

# Public Report

April 25, 2019: Use of Force - Takedown



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**Use of Force - Takedown**  
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## INCIDENT

**Part of this incident was recorded on cellphone cameras and by store security cameras. In keeping with Supreme Court precedent which states that uses of force must be judged based on what the officers knew (or reasonably believed) at the time force was used, and not with the benefit of 20/20 hindsight,<sup>1</sup> I have endeavored to describe the incident based on interviews describing the officers' states of mind during the incident, as well as interviews conducted with witnesses to the incident.**

On April 25, 2019, at approximately 7:00 p.m., Fairfax County Police Department (hereinafter "FCPD") officers responded to a reported shoplifting at the Spencer's store located inside the Tysons Corner Center shopping mall. Officers found the suspected shoplifter (accompanied by two friends) in the store, and Police Officer First Class #1 (hereinafter "PFC#1") issued a summons<sup>2</sup> to her. Before leaving Spencer's, one of the suspected shoplifter's friends (hereinafter identified by the initials of her name, "LC") deliberately poured water from a water bottle onto the floor of the store; and she tossed the water bottle in the direction of Spencer's as she walked into the main mall area. Police Officer First Class #2 (hereinafter "PFC#2"), who had remained inside of Spencer's after PFC#1 had issued the summons, immediately left the store to arrest LC for disorderly conduct.<sup>3</sup> He located her in the mall area and, before handcuffing her, escorted her back to Spencer's. As he led her back to the store, LC squirmed and twisted her arms.<sup>4</sup> PFC#2 was able to get her back to the store, and he told LC that he would take her to the ground if she did not comply. In response, she tried to break free from his grip. PFC#2 positioned his left leg in front of LC and guided her over his thigh and placed her on the ground. This allowed PFC#2 to gain control of LC by placing her on her stomach and safely handcuffing her.

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<sup>1</sup> Graham v. Connor, 490 U.S. 386 (1989).

<sup>2</sup> Va. Code § 19.2-73 allows for the issuance of a summons rather than an arrest in "any misdemeanor case or in any class of misdemeanor cases . . . when there is reason to believe that the person charged will appear in the courts having jurisdiction over the trial of the offense charged."

<sup>3</sup> Fairfax County Code § 5-1-4.

<sup>4</sup> In an interview with investigators after incident, the manager of Spencer's described her actions as "fighting," "screaming," and "pulling away."

During the arrest of LC, a witness (hereinafter identified by the initials of his name, “SB”) interfered with the officers and became disorderly. SB and his girlfriend were inside a different store when LC first dumped the water on the floor at Spencer’s. They saw PFC#2 leading LC back to the Spencer’s while LC was squirming and screaming. SB and his girlfriend tried to enter Spencer’s as PFC#2 was struggling to handcuff LC. When Police Officer First Class #3 (hereinafter “PFC#3”) stopped them from entering until the handcuffing could be completed, they walked back out. However, they quickly returned to the front entrance and walked back and forth in front of Spencer's. Other mall patrons also began to crowd around the entrance to Spencer’s and yelled at the officers. The officers created a perimeter at the front of the store until LC could be handcuffed and controlled.

One of the perimeter officers, Master Police Officer #1 (hereinafter “MPO#1”), instructed the individuals to provide space and to move away from the store entrance. Instead, SB’s girlfriend stated that she did not have to listen to them and remained where she was. When MPO#1 put his hand on SB’s girlfriend’s shoulder, SB yelled, “Don't fucking touch her or else,” and took a step towards MPO#1. PFC#3 stepped in and immediately arrested SB for disorderly conduct.<sup>5</sup> When he did, PFC#3 grabbed SB's right wrist and elbow while placing him face-first against the Spencer store’s wall. PFC#3 handcuffed and escorted SB away from the chaotic scene in the mall. During his arrest, SB’s hand was scratched, and his watch was damaged. He refused an offer to have paramedics examine him. SB was transported to the Fairfax County Adult Detention Center and appeared before a magistrate.

## **CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION**

The FCPD conducted only an administrative investigation into the officers’ UOF during the arrests of LC and SB. The results of that administrative investigation into the officers’ UOF will be detailed in the following section of this report.

Based on the incident, LC was charged with disorderly conduct<sup>6</sup> and with obstruction of justice.<sup>7</sup> SB was charged with disorderly conduct.<sup>8</sup>

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<sup>5</sup> Note 3, *supra*.

<sup>6</sup> *Id.*

<sup>7</sup> Code of Virginia § 18.2-460.

<sup>8</sup> Note 3, *supra*.

## **INTERNAL ADMINISTRATIVE INVESTIGATION**

The FCPD administrative investigation into PFC#2's use of force on LC and PFC#3's use of force on SB included interviews of those involved in the incident and witnesses of the incident; review of cellphone and security camera footage; review of Department of Public Safety Communications records; review of the Incident Reports prepared following the incident; and review of Fairfax County Criminal Justice Academy training records pertaining to PFC#2 and PFC#3.<sup>9</sup>

The FCPD concluded that the officers involved in this incident used minimal force pursuant to and in accordance with departmental policy. I monitored and reviewed the internal investigation into this incident at the request of Chief Edwin C. Roessler Jr. I agree with the FCPD conclusion and will articulate the reasons for that conclusion and my agreement with it in the following section of this report.

## **CONCLUSIONS**

FCPD General Order (hereinafter "G.O.") 540.0 USE OF FORCE – PURPOSE AND POLICY, states, in relevant part: "It is the policy of the Fairfax County Police Department that officers hold the highest regard for the sanctity of human life, dignity, and liberty of all individuals. Force is 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. Force should be based on 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 as well as the individual's civil liberties. Force shall not be used unless it is reasonably necessary in light of the circumstances confronting the officer."

Additionally, FCPD's policy on use of force defines "Force" as "[a]ny physical strike or contact with an individual, or any significant physical contact that restricts an individual's movement;" "Less-Lethal Force" as "[a]ny level of force not designed to cause death or serious injuries;" and, "Objectively Reasonable" as "[t]he level of force that is appropriate when

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<sup>9</sup> Both successfully completed an in-service training session on control and hand-to-hand tactics and on takedown techniques during 2018.

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.”<sup>10</sup>

The policy goes on to identify and define varying types of resistance that individuals may engage in when interacting with officers. FCPD G.O. 540.4 provides that “Passive Resistance” is “[w]here 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” is “[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; and “Aggressive Resistance” is “[w]here 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.”<sup>11</sup>

Finally, FCPD policy sets forth varying levels of control authorized to overcome such resistance. During the incident under review, PFC#2 and PFC#3 transitioned from the use of “Low-Level Control”<sup>12</sup> to the use of “Less-Lethal Force”<sup>13</sup> in order “to gain compliance by individuals offering resistance.”<sup>14</sup> Among the recognized less-lethal force options are “[e]mpty-hand tactics, such as strikes, kicks, or takedowns”<sup>15</sup> like that deployed against LC and SB during this incident. Furthermore, FCPD G.O. 540.6 recognizes that among the “[i]nstances where less-lethal force may be effective include . . . [e]ffecting an investigative stop or arrest and [d]efending oneself or another individual from injury or assault.”<sup>16</sup>

Before being handcuffed, LC squirmed and twisted while being escorted back to Spencer’s. There, the manager of the store described LC to be “fighting,” “screaming,” and “pulling away.” Before executing a controlled takedown of her, PFC#2 told LC that he would

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<sup>10</sup> FCPD G.O. 540.1 I. G., I., and M.

<sup>11</sup> FCPD G.O. 540.4 I. A. 1., 2., and 3.

<sup>12</sup> FCPD G.O. 540.4 II. A. 1. provides officer presence, verbal communication, and handcuffs or other Department-issued restraint devices as examples.

<sup>13</sup> Note 9, *supra*.

<sup>14</sup> FCPD G.O. 540.4 II. A. 2. Their resistance constituted passive, and then active, resistance.

<sup>15</sup> FCPD G.O. 540.4 II. A. 2. a.

<sup>16</sup> FCPD 540.6 I. A. 1. and 3.

take her to the ground if she did not comply. At that point, LC tried to free herself from PFC#2's grip. As he had warned, PFC#2 then took LC to the ground in a controlled manner, got control of her, and put handcuffs on her. His actions, in accordance with FCPD G.O. 540.6, allowed PFC#2 to complete the arrest of LC.

Similarly, PFC#3's minimal use of force applied against SB complied with FCPD G.O. 540.6. When MPO#1 put his hand on SB's girlfriend's shoulder, SB yelled, "Don't fucking touch her or else," and took a step towards MPO#1, appearing to be intent on physically confronting MPO#1. PFC#3 immediately grabbed SB's right wrist and elbow to "effect . . . [his] arrest and [defend] another individual from injury or assault."<sup>17</sup>

The two officers' actions complied not only with departmental policy, but with the legal standards governing their conduct as well. FCPD's "objective reasonableness" standard contained in its general orders governing the use of force by its officers matches the legal standard provided by the United States Supreme Court in its Graham v. Connor opinion.<sup>18</sup> That opinion provided several relevant pronouncements to the incident under review, and to the crafting of FCPD's use of force policies. The Supreme Court pointed out "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;"<sup>19</sup> that such uses of force by law enforcement officers in this country are to be analyzed under the Fourth Amendment to the United States Constitution;<sup>20</sup> and, that to be lawful under that Fourth Amendment standard, an officer's use of force must be objectively reasonable. Also germane to this incident, the Supreme Court in Graham v. Connor recognized that "[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers violates the Fourth Amendment,"<sup>21</sup> and that the "calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."<sup>22</sup> Consequently, for the same reasons the

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<sup>17</sup> *Id.*

<sup>18</sup> Note 1, *supra*.

<sup>19</sup> 490 U.S. 386, at 396.

<sup>20</sup> Amendment IV to the U.S. 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.

<sup>21</sup> Note 18, *supra*.

<sup>22</sup> 490 U.S. 386, at 396-397.

officers' actions in this incident comported with FCPD policy, they also complied with the applicable legal standards.

## **RECOMMENDATIONS**

FCPD policy thoroughly addresses the use of force and aligns with constitutional standards. Furthermore, FCPD provides its officers extensive guidance—through both policy and training—on the types of force that are typically considered objectively reasonable in different situations. The FCPD analyzed the actions of PFC#2 and PFC#3 during this incident by examining their actions against the policies in place, and I believe the department's findings are appropriate. Therefore, I have no recommendations to make in relation to the use of force examined as part of this incident review.



## **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. Q. 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 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. N. 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.

