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# Police Civilian Review Panel

## Meeting Agenda

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Location: Fairfax County Government Center, Room 232

Date: January 9, 2020

Time: 7:00 pm

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### Agenda details:

#### I. Call to Order

#### II. Administrative Matters

- a. Approval of December 17<sup>th</sup> Meeting Summary

#### III. Agenda Items

- a. Approval of Initial Review Report for CRP-19-20
- b. Approval of Review Report for CRP-19-11
- c. 2019 Panel Annual Report
- d. 2020 Panel Leadership Elections

#### IV. New Business

#### V. Adjournment

Police Civilian Review Panel

December 17, 2019

Fairfax County Government Center, Conference Room 232

Meeting Summary

Panel Members Present:

Hansel Aguilar  
Jimmy Bierman  
Bob Cluck  
Hollye Doane, Panel Vice-Chair  
Frank Gallagher  
Doug Kay, Panel Chair  
Shirley Norman-Taylor

Panel Members Absent:

Sris Sriskandarajah  
Rhonda VanLowe

Others Present:

Gentry Anderson, OIPA  
Julia Judkins, Counsel  
Major Owens, FCPD  
Rachelle Ramirez, OIPA  
Richard Schott, Independent Police Auditor  
Complainant

The Panel's business meeting was called to order at 7:00 p.m.

Training Summary Approval: Mr. Kay asked if the training administered by the Fairfax County Police Department (FCPD) to the Panel and staff of the Office of the Independent Police Auditor (OIPA) was audio recorded. Ms. Anderson replied affirmatively and noted that the audio recording is posted on the Panel's website. Mr. Bierman moved approval of the Meeting Summary from the Panel's November 16<sup>th</sup> training. Mr. Cluck and Ms. Norman-Taylor jointly seconded the motion and it carried by a vote of seven, with Mr. Sriskandarajah and Ms. VanLowe being absent.

Meeting Summary Approval: Ms. Doane moved approval of the summary from the Panel's November 19<sup>th</sup> meeting. Mr. Gallagher seconded the motion and it carried by a vote of seven, with Mr. Sriskandarajah and Ms. VanLowe being absent.

Review Meeting for CRP-19-11: Mr. Kay provided a summary of the allegations made in the complaint and the timeline of events, and he outlined the Panel's Review Meeting procedures. Mr. Gallagher asked if the Panel has a statute of limitations on hearing certain complaints. Mr. Kay replied that the Panel's Bylaws define the limitations. One of the limitations is that the Panel cannot undertake a review of Initial Complaints submitted to the Panel more than one year after the incident. In this case, the complaint was filed with the FCPD exactly one year after the incident rather than to the Panel. The complainant filed a Review Request with the Panel within 60-days of the date of the FCPD's disposition

letter. Therefore, the Panel is acting in accordance with its Bylaws and can conduct a review of the Review Request.

#### FCPD Statement

Major Owens provided a summary of the FCPD's investigation into the complaint. He noted that the year time lapse from the date of the incident to when the complaint was filed negatively impacted the investigation as the FCPD wants to immediately conduct witness interviews and review available security camera footage. The investigation revealed that the officer's actions were in compliance with FCPD policy.

#### Complainant Statement

The complainant was present and identified himself. Mr. Kay thanked the complainant for attending and offered him the opportunity to state the reasons why he requested a review. The complainant stated that he felt the investigation ignored the allegations made in his complaint and that he was confused by the results of the investigation.

#### Complainant Questioning

Ms. Norman Taylor: Did you receive a letter from the FCPD detailing the investigation and its results? The complainant replied affirmatively but he stated that he still did not agree with the outcome.

Ms. Doane: How old were the children who were left unattended in the motel room? The complainant replied that one child was seven months old and the other was three years old.

Ms. Doane: You allege that there was time period of forty-five minutes where the children were left unattended. Is there any way to verify this? The complainant replied that he was outside with the police when the incident started, and his friend (who was watching the children) was called down to answer questions. He recalled that it took back up officers forty-five minutes to arrive on scene.

Mr. Aguilar: Please explain the part of the incident where the officer closed the car door on your leg. The complainant replied that while he was sitting inside the vehicle, he told the officer his children were left unattended and he needed to get them. He asked if he was under arrest and the officer replied that he was not under arrest. He claimed the officer ignored his concern about the children, so he began to open the car door and step out. When he opened the door, the officer asked for the complainant to remain in the vehicle and there was a scuffle back and forth with the door which hit the complainant's leg and the officer's knee.

Mr. Aguilar: Did you get back into the car? The complainant answered affirmatively.

Ms. Norman-Taylor: Did the officer previously ask you to stay in the vehicle? The complainant replied that the officer did not ask him to remain in the vehicle.

Mr. Gallagher asked the complainant about a firearm and drugs being found in the car as detailed in the police report. The complainant claimed that a firearm and drugs were not found in the vehicle.

Mr. Aguilar: Earlier, you stated you did not agree with the outcome of the investigation. In your opinion, is there anything the FCPD could have investigated further? Much of the complainant's response was

inaudible but he was concerned that the officer was in the dark behind the building before approaching the complainant.

Mr. Aguilar: Do you believe that the investigation included a review of security cameras in the area? The complainant replied that he did not think that security camera footage was reviewed during the investigation.

#### FCPD Questioning

Mr. Bierman: Can you provide us with additional information on the CAD (Computer Aided Dispatch)? Major Owens replied that the CAD system is the computer found in the police car which details the event history and time stamps events when officers mark "on scene."

Mr. Bierman: According to the CAD, what is the time stamp of when the event started and when back up was called? Major Owens replied that the event started at 6:34 p.m. and the backup officer arrived on scene 7.5 minutes later.

Mr. Cluck: What guidance do officers receive on the use of discretion? Major Owens replied that guidance is not given to officers on when to issue warnings versus tickets. He said that officers must consider the totality of circumstances when making decisions on scene.

#### Complainant Questioning

Mr. Gallagher: Did you leave the vehicle parked in the handicap parking spot because you did not have a driver license and did not want to get a ticket for not having a license? The complainant replied affirmatively and noted he just payed off all his tickets and did not want to receive another ticket. Mr. Gallagher noted that the complainant was evading the officer.

#### FCPD Questioning

Ms. Doane: Can you state the FCPD policy or relevant law related to children left unattended due to the detention of supervising adults? Major Owens replied he could not recite the policy from memory.

Ms. Doane: Did the investigation find that leaving young children unattended for fifteen minutes was not problematic? Major Owens replied that when officers know that there are children unattended on scene, they are attended to as soon as possible. In this situation, one officer was on the scene with four individuals in an unsecure environment with the odor of narcotics present. When back up arrived, officers immediately attended to the children.

Ms. Doane noted that the time that elapsed from when the officer found out there were children left unattended and when a backup officer checked on the children is unclear. Major Owens stated that the year delay in the submission of the complaint affected the investigation; however, the CAD records indicate that from the time the incident started, it took 7.5 minutes for the next officer to arrive on scene.

Ms. Doane: Do you know if the officer on scene told the backup officer that there may be children left unattended? Major Owens replied that when backup officers arrived on scene, the officers immediately attended to the children and had them in the lobby of the building.

Ms. Doane: Did the officer go up to the room to get the children? Major Owens replied affirmatively.

Ms. Doane: How did they get into the room to get the children? Major Owens replied that he is unsure how officers gained entrance into the room and does not want to make speculations.

#### Complainant Questioning

Ms. Doane: Why do you think your friend who was tasked with watching the children left the children unattended? The complainant replied that his friend left the children to speak with the officer and that the children were asleep.

Ms. Norman-Taylor: Did you or the officer request your friend to leave the children to speak with the officer? The complainant replied that he had asked his friend to leave the children to speak with the officer.

#### FCPD Questioning

Mr. Bierman: Can you please explain how the CAD's time stamping function works? Major Owens replied that officers mark out when they exit their vehicle by using their computer or radioing the message to dispatchers.

Mr. Aguilar: What is the retention period for in-car video footage? Major Owens replied that he believes in car video records are to be retained for one year per Virginia state law.

Mr. Aguilar: Did the subject officer have in-car video footage of the incident? Major Owens replied that the one-year time lapse creates an issue because the retention period established by Virginia law calls for these records to be purged after one year.

Mr. Aguilar: Did the investigation look into whether the in car video camera was installed in the vehicle and working that evening? Major Owens replied that due to the limitations by the retention period, the FCPD would not be able to indicate if a video ever existed.

Mr. Aguilar: In this incident, would the outstanding criminal issue related to the firearm found in the vehicle require the in-car video footage to be retained longer than one year? Major Owens again replied that due to the retention period established by Virginia law, the video was purged one year after the date of the incident.

Mr. Aguilar: According to the FCPD General Orders it is permissible for a cross-gender search to be conducted but it should be avoided if possible. Was there a request for a female officer to report to the scene to conduct the search of the involved female subject? Major Owens replied he did not know if that occurred but the officer who attended to the children was a female officer. He cannot speak to what was discussed at the scene and again noted the one-year time lapse from the time the incident occurred to when the complaint was submitted.

Mr. Aguilar: Is there any reason why the decision to conduct the search without a female officer was not explored more during the investigation? Major Owens replied that he is unable to answer the question.

Mr. Aguilar: Does the FCPD receive complaints related to cross gender searches often? Major Owens replied that it is not a common complaint.

Mr. Aguilar: How does the FCPD classify the event involving the car door? Major Owens replied that during the Panel's November 19<sup>th</sup> meeting, the Panel and Independent Police Auditor discussed and

agreed that the allegation of assault was not a use of force because it did not fall within the definition within the FCPD General Orders. The event was an inadvertent striking involving the car door and not a use of force incident.

Mr. Aguilar: The officer appeared to give commands to the complainant to remain in the vehicle. The complainant appeared to not listen to the command and was concerned about the children who were left unattended. It appeared that a part of the complainant's body was outside of the vehicle and that the officer used the door as an instrument to force the complainant to stay in vehicle. Major Owens replied that the investigation did not reveal that the officer used the door to inflict pain on the complainant for compliance.

Mr. Aguilar: Did the investigator ask the subject officer if he saw the complainant's leg outside of the car? Major Owens replied that he did not know if that question was asked.

Mr. Bierman: According to the investigative file, an individual was sitting in the passenger seat of the car, but it does not seem that he was interviewed. Why? Major Owens replied that the individual did not file any complaints related to the incident. He did not know the decision-making process related to witness interviews because the investigation was conducted at the district station level.

Mr. Bierman: According to the investigative file, a woman who was on a ride-along with an officer who responded to the scene was described. Was she questioned about this incident? Major Owens replied he could not answer the question.

Mr. Aguilar: I am concerned that there are different levels of quality when investigations are conducted at the station level versus those conducted by the Internal Affairs Bureau (IAB). Major Owens replied that FCPD policy requires IAB to investigate any complaint containing an allegation of biased based policing and that is why the investigation was reopened.

Mr. Aguilar: Is there a mechanism for complaints that contain racial bias allegations to be routed to IAB for investigation? Major Owens replied that any complaints containing bias allegations at the station level are routed to IAB. He reminded the Panel that he became the commander of IAB in May 2019, after the complaint was received.

Mr. Aguilar: Can there be a department-wide reminder for this to not happen again? Major Owens replied that IAB spoke with the district stations to follow up and ensure it does not occur again.

Panel Deliberations: Mr. Kay directed Panel Members to the three types of findings outlined in the Panel's Bylaws on which Panel Members can vote when reviewing an FCPD Investigation, which are found in the Panel's Bylaws. He invited the Panel to discuss whether the FCPD Investigation was accurate, complete, thorough, objective, and impartial.

Panel Findings: Mr. Bierman moved to concur with the findings and determinations detailed in the FCPD Investigation Report. The motion was seconded by Ms. Doane and carried by a vote of six, with Mr. Aguilar voting "Nay," and Mr. Sriskandarajah and Ms. VanLowe being absent. *Mr. Bierman will draft the Review Report.*

Panel Members requested that the report contain a comment that the FCPD track all future ride-alongs and that the FCPD explain in the investigative file why known witnesses were not investigated. Mr. Aguilar added his concern about the cross-gender search and asked that the report include a reminder

that officers ask for a back up officer of the same gender as the subject to conduct a search when possible. *Mr. Aguilar will write draft language and send it to Mr. Bierman for inclusion in the report.* Ms. Doane noted that she would like a sentence included in the report noting her concern about the children being left unattended.

Mr. Kay thanked the complainant for attending the meeting and Major Owens for participating on behalf of the FCPD.

Publishing Panel Recommendations Matrix: Mr. Kay referenced the updated draft of the Panel Recommendations Matrix and noted that it was reviewed during the December 13<sup>th</sup> Quarterly Meeting. The document will be published to the Panel's website so that the public can view the Panel's recommendations and the FCPD's responses. Mr. Kay said the document will be posted to the Panel's website by December 25<sup>th</sup> and asked for Panel Members to submit any edits to him before that time. Ms. Doane moved that the Panel adopt the Panel Recommendations Matrix. Mr. Gallagher seconded the motion and it carried by a vote of seven, with Mr. Sriskandarajah and Ms. VanLowe being absent. Mr. Gallagher noted his concerns regarding the Panel posting draft materials to the website.

December 13<sup>th</sup> Quarterly Meeting Debrief: Mr. Kay reported that FCPD extension requests, training, and the Recommendations Matrix were discussed at the last quarterly meeting. The Action Item does not give the Panel the authority to reject an extension request made by the FCPD. The Panel tracks extension requests and notifies the Board of Supervisors and the complainant when an extension is requested. Mr. Kay again thanked Major Owens and the FCPD for the November 16<sup>th</sup> training session and the group discussed conducting additional training in Fall 2020. Mr. Kay announced that the FCPD asked for clarity on the Panel recommendation from the review report CRP-18-12, which states: "The Panel recommends that FCPD periodically summarize and publish all FCPD discipline across the entire FCPD without specifically identifying the disciplined officer by name." The FCPD want to specify whether the document is to be an internal document within the FCPD or an external document to be published for the public to review. He reported that this recommendation is under consideration by the FCPD and they are consulting with other departments and the Office of the County Attorney.

Mr. Kay explained to the Panel that he had intended for the recommendation to be an internal document to be used as a tool for officers to understand what discipline is assigned to misconduct. Mr. Aguilar added that if the document was published to the public, it would boost transparency and public trust between the community and the FCPD. Mr. Kay concluded that if the recommendation is implemented, the Panel can comment on whether the document should be made public at a later point in time.

Closed Session: At 8:42 p.m., Mr. Kay moved that the Panel recess and go into closed session for discussion and consideration of matters for the purpose of consultation with legal counsel as enumerated in Virginia Code Section 2.2-3711(a)(8). Ms. Doane and Ms. Norman-Taylor jointly seconded the motion and it carried by a vote of seven, with Mr. Sriskandarajah and Ms. VanLowe being absent.

At 8:51 p.m., Mr. Kay moved that the Civilian Review Panel certify that, to the best of each member's knowledge, only public business matters lawfully exempted from the open meeting requirement and only such public business matters as were identified in the Motion by which the closed session was convened were heard, discussed or considered by the Panel Members during the Closed Session. All

Panel Members certified the motion and it carried by a vote of seven, with Mr. Sriskandarajah and Ms. VanLowe being absent.

Proposed Amendment to the Complaint Form: A draft complaint form and draft website language was circulated to the Panel and copies were made available to the public. Mr. Kay said that the purpose of the amendments to the form and the website language is to make clear to complainants that the Panel is required to forward all complaints to the FCPD upon receipt. Ms. Doane pointed out that the complaint form does not provide instructions for a complainant to submit their complaint anonymously. Mr. Bierman replied that the complaint form has always included a section for the complainant to insert their name and contact information; if a person provides contact information, the complaint can be processed. Ms. Doane asked if the OIPA staff is considering similarly updating the complaint form for the Independent Police Auditor to which OIPA staff answered in the affirmative. Ms. Doane moved that the complaint form and website language be updated to make clear that the Panel must forward complaints to the FCPD. Mr. Bierman and Mr. Gallagher jointly seconded the motion and it carried by a vote of seven, with Mr. Sriskandarajah and Ms. VanLowe being absent.

New Business:

Mr. Kay announced that elections for the position of Panel Chair and Vice-Chair will occur at the Panel's meeting on January 9<sup>th</sup>. Ms. Doane noted that the Vice-Chair must be available to serve as chair the following year.

Mr. Kay, Mr. Cluck, and Ms. Norman Taylor are eligible for reappointment to the Panel for a term of three years in February 2020. Ms. Anderson reminded them to reach out to the incoming Chairman of the Board of Supervisors, Jeff McKay, to notify him of their interest in being reappointed.

Mr. Aguilar announced that he took a ride-along in the Fair Oaks district. He said the officer he was assigned to was very professional. He told the Panel about an incident they responded to involving a person experiencing a mental health crisis. Mr. Kay encouraged every Panel Member to take a ride-along.

Next Meeting: The Panel's next business meeting is Thursday, January 9<sup>th</sup>, 2020, at 7:00 p.m. in the Government Center, Conference Room 232.

The meeting was adjourned at 9:03 p.m.



# Fairfax County Police Civilian Review Panel

## Initial Review Report

Request for Review – Basic Information	
Complainant: ██████████	CRP Complaint Number: CRP-19-20
<b>Subcommittee Members:</b> <ul style="list-style-type: none"><li>• Bob Cluck, Review Liaison</li><li>• Shirley Norman-Taylor, Review Liaison</li><li>• Hollye Doane, Panel Vice Chair</li></ul>	
<b>Complaint Submission Date:</b> August 12, 2019 (Initial Complaint: May 13, 2019)	

This report is subject to Federal and Virginia Freedom of Information Acts. Panel members will maintain to the greatest extent possible under the law and in accordance with the Bylaws all sensitive and confidential information not intended for a public release.

### Purpose

The Initial Review Report outlines the Review Liaisons' (a) determination on Panel authority to review an investigation based on complaint details and in accordance with the Bylaws and (b) recommendations on whether to accept or decline to review a submitted Request for Review.

### Findings

The complainant alleged that the officer did not issue her a ticket for a traffic violation which she was due to appear in court to address. She also alleged that the statements of her mother, who was a witness to the event, were not included in the police report.

Article VI(A)(1) of the Panel's Bylaws states: "The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity, and impartiality where (1) the subject matter of an Investigation is an allegation of 'abuse of authority' or 'serious misconduct' by a FCPD officer, and (2) a Review Request is filed."

The subject matter of this investigation concerns an error in the issuance of a summons for a traffic violation. The Subcommittee finds that subject matter of the investigation is not an allegation of "abuse of authority" or "serious misconduct" by the FCPD officer in question.

### Recommendation

The Subcommittee recommends that the Panel not undertake a review of CRP-19-20 because the complaint does not meet the scope of review criteria set forth in its Bylaws.

Panel Bylaws Abuse of Authority and Serious Misconduct Checklist		
Criteria Met?	Abuse of Authority and/or Serious Misconduct	Complainant Details*
No	Use of abusive racial, ethnic or sexual language or gestures.	
No	Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability.	
No	Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.	
No	Reckless endangerment of detainee or person in custody.	
No	Violation of laws or ordinances.	
No	Other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Canon of Ethics, that occur both on or off duty.	

**\*Confidential and sensitive information shall not be disclosed in this document. Contact the Chair or Panel Legal Counsel for questions and/or additional information.**



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** 1/9/2020

**TO:** Fairfax County Board of Supervisors  
Col. Edwin C. Roessler, Jr., Chief of Police  
Mr. Richard G. Schott, Independent Police Auditor

**FROM:** Fairfax County Police Civilian Review Panel

**SUBJECT:** Report of Panel Findings in case of Complaint No. CRP-19-11

### I. Introduction<sup>i</sup>

The Panel held a Panel Review Meeting on December 17, 2019, to review the Investigation resulting from the complaint first submitted to the Panel on May 21, 2019. The requested review was of an investigation originally completed on April 4, 2019, following a citizen complaint submitted directly to the FCPD at the Franconia District Station on December 27, 2018. In June 2019, the FCPD reopened its investigation and issued a second disposition letter dated August 30, 2019.

After reviewing the Investigation file, the Panel Members present<sup>1</sup> voted 6-1 that the Investigation was complete, thorough, and accurate, and to concur with the ultimate findings of the FCPD documented in the Investigation Report. The Panel Members present determined to present several comments and recommendations for future Investigation Reports and police procedures based on unique aspects of the file.

### II. Background Facts and Review Request

On December 27, 2017, at approximately 6:00pm, the individual who filed the complaint at issue (hereinafter referred to as the "Complainant") was stopped by a uniformed FCPD Officer (herein after referred to as the "Subject Officer") in a marked cruiser for parking in a handicapped parking spot without a handicapped sticker in the parking lot of an extended stay hotel where the Complainant and his family were staying. The Complainant, who is a Black male, was driving the car with a Black male passenger in the front seat and a White female passenger, his wife, in the back seat. The Complainant had exited the car and was walking into the hotel when the Subject Officer stopped him. The Complainant would later admit at the Review Meeting that he parked in the handicapped spot because he was nervous that the Subject Officer was following him and the Complainant did not have a driver's license.

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<sup>1</sup> Panel members Rhonda VanLowe and Sris Sriskandarajah were not present.

Upon being stopped, the Complainant acknowledged to the Subject Officer that his car did not have a handicapped sticker but told the Subject Officer that he believed that the renter of the car had one. The Complainant offered to go upstairs to retrieve the sticker from the renter, but the Subject Officer instructed the Complainant to return to the vehicle and the Subject Officer also explained that he would be calling for backup. The Complainant called his family friend, the renter of the car, who came down to explain the situation, but the family friend, a Hispanic female, admitted that she did not have a handicapped sticker.

While waiting for other officers to arrive, the Subject Officer requested that all four individuals remain in the vehicle. According to the Subject Officer, he also informed the individuals that he smelled marijuana in the vehicle. According to the Subject Officer, The Complainant admitted to having smoked marijuana in the vehicle earlier that day.

The Complainant repeatedly asked the Subject Officer if he was under arrest, was told that he was not, and then informed the Subject Officer that his children were left unattended up in the hotel room. In addition, the Complainant's family friend who had been watching the children and had come down from the hotel room explained that the stove was still on. The Complainant's children were three years old and seven months old. The Complainant insisted that he be allowed to attend to his children, but the Subject Officer thwarted his efforts to leave the car, who prevented the Complainant from opening the door, leading to the Complainant's leg to be pinched in between the door and the car. The Complainant put his hands outside the window of the car, informed the officer that he would be remaining in the car, and moved his leg back into the car. The Complainant was not injured.

When backup arrived, consisting of several marked cruisers, additional police officers, and a police ride-a-long Department of Public Safety Communications civilian, the Complainant and the other passengers were removed from the car. Male officers patted down all occupants of the vehicle. The Subject Officer handcuffed the Complainant and placed him in a police cruiser. Officers retrieved the children from the hotel room and brought them to the lobby.

Upon searching the vehicle, the Subject Officer informed the Complainant that he had recovered a small bag with apparent marijuana residue on the driver's side of the vehicle and a loaded handgun in the glove compartment with a filed off serial number. The Subject Officer issued a summons to the Complainant for possession of marijuana. The Complainant did not receive a summons in connection with the handgun and ultimately was never charged as all investigatory efforts (including using fingerprint and DNA evidence) failed to tie the gun to a particular person.

According to the Complaint, the whole incident took roughly forty-five minutes, during which the Complainant's young children were left unattended. The Complainant calculated his estimate by noting that roughly ten minutes passed before his family friend came down from the hotel room, during which the Subject Officer attempted to run the Complainant's social security number and date of birth, that further fifteen or so minutes passed before backup

arrived, and that another fifteen or so minutes further passed before the children were retrieved. The Complainant also asserts that the gun recovered on the scene was not his and did not, in fact, come from the car, and that there was no marijuana in the car either. The Complainant further asserts that the pat downs of his female companions were improper. In addition, the Complainant asserts that he was assaulted when the Subject Officer closed the door on his leg. Finally, Complainant asserts that he was the victim of racial profiling.

Specifically, the Complaint read:

- Complaint (1): [Subject Officer] claiming he found Marijuana in the vehicle.
- Complaint (2): Being charged with Possession of Marijuana.
- Complaint (3): Racial Profiling.
- Complaint (4): Assault by a police officer.
- Complaint (5): Records stating I had a weapon (GUN) but never was charged with having a weapon in my possession.
- Complaint (6): Children unattended to for 45 minutes.

The Commonwealth's Attorney dismissed the possession of marijuana charge against the Complainant. The Complaint alleged his attorney advised him to wait a full year until the statute of limitations had run out on the possession charge before filing a citizen complaint against the Subject Officer on December 27, 2018.

### III. Procedural Background

As explained above, the Complainant filed a citizen complaint on December 27, 2018, directly with the Franconia District Station. The Complainant's family friend and his wife also filed complaints at that time.

A supervisor at the Franconia District Station investigated the incident, interviewing the Complainant, his wife and his family friend, the Subject Officer, and two police officers who had provided backup. This investigation addressed all allegations of misconduct in the complaint, including the Complainant's assertions of racial bias. Although the investigator located no videos documenting the incident due to the passage of time (over one year), the investigator was also able to review the Computer Aided Dispatch ("CAD") history of the patrol cars involved, which documents when officers leave and reenter their cars. The investigator further reviewed the evidence logs from the time of the incident in question and the history of the prosecution of the case—or in this instance the lack thereof.

On April 4, 2019, the FCPD informed the Complainant that it had concluded "a comprehensive examination of the facts and circumstances surrounding the allegations" and found that the Subject Officer's initial stop "was not based upon bias, but instead, on a clear violation of law for parking in a handicapped parking spot without the proper placard displayed." Further, addressing the other allegations, the letter to the Complainant explained: A review of all relevant information, in addition to witness interviews, indicated that [Subject Officer] acted in accordance with policy and procedures. [Subject

Officer] detained you for the plain smell of marijuana in the vehicle and gave you lawful commands to remain in the vehicle. When you attempted to exit the vehicle, he sought to contain you by closing the door. When he subsequently searched the vehicle, evidence of marijuana was located as well as an illegal gun. All evidence recovered was entered into the Police Department Property Room. As soon as it was practical to do so, [Subject Officer] ensured your children were attended to. Finally, it is permissible by Department Policy, for an officer to conduct a cross gender search or pat down.

The letter further informed the Complainant that he could request that this Panel review the investigation of his complaint.

On May 21, 2019, the Complainant requested review by the Panel. Notably, the Complainant's wife and his family friend did not request the Panel review their initial complaints. Nevertheless, the Investigation addressed all three complaints.

Because the complaint contained an allegation of bias-based policing, and specifically racial profiling, the Internal Affairs Bureau ("IAB") chose to reopen the investigation and notified the Panel of its intent to do so on June 4, 2019. A Second Lieutenant conducted a second investigation along the same lines as the first, also entailing witness interviews, including with the Complainant, and a comprehensive record review. This second investigation occurred because the initial complaint had been reviewed by the Franconia District Station and not the IAB. On August 30, 2019, the FCPD informed the Complainant that:

During this review, [IAB] completed additional investigative steps into the allegation of bias based policing. [IAB] observed that this specific allegation was investigated [by the Franconia District Station], however, not to the standards of the Internal Affairs Bureau. Additional investigative steps that were taken regarding your bias based policing allegation included seeking clarification from you regarding what occurred during the event, further interviews with the involved officers, and discussing your experiences, and related options, regarding your concerns with other agencies that were involved. The additional factfinding measures were completed and documented. At the conclusion of this supplemental investigation and review, the outcome and analysis came to the same conclusion: [Subject Officer's] actions were within Department policy.

The letter was sent to the Panel in addition to the Complainant.

On Monday, October 7, 2019, a subcommittee of the Panel met to discuss the Investigation. Having reviewed the Investigation and the complaint, the Panel determined that the Investigation concerned matters within the purview of the Panel because complaint was timely submitted and concerned allegations that rose "to the Panel's standard of abuse of authority and serious misconduct."

At the Panel meeting on November 19, 2019, the subcommittee recommended the Panel review the Investigation. In light of the claim of assault, the subcommittee asked the Independent Police Auditor whether the allegations rose to the definition of use of force set forth by FCPD General Order 540 and thus was within his purview. The Independent Police Auditor and the Panel agreed that the allegations were not sufficient to require that the Auditor, not the Panel, review the allegations. By a vote of 8-0, the Panel Members present<sup>2</sup> accepted the recommendation of the subcommittee, determined that the Panel had the authority to review the Investigation, and issued an initial disposition notice.

#### IV. Panel Meeting

All Panel Members present for the Panel Review Meeting reviewed the Investigation Report prior to the Meeting on December 17, 2019. The Complainant and his family friend were present at the Panel Review Meeting. The Complainant made a statement and answered questions of the Panel. Major Matt Owens appeared on behalf of the FCPD and answered questions from the Panel.

Based on the Complainant's statement and responses to questions, Major Owens's statement and responses to questions, and the Panel's review of the Investigation file, the Panel made the following findings:

The Investigation interviewed the Complainant and his wife and family friend, also complaining witnesses; the Subject Officer; and two other officers. The Investigation also examined the available records of the patrol cars in question. The Investigation further reviewed contemporaneous files concerning the incident, including police reports and evidence logs concerning the handgun and the alleged marijuana found in the car.

The lengthy passage of time between the incident and the Complaint created challenges for investigators and, unfortunately, meant that certain potentially important evidence simply was not available. For instance, under state law, police departments are required to retain video evidence for one year, but there was no in car video or similar evidence that had not been purged after a year had passed.

That said, FCPD vehicles are equipped with CAD systems. Based on the CAD information, the Subject Officer exited his vehicle and the event started at 6:34pm.<sup>3</sup> According to CAD information from the other patrol cars involved, officer backup arrived on the scene within seven and a half minutes of the Subject Officer's request. While there were discrepancies between the perspectives of the complaining witnesses, who claimed the incident had lasted forty-five minutes, and the police officers, who asserted a much shorter timeline

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<sup>2</sup> Panel Member Hansel Aguilar was not present.

<sup>3</sup> Officers are trained to press a button in their vehicle connected to the CAD system to signify when they leave and enter their vehicles. This system helps track the location of police officers.

(and who claimed that the children were attended to after backup arrived on the scene), the Investigation found that the evidence did not as a whole suggest the lengthy detention asserted, nor that the safety of the Complainant's children was compromised. While the Panel expressed concern that there was not a clear policy in place to deal with a situation where children were left unattended by a then-detained individual, the Panel concurred with the Investigation's finding that it was reasonable for a solo officer dealing with an illegally parked car smelling of marijuana who received backup within seven and one half minutes to continue to detain the individuals in question and deal with the children upon the arrival of backup.

Further, the Complainant's claim that neither a firearm nor marijuana were found in the car was simply unsupported by the evidence uncovered in the Investigation. The officers involved contended that they found marijuana and the handgun in the vehicle. The Subject Officer submitted the contraband to the evidence custodian contemporaneously with the incident. The Complainant argues, more or less, that the fact that the police never obtained a gun charge or pursued the simple marijuana possession charge suggest that said contraband was not really seized. But this position is mere unfounded speculation; charging discretion simply does not prove that evidence obtained and logged never existed. Moreover, the Investigation revealed, for example, that the FCPD tested the firearm for fingerprint and DNA evidence in the hopes of connecting it to the Complainant or another person. Said testing was unsuccessful.

The Panel also considered the claims that the Complainant had been assaulted. The Complainant admitted that he was unhurt when the Subject Officer closed the door that struck his leg. The parties were all in agreement that the Subject Officer was preventing the Complainant from leaving the vehicle during the stop. Nothing in the Investigation suggested anything more than an inadvertent striking of the Complainant, rather than a use of force (as explained by the Independent Police Auditor). The Panel's lone dissenter disagreed with this finding and suggested that a use of force investigation should have been conducted. However, the Panel found that the incident had been properly investigated.

With respect to the two females who complained of invasive pat downs conducted by a male officer, the Panel found that the Investigation took these allegations seriously but was reasonable in clearing the Subject Officer. While the department has expressed a preference for same-gender pat downs, opposite gender pat downs are permissible, and the evidence did not support the assertion that the pat downs had been excessively invasive. Nevertheless, the Panel discussed making a comment or recommendation regarding future cross-gender pat downs. *See Part V supra.*

Lastly, the Panel considered the allegations of racial profiling. The Complainant offered that he was a target and asserted that Subject Officer had no basis to stop him expressing his belief that he was stopped because he is Black, and his wife is White. Complainant claimed that Subject Officer initiated racially motivated contact with him before he parked illegally in a handicapped stop.

The Investigation did not support the Complainant's claims. The Subject Officer claimed that he stopped the Complainant only after the car was illegally parked, at which point



the Complainant had exited the vehicle. The Complainant admitted that he had parked illegally and was trying to get away from the Subject Officer because he was driving without a license and did not want to get a ticket. The written complaint provided by the Complainant's wife, contradicted the Complainant's position, as did the interview with Complainant's wife: she asserted that the police car had been driving behind the car and Subject Officer made contact with Complainant only *after* Complainant had parked in a handicap space. The interview with Complainant's wife further contradicted claims of the husband that he did not use marijuana and asserted her belief that Complainant had pulled into the handicapped space because he did not have a license. Complainant also could not explain his belief that he alone was targeted because of his race, whereas his front seat passenger of the same race was not charged with any crime.

Moreover, the IAB made the deliberate choice to reopen and review the case in light of the complaint of racial bias. The IAB conducted additional interviews and pulled arrest statistics for the Subject Officer and similarly situated officers, namely those in the Franconia District Station. The statistics revealed that the Subject Officer arrested fewer Black suspects than the average police officer of the Franconia District Station.

While one Panel Member expressed concern that the initial district station Investigation had not been as comprehensive with respect to the racial bias complaint in particular, the IAB reopened the Investigation on its own volition to ensure that the matter was handled in accordance with IAB practices. In light of the actions taken by the IAB and the investigative choices made in considering the complaint, the Panel found by a vote of 6 to 1 that the Investigation is complete, thorough, and accurate, and concurred with the conclusions of the Investigation.

At the same time, the Panel felt that room for improvement in the Investigation exist, and decided to make certain Comments and Recommendations seen below.

First, while the Investigation included interviews with the Complainant, his wife, and his family friend, the Police failed to interview with the passenger in the front seat of the car. Major Owens did not know why the front seat passenger had not been interviewed. While a number of innocent hypothetical reasons may exist for why the front seat passenger was not interviewed, including, given the passage of time, a difficulty finding said witness, the Panel criticized the Investigation for failing to provide any explanation for why a known and obvious witness had not been interviewed.

Second, while the Investigation interviewed several responding officers, the ride-a-long civilian who arrived at the scene and apparently played a role in securing the children was also never interviewed. The Investigation determined that the officer described in complaining witness statements as a "female officer," a "rookie cop in training," and an "officer in training" was, in fact, a police ride-a-long Department of Public Safety Communications civilian, but the Investigation Report admitted that investigators could not determine who that individual was. The Panel did not have reason to believe that the investigator had never tried to identify the ride-a-long individual, but it did fault the Investigation, and the record keeping related to ride-

a-longs, for being unable to obtain a statement from a potentially unbiased observer to the incident, given that she was neither a member of the Police Department nor an individual detained by the Subject Officer. Indeed, such a witness could have been just as helpful in clearing the actions of the Subject Officer as she could have been supporting the allegations of the complaint.

Third, while the Panel concurred with the Investigation Report finding that the Subject Officer had not acted improperly when waiting for backup before addressing the issue of unsupervised children, the Panel expressed concern that there was not clarity with respect to how an officer should make such decisions.

An audio recording of the December 17, 2019, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-dec-18-2019>.

On January 9, 2020, the Panel discussed the Finding Summary; an audio recording of that meeting may be reviewed here: **Insert Link.**

#### V. Recommendations

- a. With respect to obvious, known witnesses who are not interviewed, Investigation Reports should include an explanation for why such an interview failed to occur.
- b. FCPD civilian ride-a-long individuals should be tracked and recorded in all instances. A police ride-a-long individual should never be unknown such that when an incident containing alleged misconduct is investigated, the civilian witness cannot be determined.
- c. The FCPD should implement a clear policy for what officers should do in situations where children are left unattended by detained individuals to make sure that such children are safe during such incidents.
- d. As referenced in the case file and confirmed by Major Owens in the review meeting, cross-gender searches and or pat downs are permissible. However, as outlined in FCPD General Order 203, officers are instructed that, “Whenever practical, cross sexual search should be avoided.” The Department should seek to emphasize and clarify the instruction provided in GO 203 regarding cross sexual searches via roll-call trainings and or department wide reminders to ensure that officers are taking the necessary steps, when practical, to avoid cross sexual searches and pat downs.

**CC:** Complainant

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<sup>i</sup> Unless otherwise noted, terms with initial capital letters are defined in the Bylaws.

## MEMORANDUM

To: The Fairfax County Police Civilian Review Panel

From: Hansel Aguilar, Panelist

Date: January 9, 2020

Re: Warren Complaint Dissent

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### I. Introduction

After a careful consideration of the case file, the review meeting deliberation, and the Majority report of the Warren matter, I find that I am not able to support the conclusion stated in the report that the "...Investigation is complete, thorough, and accurate..." At best, the investigation is inconclusive on various areas of concern brought forth by the complainant.

II. The Investigation concerning the allegation of assault by a police officer was not completely, thoroughly and accurately investigated and is inconclusive

Determining whether the officer exhibited an excessive use of force on the complainant is likely a question that cannot be answered at this point. That said, neither can a definitive conclusion be made based on the information reported in the investigation.

The complainant reported that he was struck by the door of the vehicle when the subject officer pushed the door shut to contain him in the backseat of the vehicle. During the investigation of the allegations lodged by the complainant, the subject officer did not deny that he closed the door of the vehicle and informed the Department that it appeared the complainant was attempting to exit the vehicle at the time when he instructed him to remain in the vehicle. In his complaint to the Department, the complainant classified this event as an "assault by a police officer."

While the FCPD investigators did question the subject officer regarding this allegation of force, the Department did not classify the event as a “use of force” incident even though FCPD General Order 540 describes this event as force:

*“G. Force: Any physical strike or instrumental contact with an individual, or any significant physical contact that restricts an individual's movement.”*

Based on the review of the file, there is sufficient reason to believe that there was instrumental contact (i.e. the door) with the complainant caused by an action taken by the officer. The inquiry should then have moved to attempt to identify why the event was not classified as a use-of-force incident and whether the force was justified. The majority asserts in its report that in the November 19, 2019<sup>1</sup> Panel meeting the IPA explained that the event appeared to be an “inadvertent striking.” While this is accurate, the IPA also indicated in that same meeting, “that could certainly be reviewed by the Panel as well.” [07:30-07:39]<sup>2</sup> As such, I maintain that the FCPD failed to properly document and investigate that allegation as a use of force incident.

A thorough and complete investigation of the incident would have required a questioning of the witnesses regarding this allegation and attempting to review available footage (i.e. surveillance footage of the hotel cameras; other public cameras, and or in-car-video). As noted in the Majority’s report, due to the passage of time from when the police encounter occurred and when it was investigated, some evidence appeared to be unavailable. The case file, however, did not indicate whether the investigators attempted to review the footage or just assumed it was no longer available due to the lapse of time. Specifically, in the December 18, 2019 Panel meeting, I asked Major Owens whether he had knowledge of whether the subject officer had an in-car-video activated on the day in question, to which he replied, “it would be impossible to tell if he had an in-car-video, if it was working that night, or anything because of the time frame of the initial incident to the time of the complaint prohibits us from finding that.” [41:25-41:40]<sup>3</sup> Furthermore, Major Owens explained to the Panel that even if there was an in-car-video system

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<sup>1</sup> Panelist Aguilar was not present for this Panel review meeting; however, he was able to review the recording of the meeting.

<sup>2</sup> A transcript of the meeting is not available, however as it is practice of the Panel, a link to the SoundCloud audio recording of the public meeting can be accessed via <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-nov-19-2019> . Time stamps of selected statements from the session are provided in brackets.

<sup>3</sup> A link to the SoundCloud audio recording of the public meeting can be accessed via: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-dec-18-2019> . Time stamps of selected statements from the session are provided in brackets.

installed in the subject officer's patrol cruiser on the day of the incident in question, there would be no way for the FCPD to determine whether it was activated on the day of the incident and whether it collected any footage because of the lapse of time from when the incident occurred and when it was investigated.

### III. Witnesses were not completely, thoroughly and or accurately identified or interviewed

As noted in the Majority's report and recommendations, the Investigation Report indicated that the investigators did not identify and or interview all known witnesses.

### IV. Cross-gender pat down/searches

While the FCPD (via the Investigation Report and Major Owens affirmation at the Panel meeting) indicated that the Department permits cross-gender pat downs and searches, in my opinion, it failed to completely and thoroughly investigate whether (in this particular instance) it would have been "practical" to avoid it as instructed in FCPD General Order 203, "*Whenever practical, cross sexual search should be avoided.*"

### V. Conclusion

While I understand and share the Chair's sentiments about the "futility of additional investigation" [56:45]<sup>4</sup> by returning this case to the FCPD for information that individuals would be unlikely to remember, based on the unknown (and unknowable) aspects of this case I must dissent from the conclusion that this investigation is complete, thorough, and accurate.

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<sup>4</sup> A link to the SoundCloud audio recording of the public meeting can be accessed via: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-dec-18-2019>. Time stamps of selected statements from the session are provided in brackets.