



County of Fairfax, Virginia

MEMORANDUM

DATE: 5/6/2021

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-20-20 and CPR-20-21

I. Introduction

The Panel held a Panel Review Meeting on September 24, 2020, to review the Investigation concerning the events of March 8, 2020 which resulted in a complaint directly submitted to the Panel on March 16, 2020. The FCPD completed its investigation on May 21, 2020 and issued its disposition letter dated May 29, 2020. The Complainants¹ requested a review of the Investigation on July 28, 2020.

At the September 24, 2020 Panel Review Meeting, the Panel voted in favor of requesting that the FCPD conduct an additional investigation. The FCPD completed its additional investigation and notified the Panel by a letter dated March 22, 2021. The Panel held a second Panel Review Meeting on April 1, 2021 to consider the additional investigation. The Panel decided to not request additional review and concur with the ultimate findings of the FCPD documented in the Investigation Report as supplemented, but made clear that it would be presenting several comments and recommendations for future reports and police procedures based on unique aspects of the file.

II. Background Facts and Review Request

At 4:00 a.m. on March 8, 2020, an anonymous caller (the “Caller”) reported to a 911 dispatcher with the Department of Public Safety Communications (“DPSC”), that he could hear domestic violence in progress. The Caller claimed his neighbors were yelling and

¹ The Complainants are sisters. Their complaints are substantially the same.

fighting and that there was pounding on the walls of a townhome he shared with his neighbors. He asked that the FCPD dispatch an officer to investigate. The Caller insisted that the dispatcher keep the Caller out of it since he claimed knew the mother of those involved. The Caller directed the FCPD to an address located on Logsdon Drive in Annandale (the "Address").

Two FCPD officers (Officer R and Officer M) (sometimes collectively the "Subject Officers") arrived at the Address within five minutes in uniform displaying their badges. The porchlight to the Address was not illuminated. The front door was one story above street level, with a spiraling staircase to an elevated landing in front of the door. Officer R approached the front door; Officer M was standing nearby as backup. Officer R commenced pounding on the front door with sufficient force that his knocking could be heard throughout the Address. The investigation revealed that Officer R was relatively new to the FCPD, and that he believed that his training and experience dictated that he not announce himself at that time given that the call for service had been for a domestic dispute, so he did not announce himself. After three to four minutes of hard knocking on the door and receiving no response, the Subject Officers departed the scene at 4:14 a.m.

At 4:22 a.m. the Caller contacted 911 dispatch a second time. He insisted he still could hear people fighting and he could hear yelling and banging. The Caller insisted on anonymity and claimed his neighbors (who were fighting) were now knocking on his door. The dispatcher again directed the Subject Officers to the Address who promptly arrived and resumed knocking on the front door.

At 4:23 a.m., one of the Complainants (YB) called 911 to report loud banging at her front door and that someone was shining a flashlight into her home. YB explained that she resides at the Address with her sister. The dispatcher informed YB that the Subject Officers were the ones doing the knocking at her door and instructed YB to open the door and let the officers inside. YB was reluctant to do so under the circumstances. She reported that she had no way of knowing that the people at the front door were, in fact, police officers, but she did note that it appeared that one of the men was wearing a "dark uniform." Eventually, at approximately 4:32, YB opened the door and she claimed that, with some difficulty, she thinks she was able to identify the Subject Officers as FCPD. According to YB, the Subject Officers never identified themselves. In a contemporaneous radio transmission, the Subject Officers informed the dispatcher that they had identified themselves. YB informed the dispatcher and the Subject Officers that there was no emergency and police are not needed.

The Complainants called 911 dispatch again at 5:15 a.m. to complain about the events of the morning.

III. Procedural Background and Panel Meetings

As explained above, on March 16, 2020, the Complainants filed a complaint with the Panel alleging the Subject Officers banged on their door excessively, did not identify themselves and were not wearing clothing from which they could be identified as police officers. On March 20, 2021, the Internal Affairs Bureau ("IAB") assigned an investigator (the "Investigator") to determine facts and circumstances surrounding the Complainants' claims. The Investigator (1) gathered relevant Computer Aided Dispatch ("CAD") messages and radio traffic, (2) collected

and reviewed dispatch recordings of the DPSC, and (3) interviewed the Complainants and the Subject Officers.

The Investigator concluded that the Subject Officers were duty-bound to make a reasonable attempt to speak to the parties at the Address. He found that the Subject Officers knocked loudly several times, and the occupants at the Address did not respond. The Subject Officers began to depart when a second call to DPSC requested officers return. This time the Subject Officers, with the aid of DPSC, persuaded the Complainants to open the door and demonstrate they were not in danger. The Investigator concluded that the repeated attempts of the Subject Officers to get the residents at the Address to answer the door was necessary for them to perform their duty. The station commander and Chief Roessler concurred with the Investigator's conclusions.

On May 29, 2020, Chief Roessler issued a disposition letter to the Complainants informing them that the investigation did not support their allegations and that Subject Officers' actions were lawful and in compliance with FCPD Regulations. Thereafter, the Complainants timely filed a review request to the Panel.

On September 24, 2020, the Panel conducted a Panel Review Meeting (the "First Meeting"). The Complainants both appeared by telephone. YB explained the events in question in detail and she answered questions of the Panel. The FCPD also appeared. The Investigator offered a summary and several IAB officers and the Investigator answered questions. At the conclusion of the First Review Meeting, a majority of the Panel voted to request additional investigation to include:

1. Investigate and analyze the gulf between the plain language of General Order 601.4 ("GO 601.4") and the actions taken during the incident;
2. Interview additional relevant witnesses named in the complaint;
3. Analyze the scene of the events in question;
4. Conduct other such investigation as warranted.

The Investigator performed some additional investigation as requested by the Panel. He reported his conclusions in the order the of the Panel's request:

Recommendation One: General Order 601.4(C) (the "Order") states in relevant part as follows:

The responding officers [to a domestic violence incident] *shall identify themselves as police officers*, explain the reason for their presence, and request entry into the home.

The Investigator noted three times in his supplemental report that the Subject Officers "could not definitively recall if they announced their presence during their first attempt to contact [the Complainants]." (In fact, the investigation file otherwise makes indisputably clear that the Subject Officers did not announce themselves at the time of the first attempt to make contact.) Moreover, the Investigator referenced a court case² he asserted stood for the proposition "that officers of the law who are in full uniform have identified themselves by their very presence."

² See Beckman v. Hamilton, No. 17-12407, 2018 WL 1907151 (11th Cir. Apr. 23, 2018).

The Investigator noted further that “it is not tactically prudent for a police officer to knock on a door and simultaneously announce that they are the police while still standing in the fatal funnel.” Further, he asserted a distinction between “announce” and identify. He wrote that “[t]actical approaches to police calls for service must be considered and weighed against the need for immediate announcements. Identification takes place once contact with a community member occurs.”

Recommendation Two: The Investigator (1) canvassed the neighbors; (2) left business cards on the doors asking for return calls and (3) called and left a voicemail for the witness identified by Complainants. None of these steps resulted in any additional information.

Recommendation Three: The Investigator went to the Address and took photographs of the scene. He concluded that the elevated front door at the Address presented limited officer safety options and supported the Subject Officers’ approach and positioning during the calls for service.

Recommendation Four: The Investigator determined no additional investigation was warranted.

The FCPD concluded that the Subject Officers did not violate any Department policy or procedure.

IV. Second Panel Meeting and Conclusions

On April 1, 2021, the Panel conducted a second Panel Review Meeting (the “Second Meeting”). The Complainants both appeared by telephone. YB explained her continued dissatisfaction with the events in question, with the two investigations and she answered questions of the Panel.

The thrust of the Complainants continued dissatisfaction centered around their fright caused by their inability to recognize the police in the darkness and their fear that the police may be intruders. Even after the dispatchers provided specific instructions to the Complainants to open the door and let the police inside, the YB indicated she was reluctant to do so. At bottom, YB maintained the Complainants would not have complained and persisted in their request for review if the police had identified themselves when they knocked.

YB indicated the Complainants had received the findings letter in May 2020 and a second letter following the First Meeting. However, the FCPD did not contact the Complainants to offer any further explanation.

The FCPD also appeared, and the Investigator summarized the additional investigation and several IAB officers and the Investigator and answered questions. The Investigator explained how the officers could have been reasonably identified and concluded that community members can identify officers by their uniforms, sounds of the radio, and the police car outside. The Investigator asserted that his investigation established that the Subject Officers eventually verbally identified themselves; however, he admitted it was unclear when they did so, and he acknowledged that the Subject Officers do not have appeared to have announced themselves the first time they knocked on the door. Further, he stated that the FCPD concluded that the Subject Officers’ actions were in compliance with General Order 601.4.

The Panel questioned the FCPD extensively about these conclusions. The Investigator stated that it may not always be tactically safe for an officer to announce his presence in the type of situation presented, including here where the door was on an elevated landing and there was little ground for immediate retreat. He noted that the FCPD probably needs to evaluate General Order 601.4 and more clearly define the difference between identify and announce so that expectations of responding officers responding and the public are clear. The Investigator stated that it is a common understanding in law enforcement that officers identify themselves when a community member answers the door. He contrasted this understanding with a knock and announce. He said that the FCPD needs to revise General Order 601.4 to ensure it reflects best practice and the intent of the policy is clear to officers. Another IAB officer stated that the FCPD would have preferred that the Subject Officers knocked and announced on the first approach.

The Investigator acknowledged that, in the darkness, it may be difficult for a community member to identify a police officer.

The Panel noted that the information the Subject Officers received from the dispatcher was not as described by the caller. An IAB officer noted that it is not uncommon for officers to encounter a scene that does not match the dispatcher's description. Under those circumstances, an officer should take steps to clarify. In this instance, the Subject Officers did so by verifying the address and confirming that the Caller did not want to be identified. Nevertheless, the Subject Officers knocked on the door to investigate the Caller's complaint.

The Panel noted that General Order 601.4 proscribes that officers shall identify themselves, explain the reason for their presence, and request entry into the home. The Panel asked if the language could be reworked to disentangle the three clauses.³ An IAB officer answered affirmatively and said that they will review and reconsider the language in General Order 601.4.

The Panel asked if the FCPD is considering how to best address "swatting" incidents (where false police reports are made to harass innocent community members). The Panel asked whether the FCPD can trace such false reports. The IAB officer explained protocol at the call-taking center on swatting events. However, in this case the Caller used a local phone number (that was apparently noted in dispatch records). The Panel inquired if the FCPD called the number back to investigate the Caller. The IAB officer said the policy is that if someone wants to remain anonymous, the FCPD will not contact the caller again.

The Panel deliberated extensively.

Some Panel Members were critical of the FCPD's assertion in the investigation file that it was unclear if the Subject Officers announced themselves the first time they went to the Address. These Panel Members found this assertion to be inaccurate as substantial evidence in the file suggested that they did not announce and identify themselves as FCPD officers upon approaching the residence.

However, this inaccuracy was insufficiently material for the Panel to request further analysis by the FCPD. Rather, the three options available in the Bylaws – to concur with the

³ The Panel also noted that the court case referenced did not, in fact, create a clear distinction between "identify" and "announce" and was not precedential.

investigation, to request additional investigation, or to inform the Board of Supervisors that the investigation was incomplete/in need of further review – were disappointing to some in the context of this investigation review and lend further support for the need to amend the Bylaws to give the Panel more options consistent with those outlined in the Panel’s Four-Year Review. To these Panel Members, it matters little under the options afforded to the Panel that the Subject Officers did not announce themselves immediately upon arrival since the FCPD takes the position that the officers must have tactical discretion to *not* announce themselves. It is this discretion – which is inconsistent with the dictates of General Order 601.4 – that is the critical issue, but the Panel is not currently empowered to simply say that the investigation contained a conclusion regarding the General Order that is “incorrect,” and in light of the FCPD’s repeated acknowledgments that the General Order may be ripe for clarification, even skeptical Panel members questioned the utility of requesting further action on this Complaint. The Panel expects that the FCPD will make good on its promise to take a close look at General Order 601.4 and revise it as necessary.

The Panel was also critical of the FCPD’s handling of the Complainants. The Panel urged the FCPD to have more robust communications with complainants. With respect to this Complaint in particular, it appears that better communication between the FCPD and the Complainants, and a better explanation of why the officers did not immediately identify themselves or what could have been done better in the future, could have vitiated the need for requesting a Review entirely.

In addition, the Panel urged the FCPD to take a critical look at how it handles swatting incidents. Here, the only crime committed may have been a false police report by the Caller. That potential crime was never investigated.

In the end, the Panel voted unanimously to concur with the findings of the Investigations.⁴

An audio recording of the September 24, 2020, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-september-24-2020>.

An audio recording of the April 1, 2021, Panel Review Meeting may be reviewed here:

On May 6, 2021, the Panel discussed this Finding Summary; an audio recording of that meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-april-1-2021>.

V. Comments:

1. The three finding options available in the Bylaws are inadequate to address all potential conclusions that may arise in a Panel Review. The Bylaws should be amended to give the Panel more options for conclusions consistent with those outlined in the Panel’s Four-Year Review.

⁴ Panel Member Cheri Belkowitz, who joined the Panel too late to take part in a review of the investigation, abstained and took no part in the decision.

VI. Recommendations:

1. The FCPD should consider how officers respond to swatting incidents where the scene does not match the description in a 911 call, provide the necessary training to officers on these situations, and whether they can investigate calls as potential false police reports.
2. The FCPD should review and revise General Order 601.4 regarding how officers identify and announce themselves when responding to domestic service calls, clarify the situations when they are permitted to delay in announcing or otherwise identifying themselves, and ensure that officers are properly trained in implementing a revised general order.
3. The FCPD should consider how it can better communicate with Complainants the outcomes of its investigations, including whether such communication should go beyond standard disposition letters.

CC: Complainant