

Public Report

March 1, 2023: Use of Force
Complaint
IPA-23-17



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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 in March 2023 (i.e., General Order 540, effective August 12, 2022).

INCIDENT

On March 1, 2023, an individual (hereinafter identified by his initials “R.F.”) was arrested by officers of the Fairfax County Police Department (hereinafter “FCPD”) for driving while intoxicated¹ (“DWI”) while in a private parking garage located on Capital One Drive in McLean. Police Officer First Class #1 (hereinafter “PFC#1”) arrested R.F. after developing probable cause to believe he was intoxicated. The probable cause did not include the result of a Preliminary Breath Test (hereinafter “PBT”) at the scene because R.F. did not submit to one. He was handcuffed without any reportable force² being used on him, although R.F. did initially try to pull his arms away from PFC#1 and Police Officer First Class #2 (hereinafter “PFC#2”) when they began to handcuff him.

PFC#1 transported R.F. to the Fairfax County Adult Detention Center (hereinafter “ADC”). She obtained a search warrant—authorizing an evidentiary blood draw from R.F.—from a magistrate at the ADC. The blood draw was accomplished by an FCPD Alcohol Testing Unit technician (hereinafter “ATU#1”) at the ADC.

On September 5, 2023, R.F. submitted a complaint to the Office of the Independent Police Auditor (hereinafter “OIPA”), which was shared with the Fairfax County Police Civilian Review Panel (hereinafter “Panel”). The complaint listed several allegations, to include excessive force being used on him prior to and during the blood draw.³ The OIPA forwarded the complaint to the FCPD’s Internal Affairs Bureau (hereinafter “IAB”) for investigation by the FCPD.

¹ Va. Code § 18.2-266.

² FCPD General Order (“G.O.”) 540 III. 10. states that “[r]eportable uses of force do not include escorting or handcuffing an individual who is exhibiting minimal or no resistance.”

³ The Fairfax County Police Civilian Review Panel’s by-laws in Article VI. at A. 3. provide that “[w]here a Complaint alleges misconduct within both the Panel’s scope of authority and the Auditor’s scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort.” For a full discussion of the respective scopes of authority of the Auditor and the Panel, visit <https://www.fairfaxcounty.gov/policeauditor/> and <https://www.fairfaxcounty.gov/policecivilianreviewpanel/>.

The FCPD investigated the following allegations: that PFC#1 did not properly investigate the circumstances of the DWI and did not follow proper protocols when offering R.F. a PBT; that he was emotionally and physically abused by PFC#1 in the blood draw room at the ADC; that ATU#1 aggressively conducted the blood draw and showed no empathy for R.F. despite knowing that R.F. suffered from a fear of needles; and that PFC#1 participated in the malicious blood draw, and that she falsified official statements to cover her misconduct.

R.F. also complained about being subjected to abuse by Fairfax County Sheriff's Office (hereinafter "FCSO") deputies while at the ADC, and about inhumane conditions at the ADC. The allegations against FCSO deputies and about conditions at the ADC are not within the investigative purview of the FCPD⁴ and therefore are not reviewed by the OIPA.

This OIPA report will address only the allegations of force made by R.F. against FCPD employees, which include his allegations of being "lifted by the arms and slammed on the table" for a blood draw, being "strapped tightly to a chair," and that the blood draw itself was done in a malicious manner. The Panel, which has the authority to review the investigation into allegations of abuse of authority or serious misconduct committed by FCPD employees, is conducting a separate review of R.F.'s non-use of force allegations.⁵

INTERNAL ADMINISTRATIVE INVESTIGATION

Initially, the FCPD administrative investigation into R.F.'s allegations was conducted by a supervisor at the district station level. That administrative investigation examined two allegations of excessive force which are addressed in this OIPA report: 1) being physically abused by PFC#1 in the blood draw room at the ADC; and 2) that ATU#1 conducted the blood draw in an unnecessarily aggressive manner. The district station supervisor's investigation included interviews of R.F., the FCPD employees involved in the incident, and R.F.'s defense

⁴ R.F. was provided with the information necessary for him to lodge a complaint with the FCSO; and the FCPD investigator who conducted the investigation into the actions of the FCPD employees advised R.F. that he would share R.F.'s complaint information with the FCSO.

⁵ Upon a request from the complainant on January 18, 2024, the Panel engaged in its process to conduct its own review of the FCPD investigation (CRP-24-02). During its July 11, 2024, Review Meeting, the Panel learned that the FCPD conducted additional investigation into this matter after the Panel members already reviewed the initial investigative file. Consequently, the Panel voted to withhold a judgment of the FCPD's investigation until Panel members could review the additional investigation results. The Panel voted on its findings at its September 5, 2024, meeting.

attorney—who was identified by R.F. as a witness to some of PFC#1’s misconduct (but not the alleged use of force or blood draw); an examination of all available in-car video (hereinafter “ICV”) and body-worn camera (hereinafter “BWC”) footage; and a review of all incident reports prepared to document the incident and of the photographs provided by R.F. purporting to show injuries sustained by him during the blood draw. Based on this investigation, the FCPD concluded that PFC#1 and ATU#1 were “exonerated,” meaning that their “actions were found to be in compliance with the rules and regulations of the Department.”⁶

During the Panel’s meetings wherein the investigation into R.F.’s allegations was discussed,⁷ Panel members expressed concerns about the investigation. The FCPD’s IAB conducted additional investigation into the allegations to alleviate the Panel members’ concerns. The additional investigative steps consisted of identifying the FCSO deputies who were working at the ADC when this incident occurred, interviewing those who were available, and obtaining and documenting information from the FCSO’s Internal Affairs Bureau.

After reviewing the results of the supplemental investigation, the FCPD changed its conclusion to reflect that the allegations of excessive force used by PFC#1 and ATU#1 were “not sustained”—meaning that “[i]nsufficient evidence exists to either prove or disprove the allegations[s].”⁸ I agree that there was insufficient evidence to either prove or disprove R.F.’s excessive force allegations given the lack of any camera footage—either BWC or from stationary security cameras—capturing the events inside the ADC. I will elaborate on the dearth of camera footage in the RECOMMENDATIONS section of this report.

Based on my review of the initial and subsequent investigations conducted, and on the information that was available, my opinion is that the FCPD investigation(s) into R.F.’s use of force allegations was complete, thorough, objective, impartial, and accurate.

⁶ FCPD G.O. 301 XIII. A. 3.

⁷ The Panel discussed R.F.’s complaint (CRP-24-02) at its meetings on May 28, 2024, June 6, 2024, and July 11, 2024.

⁸ FCPD G.O. 301 XIII. A. 5.

CONCLUSIONS

On March 1, 2023, FCPD officers responded to the parking garage on Capital One Drive in McLean at the request of a private security officer. The entire incident was captured on ICV and BWC footage, to include R.F.'s arrest and transport to the ADC. However, as dictated by both FCPD and FCSO policies,⁹ PFC#1's BWC was not activated when she escorted R.F. into the ADC and did not capture the events that occurred there.

While inside the blood draw room of the ADC, R.F. says that he told ATU#1 that he had a fear of needles and, consequently, would have preferred a breath test over the blood draw. He further advised that, due to his visible anxiety, PFC#1 tackled him and then "slammed him on the table" to initiate the blood draw. He also said that ATU#1 deliberately administered an aggressive and painful blood draw. After the blood draw, R.F. reported that PFC#1 strapped him tightly to a chair and put a facemask over his mouth to "muffle" him as he yelled for a witness and a supervisor. According to R.F., there were four or five deputies outside of the blood draw room who could have seen PFC#1 brutalize him or heard his pleas for help (even if muffled by the mask).¹⁰

In reviewing this investigation—even without any camera footage available—there are at least three indications that could support a conclusion that no force was used during this incident.

First, FCPD General Order (hereinafter "G.O.") 509 IV. E. 5. d. makes clear that "[o]fficers should de-activate their BWC . . . [w]hen inside of a jail or correctional facility . . . unless (1) a *use of force occurs* or is reasonably anticipated, (2) while interacting with a suspect during an active criminal investigation, or (3) they are responding to an incident involving on-going violence." PFC#1 never activated her BWC while inside the ADC, an indication that she did not use force on R.F. because—if she had—she would have been mandated by policy to activate it.

⁹ FCSO's Standard Operating Procedure 61 III. requires its deputies to "power down the BWC in state, federal, and local courthouses, as well as Detention Centers (Jails/Prisons), unless a use of force or arrest is anticipated or occurs."

¹⁰ R.F.'s description of events was provided in his complaint email to the OIPA dated September 5, 2023, and during an interview with the FCPD. During subsequent Panel meetings attended by R.F., he indicated that he was handcuffed with his hands behind his back during the blood draw and while seated in a chair in the blood draw room.

Second, self-reporting any use of force is required by FCPD policy.¹¹ PFC#1 did not report that she used any force in the Incident Report she prepared following the incident or during her interview as part of the administrative investigation into R.F.'s allegations. During that administrative interview, however, she did report that R.F. slid off a chair (either deliberately or accidentally) while waiting for his blood to be drawn¹² and that four or five FCSO deputies saw him fall; that she and they lifted him back up; and that the deputies held his arm as still as they could for the blood to be drawn by ATU#1.¹³ PFC#1 also reported that ATU#1 placed a mask over R.F.'s mouth during the blood draw.¹⁴

Third, during ATU#1's administrative interview, she recalled R.F. squirming while resisting the blood draw, and that one or two deputies held him still. But she stated in her interview that she had no recollection of PFC#1 having any physical contact with R.F. at the time of the blood draw.

Finally, the FCSO has a "duty to intervene" provision in its use of force policy.¹⁵ Despite this duty, none of the five FCSO deputies on duty at the ADC reported anything related to R.F.'s blood draw. After receiving R.F.'s complaint six months later, the FCPD could have—and in my opinion should have—tried to identify and interview the deputies who were present in the ADC (in or near the blood draw area) at the time the blood was extracted from R.F. Unfortunately, this was not done until FCPD's IAB conducted the supplemental investigation in June, 2024. By that time, two of the five deputies were no longer employed by the FCSO; therefore, only three were interviewed. Still, the fact that no FCSO deputy reported an excessive use of force—as required by policy—is an indication that there was not an excessive use of force.

Because there was no camera footage from the ADC (to include the blood draw room), the FCPD had to draw a conclusion as to R.F.'s allegations of excessive force based on the

¹¹ FCPD G.O. 540. X. A. clearly states that "[a]ny officer who uses force or points a firearm at another individual shall document the circumstances of the event in an incident report or supplement accordingly in the current RMS... ." While "[m]erely placing an individual in handcuffs as a restraint" would not require self-reporting, the amount of force alleged by R.F. certainly would, as dictated by FCPD G.O. 540 III. 10 and 540 VI. A.

¹² According to the results of the blood draw, R.F.'s blood alcohol content was .23, a clear indication he was under the influence of alcohol at the time of his interaction with the FCPD and FCSO in the ADC.

¹³ R.F. admitted to having anxiety about needles and squirming during the blood draw.

¹⁴ R.F. vomited before being arrested, and he told PFC#1 that his child was sick. PFC#1 remembered ATU#1 saying that she "did not want Covid" before placing the mask on R.F.

¹⁵ FCSO Standard Operating Procedure 032 II.

conflicting version of events provided by R.F. and the versions provided by PFC#1 and ATU#1. Without footage, the department concluded that the allegations could neither be proven nor disproven, and therefore reached a finding of not sustained.¹⁶ Although R.F. contends that PFC#1's demeanor changed after entering the ADC, the interaction between PFC#1 and R.F. that was recorded (i.e., his arrest and transport to the ADC),¹⁷ as well as the absence of any reports of force from the involved FCPD employees and FCSO deputies, indicate that there was no force used against R.F. In the absence of footage, I agree with the FCPD's conclusion that the allegations can neither be proven nor disproven.

RECOMMENDATIONS

If camera footage from the ADC (specifically, the blood draw room at the ADC) had been available, the FCPD would likely have been able to reach a more definitive conclusion about what occurred there. The result may have been a finding of “unfounded,” meaning that “[t]he allegation is false or did not occur;”¹⁸ “unfounded by technology,” meaning that “[t]he allegation and/or incident has been captured by technology and a review of the technology has established that the allegation is false and did not occur;”¹⁹ “exonerated,” meaning that the officers “actions were found to be in compliance with the rules and regulations of the Department;”²⁰ or, “sustained,” meaning that “[t]he allegation is supported by evidence.”²¹ However, without any video footage, reaching any of these conclusions by the required “preponderance of evidence” standard was not possible.²²

With the proliferation of technology used by law enforcement today (e.g., BWCs), the public—as well as police officers and complainants—expect to see definitive accounts of incidents involving citizens and the police. But, as in the incident under review, that is not

¹⁶ Note 8, *supra*.

¹⁷ Based on my review of that footage, I would describe PFC#1's conduct, demeanor, and language during R.F.'s arrest and during the drive to the ADC as professional and straightforward.

¹⁸ FCPD G.O. 301 XIII. A. 1.

¹⁹ FCPD G.O. 301 XIII. A. 2.

²⁰ FCPD G.O. 301 XIII. A. 3.

²¹ FCPD G.O. 301 XIII. A. 6.

²² FCPD G.O. 301 XIII. A. states that “[a]t the completion of an administrative investigation, each allegation shall be classified with one of the following findings based on a preponderance of the evidence.”

always the case.²³ In addition to jails and correctional facilities, FCPD policy also prohibits the use of BWCs in locations such as locker rooms; restrooms; federal, state, or local courthouses or while appearing before a judge or magistrate; medical and mental health care facilities; ambulances; drug treatment centers or rehabilitative (halfway) houses; and any public or private school.²⁴ While recognizing the legitimate privacy concerns in each of these locations, there is still the potential for a police use of force to occur at any of them. Thus, FCPD's policy does allow for BWC activation in each of the listed locations whenever a use of force happens or is simply anticipated.²⁵

Obviously, the possibility of force being used is inherently higher in a "jail or correctional facility" (the ADC) than in the other excepted facilities listed, because officers are almost always accompanying a recent arrestee when they are in the ADC.²⁶ Based on this higher likelihood, I recommend that the FCPD engage in discussion with the FCSO to allow BWC recording while FCPD officers are in the ADC, regardless of whether a use of force is happening or anticipated. In the incident under review, video footage from the blood draw room within the ADC would likely have led to a more definitive conclusion about what occurred there. This more definitive conclusion would be more satisfying to the parties involved and to the public at large.

I may be overlooking other logistical or legal impediments to using BWCs within the ADC, but starting a dialogue to explore the possibility of their use could be a first step toward overcoming whatever impediments there may be.

²³ The OIPA previously reviewed another investigation into an allegation of excessive force that was not captured on video at the ADC ([IPA-23-03](#)).

²⁴ FCPD G.O. 509 IV. E. 5. c., e., f., and g.

²⁵ FCPD G.O. 509 IV. E. 5.

²⁶ Note 23, *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.