

Memo

To: Lieutenant G. Jones
From: Captain J.T. Simpson
Date: February 28, 2022
Re: Lieutenant Furr IA findings

On 02/07/2022, I was issued a SCF completed by Major T. Lindgren regarding the 01/27/2022 incident between Lieutenant Arick Furr and Mr. Jeffery Gray.

I met with LT Furr in my office to discuss the matter. The matter was reviewed by me, not internal affairs, thus Garrity Rights were not issued, and the conversation was not recorded. I asked LT Furr to describe the interaction with Mr. Gray.

Facts and Circumstances:

LT Furr was working at the front desk of City Hall. An unknown female came to the desk and asked for directions to an office in City Hall. The female walked away but then returned and told him a male was outside City Hall asking for money and made her feel uncomfortable. The female was not identified and the circumstances surrounding her distress were not identified.

LT Furr walked outside and saw a male, later identified as Mr. Gray, holding a cardboard sign. LT Furr attempted to speak to Mr. Gray. Mr. Gray ignored him, folded up his sign, and walked away from City Hall toward South Main Street. LT Furr did not continue the interaction and went back inside City Hall.

A short time later, Mr. Dan Merkel walked into City Hall and told LT Furr that a male was panhandling on the front steps of City Hall.

LT Furr walked outside and contacted Mr. Gray, who was on the front sidewalk holding a cardboard sign. LT Furr told Mr. Gray that panhandling was not allowed in the city and he needed to leave. Mr. Gray become argumentative, called LT Furr stupid and a

disgrace, and told LT Furr that he was not leaving, and he was not going anywhere. Mr. Gray asked LT Furr what his legal authority was for ordering him to leave. LT Furr asked for Mr. Gray's identification. Mr. Gray reached into his pockets and pulled out two magnet alphabet letters and told LT Furr that was the only ID he was getting from him. Mr. Gray then took out a Florida driver's license, showed it to LT Furr and again told him he was not getting it and put the license back in his pocket. The conversation continued with Mr. Gray remaining argumentative and when Mr. Gray began to walk away, LT Furr informed Mr. Gray was not free to leave. LT Furr informed Mr. Gray he was being detained and secured him in handcuffs. LT Furr searches Mr. Gray after he is detained and removes his Florida driver's license from his pocket. LT Furr walks Mr. Gray over to the bench near the front doors of City Hall and notices a GoPro camera sitting on the bench pointing in their direction. He asks Mr. Gray to sit down on the bench and turns the camera away from them. Mr. Gray identifies the camera as his. LT Furr took the GoPro, turned it off, and placed it into Mr. Gray's pocket. Officer Shoffiett arrives after Mr. Gray is detained. Mr. Gray's calms down and LT Furr removes the handcuffs and leaves Mr. Gray on the bench. LT Furr returns to his patrol vehicle, runs Mr. Gray for warrants, and completes a Field Interview in MCT. LT Furr returns to Mr. Gray and informs him that he cannot panhandle for money. Mr. Gray asked if he could remain on the sidewalk and LT Furr tells him no and he must leave. Mr. Gray leaves the area and LT Furr returns to the front desk.

I asked LT Furr to describe his decision-making process prior to meeting with Mr. Gray. Specifically, regarding what type of officer-citizen encounter was appropriate. LT Furr felt he had reasonable articulable suspicion (RAS) for a Tier 2 encounter. The two independent citizen complaints regarding Mr. Gray's actions, within a short amount of time, was within the scope of RAS to investigate and detain Mr. Gray to investigate possible disorderly conduct charges. LT Furr felt that Mr. Gray was intentionally egging him on by calling him stupid and a disgrace.

Mr. Gray had released video footage from the GoPro camera onto his YouTube channel. LT Furr did not have a body worn camera (BWC) thus the video from Mr. Gray is the only video available. LT Furr and I watched the 13-minute video in my office. The start of the video shows the front of City Hall. LT Furr's marked patrol vehicle is parked in front of City Hall. Mr. Gray describes his intent to conduct a "civil rights investigation". The screen changes to a picture of Mayor Gilvin and the audible voice of Mr. Gray saying, "God Bless the Homeless Veterans". A male voice is heard saying that panhandling isn't

allowed. I was not able to identify the male voice. The video shows Mr. Gray standing on the sidewalk in front of City Hall holding a sign. An unknown white female walks up the sidewalk and Mr. Gray again says, "God Bless the Homeless Veterans" and the female enters City Hall. A few moments later, LT Furr exits City Hall and approaches Mr. Gray and says, "you have to leave". The encounter is recorded and while there is audio of the conversation between Mr. Gray and LT Furr, it is hard to decipher all that is said. LT Furr tells Mr. Gray he is not free to leave and that he is being detained and LT Furr places Mr. Gray into handcuffs. When LT Furr walks Mr. Gray to the bench where the camera is located, the camera is turned by LT Furr. Mr. Gray is heard identifying the camera as his and requesting the camera to be turned to record their interaction. A few moments later, the recording stops. Audio continues recording the interaction. LT Furr and OFC Shoffiett are asking Mr. Gray if he needs any help, if he is homeless, needs any other assistance. Mr. Gray informs them he is neither homeless nor in need of any assistance. When LT Furr returns to his patrol car, the recording starts again. LT Furr explains that panhandling is not allowed in the city. Mr. Gray asks if he can remain on the sidewalk and LT Furr tells him no. As Mr. Gray is walking away, LT Furr says that Mr. Gray needs to "leave the Downtown area period."

I began reviewing the internal video surveillance footage from City Hall. I was able to find video showing LT Furr at the front desk. The City Hall video does not contain audio. Mr. Merkel comes to the desk at 0929. Shortly after the conversation with Mr. Merkel, LT Furr walks outside but then comes back a few moments later. At 0931, the same unknown white female seen on Mr. Gray's GoPro video, enters City Hall. As described by LT Furr, there is a short conversation where he appears to be providing directions and she walks away. Approximately 10 seconds later, she returns and has another conversation with LT Furr. During the conversation, she motions outside, and LT Furr goes outside at the end of the conversation. In LT Furr's initial recollection of the event, the unknown female was the first complainant and Mr. Merkel was the second complainant.

I met with OFC Shoffiett in my office. Garrity Rights were not issued, and the conversation was not recorded. I asked OFC Shoffiett to describe the interaction with Mr. Gray.

OFC Shoffiett said that Mr. Gray was detained in handcuffs when he arrived. OFC Shoffiett spoke with Mr. Gray about his veteran status, his military history, and his

current living situation. Mr. Gray says that he is not homeless and does not need any assistance. After LT Furr completes the Field Interview, Mr. Gray is released, and Mr. Gray leaves the area.

Incident Review:

Based on the information provided by LT Furr, I was able to corroborate two persons did speak to him shortly before his interaction with Mr. Gray. City ordinance 30-3(a) states *“it shall be unlawful for any person to disturb or endanger the public peace by any disorderly conduct”* and (b)(1) further describes disorderly conduct as behaving in *“violent or tumultuous manner toward another whereby any person is placed in fear of the safety of such person’s life, limb or health.”* City ordinance 30-4(a)(3) states *“it shall be unlawful for any person within the corporate limits of the city to be disorderly while under the influence of alcohol or drugs on the streets, sidewalks, or other public places.”* 30-4(a)(3) ordinance prohibits panhandling while under the influence of alcohol or drugs. The information provided to LT Furr from the two complainants described Mr. Gray as panhandling and making the female complainant feel “uncomfortable”. Neither complainant described Mr. Gray as possibly being under the influence.

Therefore, LT Furr did not have a legal basis to conduct a tier 2 detainment of Mr. Gray. A tier 1, consensual encounter was more appropriate. A consensual encounter could have given LT Furr the time to develop enough information to attain RAS.

LT Furr’s first statement to Mr. Gray was “you need to leave”. LT Furr’s interaction with Mr. Gray did not present patience, resolve, or proper investigative steps. LT Furr did not take investigative steps to corroborate the information provided to him by Mr. Merkel or the unknown female. LT Furr immediately giving an order at the beginning of the interaction exacerbated the situation and interrupted the opportunity for investigation or an amicable discussion. Mr. Gray is a self-admitted 1st amendment auditor who purposely records his interactions with law enforcement.

The department’s PRIDE model of decision making recommends the use of time to investigate situations where there is no immediate danger. There was no indication that Mr. Gray was an immediate threat to anyone. LT Furr had the time to observe and watch Mr. Gray before encountering him.

Department policy, Goals and Objectives 01-01 Mission Statement, The Department of Public Safety exists to enhance the quality of life of those who live, work, and play in the City of Alpharetta. This mission is met by providing good customer service to everyone we encounter. Ignoring the complaint of panhandling by two citizens would not be good customer service. However, engaging in a confrontation with an individual of a citizen's complaint without first trying to investigate the authenticity of the complaint does not meet the department's expectations of a high-ranking officer.

After Mr. Gray is detained, LT Furr enters his pocket to retrieve his driver's license. *Terry v. Ohio* allows for an officer to frisk a person who has been detained for weapons. The frisk must be non-intrusive, and pockets cannot be entered unless an object which is consistent with a weapon is felt within the pocket. There was no legal justification to enter Mr. Gray's pocket that contained the driver's license. *Department policy, Encountering the Suspicious Person 05-05-04 Paragraph A, Investigative Detention: The brief detention of a person to investigate suspicion of criminal activity. The officer should; based upon his/her natural senses, experience, and good judgment, have articulable reasons to support the suspicion. The person's outer garments may be frisked if the officer believes weapons are involved.*

Current case law allows for citizens to record law enforcement if there is no obstruction or interference of the officer's ability to complete their tasks. Mr. Gray is heard in the GoPro video claiming the camera is his. After LT Furr turns the camera away from he and Mr. Gray, Mr. Gray asks the camera to be turned back toward them to continue recording the interaction. Instead, LT Furr chose to turn the camera off and put it into Mr. Gray's pocket. There is no apparent justification for LT Furr's manipulation of the camera. LT Furr said he was frustrated by Mr. Gray and his actions. After he manipulated the camera, LT Furr said he knew that he should not have manipulated the camera and should have allowed the camera to continue to record.

After Mr. Gray was released from investigative detention, LT Furr informed him that he could not remain in the area. There is no legal justification for LT Furr to order Mr. Gray to leave the area at the end of their interaction. LT Furr felt that ordering Mr. Gray to leave the area was an effective way to de-escalate and diffuse the situation.

Conclusion:

LT Furr's detainment of Mr. Gray and his interaction with Mr. Gray is not within the scope of the law or department policy. *Department policy, Arrest-Legal Process 04-10, Definitions, Investigative Detention: The brief detention of a person to investigate suspicion of criminal activity. The officer should; based upon his/her natural senses, experience, and good judgment, have articulable reasons to support the suspicion. The person's outer garments may be frisked if the officer believes weapons are involved.* LT Furr is an experienced police officer within the Alpharetta Police Department. He is a high-ranking officer with vast training, and a department instructor. LT. Furr has been employed as an Alpharetta Police Officer for 14 years and previously employed by the Albany Police Department (GA) for 3 years. The department's expectations for police lieutenants are but not limited to, being accountable for quality decisions, problem solutions, and good judgement regarding critical, routine, or basic matters/situations. Lieutenants will lead by example with enthusiasm, passion, and excellence while building self-confidence in subordinate officers and strengthening community trust.

LT Furr allowed himself to become frustrated and annoyed by Mr. Gray. Resulting in LT Furr acting outside of his legal authority. I found no information that LT Furr was acting with malice or outside motive, merely poor judgement. His personnel file reflects no similar record of behavior.

Assessment of the Douglas Factors:

1 – The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously for gain, or was frequently repeated:

Any violation of a constitutionally protected right is a serious offense. LT Furr's detainment of Mr. Gray may not survive a constitutional challenge. The search of and retrieving of Mr. Gray's license from his pocket, manipulation of the Mr. Gray's GoPro camera, and ordering Mr. Gray to leave the downtown area are outside of departmental policy and the law. LT Furr's interactions with Mr. Gray was not acceptable. LT Furr's position and duties as a shift commander and instructor are critical positions within the organization. LT Furr's actions were based on assumptions made about a complaint made by two citizens, not bad intentions nor malice.

2 – The employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position:

LT Furr is shift commander and an instructor. LT Furr is expected to appropriately handle interactions of this nature.

3 – The employee’s past disciplinary record:

LT Furr has a good disciplinary record with no major issues.

4 - The employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability:

LT Furr is a tenured employee with over 14 years of service to the City of Alpharetta and over 17 years of law enforcement experience. He has been a dependable and consistent top performer in his multiple job assignments throughout the organization. He gets along well with co-workers and supervisors.

5 - The effect of the offense upon the employee’s ability to perform at a satisfactory level and its effect upon supervisors’ confidence in the employee’s work ability to perform assigned duties:

This interaction is a result of poor decision making and performance. This is a learning opportunity for LT Furr and the entire organization. I am confident that LT Furr will learn from this experience, and it will have no effect on my confidence in his ability to perform satisfactorily in the future.

6 - The notoriety of the offense or its impact upon the reputation of the agency:

Since the release of the GoPro video, there have been numerous calls, emails, and social media posts to the City about this interaction. The communications have mostly been contentious and negative. Most of the authors of these communications have been from out of the immediate area of Alpharetta.

7 - The potential for the employee’s rehabilitation:

I am confident LT Furr will learn from this interaction. He is an instructor and will be used to express the learning points to the rest of the organization.

8 - Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter:

LT Furr admitted that he was frustrated with Mr. Gray's actions. LT Furr failed to follow good investigative practices. He began making urgent decisions when he should have slowed down and investigated the complaint. LT Furr allowed his frustrations to compound poor decisions and to escalate the interaction.

9 - The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others:

Internal sanctions are adequate and effective to deter such conduct in the future by LT Furr and other employees of the organization.

Taking all facts, circumstances, and the Douglas Factors into account, I recommend Lieutenant Arick Furr is suspended without pay for a period of two (2) working days. I recommend LT Furr provide on-duty and in-service training to the rest of the organization regarding the lessons learned from this interaction. LT Furr will overcome identified difficulties and improve his and the organizations overall performance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J.T. Simpson', with a long horizontal flourish extending to the right.

Captain J.T. Simpson
Uniform Patrol Division

