be used to the extent it is objectively reasonable” The comprehensive use of force policy then goes on to explain different circumstances under which various force options are authorized, including the use of deadly force. As previously noted, the policy is consistent with Supreme Court precedent and does not change when force is deployed during or at the conclusion of a foot pursuit. In fact, simply eliminating any reference to fleeing felons and misdemeanants in the FCPD’s use of force policy would underscore the requirement that deadly force is not authorized unless officers have probable cause to believe that a person, or his escape, poses an immediate danger of death or serious injury to the officers or others.

In a 2021 report presented to the Fairfax County Board of Supervisors,⁴² a research team from the University of Texas at San Antonio which had conducted an analysis of three years (2016-2018) of use of force and related data from the FCPD, made the following

³⁹ G.O. 540 VII. B. 3. (*emphasis added*).

⁴⁰ G.O. 540 VII. A.

⁴¹ *Supra*, note 18.

⁴² University of Texas at San Antonio: [AN INVESTIGATION OF THE USE OF FORCE BY THE FAIRFAX COUNTY POLICE DEPARTMENT](#).

recommendation: “We strongly urge the FCPD to amend GO 540.8 to incorporate an *imminency* requirement in all cases of deadly force. A policy such as this eliminates the need for a separate ‘fleeing felon’ provision altogether. Under this approach, officers are permitted to use deadly force to protect themselves or others from what is reasonably believed to be an *imminent* threat of death or serious injury. While some agencies permit the use of deadly force to apprehend fleeing violent felons who *also* pose an imminent threat to human life [example omitted], such a provision is not necessary because it is merely a specific application of the general rule and thus is subsumed by it. Moreover, this recommended policy approach is clear, simple, easy to train on, and consistent with recommendations from professional police organizations and legal scholars. It is also consistent with evolving community standards on deadly force that increasingly expect police to use deadly force only under the narrowest of circumstances.”⁴³

I agree with the research team’s rationale, and I also recommend that the FCPD eliminate any fleeing felon or misdemeanor language from its use of force G.O. The elimination of such language should prevent any confusion—and criticism—that the use of force policy allows for the use of deadly force merely to prevent someone from fleeing.

Additionally, the FCPD did not have a G.O. governing foot pursuits on February 22, 2023, when this incident occurred. Shortly thereafter, the department implemented a “foot pursuit data tracking” policy. In its entirety, Regulation 203.8 reads: “Officers who engage in a foot pursuit of a fleeing suspect are expected to exercise sound judgment throughout the length of the chase, and balance their obligation to promote the safety of the general public with the need to apprehend offenders and/or persons in need of immediate mental health or medical treatment. Any officer who directly participates in a foot pursuit of a suspect shall ensure the incident is properly documented in an incident report and/or supplement in the Department’s current records management system. First-line supervisors shall review all incident reports and supplements involving a foot pursuit report and promptly complete the Department’s Foot Pursuit Documentation Form located on the Department’s BlueNet page. Once completed, reviewing first-line supervisors shall submit the form to their respective commander for additional review to ensure the event was in compliance with any applicable Department

⁴³ *Id.* at 93 (*emphasis* in original). While the researchers from UTSA recommended using the word *imminent* in a revised general order, *immediate* was the word used by the Supreme Court in Tennessee v. Garner, note 18, *supra*.

training, policies, and procedures.” The mandated data tracking of foot pursuits was not a substantive policy meant to govern actual foot pursuits.

The FCPD has been researching and developing a thorough foot pursuit policy in conjunction with policing and community groups and individuals throughout Fairfax County. The One Fairfax Community Roundtable Foot Pursuit Equity Action Team is one group that has actively provided input for the department to consider as it develops its first G.O. governing foot pursuits for its officers. Since December 2024, I have been engaged in that process as a non-voting, ex-officio member of the Foot Pursuit Equity Action Team. I will remain actively involved in the process to ensure that the eventual policy aligns with what is considered “best practice” within the policing community.⁴⁴ For this reason, I offer no recommendations on a foot pursuit policy at this time.

⁴⁴ On April 4, 2025, the FCPD publicly announced its new foot pursuit policy – see, [Fairfax County Police Department Implements Foot Pursuit Policy and Creates Public-Facing Dashboard | Fairfax County Police Department News](#). The new policy takes effect on April 9, 2025. I may provide recommendations for changes in policy and practice after the new policy has been implemented.

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.III.10. as any physical strike or instrumental contact with an individual, or any significant physical contact that restricts a person's movement. Reportable uses of force do 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 reportable uses of force.

Less-Lethal Force – Defined in Fairfax County Police Department General Order 540.III.13. as any level of force not designed to cause death or serious injury.

Deadly Force – Defined in Fairfax County Police Department General Order 540.III.2. as any level of force that is likely or intended to cause death or serious injury.

Serious Injury – Defined in Fairfax County Police Department General Order 540.III.26. as any injury which creates a substantial risk of death, 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; Defined in Fairfax County Police Department General Order 540.III.5. 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. Considered less-lethal force. Often referred to as a Taser.

Empty-Hand Tactics – Described in Fairfax County Police Department General Order 540.VI.A. as including strikes, kicks, pressure points, and takedowns in an objectively reasonable manner to overcome resistance. Considered less-lethal force.

OC Spray – Oleoresin Capsicum; Defined in Fairfax County Police Department General Order 540.III.19. as a less-lethal force instrument that contains a projectile lachrymatory agent spray designed to irritate an individual's eyes and temporarily take away their vision in order to effectuate lawful control. Often referred to as "pepper spray."

PepperBall System – Defined in Fairfax County Police Department General Order 540.III.21. 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.III.25. as where an individual poses no immediate threat to an officer and exhibits no resistive movements 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.III.25. as where an individual's verbal and/or physical actions are intended to prevent an officer from taking lawful action but not intended to harm the officer.

Aggressive Resistance – Defined in Fairfax County Police Department General Order 540.III.25. as where an individual displays the intent to cause injury, serious injury, or death to an officer, themselves, or another person and to prevent the officer from taking lawful action.