

# Public Report

June 30, 2022: Officer-Involved  
Shooting  
IPA-22-07



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**NOTE TO THE READER: The Fairfax County Police Department revised its policy on use of force after this incident occurred. That revised General Order (General Order 540) took effect on August 12, 2022. The force used during this incident will be analyzed using the policy provisions that were in effect on June 30, 2022 (i.e., General Order 540, effective March 1, 2021).**

**LANGUAGE DISCLAIMER: This report contains harsh (potentially offensive) language, quoting an officer who was involved in the incident. My reference to the language is not gratuitous; rather, the officer’s use of the language was a part of the investigation conducted by the Fairfax County Police Department.**

## **INCIDENT**

On June 26, 2022, an individual (hereinafter identified by his initials “CP”) was involved in an incident during which he allegedly committed larceny in Reston, Virginia, by taking a Glock handgun which belonged to his brother. Before leaving the residence with the handgun, CP pointed it at his brother. He later fired a single shot while in the apartment, with nobody being injured. He left with the gun in a green Volvo car. Based on the incident and subsequent investigation into CP, an FCPD officer obtained arrest warrants charging CP with Larceny of a Firearm;<sup>1</sup> Possession of a Firearm by a Convicted Felon;<sup>2</sup> Brandishing a Firearm;<sup>3</sup> and Reckless Handling of a Firearm.<sup>4</sup>

Four days later, on June 30, 2022, at approximately 4:32 p.m.,<sup>5</sup> FCPD officers assigned to the “Summer Crime Initiative” team<sup>6</sup> located the green Volvo in the parking lot of the Springfield Town Center shopping mall in Springfield, Virginia. Because CP was not then in the Volvo, FCPD Officer #1 (hereinafter OFFC#1), Police Officer First Class #1 (hereinafter “PFC#1), and Police Officer First Class #2 (hereinafter “PFC#2”) positioned themselves near the car so they could see when CP approached it from the mall. The three officers were in separate unmarked police cars and were wearing the uniform of the Summer Crime Initiative specialized

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<sup>1</sup> Va. Code § 18.2-95.

<sup>2</sup> Va. Code § 18.2-308.2.

<sup>3</sup> Va. Code § 18.2-282.

<sup>4</sup> Va. Code § 18.2-56.1.

<sup>5</sup> Times used are from review of the officers’ body-worn cameras and in-car video footage (hereinafter “ICV”).

<sup>6</sup> Described by the FCPD as a seasonal team of officers focused on suppressing crime during the summer months. See, [Officer-Involved Shooting in Springfield Town Center Parking Lot | Fairfax County Police Department News \(wordpress.com\)](https://www.fairfaxcounty.gov/police/news/Officer-Involved-Shooting-in-Springfield-Town-Center-Parking-Lot-Fairfax-County-Police-Department-News-wordpress-com).

unit with police badges exposed. They each had, and activated, a body-worn camera (hereinafter “BWC”).

At 4:34 p.m. CP came from the mall to his car and remained on the outside of it until OFFC#1 pulled his car into the parking spot behind the Volvo. OFFC#1 got out of his car and as CP started to get into his, OFFC#1 said, “Hey, don’t.” CP disregarded that command and got into the driver’s seat. PFC#1 quickly pulled his car in front of the Volvo, effectively boxing it in between the police vehicles and two non-police cars parked (and unoccupied) on either side of the Volvo. PFC#2 parked his vehicle behind PFC#1’s and took a position behind the car parked on the driver’s side of the Volvo. All three officers pulled their weapons and pointed them at CP and began giving him commands.

Between 4:35:14 and 4:35:42, approximately twenty-three loud verbal commands were given to CP, including “show me your hands,” “put your hands up,” or simply, “hands.” At 4:35:36, OFFC#1 shouted, “Show me your fucking hands! I will shoot you!” CP did not show his hands or acknowledge hearing the commands, but he did lean over from the driver’s side of the car to the passenger seat; and, at 4:35:42, PFC#2 shouted loudly, “He’s got a gun!”<sup>7</sup> By the time PFC#2 shouted, CP was sitting upright in the driver’s seat and looking in the direction of PFC#2.

Between 4:35:46 and 4:36:08, eighteen more commands to “drop the gun” and “drop it” were made to CP, including PFC#2 yelling, “Drop the gun. You’re going to get shot!” at 4:35:57. At 4:36:08, PFC#2 fired four rounds from his gun. Almost simultaneous to PFC#2’s firing, OFFC#1 fired four shots at CP. The eight shots were all fired within two seconds. CP was struck and slumped over in the seat, preventing the officers from seeing whether he still had possession of his gun. For the next seventeen seconds, a total of twenty-five commands to “drop the gun” or “show your hands” were given. Medical assistance was requested over the police radio at 4:36:25. After tactically approaching the vehicle, CP was removed, medical aid was rendered, and he was airlifted to a hospital where he was pronounced deceased. A Glock handgun was recovered from CP’s vehicle, loaded with a full magazine but an empty chamber.

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<sup>7</sup> At 4:35:49, a pistol can be seen in CP’s right hand from the ICV in PFC#1’s vehicle.

## **RELEASE OF INVOLVED OFFICERS' NAMES**

FCPD Chief Kevin Davis complied with 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 the identities of PFC#2 and OFFC#1 on July 10, 2022.<sup>8</sup> He also released the BWC footage within thirty days of the incident on July 22, 2022.<sup>9</sup>

## **CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION**

The FCPD conducted a criminal investigation and an administrative investigation into the use of deadly force by PFC#2 and OFFC#1 during this incident. The results of the criminal investigation were provided to the Office of the Commonwealth's Attorney for Fairfax County. On October 11, 2022, Fairfax County Commonwealth Attorney (hereinafter "CWA") Steve Descano issued a report on this officer-involved shooting incident. CWA Descano concluded his report by stating that he found "no violations of criminal law on the part of [OFFC#1] and [PFC#2] and decline[d] to bring any criminal charge against either officer."<sup>10</sup>

## **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"). Following its internal/administrative investigation into this incident, the FCPD determined that PFC#2's and OFFC#1's use of deadly force was objectively reasonable and, therefore, their use of deadly force complied with departmental policy. Specifically, the FCPD concluded that the use of deadly force complied with FCPD General Order (hereinafter "G.O.") 540.0, 540.1, and 540.8. I agree with this conclusion and that it was based on an investigation that was complete, thorough, objective, impartial, and accurate.

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<sup>8</sup> [Officer-Involved Shooting in Springfield Town Center Parking Lot | Fairfax County Police Department News \(wordpress.com\)](#).

<sup>9</sup> *Id.*

<sup>10</sup> Fairfax County Commonwealth of Virginia "[REPORT ON JUNE 30, 2022, OFFICER INVOLVED SHOOTING](#)," October 11, 2022.

## CONCLUSIONS

In its landmark Graham v. Connor<sup>11</sup> opinion, the United States Supreme Court analyzed the use of 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.”<sup>12</sup> In the Graham ruling, Chief Justice William Rehnquist stated that the Fourth Amendment to the United States Constitution<sup>13</sup> is the standard by which an officer’s decision to use force must be judged, and that “all claims that law enforcement officers have used excessive force — deadly or not — in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard.”<sup>14</sup>

Specific to deadly force,<sup>15</sup> it is objectively reasonable to use 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.”<sup>16</sup> Also important to note is that probable cause is based on the “totality of the circumstances,”<sup>17</sup> known to the officer at the time, and the probable cause [to believe] standard is met when there is a “fair probability”<sup>18</sup> that the belief is accurate.

The situation under review was certainly tense and uncertain, and it had evolved rapidly when OFFC#1 and PFC#2 used deadly force. The officers located CP’s unoccupied vehicle in the shopping mall’s parking lot at approximately 4:32 p.m. Within two minutes, CP emerged from the mall and was outside of his car. While CP was still outside of his car, OFFC#1 pulled his car directly behind him and tried to verbally engage him; unfortunately, CP got into his vehicle before the officers could arrest him. The officers immediately commanded CP to show them his hands. He did not respond to the commands, but he did produce a handgun which could be seen by the officers. PFC#2 shot first only after he saw CP’s finger on the gun’s trigger or

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<sup>11</sup> 490 U.S. 386 (1989).

<sup>12</sup> *Id.* at 397.

<sup>13</sup> 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.

<sup>14</sup> Note 10, *supra*, at 395.

<sup>15</sup> See GLOSSARY.

<sup>16</sup> Tennessee v. Garner, 471 U.S. 1, 4 (1985).

<sup>17</sup> Illinois v. Gates, 462 U.S. 213 (1983).

<sup>18</sup> *Id.*

alongside of the trigger while waving it from side to side in the direction of him and PFC#1.<sup>19</sup> OFFC#1 fired his weapon only after hearing a gunshot and believing that PFC#2 had been shot by CP.<sup>20</sup>

When PFC#2 and OFFC#1 deployed deadly force against CP, they clearly had the requisite probable cause to believe that CP posed a significant threat of death or serious injury to them and to the individuals who were in the parking lot and can be seen on ICV and BWC footage near CP's vehicle before and after the shooting.<sup>21</sup> Therefore, their use of deadly force was objectively reasonable and, therefore, lawful.

The officers' use of deadly force also complied with departmental policy for the same reason it was lawful under the Fourth Amendment—the use of deadly force was objectively reasonable. Paralleling the pronouncements from Graham v. Connor,<sup>22</sup> 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.”<sup>23</sup>

FCPD G.O. 540.1, Use of Force- Definitions, goes on to define “Objectively Reasonable” as “[t]he 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.”<sup>24</sup>

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<sup>19</sup> FCPD Major Crimes Bureau's interview of PFC#2 conducted on July 7, 2022.

<sup>20</sup> FCPD Major Crimes Bureau's interview of OFFC#1 conducted on July 8, 2022.

<sup>21</sup> Note 16, *supra*. Additionally, FCPD Standard Operating Procedure 13-048 (current G.O. 521) on “HOSTAGE AND BARRICADE PROCEDURES” sets forth the following “Priority of Life” for officers to follow: 1) hostages, 2) *innocent by-standers*, 3) police and other first responders, and 4) offenders. (*emphasis added*).

<sup>22</sup> Note 11, *supra*.

<sup>23</sup> FCPD G.O. 540.0 II.

<sup>24</sup> FCPD G.O. 540.1 I. M.

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 deadly force is immediately necessary 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 and that all other force options to control the individual(s) are not feasible, or have already proven to be ineffective.”<sup>25</sup> Therefore, PFC#2 and OFFC#1 satisfied the department’s policy standards when using deadly force against CP for the same reasons they met the legal requirements for using such force. That is, they each utilized deadly force based on their own objectively reasonable belief that CP posed a significant and immediate threat of death or serious injury to them (PFC#2 and OFFC#1) and to others.

## **RECOMMENDATIONS**

In this incident, a dynamic situation unfolded very rapidly. Ideally, the FCPD’s Fugitive Track and Apprehension Unit, or a contingent of its Special Weapons and Tactics team, could have been called upon to plan and methodically arrest CP, who was believed to be armed (and who, in fact, was armed) in a safer location than a crowded shopping mall parking lot. In fact, officers initially planned to arrest CP at his home in Reston.<sup>26</sup> However, CP approached his car within two minutes of the Summer Crime Initiative officers locating it in the parking lot. Hoping to stop CP before he got into the car, OFFC#1 quickly drove his car behind the Volvo, got out and began ordering him to stay out of the car. CP immediately got into the driver’s seat. At that point, the three officers utilized available cover/concealment and tried to get CP to cooperate with verbal commands. Unfortunately, CP continued to disregard commands and accessed a handgun while in the car. When it appeared to PFC#2 that CP was preparing to fire his weapon at him or others, PFC#2 fired his own weapon. Almost simultaneously, OFFC#1 also fired his weapon.

FCPD policies thoroughly address the use of both deadly and “less-lethal” force, align with constitutional standards, and provide FCPD officers extensive guidance on resolving

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<sup>25</sup> FCPD G.O. 540.8 I. A.

<sup>26</sup> FCPD Internal Affairs Bureau’s interview of OFFC#1 conducted on July 18, 2022.



incidents with the concept that the sanctity of life is always paramount.<sup>27</sup> The FCPD investigation determined that the use of deadly force during this incident was lawful and complied with departmental policy, and that both PFC#2 and OFFC#1 reacted appropriately and according to their training. I agree with those conclusions and I have no recommendations to make based on my review of the investigation into this incident.

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<sup>27</sup> 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*).

## **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.

