

Public Report

May 4, 2018: Use of Force Complaint



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A Public Report by the
Fairfax County Independent Police Auditor

Publication Date: February 27, 2019



A Fairfax County, Va., Publication

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INCIDENT

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

On May 4, 2018, at approximately 9:30 a.m., Fairfax County Police Department (hereinafter "FCPD") officers from the West Springfield District Station were dispatched to a home on Gist Court based on a call from the homeowner reporting that a person had attempted a burglary by punching in a rear window at her home. She described the subject as a 20-30-year-old black male wearing a black hat, dark vest, black pants, and black gloves. The homeowner also indicated that the subject had driven away in a black car (either an Infiniti or Mazda), and she provided the Virginia license plate number affixed to the car. Police Officer #1 (hereinafter "OFFC#1") and his training officer (hereinafter "PFC#1") responded and quickly located the vehicle.

The officers conducted a traffic stop,¹ activating their vehicle's in-car video system. The driver, an individual later identified as having the initials J.B. (hereinafter "JB"), complied by pulling off of Old Keene Mill Road and pulled into a driveway on Velleity Lane. He got out of the vehicle and approached the officers. While their initial interaction was very cordial, OFFC#1 did handcuff JB immediately. Additional officers, including Master Police Officer #1 (hereinafter "MPO#1"), responded to the location of the stop, and they began to engage in cordial conversation with JB. Simultaneously, other officers determined through investigation that there was probable cause to believe JB was involved in the reported attempted burglary on Gist Court. Additionally, officers discovered that the vehicle JB was driving at the time of the stop had previously been reported to the FCPD as being involved in an "unauthorized use"² investigation.

¹ In its landmark Terry v. Ohio, 392 U.S. 1 (1968) decision, the United States Supreme Court first recognized a law enforcement officer's authority to detain an individual, without probable cause, if the officer could articulate reasonable suspicion that the individual was engaged in criminal activity.

² Va. Code § 18.2-102.

When the officers established probable cause to arrest JB,³ he was escorted to the front of a police cruiser and was told he would be transported to the West Springfield District Police Station to be interviewed. When he questioned the basis for this, an officer advised that detectives at the station would explain. He was then told he would be searched prior to being taken to the police station.⁴ At this point, JB attempted to pull away from officers. PFC#1 and MPO#1 each took control of one of JB's arms so that OFFC#1 could conduct the search of JB incident to his arrest. During the search, JB repeatedly questioned the basis for his being stopped, the pending transport, and the proposed questioning. He refused to remain still, requiring PFC#1 and MPO#1 to continue grasping his arms and applying pressure on his body to keep him on the cruiser and enable the search to occur.

When the search of JB had been accomplished, he was escorted to the rear passenger door so that he could be placed in the cruiser. However, JB refused to get into or allow the officers to place him in the vehicle. After being told to sit in the cruiser several times, he sat in the rear seat but kept his foot on the outside of the car, preventing the officers from closing the door. After repeated requests for JB to put his foot inside, PFC#1 physically placed JB's leg entirely inside the car. He then refused to allow the officers to place the seatbelt on him, and attempted to get out of the car. MPO#1 grabbed JB's arms to pull him back into the car. However, he used his feet to push himself to the driver side of the rear seat and thrashed his body, apparently in an effort to get out through the driver's side rear door. PFC#1 and OFFC#1 then removed him from the vehicle and placed him on the ground in a seated position. MPO#1 retrieved a Ripp Hobble restraint device⁵ from a police cruiser and tried to apply it to JB's feet. He continued to thrash his body and started to kick his feet to prevent the Ripp Hobble from being applied. PFC#1 and OFFC#1 applied their body weight onto JB to keep him still enough for MPO#1 to secure the Ripp Hobble around JB's feet. At this point, JB no longer resisted the

³ The Fourth Amendment to the United States Constitution provides that "The right of the people to be secure 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." Thus, an arrest requires probable cause to believe an individual has committed a crime to be lawful.

⁴ Chimel v. California, 395 U.S. 752 (1969), first recognized that an arresting officer may search an arrestee's person to discover and remove weapons and to seize evidence to prevent its concealment or destruction, and may search the area "within the immediate control" of the person arrested.

⁵ A belt-like restraint device often used to prevent an individual from kicking while being transported.

officers' efforts. He was placed in the back of OFFC#1's cruiser for transport. No other force was used.

JB's account of the start of the incident is consistent with the officers' account, but varies greatly when describing the force used. He characterized the beginning of the encounter as cordial. He maintained his innocence throughout his initial detention,⁶ explaining to the officers that he had been in the area distributing business cards for his and his wife's cleaning business.

When told he was going to be transported to a police station for questioning, JB thought he was being "kidnaped," mainly because the officers on the scene refused to even identify the specific crime under suspicion. He asked for an explanation numerous times but was never provided one. He believed this constituted a violation of his rights.

JB stated that he was "slammed" on the hood of a police cruiser and had personal belongings taken from him. When placed in the back of the cruiser, JB yelled for help in an effort to get the attention of someone in the neighborhood so they could see, and hopefully record, what was happening. He described being "thrown" and "slammed" to the ground, causing injuries to his left leg and bumps on his head.

After being placed in the cruiser, JB was transported to the West Springfield District Police Station to be interviewed by detectives. After being interviewed JB was taken to the Fairfax County Adult Detention Center (hereinafter "ADC"). Later that evening, he experienced a seizure and was taken to Inova Fair Oaks Hospital. While there he alleged that excessive force had been used against him during his arrest. That allegation was reported by hospital staff to the FCPD, which initiated an investigation of the incident. JB's complaint to the FCPD alleging excessive force initiated OIPA's review of that investigation.

⁶ *Supra*, note 1.

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

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

An arrest warrant was issued when JB was brought to the ADC, charging him with attempted burglary.⁷

INTERNAL ADMINISTRATIVE INVESTIGATION

The investigation of this incident began at the district station level and was subsequently conducted by personnel assigned to the FCPD Internal Affairs Bureau (hereinafter "IAB"). The investigation included a review of all available in-car video footage of the interaction between JB and the FCPD officers; multiple interviews of JB; interviews of all involved officers; and an interview of a Velleity Lane homeowner who witnessed the incident.

The FCPD investigation into JB's allegation of excessive force determined that officers complied with all applicable laws and departmental policies during the encounter.⁸ 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

In its momentous Graham v. Connor decision,⁹ the United States Supreme Court recognized "that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it."¹⁰ In that case, the Court also pronounced that such uses of force by law enforcement officers in this country are to be analyzed under the Fourth Amendment to the United States Constitution.¹¹ To be lawful

⁷ Va. Code § 18.2-91 and Va. Code § 18.2-26.

⁸ The review of the in-car video footage supports the officers' description of force used; it does not show JB being "slammed" to the back of the police cruiser or to the ground before being secured in the backseat of the vehicle.

⁹ 490 U.S. 386 (1989).

¹⁰ *Id.*, at 396.

¹¹ *Supra*, note 3.

under that Fourth Amendment standard, an officer's use of force must be objectively reasonable. Likewise, FCPD G.O. 540.0 on USE OF FORCE mandates, in part:

“Force 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. Force should be based upon the totality of the circumstances known by 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. Force shall not be used unless it is reasonably necessary in view of the circumstances confronting the officer.”

Additionally, FCPD G.O. 540.1 defines “Objectively Reasonable,” much like the Supreme Court did in its Graham opinion, as follows:

“The 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. Objective 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.”

Applying these provisions to the incident under review makes it clear that the force used on JB during this incident was permitted by both the law and departmental policy.

At the outset of the encounter, JB was being detained by OFFC#1 and PFC#1. When he was placed under arrest and prior to being searched, JB attempted to pull away from the officers. He squirmed and would not remain still for the officers to search him. His actions constituted, at a minimum, “passive resistance.”¹² At this point, FCPD policy authorized the use of “less-lethal” force “to gain compliance by [an] individual[] offering resistance.”¹³ PFC#1 and MPO#1 used “less lethal” force merely by taking physical control of JB's arms and applying pressure to his body to keep him on the cruiser so that the search could be carried out by OFFC#1.

¹² Defined in FCPD G.O. 540.4 I. A. 1. 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.”

¹³ FCPD G.O. 540.4 II.2.

When JB refused to stay in the back of the police cruiser, when he prevented the officers from seat-belted him or closing the car door, and when he tried to get completely out of the car, he engaged in “active resistance.”¹⁴ At this point, PFC#1 and OFFC#1 removed JB from the vehicle and placed him on the ground in a seated position so the Ripp Hobble device could be applied. JB tried to prevent the Ripp Hobble from being secured by thrashing his body and kicking his feet. To get the device on, PFC#1 and OFFC#1 applied their body weight onto JB to keep him stationary. It was objectively reasonable to utilize the Ripp Hobble on JB to transport him in the cruiser, and the limited force used to secure the device was reasonable as well.

While JB characterized the force used on him as excessive, and described being “manhandled” and “slammed” onto the back of the police car and to the ground, the in-car video footage contradicts his characterization and supports the officers’ description of what transpired. Furthermore, JB did acknowledge, when interviewed after the incident, that during the encounter he went into “panic mode,” screamed for help, and thrashed his body.

The only eyewitness to the encounter was a Velleity Lane homeowner who was interviewed by IAB personnel. He observed the interaction between JB and the FCPD officers through a window of his home, but was unable to hear everything that was said. The witness described being “impressed” by the officers’ treatment of JB; that they were “very courteous;” and that he did not see any officer hit, strike, or kick JB.¹⁵

JB’s admissions and the eyewitness’s description of the interaction between JB and the officers further bolster the FCPD’s conclusion – with which I concur – that the use of force during this incident was objectively reasonable.

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

¹⁴ Defined in FCPD G.O. 540.4 I. A. 2. 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.”

¹⁵ IAB interview conducted on May 22, 2018.

actions of all officers involved in this incident by examining them against the policy in place, and I believe that these conclusions are sound. Therefore, I have no recommendations to make based on this incident review.

