Public Report

Sept. 23, 2024: Use of Force Complaint IPA-24-18

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Independent Police Auditor

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INCIDENT

On September 23, 2024, at approximately 3:25 p.m., Fairfax County Police Department (hereinafter "FCPD") officers responded to a home on Washington Brice Road after an individual (hereinafter identified by her initials, "V.K.") called 9-1-1 and asked for police assistance with a custody dispute involving V.K., her ex-husband, and their 13-year-old daughter. When FCPD Officer #1 (hereinafter "OFFC#1"), Police Officer First Class #1 (hereinafter "PFC#1"), and Police Officer First Class #2 (hereinafter "PFC#2") arrived, they determined that the daughter did not want leave her father's home with her mother, V.K. The officers also developed probable cause to believe that V.K. was drunk and would not be allowed to drive away from the residence.

When her ex-husband told the officers that he did not want V.K. at his house, the officers gave V.K. several chances to leave her ex-husband's property, but she refused. After the officers informed V.K. that she was now trespassing and she still refused to leave, she was arrested for trespassing and for being drunk in public. OFFC#1 applied handcuffs on V.K. near the front porch of the home. He double-locked the handcuffs to prevent them from inadvertently tightening on V.K.'s wrists. The officers then escorted V.K. to the front of a police cruiser and activated its in-car video (hereinafter "ICV") system so that it would capture PFC#1 conducting a search of V.K. incident to her arrest.

V.K. began screaming incoherently while she was in the street, and she dropped her body weight, necessitating the officers to keep her upright. After being searched by PFC#1,[1] V.K. was placed in the back seat of a police cruiser and a seatbelt was fastened over her. However, within forty-eight (48) seconds of the vehicle's door being closed, V.K. removed her left hand from the handcuffs, released the seatbelt, and attempted to remove the handcuffs from her right hand.[2] PFC#1 opened the door and pulled V.K.—who was lying across the back seat—out of the vehicle so she could be re-handcuffed. At this point, V.K. resisted by attempting to pull away from the officer. PFC#1 controlled V.K. by grabbing her bicep while OFFC#1 struggled to get the handcuffs back on. V.K. quickly moved her head down and bit PFC#1's forearm near her

[1] PFC#1 explained to V.K. that she needed to be searched before being placed in a police vehicle.
[2] Captured on footage from the cruiser's ICV.

elbow. PFC#1 did not strike V.K., but did push V.K.'s face away from her to prevent any additional biting.

The officers could not control V.K. adequately, so they performed a controlled takedown of her to the ground. With V.K. on her stomach—but with no officer exerting any pressure on her back—OFFC#1 applied the handcuffs and double-locked them again. They placed her back in the cruiser and secured the seatbelt on her. Twelve seconds after the officers closed the door, V.K. removed both handcuffs and tossed them toward the driver's side door. The officers removed her from the car and reapplied the handcuffs—more tightly this time—double-locked them and put her back in the cruiser.

The officers notified their supervisor that they had used force on V.K., prompting him to respond to the scene. He requested to take pictures of V.K.'s wrists after he noted redness on them, but V.K. refused to allow pictures to be taken. OFFC#1 and PFC#2 then drove V.K. to the Fairfax County Adult Detention Center (hereinafter "ADC").

On September 25, 2024, V.K. submitted a complaint to the Fairfax County Office of the Police Civilian Review Panel (hereinafter "OPCRP") alleging that the officers "brutally battered her" and engaged in other misconduct. The OPCRP provided V.K.'s complaint to the Office of the Independent Police Auditor (hereinafter "OIPA") so that the OIPA could review the investigation into her allegations of excessive force.[3] This report will only address the allegations of use of force, while the Panel conducted an initial review of the FCPD's investigation into V.K.'s other allegations.[4]

[3] The Panel's by-laws, in Article VI. at A. 3., provide that "[w]here a Complaint alleges misconduct within both the Panel's scope of authority and the Auditor's scope of authority, the Panel and the Auditor shall each conduct a review of the Investigation within their requisite scope of authority. The Auditor and Chair shall coordinate the work of the Panel and Auditor to ensure efficient use of resources and avoid duplication of effort." For a full discussion of the respective scopes of authority of the Auditor and the Panel, visit Department Homepage | Independent Police Auditor and Police Civilian Review Panel | Police Civilian Review Panel.

[4] A three-member subcommittee of the Panel reviewed the FCPD investigation into V.K.'s non-use of force allegations at a subcommittee meeting on April 2, 2025. The full Panel voted to not conduct a full Panel review during the Panel's meeting on April 3, 2025.

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

V.K. was brought before a magistrate after arriving at the ADC. The magistrate issued warrants charging her with Trespassing,[5] Drunk in Public,[6] and Assault of a Law Enforcement Officer.[7] The FCPD conducted only an administrative investigation into the officers' actions during this incident.

INTERNAL ADMINISTRATIVE INVESTIGATION

The administrative investigation of the officers' actions was conducted by a supervisor assigned to the Fair Oaks District Station.

The internal investigation into this incident was, in my opinion, complete, thorough, objective, impartial, and accurate. All appropriate interviews were conducted, and all BWC and in-car video footage was reviewed.

The FCPD concluded that the minimal force used on V.K. was objectively reasonable and within departmental policy. Specifically, the FCPD concluded that OFFC#1, PFC#1, and PFC#2 complied with FCPD General Order (hereinafter "G.O.") 540 II and G.O. 540 IV. G. I agree with that conclusion and will articulate my reasons in the following section of this report.

CONCLUSIONS

The FCPD's comprehensive policy governing its officers' use of force is set out in G.O. 540.[8] G.O. 540 II mandates that "[t]he use or display of force options by officers shall never be performed in a reckless manner and shall only be used to the extent it is objectively reasonable to defend oneself or another, maintain control over an individual during an investigative or mental health detention, or overcome resistance to a lawful detention or arrest." Objectively reasonable force is that "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.

[5] Va. Code § 18.2-119.
[6] Fairfax County Code 5-1-1.
[7] Va. Code § 18.2-57(C).
[8] FCPD G.O. USE OF FORCE, effective April 29, 2024.

Objective reasonableness is not analyzed with the benefit of hindsight, but rather accounts for the fact that officers must make rapid and necessary decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations."[9] Finally, G.O. 540 IV. G. provides that "[l]ess lethal and deadly force options should never be used against a handcuffed individual unless they pose an active threat to an officer, others, or themselves. Objectively reasonable empty-hand tactics may be utilized to maintain control over a non-compliant, handcuffed individual."

When the officers arrested V.K. they had probable cause to believe that she was trespassing and drunk in public. The charge of assault on a law enforcement officer was sought because V.K. bit PFC#1 after being arrested. As permitted by FCPD's policy, the officers only used force on V.K. to overcome her resistance[10] to a lawful arrest.

The officers used some force on V.K. after her initial arrest and after she was first handcuffed. Because she was able to slip out of the handcuffs—two different times—it is debatable whether any force was used on a "handcuffed person" as contemplated by G.O. 540 IV. G. Regardless, that policy provision permits the use of objectively reasonable force options if a handcuffed individual poses an active threat to officers and specifically states that "[o]bjectively reasonable empty-hand tactics may be utilized to maintain control over a non-compliant, handcuffed individual." V.K. was non-compliant and she posed an active threat to PFC#1 when she bit PFC#1. PFC#1 used an objectively reasonable empty-hand tactic when she pushed V.K.'s face away from her to avoid any continued violence. Therefore, PFC#1's actions—as well as OFFC#1's and PFC#2's actions—during this incident were permitted by departmental policy.

RECOMMENDATIONS

FCPD policy thoroughly addresses when and how force options are permitted to be used by FCPD officers. The force used on V.K. during this incident was objectively reasonable and permitted by G.O. 540. OFFC#1, who handcuffed V.K. all three times she was handcuffed during this incident, was working under the tutelage of PFC#1 as part of the FCPD's field

[9] FCPD G.O. 540 III. 18.
[10] See GLOSSARY for the definitions of the varying levels of resistance.

training program. His failure to adequately secure the handcuffs the first two times she was handcuffed was addressed. Consequently, I have no recommendations to make based on my review of the investigation 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.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 reasonably appears to pose no immediate threat to an officer and displays no resistive movements but is not complying with lawful orders and appears to be 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 reasonably appear 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.III.25. as where an individual reasonably appears intended to prevent an officer from taking lawful action and pose an immediate threat of harm to themselves, another person or an officer.