

Public Report

Jan. 28, 2020: Officer-Involved Shooting
IPA-20-02



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NOTE TO THE READER:

The Fairfax County Police Department revised its policy on use of force twice since this incident occurred, first on March 1, 2021, and again on August 12, 2022. The force used during this incident will be analyzed using the policy provisions that were in effect on January 28, 2020 (i.e., General Order 540, effective March 31, 2017).

The department has also revised its policy relating to the manner of entry for and the execution of search warrants since this incident occurred. Some of those changes will be discussed in this report.

INCIDENT

On January 28, 2020, shortly before 10:00 p.m., detectives from the Fairfax County Police Department (hereinafter “FCPD”) Organized Crime and Investigations Bureau (hereinafter “OCIB”) went to a residence on Lee Landing Drive in the Falls Church area of Fairfax County to conduct a search of the residence pursuant to a search warrant. The detectives also planned to arrest an individual residing at the home (hereinafter “DV”) pursuant to warrants authorizing his arrest. Members of the FCPD’s Special Weapons and Tactics Team (hereinafter “SWAT”) were there to assist the OCIB detectives.

Earlier that evening, at approximately 9:30 p.m., there was a briefing to discuss the execution of the search warrant attended by members of both OCIB and SWAT. Officers were informed that, in addition to the search warrant, there were outstanding arrest warrants for DV for possession with intent to distribute marijuana¹ and failing to appear in criminal court.² The lead detective also provided information that DV was affiliated with a street gang and that he had access to weapons. Finally, the presence of a second-floor camera had also been noted during pre-search warrant surveillance of the residence, causing concern that DV would know in advance that the officers were getting ready to execute the warrants.³ Based on this information and the nature of the search warrant itself, SWAT supervisors approved dispensing with the

¹ Va. Code § 18.2-248.1

² Va. Code § 19.2-128.

³ See, for example, [Slain FBI agents gunned down through closed-door: report \(nypost.com\)](https://www.nypost.com/2020/01/28/slain-fbi-agents-gunned-down-through-closed-door-report/).

usual requirements of first knocking, announcing, and then waiting a reasonable amount of time⁴ before entering the search location.⁵

SWAT officers were to make the initial entry into the home and to secure the location prior to the OCIB detectives conducting the search authorized by the search warrant. Because the front door to the residence was locked, one SWAT officer used a ramming device to breach the door. The first three SWAT officers to enter were Master Police Officer #1 (hereinafter “MPO#1”), Police Officer First Class #1 (hereinafter “PFC#1”), and Sergeant #1 (hereinafter “SGT#1”), each of whom shouted, “Police, search warrant!” as they crossed the threshold.⁶ After MPO#1 entered the residence, the entrance to the kitchen was to his left. In the kitchen, MPO#1 saw DV approaching him with what appeared to be a rifle⁷ pointed at him. MPO#1 raised his handgun from the “ready-gun” position⁸ and fired three times at DV. One round struck DV in the leg, who then fell to the ground and was handcuffed by MPO#1. Master Police Officer #2 (hereinafter “MPO#2”) quickly rendered medical aid to DV before medics from the Fairfax County Fire and Rescue Department (hereinafter “FCFRD”)—who had been pre-staged very near the search location—arrived shortly thereafter.

The FCFRD transported DV to Fairfax Hospital, where he was treated and released to the custody of the FCPD. During the transport to the hospital, Police Officer First Class #2 (hereinafter “PFC#2”) accompanied DV and the FCFRD personnel. PFC#2 documented DV stating, unprovoked, “I didn’t mean to point the gun at you,” while he was being transported. Following DV’s treatment and release from the hospital, Police Officer First Class #3 (hereinafter “PFC#3”) transported him to the Fairfax County Adult Detention Center (hereinafter “ADC”), arriving at approximately 2:20 a.m. on January 29, 2020.

⁴ *Richards v. Wisconsin*, 520 U.S. 385 (1997).

⁵ No-knock entries were often made by FCPD officers executing search warrants in narcotics investigations due to the likelihood that evidence would be destroyed after officers knocked and announced and before they could make entry. The suspected presence of weapons could also lead officers to execute a warrant without first knocking. The issue of “no-knock” warrants and entries will be more fully addressed in the RECOMMENDATIONS section of this report.

⁶ *Supra*, note 4. Announcing while entering does not satisfy the knock, announce, and delay requirements; therefore, this type of entry must be independently justified as it was in this situation.

⁷ It was, in fact, an M4 rifle.

⁸ Defined in FCPD General Order 540.1 I. P. as a “firearm pointed toward a threat area with the muzzle lowered from the officer’s eye level sufficient to see the threat area clearly.” The definition also includes a statement that “[t]he ready-gun position is used to search a location or object or to cover a threat area (high or low), depending on the environment (e.g., up or down a stairwell).”

RELEASE OF INVOLVED OFFICER'S IDENTITY

FCPD Chief EDWIN C. ROESSLER Jr. complied with the 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 MPO#1's identity on February 2, 2020.⁹

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD conducted both a criminal and an administrative investigation into MPO#1's use of deadly force. The results of the criminal investigation were provided to the Office of the Commonwealth's Attorney (hereinafter "CWA"). On March 5, 2020, the CWA advised the FCPD that no criminal charges would be pursued against MPO#1 for his use of force during this incident because it determined that MPO#1's actions "did not violate criminal law."¹⁰

When DV was brought to the ADC after the shooting, the outstanding warrants for possession with intent to distribute and failure to appear were served on him. DV was also charged with assault on a law enforcement officer¹¹ based on his actions during the incident under review.

INTERNAL ADMINISTRATIVE INVESTIGATION

Because this was an officer-involved shooting, the FCPD Internal Affairs Bureau (hereinafter "IAB") conducted the internal administrative investigation. That internal investigation into this incident was, in my opinion, complete, thorough, objective, impartial, and accurate.

The IAB investigators were apprised of and provided access to the comprehensive criminal investigation conducted by the FCPD Major Crimes Bureau (including components of their Crime Scene Section and Incident Support Services). Numerous members of the FCPD were interviewed, including all officers present during the incident. Other individuals

⁹ [Investigation Continues after Officer Involved Shooting in Falls Church Area | Fairfax County Police Department News \(wordpress.com\)](#).

¹⁰ March 5, 2020, Letter from Commonwealth's Attorney Steve Descano to FCPD Chief Edwin Roessler.

¹¹ Va. Code § 18.2-57.

interviewed included members of the FCFRD, DV, and DV's live-in girlfriend, who was in the house at the time of the incident. The interviews of DV and DV's girlfriend ended when they each requested an attorney before providing additional information.

The administrative investigation also included the collection and review of: FCPD incident reports; photographs, a diagram, and an aerial map of the location of the incident; Department of Public Safety Communication data related to the incident and response to it; computer-aided dispatch data; FCFRD records pertaining to its response to the incident; and MPO#1's training records.

The FCPD concluded that MPO#1's use of deadly force was within departmental policy, specifically FCPD General Order (hereinafter "G.O.") 540.0 and G.O. 540.8. I agree with the FCPD's conclusions and will articulate my reasons in the following section of this report.

CONCLUSIONS

In its Graham v. Connor¹² opinion, 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 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.”¹³ In the same opinion, Chief Justice William Rehnquist stated that the Fourth Amendment to the United States Constitution¹⁴ 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 force¹⁵ 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.”¹⁶ Finally, probable cause is based on

¹² 490 U.S. 386 (1989).

¹³ *Id.* at 397.

¹⁴ 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.

¹⁵ See GLOSSARY.

¹⁶ Tennessee v. Garner, 471 U.S. 1, at p. 4 (1985).

the “totality of the circumstances,”¹⁷ known to the officer at the time, and the probable cause [to believe] standard is met when there is a “fair probability”¹⁸ that the belief is accurate.

The situation under review was certainly tense, uncertain, and rapidly evolving. Immediately after entering the residence, MPO#1 saw DV approaching and pointing what appeared to be a rifle¹⁹ at him. This provided MPO#1 the “fairly probable” belief²⁰ that DV “pose[d] a significant threat of death or serious injury to [him] or others,”²¹ legally allowing him to use deadly force to prevent such death or serious injury. Therefore, MPO#1’s use of deadly force was objective reasonable and lawful under the Fourth Amendment.

For the same reasons that MPO#1’s use of deadly force was objectively reasonable and legal, his use of deadly force comported with FCPD policy. The FCPD policy regarding the use of force—up to and including deadly force—mirrors the aforementioned pronouncements from the Supreme Court in its Graham and Garner opinions. FCPD 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.”²² 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.”²³ 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

¹⁷ Illinois v. Gates, 462 U.S. 213 (1983).

¹⁸ *Id.*

¹⁹ *Supra*, note 7.

²⁰ *Supra*, notes 17 and 18.

²¹ *Supra*, note 16.

²² FCPD G.O. 540.0 II.

²³ FCPD G.O. 540.1 I. L.

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.”²⁴ Based on the immediate nature of the threat of death or serious injury when MPO#1 made entry into DV’s residence, no other force options were feasible. Therefore, MPO#1’s use of deadly force met the policy standards required by the FCPD. He utilized deadly force based on an objectively reasonable belief that DV posed a significant, or imminent, threat of death or serious injury to him (MPO#1) and to others, and he had no other feasible force options.

RECOMMENDATIONS

Use of Force Policy

FCPD policy on the use of force²⁵ thoroughly addresses the use of both deadly and “less-lethal” force, align with constitutional standards, and provides FCPD officers extensive guidance on resolving incidents with the concept that the sanctity of life is always paramount.²⁶ In this incident, MPO#1 was confronted with an immediate danger of death or serious injury. The FCPD analyzed his decision to use deadly force by examining that decision against the policies in place. The investigation determined that MPO#1’s actions 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. Consequently, I have no policy recommendations relating to the use of force based on this incident review.

Execution of Search Warrants

Prior to MPO#1’s use of deadly force during this incident, the decision was made by SWAT supervisors—during the briefing prior to the execution of the warrant—to enter DV’s

²⁴ FCPD G.O. 540.8 I. A.

²⁵ As noted at the beginning of this report, the FCPD revised its policy on use of force twice since this incident occurred, first on March 1, 2021, and again on August 12, 2022.

²⁶ Currently in effect, 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*). The policy in effect when this incident occurred on January 28, 2020, included the same statement.

residence without knocking, announcing, and delaying entry.²⁷ There is a subtle distinction between “no-knock” *warrants* (whereby the magistrate issuing the warrant dispenses with the requirements of knocking, announcing, and waiting a reasonable amount of time before making entry at a search location), and a no-knock and unannounced *entry* to execute a search warrant (whereby the officers who are executing the search warrant make the decision to enter the location without first knocking and announcing).²⁸ Across the country at the time of the incident under review, there were police departments that routinely obtained no-knock warrants from issuing magistrates. The FCPD did not obtain such no-knock warrants from a magistrate—which are now explicitly prohibited by Virginia law—but did allow its officers to make no-knock and unannounced entries under limited circumstances,²⁹ such as those known at the time of this incident.

Shortly after this incident, events transpired across the United States which required police departments to examine their departmental policies on use of force and non-use of force issues, including the use of no-knock search warrants and entries. On March 13, 2020, Breonna Taylor was shot and killed by Louisville, Kentucky, police officers who were executing a no-knock search warrant. Although it was later argued—and determined by a grand jury—that officers had, in fact, knocked and announced when making entry, the judge who issued the warrant had pre-authorized the warrant to be executed without the officers first knocking and

²⁷ *Supra*, note 5.

²⁸ See pages 25-32 in [FBI Law Enforcement Bulletin - September 2006 — LEB](#) for a discussion of the “knock and announce” requirements, no-knock warrants, and no-knock entries.

²⁹ At the time of this incident, FCPD General Order 610.3 VI. D. provided: “The lead officer/detective, a member of SWAT, or a uniformed officer shall notify persons inside the search site of the team’s presence, and shall announce, in a voice loud enough to be heard inside the search site, that they are the Fairfax County Police and they have a warrant to search the premises and they demand admission to the premises at once (also see Section VII, ENTRY CONSIDERATIONS). The announcement of authority and purpose is NOT REQUIRED whenever there is reasonable suspicion to believe that such announcement would be dangerous or futile, evidence could be destroyed if an announcement is made. When such information is known at the time the affidavit supporting the warrant is drafted, the information shall be entered as part of the affidavit. The only factors that could contribute to reasonable suspicion to believe that an announcement would be dangerous or futile, or that evidence could be destroyed, are: 1. Firm indication that an occupant of the premises is armed and/or dangerous; or 2. Specific information that an occupant has a history of violence involving threats or attacks on any individual; under circumstances that make it reasonable to conclude that they may respond to the knock and announcement with violence; or 3. Specific knowledge that an occupant would intend to frustrate searches by destroying seizable items following an announcement of authority and purpose; or 4. Specific knowledge that some occupants would be endangered by other occupants if the announcement of authority and purpose is made. When information, as indicated above, is developed at the time of entry, immediate entry is justified for reasons of safety and security.”

announcing.³⁰ Then, on May 25, 2020, Minneapolis police officer Derek Chauvin knelt on George Floyd's neck for nearly ten minutes, killing Floyd.³¹ Taylor's death ignited protests aimed at the use of "no-knock" warrants, while Floyd's death touched off massive protests in the United States (and several other countries) demanding far-reaching and broad-based police reform.

On December 7, 2020, Virginia Governor Ralph Northam signed a Virginia state law prohibiting police from using no-knock search warrants throughout the Commonwealth of Virginia.³² Specifically, the new law states that "[n]o law-enforcement officer shall seek, execute, or participate in the execution of a no-knock search warrant,"³³ and proceeds to dictate how entry must be made for any search warrant. The new law mandates that "[a] search warrant for any place of abode under this section shall require that a law-enforcement officer be recognizable and identifiable as a uniformed law-enforcement officer and provide audible notice of his authority and purpose reasonably designed to be heard by the occupants of such place to be searched prior to the execution of such search warrant."³⁴

Likewise, the FCPD promulgated a revised General Order relating to search warrants which became effective on July 1, 2021. That revised policy mirrors the language contained in the new Virginia law.³⁵ Based on these developments, both current state law and FCPD policy prohibit no-knock warrants and unannounced entry before executing any search warrant.

Pursuant to the FCPD policy in effect at the time of the incident currently under review, the decision to not knock was made by SWAT supervisors based on information acquired by the officers responsible for executing the warrant. Although they did not knock first, the officers who made the initial entry into DV's residence chose to loudly announce their identity and

³⁰ See, [What to Know About Breonna Taylor's Death - The New York Times \(nytimes.com\)](https://www.nytimes.com/2020/05/25/us/police/derek-chauvin-george-floyd.html).

³¹ Chauvin was convicted of second-degree and third-degree murder, as well as second-degree manslaughter, and was sentenced to twenty-two and a half years in prison. See, [George Floyd is killed by a police officer, igniting historic protests - HISTORY](https://www.history.com/news/george-floyd-killed-by-police-officer-igniting-historic-protests).

³² See, [Virginia Gov. Northam Signs 'Breonna's Law' Banning No-Knock Warrants : NPR](https://www.npr.org/2020/12/07/931111100/virginia-gov-northam-signs-breonna-law-banning-no-knock-warrants). The law took effect on March 1, 2021.

³³ Va. Code § 19.2-56 B.

³⁴ *Id.*

³⁵ FCPD G.O. 611.3 VI. D. prohibits officers from seeking, executing, or participating in the execution of no-knock search warrants, and goes on to provide that "[a] search warrant for any place of abode shall require that any members of the entry team shall be recognizable and identifiable as uniformed officers and provide audible notice of their authority and purpose reasonably designed to be heard by the occupants of such place to be searched prior to the execution of such search warrant."

purpose as they entered so that the residents would know who they were and why they were there. The officers' announcement—while entering—was not required at the time;³⁶ however, current law (as well as FCPD policy) now requires an announcement regardless of whether a delayed or an immediate entry is made.

Although allowed, immediate entry while announcing should be used very infrequently. In most instances, knocking, announcing, and delaying entry—to give the occupants a chance to comply with officers' demands to allow entry—will be the safest and most prudent course of action. FCPD policy on search warrants, in fact, incorporates this preference for delaying entry. The policy (both the one in place in 2020 and the newly revised one) dictates that even “[i]f items listed on the warrant are readily disposable, the entry team shall delay entry, after knocking and announcing, for at least 20 seconds following the announcement, unless [t]hey are admitted to the site by an occupant or [t]here is substantial indication that there is a willful delay in responding to the announcement.”³⁷ And, if the items listed on the warrant are not readily disposable, the delay must be at least 60 seconds, subject to the same limited exceptions already noted.³⁸

While FCPD policy mandates a delay of at least twenty seconds before forcing entry to begin a search after knocking and announcing—even when the items to be seized are “readily disposable”—the policy recognizes that in limited cases an immediate entry will be necessary.³⁹ Specifically, the policy allows for immediate entry, after the required audible announcement, only under the following circumstances: 1) there is a firm indication that an occupant is armed and/or dangerous; 2) there is specific information that an occupant has a history of violence involving threats or attacks on people and it is reasonable to conclude they may respond to the knock and announcement with violence; 3) officers have specific knowledge that an occupant will frustrate the search by destroying seizable items following the announcement; or, 4) officers have specific knowledge that some occupants would be endangered by other occupants by delaying entry after the announcement.⁴⁰

³⁶ *Supra*, note 29.

³⁷ FCPD G.O. 610.3 VI. E. 1. (effective 7/1/2019) and FCPD G.O. 611.3 VI. E. 1. (effective 7/1/2021).

³⁸ FCPD G.O. 610.3 VI. E. 2. (effective 7/1/2019) and FCPD G.O. 611.3 VI. E. 2. (effective 7/1/2021).

³⁹ While immediate entry is allowed, an audible announcement is always required. *Supra*, note 35.

⁴⁰ FCPD G.O. 611.3 VI. F.

With the new Virginia law in place, which prompted necessary changes to FCPD policy in 2021, I have no recommendations to make relating to the execution of search warrants based on my review of this incident.

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.

