

Public Report

Mar. 15, 2021: Use of Force
Complaint - Assault Allegation
IPA-23-03



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INCIDENT

At approximately 10:20 p.m. on March 15, 2021, Police Officer First Class (hereinafter “PFC#1”) of the Fairfax County Police Department (hereinafter “FCPD”) responded to a 9-1-1 call wherein the caller (hereinafter identified by her initials, “YS”) reported that she was being stalked by an individual (hereinafter identified by his initials, “WW”). PFC#1 had also responded to other calls for service from YS regarding WW stalking her in recent weeks. After developing probable cause to arrest WW for stalking based on the March 15th incident, PFC#1 arrested him and transported him to the Fairfax County Adult Detention Center (hereinafter “ADC”). Two cell phones were seized by PFC#1 because PFC#1 had probable cause to believe the phones contained evidence of the stalking charge.

Within days of being arrested, WW went to the FCPD’s Franconia District station to ask about getting his phones returned. Following several inquiries, to include one made directly to PFC#1, the phones were returned to WW on December 27, 2021.

On August 10, 2022, WW submitted an online complaint to the FCPD, which included several allegations¹ against PFC#1 based on his actions during the March 15, 2021, incident, and his actions subsequent to WW’s arrest. The investigation into those allegations was started at the district station level. However, while being interviewed by a district station supervisor on September 7, 2022, WW alleged for the first time that PFC#1 had treated him differently based on his race, and that PFC had “assaulted” him (by kicking him in the buttocks) as the two of them were leaving the ADC following his arrest and appearance before a magistrate on March 15, 2021. Based on these new allegations, the FCPD’s Internal Affairs Bureau (hereinafter “IAB”) launched an administrative investigation. WW also submitted a complaint directly to the Office of the Independent Police Auditor (hereinafter “OIPA”) of the alleged use of force, prompting my review of the FCPD’s investigation into that allegation.²

¹ Among these initial allegations was that PFC#1 unlawfully arrested WW, that he would not allow WW to share his side of the story, and that PFC#1 retained WW’s cell phones for too long after the arrest.

² On April 17, 2023, after receiving the FCPD’s disposition letter outlining the conclusions of the FCPD’s investigations, WW emailed the FCPD and copied the OIPA and the Police Civilian Review Panel expressing his dissatisfaction with the investigations. Article VI. A. 3 of the PCR Bylaws provide that “[w]here a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort.”

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD administrative investigation produced no evidence indicating that any force had been used on WW or that an “assault”³ had occurred. Consequently, no criminal charges were brought against PFC#1. WW was charged with stalking⁴ based on his actions which led to his arrest on March 15, 2021.

INTERNAL ADMINISTRATIVE INVESTIGATION

The administrative investigation into WW’s allegation that PFC#1 assaulted him was conducted by the FCPD’s IAB. Following its investigation, the FCPD classified the use of force allegation as “unfounded.”⁵ I agree with that determination and opine that the investigation upon which it was based was complete, thorough, objective, impartial, and accurate.

CONCLUSIONS

Specific to the use of force allegation made in September, 2022, PFC#1 and WW were interviewed by IAB as part of its administrative investigation. PFC#1 denied kicking WW or using any other force on him. During his recorded interview, WW described being kicked in the buttocks by PFC#1 after PFC#1 opened the door for him to leave the ADC. When he described how PFC#1 opened the door and kicked him, he described the opening of a door similar to the opening of a house door. However, the IAB investigator determined that the ADC door where the kick allegedly occurred does not swing open like a house door. Rather, it is a heavy, sliding metal door that is electronically controlled by deputies at the ADC.

By the time WW made his excessive force claim in September, 2022, there was neither body-worn camera (hereinafter “BWC”) footage nor ADC security camera footage available for investigators to review. Per FCPD policy, officers turn their BWCs off when entering the ADC.⁶

³ Va. Code § 18.2-57.

⁴ Va. Code § 18.2-60.3.

⁵ FCPD General Order (hereinafter “G.O.”) 301 XIII. A. 1. describes the “Unfounded” classification as a finding—established by a preponderance of the evidence—that the “allegation is false and did not occur.”

⁶ FCPD G.O. 509 IV. G. 5. d.

Additionally, the ADC's camera footage from March 15, 2021, was no longer retained when WW's September, 2022 claim of force was being investigated. IAB investigators did, however, review a substantial amount of BWC and in-car video footage of the earlier interaction between WW and PFC#1 that had occurred on March 15, 2021, and found that the interaction captured on video contradicted much of what WW claimed to have occurred on that date. I also reviewed this footage and concur with that assessment.

Finally, WW had been interviewed on numerous occasions before he made the allegation in September, 2022, that PFC#1 had "assaulted" him. The FCPD found, and I agree, that the delay in reporting such a serious allegation calls into question the validity of WW's complaint.

Without being able to definitively confirm or rebut whether PFC#1 actually kicked WW, I agree with the FCPD's conclusion that—based on a preponderance of the evidence available at the time of the investigation—the allegation that he did so is false, and that it did not occur.⁷

RECOMMENDATIONS

When WW made his allegations in September, 2022—that PFC#1 had engaged in bias-based policing when arresting him and had used unnecessary force on him after his arrest in March, 2021—the IAB investigated the seventeen-month-old claim of excessive force by gathering and examining all available information. Consequently, I have no recommendations to make based on my review of the investigation into this incident.

⁷ *Supra*, note 5.

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.

