

Police Civilian Review Panel

April 28, 2022

Conducted Electronically due to COVID-19 Pandemic

Initial Disposition Subcommittee – CRP-22-06

Members Present:

Dirck Hargraves, Subcommittee Chair

William Ware, Review Liaison

Janell Wolfe, Review Liaison

Others Present:

Rachelle Ramirez, OIPA

Steven Richardson, Panel Executive Director

Dre’Ana Whitfield, PCRP

NOTE: The Panel’s subcommittee meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Initial Disposition Subcommittee was called to order at 5:32 p.m.

Motions to Conduct Electronic Meeting: Mr. Hargraves took roll call to verify a quorum of the Panel’s subcommittee was present and to ensure each subcommittee member’s voice could be heard clearly. He asked each subcommittee member to state their name and the location from which they were participating.

Mr. Hargraves was present and participated from Rockville, Maryland.

Mr. Ware was present and participated from Alexandria, Virginia.

Ms. Wolfe was present and participated from Fairfax, Virginia.

Mr. Hargraves moved that each member’s voice may be adequately heard by each other member of this Panel. The motion was seconded by Ms. Wolfe and it carried by unanimous vote.

Mr. Hargraves moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the subcommittee to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA’s usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. He further moved that the subcommittee may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and

entering access code 2333 843 0407 as noted in the Public Meeting Notice. Ms. Wolfe seconded the motion and it carried by unanimous vote.

Mr. Hargraves moved that all matters addressed on the agenda are necessary to continue operations and the discharge of the Panel's lawful purposes, duties, and responsibilities. Mr. Ware seconded the motion and it carried by unanimous vote.

Completion of Initial Review Report for CRP-22-06:

Mr. Hargraves provided a brief overview of the Panel's subcommittee process for the public's information. He summarized the key dates regarding the complaint as referenced in the Initial Review Report template in the meeting materials.

Mr. Ware provided a summary of the complaint. On November 10, 2021, the complainant was delivering packages for Amazon. The complainant arrived at an apartment complex in Fairfax County. The complainant parked in a space that was labeled as a reserved space within the apartment complex. The complainant alleged that as she parked, another vehicle was within her vicinity. The complainant asked the individual whether she was parked in their parking space and did not receive a response from the driver. Another individual asked the complainant if she was going to move her vehicle. The complainant moved her vehicle and proceeded to the apartment building elevator to deliver the packages. The complainant alleged that one of the individuals in the vehicle walked past her with a pistol in his hand. Mr. Ware noted that the complainant became fearful and went back to her vehicle.

Ms. Wolfe noted that the complainant knew that the individual was behind her and was unhappy about the parking situation.

Mr. Hargraves concurred with the observations of the subcommittee members. Mr. Hargraves provided more information regarding the complaint, including that the complainant called her mother from the scene and it was her mother who called the police.

Mr. Hargraves expressed questions about whether the position of the pistol was considered brandishing under the Virginia Code.

He stated that the first FCPD officer responded to the delivery truck but did not immediately see the complainant. A second officer responded to the scene and provided backup.

He explained that after the FCPD officers interviewed the complainant, they ran the perpetrator's license plate number. The two FCPD officers located the alleged perpetrator's residence to ask further questions.

Mr. Hargraves noted that he believed that the police officers responded professionally to the complainant and the alleged perpetrator. He said it was confirmed that the alleged perpetrator had a concealed carry permit. He further explained that the two FCPD officers did not see a need for them to arrest the alleged perpetrator, as there was no hostility or words exchanged

between the complainant and the alleged perpetrator. He said the complainant could go to a magistrate to bring charges against the perpetrator.

Mr. Ware noted that as the complainant went back to her vehicle after seeing the handgun, the complainant encountered another person who advised that the complainant did not have to be concerned about the actions of the alleged perpetrator.

Ms. Wolfe noted that the complainant was very adamant about the gun not being in the holster. She expressed that she does not believe that it was fully investigated whether the gun was in the holster and that the officer did not question the perpetrator about it being holstered. She said the holster may have been black like the gun.

Mr. Hargraves went through the Panel Bylaws Abuse of Authority and Serious Misconduct Checklist listed in the meeting materials for the public. The subcommittee agreed that the allegations could fall into two categories in the checklist: the harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability (#2), and violation of laws or ordinances (#5).

Mr. Hargraves stated that the complainant alleged the FCPD response time was lacking and that the perpetrator was not arrested because the complainant was black.

Ms. Wolfe noted that there may also be a gender-bias allegation and specifically that the FCPD handled the case differently because the complainant is a black woman.

Discussion ensued on whether, following the incident, there was a misstatement made by an FCPD supervisor regarding the law or whether a violation of laws or ordinances occurred. Specifically, Mr. Hargraves noted the supervisor stated to the complainant that brandishing a weapon only occurs if it is pointed at a victim and that the police had to be present to witness a brandishing to issue a warrantless arrest.

Mr. Hargraves recommended that CRP-22-06 be referred to the full Panel for review. The subcommittee members concurred with Mr. Hargraves's recommendation.

Mr. Ware summarized the elements of the investigation that the subcommittee was able to review in the investigative file. Mr. Ware and Ms. Wolf discussed the reference in the FCPD disposition letter to *Dezfuli v. Commonwealth* and its applicability to brandishing in this case. Mr. Ware said in reviewing the cases referenced in the investigation and Virginia statute, that he was concerned that this person may be in violation of a brandishing statute. He said that the FCPD followed up with the Commonwealth Attorney office which said it will not prosecute based on facts provided. He noted that this complaint is of enough interest to be considered by the full Panel. Ms. Wolf expressed her agreement and stated that factually the *Dezfuli* case has no bearing on this incident and that she was able to identify another case more applicable that has to do with holding a weapon (*Crewe v. Commonwealth*).

Ms. Wolfe moved that after having reviewed and discussed the complaint, CRP-22-06 should be referred to the full Panel for review. Mr. Ware seconded the motion and it carried by a unanimous vote.

Mr. Hargraves stated that there will be elements in the investigation that will be discussed further by the full Panel. He thanked the complainant for filing the complaint and commended the Internal Affairs Bureau for conducting the investigation. Mr. Hargraves stated that he believed the Internal Affairs Bureau provided a responsive disposition to the matter but would like the full Panel to review further.

Ms. Wolf, being a new Panel member, asked for clarity about how the complaint moves to the full Panel. Mr. Hargraves stated that the subcommittee will present their recommendation to the Panel at the next meeting. Ms. Ramirez stated that the subcommittee meeting summary and a completed Initial Review Report will be shared in the meeting materials.

The meeting adjourned at 6:16 p.m.

Fairfax County Police Civilian Review Panel Subcommittee Initial Review Report

Request for Review – Basic Information

CRP Complaint Number: CRP-22-06

Subcommittee Meeting Date: April 28, 2022

Subcommittee Members:

- Dirck Hargraves, Subcommittee Chair (Panel Chair)
- William Ware, Subcommittee Member
- Janell Wolfe, Subcommittee Member

Complaint Submission Date: Review Request received on 3/26/2022. Other Key Dates: Incident Date: 11/10/2021; Initial Complaint to Panel (CRP-21-23): 11/12/2021; FCPD Disposition letter: 1/25/2022

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 Subcommittee Initial Review Report sets forth the Subcommittee’s recommendation on whether the Complainant’s allegation(s) meet the standard for review provided in the Panel’s Bylaws. The Panel may accept or not accept the Subcommittee’s recommendation on whether to review a complaint.

Findings

The Panel’s review authority states in Article VI (A)(1) of its Bylaws: “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 allegations of dissatisfaction with the FCPD in concluding there was no crime and in not releasing the name of the perpetrator for the complainant to file a restraining order.

The Subcommittee finds that the subject matter of the investigation, as stated in the allegations, **meets** the threshold requirement for “abuse of authority” and “serious misconduct.”

Recommendation

The Subcommittee recommends that the Panel **undertake** a review of CRP-22-06 because the complaint **meets** 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.	
Yes	Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability.	Alleged the FCPD response time was lacking and that the perpetrator was not arrested because the complainant is black. There may also be gender discrimination as the complainant is a woman.
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.	
Yes	Violation of laws or ordinances.	Potential misstatement by FCPD supervisor regarding brandishing law.
No	Other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Cannon 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.**