

Law Enforcement
Community Oversight Board

INVESTIGATIVE REPORT

23CMP-022



ARLINGTON
VIRGINIA

Julie Evans, Chair
communityoversightboard@arlingtonva.us

To: **Chief Charles “Andy” Penn**
Arlington County Police Department
Justice Center Building, 1425 N. Courthouse Rd. Rm 7109
Arlington, VA 22201

CC: **Captain Albert Kim**, OPR Commander
Mummi Ibrahim, Independent Policing Auditor for Arlington County
Matt De Ferranti, County Board COB Liaison
Susan Cunningham, County Board COB Liaison
Aaron Miller, Deputy County Manager
Mark Schwartz, County Manager

Re: **2023CMP-022**

Dear Chief Penn:

This is to inform you that, pursuant to Arlington County Code Section 69, the Law Enforcement Community Oversight Board (COB) has reviewed the above-mentioned administrative investigation and has come to the following findings, assessments, and recommendations pertaining to the collaborative investigation conducted by the Arlington County Police Department Office of Professional Responsibility (OPR) and the Independent Policing Auditor (IPA).

Table 1. Summary of Investigation and COB Review Findings

Alleged Policy Violation(s)	OPR Finding(s)	IPA Finding(s)	COB Finding(s)
Search and Seizure (Officer 1)	Exonerated	Not Sustained	Not Sustained
Use of Force (Officer 1)	Exonerated	Exonerated	Exonerated

SUMMARY OF THE INCIDENT

Location: Commercial Store Front on S George Mason Dr

Persons Involved:

- Complainant – 63yo, Black or African American, Male, English is Primary Language, made complaint to COB through web portal (*complaint intake facilitated by I. Lazarenko*)
- Reporting Party – placed call to ACPD
- Officer 1 – Initially responded to ACPD call, primary interaction with Complainant and Reporting Party
- Officer 2 – Field Training Officer (FTO), initially responded to ACPD call, observed interactions with public
- Officer 3 – Arrives later to scene and receives verbal summary of events from Officers 1 and 2
- Anonymous Witness – provided a statement to the IPA

Summary: In April 2023, a complainant alleged in a complaint to the COB that he was illegally searched and physically detained by Officer 1 and cited experiencing an episode of Post Traumatic Stress Disorder (PTSD) and feared for his life during an encounter with the police. The encounter took place outside a store on S George Mason Dr; the Complainant restrained his dog from another dog and its owner. The other dog owner, the Reporting Party, called the police to report the interaction as possible animal abuse and ACPD responded to the scene.

Upon approach by the police officers, the Complainant asked if he was being arrested or detained and was told “no,” and began to walk away. Dialogue between Officers and the Complainant continued and the Complainant removed his phone from his back pocket, as Officer 1 was instructing him not to reach into his pocket. Officer 1 quickly removed the Complainant’s phone from his hands and, within a few seconds of being instructed to do so by the FTO (Officer 2), Officer 1 returned the phone.

Table 2. Summary COB Assessment of ACPD OPR Investigation

Assessment Metric	Guiding Questions: Did ACPD's OPR Investigation/Report...	COB Assessment
Comprehensive	...explore all alleged and other identified possible policy violations?	Yes
Thorough	...pursue all relevant evidence available for all involved officers?	Yes
Complete	...analyze all lines of inquiry to a meaningful resolution?	Yes
Accurate	...correctly record the facts presented in available evidence?	Yes, with clarification (see below)
Objective	...assess all evidence without assumptions or preconceived notions about the outcome?	Yes
Impartial	...demonstrate balanced consideration for all parties involved? (i.e., regardless of rank, position, demographic, etc.)	Yes
Credible	...promote public trust in the investigation process?	Yes
Sufficient Discipline	...include sufficient discipline for any sustained allegations?	N/A

Additional Information about the COB's Assessment of the OPR Investigation and Report:

- **Accuracy:** OPR's report states that the Complainant reached into his pocket *after* Officer 1 instructed him not to do so; however, review of the body-worn camera (BWC) footage indicates that these actions occurred simultaneously. The discrepancy is likely attributable to how quickly the events unfolded and, as the IPA report indicates, the inaccuracy is only significant to clarify that the Complainant's actions did not seem to be a defiance of Officer 1's verbal command and therefore did not necessarily warrant seizure of the Complainant's phone.

Explanation of COB Findings for Alleged and Other Identified Possible Policy Violations:

- **536.06 – Search and Seizure:**
Not Sustained. The evidence reviewed did not contain sufficient information to sustain or exonerate the allegation that Officer 1's seizure of the Complainant's phone was illegal, relating to Officer 1's possible motivation to seize the phone to prevent recording of the interaction. The entire physical interaction between Officer 1 and the Complainant lasted approximately 10 seconds, which was not enough time for the Complainant to explain what he was reaching for or why, especially from behind the Complainant's back. The COB (and IPA) did find Officer 1's interview statements that the seizure was motivated by a fear for officer safety to be credible; however, the BWC footage does indicate that the removal of the phone took place and interfered with the Complainant's interest in his property to record the interaction.
- **538.04 – Use of Force:**
 - The Arlington County Police Department's highest priority is the sanctity of human life. In all aspects of their conduct, sworn officers will act with the foremost regard for the preservation of human life and the safety of all persons. The Department is committed to accomplishing its mission with respect and by using communication, crisis intervention, and de-escalation tactics before resorting to force, whenever feasible.
 - An officer's use of force is governed by the Fourth Amendment of the U.S. Constitution and the laws of the Commonwealth of Virginia. Officers may use force to bring an incident or non-compliant suspect under control, detain or arrest a person, prevent an escape, and/or protect the lives or personal safety of themselves or others. The amount of force applied by officers shall be objectively reasonable in light of the facts and totality of circumstances confronting them.**Exonerated.** Review of BWC footage from Officers 1 and 2 shows that the Complainant has no physical contact visible beyond Officer 1 seizing and quickly returning the phone, upon instruction by the FTO (Officer 2) to do so.

Does this investigation warrant a training recommendation? If so, was one made by OPR or the IPA?

- **Yes:** The COB recommends that Officer 1 receive additional training on de-escalation tactics. Although the COB concurs with the IPA finding that Officer 1's actions were reasonable, especially as a new recruit still working to establish a command presence and comfort level when responding to calls for service, a more seasoned officer may have diffused the tension without seizure of the Complainant's phone. Further, in light of the increasing friction between the Complainant and Officer 1, the situation may have escalated without the supervisory presence and intervention of the FTO.
 Although OPR's report did not include a training recommendation, ACPD could strengthen its emphasis on promoting positive outcomes through de-escalation by providing Officer 1 with additional training.

Other relevant comments, commendations, or concerns:

- **Commendation for the FTO:** The COB echoes the IPA commendation for the FTO (Officer 2), who deftly balanced the need to afford new officers with enough space to learn while also promoting officer and public safety throughout the interaction. The FTO promptly intervened after Officer 1 seized the Complainant's phone, effectively de-escalating the situation and demonstrating empathy to the Complainant. His tone and demeanor interacting with the Complainant exemplified excellent community policing and he provided meaningful guidance during the subsequent debrief with Officer 1 to use in future interactions with members of the public.
- **Number of Police Vehicles Responding to the Scene:** The COB recognizes that the Complainant's assessment of the number of police vehicles was not accurate, BWC footage indicates that at least four (4) officers responded to this call for service. During the investigation review meeting, the COB recognized the need to manage uncertainty in responding to different calls for service and effectively manage a scene, specifically pertaining to the presence of an animal. The COB also acknowledged that the Complainant's sensitivity to the 'show of force' by police is a reasonable reflection of broader community members' needs. The COB encourages ACPD to consider operational and communication protocols to encourage excess officers and vehicles to depart after a preliminary assessment to manage the scene is completed to prevent perceptions of intimidation or over-policing.
- **Recognition of Possible Harm related to Post-Traumatic Stress Disorder (PTSD):** After hearing relevant personal testimony offered during the COB's public Investigation Review Meeting for this case, the COB emphasizes the seriousness of the possible harm that can be caused by negative interactions with law enforcement to members of the community who suffer from elevated sensitivities or risk factors (e.g., PTSD; abuse, domestic violence, or sexual assault; different physical or cognitive abilities, etc.) Recognizing our shared sensitivity to the health and wellness of the community, the COB encourages ACPD to continuously expand and reinforce relevant training, pertaining to: officer recognition of these harms and associated consequences, protocols to equip officers with trauma-informed skills that minimize risk and harm to the public, and tools to increase officers' ability to prioritize community safety, health, and wellness in varied and dynamic situations.

I submit this report on behalf of the entire COB and we appreciate your attention to this report; please contact me if you have any questions.

Sincerely,

Julie Evans, Chair
Arlington County COB
E-mail: communityoversightboard@arlingtonva.us

23CMP-022

ACPD RESPONSE



Memorandum

To: Community Oversight Board Date: February 25, 2025
From: Chief Andy Penn, Chief of Police
Subject: COB Report 23CMP-022 – ACPD Written Response

This memorandum serves as ACPD’s written response to the Community Oversight Board (COB) Report Case ID 23CMP-022. The case was heard by the COB on November 8, 2023. The document will address the following:

- Part 1. OPR’s Findings for ACPD Manual Section 536.06 – Search and Seizure.
Part 2. The COB’s training recommendations, comments, and concerns.
a. Officer 1 receive additional training on de-escalation tactics.
b. Operational and communication protocols... to prevent perceptions of intimidation or over-policing.
c. ACPD Expand and reinforce relevant training, pertaining to... trauma-informed skills.

Part 1. OPR’s Findings for ACPD Manual Section 536.06 – Search and Seizure.

Table 1. Administrative Investigation Findings

Table with 4 columns: Allegation, ACPD Manual Section, OPR Findings, COB Findings. Row 1: 1, 536.06 – Search and Seizure, Exonerated, Not Sustained. Row 2: 2, 538.04 – Use of Force, Exonerated, Exonerated.

OPR Findings – 536.06 – Search and Seizure – Exonerated

ACPD Manual Section 536.06 – Search and Seizure states,

“Searches and seizures effected by officers shall be conducted reasonably and in accordance with the Fourth Amendment, applicable state law, and relevant case law, taking into account the totality of the circumstances of an incident in order to ensure an equitable and effective criminal justice process. Officers are required to document all searches and seizures.”

"A search or seizure must be based on specific, articulable facts establishing criminal behavior and may not be based on a person's race, color, religion, national origin, sex, gender identity, sexual orientation, age, or disability, except when those factors are used as descriptors to identify a suspect."

During this incident, Officer 1 responded to an "animal complaint." The caller informed police dispatch he observed a "dog being yanked by the collar and [a subject] hurting it." The caller also reported the subject had "threatened harm... was acting erratic... and possibly under the influence."

Based on the information provided by the caller, Officer 1's investigation into the incident would include whether the subject violated one or more of the following state and local laws:

- **VA Code 18.2-57.** Assault and Battery.
 - "Assault" does not require contact only that a combination of words and actions puts a person in reasonable fear of being battered.
- **VA Code 3.2-6570.** Cruelty to Animals.
- **VA Code 18.2-388. Intoxication in Public Intoxication or Arlington County Code 17.7. Public Intoxication and Profanity.**

As Officer 1 approached the location on foot, a subject (not the caller) can be heard yelling "*what's going on over here? that punk a#\$ mother!#%\$ right there better mind his business...*" Officer 1 told the subject, "*do me a favor stop... stop... do me a favor, quit it...*" The subject responded by stating, "*I'll say what I want to say.*" Officer 1 replied, "*I'll deal with you in just one second.*" The subject responded by stating, "*no, I'll tell you what...*" The subject then turned and placed his bags on the ground. The subject's hands, the content of the bags, and what he was doing with the bags were no longer visible to Officer 1. After placing the bags on the ground, the subject turned to face Officer 1. The subject then moved his left hand behind his back as if to grab something from his back left pocket. Officer 1 stated, "don't reach in your pocket" as the subject removed the item. Officer 1 closed the distance and immediately took the item from the subject's hand. The elapsed time from when the subject initially touched his pocket, to when Officer 1 closed the distance and removed the item from the subject's hand was two (2) seconds.

During his administrative interview with OPR, Officer 1 stated the following:

- The subject appeared agitated and was approximately 3-4 feet from him.
- The subject placed something on the ground, turned to face him and placed his hand behind him and grabbed something from his left pocket.
- He grabbed the item from the subject's hand because he didn't know what it was or whether it was going to become a safety hazard.

Based on the totality of the circumstances of the incident: crimes being investigated included ones that involved violence or the potential for violence; the subject was agitated and verbally aggressive with the officer and caller; and the rapidly evolving nature of the incident (2 seconds between the time the subject grabs his pocket to when the officer takes the item from the subject's hand), Officer 1's actions to take an item out of the subject's hand are reasonable, legally justified, and permitted under policy.

Based on the above analysis, ACPD found that the allegation Officer 1 violated **ACPD Manual Section 536.06 – Search and Seizure** is **EXONERATED**.

Exonerated = Incident occurred but was lawful and proper.

Part 2. The COB's training recommendations, comments, and concerns.

a. Officer 1 receive additional training on de-escalation tactics.

Officer 1 responded to the location and immediately heard the subject yelling profanities and being verbally aggressive (see Part 1). Officer 1 did not raise his voice or use profanity in response. Officer 1 stated, "*do me a favor stop*" in a non-aggressive yet firm manner. The subject was standing in front of the main entrance to the business blocking ingress and egress. Two (2) customers were standing outside in close proximity to the subject. Officer 1's decision to close the distance and restrict the subject's forward and lateral movements were prudent to ensure the safety of bystanders on scene. There was no information provided by witnesses, the caller, or the call taker, that indicated the subject suffered from PTSD. This information was learned after the fact.

At the time of the incident, Officer 1 had not completed field training with a Field Training Officer (FTO) and was currently working to complete Virginia Department of Criminal Justice Services (DCJS) requirements as a certified police officer. The number of requirements is expansive.

ACPD requires officers in field training to complete six hundred to eight hundred (600-800) hours of training. DCJS mandates only one hundred (100) hours of field training to become certified as law enforcement officers in Virginia. In addition to formal academy training, ACPD also provides recruit officers with two (2) weeks of local training prior to the start of field training. Reality-based training scenarios are used throughout this process to ensure recruits are adhering to the policy, procedures, and expectations of the agency. De-escalation, discretionary arrests, and verbal communication are areas of focus for instructors.

Officer 1's successful completion of the field training program ensured he received the proper amount of "de-escalation tactics" training as dictated by DCJS and ACPD's own internal training curriculum.

b. Operational and communication protocols... to prevent perceptions of intimidation or over-policing.

ACPD is mindful that the presence of multiple officers could be perceived as intimidating or "over-policing." However, in most cases when multiple officers are on the scene of an incident, they are completing tasks assigned to them by the primary officer or a supervisor.

ACPD supervisors have the authority, and will continue to be empowered, to manage the number of officers on any given scene. Supervisors have consistently placed officers in-service once a scene is stabilized. Officers who are not actively completing an assigned task are placed in-service. This process prevents service vacuums from occurring and is the current protocol at ACPD.

c. ACPD Expand and reinforce relevant training, pertaining to... trauma-informed skills.

The incident involving Officer 1 lasted approximately eighteen (18) seconds¹. The rapid nature in which these events occurred would have made it difficult for the officer to recognize the indicia of PTSD. Unfortunately, it is not uncommon for these types of incidents to escalate quickly. ACPD has always relied on its immense investment in training its personnel to ensure the decisions officers make prioritize the safety of community members.

The department remains committed to its high training standard and will continue to provide its officers with the training they need to be successful partners in the community they serve. This includes a continued emphasis on de-escalation tactics, Crisis Intervention Team (CIT) training, active participation in the Mobile Outreach Support Team (MOST), and other similar programs.

¹ The amount of time between Officer 1's first contact with the subject and when Officer 1 took the subject's cellphone from him.