

Public Report

Jan. 30, 2018: Use of Force Complaint



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INCIDENT

The officers' account of what transpired and the account provided by the individual arrested during this incident differed slightly. Both accounts are summarized below.

On January 30th, 2018, three officers from the Fairfax County Police Department's (hereinafter "FCPD") Reston District Station responded to a "drunk in public"¹ complaint at the Reston Public Library located at 11925 Bowman Towne Drive in Reston, Virginia. Library staff reported that there was a female in the restroom who was seated on the toilet, apparently unconscious but breathing. The officers entered the bathroom and observed the individual, later identified as an individual with the initials B.B. (hereinafter "BB"). The officers lightly shook "BB" to rouse her. When BB responded, it was apparent to the officers that she was extremely intoxicated. They also noticed a cup on the floor of the bathroom stall BB had occupied which contained an alcoholic beverage. BB had glassy eyes and her speech was noticeably slurred.

The officers requested personnel from the Fairfax County Fire and Rescue Department to respond and assess BB's medical condition because of her suspected high level of intoxication. BB was not cooperative with the responding medics and refused any medical attention. She also declined multiple offers to be transported to the hospital.

Officers explained to BB that she could not remain in the bathroom of the library and that library staff had requested her to leave the library. She became argumentative with the officers and refused to cooperate with the request to leave the premises. When she did stand up from the toilet, BB immediately lost her balance. At that point, officers decided to arrest BB for being "drunk in public" because of their concern for her safety. FCPD Police Officer First Class #1 (hereinafter "PFC#1") placed BB under arrest for violating Fairfax County Code § 5-1-1, Drunk in Public. After being handcuffed BB was escorted out of the library, searched incident to arrest by Master Police Officer #1 (hereinafter "MPO#1"), and transported to the Fairfax County Adult

¹ 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).

Detention Center (hereinafter “ADC”) by PFC#1. A magistrate at the ADC issued a warrant for BB charging her with a violation of Fairfax County Code § 5-1-1.

No other physical contact was reported by the officers on the scene of BB’s arrest, and no use of force was documented by them in either the arrest report or in a use of force supplement.²

BB was interviewed as part of the FCPD administrative investigation into this incident. She admitted to having been drinking on January 30, 2018, but indicated that she should not have been arrested. She acknowledged being an alcoholic and that, therefore, she is able to recognize when she is drunk. She also admitted to “dozing off” while in the library’s bathroom while drinking brandy. In addition to disagreeing with being arrested, BB complained that she had been dragged out of the library while in handcuffs. Her complaint, therefore, constituted a complaint alleging force being used on her.

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD conducted only an administrative investigation into the officers’ actions based on BB’s complaint following her arrest. No referral was made to the Office of the Commonwealth’s Attorney in reference to their actions.

BB 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 complaint lodged by BB. That complaint also initiated this review of the FCPD investigation. The FCPD officers involved in BB’s arrest were interviewed, as were responding Fairfax County Fire and Rescue personnel. BB was interviewed; Reston Public Library staff was interviewed; and, video footage captured on a library security camera was reviewed. The FCPD investigation concluded that there was no reportable use of force by any of the officers involved in BB’s arrest, and that

² FCPD General Order (hereinafter “G.O.”) 540.7 II. A. 4. b. prescribes the completion of a “[u]se of force supplement in the current Records Management System describing the incident, the type of force used, and that there were no injuries observed or any complaints of injuries” whenever an officer uses “less-lethal force that does not involve the complaint of injury or medical treatment.”

proper arrest procedures had been followed. In my opinion the FCPD investigation into this matter was complete, thorough, objective, impartial, and accurate. 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." Likewise, FCPD G.O. 540.7 II. A. 4. b. requires officers to complete a "[u]se of force supplement in the current Record Management System describing the incident, the type of force used, and that there were no injuries observed or any complaints of injuries" whenever less-lethal force is used that does not involve the complaint of injury or medical treatment. The officers complied with these G.O.s during this incident because there was no reportable use of force. Although BB indicated that she had been "dragged" from the library after being arrested and handcuffed, no other person present during the incident reported any such dragging (or any other type of force) when being interviewed following the incident. In fact, an employee of the library who witnessed the entire event opined that, "If anything, they [the officers] were too nice."

Furthermore, the library's security camera video footage shows PFC#1 and MPO#1 walking BB out of the library, each holding one of BB's forearms. They were walking at a comfortable pace which did not require BB to be dragged or hurried. This routine escorting of an arrestee is not considered a use of force; consequently, the officers were not required nor expected to document their actions as a use of force.

The FCPD administrative investigation also determined that the arrest of BB was supported by probable cause and complied with departmental policy. First, FCPD G.O. 601 III. B. 1. Allows an FCPD officer to arrest for a misdemeanor "[i]f the offense is observed by the

arresting officer.” The probable cause standard required for any arrest³ 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 been committed and that a particular person committed it.” Based on his observations and information provided by library staff, PFC#1 had probable cause to believe that BB was in violation of Fairfax County Code § 5-1-1.⁴ Therefore, the arrest was 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. Additionally, FCPD policy clearly instructs officers when and how to document a use of force. All documented uses of force are reviewed and/or investigated by an officer’s supervisor or someone higher ranking than that supervisor. The FCPD analyzed the actions of all officers involved in this incident by examining them against the policies in place, and I believe that these conclusions are sound. Therefore, I have no recommendations to make based on this incident review.

³ 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.

⁴ Supra, note 1.

