



County of Fairfax, Virginia

MEMORANDUM

DATE: March 29, 2024

TO: Fairfax County Board of Supervisors

Bryan Hill
County Executive

Tom Arnold
Deputy County Executive for Safety and Security

FROM: Richard G. Schott
Independent Police Auditor

SUBJECT: Disposition of Independent Police Auditor Review for:

- IPA-18-16R
- IPA-19-14R
- IPA-19-17R
- IPA-19-19R
- IPA-19-20R
- IPA-20-13R
- IPA-20-18R

As set forth in the Office of the Independent Police Auditor’s Procedural Memorandum 04, dated September 11, 2023, the following Fairfax County Police Department (“FCPD”) investigations have been reviewed and will not be the subject of a detailed Office of the Independent Police Auditor (“OIPA”) Incident Report.¹ Rather, this Summary Memo documents my reviews of the investigations into complaints made about firearms being pointed in seven separate incidents between 2017 – 2020.

The FCPD began to document the “pointing of a firearm at a human to gain control and compliance” as a “reportable action, [but] not a use of force” in 2017.² When it did so, the department mandated that “[t]he notification and investigation of the pointing of a firearm will be conducted in accordance with General Order 540.7, Less-Lethal Force

¹ [OIPA Procedural Memorandum 04: Case Intake and Public Reports](#)

² FCPD General Order 540.20 III. A., effective March 31, 2017.

revisions to the department's General Order 540 in 2021 and 2022, with the 2022 revision stating that the investigation of the pointing of a firearm "shall be documented by an on-duty supervisor in the current IAB RMS and forwarded for command review and dissemination."³ Recently, FCPD Chief Kevin Davis announced that the pointing of a firearm at a human will be tracked and treated as force beginning on January 1, 2024, and as such, will be included in the department's 2025 Use of Force Report.

IPA-18-16R

On September 10, 2018, FCPD Tysons Urban Team ("TUT") officers responded to a suspected shoplifting at the Macy's department store in Tyson's Corner shopping mall. The TUT officers, some of whom were in FCPD uniforms while others were in plainclothes, followed the two suspected shoplifters out of the store and into the mall, where the two individuals were joined by approximately ten other individuals. When the officers had developed probable cause to believe the two individuals had shoplifted, they attempted to arrest them. The two individuals resisted arrest, and several of their companions (later determined to be friends or relatives) began to interfere with the officers' efforts. Ultimately, three other individuals were arrested and charged with disorderly conduct and obstruction of justice for their actions.

While trying to overcome the shoplifters' resistance to being arrested, Police Officer First Class #1 ("PFC#1") was knocked to the ground, landing on his back with one of the shoplifting suspects on top of him. During a struggle to get control of the person on top of him, and while repeatedly identifying himself as a police officer and displaying his police badge, one of the other individuals there (later determined to be the brother of the individual with whom PFC#1 was struggling), approached, stood over PFC#1, and said something to the effect of, "I'm going to f**k you up." In response, PFC#1 drew his firearm, pointed it at the individual, and ordered him to back away. The brother did back away, and PFC#1 withdrew his weapon to the side of his body before re-holstering it when he was able—after getting control of the person with whom he was struggling.

The brothers' mother arrived at Tyson's Corner, and complained that her sons had been singled out because of their ethnicity. She also made a complaint about PFC#1 pointing his weapon at her son.

The FCPD determined that PFC#1 pointing his weapon was reasonable under the tense and chaotic circumstances of the incident. Several officers were trying to control several combative individuals, and PFC#1 was in a very vulnerable position when the brother approached and made his threatening comment. PFC#1 pointed his weapon to discourage the brother from inflicting bodily injury to himself and/or to his fellow officers, some of whom had their backs to PFC#1 and who were themselves trying to control multiple people. I agree with the FCPD's determination that PFC#1's pointing his weapon at an

³ FCPD General Order 540 VII. H., effective August 12, 2022.

aggressive person who threatened to “f**k” him up, while PFC#1 was on his back with another person on top of and fighting him, was objectively reasonable.

IPA-19-14R

On January 21, 2018, FCPD officers were dispatched to a call for a person threatening to commit suicide. On their way to respond, the officers were advised that the person threatening suicide was a military veteran, and that he had threatened to “take others with him.” When the officers arrived at the address, one officer drew his firearm and briefly pointed it at the individual when he opened his door with an object in his hand. The officer was approximately twenty feet away from the individual. The officer implored the individual, “Let me see your hands!” three times before reholstering his gun. He did so after determining the object in the individual’s hand was a cordless telephone.

On 7/1/2019, the individual complained to the FCPD about the gun being pointed at him. In my opinion, the officer who responded to the call with his weapon drawn—and then pointed at the individual—acted objectively reasonable. The totality of the circumstances included the probability of the individual possessing a weapon; a threat of “tak[ing] others with him” before committing suicide; and a visible object in the individual’s hand when he opened the door for the officers.

IPA-19-17R

On June 12, 2019, at 10:11 p.m., an individual was detained by undercover FCPD officers after a controlled and coordinated drug transaction which took place in a hotel parking lot. The individual’s father was also present in the parking lot, seated in his vehicle. The individual who was being detained initially struggled with the officers. When his father drove his vehicle “directly towards” the group of officers and his son, all four officers drew and pointed their weapons at the vehicle. The father later explained that he initially thought his son was being “jumped” by drug purchasers, but when he got to approximately ten feet away, he realized they were officers trying to take control of his son. He put his vehicle in reverse and then stopped. Two officers approached with their guns still pointed at the vehicle. The father later complained that the officers pointed their weapons at his head. The FCPD investigated the incident and determined that the officers only pointed their weapons at the approaching—and later the stopped—vehicle.

In my opinion, the officers acted reasonably when they pointed their weapons at a vehicle quickly approaching (driving “directly towards” them) the scene of a “buy-bust” arrest. When the driver backed up and stopped, two officers initially approached with their weapons still drawn and pointed. This was objectively reasonable as well. When the officers identified the driver as the father of the subject being arrested, they holstered their weapons and no force was deployed.

IPA-19-19R

On May 22, 2018, FCPD officers engaged in a narcotics deal buy-bust in the parking lot of the Springfield Mall. Following the attempted purchase of illegal drugs, the seller tried to flee with the buy money without providing any drugs to his buyer. Officers in undercover police vehicles

moved in to arrest the subject, who was in his vehicle. However, the subject in the car evaded the oncoming undercover vehicles and continued driving in the shopping mall parking lot. Shortly thereafter, multiple vehicles were able to block the subject's car from moving by using a technique known as a tactical vehicle intercept ("TVI"). Officers pointed their weapons at the arrestee while he was extracted from his vehicle. Once removed, he was taken to the ground and handcuffed.

Because of the dynamic nature of the TVI—especially after the failed arrest attempt and flight by the subject—coupled with his accepting drug purchase money without providing any drugs, the pointing of weapons at the subject of the TVI in this case, in my opinion, was reasonable.

IPA-19-20R

On September 14, 2019, FCPD officers were dispatched to a late-night "burglary of an occupied dwelling" call. The homeowner confronted the individual—who was known to the homeowner—and he fled the house. The call was then downgraded to an "unlawful entry." Officers acquired an address for the individual and went to his residence at 2:03 a.m. to investigate. When the individual's father opened his door in an "aggressive manner," the officers pointed their handguns at him briefly. A verbal command of "Show me your hands!" was captured on the in-car video (which included audio) of the incident. The officers holstered their weapons and explained they were looking for his son. When the father attempted to shut the door, one officer used his foot to prevent the door from closing. The force with which the father attempted to close the door caused it to bounce off the officer's foot and strike him, slightly cutting his forehead. The officers then made a warrantless entry to search for the intruder. The son was not inside the residence.

The father complained to the FCPD that he was assaulted when the door struck his head, and that the warrantless entry into, and search for his son inside, his apartment were unlawful. He also complained about the officers briefly pointing weapons at him when he first opened his door. The FCPD investigated the complaints as 1) an allegation of assault and battery; and 2) and allegation of an illegal warrantless search. The FCPD determined that the officers' actions did not constitute an assault and battery; but, the issue of the pointed firearms was not specifically addressed. While I agree that the door inadvertently striking the father because the officer blocked it from closing with his foot did not constitute an assault and battery (nor a use of force under FCPD policy), I do not believe that pointing firearms at the father was reasonable.

At the time of this incident, FCPD General Order 540.1 I. K. defined the "modified ready" position as "[a] one-or two-handed grip of a firearm held against the body with the muzzle pointed toward the ground, de-cocked, and the trigger finger straight along the frame." The definition went on to explain that "[t]his position is used when maneuvering in close proximity to other officers or individuals thereby *preventing the inadvertent pointing of a firearm at a person while also maintaining a tactical advantage.*"⁴ The officers could have maintained a tactical advantage during this incident by having their weapons unholstered and at a "modified ready" position without potentially escalating the volatile situation. Having them pointed at the individual who answered the door, in my opinion, was more than what was reasonable under the circumstances.

⁴ General Order 540.1 I. K. The definition of the "modified ready" position remains the same, but is currently in General Order 540 III. 16 (effective August 12, 2022) (*emphasis added*).

The FCPD consulted with the County Attorney's Office ("CAO") to determine the legality of the officers' entry into the residence to look for the individual who had earlier engaged in the unlawful entry. The CAO opined that the officers' entry and subsequent search were illegal because there was no exigency justifying the entry/search. I agree with the conclusion of the CAO, which was both accepted and acted upon by the FCPD following its investigation into the incident.

IPA-20-13R

On June 20, 2020, FCPD officers from the Franconia District Station responded to the Shoppers Food Warehouse ("SFW") on Lorton Market Street in Lorton, Virginia. The manager reported that two individuals (one male ("OP") and one female ("NP")⁵) had been in the store creating a disturbance, with the female actively destroying items. They left the SFW before officers arrived.⁶ However, officers quickly located a car associated with OP at a nearby 7-11 convenience store. When OP came out of the 7-11, he admitted to officers that he had been at the SFW. However, when officers started to ask additional questions, OP walked away. Officers followed him—on foot—to his home approximately one-half mile away.

At the house, officers continued to ask OP questions. He refused to answer and went inside. The officers left and returned to the 7-11 where OP's car was located. Shortly thereafter—while the officers were still at the 7-11—OP returned and got into his car. One officer tried to block him in with a police car, but OP navigated around the police cruiser and left the parking lot.

Several officers followed behind OP until he reached his home and pulled into the open garage. Officers walked into the garage and demanded that OP get out of the car. OP refused to get out of his car. Meanwhile, NP stood in the threshold of a door between the garage and the house, waiting to close the garage door. When officers attempted to arrest NP in that threshold, OP bolted from the car and aggressively charged at the officers who were attempting to arrest NP.

OP and NP were both arrested after they each actively resisted, and officers used force on them to overcome their resistance.

On June 24, 2020, OP complained to the FCPD about having weapons pointed at him during the incident, and because the officers entered the house to arrest his sister. He indicated that guns had been pointed at him three different times: 1) after walking—and being followed by officers—from the 7-11 to his home when he reached into his pocket after going into his garage; 2) when he maneuvered around the police car after walking back to the 7-11 to retrieve his car; and, 3) while being ordered out of his car after driving into his garage after retrieving the car from the 7-11.

Based on in-car video footage (as well as cell phone footage taken by OP on his cell phone that he provided to the FCPD) and interviews of the officers involved in the incident, it is clear that the only time that officers removed their guns from their holsters was when they were in OP's garage and he refused to get out of his car. Even then, the two officers who drew their weapons kept them at a "modified ready" position and did not point them at OP. At the time of this incident, FCPD General Order 540.1 I. K. defined the modified ready position as "[a] one-or two-handed grip of a

⁵ Later determined to be siblings.

⁶ NP apparently went directly home from the SFW.

firearm held against the body with the muzzle pointed toward the ground, de-cocked, and the trigger finger straight along the frame.” The definition went on to explain that “[t]his position is used when maneuvering in close proximity to other officers or individuals thereby preventing the inadvertent pointing of a firearm at a person while also maintaining a tactical advantage.”⁷ The investigation into the alleged pointing of firearms at OP concluded that the only two officers who removed their guns from their holsters were justified in doing so. They complied with departmental policy when they briefly maintained their guns in the modified ready position while trying to get OP out of his car—while in his garage—after OP first walked away from what should have been an investigative detention⁸ and who subsequently maneuvered his car and drove away from a second attempted investigative detention. I agree with that conclusion based on the circumstances and the department’s articulated justification for using the “modified ready” positioning of an officer’s firearm.

IPA-20-18R

At approximately 1:30 p.m. on June 6, 2017, FCPD officers from the Mason District police station responded to a parking garage in response to numerous calls reporting a man on the top level of the parking garage holding a weapon and a shield. One caller stated the man possibly had an AR-15 or M-16 assault rifle; while another caller stated his belief that the man had a handgun tucked inside his shirt. Upon their arrival at the garage, officers blocked the exit and requested the FCPD helicopter to provide assistance from above the garage. Almost immediately after the officers arrived, a driver tried to leave the garage. He was challenged by several officers, one of whom pointed a rifle at the vehicle. Other officers had rifles in hand, but not pointed. The driver complied with verbal commands given. He made a complaint to the FCPD on September 4, 2020, more than three years after the incident.

While the officer was not faulted for pointing his weapon at the driver during the tense situation, it was documented that he failed to report the pointing of his weapon during the June 2017 incident. It should be noted, however, that FCPD’s policy had recently changed just prior to this incident—effective March 31, 2017—to require the documentation (as a “reportable action”) of the “[p]ointing of a firearm at a person in response to their actions in order to gain control and compliance.”⁹

I agree with the department findings based on what the officer encountered during this incident.

cc: Chief Kevin Davis, Fairfax County Police Department
Commander John Lieb, Internal Affairs Bureau

⁷ General Order 540.1 I. K. The definition of the “modified ready” position remains the same, but is currently in General Order 540 III. 16 (effective August 12, 2022).

⁸ Terry v. Ohio, 392 U.S. 1 (1968) first gave police officers the legal authority to detain—forcefully if necessary—individuals provided the officers have reasonable suspicion that the individual is engaged in or about to engage in criminal activity.

⁹ FCPD General Order 540.7 III. A., effective March 31, 2017, since revised.