

Public Report

Dec. 17, 2022: Use of Force
Complaint
IPA-23-27



Richard G. Schott
Fairfax County
Independent Police Auditor

Dec. 17, 2022:
Use of Force Complaint
IPA-23-27

A Public Report by the Fairfax County
Independent Police Auditor

Publication Date: Jan. 24, 2025



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.

NOTE TO THE READER: The Fairfax County Police Department revised its comprehensive policy addressing the use of force 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 December 17, 2022 (i.e., General Order 540, effective August 12, 2022).

INCIDENT

At approximately 7:30 a.m. on December 17, 2022, Master Police Officer #1 (hereinafter “MPO#1”) with the Fairfax County Police Department (hereinafter “FCPD”) initiated a traffic stop of an individual (hereinafter identified by her initials, “L.R.”) on Interstate 66 near Nutley Street in Fairfax County. After gauging her speed at over 90 m.p.h.,¹ MPO#1 got directly behind L.R.’s car and activated his police blue lights and siren² to initiate the stop. L.R. moved from the far-left lane to the middle lane and slowed to approximately 70 m.p.h., but she continued without pulling over. Because she did not pull over, MPO#1 kept his police lights active and re-activated his siren. L.R. failed to pull over even after MPO#1 followed her—with lights and siren activated—for approximately 3 miles. MPO#1 then pulled up beside her to try to identify who was driving in the event the driver did not ultimately pull over. Finally, after making eye contact with MPO#1, L.R. pulled to the right shoulder of Interstate 66 near the exit for Route 50.³

MPO#1 approached the car and directed L.R. to get out of her vehicle. L.R. questioned why she was being told to get out of her car, prompting MPO#1 to repeat the command to get out of the car several (a total of eight) times. In turn, L.R. repeatedly questioned why he wanted her to get out of her car and she refused to do so. Approximately thirty seconds after MPO#1 first approached and told L.R. to get out, he took hold of both of her wrists and pulled her out of the car. He escorted her to the back of her car to handcuff her in a safer area. When MPO#1 first tried to handcuff L.R., she pulled her body away from him, causing him to take hold of her upper body to get sufficient control and to accomplish the handcuffing. He conducted a limited search of L.R.’s body for weapons after handcuffing her.

¹ MPO#1 “paced” behind L.R. for approximately .7 mile before activating his lights and siren. He is heard on his body-worn camera footage stating that L.R. is driving over 90 (MPO#1 is heard reciting “92,” “93,” “96,” “97,” and “98”) miles per hour.

² While he left the police lights on, he only briefly activated the siren at this point.

³ In total, L.R. drove approximately 4 miles after MPO#1 first attempted to initiate the stop by activating his police lights and siren.

While MPO#1 struggled to handcuff L.R., L.R.'s seven-year-old daughter opened the back door of L.R.'s car and shouted, "Mom!" Using a calm voice, MPO#1 pleaded with the young girl to stay in the car. However, L.R. directed her daughter to bring her phone to her, which she did.

MPO#1 escorted L.R. to his police cruiser and instructed her to sit in its back seat. She refused, but her daughter tried to get into the cruiser. MPO#1 prevented the daughter from getting in by holding her by her arm, and he made several additional requests for L.R. to get into the cruiser. L.R. then told her daughter to call someone on L.R.'s phone.

Finally, MPO#1 used his leverage to get L.R. seated in the police car. But, when he tried to get her legs inside the car, L.R. began screaming and got out of the car. MPO#1 forced her back into it by controlling her upper body with a firm grip. Before he could close the door, L.R. again got out. MPO#1 advised L.R. that she was under arrest. Although MPO#1 then allowed her daughter to sit in the cruiser, L.R. continued to refuse to get in, stating that she would refuse until another officer showed up. MPO#1 pleaded with L.R. to get into the cruiser for over six minutes. She refused to get in, and MPO#1 did not use any additional force to get her into the car.

When Police Officer First Class #1 (hereinafter "PFC#1") arrived, he escorted L.R.'s daughter back to L.R.'s car, and L.R. finally got into the police cruiser. Other officers arrived on the scene, including MPO#1's supervisor, who obtained an initial statement (and complaint) from L.R. about her interaction with MPO#1. MPO#1 transported L.R. to the Fairfax County Adult Detention Center (hereinafter "ADC"), and her daughter was taken to the McLean District Station until a family member picked her up.

On December 16, 2023, L.R. submitted a complaint to the Fairfax County Police Civilian Review Panel (hereinafter "Panel") and it was forwarded to the Office of the Independent Police Auditor because it included allegations of excessive force. Specifically, L.R. complained that MPO#1 "tightly grabbed my arm, and forcibly removed me from my vehicle . . ." and "then dragged me pulling my handcuff." This report will address only the alleged uses

of force, while the Panel conducted an initial review⁴ of the investigation into L.R.’s other allegations.⁵

CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION

The FCPD conducted only an administrative investigation into the actions of MPO#1 during this incident.

MPO#1 took L.R. to the ADC where she appeared before a magistrate. The magistrate issued misdemeanor warrants charging L.R. with resisting arrest/obstruction of justice;⁶ disregarding signal by law enforcement officer to stop;⁷ and exceeding speed limit/reckless driving.⁸

INTERNAL ADMINISTRATIVE INVESTIGATION

The administrative investigation into this incident was conducted by the FCPD’s Internal Affairs Bureau. That investigation included interviews of L.R. and MPO#1, a review of the incident reports created following the incident, a review of relevant medical records, and a review of all of the body-worn camera and in-car video footage captured from the incident.

The FCPD concluded that MPO#1’s actions which were the subject of L.R.’s complaint—to include the force he used—were lawful and complied with FCPD policies. However, the administrative investigation identified two separate policy violations—one committed by MPO#1, and one committed by his supervisor—and the department took appropriate corrective action in response to both.

⁴ A three-member subcommittee of the Panel reviewed the FCPD investigation into L.R.’s non-use of force allegations at a subcommittee meeting on December 9, 2024. The full Panel voted to not conduct a full Panel review during the Panel meeting on January 9, 2025.

⁵ The Fairfax County Police Civilian Review 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. For a full discussion of the respective scopes of authority of the Auditor and the Panel, visit <https://www.fairfaxcounty.gov/policeauditor/> and <https://www.fairfaxcounty.gov/policecivilianreviewpanel/>.

⁶ Va. Code § 18.2-460 (E).

⁷ Va. Code § 46.2-817.

⁸ Va. Code § 46.2-862.

Specific to the use of excessive force allegation made by L.R., the FCPD concluded that the force used by MPO#1 was objectively reasonable and in compliance with the provisions contained in FCPD General Order (hereinafter “G.O.”) 540, which applies when force is used by officers. I agree with the FCPD’s conclusion, and that it was based on an investigation that was complete, thorough, objective, impartial, and accurate.

CONCLUSIONS

The Supreme Court of the United States first recognized the lawful authority of a police officer to order the driver of a lawfully detained vehicle to get out of the vehicle in Pennsylvania v. Mimms.⁹ In so doing, the Court “recognized the inordinate risk confronting an officer as he approaches a person seated in an automobile.”¹⁰ When he approached L.R., MPO#1 had more than the generalized risk recognized in Mimms. He had paced L.R. driving well over 90 miles per hour for over half of a mile, and she had not stopped for three miles while MPO#1 was directly behind her with his lights and siren activated. MPO #1, therefore, had the legal authority to detain L.R. and to order her out of her car. Whether the force that MPO#1 used to remove L.R. from her vehicle was appropriate is a separate question.

After approaching L.R.’s car, MPO#1 gave L.R. eight commands to get out.¹¹ When she refused, MPO#1 reached in and took hold of her wrists. L.R. reacted by pulling her hands away. At this point, MPO#1 pulled L.R. out of the car by her wrists. This constituted “less-lethal force,”¹² as did the subsequent force techniques MPO#1 used to handcuff L.R. and to get her into his police cruiser (i.e., his taking hold of her upper body to get sufficient control to accomplish the handcuffing; using his leverage to get L.R. seated in the police car; and, finally, forcing her back into the cruiser by controlling her upper body with a firm grip).¹³

FCPD G.O. 540 V. A. provides that “[l]ess-lethal force may be used to overcome resistance to a lawful investigative stop or arrest,” and FCPD G.O. 540 VI. A. authorizes its

⁹ 434 U.S. 106 (1977).

¹⁰ *Id.* at 110.

¹¹ FCPD G.O. 540 IV. E. requires that, “[w]henver possible, officers shall attempt to utilize de-escalation strategies and verbal communication skills to gain compliance and, ideally, prevent situations from deteriorating to the point where force may be necessary.”

¹² Defined in G.O. 540 III. 13. as “[a]ny level of force not designed to cause death or serious injury.”

¹³ After defining “less-lethal force,” *id.*, G.O. 540 III. 13. lists “[e]mpty-[h]and [t]actics, such as strikes, kicks, or takedowns” as being among the Department-sanctioned less-lethal options for FCPD officers to use.

officers to “use empty-hand tactics, including but not limited to, strikes, kicks, pressure points, or takedowns in an objectively reasonable manner to overcome resistance in accordance with their training to reduce the likelihood of injury to themselves or other individuals.” It is beyond dispute that L.R. actively resisted¹⁴ MPO#1’s lawful efforts to remove her from her car. L.R. refused to get out of her car and pulled her hands away when MPO#1 first made physical contact with her. She continued actively resisting by not allowing the officer to place her inside the back of the cruiser and even getting out of the cruiser after first being forced into it.

Lastly, the FCPD concluded that the amount of force used by MPO#1 was objectively reasonable; and because that force used was objectively reasonable, it complied with FCPD policy as well as the law.¹⁵ Force is objectively reasonable when it is “[a] 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 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.”¹⁶ MPO#1 sought compliance from, and exerted control over, an individual driving over 90 miles per hour, who did not stop for over three miles after lights and a siren were activated behind her, who refused to get out of her car when she did pull over, and who resisted physical efforts to remove her from her car.

While it is unfortunate that force was used in this incident, the force that was used was objectively reasonable. What could have been a fairly “routine traffic stop”¹⁷ turned into a tense

¹⁴ “Resistance” is generically defined in FCPD G.O. 540 III. 25. as “[v]erbal or physical exertions designed to thwart, obstruct, or defeat an officer’s lawful attempt at control,” while “active resistance” is specifically defined as “[v]erbal and/or physical actions by an individual intended to prevent an officer from taking lawful action but not intended to harm the officer.” For definitions of the varying levels of “resistance,” see APPENDIX: GLOSSARY OF TERMS.

¹⁵ In its landmark opinion in Graham v. Connor, 490 U.S. 386 (1989), the United States Supreme Court recognized that “the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it,” but that to be lawful the force used must be “objectively reasonable.”

¹⁶ FCPD G.O. 540 III. 18.

¹⁷ While traffic stops are often referred to as being “routine,” experts point out that “[t]raffic stops remain among the most dangerous interactions that officers face, and that what makes them ‘inherently dangerous is the unknown.’” The quotes appeared in the article, “Texas Gunman Lost His Job on Day of Rampage,” by Ben Guarino, in the Washington Post on September 3, 2019, at p. A14, and were attributed to Robyn Small, public relations director for the National Law Enforcement Officers Memorial Fund, and Thor Eells, director of the National Tactical Officers Association.

and rapidly evolving situation within minutes, and the amount of less-lethal force deployed under these circumstances was objectively reasonable.

RECOMMENDATIONS

The FCPD's use of force policy adequately addresses the use of less-lethal force, and it aligns with Constitutional standards. MPO#1's uses of force during this incident complied with that policy as well as his training. The department's use of force policy also stresses that the sanctity of human life is always paramount,¹⁸ and the importance of verbal communication skills in gaining compliance before resorting to force.¹⁹ Because of the sound policy already in place, I have no recommendations to make based on this incident review.

¹⁸ FCPD G.O. 540 II. states that "[i]t is the policy of the Department that all members hold the *highest regard for the sanctity of human life* and respect the dignity and liberties of all individuals." (*emphasis added*).

¹⁹ Note 11, *supra*.

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.