

# Public Report

June 2, 2018: Use of Force Complaint



Richard G. Schott  
Fairfax County  
Independent Police Auditor



# June 2, 2018: Use of Force Complaint

A Public Report by the  
Fairfax County Independent Police Auditor

Publication Date: April 24, 2019



A Fairfax County, Va., Publication

Office of the Independent Police Auditor  
12000 Government Center Parkway, Suite 233A  
Fairfax, VA 22035  
[www.fairfaxcounty.gov/policeauditor](http://www.fairfaxcounty.gov/policeauditor)

Contact Us: [IPAPoliceAuditor@fairfaxcounty.gov](mailto:IPAPoliceAuditor@fairfaxcounty.gov)

To request this information in an alternate format, call 703-324-3459, TTY 711.

## INCIDENT

**The entirety of this incident was recorded on body-worn cameras worn by three of the officers involved. 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. I have reviewed the body-worn camera footage, and it is consistent with the officers' accounts of what transpired.**

On June 2, 2018, at 1:48 a.m., Fairfax County Police Department (hereinafter "FCPD") Police Officer First Class #1 (hereinafter "PFC#1") responded to the Cue Club Cafe located at 7014 Columbia Pike in Annandale. The officer responded to that location because of an intoxicated male acting aggressively inside and then yelling outside of the establishment. Upon arrival PFC#1 located an individual, later identified by name with the initials of M.G. (hereinafter "MG"), who appeared extremely intoxicated, outside of the club's front door. The manager of the Cue Club Cafe advised PFC#1 that MG had been disorderly in the club and had been escorted out. Not long afterward, the manager also advised that he believed MG had training in martial arts. PFC #1 advised MG that he would summon a cab for MG and would not arrest him for being drunk in public, but only if MG did not revert to acting disorderly. PFC#1 did, in fact, call for a cab to respond to the location.

While waiting for the cab to arrive, Police Officer First Class #2 (hereinafter "PFC#2") and Police Officer First Class #3 (hereinafter "PFC#3") responded to the Cue Club Cafe. The three officers engaged in lengthy conversation with MG while waiting for the cab. Throughout their conversation, MG displayed visible signs of being intoxicated. At one point, he expressed concern that some of his pool-shooting equipment was missing from his case. When he was shown that all the pieces were there, he took hold of a pool cue and waved it; but, he did allow officers to put the cue back in the case. Shortly thereafter, a patron from the club came out and started talking to MG. MG went to the ground on his back, and wrapped his legs around the patron's leg and tugged his arm, appearing as though he may attempt to take the patron down and

---

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

engage in ground-fighting. MG disengaged the patron, and was assisted back onto his feet. At this point, the officers decided that it may be unsafe to put MG in a cab with only the driver. They decided to arrest MG for being “drunk in public.”<sup>2</sup>

When the officers advised MG that he was under arrest, he tensed up and attempted to break free from the officers. PFC#1 got one handcuff on MG’s right wrist, but was not able to get the second handcuff on MG because of his resistance. Police Officer First Class #4 (hereinafter “PFC#4”) arrived on the scene, and the four officers methodically took MG to the ground to gain control over him. MG continued to resist and grabbed PFC#3’s keys, which had fallen to the ground during the initial struggle. He was able to pull his arms under his body as the officers continued to struggle with him and ordered him to stop resisting and to give them his hands. When he refused and continued resisting, PFC#2 administered four empty-handed strikes to the left side of MG’s torso, which allowed the officers to gain control of MG’s left hand and get it handcuffed. Although he was now handcuffed, MG remained non-compliant and was able to bite PFC#1’s leg. He then said, “I will bite you again, God damn it!”<sup>3</sup> PFC#3 then removed their electronic control weapon (hereinafter “ECW”),<sup>4</sup> placed it on MG’s back, and warned him that the ECW would be used on him if he made another aggressive move. MG was then able to grab PFC#2’s hand and twist the ring finger so badly that PFC#2 thought it had been broken.

PFC#4, who had been controlling MG’s legs, went to his vehicle to retrieve a Ripp Hobble restraint device.<sup>5</sup> PFC#2 assumed control of MG’s legs and attempted to search MG for weapons. MG then said something to the effect, “This makes me lash out at the next person I talk to; you’re not going to find anything,” and, “I hope I hurt that person, until they are dead!”<sup>6</sup> MG then tried to raise himself from the ground and roll to his left side. PFC#3 deployed the

---

<sup>2</sup> Fairfax County Code § 5-1-1 provides that “[i]f any person profanely curse or swear or be *drunk in public* he shall be deemed guilty of a Class 4 misdemeanor. In any area in which there is located a court-approved detoxification center, a law enforcement officer may authorize the transportation, by police or otherwise, of public inebriates to such detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center.” Italics added for emphasis.

<sup>3</sup> Review of body-worn camera footage from the incident.

<sup>4</sup> Fairfax County Police Department (“FCPD”) General Order (“G.O.”) 540.1 I. C. defines an electronic control weapon 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.” They are often referred to as tasers.

<sup>5</sup> A belt-like restraint device often used to prevent an individual from kicking while being transported.

<sup>6</sup> Review of body-worn camera footage of the incident.

ECW in “drive stun mode”<sup>7</sup> for approximately two seconds. MG then stopped his effort to roll to one side or to get up. Shortly thereafter, PFC#2 and PFC#4 applied the Ripp Hobble device to MG’s ankles.

Officers carried MG away from the entrance to the Cue Club Cafe into the parking lot, and instructed him get into a patrol cruiser for transport. When MG refused to stand or to get into the cruiser, a sergeant from the Mason Police District Station (hereinafter SGT#1) who had arrived on the scene decided that they would use a transport wagon to transport MG to the Fairfax County Adult Detention Center (hereinafter “ADC”). While waiting for the transport wagon, MG was on his stomach with officers maintaining control of him. When MG attempted to roll onto his back, officers prevented him from doing so and returned him to his stomach. SGT#1 instructed the officers to stop applying any pressure on MG because he (MG) now promised to remain on his stomach. PFC#3 remained crouched down near MG and put the ECW on MG’s right shoulder. PFC#3 warned MG that if he refused to stop moving, the ECW would be deployed again. MG shouted something and PFC#4 perceived him to be making a furtive movement by lifting his head and right shoulder in an effort to assault a law enforcement officer. In response, PFC#3 again deployed the ECW in drive-stun mode for less than two seconds.

No additional force was used on MG. When the transport wagon arrived and MG refused to walk or hop to it, officers carried him and placed him inside of the wagon. He was secured in the wagon and transported to the ADC.

## **CRIMINAL INVESTIGATION/ PROSECUTIVE DECISION**

The FCPD conducted only an administrative investigation into the officers’ use of force on MG during his arrest. No referral was made to the Office of the Commonwealth’s Attorney.

---

<sup>7</sup> “Tasers generally have two modes. In dart mode, a taser shoots probes into a subject and overrides the central nervous system. Drive stun mode, on the other hand, does not cause an override of the victim’s central nervous system; that mode is used as a pain compliance tool with limited threat reduction.” Armstrong v. Village of Pinehurst, 810 F.3d 892 (4<sup>th</sup> Cir. 2016), fn. 3 (internal quotation marks omitted). One of the largest producers and providers of ECWs to law enforcement agencies, AXON, advises that ‘the drive-stun mode generally will not cause NMI [neuromuscular incapacitation] and becomes primarily a pain compliance option.’ <https://help.axon.com/hc/en-us/articles/235821707-Drive-stun-backup>, accessed on December 17, 2018.

MG was ultimately charged with being drunk in public, with two counts of assault on a law enforcement officer,<sup>8</sup> and with obstruction of justice.<sup>9</sup>

## **INTERNAL ADMINISTRATIVE INVESTIGATION**

The FCPD officers who used force during the arrest of MG each completed a use of force supplement.<sup>10</sup> The incident was investigated at the station level based on the officers' self-reporting; the FCPD Internal Affairs Bureau (hereinafter "IAB") did not conduct the internal investigation, but the results of the station level investigation were provided to IAB.<sup>11</sup> There was no complaint made regarding this incident until October 31, 2018, when a witness filed a complaint directly to the Office of the Independent Police Auditor. That complaint initiated this review of the FCPD investigation.

The internal administrative investigation of this incident included interviews of all involved officers, and a review of body-worn camera footage (both audio and video) of the incident captured by three body-worn cameras. MG was not interviewed as part of the internal investigation; however, in a letter he sent to the officers involved in his arrest he admitted to being "blackout drunk" during the encounter and he apologized for his conduct during the incident. In my opinion the FCPD investigation into this matter was complete, thorough, objective, impartial, and accurate.

The FCPD investigation concluded that PFC#3's second deployment of the ECW after MG was handcuffed and restricted by the Ripp Hobble device was a violation of FCPD General Order (hereinafter "G.O.") 540.12 F. Otherwise, the investigation determined that all officers' use of force complied with departmental policy. Specifically, FCPD concluded that each involved officer (except for PFC#3's second ECW deployment) complied with FCPD G.O. 540, *et seq.* The FCPD finding was that the officers complied with G.O. 540.4 when arresting MG

---

<sup>8</sup> Virginia Code § 18.2-57 ¶ C.

<sup>9</sup> Virginia Code § 18.2-460.

<sup>10</sup> FCPD G.O. 540.7 II. A. 4. b. prescribes the completion of a "[u]se of force supplement in the current Records Management System describing the incident, the type of force used, and that there were no injuries observed or any complaints of injuries" whenever an officer uses "less-lethal force that does not involve the complaint of injury or medical treatment."

<sup>11</sup> FCPD G.O. 540.7 II. 4. provides that the on-duty supervisor or above has investigative authority in incidents involving "less-lethal force that does not involve the complaint of injury or medical treatment."

because they used an objectively reasonable amount of force to overcome a resisting individual. I agree with the FCPD's conclusions and will articulate my reasons in the following section.

In addition to determining that PFC#3's second ECW deployment constituted a violation of G.O. 540.12 F., the FCPD investigation identified a training deficiency and a policy gap which led to the improper positioning of MG after he was restrained by the Ripp Hobble device. That aspect of the investigation will be examined in the "RECOMMENDATIONS" section of this report.

## **CONCLUSIONS**

In its Graham v. Connor decision,<sup>12</sup> the United States Supreme Court pronounced that uses of force by law enforcement officers in this country are analyzed under the Fourth Amendment to the Constitution.<sup>13</sup> To be lawful, therefore, an officer's use of force must be objectively reasonable. Likewise, FCPD G.O. 540.0 on USE OF FORCE mandates, in part: "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 upon 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 view of the circumstances confronting the officer." Additionally, FCPD G.O. 540.1 defines "Objectively Reasonable" as follows: "The level of force that is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same set of circumstances. Objective reasonableness is not analyzed with the benefit of hindsight, but rather 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." Applying these provisions to the incident under review makes it clear that, except for PFC#3's second

---

<sup>12</sup> Supra, note 1.

<sup>13</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.



deployment of their ECW, the officers' actions were permitted by both the law and departmental policy.

MG was being lawfully arrested for being drunk in public. He "actively resisted"<sup>14</sup> by first pulling away from the officers and again by pulling his arms under his body as the officers continued to struggle with him. The level of force to overcome MG's resistance was objectively reasonable. The four officers on the scene took MG to the ground in a controlled manner to get more control of him. PFC#2 delivered strikes to MG's body after one handcuff had been secured but while the officers were struggling to secure the second handcuff. Departmental policy authorizes the use of less-lethal force, including "empty-hand tactics, such as *strikes*, kicks, or takedowns"<sup>15</sup> to effect an arrest or investigative stop.<sup>16</sup> The strikes delivered by PFC#2 did, in fact, assist the officers in getting the second handcuff on MG.

Despite being handcuffed MG then engaged in more aggressive behavior. When he bit PFC#1's leg and grabbed and twisted PFC#2's finger, MG became an "aggressive resistor" under FCPD policy.<sup>17</sup> PFC#3 deployed the ECW on MG after MG attempted to raise his torso and roll to his left, and had made the comment, "I hope I hurt that person, until they are dead!"<sup>18</sup> In an interview during the FCPD administrative investigation, PFC#3 expressed the belief that MG was again trying to bite (or otherwise assault) officers; and the approximate two-second deployment of the ECW was to prevent that from happening. While departmental policy cautions against using an ECW on a handcuffed person, it allows the use if the handcuffed person "continues to pose a threat to the officer, to others, [or] to themselves [when] other force options have become ineffective or are unacceptable for the situation."<sup>19</sup> PFC#3's ECW deployment at this time was objectively reasonable and fit within this limited policy provision.

---

<sup>14</sup> FCPD G.O. 540.4 I. A. 3. defines "active resistance" as being "[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."

<sup>15</sup> FCPD G.O. 540.6 I. D. 1. (*italics added*).

<sup>16</sup> FCPD G.O. 540.6 I. A.

<sup>17</sup> FCPD G.O. 540.4 I. A. 3. defines "aggressive resistance" as "[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>18</sup> Review of body-worn camera footage of the incident.

<sup>19</sup> FCPD G.O. 540.12 I. F. Similarly, FCPD G.O. 540.16 (specific to ECW usage) IV. H. provides that "[a]n ECW should not be used on handcuffed persons unless it is necessary to prevent them from causing serious bodily harm to themselves or others, or if lesser attempts of control have been ineffective;" see also, Rose v. City of Lafayette, Colorado, 2007 WL 485228 (D. Colorado, 2007).

Also, PFC#3 complied with the departmental policy that mandates: “[w]hen practical, a warning should be given to the person prior to activating the ECW unless doing so would compromise any individual’s safety.”<sup>20</sup> PFC#3 did this by verbally advising MG that the ECW would be used on him if he made another aggressive move prior to deploying it. Before using the ECW for the second time, PFC#3 again verbally warned MG.

Regardless of the latter verbal warning, the FCPD investigation determined that PFC#3’s second activation constituted a violation of departmental policy. By this time, the Ripp Hobble device around MG’s ankles restricted the use of his legs. His movements, therefore, were more limited than they had been earlier. In fact, prior to the second ECW deployment, SGT#1 had instructed the officers to stop applying any pressure on MG, allowing them to increase their distance from MG. Although PFC#3 believed MG was trying to act aggressively at the time the ECW was used for the second time, this use was in violation of policy. MG could no longer bite or grab any of the officers to inflict injury; therefore, de-escalation of force was more appropriate. Likewise, the limiting policy provision that details when use of an ECW is allowed on handcuffed individuals no longer allowed for even the brief deployment in drive stun mode.

## **RECOMMENDATIONS**

In addition to the violation of G.O. 540.12 F. discussed in the preceding section, the FCPD administrative investigation identified an issue related to the use of the Ripp Hobble restraining device which will be addressed by the FCPD in future training and policy study. The use of the Ripp Hobble device was clearly permitted in this situation. In fact, FCPD Standard Operating Procedure (hereinafter “SOP”) 07-029 specifically states that the “RIPP Hobble brand device may be used to protect officers and others from kicking or other behavior which constitutes an actual or attempted assault, escape behavior, or attempts to damage property by application to the legs.” However, SOP 07-029 goes on to mandate that “[t]he RIPP Hobble will be used according to the manufacturer’s instructions,” to include keeping the subject in an upright position and not allowing the subject to lie on their side after being restrained by it. Not all of these manufacturer’s instructions were complied with because MG refused to cooperate

---

<sup>20</sup> FCPD G.O. 540.16 IV. L.

and was allowed to lie on his stomach after the Ripp Hobble device had been applied to his ankles.

The possible deficiency of the SOP, as identified during the administrative investigation into this matter, is that it does not address a situation when an actively or aggressively resisting subject who is restrained with a Ripp Hobble device refuses to remain in an “upright, seated position,”<sup>21</sup> or who will not “lean back against a firm, fixed object (seat back, tree, wall, etc.) to relieve stress on the diaphragm.”<sup>22</sup> Based on a review of this incident and the subsequent administrative investigation, an FCPD Commander requested reviews by the Fairfax County Criminal Justice Academy staff and the FCPD’s Director of Accreditation. These reviews will include examination of the department’s use of and training on the Ripp Hobble device and SOP 07-029.

FCPD policy thoroughly addresses the use of force and provides its officers extensive guidance on the types of force that are typically considered objectively reasonable in different situations. The policies are in direct alignment with Supreme Court precedent. The FCPD analyzed the actions of all officers involved in this incident by examining them against the policies in place, and I believe that these conclusions are sound. Other than agreeing with the review of SOP 07-029 and the training associated with the use of the Ripp Hobble device, which has already been initiated by the FCPD, I have no additional recommendations to make based on this incident review.

---

<sup>21</sup> FCPD SOP 07-029.

<sup>22</sup> *Id.*

