

Public Report

Oct. 28, 2017: Use of Force - Takedown



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INCIDENT

A portion of this incident was captured on cellphone video which was widely circulated online.¹ While I have reviewed the video footage, I have endeavored to describe the incident based on interviews of witnesses and the involved officers conducted within days of the incident.² This is in keeping with Supreme Court precedent which states that uses of force must be judged based on what the officers knew (or reasonably believed) at the time force was used, and not with the benefit of 20/20 hindsight.³ It should be noted, however, the witnesses and officers had viewed the video footage prior to being interviewed.

On October 28, 2017, the annual Annandale Parade took place. As described on the Annandale Chamber of Commerce's website leading up to the parade, the event "promotes community involvement and neighborhood camaraderie while celebrating the rich diversity of Annandale. It's also just a great way to have a bit of innocent family fun."⁴ Among those taking part in the 2017 parade were numerous community and civic organizations, and several local, state, and federal politicians. The Republican candidate for the Virginia governor's race (with an election date of November 7, 2017), Ed Gillespie, was in attendance and was set to ride in a large campaign vehicle during the parade. The parade began at the intersection of Gallows Road and Columbia Pike. The staging area for parade participants was the parking lot of the Annandale United Methodist Church located at 6935 Columbia Pike. Larger vehicles, to include Fire Department vehicles and an "Ed Gillespie for Governor" campaign vehicle, were adjacent to the church parking lot.

Officers from the Mason District Station of the Fairfax County Police Department (hereinafter "FCPD") were assigned to coordinate traffic and crowd control, as well as to ensure security and public safety for the parade. FCPD Second Lieutenant (hereinafter "2LT#1") was assigned as the Incident Commander for the parade, putting him in command of approximately

¹ Retrievable from <http://digg.com/2017/mike-stark-violent-arrest>, as well as numerous other websites.

² M.S. declined to be interviewed on the day of the incident; and, through his attorney several days later, it was determined that M.S. would not be providing a statement for the administrative investigation into this matter.

³ *Graham v. Connor*, 490 U.S. 386 (1989).

⁴ <http://www.annandalechamber.com/theannandaleparade.rhtml>, accessed on March 26, 2018.

24 officers for the duration of the event. The Mason District's station commander (hereinafter "CAPT#1") was also present for the parade.

Minutes before the 10:00 a.m. start time of the parade, the primary parade organizer informed 2LT#1 and CAPT#1 that she had been advised by an Ed Gillespie campaign staff member that an individual (later identified as M.S.) was there to harass and/or confront Gillespie and was in the parking lot staging area. She pointed M.S. out, and 2LT#1 observed him standing right next to the Gillespie campaign vehicle glaring into the vehicle and yelling in its direction. 2LT#1 also noticed that M.S. had both hands in the pocket of his sweatshirt. With the parade about to begin, 2LT#1 was focused on getting the parade under way and discontinued observing M.S. However, when he looked again toward the church parking lot he observed M.S. in the road, directly in front of the Gillespie vehicle, blocking it from being able to enter the parade. M.S. also appeared to be using his cellphone to videotape the Gillespie vehicle. After approximately 5-10 seconds, 2LT#1 approached M.S. and advised him that if he intended to disrupt the parade, he (2LT#1) could not let that happen, and that he (M.S.) could not block the parade.⁵ M.S. responded by saying, "I am a [expletive] reporter," and something to the effect that he could stand where he wanted. But, he did leave the road and went to the sidewalk briefly. When M.S. went onto the apron of the church parking lot driveway, 2LT#1 forcefully told him to return to the sidewalk. At this point, M.S. loudly used an expletive several times while saying he was doing his job as a reporter, that he could do what he wanted, that 2LT#1 was a [expletive] idiot, and that he was going to watch "every move he [Gillespie] makes and every breath he takes."⁶ After hearing the same expletive used multiple times (2LT#1 estimated 5 or 6 times), CAPT#1 approached and told M.S. that if he cursed again, he [M.S.] would be arrested. M.S. responded, "[expletive] this!" CAPT#1 then directed 2LT#1 to arrest M.S.

2LT#1 verbally advised M.S. that he was under arrest and directed him to turn around. He initially got control of M.S.'s right arm, and brought his left arm behind him. However, as 2LT#1 was escorting M.S. away from the church's driveway and before he had handcuffed him, M.S. began to resist by pulling his arms away from 2LT#1. At this point, CAPT#1 got involved with trying to arrest M.S. and he got ahold of M.S.'s left arm while 2LT#1 held onto his right

⁵ It is at approximately this point of the encounter between M.S. and the FCPD that the widely-viewed cellphone video begins.

⁶ Internal Affairs Bureau (hereinafter "IAB") interview of 2LT#1 conducted on November 15, 2017, and IAB interview of CAPT#1 conducted on November 16, 2017.

arm. The officers felt that M.S. was leaning and trying to pull away from them. The officers pushed M.S. against a fence in an effort to gain control of him, but they still perceived that M.S. was resisting their efforts to take him into custody. Although they were unable to get sufficient control of M.S. to handcuff him, 2LT#1 opined that M.S. was not trying to assault him or CAPT#1 at this point, but was simply trying to avoid arrest. 2LT#1 did fear that M.S. was in possession of a weapon or contraband, causing him to resist in the manner he did. Because of their inability to overcome M.S.'s resistance, 2LT#1 executed what he referred to as an "ankle pick"⁷ (also referred to as a "leg sweep") to take M.S. down to the ground and try to get control of him. CAPT#1 and 2LT#1 also went to the ground and continued to try to handcuff M.S. While most of the officers' body weight was on M.S., they were still unable to control his arms. M.S. is heard on the video⁸ telling the officers that he cannot give them his arm because of their weight on him; but the officers believed M.S. was actively resisting by rolling and refusing to surrender his arms. Four other officers stationed near the start of the parade (but who were not involved in the initial encounter with M.S.) were summoned by at least two onlookers to assist 2LT#1 and CAPT#1.

After bringing M.S. to the ground, 2LT#1 felt that M.S. deliberately pulled his own hand under his body. CAPT#1 and 2LT#1 were concerned that M.S. may have had a weapon in his hand, or that he was trying to access a weapon with his hand. CAPT#1 recalls asking, "What's in his hand, what's in his hand?"⁹ The officers who had been summoned over to assist heard this question being asked, but were unaware of what had initially led to the confrontation between CAPT#1, 2LT#1, and M.S. Based on their limited knowledge, they felt it imperative to quickly get control of M.S. 2LT#1 applied his weight to M.S.'s head and back in an effort to control him. Police Officer First Class (hereinafter "PFC#1"), one of the officers called to help, tried to control M.S.'s legs while other officers tried to control his hands. When PFC#1 heard an officer say something about an object in M.S.'s hands, he delivered 3-5 closed-fist strikes to M.S.'s upper leg in an effort to get compliance from M.S. by using this "pain compliance" technique.¹⁰ After delivering the strikes, PFC#1 reached under M.S.'s body and got ahold of one of M.S.'s

⁷ IAB interview of 2LT#1 conducted on November 15, 2017.

⁸ *Supra*, notes 1 and 5.

⁹ IAB interview of CAPT#1 conducted on November 16, 2017.

¹⁰ IAB interview of PFC#1 conducted on November 15, 2017.

hands. He assisted in getting M.S. handcuffed, and then conducted a “pat-down” of M.S. No weapons were located.

After getting M.S. handcuffed, patted down, and on his feet, CAPT#1 noticed a complete change in M.S.’s demeanor. He almost immediately said, “I actually like cops;” and, “I don’t like being arrested for cursing, but I like cops.”¹¹ Although LT#1 had earlier referenced the Fairfax County Code Section 5-1-1, Drunkenness and Profane Swearing (“Curse and Abuse”), to M.S., he was charged with Disorderly Conduct (VA Code § 18.2-415) and Resisting Arrest (VA Code § 18.2-479.1)¹².

After M.S. was arrested, he looked over at an individual standing close by who was filming the incident. 2LT#1 felt as though the look was meant to communicate something to the effect, “did you get all this?”¹³ In response to a question posed by the individual recording, 2LT#1 stated to the individual, “I would appreciate it” [if you would stop recording], and “the job is hard enough.”¹⁴ The individual then stopped recording.

Officers noticed that M.S. had an abrasion on his head, and he was offered, but refused, medical treatment at the scene. The officers assigned to transport him to the Fairfax County Adult Detention Center (hereinafter “ADC”) were instructed to take M.S. to a nearby fire station for treatment. They did so, but again M.S. declined any treatment.

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD conducted only an administrative investigation into the officers’ use of force. No referral regarding their actions was made to the Office of the Commonwealth’s Attorney.

When M.S. was brought before a magistrate at the ADC, arrest warrants for violations of Fairfax County Code Section 5-1-1, Drunkenness and Profane Swearing (“Curse and Abuse”), Disorderly Conduct (VA Code § 18.2-415) and Resisting Arrest (VA Code § 18.2-479.1) were sought. The magistrate issued warrants for the latter two charges only, because he believed that

¹¹ *Supra*, note 9.

¹² VA Code § 18.2-479.1 was repealed in 2018; now VA Code § 18.2-460.

¹³ *Supra*, note 7.

¹⁴ *Id.*, and confirmed by viewing the aforementioned (note 1) video footage accessed from <https://lawandcrime.com/video/reporter-brutally-arrested-while-covering-republican-ed-gillespie-watch/>.

the elements of Fairfax County Code Section 5-1-1 were also included in the Disorderly Conduct charge.

INTERNAL ADMINISTRATIVE INVESTIGATION

The FCPD internal investigation of this incident was conducted by personnel assigned to the Internal Affairs Bureau (hereinafter “IAB”) – rather than personnel assigned to the Mason District Station – because a lieutenant and a captain were involved in the use of force. All involved officers and numerous witnesses (including parade participants and parade attendees) were interviewed; videotaped footage (both cell phone and in-car camera) was reviewed. M.S. declined to provide a statement.

The FCPD concluded that all involved officers’ use of force was within departmental policy. Specifically, FCPD concluded that each involved officer complied with FCPD General Order (hereinafter “G.O.”) 540, et seq. The FCPD finding was that the officers complied with G.O. 540.4 in using the amount of force they used to arrest M.S. G.O. 540.4 allowed the officers to “use the amount of control that [was] objectively reasonable to overcome resistance in order to take lawful action.” I agree with the FCPD’s conclusion that the amount of force used was objectively reasonable, and will articulate my reasons in the following section of this report.

However, the FCPD determined that 2LT#1’s request to stop recording the incident, made to the individual seen recording the arrest of M.S., was a violation of departmental policy. FCPD concluded that 2LT#1’s request to discontinue videotaping the incident violated FCPD G.O. 603.1, which is captioned “Individuals Recording Police Activity.” It states in part: “As long as the recording of police officers engaged in the public discharge of their duties takes place from a location where the individual has a legal right to be present and does not interfere with police activity, jeopardize safety, violate the law, or incite others to violate the law, officers shall not inform or instruct individuals that the recording of police officers or police activity is not allowed, or otherwise obstruct the recording of police activity.

1. Officers shall not threaten, intimidate, or *otherwise discourage* any individual from recording police activity.”¹⁵

¹⁵ FCPD G.O. 603.1 IV. B. (*emphasis added*).

I concur with the finding that the statements made to the individual recording the incident did “otherwise discourage” him from continuing to record. It is worth noting, however, that 2LT#1 did not discourage M.S. from using his cellphone to record earlier parts of the encounter, nor did he state to anyone that recording of police officers or police activity is prohibited.

In my opinion the FCPD investigation into this matter was complete, thorough, objective, impartial, and accurate.

CONCLUSIONS

The annual Annandale Parade is designed to promote community involvement and neighborhood camaraderie, and it should be a “great way to have a bit of innocent family fun.”¹⁶ As such, hundreds (if not thousands) of people of all ages were gathered to enjoy the start of the parade in 2017. Unfortunately, the start of the event was interrupted by yelling, cursing, and a physical confrontation between M.S. and members of the FCPD. It was an unfortunate confrontation that played out in a very public way. The FCPD conducted a methodical investigation to determine whether officers violated the department’s use of force policy with their actions in arresting M.S. I agree with the department’s conclusion that they did not.

FCPD G.O. 540.0 on USE OF FORCE states, 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.”¹⁷ FCPD G.O. 540.1, Use of Force- Definitions, goes on to define “Objectively Reasonable” 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

¹⁶ *Supra*, note 4.

¹⁷ FCPD G.O. 540.0 II.

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.”¹⁸ Finally, FCPD G.O. 540.6 and 540.4 recognize that less-lethal force may be used to effect an arrest,¹⁹ and that less-lethal force may be “necessary to gain compliance by individuals offering resistance.”²⁰

The officers clearly had probable cause to arrest M.S. when they did, and the officers had a reasonable belief that he was offering some level of resistance to avoid being arrested. FCPD G.O. 540.4 distinguishes “passive resistance” from “active resistance” by describing passive resistance 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” and active resistance 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.”²¹ Regardless of whether the level of resistance is passive or active, FCPD policy allows for the use of less-lethal force to overcome it. Furthermore, included in the departmental policy’s listing of what constitutes less-lethal force are “[e]mpty-hand tactics, such as *strikes*, *kicks*, or *takedowns*.”²² Consequently, I agree with FCPD’s conclusion that the officers’ use of force in this situation was consistent with departmental policy.

Much of the language in the previously-discussed FCPD General Orders is taken almost directly from the United States Supreme Court’s Graham v. Connor opinion.²³ Although decided in 1989, that case remains the Court’s most notable analysis of law enforcement use of force, and is the standard by which to judge an officer’s actions when using force. Notably in Graham, the Supreme Court recognized that “police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”²⁴ Furthermore, the Court noted that determining the reasonableness of those officers’ actions “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is

¹⁸ FCPD G.O. 540.1 I. L.

¹⁹ FCPD G.O. 540.6 I. A. 1.

²⁰ FCPD G.O. 540.4 II. 2.

²¹ FCPD G.O. 540.4 I. A. 1. and 2.

²² FCPD G.O. 540.4 II. A. 2. a. (*emphasis added*).

²³ *Supra*, note 3.

²⁴ Graham v. Connor, 490 U.S. at 397.

actively resisting arrest or attempting to evade arrest by flight.”²⁵ The Court reiterated that “[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, violates the Fourth Amendment.”²⁶ Finally, the Court required that an officer’s use of force “be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”²⁷ Taking these admonitions from the Supreme Court into account, the use of force in this incident was legal as well as within policy.

Most critics of the actions taken by FCPD officers in this situation had viewed the video footage before commenting on those actions.²⁸ They also knew that M.S. did not possess a weapon at the time of his arrest; and, that he was a reporter covering the Gillespie campaign when the incident occurred. These critics expressed that the situation should have been handled differently. It certainly *could* have been resolved differently; but, that cannot change the Graham-type analysis of what actually occurred.

In addition to the Supreme Court mandate that hindsight not be used and that a use of force must only be reasonable, federal judges have also ruled out requiring police officers to use lesser intrusive types of force during encounters when force is justified. Judge Alex Kozinski, then on the Ninth Circuit Court of Appeals, stated the rule succinctly in a 1994 opinion when he explained that “[o]fficers thus need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct we identify as reasonable.”²⁹ The rationale for this, Judge Kozinski explained, is that “[r]equiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves.”³⁰ The Bureau of Justice Assistance (a component of the United States Department of Justice), in promulgating guidance to investigators of officer-involved use of force cases, stated it this way: “While there may be more than one way to resolve an encounter that is ‘tense, uncertain, and rapidly evolving,’ and while one option may be better than another, the Graham test does not demand that only one option be

²⁵ *Id.*, at 396.

²⁶ *Id.*, quoting Johnson v. Glick, 481 F.2d 1028 (2nd Cir. 1973).

²⁷ Graham v. Connor, 490 U.S. at 396.

²⁸ For example, several emails received by the Independent Police Auditor, critical of the force used on and the arrest of M.S., alluded to the video footage of the incident.

²⁹ Scott v. Henrich, 39 F.3d 912, 915 (9th Cir. 1994).

³⁰ *Id.*

found objectively reasonable. There may be a range of alternatives that would have been reasonable.”³¹ This is consistent with a Supreme Court decision (in a non-use-of-force case) pointing out that the Fourth Amendment does not require police officers to choose “the least intrusive alternative, only a reasonable one.”³²

The officers involved in this situation used a reasonable amount of force under circumstances that were tense, uncertain, and rapidly evolving. Unlike the critics of their actions (who benefitted from hindsight), none of the officers had prior knowledge of M.S. (other than being told, just before the parade was to begin, that he was there to harass or to confront Gillespie); they did not know that he was a reporter covering the Gillespie campaign until after the incident had unfolded; and, when they first observed M.S., he had both hands in his pockets and was yelling loudly in the direction of the Gillespie campaign vehicle. Although M.S. did advise 2LT#1 that he was a reporter when they first interacted, he had no visible press credentials. Finally, the parade had numerous elected officials participating, and a hotly contested governor’s election was just days away. This caused several of the individuals interviewed during the administrative investigation of this incident (including 2LT#1), to think back to the tragic shooting at the Congressional softball team practice which had occurred in June, 2017, in nearby Alexandria, Virginia,³³ when they first observed M.S.’s behavior at the parade.

While an ankle pick (or leg sweep) and closed-fist strikes may seem somewhat harsh to accomplish an arrest for violations of Fairfax County Code Section 5-1-1, Drunkenness and Profane Swearing (“Curse and Abuse”), Disorderly Conduct (VA Code § 18.2-415) and Resisting Arrest (VA Code § 18.2-479.1), they were reasonable choices based on the totality of the circumstances. In a recent federal appeals court decision involving a “leg sweep maneuver” used by a deputy sheriff against a college student who refused to drop water balloons after the deputy requested him to do so, a three-judge panel found that the deputy was entitled to qualified immunity. The court did so “because, at the time this incident occurred, the law was not clearly established that an officer cannot progressively increase his use of force from verbal commands,

³¹ “Considerations and Recommendations Regarding State and Local Officer-Involved Use-of-Force Investigations,” Bureau of Justice Assistance, U.S. Department of Justice, August, 2017, page 30.

³² *Illinois v. Lafayette*, 462 U.S. 640 (1983).

³³ On June 14, James Hodgkinson opened fire with a rifle on an early morning baseball practice for Republican members of Congress. Several individuals were injured, including United States Representative Steve Scalise from Louisiana, and a United States Capitol police officer. Hodgkinson was shot and killed by officers.

to an arm grab, and then a leg sweep maneuver when a misdemeanor refuses to comply with the officer's orders and resists, obstructs, or delays the officer in his lawful performance of duties such that the officer has probable cause to arrest him in a challenging environment."³⁴

In another appellate court decision examining the use of a leg sweep, the appellate panel reversed the district court's granting of qualified immunity to a sheriff's deputy who took a person to the ground with a leg sweep and then forcibly handcuffed him. The panel did so, however, because "[i]t was well-established at the time of the incident in this case that a non-violent, non-resisting, or only passively resisting suspect who is not under arrest has a right to be free from an officer's use of force."³⁵ Unlike the situation under review, the subject of the leg sweep in that case was an epileptic who had committed no crime, was not told that he was being arrested, and had arguably offered no resistance before being taken down.³⁶

While I concur with FCPD's conclusion that the officers complied with departmental general orders governing the use of force, I also concur with the department's conclusion that there was a violation of the general order governing individuals recording police activity. As previously noted, "[o]fficers shall not threaten, intimidate, or otherwise discourage any individual from recording police activity."³⁷ Whether 2LT#1 intended for his statements, made to the individual recording the encounter, to discourage him from continuing to record, they certainly could be construed that way.

RECOMMENDATIONS

While the following may constitute an observation more than a recommendation, I feel compelled to respond to criticism directed at Chief Edwin C. Roessler Jr., in the aftermath of this incident. Within 3 days of the incident, and the airing/uploading of the video footage of the encounter between his officers and M.S., Chief Roessler forcefully defended the actions of all officers involved. Because his comments were made while the administrative investigation into the incident was in its very early stages, some observers expressed doubt that those conducting the investigation could be objective. As an example, one email received by members of the

³⁴ Shafer v. County of Santa Barbara, 868 F.3d 1110, 1113 (9th Cir. 2017).

³⁵ Smith v. City of Troy, Ohio, 874 F.3d 938, 945 (6th Cir. 2017).

³⁶ *Id.*

³⁷ *Supra*, note 15.

Fairfax County Board of Supervisors and provided to the Office of the Independent Police Auditor included the following:

“While I appreciate the fact that the Chief Roessler has ordered an investigation, his comments addressing this issue demonstrate that any investigation should not be conducted by the FCPD. The Chief has already publicly said that the officers involved did nothing wrong (‘I’m standing before you to defend the lawful actions of my police officers enforcing the law and protecting the community at a parade.’). Since the Chief has already cleared the officers, what’s the point of doing any investigation? Furthermore, can we have any confidence that any Internal Affairs investigators will conclude anything differently than what their boss has already said publicly? I, for one, have no confidence that any investigation of this incident by the FCPD will be fair and impartial.”

Communities throughout the country are demanding more transparency from their police departments, and Fairfax County is among them. Chief Roessler decided to comment on the M.S. arrest shortly after it occurred in an effort to be transparent. When he defended his officers’ actions, people were critical of his supportive comments and questioned whether IAB investigators could conduct an objective investigation of the incident. The chief’s quick defense of his officers’ actions certainly could have made it difficult for an IAB investigator to conclude that those same officers acted inappropriately. On the other hand, had Chief Roessler remained silent after the incident was publicized by virtue of the video footage being released, it is likely he would have been criticized for not being transparent.

Both sides of a dispute are often compelled to “control the narrative” at the outset of publicity surrounding a disputed event. Had Chief Roessler made no comment, the video footage of M.S.’s arrest may have been the only narrative of the incident for a lengthy period of time. Unfortunately, that partial video footage does not tell the entire story. As one commentator has noted in regard to any video of police-citizen encounters, “[t]he point is that video is subjective and courts, the public, and commentators err in assuming its objectivity and singularity.”³⁸

While it is understandable that Chief Roessler wanted to defend his officers following this controversial situation, concern that his bold statements defending those officers would prohibit a thorough review is also understandable. While I understand this skepticism, I reiterate

³⁸ Howard Wasserman, *Police Misconduct, Video Recording, and Procedural Barriers to Rights Enforcement*, 96 N.C. L. Rev. 1313, 1329 (2018).

my opinion that the internal investigation was complete, thorough, objective, impartial, and accurate.

The arrest of M.S. began with loud cursing within earshot of families attending a parade on a fall Saturday morning. It culminated with police using force to effect an arrest in front of those same parade attendees. It was unfortunate and avoidable. In fact, the judge who presided over M.S.'s criminal case in Fairfax County General District Court in February, 2018, commented to M.S. during his trial that "you started getting, doing what you were doing to get attention;" and, that "you're not being a reporter anymore, now you want to be an actor in the drama."³⁹ The police responded to these actions, leading to their use of force to accomplish the arrest of M.S. The arrest of a reporter covering a parade in which politicians took part offended some observers, as did the force used to accomplish it.⁴⁰ In my opinion, however, both the arrest and force used were reasonable police responses to M.S.'s actions.

³⁹ Court transcript from Commonwealth of Virginia v. Michael Stark, presided over by The Honorable Mark Simmons, February 13, 2018.

⁴⁰ *Supra*, note 28.

