Public Report

Feb. 23, 2022: Use of Force Complaint

IPA-22-14R

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NOTE TO THE READER: The Fairfax County Police Department revised its comprehensive policy addressing the use of force on August 12, 2022, and again 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 February 23, 2022 (i.e., General Order 540, effective March 1, 2021).

INCIDENT

On February 23, 2022, at approximately 10:00 a.m., two police officers from the Fairfax County Police Department (hereinafter "FCPD") responded to a residence on Parkleigh Way in the Alexandria area of Fairfax County. The officers went there to conduct a welfare check on a resident (hereinafter identified by her initials, "R.B.") at the request of R.B.'s employer. The Fairfax County Fire and Rescue Department (hereinafter "FCFRD") was called to the location, and FCFRD personnel brought R.B. to INOVA Fairfax Hospital.

Several hours later (at 9:19 p.m.), FCPD Police Officer First Class #1 (hereinafter "PFC#1") and Officer #1 (hereinafter "OFFC#1") responded to the same residence on Parkleigh Way after the police received a call from R.B.'s roommate. PFC#1 and OFFC#1 explained to the roommate the process of obtaining an emergency custody order[1] (hereinafter "ECO"). A magistrate issued an ECO at 12:30 a.m. on February 24, 2022; and, at 1:26 a.m., PFC#1, OFFC#1, Police Officer First Class #2 (hereinafter "PFC#2"), and Sergeant #1 served the ECO on R.B.

When the officers first tried to take R.B. into custody inside of her home, she resisted by tensing her arms and kicking at the officers. She also screamed and cursed at them. The officers applied a Ripp Hobble[2] restraint to R.B.'s legs to prevent her from kicking and striking them. They were able to handcuff R.B. and secure the Ripp Hobble using only minimal force to control her arms and legs.

[1] Va. 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.

[2] A belt-like restraint device often used to prevent an individual from kicking while being transported.

Based on the ECO, PFC#1 drove R.B. to the Merrifield Crisis Response Center.[3] When PFC#1, PFC#2, and OFFC#1 escorted R.B. into the Merrifield Center, she dropped her weight to the ground and again started kicking at the officers. They used very little force to control R.B. and re-applied the Ripp Hobble—which had been removed—to R.B.'s legs to stop her kicking. A doctor at Merrifield, after seeing and trying to speak to R.B., decided that R.B. would be subject to a temporary detention order[4] (hereinafter "TDO") and transported to INOVA Fairfax Hospital. FCFRD personnel were called to transport R.B. to the hospital, with PFC#1 riding in the ambulance during her transport.

Numerous FCPD officers and FCFRD paramedics accompanied R.B. as she was brought into INOVA Fairfax Hospital on a stretcher. Medication was provided to R.B. and PFC#1 remained with her after she had sufficiently calmed down from her earlier agitated and aggressive state.

On April 28, 2022, R.B. made a complaint—to a Fairfax County Community Services Board clinician at Merrifield—about the actions of the FCPD officers on February 24, 2022. Her complaint was provided to the FCPD. When R.B. was contacted by an investigator from the FCPD's Internal Affairs Bureau (hereinafter "IAB"), she made the following allegations: officers dragged her out of her home without a legal warrant; the officers assaulted her, causing her to spit out blood; they restrained her and pinned her to the floor; and they sexually assaulted and raped her.

[3] After this incident, the center was renamed the Sharon Bulova Center for Community Health.

[4] Va. Code § 37.2-809 B. provides: A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion . . . a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician, clinical psychologist, clinical social worker, or licensed professional counselor treating the person, that the 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. Va. Code § 37.2-809 H. allows for the period of detention to be up to 72 hours.

CRIMINAL INVESTIGATION/PROSECUTIVE DECISION

Although the FCPD conducted only an administrative investigation into R.B.'s complaint, the criminal statutes for Assault and Battery[5] and Rape[6] were reviewed based on the allegations made against the officers.

R.B. was not charged with any crime based on the incident giving rise to her allegations.

INTERNAL ADMINISTRATIVE INVESTIGATION

The FCPD's IAB conducted the internal administrative investigation into R.B.'s allegations. That internal investigation into this incident was, in my opinion, complete, thorough, objective, impartial, and accurate. It consisted of all relevant interviews and a review of incident reports that had been completed immediately after the incident. Most important, all body-worn camera (hereinafter "BWC") and in-car video (hereinafter "ICV") footage was retrieved and reviewed.

Following the investigation, both the sexual assault allegation and the rape allegation were determined to have been "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."[7] Additionally, the officers who used minimal force to apply the Ripp Hobble device on R.B. were "Exonerated by Technology," meaning that "[t]he allegation and/or incident has been captured by technology and a review of the technology has proven the actions of the employee were in compliance with Department rules and regulations."[8]

CONCLUSIONS

The finding of "Unfounded by Technology" on the sexual assault and rape allegations was appropriate because a review of the voluminous BWC and ICV footage makes clear that the

[5] Va. Code § 18.2-57.
[6] Va. Code § 18.2-61.
[7] FCPD General Order 301 XIII. A. 2.
[8] FCPD General Order 301 XIII. A. 4.

FCPD officers did not assault R.B. or engage in any sexual misconduct—to include rape—against R.B. during this incident.

Likewise, the BWC footage shows that the force the officers used to control R.B. and the use of the Ripp Hobble were both objectively reasonable and appropriate under the circumstances the officers faced when serving the ECO and then the TDO on R.B. The FCPD's policy on the use of force by its officers allows for force "to be used only to the extent it is objectively reasonable to defend oneself or another, *to control an individual during an investigative or mental detention*, or to lawfully effect an arrest.[9] The officers had the legal authority to take custody of R.B. based on the ECO and the subsequent TDO, and they used objectively reasonable force[10] to get control of her to apply handcuffs and a Ripp Hobble device to avoid being kicked by R.B.

Based on my review of the investigation into this incident as well as the BWC footage from it, I agree that the officers were "Exonerated by Technology" as it relates to the force they used.

[9] FCPD General Order 540.0 II. (*emphasis* added).

[10] Defined in FCPD General Order 540.1 I. M. 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 takes into account the fact that officers must make rapid and necessary decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations."

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 540.1 I. G. as any physical strike or instrumental contact with an individual, or any significant physical contact that restricts an individual's movement. Force does 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 a reportable action.

Less-Lethal Force – defined in Fairfax County Police Department General Order 540.1 I. I. as any level of force not designed to cause death or serious injuries.

Deadly Force – defined in Fairfax County Police Department General Order 540.1 I. B. as any level of force that is likely to cause death or serious injury.

Serious Injury – defined in Fairfax County Police Department General Order 540.1 I. R. as an injury which creates a substantial risk of death, disfigurement, 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; considered less-lethal force. Defined in Fairfax County Police Department General Order 540.1 I. C. 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. Often referred to as a Taser.

Empty-Hand Tactics – considered less-lethal force. Described in Fairfax County Police Department General Order 540.4 II. A. 2. as including strikes, kicks, and takedowns.

OC Spray – Oleoresin Capsicum; considered less-lethal force; often referred to as "pepper spray."

PepperBall System – defined in Fairfax County Police Department General Order 540.1 I. O. 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 540.4 I. A. 1. as where an individual poses no immediate threat to an officer 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 540.4 I. A. 2. as where 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.

Aggressive Resistance – defined in Fairfax County Police Department General Order 540.4 I. A. 3. as where an individual displays the intent to cause injury, serious injury, or death to others, an officer, or themselves and prevents the officer from taking lawful action.