

# Public Report

April 20, 2018: Use of Force Complaint



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A Public Report by the  
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## INCIDENT

On April 20, 2018, at approximately 1:30 a.m., Fairfax County Police Department (hereinafter “FCPD”) officers from the Sully District police station received a report that unknown males had been seen running in a wooded area near a construction site at the intersection of Lee Highway and Stringfellow Road. At the same time, Police Officer First Class #1 (hereinafter “PFC#1”) was investigating a possibly disabled vehicle on Lee Highway just before Stringfellow Road. PFC#1 determined that the vehicle was unoccupied, and other officers were dispatched to assist at the location.

While investigating the abandoned vehicle, an individual, later identified as having the initials D.B. (hereinafter “DB”), approached PFC#1 and stated that he had been an occupant of the vehicle. PFC#1 immediately recognized that DB was intoxicated, that he smelled of alcohol, was unsteady on his feet, and that he slurred his speech while continually repeating that he had been in the vehicle. DB also admitted to PFC#1 that he was drunk. PFC#1 noticed several scratches on DB when DB first approached. When asked about them, DB indicated that he suffered the scratches when he fell out of the car. He also told PFC#1 that he had run through the woods prior to approaching PFC#1. However, he declined PFC#1’s offer to seek medical assistance. When Police Officer First Class #2 (hereinafter “PFC#2”) arrived at the location, he asked DB how he had been scratched, and DB repeated that he sustained them when he fell out of the vehicle.

PFC#1 arrested DB for being “drunk in public.”<sup>1</sup> He handcuffed DB with his hands behind his back and palms facing out.<sup>2</sup> PFC#1 then began to transport DB to the Fairfax County Adult Detention Center (hereinafter “ADC”). While in route, DB demanded to be seen by medical personnel. PFC#1 immediately pulled over and requested assistance from the Fairfax County Fire and Rescue Department (hereinafter “FCFD”). FCFD personnel responded to PFC#1’s location and had PFC#1 re-locate the handcuffs on DB from behind his back to his front. When his hands were moved to his front, DB was surprised to see scratches on his arms

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<sup>1</sup> Fairfax County Code § 5-1-1 (a) provides that “[i]f any person profanely curse or swear or be *drunk in public* he shall be deemed guilty of a Class 4 misdemeanor. In any area in which there is located a court-approved detoxification center, a law enforcement officer may authorize the transportation, by police or otherwise, of public inebriates to such detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center.” (italics added).

<sup>2</sup> PFC#1’s account of the arrest and handcuffing is consistent with in-car camera video footage of the incident.

and complained that PFC#1 cut him when initially handcuffing him. PFC#1 notified his supervisor (hereinafter SGT#1) that the complaint of injury had been made. DB was transported to Fair Oaks Hospital, where SGT#1 arrived to investigate the complaint of injury caused by PFC#1. After being interviewed by SGT#1 and discharged from the hospital, DB was taken to the ADC where a magistrate issued a warrant for DB's arrest for violating Fairfax County Code § 5-1-1, Drunk in Public.

### **CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION**

The FCPD conducted only an administrative investigation into the PFC#1's actions based on DB's complaint following his arrest. No referral was made to the Office of the Commonwealth's Attorney in reference to those actions.

DB was charged with being drunk in public in violation of Fairfax County Code § 5-1-1.

### **INTERNAL ADMINISTRATIVE INVESTIGATION**

This incident was investigated at the district station level based on the allegation that PFC#1 caused DB's injuries when handcuffing him. That complaint also initiated this review of the FCPD investigation. The FCPD officers involved in and at the scene of DB's arrest were interviewed; DB was interviewed; and in-car camera video footage capturing the arrest and handcuffing of DB was reviewed. In my opinion the FCPD investigation into this matter was complete, thorough, objective, impartial, and accurate.

The FCPD investigation concluded that the complaint of injuries due to PFC#1's handcuffing of DB was unfounded, and that proper arrest procedures had been followed. I agree with the FCPD's conclusions and will articulate my reasons in the following section.

### **CONCLUSIONS**

FCPD General Order (hereinafter "G.O.") 540.1 G. defines "Force" as "[a]ny physical strike or instrumental contact with an individual, or any significant physical contact that restricts an individual's movement." Furthermore, that same G.O. provides that "[f]orce 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.” While PFC#1’s handcuffing of DB was not a reportable use of force, because of DB’s allegation that his injuries were caused by PFC#1’s handcuffing, this incident was investigated as a use of force by the “on-duty supervisor.”<sup>3</sup>

Although DB later indicated that he had been injured by PFC#1’s improper handcuffing, he previously stated multiple times that his injuries occurred when he fell out of a vehicle. At the hospital, SGT#1 noted that the scratches on DB’s arms were vertical on his arms, while handcuffs are applied across an individual’s wrists. SGT#1 did note slight red marks on DB’s wrists, but DB did not point to those as injuries. When SGT#1 asked DB to elaborate on how he sustained his injuries, DB replied that the officers were “over the top,”<sup>4</sup> and that the officers “may have pushed and shoved him.”<sup>5</sup> However, when asked to further elaborate on these comments, he admitted that he did not remember but that “it was definitely possible.”<sup>6</sup> None of the officers present during the incident reported any problems with the way DB was handcuffed (or any other type of force) when being interviewed following the incident. They all heard DB state that the scratches were caused by his falling out of the vehicle. PFC#1 recalled checking the fit of the handcuffs on DB before locking them in place. Finally, the in-car camera video footage showed PFC#1 handcuff DB with his hands behind his back before placing him in a patrol car for transport. The handcuffing was accomplished with no force used or immediate complaints from DB until after his hands were re-positioned in front of him (at the request of FCFD personnel) and he noticed scratches on his arms. Based on these results of investigating DB’s claim, the FCPD correctly found his allegation to be unfounded.

The FCPD investigation also determined that the arrest and transport of DB complied with departmental policy. The probable cause standard for an arrest<sup>7</sup> is explained in FCPD G.O. 601 II. C., which defines probable cause as “[f]acts and circumstances which, taken together with rational inferences therefrom, would lead a prudent person to believe that a crime is being or has

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<sup>3</sup> FCPD General Order (hereinafter “G.O.”) 540.7 II. A. 2. a. places investigative authority with the “on-duty supervisor or above” in a situation where a person receives “[m]edical treatment at a medical facility for any injury resulting from the use of less-lethal force.”

<sup>4</sup> SGT#1’s interview of DB conducted on April 20, 2018.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</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.

been committed and that a particular person committed it.” Based on his observations, PFC#1 had probable cause to believe that DB was in violation of Fairfax County Code § 5-1-1.<sup>8</sup> During transport to the ADC, DB stated that he needed medical assistance. PFC#1 immediately summoned medical personnel and notified his supervisor of the complaint of injury. FCPD Regulation 203.1, PRISONER SAFETY, dictates that “[a]rresting officers are responsible for the safety and protection of prisoners while in their custody. The officers shall, as soon as possible, notify their superior of any injury, apparent illness, or other conditions which indicate that the prisoner may need emergency or special care.” Separately, FCPD Regulation 203.3, TRANSPORTATION OF PRISONERS, states that “[p]risoners who are in need of medical attention shall be delivered to the appropriate hospital emergency facility by ambulance, unless in the judgment of the officer the delay for ambulance response will increase the risk of the health or safety of the prisoner.” PFC#1 complied with these departmental regulations. Therefore, the arrest and transport of DB were lawful and complied with departmental policy.

## **RECOMMENDATIONS**

FCPD policy thoroughly defines and addresses the use of force, and provides its officers extensive guidance on the types of force that are typically considered objectively reasonable in different situations. FCPD policy clearly instructs officers when and how to document a use of force and respond to complaints of injury. All documented uses of force are reviewed and/or investigated by an officer’s supervisor or someone higher ranking than that supervisor. In this case, the allegation that DB’s injuries were caused by PFC#1’s use of force was investigated and determined to be unfounded. The actions of the officer were found to comply with the policies in place. I believe both conclusions are sound. Therefore, I have no recommendations to make based on this incident review.

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<sup>8</sup> Supra, note 1.

