



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** 11/17/2020

**TO:** Fairfax County Board of Supervisors  
Col. Edwin C. Roessler, Jr., Chief of Police  
Mr. Richard G. Schott, Independent Police Auditor

**FROM:** Fairfax County Police Civilian Review Panel

**SUBJECT:** Report of Panel Findings for Complaint CRP-19-19

### I. Introduction

The Fairfax County Police Civilian Review Panel (Panel) held a public meeting on October 8, 2020, to review a complaint submitted to the Panel on April 18, 2019.<sup>1</sup> The Complainant alleged that several incidents of serious misconduct and abuse of authority by Fairfax County police officers occurred from October 2015 to December 2018. The complaint was investigated by the Fairfax County Police Department (FCPD). Following the investigation, the Complainant was notified that the officers' actions were in compliance with FCPD policies and regulations. The Complainant requested that the Panel review the investigation.

The Panel determined that the investigation relating to several allegations in the complaint could not be reviewed by the Panel because they were not timely filed by the Complainant. However, the Panel also found that two allegations in the complaint were timely filed, and the Panel reviewed the investigation pertaining to those allegations. Seven Panel members voted that the investigation was complete, thorough, accurate, objective and impartial. One Panel member dissented, and one Panel member abstained.

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<sup>1</sup> As explained later in this report, the delay in the Panel's review process was due to pending litigation that concerned matters in the Complaint.

## II. Background Facts

On June 27, 2018, a community member reported to the Mount Vernon District Police Station that there had been a physical fight between several people in a neighborhood earlier that day. A FCPD officer was assigned to investigate the altercation. The officer interviewed witnesses and viewed a video of the altercation that had been sent to him.

The Complainant said the fight occurred in front of the house of her daughter. It involved several family and community members, some of whom were minors. A portion of the incident was recorded on cell phone video by a witness at the scene. Another witness observed the Complainant at the fight holding what appeared to be a metal rod over her shoulders. The witness alleged that the Complainant struck multiple people who were involved in the fight or who were attempting to break up the fight. One witness reported that the Complainant struck him on the head, and that he had suffered headaches as a result of the assault. The video reportedly did not show that the Complainant hit anyone with the rod, but it did indicate that the Complainant was armed with a weapon and was attempting to prevent others from stopping the fight.

Based on witness interviews and the cell phone video, the officer sought warrants for the Complainant's arrest for malicious wounding and contributing to the delinquency of a minor. The officer presented probable cause testimony to a local magistrate, who issued the warrants, and the Complainant was arrested.

## III. Procedural Background, Allegations and Investigation Findings

The Complainant filed a complaint with the Panel on April 18, 2019. She alleged that the FCPD officer falsely charged her with malicious wounding and contributing to the delinquency of a minor and that he harassed her. The Panel referred the complaint to the Internal Affairs Bureau (IAB) for investigation.

IAB investigators interviewed the Complainant and reviewed the video. The Complainant admitted to holding what she said was a "slim pole," but denied hitting anyone with it. She said no one was hurt and that she was attempting to protect her daughter, who was involved in the fight. "I was like, okay, okay, let them fight, but I was making sure nobody jumped in," she told the FCPD investigator.

IAB investigators also interviewed the officer and reviewed the witness statements and the video. The investigation found that the officer's decision to seek warrants was based entirely on statements from the involved parties, as well as the video. Also, members of the community, not the officer, initiated the investigation of the Complainant's actions that led to the issuance of the warrants. The officer supplied his probable cause testimony to the Magistrate who issued the warrants, and there was no indication that the charges were excessive. The investigators noted that

magistrates are independent third parties who exist as checks to prevent reckless, excessive and unethical actions by police officers. In this case, the Magistrate found that the charges were based on probable cause.

As for the harassment charge, the investigators found that the officer had never met the Complainant prior to the incident. Therefore, he did not single out the Complainant for harassment. The investigation found that there was no evidence to support the Complainant's allegations. It also found that the officer was in compliance with all FCPD policies and regulations. A disposition letter was sent to the Complainant on June 20, 2019, informing her of the findings of the investigation and notifying her that she could request a review from the Panel.

On August 7, 2019, the Complainant requested that the Panel review the investigation. A week later, on August 14, 2019, the Panel received notice from the Office of the County Attorney that the Complainant had commenced litigation associated with allegations in the complaint. A subcommittee of the Panel met on September 16, 2019 and voted to recommend to the full Panel that it defer consideration of the review until resolution of the litigation. The Panel voted to accept the recommendation of the subcommittee on October 7, 2019, and deferred its review in accordance with Article VI, Section D (1) of its Bylaws.<sup>2</sup>

The Complainant informed the Panel in June 2020 that litigation associated with the complaint was no longer pending. The Office of the County Attorney confirmed that the litigation had concluded. A subcommittee of the Panel met virtually on August 20, 2020 to consider whether the panel had authority to review the complaint.

As stated earlier, some of the allegations in the complaint involved incidents that had occurred prior to December 6, 2016. The Panel's Bylaws prohibit the Panel from reviewing any investigation relating to an incident that occurred before that date.<sup>3</sup> The subcommittee determined that four specific allegations fell into this category and could not be reviewed by the Panel. These allegations were as follows: (1) FCPD officers falsely accused the Complainant of robbery at gunpoint; (2) FCPD officers improperly searched the Complainant's car; (3) FCPD officers issued a defective search warrant pertaining to the Complainant; and (4) FCPD officers falsely accused the Complainant of distributing cocaine and marijuana.

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<sup>2</sup> Article VI, Section D (1) of the Panel's Bylaws provides: "If at any point in the review process the Panel learns that the matters of a Review Request are the subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall (a) suspend its review; (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court; (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed."

<sup>3</sup> Article VI, Section A (1) (b) states that the Panel shall not review any complaint related to an incident that occurred before December 6, 2016.

Six other allegations in the complaint were submitted to the Panel more than one year after the date of the incident. In such cases, the Panel may review the investigation of allegations if the Complainant provides the Panel with good cause.<sup>4</sup> Good cause was not shown. The subcommittee noted that the Complainant had not provided reasons for missing the filing deadline. These allegations were as follows: (1) a FCPD officer intimidated the Complainant in a text message; (2) a FCPD officer extorted the Complainant by charging her with felony distribution of marijuana; (3) a FCPD officer lied to the housing authority that the Complainant was selling drugs from her home; (4) FCPD officers unlawfully searched the Complainant's car; (5) a FCPD officer lied under oath during the Complainant's trial; and (6) The Complainant was falsely incarcerated and harassed while in jail.

As discussed previously, two allegations in the complaint were timely filed. The complainant alleged that she was falsely accused and arrested on charges of malicious wounding and contributing to the delinquency of minors by an FCPD officer and that she was harassed and charged with serious crimes by the officer.

One member of the subcommittee expressed her belief that the Panel did not have authority to review the investigation because the allegations were not substantiated with evidence in the investigation file. She also expressed concern that the allegations involving charges of malicious wounding and contributing to the delinquency of minors had been previously adjudicated and considered by a magistrate and a judge. She said that it is not the Panel's job to second guess a court's decision. The other two members disagreed, stating that the Panel's Bylaws specifically allow the Panel to review an investigation where prior litigation concerning the matter had concluded. One subcommittee member commented that legal determinations of probable cause by a court are different from the Panel's review standards for abuse of authority and serious misconduct of a police officer. The subcommittee agreed that the issue was worthy of further discussion by the Panel.

The Panel subcommittee voted 2-1 to recommend that the full Panel review the allegations that had been timely filed. They suggested that the Panel send a letter to the Complainant requesting an explanation as to why the filing deadline was not met for those allegations where the complaint was filed more than one year after the date of the incidents. The Panel sent the letter, but the Complainant did not provide a response showing good cause for missing the deadline.

On August 27, 2020, the Panel considered the subcommittee's recommendations and voted not to review the allegations where the incidents occurred prior to December 6, 2016. The Panel also voted that there was not good cause to extend the filing deadline for those allegations where the complaint was filed more than

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<sup>4</sup> Article VI, Section A (1) (c) provides that the Panel shall not review an Initial Complaint that is filed more than one year after the date of the incident that is the subject of the investigation (unless the Panel determines that there is good cause to extend the filing deadline).

one year after the date of the incidents.<sup>5</sup> However, the Panel voted to review the two remaining allegations that had been timely filed.<sup>6</sup> The Panel discussed whether prior litigation on the criminal charge of malicious wounding should preclude review by the Panel. A majority of the Panel agreed that the Bylaws do not prohibit Panel reviews of a police investigation where a court has previously addressed issues associated with allegations in a complaint. The Panel majority also agreed that the Panel's role in reviewing a police investigation is distinct from a court's role in adjudicating criminal proceedings.

#### IV. Panel Meeting

The Panel Review Meeting was held virtually on October 8, 2020. All Panel members had reviewed the investigation file prior to the meeting, and the Complainant was present at the meeting. In her statement to the Panel, the Complainant stressed that no one was hurt, and that everyone had willingly participated. "I could not stop it," she said. "It was out of my control, but I was there to protect my daughter who was in the fight, and I told her that it wasn't a good idea, but that's what they chose to do." She said parents of children who participated in the fight lied when they said she struck others with the pole. She said that the charge of malicious wounding was excessive, reckless and false, and that it was later dropped. She added that she lost her job and her housing as a result of the charges, and she had experienced financial pain, loss and distress. She said that she felt like she was a "target" of the police.

The Complainant was asked during questioning whether she thought all the witnesses were interviewed by the IAB. She indicated that everyone was interviewed and that she was certain that the investigators had seen the video.

The FCPD presented their investigation findings to the Panel and concluded by saying that the officer practiced "evidenced-based policing" in this case and adhered to all FCPD policies and regulations. It was also revealed that one witness sought and obtained a protective order against the Complainant independent of the FCPD and its investigation.

Panel members were concerned that during their review of the investigation file, the video was not in the file. One Panel member said that this was a vital piece of evidence that made his review of the investigation incomplete. Captain Alan Hanson, who represented the FCPD at the meeting, said that the video should have been in the file and offered to provide it to any Panel member who wanted to view it. Several Panel members pointed out that while the video should have been in the file, other evidence in the file suggested that it did not show the Complainant hitting anyone. Further, the video corroborated other accounts from witnesses that the

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<sup>5</sup> One Panel member abstained from voting on the motion to not review the allegations.

<sup>6</sup> Six members of the Panel voted to review the two timely filed allegations, and two Panel members voted not to undertake the review. One Panel member did not vote because of technical difficulties during the virtual meeting.

Complainant was armed and was threatening others. Several members commented that although the video was important, it was not the determinant factor in the officer's decision to seek warrants.

Members of the Panel pointed out that the officer was thorough in his interviews of witnesses and that he considered all the evidence provided to him from community members. Also, he could not have harassed the Complainant because he did not know her previously. Finally, a magistrate also considered the evidence, concurred with the testimony of the officer, and issued the warrants.

The Panel voted that the investigation was thorough, complete, accurate, objective and impartial, with one Panel member voting nay and another abstaining.

An audio recording of the October 8, 2020 Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-october-8-2020>

On November 12, 2020, the Panel discussed the Review Report. An audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-november-12-2020>

**CC:** Complainant