

Public Report

June 5, 2020: Use of Force -
Deployment of Electronic Control Device

IPA-20-05



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Fairfax County Independent Police Auditor

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NOTES TO THE READER:

This incident was the subject of intense media coverage and public scrutiny. Body-worn camera footage has previously been circulated online and can be viewed by accessing [Cop charged after bodycam footage shows 'horrible use of force': Police chief - ABC News \(go.com\)](#).

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 June 5, 2020 (i.e., General Order 540, effective March 31, 2017).

INCIDENT

At approximately 1:19 p.m. on June 5, 2020, an individual (hereinafter identified by his initials “LG”) contacted the Fairfax County Department of Public Safety Communications (hereinafter “DPSC”) and reported that someone needed oxygen and was running out of breath on Fordson Road.¹ Although LG identified himself to the call-taker, the call-taker had trouble understanding LG and did not provide his identity when putting the information out over the Fairfax County Police Department (hereinafter “FCPD”) computer-aided dispatch system (hereinafter “CAD”). FCPD Officer #1 (hereinafter “OFFC#1”) responded and located LG seven minutes after the initial call (at 1:26:02 p.m.).²

The Fairfax County Fire and Rescue Department (hereinafter “FCFR”) was already on the scene—with an ambulance—when OFFC#1 arrived. Even though LG identified himself to OFFC#1, OFFC#1 also had difficulty understanding him and did not provide a name back to DPSC. He did notify DPSC that he was “out with one with the fire department, [and that] he is walking around in the middle of the street, rambling.”³ OFFC#1 and an individual from the FCFR tried to convince LG to get into the ambulance so he could be taken to a hospital. Instead, LG walked in circles while speaking incoherently, and did not enter the ambulance. OFFC#1 surmised from LG’s behavior that LG may have used Phencyclidine (commonly referred to as, and hereinafter, “PCP”), and therefore was drunk in public which would allow for his arrest.

¹ The area is serviced by the Mount Vernon District Station of the Fairfax County Police Department.

² The times documented down to the second were compiled by FCPD investigators after reviewing several sources: the officers’ event histories, patrol unit histories, in-car video footage, and body-worn camera footage.

³ DPSC-recorded communications from the incident.

However, OFFC#1 engaged in de-escalation techniques⁴ and did not want to initiate an arrest—possibly leading to a physical altercation—while he had no backup officer(s) on the scene.

At 1:29:16 p.m. (a little more than 3 minutes after OFFC#1 arrived and started de-escalation efforts with LG), FCPD Police Officer First Class #1 (hereinafter “PFC#1”) arrived. Two seconds later (at 1:29:18) he got out of his police cruiser and walked toward LG. At 1:29:25, PFC#1 provided the verbal command, “Anthony, get on the ground;” two seconds later (1:29:27) a second command, “Get on the ground, Anthony.” One second after the second verbal command (at 1:29:28), PFC#1 deployed his electronic control weapon (commonly referred to as a taser and hereinafter “ECW”) on LG. At the time of the deployment, LG was walking away from and to the right of PFC#1. Only twelve seconds had elapsed since PFC#1’s arrival. The ECW had the desired effect, causing LG to fall to the ground.

When LG fell to the ground, he landed on his back. PFC#1 tried to roll him over to his stomach so that he could handcuff LG. While trying to roll him over, PFC#1 stated, “Anthony, relax” two times. He also said to LG, “Anthony, give me your arm.” OFFC#1 joined the struggle to handcuff LG, but despite both officers’ efforts to control him, LG got both arms underneath his body. He then attempted to stand up—and succeeded in getting to his knees—despite both OFFC#1 and PFC#1 applying their body weight onto him. When LG was on his knees, FCFR personnel on the scene helped overcome LG’s resistance and the officers succeeding in getting him handcuffed at 1:30:41 (one minute and thirteen seconds after the initial ECW deployment). During the struggle to handcuff LG, PFC#1 used his right hand (while holding the ECW in it) to strike the side of LG’s head, and then deployed his ECW two additional times (once in drive stun mode and once in dart mode).⁵

⁴ FCPD General Order (hereinafter “G.O.”) 540.2 I. A. describes de-escalation as “the result of a combination of communication, tact, empathy, instinct, and sound officer safety tactics. The ultimate goal is to help achieve a positive outcome by reducing the need for force.”

⁵ As described in a federal appellate court decision which will be referred to in the CONCLUSIONS section of this report, “[t]asers generally have two modes. In dart mode, a taser shoots probes into a subject and overrides the central nervous system. Drive stun mode, on the other hand, does not cause an override of the victim’s central nervous system; that mode is used as a pain compliance tool with limited threat reduction.” Armstrong v. Village of Pinehurst, 810 F.3d 892 (4th Cir. 2016), fn. 3 (internal quotation marks omitted). Also, one of the largest producers and providers of ECWs to law enforcement agencies, AXON, advises that “[d]rive-stun mode is not designed to cause incapacitation and primarily becomes a pain compliance option. Drive-stun is only effective while the CEW’s electrodes are in direct contact with the subject or when pushed against the subject’s clothing. As soon as the CEW is moved away, the energy being delivered to the subject stops. If the probes are deployed, even at very close range, the user may drive-stun to another portion of the body that is further away from the probes, thereby

OFFC#1 advised that LG was “actively resisting”⁶ during the struggle to handcuff him; and, because of the resistance, OFFC#1 requested for additional officers to “step it up” if they were responding to his location. Other officers did, in fact, arrive but not until LG was handcuffed and no officer—other than PFC#1—used force.

After being secured in handcuffs, LG stated that he could not breathe. The FCFR personnel on the scene rolled LG over; and a RIPP Hobble restraint device⁷ was placed on his legs. He continued to make incoherent remarks while he was assisted to a standing position. He was compliant while placed on a gurney, put in an ambulance, and transported to Mount Vernon Hospital.

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD conducted both a criminal and an administrative investigation into PFC#1’s use of force against LG. The Office of the Commonwealth’s Attorney for Fairfax County (hereinafter “CWA”) charged PFC#1 with three counts of misdemeanor assault and battery.⁸ In March, 2022, a jury found him not guilty of those charges.⁹

A separate civil lawsuit brought by LG against PFC#1 and Fairfax County was settled. The defendants did not admit any wrongdoing as part of the settlement.¹⁰

The criminal charges lodged against LG based on this incident were dismissed.

increasing the possibility of inducing incapacitation.” https://my.axon.com/s/article/Drive-Stun-Backup?language=en_US, accessed on November 15, 2022.

⁶ FCPD G.O. 540.4 I. A. 2. defines “Active Resistance” as “[w]here 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.”

⁷ A belt-like restraint device often used to prevent an individual from kicking while being transported.

⁸ Va. Code § 18.2-57.

⁹ See, [Fairfax County police officer Tyler Timberlake acquitted of assault on Black man - The Washington Post](#).

¹⁰ See, [Settlement reached in suit alleging excessive force by Va. officer - The Washington Post](#).

INTERNAL ADMINISTRATIVE INVESTIGATION

The administrative investigation into PFC#1's actions was justifiably delayed while the criminal prosecution against him proceeded.¹¹ After that delay and the administrative investigation (which included the findings of the criminal investigation and subsequent criminal trial), the FCPD concluded that PFC#1's four distinct uses of force (i.e., first deployment of ECW; strike to head with hand; deployment of ECW in drive stun mode; and deployment of ECW in dart mode) during this incident did not violate its policy on the use of force. However, the department's investigation determined that PFC#1 did violate its policy requiring de-escalation attempts and tactics, based in part on his failure to provide a required warning (when practical) prior to deploying his ECW. In my opinion, the FCPD's investigation was thorough, complete, objective, impartial, and accurate. I agree with the conclusions and will explain how the department reached them and why I agree with them in the CONCLUSIONS section of this report.

CONCLUSIONS

1. Legal Standard

In its landmark Graham v. Connor¹² opinion, the United States Supreme Court pronounced that the Fourth Amendment to the United States Constitution¹³ is the standard by which an officer's use of force during an arrest or detention—both of which are Fourth Amendment seizures—must be analyzed. That Fourth Amendment standard dictates that an officer's use of force must be “objectively reasonable” for it to be lawful. PFC#1's first ECW deployment was deemed reasonable at the conclusion of the FCPD investigation based in large part because it was prompted by PFC#1's mistaken belief that LG was an individual named

¹¹ Garrity v. New Jersey, 385 U.S. 493 (1967), prohibits the use of incriminating statements in the prosecution of a public employee if those statements were compelled from the public employee under threat of termination. The FCPD chose to delay the conclusion of its administrative investigation in this case until the criminal proceedings against PFC#1 were fully resolved.

¹² 490 U.S. 386 (1989).

¹³ 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.

“Anthony,” who was known to PFC#1 to be a PCP user who had aggressively resisted¹⁴ past police attempts to arrest him, and for whom active felony arrest warrants for Strangulation¹⁵ and Assault and Battery¹⁶ were outstanding. Also, PFC#1 articulated that he perceived LG as having the “1,000 yard stare” common among individuals under the influence of PCP, and that LG “tensed up” as if to be getting ready to fight when PFC#1 told him to “get on the ground.”¹⁷ PFC#1 also expressed concern for other individuals—including the unarmed paramedics on the scene—if LG was not immediately controlled.¹⁸

In hindsight, it is known that some of what PFC#1 believed during the incident was incorrect. Most notably, he mistakenly thought LG was a different person. This mistaken belief, however, does not render his use of force unreasonable; rather, it lends weight to the determination that the force he used was objectively reasonable. Because the constitutional standard by which to judge the legality of an officer’s use of force is “reasonableness,” it is possible for an officer to be wrong, yet reasonable. Put another way, the Constitution requires officers to be reasonable when using force; it does not require them to be right. Direct reference to a long passage from the Supreme Court in its Graham opinion explains why this is so:

“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight. The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested (citing Hill v. California, 401 U.S. 797 (1971)), nor by the mistaken execution of a valid search warrant on the wrong premises (citing Maryland v. Garrison, 480 U.S. 79 (1987)). With respect to a claim of excessive force, the same standard applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers’ (quoting Johnson v. Glick, 481 F.2d 1028, at 1033 (2nd Cir. 1973)), violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact 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. As in other Fourth Amendment contexts, however, the ‘reasonableness’ inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are ‘objectively reasonable’ in light of

¹⁴ G.O. 540.4 I. A. 3. defined “Aggressive Resistance” as “[w]here 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.”

¹⁵ Va. Code § 18.2-51.6.

¹⁶ Va. Code § 18.2-57.

¹⁷ According to the National Institutes of Health, “Phencyclidine (PCP, “angel dust”) is an infamous hallucinogenic sought for its ability to induce the illusion of euphoria, omnipotence, superhuman strength, and social and sexual prowess.” [Phencyclidine Intoxication and Adverse Effects: A Clinical and Pharmacological Review of an Illicit Drug - PMC \(nih.gov\)](#), accessed on December 2, 2022.

¹⁸ PFC#1 articulated these various concerns during court proceedings relating to the criminal charges brought against him and during interviews he provided to FCPD investigators.

the facts and circumstances confronting them, without regard to their underlying intent or motivation.”¹⁹

Based on the Supreme Court’s admonitions in Graham, I must agree with the FCPD’s conclusion that PFC#1’s initial deployment of his ECW was reasonable. Some law enforcement professionals would refer to this situation as a classic example of an officer’s use of force being awful, but lawful nonetheless.

I recognize that this first use of force may have prompted LG’s aggressive reaction and, in turn, resulted in the subsequent uses of force against him. Nonetheless, those uses of force must also be analyzed in the proper context of the incident and while considering what PFC#1 believed at the time. After doing so, I agree with the FCPD that those subsequent uses of force by PFC#1 were also objectively reasonable.

LG reacted to being struck by the initial ECW deployment in a way that indicated he was resisting the officers. After falling to the ground, he failed to comply with verbal commands and refused to provide his hands to the officers. He was able to get his hands underneath his own body and lift himself up to his knees despite having the weight of two officers on him. PFC#1 first tried a “strike”²⁰ to gain control of LG; then resorted to using his ECW again, this time in drive-stun mode. Finally, PFC#1 deployed his ECW for a third time, this time in dart mode. Only then did he and OFFC#1 succeed in handcuffing LG. These three subsequent uses of force were objectively reasonable efforts to overcome LG’s continuing resistance which put the officers, and others, at risk.

2. FCPD Policy

a. Use of Force

FCPD’s policy provisions addressing the use of force closely parallel federal law on the topic. FCPD G.O. 540.0 II. proscribes that “[f]orce 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,” and that the “[f]orce should be

¹⁹ *Supra*, note 12 at 396-397.

²⁰ While FCPD G.O. 540.4 II. A. 2. a. contemplates a strike as being “empty-hand,” PFC#1 maintained his ECW in his hand when he struck LG.

based upon the totality of the circumstances known to 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." FCPD G.O. 540.1 I. L. goes on to define "objectively reasonable" as being "[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." That policy provision further provides that "[o]bjective 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."

FCPD policy goes beyond Graham v. Connor by providing guidance that "less-lethal"²¹ force options (such as strikes and ECWs) can be used when they are "reasonably necessary to gain compliance by individuals offering resistance."²² FCPD G.O. 540.4 I. A. 2. defines "active resistance" as "[w]here 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." Based on this definition, FCPD trains its officers that walking away from an arresting officer constitutes active resistance. Based on his training and PFC#1's beliefs and observations (that "Anthony" was on PCP, he tensed up as though preparing to fight, and posed an immediate danger to those on the scene), PFC#1 considered LG to be an "active resister" when he used force on him, even when he first deployed the ECW.

While FCPD policy permitted PFC#1's first ECW deployment on a person he reasonably perceived to be an active resister, it would not have been allowed had LG been perceived as a passive resister posing no danger to others. FCPD defines "passive resistance" as "[w]here 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."²³ In Armstrong

²¹ Defined in FCPD G.O. 540.1 I. I. as "[a]ny level of force not designed to cause death or serious injuries."

²² FCPD G.O. 540.4 II. A. 2.

²³ FCPD G.O. 540.4 I. A. 1. In the current (effective August 12, 2022) definition of "passive resistance," FCPD G.O. 540 III. 25. provides examples of passive resisters as "[i]ndividuals who remain in sitting, standing, limp, or prone positions."

v. Village of Pinehurst,²⁴ a decision from the Fourth Circuit Court of Appeals²⁵ issued on January 11, 2016, the court held that the use of an ECW on a stationary, non-violent (although passively resisting by clinging to a street sign pole) subject who was a danger only to himself was an unconstitutional use of excessive force. The officer involved in the Armstrong opinion was afforded qualified immunity, but only because the Fourth Circuit judges found that the use of the ECW in the manner it was deployed by him was not a clearly established violation when he acted in 2011.

Based on the Fourth Circuit's opinion in Armstrong, beginning in 2016, the use of an ECW on a passively resisting individual who posed a danger only to himself did become a clearly established violation of law. As a result, in a Memo to his command staff dated January 20, 2016 (just days after the Armstrong opinion was released), FCPD Chief Edwin C. Roessler Jr. instructed that "[c]ommanders shall ensure that all sworn personnel under their command are immediately instructed" on policy changes necessitated by the Armstrong decision. In the Memo, one of the policy changes determined to be necessary by the ruling was set forth as follows: "Effective immediately the use of the Electronic Control Weapon (ECW), whether in 'probe' or 'drive stun' mode **shall not be used on passive resisting subjects who pose no immediate risk of danger to themselves, or others.**"²⁶ The change was incorporated into G.O. 540.16 IV. A. to state: "An ECW should be used only in situations where a reasonable officer would perceive an immediate danger that could be mitigated through use of the ECW. Resistance that is non-violent in nature does not necessarily constitute immediate danger, thus ECWs should never be used against a person displaying passive resistance."²⁷ Furthermore, during ECW re-certification training attended by PFC#1 at the Fairfax County Criminal Justice Academy (hereinafter "FCCJA") in 2017, he and other attendees of the training were instructed to "[u]se [ECWs] on those *actively resisting* or higher."²⁸ Based on the FCPD's definitions of

²⁴ 810 F.3d 892 (4th Cir. 2016).

²⁵ The territory covered by the United States Fourth Circuit Court of Appeals is Virginia, Maryland, West Virginia, North Carolina, and South Carolina. Therefore, opinions from the Fourth Circuit are binding precedent for law enforcement officers in those states.

²⁶ January 20, 2016, Memorandum from FCPD Chief Edwin C. Roessler to Command Staff (**emphasis** in original).

²⁷ The principle remains in the department's most recent iteration of its use of force guidance, which continues to definitively state that "ECWs shall never be used on a passive resister." The current G.O. also continues to require a "safety risk" element before using the ECW. See, FCPD G.O. 540 VI. D. (**emphasis** in original), which became effective on August 12, 2022.

²⁸ FCCJA ECW Re-certification training, PowerPoint slide 10 (*emphasis* added).

and training on passive and active resistance, PFC#1 reasonably believed—based on his articulation of the circumstances he confronted—that LG was an active resister who posed an immediate danger to others, as well as to himself. Thus, his actual uses of force were within departmental policy.

b. De-Escalation

While PFC#1’s first and subsequent uses of force satisfied departmental policies and restrictions placed on them because of the Armstrong decision, PFC#1’s failure to attempt de-escalation did violate FCPD department policy.

FCPD G.O. 540.2, DE-ESCALATION, states: “De-escalation is the result of a combination of communication, tact, empathy, instinct, and sound officer safety tactics. The ultimate goal is to help achieve a positive outcome by reducing the need for force.”²⁹ It goes on to say that “[w]hen possible, officers should seek to utilize de-escalation strategies to prevent situations from deteriorating to the point where they would need to use force. Officers should attempt to gain voluntary compliance and reduce the level of force required in a situation through verbal communication efforts. When force is applied, officers will adjust the amount of force used to overcome an individual’s resistance and to gain control.”³⁰ Additionally, the ECW recertification training PFC#1 attended at the FCCJA in 2017 instructed officers to “[g]ive subjects a reasonable opportunity to comply before [ECWs are] used” and to “not immediately resort to [ECWs] without first attempting to use negotiation, commands, or physical skills.”³¹ PFC#1 first deployed his ECW twelve seconds after arriving, without attempting any de-escalation techniques, and without giving LG any warning that he planned to use his ECW. Therefore, PFC#1 clearly violated the FCPD’s de-escalation policy.

The FCPD’s administrative investigation also noted a violation of G.O. 540.16, ELECTRONIC CONTROL WEAPON, Section IV. L., which states: “When practical, a warning should be given to the person prior to activating the ECW unless doing so would compromise any individual’s safety. Warnings may be in the form of verbalization, display, laser painting, arcing, or a combination of these tactics.” Providing such warning also forewarns other officers present that an ECW deployment is about to occur, “reduc[ing] the risk of multiple officers

²⁹ FCPD G.O. 540.2 I. A.

³⁰ FCPD G.O. 540.2 I. B.

³¹ *Supra*, note 28, slides 11 and 14.

activating ECWs simultaneously against one person.”³² Because PFC#1 provided no warning that he was going to deploy his ECW, he clearly violated this provision of departmental policy as well.

Whether de-escalation efforts would have eliminated the need for any force during this incident is, of course, unknown. PFC#1’s failure to attempt any de-escalation techniques, and his noted violation of FCPD policy by not doing so, however, does not affect the prior analysis—or determination of reasonableness—of his actual uses of force. In its County of Los Angeles v. Mendez decision,³³ the United States Supreme Court pronounced that there is no basis for a so-called “provocation rule,” which would turn an otherwise permissible use of force into an impermissible one if it were preceded by a separate Fourth Amendment violation committed by officers. Justice Samuel Alito, writing for the Court in Mendez, recognized that “[a]n excessive force claim is a claim that a law enforcement officer carried out an unreasonable seizure through a use of force that was not justified under the relevant circumstances. It is not a claim that an officer used reasonable force after committing a distinct Fourth Amendment violation such as an unreasonable entry,”³⁴ or as in this case, an earlier policy violation by not attempting to de-escalate. Furthermore, well before the Supreme Court’s ruling in Mendez, the Fourth Circuit Court of Appeals considered whether pre-force conduct of officers should be considered when determining whether the ultimate force used was reasonable or excessive. In Greenidge v. Ruffin,³⁵ a three-judge panel for the Fourth Circuit held that an alleged violation of standard police procedure preceding a use of force was “not probative of the reasonableness” of the force used. Pre-force conduct should be examined, and improper pre-force conduct should be addressed and remediated, as was done in this situation. But, PFC#1’s policy violations (on de-escalation and providing warnings prior to deploying an ECW) did not turn his uses of force into Constitutional violations.

³² FCPD G.O. 540.16 IV. M.

³³ 137 S.Ct. 1539 (2017).

³⁴ *Id.* at 1547.

³⁵ 927 F.2d 789, 792 (4th Cir. 1991).

RECOMMENDATIONS

The FCPD has revised its policy on the use of force twice since the incident under review occurred. I reviewed the DRAFT of those policies and provided input and recommendations. I firmly 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. Therefore, I have no recommendations regarding the current use of force policy governing FCPD officers.

Although not a recommendation, I do commend the FCPD for its decision to implement a pilot program to gauge the efficacy of the BolaWrap restraint device. According to its website, the “BolaWrap restraint device is a patented, hand-held pre-escalation apprehension tool for police that discharges a Kevlar cord to restrain noncompliant individuals or persons in crisis from a distance. The BolaWrap’s surprising sound and ability to restrict an individual’s movement buys officers time and makes it safer for them to approach and gain control of individuals.”³⁶ In a departmental public release on November 2, 2022, the FCPD announced that it had begun piloting the BolaWrap to be used on individuals displaying passive or active resistance in order to initially restrain them and take them into custody. As stated in the department’s release, “[t]he intent of this device is to safely take an individual into custody prior to an incident escalating.”³⁷ The FCPD currently has thirty BolaWrap devices assigned throughout its district stations and to its Crisis Intervention Team officers.

While the incident under review may not have been resolved differently had OFFC#1 or PFC#1 been equipped with the BolaWrap, the device may provide an additional option for officers to consider when responding to future situations like this one, and to hopefully avoid a regrettable outcome like the one that resulted.

³⁶ <https://wrap.com/bolawrap/>, accessed on November 21, 2022.

³⁷ [FCPD Piloting Remote Restraint Device | Fairfax County Police Department News \(wordpress.com\)](#).

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.

