

Public Report

Nov. 10, 2022: In-Custody Death
IPA-22-12



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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 definition for “force” and the actions of the officers involved in this incident will be analyzed using the policy provisions that were in effect on November 10, 2022 (i.e., General Order 540, effective August 12, 2022).

INCIDENT

Between 4:15 p.m. and 4:23 p.m. on November 10, 2022, nine separate 9-1-1 calls were made to the Fairfax County Department of Public Safety Communications reporting that a man (later identified as having the initials—and hereinafter identified as—“T.M.”) was in the vicinity of Backlick Road and Old Keene Mill Road in Springfield, Virginia, interfering with traffic and behaving erratically. Fairfax County Police Department (hereinafter “FCPD”) Police Officer First Class #1 (hereinafter “PFC#1”) responded and located T.M. near the intersection of Amherst Avenue and Bland Street.

T.M. was talking to a FedEx delivery driver, who had gotten out of his truck to engage with T.M. When PFC#1 approached T.M., T.M. immediately began running from him. PFC#1 followed at a safe distance, without trying to catch up to or prevent T.M.’s movement away from him. The delivery driver got into his truck and went farther ahead, before getting out and again engaging with T.M. Recognizing the apparent rapport being established between the driver and T.M., PFC#1 stayed back and followed on foot from a safe distance.

Approximately a quarter mile away from the location PFC#1 first located T.M., other officers handcuffed T.M. without using any force. The officers handcuffed T.M. to discourage him from running from them again. The officers noted indications of drug use, such as T.M. speaking incoherently. While sitting down where he was being detained, T.M. started showing signs of medical distress, so the Fairfax County Fire and Rescue Department (hereinafter “FCFRD”) was called. FCFRD personnel quickly arrived and decided to transport T.M. to a hospital. PFC#1 rode in the ambulance because T.M. was—at least arguably—in FCPD’s custody.¹ While en route to the hospital, T.M.’s condition deteriorated, and PFC#1 and FCFRD

¹ During interviews after the incident, several officers stated that T.M. was released to the custody of the FCFRD when its personnel arrived. PFC#1 did acknowledge that although he had sufficient information (probable cause) to arrest T.M. for public intoxication and for obstructing a roadway, he advised that he merely wanted to detain him to check on his welfare. Regardless, the incident was investigated as an in-custody (of the FCPD) death, initiating the Office of the Independent Police Auditor’s review of that investigation.

paramedics engaged in cardiopulmonary resuscitation (“CPR”) efforts on him, beginning at approximately 4:45 p.m. Unfortunately, T.M. was pronounced deceased at 5:12 p.m., shortly after arriving at INOVA Fairfax Hospital.

A medical examiner from the Office of the Chief Medical Examiner issued a Postmortem Examination Report, dated February 27, 2023, finding that “[p]ostmortem toxicology was positive for THC and metabolites, Cocaine, Benzoyllecgonine, Phencyclidine, Doxylamine, Etomidate, Methamphetamine, and Amphetamine in [T.M.’s] blood.” The examiner reported the “manner of death is ACCIDENT,” and that a “complete autopsy was conducted and found no trauma contributory to death.”

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

Both a criminal and an administrative investigation were commenced on the date of this incident. The FCPD’s Major Crimes Bureau conducted the criminal investigation. The results of the criminal investigation were presented to the Fairfax County Commonwealth’s Attorney’s Office, which advised the FCPD on January 24, 2023, that the incident was not a criminal event and that there would be no criminal charges brought against any of the officers involved in it.

INTERNAL ADMINISTRATIVE INVESTIGATION

An administrative investigation was initiated by FCPD’s Internal Affairs Bureau (hereinafter “IAB”) on the day of this incident because it involved the death of an individual while in the custody of FCPD officers.²

The FCPD’s administrative investigation, including the findings of the criminal investigation, consisted of the review of all Computer Aided Dispatch data and FCPD police radio communications related to the incident; interviews of all officers who responded to the incident; interviews of FCFRD personnel who were involved in the incident; a review of body-worn camera (hereinafter “BWC”) and in-car video footage; a review of Incident Reports prepared; interviews of witnesses, to include the FedEx delivery driver who interacted with T.M.; obtaining and reviewing business surveillance camera footage; interviews of T.M.’s

² *Id.*

family members; and a review of the State Medical Examiner’s conclusions (including autopsy photos and the toxicology report).

I believe the FCPD administrative investigation into this incident was complete, thorough, objective, impartial, and accurate.

CONCLUSIONS

The FCPD concluded that no force was used during this incident because FCPD General Order (hereinafter “G.O.”) 540 III. 10. states that “[m]erely placing an individual in handcuffs as a restraint in arrest or transport activities . . . does not constitute [a] reportable use[] of force.”

Therefore, the FCPD analyzed the actions of PFC#1, as well as the other responding officers, under its Regulation 201, which covers GENERAL RESPONSIBILITIES.³ Specifically, Regulation 201.1 requires that “[m]embers of the Fairfax County Police Department (FCPD) shall maintain working knowledge of laws and ordinances in effect in both the Commonwealth of Virginia and Fairfax County. Employees shall also maintain working knowledge of all General Orders, Standard Operating Procedures (SOP), and conducted training initiatives of the FCPD, as well as all Fairfax County Government Personnel Regulations and perform their duties as required or directed by law, policy, order SOP, or order of a superior officer.”

Following its investigation, the FCPD concluded that one of the responding officers (not PFC#1) committed a policy infraction—of G.O. 509 IV.⁴—by failing to activate his BWC during the incident. The FCPD also concluded that the failure to activate the BWC was not intentional or malicious. All other actions conformed with FCPD policies and regulations.

RECOMMENDATIONS

While I have no recommendations to offer based on my review of the investigation into this unfortunate event, my review of PFC#1’s BWC footage leads me to applaud PFC#1 for his decision-making and his actions during this incident. First, when he recognized that T.M. was in distress and that the FedEx delivery driver seemed to be establishing a good rapport with T.M.,

³ Effective September 5, 2022.

⁴ G.O. 509 Body-Worn Camera and In-Car Video Systems, effective April 11, 2022.

PFC#1 stayed back at a distance where he could observe but not provoke more erratic actions from T.M. In effect, this was an excellent attempt to de-escalate the situation and avoid any use of force, such as a takedown or a forced handcuffing of T.M.

Second, PFC#1 offered his assistance while he was in the FCFRD ambulance during the transport of T.M. to the hospital; and, when requested to do so he immediately helped administer CPR in an effort to resuscitate T.M. Unfortunately, the efforts of PFC#1 and the FCFRD personnel in the ambulance did not prevent T.M. from passing away.

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.