

Public Report

Sept. 13, 2023: In-Custody Death

IPA-23-18



Richard G. Schott
Fairfax County
Independent Police Auditor

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A Public Report by the Fairfax County
Independent Police Auditor

Publication Date: August 30, 2024



A Fairfax County, Va., Publication

Office of the Independent Police Auditor
12000 Government Center Parkway, Suite 233A
Fairfax, VA 22035

www.fairfaxcounty.gov/policeauditor

Contact Us: IPAPoliceAuditor@fairfaxcounty.gov

To request this information in an alternate format, call 703-324-3459, TTY 711.

INCIDENT

At approximately 12:30 a.m. on September 13, 2023, Fairfax County Police Department (hereinafter “FCPD”) officers from the Franconia District Station responded to a home on Ash Drive in Springfield. The homeowner had reported that there was a naked man in his backyard behaving erratically and trying to get into his home. The first arriving officer met the homeowner at the front of the house and accompanied him to the back of the house. They did not see the man (hereinafter identified by his initials, “L.E.”) in the yard.

When Police Officer First Class #1 (hereinafter “PFC#1”) and Officer # 1 (hereinafter OFFC#1) arrived shortly after the first officer, they went straight into the house from the backyard and found L.E. lying on the floor and handcuffed him at approximately 12:40 a.m.¹ They immediately rolled L.E. onto his side and at 12:44 a.m. requested that the Fairfax County Fire and Rescue Department (hereinafter “FCFRD”) be called to the location.

Second Lieutenant #1 (hereinafter “2LT#1”) arrived within minutes,² at which point L.E. was breathing on his own. When he stopped breathing (at approximately 12:50 a.m.), the officers removed the handcuffs and performed cardiopulmonary resuscitation (“CPR”) until paramedics from the FCFRD arrived (at 12:52 a.m.) and continued life-saving efforts. L.E. was transported by the FCFRD to INOVA Fairfax Hospital.³ Police Officer First Class #2 (“PFC#2”) followed the ambulance to the hospital because L.E. was in the custody of the FCPD. Unfortunately, L.E. was pronounced deceased at 1:34 a.m.

The Office of the Chief Medical Examiner rendered its Postmortem Examination Report and Report of Autopsy on February 11, 2024. The reports noted that “[p]ostmortem toxicology shows the presence of cocaine, naloxone, and THC in [L.E.’s] blood,” and that “[t]he decedent sustained a fatal arrhythmia as a result of acute cocaine intoxication.” The conclusions were that the cause of death was “ACUTE COCAINE INTOXICATION” and that the manner of death was “ACCIDENT (SUBSTANCE ABUSE).” There was no indication that being restrained—even for the very brief period of time that he was—contributed to L.E.’s death.

¹ The initial call of a “suspicious person” was elevated to “burglary of an occupied dwelling” based on L.E. entering the home.

² The lieutenant started traveling to the house after hearing the details of the initial call. She thought the potential for force being used was heightened because of the probability that L.E. was under the influence of narcotics.

³ [NARCAN® Nasal Spray](#)—a treatment designed to rapidly reverse the effects of a life-threatening opioid emergency—was administered twice while in route to the hospital.

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. Because no force was used during the incident and based on the findings of the Medical Examiner's Office, the results of the criminal investigation were not presented to the Fairfax County Commonwealth's Attorney's Office. The criminal investigation was reviewed and included as part of the administrative investigation into the actions of the officers involved in this incident.

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.⁴

The FCPD's administrative investigation, to include the findings of the criminal investigation, included a 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; a review of crime scene documentation (videos and photographs); a review of body-worn camera ("BWC") and in-car video ("ICV") footage; a review of video footage captured by the homeowner's Ring doorbell camera; and a review of the State Medical Examiner's conclusions.

The IAB investigation identified a policy infraction relating to one of the officer's response-driving to the incident. Otherwise, there were no policy violations. I believe the FCPD administrative investigation into this incident was complete, thorough, objective, impartial, and accurate; and, that the driving infraction was technical in nature and did not constitute any intentional wrongdoing.

⁴ Although no force was used on L.E. by any FCPD officer, the Office of the Independent Police Auditor automatically reviews the investigation into any individual's death which occurred while that individual was in the custody of the FCPD.

CONCLUSIONS

Because no force was used during this incident,⁵ the actions of PFC#1 and OFFC#1 were analyzed by looking to FCPD General Order (hereinafter “G.O.”) 203, which addresses and is titled PRISONER CARE AND CUSTODY;⁶ and, more specifically, G.O. 203.1, which covers and addresses PRISONER SAFETY. In its entirety, G.O. 203.1 provides that “[a]rresting officers shall be responsible for the safety and protection of all individuals within their legal custody and shall notify their immediate supervisor of any apparent injury, illness, or other condition(s) necessitating medical care. Officers with individuals in custody shall observe all applicable laws and Department policies at all times. Individuals in custody shall be secured during transport, treated humanely, and shall never be subjected to unnecessary restraint, force, or the use of profane and/or abusive language. Officers with individuals in custody are responsible for the custody of that individual until relieved by another officer or competent authority. All officers have a duty to intervene and shall report any violations of this Regulation immediately to a supervisor or division/station commander.”

The FCPD concluded that PFC#1 and OFFC#1 complied with the requirements of G.O. 203.1 as set forth above.⁷ I agree with that conclusion.

By the time the officers handcuffed L.E., they had probable cause to believe he had committed a burglary of an occupied dwelling.⁸ If not for the medical emergency, the officers would have transported L.E. to the Fairfax County Adult Detention Center (“ADC”). Accordingly, they secured him with handcuffs for the transport. They quickly removed the handcuffs and performed CPR when the medical emergency became apparent.

RECOMMENDATIONS

PFC#1 and OFFC#1, as well as the other responding officers, complied with the department’s policies for properly handling people in custody, and for keeping them safe. Unfortunately, despite their compliance to the policies in place, L.E. died while in the custody of

⁵ FCPD G.O. 540 III. 10. (effective August 12, 2022) 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.”

⁶ FCPD G.O. 203, effective August 30, 2023.

⁷ 2LT#1 proactively responded to the scene because she anticipated that force may be used on L.E.; therefore, supervisory notification of the medical situation from either PFC#1 or OFFC#1 was a moot point. See, note 2, *supra*.

⁸ Note 1, *supra*.

the FCPD. The policy infraction regarding one of the officer's driving while responding to this incident was unrelated to L.E.'s unfortunate death. I have no recommendations to make based on this incident review.

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.