

Public Report

Dec. 17, 2020: Officer-Involved
Shooting
IPA-20-10



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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 December 17, 2020 (i.e., General Order 540, effective March 31, 2017).

INCIDENT

On December 17, 2020, at approximately 10:49 a.m., an individual (who was a juvenile) called 9-1-1 and reported to the Fairfax County Department of Public Safety Communications (hereinafter “DPSC”) that he had been shot in the face by his roommate (hereinafter identified by his initials “GM”) in an apartment on Peach Orchard Drive in the Falls Church area of Fairfax County. The caller reported that he was currently inside of a locked bedroom, but that GM was still in the apartment and that he could not safely get out of the apartment. At 10:54 a.m., patrol officers from the Fairfax County Police Department’s (hereinafter “FCPD”) McLean District police station arrived at the location of the shooting. They were quickly joined there by other FCPD officers, a Fairfax County Sheriff’s Office deputy, and several members of the FCPD’s Special Operations Division’s (hereinafter “SOD”) Special Weapons and Tactics (hereinafter “SWAT”) team. Two of the responding SWAT team members were Police Officer First Class #1 (hereinafter “PFC#1) and Master Police Officer #1 (hereinafter “MPO#1). At 10:57 a.m., GM called DPSC and stated that he “shot the male twice;” and, at 11:07 a.m., he stated that he would not be alive much longer and that police “will have guns blazing” because he had killed someone.¹

At 11:10 a.m., the juvenile shooting victim advised DPSC that GM was now banging on his bedroom door. The DPSC call-taker on the phone with GM asked him to put down his gun and surrender to the police, but he refused. At that point, the FCPD Duty Officer—who had been apprised of all the aforementioned information and statements—made the decision to have a team enter the apartment to rescue the shooting victim (and now hostage). At 11:12 a.m., the assembled team entered the apartment, and one minute later a report of “shots fired” was sent over police radios.

¹ Review of Department of Public Safety Communications data.

Because the door to the apartment was locked, the officers forced their way in with breaching equipment. PFC#1 and MPO#1 were the third and fifth officers to enter. They approached a bedroom with a closed door, believing the juvenile shooting victim was inside. Before getting to the closed door, PFC#1 saw GM sitting on a bed in another bedroom with the door open. GM held two pistols pointed in the direction of PFC#1. PFC#1 fired one shot from his weapon, which struck GM in the stomach. GM returned fire, striking PFC#1 in his arm. GM continued firing² and PFC#1 fired several more rounds, while MPO#1 fired several rounds as well.³

When the gunfire stopped, Master Police Officer #2 (hereinafter “MPO#2”), who had entered the apartment equipped with a bullet-resistant shield, came to assist MPO#1 in freeing the juvenile victim/hostage from his bedroom. Using the ballistic shield as a barrier between them and GM, MPO#1 and MPO#2 safely got the juvenile out of the apartment. They also assisted PFC#1 out of the apartment so that he could receive medical treatment for his gunshot wound.

MPO#2 proceeded to direct verbal commands to GM, who complied by tossing his now-empty gun out of the bedroom he was in. GM also followed commands to crawl towards MPO#2. After being handcuffed, GM was brought to Fairfax County Fire and Rescue Department (hereinafter “FCFRD”) personnel for medical treatment and transport to a hospital.

RELEASE OF INVOLVED OFFICERS’ IDENTITIES

FCPD Chief Edwin C. Roessler Jr. released a statement on January 8, 2021, which identified MPO#1 and PFC#1 as the two officers who discharged their weapons during this incident.⁴ The departmental policy directive was to release the name(s) of officers involved in an officer involved shooting within 10 days of the incident, unless the Chief of Police determined there could be a credible threat by releasing the name(s) or that he needed more than ten days to

² During the ensuing investigation into the incident, detectives determined that GM fired ten .40 caliber rounds in the direction of PFC#1 and MPO#1.

³ Detectives determined that PFC#1 fired a total of seven rounds, while MPO#1 fired nine.

⁴ [UPDATE: Statement from Colonel Edwin C. Roessler Jr. Regarding December 17 Officer-Involved Shooting | Fairfax County Police Department News \(wordpress.com\)](#).

assess such potential risk. On December 26, 2020, Chief Roessler advised that additional time was needed to complete the risk assessment.⁵

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD conducted both a criminal and an administrative investigation into the shooting of GM. The results of the criminal investigation were provided to the Office of the Commonwealth’s Attorney (hereinafter “CWA”). In a January 19, 2021, letter addressed to Chief Roessler, Fairfax County CWA Steve Descano advised that no criminal prosecution of PFC#1 or MPO#1 would be pursued because he “concluded that [MPO#1 and PFC#1] did not commit any violation of criminal law.”⁶ CWA Descano concluded his letter to FCPD Chief Roessler by commenting that the “officers who were on the scene on December 17th exhibited bravery and respect for the sanctity of life that should make residents of the county proud.”⁷

GM was charged with malicious wounding⁸ related to the shooting of his juvenile victim. He was charged with two counts of attempted capital murder⁹ and two counts of the use of a firearm in the commission of a felony¹⁰ based on his shooting at PFC#1 and MPO#1. GM died from a medical emergency—unrelated to this incident—prior to the prosecution of the charges against him.

INTERNAL ADMINISTRATIVE INVESTIGATION

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

⁵ *Id.*

⁶ January 19, 2021, Opinion Letter from Commonwealth’s Attorney Steve Descano to FCPD Chief Edwin C. Roessler Jr.

⁷ *Id.*

⁸ Va. Code § 18.2-51.

⁹ Va. Code §§ 18.2-26 and 18.2-31. A. 6.

¹⁰ Va. Code § 18.2-53.1.

In addition to keeping apprised of and reviewing the comprehensive criminal investigation conducted by the FCPD's Major Crime Bureau and its Crime Scene Section, IAB investigators conducted administrative interviews of all parties involved in the incident and several other individuals (including neighbors and FCFRD personnel). IAB's investigation also included a review of the following: incident reports, DPSC data and the 9-1-1 calls, computer-aided dispatch records, body-worn camera (hereinafter "BWC") footage,¹¹ and training records relating to training completed by PFC#1 and MPO#1.

The FCPD concluded that MPO#1's and 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. Also, the FCPD concluded that the officers on scene followed the procedures in place on interacting with individuals who have taken a hostage(s) and/or have barricaded themselves in a location. I agree with the FCPD's conclusions and will articulate my reasons in the following section of this report.

CONCLUSIONS

In its 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

¹¹ Only one officer was equipped with a body-worn camera at the time of this incident, and he remained in the exterior hallway without entering the apartment. When this incident occurred on December 17, 2020, the FCPD was in the early stages of implementing its BWC program, and no SOD officers wore them at the time. With full implementation of the BWC program, officers currently assigned to SOD's SWAT team are equipped with body-worn cameras.

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.

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 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. Almost immediately after entering the residence to rescue a gunshot victim, PFC#1 saw DV sitting on a bed and pointing what appeared to be two handguns at him.¹⁹ This provided PFC#1 with the “fairly probable” belief²⁰ that GM “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, PFC#1’s initial use of deadly force was objectively reasonable and lawful under the Fourth Amendment.

After PFC#1 fired his first shot, GM began shooting at PFC#1 and MPO#1. PFC#1 was struck once in the arm. GM’s actions further substantiated that he posed a significant threat of death or serious injury to PFC#1, MPO#1, their fellow officers, and to the shooting victim still trapped in the residence. Therefore, PFC#1’s continued use of deadly force—until the threat of death or serious injury no longer existed—was also legal.

MPO#1 did not use deadly force until he and PFC#1 had been fired upon by GM. At that point, MPO#1 clearly had a “fairly probable”²² belief that GM “pose[d] a significant threat of death or serious injury to [him] or others.”²³ Accordingly, MPO#1’s use of deadly force—until the threat of death or serious injury no longer existed—was also legal.

For the same reasons that PFC#1’s and MPO#1’s uses of deadly force were objectively reasonable and legal, their uses of deadly force comported with FCPD policy. The FCPD policy regarding the use of force—up to and including deadly force—mirrors the aforementioned

¹⁵ See GLOSSARY.

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

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

¹⁸ *Id.*

¹⁹ The fact that they were weapons was quickly confirmed when GM fired ten .40 caliber rounds, striking PFC#1 once in the arm. *Supra*, note 1. A second pistol—which was not fired during this incident—was recovered from the bedroom GM was in at the time of the shooting

²⁰ *Supra*, notes 17 and 18.

²¹ *Supra*, note 16.

²² *Supra*, notes 17 and 18.

²³ *Supra*, note 16.

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.”²⁴ 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.”²⁵ Finally, FCPD policy provides that “[d]eadly force shall not be used unless it is objectively reasonable. The officer must believe, based on the totality of the circumstances known at the time, that imminent death or serious injury to any individual(s) exists and that all other force options to control the individual(s) are not feasible, or have already proven to be ineffective.”²⁶ Based on the immediate nature of the threat of death or serious injury after PFC#1 and MPO#1 made entry into the apartment and GM pointed weapons at them, no other force options were feasible. Therefore, PFC#1’s and MPO#1’s use of deadly force met the policy standards required by the FCPD. They each utilized deadly force based on an objectively reasonable belief that GM posed a significant, or imminent, threat of death or serious injury to them (PFC#1 and MPO#1) and to others (their fellow officers and the shooting victim), and they had no other feasible force options.

PFC#1 and MPO#1 also complied with the department’s policy and procedures for dealing with a hostage situation (or barricaded subject) when they responded to this incident. The FCPD explains its over-arching “sanctity of life” provision at the beginning of its General Order on Use of Force. The first sentence of G.O. 540.0 II. POLICY reads: “It is the policy of

²⁴ FCPD G.O. 540.0 II.

²⁵ FCPD G.O. 540.1 I. L.

²⁶ FCPD G.O. 540.8 I. A.

the Fairfax County Police Department that officers hold the highest regard for the sanctity of human life, dignity, and liberty of all individuals.” Additional guidance provided in FCPD Standard Operating procedure (hereinafter “SOP”) 13-048: Hostage/Barricaded Persons²⁷ for resolving “hostage/barricaded persons” situations dictates that officers prioritize their actions based on the following priority of life: 1) hostages; 2) innocent by-standers; 3) police/first responders; and, 4) suspects/subjects. SOP 13-048 also provides that: “[u]nless immediate action is necessary to protect life, the first unit(s) on the scene shall confine activities to containment and stabilization of the situation, to include establishing a secure perimeter, remaining behind cover, establishing communication, and gaining voluntary compliance with legal authority through negotiation;”²⁸ “[i]f the situation involves a hostage or the suspect/subject demonstrates the means and intent to use deadly force, SOD [Special Operations Division] resources shall immediately be requested;”²⁹ [a]ttempts to communicate with the suspect/subject should be made;”³⁰ and “[p]ersons in the immediate vicinity of where the suspect is located should be moved to a safe area . . .”³¹ Based on what the officers knew at the time of their arrival at the apartment—that a juvenile victim, who had already been shot by GM, was trapped in a locked bedroom, and that GM was trying to get into that bedroom—immediate action was necessary to protect the life of a hostage. The officers entered the apartment after getting approval from the FCPD Duty Officer, and they complied with their departmental policy when doing so.

RECOMMENDATIONS

The factual recitation of this incident in the INCIDENT section of this reports makes clear that this was a very volatile and fast-moving situation with a young life at risk. Quick decisions were made by FCPD SWAT officers, to include PFC#1 and MPO#1, with the hope of saving that life. Thankfully, the juvenile victim did survive. The FCPD policies in place to address hostage or barricaded subject situations were followed during this incident, and following them likely prevented an innocent victim’s death.

²⁷ FCPD SOP 13-048 was revised (effective February 1, 2022). None of the provisions referenced in this report changed.

²⁸ FCPD SOP 13-048, IV. A. 2.

²⁹ FCPD SOP 13-048, IV. A. 3.

³⁰ FCPD SOP 13-048, IV. A. 8.

³¹ FCPD SOP 13-048, IV. A. 9.

Other decisions were made in rapid succession by responding officers, to include PFC#1's and MPO#1's decision to use deadly force. The FCPD analyzed their use of deadly force by examining them against the policies in place at the time. The investigation determined that their use of deadly force was lawful and complied with departmental policy.

The FCPD has revised its policy on the use of force twice since the incident, and I was provided the opportunity to review the DRAFT of those policies and provide input. The policies—both the former and the current—thoroughly address the use of both deadly and “less-lethal” force, and I firmly believe they align with constitutional standards. They also provide FCPD officers extensive guidance on resolving incidents with the concept that the sanctity of life is always paramount.³² Because I believe that the use of force policy in place at the time of this incident was—and the two later iterations are—comprehensive, legally sound, and well-trained by the department, I have no recommendations to make regarding the use of force policy currently governing FCPD officers.

³² The current FCPD G.O. 540.0 II. (effective August 12, 2022) states that “[i]t is the policy of the Fairfax County Police Department that officers hold the *highest regard for the sanctity of human life*, dignity, and liberty of all individuals.” (*emphasis added*).

APPENDIX: GLOSSARY OF TERMS

FCPD – Fairfax County Police Department

FCSO – Fairfax County Sheriff's Office

G.O. – General Order

SOP – Standard Operating Procedure

UOF – Use of Force

BWC – Body-worn Camera

ICV – In-Car Video

ADC – Adult Detention Center

CWA – Commonwealth's Attorney

Fourth Amendment to the United States Constitution - The right of the people to be free in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Force – defined in Fairfax County Police Department General Order 540.1 I. G. as any physical strike or instrumental contact with an individual, or any significant physical contact that restricts an individual's movement. Force does not include escorting or handcuffing an individual who is exhibiting minimal or no resistance. Merely placing an individual in handcuffs as a restraint in arrest or transport activities, simple presence of officers or patrol dogs, or police issuance of tactical commands does not constitute a reportable action.

Less-Lethal Force – defined in Fairfax County Police Department General Order 540.1 I. I. as any level of force not designed to cause death or serious injuries.

Deadly Force – defined in Fairfax County Police Department General Order 540.1 I. B. as any level of force that is likely to cause death or serious injury.

Serious Injury – defined in Fairfax County Police Department General Order 540.1 I. Q. as an injury which creates a substantial risk of death, disfigurement, prolonged hospitalization, impairment of the functions of any bodily organ or limb, or any injury that medical personnel deem to be potentially life-threatening.

ECW – Electronic Control Weapon; considered less-lethal force. Defined in defined in Fairfax County Police Department General Order 540.1 I. C. as a device which disrupts the sensory and motor nervous system of an individual by deploying battery-powered electrical energy sufficient to cause sensory and neuromuscular incapacitation. Often referred to as a Taser.

Empty-Hand Tactics – considered less-lethal force. Described in Fairfax County Police Department General Order 540.4 II. A. 2. as including strikes, kicks, and takedowns.

OC Spray – Oleoresin Capsicum; considered less-lethal force; often referred to as “pepper spray.”

PepperBall System – defined in Fairfax County Police Department General Order 540.1 I. N. as a high-pressure air launcher that delivers projectiles from a distance. Typically, the projectile contains PAVA powder which has similar characteristics to Oleoresin Capsicum. Considered less-lethal force.

Passive Resistance – defined in Fairfax County Police Department General Order 540.4 I. A. 1. as where an individual poses no immediate threat to an officer but is not complying with lawful orders and is taking minimal physical action to prevent an officer from taking lawful action.

Active Resistance – defined in Fairfax County Police Department General Order 540.4 I. A. 2. as where an individual’s verbal and/or physical actions are intended to prevent an officer from taking lawful action, but are not intended to harm the officer.

Aggressive Resistance – defined in Fairfax County Police Department General Order 540.4 I. A. 3. as where an individual displays the intent to cause injury, serious injury, or death to others, an officer, or themselves and prevents the officer from taking lawful action.

