

# Public Report

Dec. 21, 2023: Use of Force  
Complaint  
IPA-23-28



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A Public Report by the Fairfax County  
Independent Police Auditor

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**NOTE TO THE READER: The Fairfax County Police Department revised its comprehensive policy addressing the use of force on April 29, 2024. The actions of the officers involved in this incident will be analyzed using the policy provisions that were in effect on December 21, 2023 (i.e., General Order 540, effective August 12, 2022).**

## **INCIDENT**

On December 21, 2023, Fairfax County Police Department (hereinafter “FCPD”) Police Officer First Class #1 (hereinafter “PFC#1”) conducted a traffic stop on Huntsman Boulevard in Fairfax County. PFC#1, a member of the FCPD’s Selective Enforcement Team, made the traffic stop for a driver he determined was speeding (going 39 miles per hour (“mph”) in a 25-mph zone) by using radar. The driver (hereinafter identified by the initials “S.M.”) produced a driver’s license, but PFC#1 determined that the insurance on her vehicle had expired in March, 2023. When PFC#1 advised S.M. that her insurance had lapsed, she told him there was a miscommunication between the DMV and her insurance company because the issue had been resolved. PFC#1 explained that S.M. would not be allowed to drive the car away from the location.

During the conversation between PFC#1 and S.M., S.M. started to cry and became very emotional and upset. PFC#1 radioed for backup from other FCPD officers. He also requested that members of the Fairfax County Fire and Rescue Department (hereinafter “FCFRD”) respond to the location, fearing that S.M. was experiencing a medical or emotional crisis. FCFRD personnel examined S.M., who had stepped out of her car, and determined that her blood sugar level was elevated, but that she needed neither medical treatment nor medication. Police Officer First Class #2 (hereinafter “PFC#2”) and Master Police Officer #1 (hereinafter “MPO#1”) also arrived, and they accompanied S.M. while PFC#1 was preparing citations from inside his car.

Because S.M. thought she needed to get insulin right away, she began to walk away from the traffic stop to walk to a nearby pharmacy.<sup>1</sup> MPO#1, intending to detain her until the traffic citations could be issued to her, took hold of S.M.’s left arm. PFC#2 then began to try to handcuff her, and she dropped her body to the ground. PFC#2 put his knee on S.M.’s shoulder

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<sup>1</sup> Interview of S.M. on December 21, 2023. Also, as the officers prevent her from walking away, S.M. can be heard on body-worn camera footage saying: “What is going on? Let me go, let me go. I have to get my insulin. Let me go. I am trying to get my insulin.”

area to help get her handcuffed and told her that she was being detained.<sup>2</sup> MPO#1 also explained to S.M. that she was being detained, and the two officers were able to apply handcuffs with no more force (other than PFC#2 using his knee to apply pressure to S.M.'s shoulder area) being used.

A second lieutenant (hereinafter 2LT#1") and a captain (hereinafter "CAPT#1") from the West Springfield District Station arrived on the scene and spoke to S.M. CAPT#1 also summoned a "co-responder" team to the location;<sup>3</sup> however, S.M. declined to speak to the co-responders. While on the scene, she made several comments about being mistreated because of her race and gender. She also complained of pain and, therefore, was transported from the scene to Mount Vernon Hospital by the FCFRD. She did not allow FCPD officers to photograph her alleged injuries, nor did she provide investigators a release to obtain access to her medical records from the hospital.

On December 23, 2023, S.M. submitted a complaint to the Fairfax County Police Civilian Review Panel (hereinafter "Panel") listing several allegations of wrongdoing by the officers who were at the scene of her traffic stop and subsequent detention. The Panel forwarded her complaint to the Office of the Independent Police Auditor ("OIPA") based on her allegations of MPO#1 and PFC#2 using excessive force. In her complaint to the Panel, S.M. stated that two FCPD officers assaulted her and "aggressively took me down to the ground and handcuffed me."<sup>4</sup> This report will address only S.M.'s use of force allegations.<sup>5</sup>

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<sup>2</sup> While being interviewed later that day, S.M. admitted to believing she was free to leave when she began walking, but that she was then told that she was being detained.

<sup>3</sup> The Fairfax County Co-Responder Program is a partnership between the Fairfax County Police Department and the Fairfax-Falls Church Community Services Board ("CSB"). It pairs a Crisis Intervention Team (CIT) trained police officer with a CSB Crisis Intervention Specialist to respond to public safety calls that are related to behavioral health issues. See, [Co-Responder Program | Community Services Board \(fairfaxcounty.gov\)](https://www.fairfaxcounty.gov/policeandfire/community-services-board)

<sup>4</sup> She also alleged that an additional police officer was involved in—and used force during—her handcuffing. Body-worn camera footage confirms that the additional officer did not arrive until after she was handcuffed.

<sup>5</sup> For more information on the respective scopes of authority of the Auditor and the Panel, visit <https://www.fairfaxcounty.gov/policeauditor/> and <https://www.fairfaxcounty.gov/policecivilianreviewpanel/>.

## **INTERNAL ADMINISTRATIVE INVESTIGATION**

The FCPD conducted an administrative investigation into the actions of its officers during this incident. The investigation included interviews of all officers involved and a review of all available body-worn camera (hereinafter “BWC”) and in-car video (“ICV”) footage.

S.M. was interviewed by 2LT#1 at Mount Vernon Hospital on the day of the incident, and again by an Internal Affairs Bureau (hereinafter “IAB”) investigator on January 22, 2024. During the IAB interview,<sup>6</sup> S.M. declined an offer to view the BWC footage from the December 21, 2023, incident.

Based on the interviews and the viewing of video footage, the FCPD determined that S.M. went to the ground only because she dropped her own body weight when PFC#2 and MPO#1 first attempted to detain her. The only force used after S.M. was on the ground was when PFC#2 deliberately applied pressure to S.M.’s shoulder area with his knee. The FCPD “exonerated”<sup>7</sup> both officers involved in the detention and handcuffing of S.M. I agree with that finding, and that the investigation was complete, thorough, accurate, objective, and impartial.

## **CONCLUSIONS**

When S.M. was pulled over for speeding, she was seized for Fourth Amendment purposes, meaning she was not free to leave until the traffic stop concluded.<sup>8</sup> She began to walk away while PFC#1 was preparing traffic citations and before he had provided them to S.M. To prevent her from leaving, PFC#2 and MPO#1 attempted to hold her. When she dropped herself to the ground, PFC#2 used minimal force to gain control so that S.M. could be handcuffed.

In its landmark Graham v. Connor<sup>9</sup> opinion, the United States Supreme Court recognized that “the right to make an arrest or investigatory stop<sup>10</sup> necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.”<sup>11</sup> In Graham, the Supreme Court

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<sup>6</sup> The interview was conducted telephonically after S.M. did not show up for a scheduled in-person interview.

<sup>7</sup> FCPD G.O. 301 XIII. A. 3. states that “exonerated” means that the officers’ “actions were found to be in compliance with the rules and regulations of the Department.”

<sup>8</sup> Rodriguez v. United States, 575 U.S. 348 (2015).

<sup>9</sup> 490 U.S. 386 (1989).

<sup>10</sup> Traffic stops are typically analyzed as investigative detentions – see, Rodriguez v. United States, note 8, *supra*.

<sup>11</sup> Note 9, *supra*, at 396.

also recognized that to be lawful the force used must be “objectively reasonable.” The minimal amount of force used on S.M. to detain her during a lawful traffic was, in my opinion, objectively reasonable.

Because the force used was objectively reasonable, it complied with FCPD policy as well as the law. Based on the pronouncements provided in Graham v. Connor, FCPD’s policy which guides an officer’s use of force states, in part: “[t]he use of all force options by officers . . . shall only be used to the extent it is *objectively reasonable* to defend oneself or another, *maintain control over an individual during an investigative or mental health detention*, or overcome resistance to a lawful detention or arrest.”<sup>12</sup> PFC#2 used objectively reasonable force to maintain control of S.M. during a traffic stop, which is a Fourth Amendment seizure treated like an investigative detention.<sup>13</sup>

## **RECOMMENDATIONS**

The FCPD conducted a thorough investigation into the force used against S.M. on December 21, 2023. It is unfortunate that any force was necessary, but the amount used was minimal and for a lawful purpose. I have no recommendations to make based on this incident review.

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<sup>12</sup> FCPD G.O. 540 II. (*emphasis added*).

<sup>13</sup> Note 10, *supra*.

## **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.III.10. as any physical strike or instrumental contact with an individual, or any significant physical contact that restricts a person's movement. Reportable uses of force do 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 reportable uses of force.

**Less-Lethal Force** – Defined in Fairfax County Police Department General Order 540.III.13. as any level of force not designed to cause death or serious injury.

**Deadly Force** – Defined in Fairfax County Police Department General Order 540.III.2. as any level of force that is likely or intended to cause death or serious injury.

**Serious Injury** – Defined in Fairfax County Police Department General Order 540.III.26. as any injury which creates a substantial risk of death, 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; Defined in Fairfax County Police Department General Order 540.III.5. 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. Considered less-lethal force. Often referred to as a Taser.

**Empty-Hand Tactics** – Described in Fairfax County Police Department General Order 540.VI.A. as including strikes, kicks, pressure points, and takedowns in an objectively reasonable manner to overcome resistance. Considered less-lethal force.

**OC Spray** – Oleoresin Capsicum; Defined in Fairfax County Police Department General Order 540.III.19. as a less-lethal force instrument that contains a projectile lachrymatory agent spray designed to irritate an individual’s eyes and temporarily take away their vision in order to effectuate lawful control. Often referred to as “pepper spray.”

**PepperBall System** – Defined in Fairfax County Police Department General Order 540.III.21. 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.III.25. as where an individual poses no immediate threat to an officer and exhibits no resistive movements 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.III.25. as where an individual’s verbal and/or physical actions are intended to prevent an officer from taking lawful action but not intended to harm the officer.

**Aggressive Resistance** – Defined in Fairfax County Police Department General Order 540.III.25. as where an individual displays the intent to cause injury, serious injury, or death to an officer, themselves, or another person and to prevent the officer from taking lawful action.