



County of Fairfax, Virginia

MEMORANDUM

DATE: May 10, 2024

TO: Fairfax County Board of Supervisors
Chief Kevin Davis, Fairfax County Police Department
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-23-25

I. Introduction

The Panel held a Review Meeting on April 4, 2024, to review the Fairfax County Police Department (FCPD) Internal Affairs Bureau (IAB) investigation resulting from a complaint alleging that a Fairfax County Police Officer failed to assist the alleged victim of an assault that occurred on August 2, 2022. The complainant also alleged the assault victim's treatment may have been the result of systemic racism. The request for review was submitted to the Panel on December 3, 2023, by the complainant, who was acting as an advocate for the victim. The FCPD IAB investigated the complaint, sent to them on April 12, 2023, and issued a disposition letter, dated October 19, 2023. The letter stated that the FCPD determined the facts did support the complainant's allegation regarding the officer failing to properly document witness information in a police incident report, which was deemed by the FCPD as a violation of department regulations. The letter stated, "As it pertains to the remaining allegations, it was determined that the facts do not support these allegations." The letter stated the officer's actions were lawful and in compliance with FCPD Regulations.

After reviewing the FCPD IAB investigation file and hearing from the complainant and the FCPD at the Panel Review Meeting on April 4, 2024, the Panel voted 6-1, concurring with the findings of the FCPD IAB investigation. The Panel determined the investigation conducted by the FCPD IAB was thorough, complete, accurate, objective, and impartial. However, in this

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Report, the Panel is making recommendations to the FCPD to reduce the likelihood of complaints arising from similar calls in the future.

II. Background Facts

On August 2, 2022, an FCPD police officer responded to a disturbance call at a Home Depot store in Falls Church, Virginia. The call for service was based on a dispute over a handicapped parking space in the Home Depot parking lot. After the officer arrived, he spoke to the victim of the alleged assault. The officer did not speak to the victim's associate, who may have witnessed the assault and was standing next to the victim in the parking lot while the officer was speaking with the victim. The victim said the alleged assailant accosted the victim in the parking lot where the victim's vehicle was parked in a space for handicapped drivers. The assailant challenged the victim, asking to see the victim's handicapped parking placard. The victim said the assailant cursed at the victim and touched the victim's face with a pen during the altercation. The officer asked the victim clarifying questions to determine if the assailant touched the victim with the pen, constituting assault. The victim again said the assailant touched his face with a pen. The officer asked the victim if the assailant used a racial slur, and the victim said the assailant did not. The victim said a Home Depot employee, who was in the parking lot during the altercation, witnessed the entire event.

The police officer spoke to the alleged assailant, who denied touching the victim with a pen. After speaking to the assailant, the officer told the victim the officer could not make an arrest for the misdemeanor assault that did not occur in the officer's presence. The officer advised the victim he could go to the Magistrate's Office and try to obtain a warrant for assault for the assailant. The officer provided the victim with the incident report number and the officer's name. He then told the victim and the assailant they were free to leave the scene.

The officer then went to speak to the Home Depot employee who was present during the altercation. The employee said he witnessed the argument, but he did not see an assault. The officer told the employee that the officer would list the employee as a witness, but the officer would not include personal identifiable information (PII) like the employee's home address and date of birth in the incident report. If the employee was needed for court the officer said he would send a subpoena for him to the Home Depot address. After speaking with the Home Depot employee witness the officer left the scene of the call for service. The officer did not talk to the victim's associate, who was standing next to the victim while the officer was talking to the victim. The officer made no apparent effort to determine if there was video footage of the incident captured by Home Depot's security cameras.

After the victim left the scene of the incident, the victim went to a Magistrate's Office in Fairfax County to attempt to obtain a warrant for assault for the assailant. The Magistrate would not issue a warrant and told the victim he needed to contact the police officer who handled the call for service. The victim went to the Mason District police station and spoke to a Fairfax County Police Civilian Aide (PCA). The PCA said the police officer who responded to the call for

service was not currently available, but the officer would call the victim. The officer never called the victim.

The victim sought the assistance of the Fairfax County National Association for the Advancement of Colored People (NAACP), and the complainant was assigned to assist the victim. On February 10, 2023, the victim and the complainant went to Fairfax County Police Central Records to obtain a copy of the police incident report. The copy of the report received by the complainant and victim did not contain all the information in the report and appeared to be redacted. On February 14, 2023, the complainant went to the Home Depot and spoke to the manager, who said the employee witness no longer worked at Home Depot. On February 15, 2023, the complainant went to the Magistrate's Office and was told by the Magistrate she needed the assailant's name and date of birth to obtain a warrant for the assailant. The Magistrate did not provide her with instructions on how to obtain the assailant's address and date of birth.

On April 12, 2023, the complainant sent a letter to members of the Fairfax County Board of Supervisors, requesting assistance in this matter. Shortly afterward the complainant was informed the FCPD IAB was opening an investigation into the matter. On April 18, 2023, the complainant spoke with Lieutenant Geschke, the FCPD IAB investigator assigned to investigate the matter. The investigator said in similar cases, with a misdemeanor not witnessed by the officer, FCPD policy is to give the victim the officer's name and direct the victim to go to the Magistrate's Office. The Magistrate should then contact the officer. In a subsequent telephone call, the investigator gave the victim the assailant's name, date of birth, and other information necessary for the victim to obtain a warrant for the assailant.

On April 28, 2023, the complainant and the victim went to the Magistrate's Office and completed a criminal complaint. According to the complainant, the Magistrate accessed the police report and said the report did not provide enough information for the Magistrate to issue a warrant for the assailant. Specifically, the Magistrate said the police report contained no information about the victim being assaulted with a pen, and the report did not contain any witness information. According to the complainant, the Magistrate called the Mason District police station to speak to the officer who handled the call for service and completed the report, but the officer was unavailable. The complainant said the Magistrate told the complainant and victim to follow up with the officer or the Commonwealth's Attorney's Office.

On May 5, 2023, Lt. Geschke told the complainant the video footage from the Home Depot was no longer available because it was past the retention date for the video.

III. Procedural Background and Investigative Findings

In a letter dated October 19, 2023, the FCPD informed the complainant and victim the FCPD had completed the investigation of the complaint, dated April 12, 2023. The complaint alleged the officer:

- failed to interview two witnesses
- failed to document the witness's statements in the incident report

- did not accurately document the assault
- gave the victim inaccurate information regarding obtaining a warrant from the Magistrate's Office
- never followed up with the victim after the victim attempted to contact the officer

The complaint also alleged the possibility of systemic racism by the Police Department based on the way the alleged assault was investigated. The FCPD investigation determined the officer did obtain a statement from the Home Depot employee witness, but the officer allegedly forgot to include that statement in the incident report. The FCPD said even though that statement was not included in the incident report, the statement of the witness conflicted with the victim's account of the incident and would not have assisted the victim in obtaining a warrant. The FCPD investigation found sufficient evidence to support the allegation that the officer did not properly document the interview with the Home Depot employee witness.

The disposition letter from FCPD also said the officer was not contacted by the Magistrate's Office, and the officer did not receive a request to contact the victim. The letter stated that although the officer could have provided a clearer explanation to the victim [about obtaining a warrant from the Magistrate], the officer's actions in not providing the alleged assailant's PII was reasonable and not a violation of policy.

In response to the allegation of systemic racism by the FCPD influencing the assault investigation, the FCPD said the investigation revealed no derogatory statements by the officer during the assault investigation, and they proclaimed that race did not impact the officer's decisions. The FCPD said they also conducted an analysis regarding racial bias as it pertained to the officer, using statistics from February 1, 2021, to August 2, 2022. The FCPD said, "The statistical analysis did not support the claim of systemic racism." They added the officer's "actions were lawful and in compliance with FCPD Regulations."

The complainant was advised that she and the victim could seek a review of the FCPD IAB investigation by the Police Civilian Review Panel. The complainant made a formal request for review by the Panel on a Complaint Form dated December 3, 2023.

A subcommittee of the Panel met on March 4, 2024, to discuss the request for a review of the FCPD IAB investigation, assigned case number CRP-23-25 by the Panel. On the date of the meeting, each Panel subcommittee member had previously reviewed the FCPD IAB investigation file. After discussion by the subcommittee, they agreed to recommend during the March 7, 2024, meeting of the Panel that the full Panel Review the allegation. The eight-member Panel [there was one vacant seat at the time of the meeting] met on March 7, 2024, and agreed to conduct a full Panel Review of the investigation during the April 4, 2024, Panel meeting.

IV. Panel Meeting and Findings

The victim was present in-person, and the complainant was present via Microsoft Teams for the full Panel Review on April 4, 2024.¹ Also, the investigator and two additional members of the FCPD IAB were present. Lieutenant Geschke was the primary spokesperson for the FCPD IAB. Panel Vice-Chair Wolfe summarized the findings of the subcommittee and what was observed on the body-worn camera footage of the call for service. Wolfe also described what happened after the call for service and prior issues the Panel has attempted to address with the Magistrate's Office and members of the community attempting to obtain warrants.

The victim, who was physically present, was given the opportunity to share with the Panel his version of the events and why he filed the complaint. The victim deferred to the complainant, who was acting as the victim's advocate, and had spoken at the March 7, 2024, meeting. The advocate said that the Magistrate's Office is the main issue in this case, and she had gone with the victim to the Magistrate's Office several times after the initial call for service. The complainant said she realized the police officer is not allowed to give the alleged assailant's PII to the victim. A Panel member asked if the complainant and the victim went to the Magistrate's Office after being provided with the alleged assailant's PII. A Panel member asked if the victim's associate, who may have witnessed the incident, had ever been interviewed and if the victim had been poked in the face with a pen by the alleged assailant. A Panel member asked about the Magistrate calling the police officer and the officer allegedly not being available when that call was placed.

Lieutenant Geschke spoke about the investigation conducted by FCPD IAB. Geschke provided a brief overview of the call for service at the Home Depot. Geschke said the officer only identified one witness [the Home Depot employee]. Geschke said the officer spoke to the Home Depot employee witness but forgot to include the statement by the employee in the incident report. A Panel member asked Geschke how the FCPD determined there was no systemic racism as outlined in their disposition letter to the complainant and victim. Specifically, the Panel member asked if FCPD policy or regulations defined systemic racism. Geschke was not aware of any policy or regulation that defined systemic racism.

After public deliberation, the Panel voted with a 6-1 majority, with one abstention, that the investigation was accurate, complete, thorough, objective, and impartial. Based on the review of the investigation file, specifically the body-worn camera footage and statements made by the victim concerning the officer, the Panel found no evidence of racism on the part of the officer. The scope of one incident is not sufficient to support or reject systemic racism by the FCPD.

Members of the Panel and the complainant do, however, have recommendations to improve the process of citizens obtaining warrants from the Magistrate's Office after a call for service. The Panel recognizes the Magistrate's Office is independent of the FCPD and part of Virginia's

¹ There was one vacant seat on the Panel at the time of the review. In addition, one Panel member had not reviewed the FCPD IAB investigation file and was prohibited from engaging in discussion of the case or voting during the April 4, 2024, meeting.

judicial system, but changes in police practice would make the process of obtaining a warrant easier for victims and possibly reduce complaints to the FCPD.

Recommendations include amending Section 204.16 of FCPD Regulation 204 to state,

1. “Officers shall personally accompany a complainant to the Magistrate’s Office,” to assist the complainant with attempting to obtain a warrant. Exceptions would be authorized by a police supervisor, in the interest of public safety, because of more pressing issues like serious pending calls or emergencies.
2. If the officer does not accompany the complainant to the Magistrate’s Office, the police supervisor shall follow up with the complainant at least one time to schedule a convenient time during a future scheduled duty shift where both the officer and complainant can go to the Magistrate’s Office.
3. Officers need to tell complainants that the Magistrate’s Office requires PII of the alleged offender to issue an arrest warrant. Officers should explain the Magistrate’s Office is separate from the FCPD and explain the issuance of a warrant is a decision of the Magistrate, based solely on the Magistrate’s determination of whether probable cause that a crime was committed exists.
4. The FCPD should develop a card or other handout to give to complainants with the information listed above so that victims of crime, who may be in shock or confused, can reference the information later.
5. Lastly, roll call, in-service, or other training should be conducted reminding officers of the importance of following up with complainants who wish to obtain a warrant from the Magistrate’s Office.

An audio recording of the April 4, 2024, Panel Review Meeting may be reviewed here:

[Stream Police Civilian Review Panel Meeting with Closed Session \(April 4, 2024\) by fairfaxcounty | Listen online for free on SoundCloud](#)

On May 2, 2024, the Panel discussed this Finding Summary; an audio recording of that meeting may be reviewed here:

<https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-may-2-2024-meeting>

CC: Complainant