Public Report

April 22, 2022: Use of Force Complaint
IPA-22-15R

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Independent Police Auditor

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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 April 22, 2022 (i.e., General Order 540, effective March 1, 2021).

The department also revised its General Order addressing arrest procedures on June 24, 2022, and again on September 22, 2023. The actions of the officers involved in this incident will be analyzed using the policy provisions that were in effect on April 22, 2022 (i.e., General Order 601, effective January 1, 2021).

INCIDENT

On April 22, 2022, at approximately 12:15 p.m., Police Officer First Class #1 (hereinafter "PFC#1"), assigned to the Fairfax County Police Department (hereinafter "FCPD") West Springfield District Station, responded to a report of a person dangerously "racing" a dirt bike up and down the road in a residential neighborhood in Springfield. PFC#1 located the individual (hereinafter identified by his initials "K.K.") riding a dirt bike in the neighborhood and not wearing a helmet. PFC#1 yelled for K.K. to stop the dirt bike, but he did not. Instead, he rode at a high speed up a hill and toward a cul-de-sac. PFC#1 activated the lights and siren of his police cruiser and followed in the same direction. When PFC#1 crested the hill, he saw K.K. driving on the sidewalk in his direction. He turned off his siren and used the P.A. system in his car to instruct K.K. to stop the bike. K.K. accelerated and continued heading away from PFC#1. PFC#1 chose not to pursue K.K.

PFC#1 then drove through the neighborhood looking for K.K. He spoke to residents in the neighborhood who directed PFC#1 to a particular home on Cherry Heights Court. After seeing the dirt bike in the backyard of that residence, PFC#1 started to approach the front door. When he heard a voice from the backyard, however, he stopped heading to the door and asked the person (K.K.)—whom he recognized as the individual who had been riding the dirt bike—to come to him. K.K. replied that he did not have to and started walking to the dirt bike. When K.K. started walking the bike away from PFC#1, PFC#1 ordered K.K. to stop. K.K. turned in PFC#1's direction and stated that PFC#1 could not come onto the property. PFC#1 responded by telling K.K. that he was now under arrest. At this point, a second person (hereinafter

identified by his initials "K.T." and who was K.K.'s younger brother) was also in the backyard and appeared to be helping K.K. walk the dirt bike further into the backyard towards a shed. PFC#1 jumped over the backyard fence and began approaching K.K. K.K. let go of the dirt bike and ran into the house through a sliding glass door. Now in foot pursuit of K.K., PFC#1 followed him into the house.[1]

PFC#1 yelled several times that K.K. was under arrest, but K.K. ran further into the home. At the end of a hallway near a bedroom, PFC#1 caught up to K.K. and grabbed his left arm. K.K. pulled his arm away and prevented PFC#1 from controlling his arm and handcuffing him. K.K. was also now trying to restrain a dog with his right hand. A female (hereinafter identified by her initials "D.C." and who was K.K.'s aunt) was on the opposite end of the hallway and recording the encounter with her cellphone. A second female (hereinafter identified by her initials "X.D." and who was K.K.'s girlfriend) came out of a bathroom in the hallway. Having just showered, X.D. only had a towel covering her at this point.

When K.K. freed his left arm from PFC#1's grip, he stepped into the now vacated bathroom, leaving X.D. between PFC#1 and the door. X.D. closed the bathroom door and refused to allow PFC#1 to go in to arrest K.K., despite PFC#1 repeating several times that K.K. was under arrest. By this point, K.T. had joined the others in the hallway. He and X.D. began yelling, cursing, and using racial epithets directed at PFC#1, while D.C. continued to record but tried to de-escalate the increasingly chaotic situation. X.D. insisted that PFC#1 immediately provide his name and badge number. K.T. and X.D. both commanded PFC#1 to get out of the house, stating that he had no right to be there. D.C. also requested PFC#1 to go outside, stating that she would have K.K. come talk to him there. PFC#1 refused to leave and explained that K.K. was under arrest.

Approximately one and a half minutes after PFC#1 had pursued K.K. into the house, Master Police Officer #1 (hereinafter MPO#1) entered the house through the same sliding glass door and joined the group in the hallway. Right after MPO#1's arrival, PFC#1 tried to push X.D. and K.T. out of his way so he could get into the bathroom, but they pushed back against him. PFC#1 then opened and expanded his baton and used it for leverage (as a straight bar) to push X.D. back again. X.D. then struck PFC#1 in his chest, and he again used his baton to push

[1] At this time PFC#1 did not know that K.K. lived in the house.

her back. K.T. yelled more loudly and disparaged PFC#1 for striking a woman.[2] With the physical contact and increasingly loud yelling, MPO#1 recognized that the situation was escalating and stepped in front of PFC#1 and told him to back away. MPO#1 explained that he could not decipher what was being said because too many people were talking/yelling.[3] PFC#1 went out to the front of the house while MPO#1 engaged with D.C. MPO#1 asked D.C. to tell K.K. to come out of the bathroom. K.K. came out of the bathroom and stated that PFC#1 illegally jumped the fence and was trying to arrest him without probable cause.

PFC#1 returned to the hallway and tried to explain why K.K. was subject to arrest, and why he had pursued him into the home. PFC#1 again requested K.K. to come to him to be handcuffed, but when PFC#1 approached him, K.K. ran into an adjacent bedroom and tried to close the door. PFC#1, MPO#1, and a third officer who had arrived, Police Officer First Class #2 (hereinafter "PFC#2"), followed into the bedroom and used only empty-hand control tactics to get K.K. handcuffed. K.T. also entered the bedroom and was still agitated and continued yelling and cursing loudly. At this point, K.K. requested the officers to take him (K.K.) outside to defuse the situation. He was brought out and placed in a police cruiser.

After the situation had calmed considerably, a supervisor arrived at the scene and spoke with D.C. to provide information that she requested. The supervisor also spoke to K.K.'s mother—who had been at work—on the phone. PFC#1 transported K.K. to the Fairfax County Adult Detention Center. PFC#1 followed, and obtained warrants from a magistrate charging K.K. with multiple offenses.

On April 25, 2022, K.K.'s mother emailed a complaint to the FCPD's Internal Affairs Bureau (hereinafter "IAB") based on what she had been told by her sister (D.C.), her son (K.K.), and her son's girlfriend (X.D.) about the incident. Her complaint alleged illegal force (assault) and a trespass on her property.

[2] The body-worn camera video footage of this part of the incident (captured by PFC#1 and MPO#1) shows that PFC#1 never used his baton to strike X.D. but used it only to push her away from him.
[3] D.C.'s two very young children were also in the house, adding to the noise and confusion.

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

PFC#1 obtained arrest warrants charging K.K. with: 1) misdemeanor eluding,[4] 2) obstruction of justice,[5] 3) registration violation,[6] 4) operating with no operator's license,[7] and 5) riding an unauthorized vehicle on sidewalk.[8] At a later date, he obtained warrants charging X.D. with obstruction of justice with threats of force[9] and assault on a law enforcement officer.[10]

The FCPD conducted only an administrative investigation into PFC#1's uses of force—including the use of his expandable baton when dealing with X.D.—as well as the minimal use of force used by PFC#1, PFC#2, and MPO#1 when arresting K.K. in the bedroom. The administrative investigation also examined other non-use of force tactics used and actions taken by the officers involved in this incident, which I will address later in this report.

INTERNAL ADMINISTRATIVE INVESTIGATION

A supervisor assigned to the West Springfield District Station conducted an administrative investigation into the officers' actions during this incident. The investigation concluded that the force used was within policy, but that poor judgment and other non-use of force tactics employed during the incident were deficient and needed to be addressed by the department.

The internal investigation into this incident was, in my opinion, complete, thorough, objective, impartial, and accurate. All appropriate interviews were conducted, body-worn camera and in-car video footage was reviewed, and caselaw was analyzed to evaluate the uses of force as well as PFC#1's entry into the home. Separately, remedial measures were taken to prevent PFC#1 from handling an incident like this similarly in the future.

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[4] Va. Code § 46.2-817.
[5] Va. Code § 18.2-460 A.
[6] Va. Code § 46.2-613.
[7] Va. Code § 46.2-300.
[8] Va. Code § 46.2-903.
[9] Va. Code § 18.2-460 C.
[10] Va. Code § 18.2-57.

The FCPD concluded that the uses of force against X.D. and K.K. were within departmental policy. Specifically, the FCPD concluded that PFC#1 complied with the pertinent provisions contained in FCPD General Order (hereinafter "G.O.") 540.[11] The investigation also examined whether PFC#1 complied with G.O. 601 III. A. 6. and G.O. 601 III. A. 3.[12] and determined that he did, but that his future performance could be improved. I agree with those conclusions and will articulate my reasons in the following section of this report.

CONCLUSIONS

FCPD G.O. 540.0 on USE OF FORCE[13] states, in relevant part, "Force is to be used only to the extent it is objectively reasonable to defend oneself or another; [f]orce should be based upon the totality of the circumstances known by the officer at the time force is applied, without regard to the officer's underlying intent or motivation, and weighs the actions of the officer against their responsibility to protect public safety; and, [f]orce shall not be used unless it is reasonably necessary in view of the circumstances confronting the officer." FCPD G.O. 540.1 I. M. defines "Objectively Reasonable" as follows: "The 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."

Specific to the use of batons, at the time of this incident G.O. 540.15 I. D. read: "Officers may use the baton to resolve potentially violent situations thereby reducing the likelihood of injury to oneself or to other persons. Instances where the baton may be effective would include . . . [d]efending oneself or others from injury or assault."[14] Without using his baton to strike

[11] FCPD G.O. 540 USE OF FORCE, effective March 1, 2021.
[12] G.O. 601 ARREST PROCEDURES, effective January 1, 2021, and in effect on April 22, 2022. The FCPD investigator referenced G.O. 601 III. G. and H. for these provisions, but that version of G.O. 601 was not in effect until June 24, 2022. I reference the version that was in effect on April 22, 2022.
[13] G.O. 540, effective March 1, 2021.
[14] The current iteration of G.O. 540 (effective April 29, 2024) at VI. C. allows officers to "use batons in an objectively reasonable manner to overcome resistance in accordance with their training to reduce the likelihood of injury to themselves or other individuals."

X.D., PFC#1 did, in fact, use his baton in a way to defend himself from injury or assault.[15] PFC#1's initial use of force, therefore, was authorized by departmental policy.

The force used by PFC#1 and the other two officers while arresting K.K. was also allowed by FCPD policy. K.K. was told numerous times that he was under arrest, and PFC#1 asked him to come to him to be handcuffed. When K.K. ran into the bedroom from the hallway, the three officers followed. K.K. tensed his body and tried to prevent the officers from handcuffing him. The officers got control of K.K. using only empty hands (i.e., no instrument such as a baton), handcuffed him, and escorted him out of the house. FCPD G.O. 540.6 I.[16] allowed the officers to use such "less-lethal" force—in an objectively reasonable manner—to effect K.K.'s arrest, and that is what they did.

The FCPD internal investigation also looked into PFC#1's actions and decisions prior to any force being used. PFC#1 ran into a home while in "hot pursuit"[17] of someone who had been illegally riding a dirt bike in a residential neighborhood. Even though PFC#1 did have probable cause to arrest K.K., and FCPD policy[18] as well as caselaw[19] allowed for the pursuit and entry into the home, the FCPD's investigation concluded that he should not have pursued and entered the home because he assumed unnecessary risk by doing so. The violations involving the dirt bike were minor, and PFC#1 went alone into an unknown area. The situation became tense and confusing quickly, and PFC#1 was by himself for a period of time dealing with four individuals challenging his authority to be there.

Furthermore, PFC#1 did nothing to "de-escalate"[20] the situation in which he put himself, even though G.O. 540.2 I. B. states that "[w]hen possible, officers should seek to utilize de-escalation strategies to prevent situations from deteriorating to the point where they would need

[15] X.D. assaulted PFC#1 when she struck him in his chest.
[16] FCPD G.O. 540, effective March 1, 2021.
[17] FCPD G.O. 601 III. A. 6 (effective Jan. 1, 2021) described "hot pursuit" as a pursuit when the "circumstances are such that breaking off or delaying the chase for the time required to obtain a warrant is likely to involve significant danger to any person, loss of evidence, or opportunity for the suspect to escape." Current G.O. 601 III G. (effective Sept. 22, 2023) defines "hot pursuit" as: Any pursuit of a fleeing offender into a residence or structure where probable cause to arrest the individual exists and where potentially breaking off or delaying chase in order to obtain a warrant would likely result in significant danger to any person, loss of evidence, or escape of the suspect.
[18] *Id*. and FCPD G.O. 601 III. A. 3. (effective January 1, 2021).
[19] Lange v. California, 141 S.Ct. 2011 (2021).
[20] FCPD G.O. 540.2 I. A. (effective March 1, 2021) defines "de-escalation" as "the result of a combination of communication, tact, empathy, instinct, and sound officer safety tactics" and recognizes the "ultimate goal [of de-escalation] is to help achieve a positive outcome by reducing the need for force."

to use force" and that "[o]fficers should attempt to gain voluntary compliance and reduce the level of force required in a situation through verbal communication efforts."

Luckily, MPO#1 arrived fairly soon (one and a half minutes later), and he successfully de-escalated the situation by having PFC#1 leave the house and by explaining to D.C. what was occurring with her nephew. Unfortunately, his efforts came after PFC#1's initial use of force had been used on X.D.

PFC#1's choice to pursue K.K. into the home, and his failure to attempt to defuse the situation once inside the home, were addressed with him following the FCPD's investigation.

RECOMMENDATIONS

The FCPD's investigation into this incident identified poor choices and tactical mistakes, and those have been addressed. Fortunately, the poor decisions that were made resulted in only minimal uses of force. Those uses of force were analyzed and were determined to have conformed with departmental policy. The departmental policy on arrest procedures and hot pursuit has not significantly changed over time, and the policy appropriately addresses those issues. Consequently, I have no recommendations to make based on my review of the investigation—and the ultimate findings—into this incident.

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.