



County of Fairfax, Virginia

MEMORANDUM

DATE: 6/3/2021

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-20-24

I. Introduction

The Panel held a Review Meeting on May 6, 2021, to review the Investigation resulting from a complaint of Racial Profiling and excessive Use of Force submitted concurrently to the Panel and the Independent Police Auditor on May 7, 2020. The Community Member (hereinafter referred to as the “Complainant”) had just received the results from a completed FCPD investigation in an April 28, 2020, Disposition Letter into his allegations of excessive Use of Force.¹ The FCPD conducted an investigation into the Racial Bias allegation and issued a second letter to the Complainant on August 19, 2020, and he requested a review by the Panel on August 24, 2020. The Panel reviewed the investigation into the Racial Profiling allegation.²

After reviewing the Investigation file, speaking with members of FCPD along with the Investigating Officers, and speaking with the Complainant, the Panel members (PCRCP) voted unanimously that the Investigation was complete, thorough, accurate, objective, and impartial, and concurred with the findings of the FCPD.

¹ The Police Civilian Review Panel (PCRCP) does not have jurisdiction to review the Use of Force allegation. This allegation falls within the purview of the Fairfax County Independent Police Auditor, Richard Schott, who did review and provide a report on the results of his finding on this allegation.

² After the Panel conducted its initial review of the request (during a subcommittee meeting on September 14, 2020, and a Panel meeting on September 24, 2020), the FCPD notified the Panel that it was reopening the investigation for additional analysis. The Panel was notified that the investigation was complete and could be reviewed on February 4, 2021. The FCPD notified the Complainant of the additional findings in third Disposition Letter dated April 1, 2021.

II. Background Facts

The following facts are central to the Complainant's allegation that he was the subject of racial profiling:

On October 25, 2019, the Complainant, an immigrant of African descent, with his girlfriend in the vehicle, was driving behind an unmarked vehicle driven by a Black FCPD Officer (hereinafter "the Subject Officer") eastbound on Lee Hwy near the Fair Oaks Mall. It was approximately 6:15 a.m., and it is undisputed that the Complainant flashed his headlights at the vehicle because the Complainant said the vehicle was drifting in the lane. After overtaking the unmarked vehicle by passing on right, the Subject Officer clocked the Complainant on radar traveling at a speed of 73 mile per hour in a 45 mile per hour speed zone.

The Subject Officer initiated a traffic stop, approached the vehicle, identified himself as a FCPD Officer and informed the Complainant of the reason for the stop. The Subject Officer asked and was provided Complainant's driver's license and vehicle registration. The Complainant was ultimately issued three traffic citations via Summonses for Reckless Driving, Aggressive Driving, and Failure to Dim Headlights. The Subject Officer requested the Complainant sign the Summonses, which were not admissions of guilt, rather an acknowledgment of notice of the future court date.

The Complainant refused to sign the Summonses and was told by the Subject Officer that his failure to sign would result in his arrest pursuant to Virginia law. The Complainant acknowledged knowing he would be arrested for refusing to sign the Summonses after which he informed the Subject Officer that he would not answer any questions and took out his phone to record the interaction.

The Subject Officer asked the Complainant three times to sign to avoid an arrest, but he was ultimately arrested and taken to the Magistrate for his failure to sign.

III. Procedural Background and Investigative Findings

The Complainant, upon his release by the Magistrate, later that morning, contacted the FCPD to make a complaint about the Subject Officer and his treatment while being placed in the back of the police cruiser for transport to the Fairfax County Adult Detention Center. In his initial complaint, the Complainant alleged excessive Use of Force, which was investigated by the FCPD, and a disposition letter was sent to the Complainant on April 28, 2020. The Panel was not involved as the matter was solely within the purview of the Fairfax County Independent Police Auditor, and therefore, the content of that Disposition Letter will not be addressed.

The Complainant upon receiving the Disposition Letter from the FCPD, requested a review by both the Independent Police Auditor and the Police Civilian Review Panel. In his request for the review, the Complainant in addition to the allegation of excessive Use of Force included for the first time the allegation of Racial Profiling.

The FCPD did not initially investigate the racial profiling claim because it was not included in the original complaint. Thereafter, the FCPD notified the PCRCP that it was reopening the investigation to investigate the claim of Racial Profiling.

On August 19, 2020, the FCPD informed “the Complainant” that it had “completed its investigation into the allegations of your complaint, dated October 25, 2019.” The Disposition Letter indicated that the IAB had conducted a “comprehensive examination of the facts and circumstances surrounding the incident and the actions taken by [the Subject Officer] which occurred on October 25, 2019.”

The letter outlines the following:

Your initial complaint alleged that [the Subject Officer] ‘choked’ you when he fastened your seatbelt while in the police vehicle before the prisoner transport to the Fairfax County Adult Detention Center. . . . Upon receiving a letter from the Chief of Police, you later alleged that [the Subject Officer] was racially bias toward you. . . . The Internal Affairs Bureau completed an additional examination of the facts and circumstances surrounding the incident to include the bias allegation.” During the investigation, we interviewed you, the officers, who responded to the incident in question and identifiable witnesses to the incident.” We examined all the relevant evidence, including In-Car Video recordings, statements, and documents.

The investigation revealed the following facts: [The Subject Officer] stopped you for speeding and aggressive driving. Due to the traffic stop being during the hours of darkness, [the Subject Officer] was not able to determine your race, gender, place of birth, or actual identity prior to the stop. After your refusal to sign the traffic summonses, you were arrested, searched, and asked to take a seat in the police cruiser.

The letters contain additional information related to the Use of Force allegation, and therefore, not relevant to the racial profiling portion. However, the Chief of Police ultimately, informed the Complainant, “based on my review of the facts discovered during the investigation and a recommendation from the Commander of the Patrol Bureau, I have concluded that evidence does not support your allegations. . . . [The Subject Officer’s] actions were lawful and in compliance with FCPD Regulations.”

The Complainant was further advised that he could seek a review of the investigation from the Police Civilian Review Panel. The Complainant did make a formal request for review by the Panel on August 24, 2020.

It should be noted that the Complainant videoed his encounter and during the investigation was asked by the IAB Investigator, on at least two occasions, to provide a copy of the video to assist in the investigation. The Complainant initially said he would provide a copy. Upon being asked again for a copy he said he could not find the video and was therefore, not able to provide a copy to the Investigator.

A subcommittee of the Panel met on September 14, 2020, to discuss the request for a review of CRP 20-24. On the date of the meeting, each Panel members had reviewed the Investigation File. After discussions, each agreed that the allegations entailed abuse of authority and serious misconduct. In particular, the allegation of Racial Profiling would be in violation of FCPD General Order 201.13.³ Also, the request was timely filed, and therefore, the Panel had jurisdiction to review the investigation. The full nine-member Panel met on September 24, 2020, and the subcommittee recommended the Panel review the Investigation.

IV. Panel Meeting and Finding

The Complainant was present for the Panel Review on May 6, 2021.⁴ Also, both IAB Investigators were present along with other members of the FCPD. Major Lay was the primary spokesperson for the IAB who introduced 2nd Lt. Spooner to present the Investigation.

The Complainant was given an opportunity to share with the Panel his version of the events and why he filed the complaint. In his recitation to the Panel, the Complainant said he was driving to work and saw an unmarked Chevy Impala driving in the middle lane, but on the white line. He said he shared with his girlfriend that was a cop car. He said he flashed his lights to alert the driver, passed the vehicle and after passing he saw the police car lights flashing. The Complainant said he didn't know why he was being stopped but thought perhaps he has a break light out. He said he asked why he was being stopped and the Subject Officer told him he was going 73 miles per hour in a 45 mile per hour zone, and was therefore, driving reckless. He said he was given a citation to sign, but he refused. He said the Subject Officer appeared angry by his facial expression, so he began filming the encounter and handed the phone to his girlfriend. He said the Subject Officer asked him to step out of the vehicle, but while doing so the Subject Officer asked his girlfriend her name. The Complainant told the girlfriend she didn't have to give any information because she was a passenger.

The Complainant began to discuss the Use of Force allegations and was reminded by Acting Chair Bierman that the Panel could only review the allegations of racial profiling. The Complainant said he was driving alongside four or five other cars and believed he was singled out because he flashed his lights.

The Complainant was responsive to the questions asked by the various Panel members. Most Panel questions centered around race and the belief on the part of the Complainant that race played a role in his stop. He answered in the affirmative on most questions relating to his belief that he was stopped because of his race. However, he did acknowledge that if a white driver had flashed his lights and passed on the right, at the same rate of speed, that person would have been stopped as well.

The Complainant was asked by one Panel member if his driving speed could have been the reason for the stop. His response was that he passed the officer, so they were not going the same speed. Also, he said he would not drive recklessly when he knew it was a police officer.

³ FCPD 201.13 Human Relations subsection (A) Community Contacts.

⁴ The review by the Panel was delayed due to the FCPD reopening its investigation for additional analysis. The Panel was notified that the investigation was complete and could be reviewed on February 4, 2021.

He was also asked about the Subject Officer ability to know his race based on it being dark when the stop occurred.

The Complainant was asked to explain how hierarchical bias manifested itself in this incident since he accused the Subject Officer of that offense. "The Complainant" said that just because someone is African American does not mean they cannot be biased against another African American, and he asserted that such biases were often present with immigrants of African descent, like the Complainant. He further asserted that African Americans often get stopped for minor offenses.

Acting Chair Bierman thanked the Complainant for bringing the matter to the Panel.

Acting Chair Bierman then introduced FCPD's Major Lay who introduced 2nd LT. Spooner who conducted both the initial Use of Force and later the Racial Profiling investigation.

2nd LT. Spooner provided a summary of the facts of the case, the investigation and the finding. Each Panel member reviewed the investigation and so his summary will not be detailed here. However, one update given by 2nd LT. Spooner to the Panel was the fact that police cruisers assigned to the Fair Oaks Station Traffic Enforcement Team did not have ICV in the rear of the cruisers. However, this situation necessitated that that team be equipped and since this incident the police cruisers for the Traffic Enforcement Team now have ICV in the rear.

The Panel had the opportunity to ask questions of 2nd LT. Spooner. One question dealt with the appropriate action to take when a community member observes a police cruiser allegedly drifting over the line. 2nd LT. Spooner said that would depend on the circumstances, but if approaching at a high rate of speed the community member would need to slow down as a defensive tactic. Another question dealt with cars traveling behind a police cruiser at the same rate of speed whether officers can pinpoint one car with radar. 2nd LT. Spooner said that in this case, the Subject Officer was able to single out the vehicle because of the high rate of speed it was traveling when he looked in his rearview mirror.

A Panel member asked about the requirement that motorists sign summonses and whether it was State law or a county policy. 2nd LT. Spooner pointed to Virginia Code 46.2-940.

Another Panel member commented on this case being a good example of why it is beneficial to video. Major Lay agreed and said that body-worn cameras are now fully implemented in the FCPD, so that is in addition to having ICV.

A Panel member had questions about the training procedures for officers and whether there was an inconsistency in what the training says should occur and what happened in this case. In particular, the Panel member referred to an academy training slide, included with the investigation, that talks about differences in the placement of an arrestee in a vehicle with a cage as opposed to the placement without a cage. 2nd LT. Spooner said he would check and get back with the Panel.

A Panel member asked about the stop and arrest history of the Subject Officer that was included in the file by race. He wanted to know how the FDPC categorized the Subject Officer's

arrest patterns. 2nd LT. Spooner said that there was a higher percentage when looking at the arrest patterns, but he noted that the Subject Officer was a traffic officer, so many of his arrests came with traffic stops, such as refusing to sign summonses, driving on suspended licenses and driving without licenses, in a manner where the Subject Officer lacked discretion to avoid an arrest. In fact, the officer's citation statistics were consistent with the Department, though the arrest statistics showed a disparity.

Act Chair Bierman thanked the FCPD representatives for their participation.

The Panel heard from the "Complainant" and from FCPD. Based on each Panel members review of the file, statements and responses from both Complainant and FCPD, the Panel made the following finding:

The Panel voted unanimously that the Investigation was accurate, complete, thorough, objective, and impartial after open deliberation. Specifically, the Panel found no evidence suggesting that racial profiling occurred where the Complainant's undisputed and documented actions – flashing his lights and passing a police officer while speeding in the early morning hours in the dark – would have resulted in the Complainant being pulled over regardless of his race. Further, the Panel found that the IAB had followed all available lines of inquiry, including interviewing all pertinent witnesses (including the Complainant's girlfriend), viewing all available video evidence, and conducting a thorough analysis of the Subject Officer's arrest and citation statistics to determine whether there was any evidence of a history of bias.

An audio recording of the May 6, 2021, Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-may-6-2021>

On June 3, 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-subcommittee-meeting-june-3-2021>

CC: Complainant