County of Fairfax, Virginia

MEMORANDUM

DATE: December 1, 2025

TO: Fairfax County Board of Supervisors

Bryan Hill
County Executive

Tom Arnold
Deputy County Executive for Safety and Security

FROM: Todd Heflin
Office of the Independent Police Auditor

SUBJECT: Disposition of the Office of the Independent Police Auditor Review for:

IPA-19-11R

IPA-19-12R

IPA-19-16R

IPA-19-18R

IPA-19-22R

IPA-19-23R

As set forth in the Office of the Independent Police Auditor's Procedural Memorandum 04, dated September 11, 2023, the following Fairfax County Police Department ("FCPD") investigations have been reviewed and will not be the subject of a detailed Office of the Independent Police Auditor ("OIPA") Incident Report.[1] This Summary Memo documents this office's reviews of the investigations into complaints of incidents that occurred in 2019 but were not provided to the OIPA until May, 2023.

IPA-19-11R

FCPD Officers were dispatched to a fast-food restaurant in the 7600 block of Richmond Highway on February 24, 2019, in reference to a disorderly subject inside. Restaurant employees relayed to the responding officers that two males exited a vehicle in the parking lot and began to fight each other. One of the men (hereinafter identified by his initials "D.W.") entered the restaurant and asked to use the phone. When the second man began walking toward the door of the restaurant, D.W. grabbed a large beverage container off the counter and hurled it toward him. D.W. then ripped a cash register off of the counter and threw it at the man but it struck a window and broke the glass. D.W. picked up the cash register from the floor and threw it at the man. Before police arrived, D.W. left on foot, while the second man left the area in the car in which they had arrived.

A description of D.W. was put out by the officers who were first on the scene. Second Lieutenant #1 (hereinafter "SLT#1") observed an individual matching the description less than a block away from the restaurant and stopped him for questioning. Two officers (hereinafter "PFC#1" and "PFC#2") arrived to provide back up to SLT#1. SLT#1 obtained D.W.'s name and date of birth. D.W. informed him he was walking home from work. While not handcuffed, SLT#1 explained to D.W. that he was being detained. Police Officer First Class #3 (hereinafter "PFC#3") brought an employee from the restaurant to the location where D.W. was being detained. The employee positively identified D.W. as the individual who caused property damage earlier at the restaurant.

PFC#1 and PFC#2 then handcuffed D.W. and told him he was under arrest. After being searched, D.W. was placed in the back of PFC#1's vehicle. The arrest of D.W. by the two FCPD officers was captured on in-car video (hereinafter "ICV") from PFC#1's vehicle. Based on the video, D.W. did not resist and no force was used during the handcuffing.

He was transported back to the restaurant where he was then placed in the back of PFC#3's vehicle for transport to the Adult Detention Center (hereinafter "ADC"). The ICV captures D.W. making physical threats against PFC#3 as well as law enforcement generally. He also indicates the officers earlier had "roughed" him up and broken his thumb and wrist. Upon arrival at the ADC, D.W. repeated his allegations concerning the injuries. An ADC nurse

examined him and observed swelling around his hand. The nurse requested D.W. be taken to an emergency room to be examined. Although D.W. advised PFC#3 that he did not wish to go to the hospital, PFC#3 transported D.W. to INOVA Fairfax Hospital.

At the hospital, SLT#1 interviewed D.W. and had him sign a medical release form to obtain his hospital records. D.W. alleged he was "roughed" up by the officers but was unable to tell SLT#1 exactly when or how his thumb was injured. The hospital treated D.W. for a possible fractured thumb and he was medically cleared. He was transported back to the ADC and warrants were obtained for destruction of property and disorderly conduct.

As part of the FCPD's internal investigation, all the officers involved were interviewed, and ICV footage was reviewed of D.W. being placed in handcuffs as well as his transport.[2] Based on the facts gathered, no force[3] was used when D.W. was handcuffed and he was not thrown into the back of either police car. None of the officers indicated they used force against D.W. or observed any other member of the FCPD use force. D.W.'s initial allegations were made against SLT#1, but he was not present when D.W. was handcuffed. FCPD attempted multiple times to contact D.W. after the incident for another interview, but was unsuccessful.

My opinion is that the FCPD investigation into D.W.'s allegations was complete, thorough, impartial, objective, and accurate. Pursuant to FCPD General Order 540.1 I. G. in place at the time of this incident, no force was used against D.W. It is reasonable to believe that the injuries to his thumb occurred before his interactions with the officers, either during his fight with the other man or when he threw the store's cash register.

IPA-19-12R

Officers from the FCPD's Fair Oaks Station were dispatched on May 2, 2019, to a hotel in Centreville in reference to a possible overdose. Members of the Fairfax County Fire and Rescue Department (hereinafter "FCFRD") were already on the scene and had made contact with the subject of the call (hereinafter identified by his initials "M.B.") in the rear parking lot of the hotel.

The first FCPD officer on the scene was a Private First Class (hereinafter "PFC#1") who spoke with the FCFRD members present. PFC#1 and a Second Lieutenant (hereinafter

"SLT#1") approached M.B. M.B. was not cooperative and began walking away from the police officers.

PFC#1 stated when he approached M.B., he asked if he needed assistance to which M.B. responded "(expletive) you, I don't wanna talk to you." PFC#1 observed M.B. to be unsteady on his feet and decided to arrest him for public intoxication. PFC#1 told M.B. he was under arrest and moved toward him to place him in handcuffs. At that time, M.B. charged PFC#1 and they began to struggle, along with SLT#1.[4] The three fell to the ground and the officers continued to struggle with M.B., attempting to handcuff him.

M.B. continued to struggle, so PFC#1 deployed his electronic control weapon (hereinafter "ECW") in drive-stun mode (using the electrodes on the weapon against the subject's body). PFC#1 used it "3-4 times"[5] on different areas of M.B.'s body, but none prompted M.B. to comply. During the struggle, two additional FCPD officers arrived to assist. The four officers were successful in handcuffing M.B. and placing him on a stretcher. M.B. was strapped down; however, he continued to struggle and scream and he still attempted to break free. An FCFRD medic then administered ketamine to M.B. and he began to calm down.

A member of the FCFRD made an excessive force complaint to his chain of command concerning the arrest of M.B. and it was assigned to FCFRD Internal Affairs to investigate the allegation. The FCFRD firefighter treated PFC#1 for a cut he received while arresting M.B. and also communicated to him that he believed the force used against M.B. "wasn't right," and was unnecessary.

The FCPD conducted its own internal investigation. A total of thirteen people were interviewed by the FCPD's Internal Affairs Bureau (hereinafter "IAB") in reference to this incident, including the officers alleged to have used excessive force; the arrestee; six FCFRD personnel; and two citizens who had encountered M.B. at the motel. While FCFRD Internal Affairs conducted an internal investigation due to the complaint being lodged by a FCFRD employee to his chain of command, this summary covers only the FCPD IAB investigation that resulted from the FCFRD employee's complaint.

In his interview with IAB investigators at the Fair Oaks Hospital, M.B. stated he did not recall encountering the police. He indicated he left his room at the hotel to smoke a cigarette, but also stated he may have been dreaming. He then described being "slammed to the ground," and

strapped to "some type of gurney." He could provide few other details but denied being under the influence of any narcotics. M.B. refused to sign an FCPD authorization to obtain his confidential health information related to his injuries.

The FCFRD firefighter who made the complaint against the officers stated that he observed PFC#1 and SLT#1 grab M.B. by the arm and take him to the ground. He did not, however, see PFC#1 use his ECW.

An FCFRD Lieutenant in charge of the engine company that first responded to the scene stated that he observed the FCPD officers attempting to speak with M.B. who was walking away from them. He saw the officers and M.B. fall to the ground but he did not believe the officers threw M.B. down to the ground. When asked directly if he believed the officers used excessive force on M.B., the FCFRD Lieutenant stated no.

None of the witness statements contradicted the statements given by the officers involved in the use of force.

The section of FCPD General Order 540 governing the use of force in place at the time of this incident allows an officer to use an ECW on individuals who "have made active movements to avoid physical control" or on "violent individuals under the influence of drugs/alcohol."[6] The FCPD investigation concluded that PFC#1 and SLT#1's use of force complied with the department's policy, specifically that the force was objectively reasonable as required by FCPD G.O. 540.[7]

My opinion is that the FCPD investigation into the firefighter's allegations of excessive force being used on M.B. was complete, thorough, impartial, objective, and accurate. I agree that—based on the results of that investigation—the force used on M.B. was objectively reasonable and, therefore, complied with departmental policy.

IPA-19-16R

In the early morning hours of July 20, 2019, three FCPD officers responded to the area of Hibbling Avenue in reference to a fight in progress. While responding, they received an update which described a black male with no shirt and black pants attempting to drive away from the scene in a grey Honda sedan. Upon arrival, Police Officer First Class #1 (hereinafter "PFC#1") stopped a vehicle matching the description as it was driving in reverse onto a curb. PFC#1

observed that the driver, who matched the description provided, had a strong odor of alcohol about his person and glassy and bloodshot eyes. Police Officer First Class #2 (hereinafter "PFC#2") arrived and began speaking with the driver (hereinafter identified by his initials "A.L.") PFC#2 made the same observations of A.L. as to indicators of alcohol use. PFC#1 went to speak to nearby potential witnesses. Police Officer First Class #3 (hereinafter "PFC#3") then arrived to back up PFC#2 as he spoke with A.L. In order to inspect the vehicle for damage, A.L. exited it with no direction from the officers.

For safety reasons, PFC#2 asked A.L. to either sit on the ground or in his car. A.L. indicated he would sit in the car. As he walked to the passenger side of the vehicle, he suddenly took off running toward a nearby residence. PFC#2 and PFC#3 both gave commands for A.L. to stop, but he did not. The officers then observed A.L. jump onto a small fence before losing his balance and falling forward, striking his face on cement blocks and stone landscaping. A.L. then got up and ran a short distance before striking a three-foot-high fence that enclosed a garden, causing him to fall over the fence face first. A.L. struck his face against the ground, which was a mixture of dirt and grass. He again got to his feet and ran into the backyard of a residence before being tackled by PFC#2. After being taken to the ground, A.L. continued to physically struggle with the officers to prevent them from handcuffing him. PFC#2 took control of A.L.'s upper body and PFC#3 secured his legs. PFC#1 then arrived and assisted the other two officers with handcuffing A.L.

A.L. was bleeding from his face, so the officers called FCFRD to provide him with medical attention. When medical personnel arrived, A.L. stated he was injured when officers threw him to the ground. FCFRD transported A.L. to INOVA Fairfax Hospital where he received four stitches under his left eye and six stitches to his lip. It was noted that he also had scrapes on his feet and left shoulder. After treatment, he was medically cleared and transported to the ADC where he was charged with several violations including DWI and Obstruction of Justice without force.

The FCPD opened an administrative investigation into the incident. Second Lieutenant #1 (hereinafter "SLT#1") of the Franconia District Station interviewed A.L. in the hospital regarding the incident. A.L. provided details that were inconsistent from what he told FCFRD personnel who treated him at the scene. He told SLT#1 that the officers punched him, and that

he lost consciousness. He did not mention to the medical personnel that he was punched or lost consciousness. A.L. was uncooperative during the interview and would not sign a medical release form. He also objected to having his injuries photographed.

The FCPD's investigation found, based on officers' statements, physical observations, and ICV review,[8] that the officers used reasonable force on A.L. when they took him to the ground and handcuffed him in response to his attempt to flee. ICV footage corroborated the discussion PFC#2 had with A.L. about either sitting down on the curb or in the car and it also showed him walking toward the passenger door of his vehicle before taking off running out of camera view. Both PFC#2 and PFC#3 can be heard giving commands for A.L. to stop and later calling for medical assistance due to his injuries. All three officers were found to be in compliance with FCPD G.O. 540.13.[9] As to his facial injuries, FCPD found they were consistent with the falls described by the officers[10] and there was no evidence indicating any of the officers struck A.L. causing those injuries. My opinion is that the FCPD investigation into A.L.'s allegations was complete, thorough, impartial, objective, and accurate.

IPA-19-18R

On August 3, 2019, an individual (hereinafter identified by his initials "C.C.") alleged to an FCPD Sergeant that two FCPD officers (hereinafter "PFC#1" and "PFC#2") had used excessive force and made disparaging racial comments when he was arrested near Fairfax Boulevard and Lee Highway. C.C. made the complaint while he was in INOVA Fairfax Hospital after his arrest.

The Sergeant notified his chain of command and the FCPD IAB sent investigators to interview C.C. in relation to the complaint. C.C. stated he had drunk two beers in the afternoon before being arrested by PFC#1. He stated PFC#1 told him he was being stopped because he fit the description of someone who had stolen a bike, but he denied stealing it. He stated the officers slammed him on the ground while he was handcuffed and being cooperative. C.C. told the investigators he was homeless and did not have a cell phone when they asked him for contact information. He stated PFC#1 referred to him using a racial slur multiple times. He stated he bit the second "white officer" (PFC#2) in the arm because he was in handcuffs when he was taken to the ground and was subsequently kicked in the face. At one point C.C. indicated he did not

want to speak with the investigators anymore but later stated that he did want to speak to them. C.C. was described by the investigators as uncooperative and not answering questions so much as blurting out statements. They provided C.C. with their business cards for future contact but C.C. never contacted them again.

During his interview with IAB, PFC#1 stated he was in his police vehicle when he observed C.C. attempting to ride a bicycle and "stumbling about." When C.C. abandoned the bike and began walking adjacent to Lee Highway, PFC#1 parked his vehicle and approached C.C. PFC#1 noted that C.C. quickly became hostile and argumentative, and when PFC#1 asked if the bike was stolen, C.C. stated, "I don't (expletive) steal. I will kick your ass." C.C. repeated that he would kick the officer's ass while clenching his fists. During this time, PFC#1 smelled an odor of alcoholic beverage about C.C. and observed that his eyes were glassy and bloodshot. C.C. began walking away and PFC#1 told C.C. to stop because he was being detained. C.C. turned and approached PFC#1 with clenched fists, again stating he would kick the officer's ass. At this point PFC#1 unholstered his ECW and held it at the ready position[11] and called for back-up.

When PFC#2 arrived, PFC#1 re-holstered his ECW. PFC#1 approached C.C. from behind to place him in handcuffs but after he gained control of C.C.'s hands and reached for his handcuffs, C.C. tensed up and began to pull away from him. PFC#2 told him to get on the ground, but C.C. refused. PFC#1 and PFC#2 then took C.C. to the ground, and the two officers began to scuffle with him while attempting to place him in handcuffs. PFC#1 was finally able to handcuff one of his hands, but C.C. had the other hand under his body and would not comply with commands. C.C. bit PFC#2's forearm and held the bite until PFC#2 struck C.C. twice with his fist in the face, causing C.C. to release the bite.[12] At this time, a third FCPD officer (hereinafter "OFFC#1") arrived and was able to get C.C.'s other arm from under his body and complete the handcuffing.

A fourth officer (hereinafter "OFFC#2") arrived and assisted at the end of the handcuffing. At this point C.C. attempted to escape the grasp of the officers and lunged toward a construction fence. OFFC#2 delivered a knee strike to the back of C.C.'s thigh to gain his compliance. After the knee strike, C.C. was compliant during the rest of the movement from the arrest scene to PFC#1's vehicle.

C.C. was then moved by the officers about 150 feet to PFC#1's police vehicle. He continued to resist and attempted to kick at least one of the officers. C.C. was secured in the backseat and continued to threaten the officers that he would "beat" them.[13]

The FCFRD was called to the scene to examine C.C., and he was transported by ambulance to INOVA Fairfax Hospital.[14] C.C. was medically cleared and transported to the ADC by PFC#1.[15] Upon arrival at the ADC, C.C. again threatened to assault PFC#1.

As to the allegations of excessive force, FCPD's IAB examined the officers' actions in light of FCPD G.O. 540.5 on Objective Reasonableness.[16] Factors to be considered in determining whether an officer's actions were objectively reasonable include whether the individual poses an immediate threat to the officer and whether the subject is actively resisting. In this case, C.C. became aggressive almost from the beginning of the interaction with PFC#1. He approached the officer aggressively with clenched fists, and he threatened on multiple occasions to physically assault the officers. Finally, when the officers began the process of arresting C.C., he bit PFC#2 so hard the skin was broken, and it took two strikes to get him to release his bite. He then continued to resist and tried to break free even after being handcuffed, leading OFFC#2 to use a knee strike to gain C.C.'s compliance before transport. In light of these facts,[17] IAB found the officers' actions to be objectively reasonable and found their uses of force to be in compliance with FCPD policy.

The investigation into the complaints of racial bias by C.C. determined the allegations were unfounded. There was no evidence presented supporting the racial bias allegations.[18] No witness, either at the scene or at the hospital, recalled any racial slurs being used and the ICV—to the extent it captured the incident—corroborated this.

I agree with IAB's conclusions, and I find the FCPD investigation to be complete, thorough, impartial, objective, and accurate as to C.C.s allegations of racial bias and excessive force.

IPA-19-22R

On the evening of November 24, 2019, Police Officer First Class #1 (hereinafter "PFC#1") and Police Officer First Class #2 (hereinafter "PFC#2") were dispatched to a department store on Kingstowne Boulevard in Fairfax County in reference to a larceny in progress. Store employees indicated in their call to FCPD that a subject was observed layering

on jackets from the store and they believed he was about to leave. When PFC#1 and PFC#2 arrived, a subject matching the description provided to them exited the store with loss prevention employees behind him. PFC#1 spoke to the loss prevention employees outside the store and they provided her with a picture of the subject. PFC#1 then drove her police vehicle to the area where the individual—later identified by his initials "J.S."[19]—now was, exited her car, and yelled to him, "Police, stop."

J.S. ran away from the officers and PFC#1 and PFC#2 pursued him on foot. During the foot pursuit, PFC#1 yelled at J.S. that she would use her taser on him if he did not stop in order to have him comply, even though she did not have a taser on her person at the time she made the statement.[20] She caught up with J.S. near a neighboring store and grabbed his arms, pushing him up against a vehicle. PFC#2 caught up to them and removed his ECW from its holster. When PFC#2 drew his ECW and held it near J.S.'s neck, he said "Stop or I'll tase you" twice. He then said to J.S., "I'm going to (expletive) tase you."[21] When J.S. complied with PFC#1's handcuffing, PFC#2 re-holstered the ECW without deploying it.

J.S. was searched incident to his arrest and he was found to be in possession of a knife, a pair of wire cutters, and what appeared to be possible narcotic paraphernalia and drug residue. J.S. was placed in a police vehicle of another responding officer, Police Officer First Class #3 (hereinafter "PFC#3"). PFC#3 drove J.S. back to the original store and he was transferred to PFC#1's vehicle approximately 10-15 minutes later.

Upon arriving at PFC#1's police vehicle, the subject complained of pain to his neck and abdomen. Officers immediately requested the FCFRD to respond. After J.S. was examined, FCFRD indicated he had no visible injuries, but they would transport him to a medical facility if he requested it. He indicated he wished to be transported, so PFC#1 rode in the medic unit with J.S. to the Springfield Healthplex.[22]

A Sergeant (hereinafter "SGT#1") from the Franconia District Station responded to the Healthplex to conduct an investigation on the subject's possible injuries. J.S. stated he was injured by the officers when they took him into custody. He indicated an officer approached him, put his right arm behind his back and then slammed him against a vehicle. He stated another officer then put a taser against his neck and he felt something "pointy" touch his skin. He could not tell SGT#1 if he had been tased, but he stated the officer said "I'll tase you (expletive). I will

tase you." J.S. said a female officer was also present but did not say anything to him or use force. SGT#1 noted that J.S. was wearing a neck brace and holding his right abdominal region. J.S. was also shaking his right leg with great force.

A doctor entered the room with SGT#1, PFC#1, and J.S., and the doctor removed J.S.'s neck brace. The doctor indicated that a CT scan conducted on J.S. returned normal. Further, the doctor indicated the x-rays of J.S. showed no broken bones. J.S. was medically cleared and subsequently transported to the ADC by PFC#1.[23]

The FCPD's administrative investigation included the review of multiple ICV segments from four different vehicles—the initial two responding officers and two back-up officers who arrived during the arrest. None of the videos showed the moment of arrest and no audio of the arrest was captured, but one recorded the search incident to the arrest of J.S., where he is seen breathing heavily. On the video, J.S. exhibited no signs of pain while he was searched. Also, in audio from the post-arrest ICV, J.S. is offered medical treatment on several occasions and he either says no or does not respond.

An employee of a nearby store was interviewed. She was standing on the sidewalk when J.S. was arrested by PFC#1 and PFC#2. She stated she observed PFC#2 catch up with him and shove him against a blue minivan, in her opinion preventing him from continuing to flee. She heard PFC#2 call J.S. a "piece of (expletive)." She stated PFC#1 was not at the van when this occurred but arrived shortly thereafter. She stated both officers had their weapons drawn while they chased J.S. and holstered them as they got close to him. When asked, neither PFC#1 or PFC#2 said J.S. was called a "piece of (expletive)" by PFC#2 and they both indicated their weapons were never drawn when chasing J.S. Due to these inconsistencies,[24] the witness's statement was viewed as incredible.

Based on the investigation, the FCPD determined the officers' uses of force against J.S. were objectively reasonable and in compliance with policy.[25] I agree with this conclusion. J.S. did not complain of any injury until sometime after he was arrested, and when he did, medical personnel were summoned immediately. J.S. had no visible injuries and was medically cleared after being examined. While PFC#2 threatened to use his ECW against J.S. if he did not comply, there was no evidence that he deployed it. J.S.'s only statement was he felt something "pointy" against his neck, but there were no marks.

It is my opinion that the FCPD investigation was complete, thorough, impartial, objective, and accurate as to the arrest and use of force against J.S. PFC#1 pushed J.S. against a vehicle to stop his flight and then handcuffed him. There were no statements by any witnesses, including J.S. himself, that any additional force was used. J.S. received medical assistance and after being examined at a health care facility, he was medically released.

IPA-19-23R

Officers from the FCPD were dispatched on December 18, 2019, to an apartment in Falls Church in reference to a possible emotionally disturbed person. Upon arrival, Police Officer First Class #1 (hereinafter "PFC#1") and Police Officer First Class #2 (hereinafter "PFC#2") encountered three adults and a newborn infant in the apartment. The individuals in the apartment were the original caller (hereinafter identified by his initials "E.M."); his wife (hereinafter identified by her initials "J.G."); his mother (hereinafter identified by her initials "C.M."); and E.M. and J.G.'s newborn child. According to his mother, E.M. called the police because he "didn't feel safe" and it was a "national security issue."[26]

After speaking to E.M., PFC#1 determined that he should be taken into custody and transported to Fairfax Hospital due to his mental state. As the officers attempted to take E.M. into custody, they used force on him, including striking him with a baton. E.M. was eventually transported to Fairfax Hospital where he was examined, and a Temporary Detention Order was issued in order to hold him for additional psychological evaluation.

The following summarizes the actions of the two officers when they responded to the apartment:

> PFC#2 was the first to arrive and E.M. answered the door. E.M. asked both officers if they were "in the know" and told them they needed to check the apartment because it wasn't safe.[27] J.G.—E.M.'s wife—asked to speak with PFC#2 separately and they talked in a bedroom. J.G. conveyed to PFC#2 that E.M. was having mental health issues and was not taking his medication. She stated he was becoming more agitated and she was afraid he would harm her or their son.

E.M. then came "barging" into the bedroom[28] and asked PFC#2 if he was trying to separate him from his wife. PFC#2 explained to E.M. that they had to speak to all parties separately.

At this point all of the individuals in the apartment, including the infant, were in the same bedroom. PFC#1 began to ask E.M. about his mental health when C.M. asked PFC#1 to speak with her outside the bedroom. At this point, E.M. told the officers to leave the apartment. J.G. and C.M. left the bedroom where this conversation occurred, but then they heard noise coming from the bedroom, so they went back to the doorway.

As PFC#1 was leaving the room, E.M. walked toward him. PFC#1 put his hand up in front his body and E.M. walked into PFC#1's hand. At this point, E.M. claimed he was being assaulted by PFC#1. E.M. then approached the newborn in the crib, touching his arm. PFC#1 told E.M. not to touch the child due to his level of agitation. E.M. then tried to pick up the baby after having put the crib between himself and the officers.

At this point PFC#1 told E.M. they were going to take him for a psychological evaluation.[29] E.M. responded that he was not going anywhere with the officers. When PFC#1 approached E.M. and told him he was going to be handcuffed, E.M. stated "no," and put his hands in the air. E.M. then grabbed for PFC#1's handcuffs.[30] PFC#2 grabbed E.M. and was also trying to handcuff him.[31]

PFC#2 then grabbed E.M. from behind and took him down on the bed.[32] E.M. began flailing his legs. PFC#1 deployed his baton, striking E.M. on his legs to gain compliance.[33] When the baton strikes did not gain compliance from E.M., PFC#1 used his pepper spray on him,[34] but it did not stop his resistance either. At this point, PFC#1 got on top of E.M. and struck him four times with his baton in the upper back and shoulder area. PFC#2 then got a handcuff on E.M.'s left wrist and then E.M. provided his other hand for cuffing.

PFC#1 called for medical assistance, and they moved E.M. to an area near a window to help alleviate some of the effects of the pepper spray. J.G. and C.M. took the baby and moved to another room. Another officer then asked them to leave the apartment with the infant to avoid any breathing issues.

The FCPD IAB opened an investigation in response to C.M. lodging a complaint that officers used excessive force on her son and were racially biased against her and her daughter-in-law, J.G. She said that both women asked the officers to stop striking E.M. but they continued to "beat" him.[35]

During her interview with investigators, C.M. questioned whether the officers refused to listen to her and J.G. because they were Asian females. She believed they would have listened to her Caucasian husband had he been there. C.M. stated she did not hear either officer make any racial or sexist slurs or speak to her in a way that indicated such bias. She stated she believed "[a] person can be a racist, or looking down upon certain race. He doesn't have to verbalize that. His behavior should exhibit his thoughts." C.M. believed E.M. needed to be restrained and taken to the hospital, but she questioned why the officers used the amount of force they did to accomplish the detention.

During her interview with investigators, J.G.—E.M.'s wife—recounted E.M.'s mental health history for the investigators.[36] She said that he began acting paranoid after returning home from a business trip in September. On September 8, 2019, FCPD officers responded to their residence and E.M. was taken to the hospital on an Emergency Custody Order, which allows law enforcement to take someone into custody for a limited amount of time in order to have their mental health evaluated.[37] In November, E.M. was involuntary committed and diagnosed with schizophrenia and bipolar disorder. When their child was born in December, J.G. stated that E.M. did not eat or sleep much during the time their son was in the hospital. When they brought their son home, she said E.M. made concerning statements.[38] When asked specifically about the night of the incident, J.G. stated, "I did not feel safe for me, myself and my baby."

During his interview with investigators,[39] E.M. stated he remembered inviting the officers into his residence. He stated that he and his wife were immediately separated, which was something he did not want to happen. He wanted everyone to speak to each other in the same room. He stated that while in the bedroom with the officers, they tried to handcuff him with no explanation.[40] He believed that to be unreasonable and told the officers "absolutely not." When questioned about his initial conversation with the officers before the struggle, he had no recollection of it. E.M. acknowledged the officers showed care and compassion after he was taken into custody but believed they were wrong in how they handled the event.

The FCPD's administrative investigation examined four separate uses of force during this incident: PFC#2's takedown of E.M. onto the bed; PFC#1's initial baton strikes to E.M.'s legs; PFC#1's use of pepper spray; and PFC#1's baton strikes to E.M.'s back.

FCPD General Order 540.4 I. A. 2. defines "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."[41] An officer's actions must be objectively reasonable any time force is used. G.O. 540.1 I. L. defines objective reasonableness as "[t]he 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 considers the fact that officers must make rapid and necessary decisions regarding the amount of force to use in tense, uncertain and rapidly evolving situations."[42] This definition mirrors and is consistent with the United States Supreme Court decision in Graham v. Connor,[43] in which the Supreme Court said a particular use of force must be judged from the "objective" standard of a "reasonable" police officer on the scene, and that it must be recognized that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

At the point when force was used against E.M., he had made multiple statements leading officers to believe he had psychological issues that required treatment, this being confirmed by his wife, J.G. When told he was going to be placed in handcuffs, E.M. put his hands above his head and said on at least two occasions that he was not going to be handcuffed. At this point, the two officers knew that there was an infant child in the bedroom near E.M. and they had been told by J.G. that she feared E.M. could be violent. In an agitated state, E.M. had approached and touched the newborn at least twice, indicating he was going to pick the child up.

After E.M. indicated he was not going to cooperate with being taken into custody, PFC#2 used a takedown to allow him and PFC#1 to handcuff him. After refusing to present his hands for handcuffing, E.M. was flailing on the bed, kicking his legs. Not wanting to be kicked in the face, PFC#1 used his baton to strike E.M. in the legs, hoping to stop the kicking. When this did not work, PFC#1 deployed his pepper spray while continuing to give commands to E.M. With E.M. still actively resisting and trying to get up off the bed after being pepper sprayed, PFC#1

struck E.M. several times across his back and shoulders with his baton. The officers were then able to handcuff E.M.

Investigators interviewed all parties involved, and while one of the witnesses, C.M., believed the force used on her son was excessive, she acknowledged that he needed to be taken for psychological evaluation, and he was not going to go voluntarily. The investigation found the officers' uses of force were within FCPD policies and the law, and that they only used the force needed to take E.M. into custody.

As to the racial bias allegation made by C.M., the investigation found no factual evidence to support what the complainant admitted was a feeling. C.M. did not accuse either officer of making racial or gender disparaging comments. In contrast, the other witness present—J.G.—stated that she did not hear any comments from the officers that indicated racial or gender bias.[44] J.G. did not believe there was racial or gender bias when the officers did not listen to the women's requests for them to stop striking E.M., and that the officers were simply trying to get E.M. under control.

The investigation examined the two officers' arrest statistics and found no anomaly involving women or minorities that would indicate a possible bias. Based on the witness interviews, the arrest statistics, and the officers' statements,[45] FCPD's IAB concluded the bias complaint made by C.M. against the two officers was unfounded.

This incident occurred in the presence of a newborn infant and involved an agitated individual with a history of mental illness, who—according to his wife—was potentially violent. The officers had probable cause to believe that E.M. could cause serious physical harm to himself or others if he did not get professional mental health services. The officers explained to E.M. what they were going to do, pursuant to Virginia Code § 37.2-808(G), and gave him a chance to comply. When approached, he actively resisted their efforts to take him into custody, and only then was force used. I agree with the FCPD investigation results on both the use of force and racial/gender bias allegations. I believe the investigation was complete, thorough, impartial, objective, and accurate.

cc: Chief Kevin Davis, Chief of Police - FCPD
Commander John Lieb, Internal Affairs Bureau – FCPD

[1] OIPA Procedural Memorandum 04: Case Intake and Public Reports
[2] Body-worn camera (BWC) footage was not available for this incident. The FCPD did not begin implementing its BWC program countywide until 2020.
[3] FCPD General Order 540.1 I. G., effective March 31, 2017.
[4] SLT#1's account of the interaction with M.B. was consistent with PFC#1. He stated that M.B. had a strong chemical smell about his person, potentially phencyclidine, a powerful sedative known to cause hallucinations. SLT#1 also indicated that M.B. was able to push his body into the push-up position even while he and PFC#1 were on top of him during the struggle.
[5] PFC#1 was interviewed on May 16, 2019.
[6] G.O. 540.16. IV. B. 1. and 5., effective March 31, 2017.
[7] G.O. 540, effective March 31, 2017.
[8] In-car video from both PFC#1's and PFC#2's vehicles was reviewed.
[9] See G.O. 540.13.I. EMPTY-HAND TACTICS, effective March 31, 2017.
[10] All three officers were interviewed separately, and their interviews were consistent. None indicated they struck A.L. in the face and PFC#2 and PFC#3 both observed him fall twice on his face while running from them.
[11] G.O. 540.1 I. P., effective March 31, 2017, defines the "Ready Gun" position [of a firearm] as when "[a] firearm [is] presented toward a threat area with the muzzle lowered from the officer's eye level sufficient to see the threat area clearly."
[12] PFC#1 observed a piece of flesh removed from PFC#2's arm when C.C. stopped biting him.
[13] PFC#1 activated his in-car video at this time and it recorded C.C.'s transport to the hospital.
[14] A review of C.C.'s medical records obtained by IAB Investigators indicated he had multiple abrasions and contusions.
[15] The ICV was recording during C.C.'s transport to the ADC.
[16] G.O. 540.5. I., effective March 31, 2017.
[17] In addition to the officers who used force against C.C., multiple other officers, including two police recruits, were interviewed in reference to the incident. OFFC#1, who helped complete the handcuffing of C.C. was interviewed, as well as an officer assigned to photograph both PFC#2's and C.C.'s injuries at the hospital. None of those interviewed provided any statements that conflicted with the three officers who used force.
[18] PFC#1, PFC#2 and OFFC#2 made consistent statements in their interviews that no officers used racial slurs toward C.C. Multiple other officers, including two police recruits, were interviewed and stated they heard no officers use racial slurs.
[19] J.S. was initially uncooperative with officers and medical personnel as to his identity.
[20] PFC#1 was interviewed on December 20, 2019.
[21] PFC#2 was interviewed on December 20, 2019.
[22] PFC#1 stated that from the time he was put into her police vehicle through his time at the Healthplex, J.S. had complained constantly of pain. Once at the Healthplex, J.S. also told PFC#1 that he had cancer.
[23] While at the Healthplex SGT#1 did not observe any marks at the side of J.S.'s neck where he claimed he felt the taser nor did he observe any bruising or marks on the right side of J.S.'s abdomen. PFC#1 stated that J.S. made no more complaints of pain after he had been medically cleared and was subsequently transported to the ADC.
[24] Another inconsistency is that it was PFC#1 who caught up to J.S. and shoved him against a vehicle, which happened before PFC#2 caught up to them.
[25] G.O. 540, effective March 31, 2017.
[26] C.M. was interviewed on December 19, 2019.
[27] J.G. was interviewed on December 27, 2019.
[28] PFC#1 was interviewed on January 9, 2020.
[29] In his interview on January 9, 2020, PFC#1 provided clarity on his decision to take E.M. into custody. He stated that E.M. told him there were weapons of mass destruction in the building and they needed to stand against the walls in the apartment because there were classified documents. J.G. also told the officers E.M. was supposed to see a psychiatrist the next day but had decided not to do so. Based on these statements and E.M.'s agitated state while in the bedroom, PFC#1 decided to take him into custody for a psychological evaluation.

[30] PFC#1 stated that when he took his handcuffs out, E.M. "grabbed at or knocked the handcuffs away" (PFC#1 interview on January 9, 2020). E.M. stated he realized during the struggle that he had one handcuff in his hand before it was on his wrist and that it could be perceived by the officers as a weapon (E.M. interview on January 14, 2020).
[31] PFC#2 said that it was at this point when he noticed E.M. had gotten a grip on PFC#1's handcuffs (PFC#2 interview on December 19, 2019).
[32] PFC#2 was concerned with E.M.s resistance since the newborn was in the room (PFC#2 interview on December 19, 2019).
[33] PFC#1 said he used his baton because he could only approach E.M. directly and did not want to get kicked in the face.
[34] PFC#1 stated his baton strikes did not work, and after determining PFC#2 did not have an electronic control weapon, he decided to use pepper spray.
[35] C.M. said she observed the officers wrestling with E.M. on the bed and specifically that PFC#2 was pressing E.M. down on the bed and PFC#1 was "beating" him with a baton and used pepper spray (C.M. interview December 19, 2019).
[36] *Supra*, note 27.
[37] Virginia Code § 37.2-808 A. provides:
Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.
[38] J.G. said that E.M. questioned whether the child was his son, and he also asked J.G. if she was really his wife. She heard him say, as if to another person when no one was present, "[h]ey dude, I'm not gonna kill my wife. Hey dude I'm not gonna kill my baby."
[39] E.M. interview on January 14, 2020.
[40] While E.M.'s account is that there was no explanation, J.G. shared in her interview that she witnessed the officers telling E.M. he needed mental health treatment and indicated they would figure out a way to get him some help. PFC#2 also recalled PFC#1 telling E.M. they were going to take him for a psychological evaluation.
[41] G.O. 540, et seq., effective March 31, 2017.
[42] *Id*.
[43] 490 U.S. 386 (1989).
[44] J.G. interview on December 27, 2019.
[45] PFC#2 was asked in his interview about C.M.'s stated belief that the officers were biased. PFC#2 stated he had never based his actions during an event on race or sex. He stated he did not make any derogatory statements, nor did he hear any other officers do so.
PFC#1 was asked in his interview about C.M.'s assertion that, had she been a Caucasian male, she would have been listened to by the officers. PFC#1 stated he did not treat either female differently due to their gender or race, nor had he ever done so. He did not use any racial or derogatory language at the apartment at any time.