

# Public Report

June 24, 2019: Use of Force Complaint



Richard G. Schott  
Fairfax County  
Independent Police Auditor



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Office of the Independent Police Auditor  
12000 Government Center Parkway, Suite 233A  
Fairfax, VA 22035

[www.fairfaxcounty.gov/policeauditor](http://www.fairfaxcounty.gov/policeauditor)

Contact Us: [IPAPoliceAuditor@fairfaxcounty.gov](mailto:IPAPoliceAuditor@fairfaxcounty.gov)

To request this information in an alternate format, call 703-324-3459, TTY 711.



## **INCIDENT**

At approximately 9:17 p.m. on June 24th, 2019, the Falls Church Police Department received a 9-1-1 call wherein the caller stated that he had just shot his wife and that she was dead. The caller also advised that he was still at the location and provided the address. The Falls Church Police Dispatch confirmed that the address given by the caller was near Falls Church, but that it was within the jurisdiction of the Fairfax County Police Department (hereinafter "FCPD"). Falls Church Dispatch then transferred the call to the Fairfax County Public Safety Communications Center (hereinafter "FCPSCC"). When the caller spoke with the FCPSCC, he repeated that he had killed his wife, and added that he was going to shoot himself. He also identified himself by providing a name bearing the initials M.T.D. (hereinafter "MTD"). FCPD officers from the McLean District Station responded to the address provided by the 9-1-1 caller at approximately 9:51 p.m.

Upon arrival at the address given by the 9-1-1 caller, the officers learned from building staff that MTD had lived at the address provided, but that he had moved out two years earlier. Furthermore, based on a Department of Motor Vehicles (hereinafter "DMV") computer inquiry, officers identified a current address for MTD in Vienna, Virginia, different from the address given by the 9-1-1 caller. Other officers went to that Vienna address, while the officers at the original address determined that there was no threat or medical situation to resolve there. They then also responded to the Vienna address.

The first officers at the Vienna address saw a man inside, whom they assumed was MTD. They did not see anyone else. Later arriving officers to the location set up a perimeter around the residence. FCPSCC determined that no telephone number was associated with the Vienna address and relayed this to the officers on scene. One officer approached and knocked on the front door, then retreated down the stairs leading to the door. The man seen earlier, later identified as having the initials S.Z. (hereinafter "SZ") answered the door and was immediately told to come down the stairs. Weapons were pointed at SZ when he answered the knock on his door and when he proceeded to go down the stairs. He followed all commands given, and no other force was deployed.

Officers entered the home, with weapons drawn, to determine if there were any shooting victims or anyone in need of medical attention. It took between three and five minutes for them to determine that there was no one else at the residence, and that no crime had occurred there. Officers explained to SZ what had led them to his residence and the actions they took; and, they determined from him that MTD did not live there. SZ expressed dissatisfaction with how the officers handled the situation, to include the officers drawing and pointing their weapons when he answered the door and when they entered his residence.

After resolving the situation at the Vienna address, officers obtained MTD's actual current address, which was not reflected in his DMV records, and contacted him. The officers determined that MTD did not place the earlier 9-1-1 call. They also contacted his girlfriend to confirm her safety and well-being. The officers requested that MTD notify the DMV to update his address in their computer records.

Based on information gathered at the two locations, on information provided by SZ and MTD, and upon receiving more details from the Falls Church Dispatch about the initial 9-1-1 call, the FCPD officers realized that the incident had been a "swatting" event. The disturbing nature of a swatting event is captured in the following description: "Swatting is not new — it was on the FBI's radar as early as 2008 — but its origins are murky. At the most basic level, swatting is similar to the prank calls you and your friends might have made growing up. The difference is, swatting is a prank call made to authorities with the express purpose of luring them to a location — usually a home — where they are led to believe a horrific crime has been committed or is in progress. This results in a forceful response from local police or SWAT teams, who have no way to know the call is a hoax."<sup>1</sup>

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<sup>1</sup> This description is from Cable News Network reporter Dakin Andone at <https://www.cnn.com/2019/03/30/us/swatting-what-is-explained/index.html>, accessed on February 11, 2020.

## **INTERNAL ADMINISTRATIVE INVESTIGATION**

Based on a complaint made by SZ to the responding officers, and because some responding officers brandished their weapons during the incident, the FCPD immediately began an administrative investigation into this incident.<sup>2</sup>

The FCPD administrative investigation determined that when the initial 9-1-1 call went to the Falls Church Police Department, they were utilizing a backup 9-1-1 system and that the caller's phone number, subscriber information, and geographical data were not captured. Numerous interviews of the responding officers were conducted; SZ was provided with additional information regarding the incident, the police response, and the subsequent investigation. The FCPD investigation into the response to the incident found all officers to be in compliance with departmental policy, specifically its policy on the use of force.

This review of the investigation was based on SZ's complaint to the FCPD that the drawing and pointing of firearms during the incident was improper.<sup>3</sup> Based on my review of this investigation, I believe it was complete, thorough, objective, impartial, and accurate.

## **CONCLUSIONS**

The FCPD considers the pointing of a firearm to be a reportable action, and thus a use of force. Likewise, there is a litany of court opinions that consider the brandishing of a firearm to be a use of force.<sup>4</sup> The issue being decided in those cases, however, was not whether the pointing of a firearm should be considered force; but rather, whether that force was reasonable or unreasonable in the particular situation presented in each case. The cases most analogous to the incident currently under review clearly lead to the conclusion that the officers' actions were

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<sup>2</sup> SZ also submitted a written complaint to the Fairfax County Police Civilian Review Panel ("Panel"), which was provided to the FCPD. At the conclusion of its investigation, the FCPD provided SZ with information describing how to request a review by the Panel of the investigation into the incident. He did not request that review.

<sup>3</sup> FCPD General Order ("G.O.") 540.7 III.A.2 requires an officer who points "a firearm at a person in response to their actions in order to gain control and compliance" to complete a "[u]se-of-force supplement," and Section 8.c) of the Board of Supervisors Action Item 15 from September 20, 2016, establishing the Office of the Independent Police Auditor, mandates that the Auditor "shall review [Use of Force] investigations which are the subject of a public complaint made to the FCPD or the Auditor."

<sup>4</sup> See, for example, Los Angeles County v. Rettele, 550 U.S. 609 (2007); Robinson v. Solano County, 278 F.3d 1007 (9<sup>th</sup> Cir. 2002); Holland v. Harrington, 268 F.3d 1179 (10<sup>th</sup> Cir. 2001); Jacobs v. City of Chicago, 215 F.3d 758 (7<sup>th</sup> Cir. 2000); Aponte Matos v. Toledo Davila, 135 F.3d 182 (1<sup>st</sup> Cir. 1998).

reasonable. For example, in Los Angeles County v. Rettele, it was reasonable for officers to point weapons at a subject known to carry a handgun; and, in Aponte Matos v. Toledo Davila, it was reasonable for officers to brandish weapons during a search for firearms. Conversely, in Jacobs v. City of Chicago, it was unreasonable for an officer to point a gun at a cooperative elderly man's head for 10 minutes after realizing he was not their suspect; and, in Robinson v. Solano County, it was unreasonable for weapons to be pointed at a cooperative, unarmed suspect of a misdemeanor.

Objective reasonableness is also the standard by which FCPD officers' actions are judged. FCPD General Order 540.0 addressing an officer's use of force requires that "[f]orce is to be used only to the extent it is *objectively reasonable*,"<sup>5</sup> making the department's conclusion in the incident under review that the officers complied with departmental policy consistent with other cases determining whether the brandishing of firearms was reasonable or unreasonable. Officers responded to a 9-1-1 call reporting a potential murder-suicide, where the caller indicated he had shot his wife and was going to shoot himself. Officers confirmed what they could, but they needed to act quickly because of the potential for the loss of life. Fortunately, there had been no shooting and the caller had engaged in "swatting" by reporting false information to the Falls Church Police Dispatch and the FCPSCC to initiate a dramatic police response to a third-party location. Unlike some other swatting events, this situation was resolved without any injuries or death to unwitting individuals at that location.<sup>6</sup> This does not minimize the trauma of being ordered out of your home at gunpoint. However, the Supreme Court of the United States has made it clear that officers' actions cannot be judged using the 20/20 vision of hindsight.<sup>7</sup> Based on what the officers believed at the time, their actions were objectively reasonable.

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<sup>5</sup> Emphasis added.

<sup>6</sup> See, for example, <https://www.cnn.com/2019/03/29/us/swatting-suspect-20-year-sentence/index.html>, accessed on February 11, 2020.

<sup>7</sup> Graham v. Connor, 490 U.S. 386 (1989).



## **RECOMMENDATIONS**

The FCPD reacted to information provided by a 9-1-1 caller. That information required a quick and coordinated response. Officers verified as much information as they could but did not know that the 9-1-1 caller had engaged in “swatting.” Directing SZ out of his residence and then entering it to determine the status of any occupants inside, both with weapons drawn and pointed, was reasonable based on the information known to the officers at the time. Consequently, I have no recommendations to make based on this incident review.

## **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

**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** – 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.

