

Date: January 25, 2021

To: Board Members, Citizen Complaint Authority

From: Gabriel Davis, Director

Subject: Investigation Summary – February 1, 2021 Board Meeting

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Complaint #	18247
Complainant	Ayanna Riley
CCA Investigator	Dena Brown
CCA Findings	Officer Dennis Barnette Discrimination – SUSTAINED Improper Procedure (Reporting Use of Force) – SUSTAINED
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS	
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Application of Standards to Facts

The evidence establishes that Officer Barnette was dispatched to the Brownstone Nightclub where he observed Ms. Riley and Mr. Freeman involved in a verbal and physical argument. Officer Barnette issued several commands for Ms. Riley to calm down, which she ignored. As Officer Barnette grabbed Ms. Riley’s arm, she flailed her arms toward him and struck him in the face. Officer Barnette immediately placed Ms. Riley on the hood of a parked vehicle and placed her into custody with the assistance of Officer Pope. CPD Procedure § 12.545, Use of Force, hard hands is defined as the use of physical pressure to force a person against an object or the ground, use of physical strength or skill that causes pain or leaves a mark, leverage displacement, joint manipulation, pain compliance, and pressure point control tactics. The policy also states officers may use whatever force is reasonably necessary to apprehend an offender or effect an arrest and no more. Given Ms. Riley’s actions, including her striking of Officer Barnette, Officer Barnette was in compliance with CPD’s policy, procedure, and training when he used hard hands to place Ms. Riley against the hood of the vehicle to take her into custody.

Nevertheless, CPD Procedure § 12.545 also provides that an arresting officer using “hard hands” force against a subject is “required to” report the force in writing as follows: “document a narrative account of the subject’s form(s) of resistance and the officer’s specific defensive tactic used to overcome that resistance in the narrative of the arrest report and complete a Form 18NC, Noncompliant Suspect/Arrestee Report, to be reviewed and approved by a supervisor. The use of force report will require the officer identify the events leading up to the use of force” Here, Officer Barnette submitted a use of force report (Form 18NC) but he did not identify the events leading up to his use of force against Ms. Riley, and failed to describe the specific action that he took in response to resistance as he was required to do. He left the “Verbalization” section of the form blank. In fact, Officer Barnette included very little information about his interaction with Ms. Riley in his report, failing to even mention her name, or the charges against her, as required. Therefore, Officer Barnette’s failure to properly complete his use of force report violated CPD’s policy and procedure.

Finally, BWC footage from Officer Barnette’s interaction with Ms. Riley clearly reveals that as he placed her against the hood, he referred to her as follows: “[Racial slur] slapped me in the face!” CPD’s Manual of Rules and Regulations § 1.23 provides that *members shall not express, verbally or in writing, any prejudice or offensive comments concerning personal characteristics, including race, color, and ethnicity.* The City of Cincinnati’s Administrative Regulation 25 has defined discriminatory harassment as “*conduct toward an individual because of his or her...race, color, ethnicity...when the conduct is severe or pervasive enough to create an intimidating, hostile, or offensive...work environment,*” including in situations where the victim of the discrimination is not a City employee. Together, the applicable policies provide that such conduct will not be tolerated.

Accordingly, the evidence establishes that Officer Barnette publicly and heatedly described a Black woman who he was physically subduing by using the N-word—a racial slur and an expression of prejudice so well-established and so inflammatory that it requires no further explanation. He uttered the slur in the presence of other civilians, at least some of whom openly described the language as racist and offensive, and at least some of whom were African American. Such action was plainly offensive, inappropriate, and discriminatory. As such, Officer Barnette’s actions violated CPD’s policy, procedure, and training.

Note: Disciplinary Action

Officer Barnette was disciplined in accordance with CPD Manual of Rules and Regulations prior to the conclusion of CCA’s investigation. As a result of a determination made by the Chief of Police, Officer Barnette was meant to receive the following discipline:

- a 56-hour suspension without pay
- a requirement that he complete training pertaining to Administrative Regulation 25 and Customer Service; and

- a requirement that he participate in an intervention plan consisting of weekly reviews by his direct supervisor of Officer Barnette’s BWC video for a 12-month period to be documented weekly via ESL entry.

Officer Barnette’s police powers were also suspended for four months following the incident.

A grievance was filed pertaining to Officer Barnette’s discipline, which resulted in arbitration. After a hearing, the arbitrator significantly reduced Officer Barnette’s discipline, concluding the following: “Disciplinary action was appropriate and warranted . . . [however] *the 56-hour suspension shall be reduced to a written warning*, consistent with that issued to Officer Donte Hill for the same offense [from a separate case] and to other Employees who have made similar derogatory and offensive utterances; *the Grievant shall be made whole for the time lost from the 56-hour suspension; and he shall be made whole for the extra employment opportunities lost when his Police powers were suspended.*” (emphasis added).

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

There is a significant discrepancy between Officer Barnette’s contention that he does not, and did not, recall using a racial slur at the time of the incident, and what is audible on the relevant BWC video recordings (particularly video recorded by Officer Pope’s BWC). The BWC evidence reveals the unmistakable sound of Officer Barnette using the N-word to describe Ms. Riley. While Officer Barnette admits that the BWC accurately reflects that he used the slur, his statement that he does not, and did not, remember doing so is inconsistent with the evidence. CCA is unaware of any other aspects of the incident that Officer Barnette has reported difficulty in remembering, aside from the slur he uttered.

Although accounts from the relevant witnesses and the subject officer differed on the issue of whether Ms. Riley struck Officer Barnette (with Officer Barnette stating that he had been hit, and Mr. Freeman believing that Officer Barnette fabricated that account), Officer Anthony Hill’s BWC was reviewed and provided clarification that Ms. Riley did in fact strike Officer Barnette.

FINDINGS

Officer Dennis Barnette – Discrimination

The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the officer were improper. **SUSTAINED**

Officer Dennis Barnette – Improper Procedure (Reporting Use of Force)

The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the officer were improper. **SUSTAINED**

RECOMMENDATIONS

1. **CCA recommends that CPD adopt a policy and practice that for any case or complaint involving an allegation that an officer directed a slur at a member of public, where either CCA or IIS has determined that a Sustained finding is appropriate, and where that Sustained finding is predicated at least in part on a determination that the officer violated Administrative Regulation 25 on Discriminatory Harassment, CPD will adjudicate the matter as a potential violation of Manual of Rules and Regulations § 1.23(C) for purposes of any resulting disciplinary hearing and application of CPD’s disciplinary matrix.**
2. As with all of its investigations, including this one, CCA examines serious allegations, which among other things requires CCA to evaluate the credibility of all witnesses (including police officers) who have provided statements to CCA regarding the allegations at issue. This evaluation often includes a credibility assessment of a subject officer’s statements (and prior statements) pertaining to that officer’s actions and state of mind with respect to those actions. For instance, in this case, CCA considered whether the subject officer’s claim that he could not remember having used a racial slur was a credible claim of memory loss.

When assessing the credibility of such officers, and attempting to gain a complete understanding of the facts, any prior contemporaneous accounts personally written and attested to by such an officer—including use of force reports that are designed to capture that officer’s near-real-time explanation for the force used—are extremely valuable to an investigation. In this case, CCA’s ability to review a contemporaneous account of the subject officer’s actions during the incident, written by the subject himself, was hampered by the fact that, according to documents CCA reviewed, the subject officer

submitted an incomplete use of force report. That report was devoid of critical details surrounding his use of force, including any language he used.

Accordingly, we recommend that CPD take the following measures: 1) maintain its requirement that every officer who uses force at the “hard hands” level complete and submit a use of force report providing a first-hand narrative explaining the force and surrounding facts; 2) expand the policy to require *each* officer who uses or witnesses *any* amount of force, as force is described in CPD’s Procedure Manual, to complete and submit a use of force report providing a detailed

explanation of the events surrounding that officer’s use of force; and 3) enforce that use of force reporting requirement with strong compliance mechanisms.

This approach is endorsed by the International Association of Chiefs of Police (IACP), which issued guidance on Reporting Use of Force (March 2017), stating that “each officer who uses force or witnesses an incident involving force should submit a separate written use-of-force report by the end of the shift.”¹ According to the IACP, there are numerous benefits associated with broad use of force reporting, including that such reports aid in “determining whether the use-of-force policy is being followed, the number of incidents, the types of force employed, or the circumstances surrounding those incidents, as well as protection of officers from complaints of excessive use of force.”

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#2 Review Memo

Complaint #	19065
Complainant	Willie White
CCA Investigator	Dena Brown
CCA Findings	Officer Whittley Nelson Improper Stop - EXONERATED Discourtesy - UNFOUNDED
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS

On February 23, 2019, Mr. White stopped his vehicle to talk to a friend on John Street. During their conversation, Mr. White’s friend placed his head inside Mr. White’s vehicle window. When their conversation ended, Mr. White left. Mr. White alleged Officer Nelson suspected he had conducted a drug deal, improperly stopped him, and inaccurately said he had left the curb without using his signal. During the traffic stop, Officer Alicia Bruewer arrived on scene. Mr. White also alleged Officer Nelson was discourteous when she appeared to laugh and joke with Officer Bruewer. Mr. White considered Officer Nelson’s behavior unprofessional due to the seriousness of the situation.

Officer Nelson stated she saw a male leaning inside of Mr. White’s vehicle. Officer Nelson initiated a traffic stop after she observed Mr. White failing to use a turn signal when he left the curb and when he turned without signaling; during the encounter, Officer Nelson also observed him not wearing his seatbelt.

¹ <https://www.theiacp.org/sites/default/files/2020-06/Reporting%20UoF%20June%202020.pdf>

Officer Nelson did not know if Mr. White was involved in a drug transaction; she did not ask or accuse him of it. Officer Nelson stated she may have laughed or smiled at Officer Bruewer at the completion of the stop, but in no way did she laugh or joke about Mr. White. Officer Nelson denied improperly stopping or making any discourteous gestures. Mr. White was charged with Ohio Revised Code (ORC) §4513.26 Occupant Restraining Devices, Cincinnati Municipal Code §506.25 Leaving Curb, and §506.80 Changing Course or Stopping Vehicle.

CCA interviewed Officers Nelson and Bruewer and reviewed CPD’s policy, procedure, issued citations, and recorded footage. The BWC and MVR footage corroborated Officer Nelson’s version of what occurred. At no time did Officer Nelson violate CPD’s policy, procedure, or training as alleged.

FINDINGS

Officer Whittley Nelson

Improper Stop - The alleged conduct did occur but did not violate CPD policies, procedures, or training. **EXONERATED**

Discourtesy - There are no facts to support the incident complained of actually occurred. **UNFOUNDED**

3 Review Memo

Complaint #	19073
Complainant	Larry Glenn, Jr.
CCA Investigator	Dena Brown
CCA Findings	Sergeant Ryan Jones Excessive Force – UNFOUNDED
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS

On April 5, 2019, Mr. Glenn alleged that Sergeant Jones twisted his arm behind his back and pressed his knee to the back of Mr. Glenn's head, causing injury and pain.

Sergeant Jones stated while working an off-duty detail at the University of Cincinnati Medical Center (UCMC), Mr. Glenn had refused to leave the hospital once he had been discharged. Sergeant Jones observed UCMC security personnel place Mr. Glenn into custody. As UCMC security personnel escorted Mr. Glenn out of the hospital, Mr. Glenn struck two security officers. Mr. Glenn was charged with two counts of §2903.13 Ohio Revised Code Assault. Sergeant Jones denied any physical contact with Mr. Glenn.

CCA reviewed CPD’s policy, procedure, arrest sheet, BWC footage and interviewed Sergeant Jones. The BWC corroborated Sergeant Jones’s version of what occurred. At no time did Sergeant Jones violate CPD’s policy, procedure, or training as alleged.

FINDINGS

Sergeant Ryan Jones

Excessive Force - There are no facts to support the incident complained of actually occurred.
UNFOUNDED

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4 Review Memo

Complaint #	20025
Complainants	David Brown
CCA Investigator	Jessalyn Goodman
CCA Findings	Officer Jesse Hooven Officer Matthew Croswell Improper Stop – EXONERATED Discourtesy – UNFOUNDED Discrimination – UNFOUNDED
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS

Mr. Brown alleged that on January 23, 2020 at 366 Ludlow Avenue, Officers Hooven and Croswell flashed their headlights at him; he verified his headlights were on. However, the officers completed a U-

Turn and initiated a traffic stop of his vehicle. Officer Hooven issued an equipment violation citation because he inaccurately claimed the headlights were not on when the rental vehicle's "automatic headlights" was selected; the citation inaccurately described the road visibility and traffic pattern. He added that the officers did not ask for his vehicle's registration. Mr. Brown believed the officers' actions were discriminatory and their tone was discourteous.

Officers Hooven and Croswell reportedly observed Mr. Brown's rental vehicle without its headlights on. They flashed their headlights to encourage his compliance; they reported they could not observe the driver because it was night. When the vehicle did not respond, they initiated a traffic stop. Officer Hooven spoke briefly to Mr. Brown; he did not ask for registration because it was unnecessary. Officer Croswell remained with Mr. Brown as a cover officer and answered his questions. When Officer Hooven returned, he issued a citation for Cincinnati Municipal Code (CMC) §503-1 for Headlights; he denied any inaccuracies listed in the ticket. Both officers denied any discriminatory or discourteous behavior towards Mr. Brown.

CCA interviewed Officers Hooven and Croswell and reviewed the citation and relevant footage; per the BWC footage, the citation did not reflect any inaccuracies. While the DVR did not capture the officers' initial observation of Mr. Brown's vehicle, the BWC footage corroborated the officers' version of what occurred as stated above. There is no information to indicate that Officers Hooven and Croswell improperly stopped, discriminated, or were discourteous against Mr. Brown as alleged.

FINDINGS

Officer Jesse Hooven
Officer Matthew Croswell

Improper Stop – The evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training. **EXONERATED**

Discourtesy – There are no facts to support the incident complained of actually occurred. **UNFOUNDED**

Discrimination – There are no facts to support the incident complained of actually occurred. **UNFOUNDED**

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