

Date: June 3, 2021
To: Board Members, Citizen Complaint Authority
From: Gabriel Davis, Director
Subject: Investigation Summary – June 7, 2021 Board Meeting

1

Complaint #	19047
Incident Date	02/04/2019
Complainant	Brandon Davis and Nicole Davis
CCA Investigator	Dena Brown
CCA Findings	Officer Weston Voss Officer Emily Ward Improper Stop - EXONERATED Excessive Force - SUSTAINED Improper Seizure - SUSTAINED Discrimination - NOT SUSTAINED
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS	
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Improper Stop

Ms. Davis alleged Mr. Davis was improperly stopped by Officers Voss and Ward. Officers Voss and Ward were on routine patrol by Wayne Park to see if anyone was in the park after hours and to see if any suspicious activity or drug activity was occurring. Officers Voss and Ward told CCA that they observed Mr. Davis near a shed in the park after 11:00 p.m. and attempted to explain to him that “he was under investigation for being in the park after hours,” and “not free to leave.” Cincinnati Park Board states the parks shall be closed to the public between 10:00 p.m. and 6:00 a.m.

CPD Procedure § 12.554 Investigatory Stops states that during the first level of an investigatory police encounter, a police officer may approach any person in a public place and request to talk to him. So long as the person is free to leave whenever he wants, no Fourth Amendment seizure has occurred, and no reasonable suspicion or probable cause is required. During the second level of an investigatory encounter, the "Terry" type encounter, the officer may forcibly stop and detain the citizen for a brief investigatory period when an officer has reasonable suspicion to believe that the citizen is committing or has committed a crime. Under the law, reasonable suspicion must be based on specific and articulable facts that criminal

behavior has occurred or is imminent; it is a lower standard than probable cause.

Here the officers denied that they improperly stopped Mr. Davis and stated that they stopped him in order to investigate him for remaining in the park after hours, a minor misdemeanor. A review of the officer's BWC's did not capture Mr. Davis's location when the officers first observed him. The officers have offered conflicting accounts of where Davis was when they first observed him. For instance, Officer Voss testified at trial that he first observed Mr. Davis near the exit of the park walking down a driveway leading from the park, and Officer Ward testified at trial that she observed Mr. Davis coming out of a shed in the middle of the park. Both officers told CCA that Mr. Davis was walking in the park near a shed at the time. A statement submitted on behalf of Mr. Davis when his mother filed his CCA complaint stated that he "cut through" Wayne Park just before the officers stopped him, but the Complaint filed in Davis's lawsuit states that he was walking "alongside—but not through or in—the Wayne Playground park area."

Despite the multiple inconsistent accounts of where Davis was at the time of the officers' observations, and the lack of independent evidence proving his whereabouts, all statements thus far establish that Mr. Davis was, at minimum, observed in close proximity to a park that was closed. Additionally, BWC evidence shows that the officers informed Mr. Davis contemporaneously, when they stopped him, that they believed they had seen him walking inside the park, cutting against the notion that they fabricated those observations after his arrest. Therefore, in light of these facts, and the relatively low standard for meeting reasonable suspicion, CCA determined that the officers did not violate police policy, training, or procedure when they stopped Mr. Davis.

Excessive Force

In their statements, Officers Voss and Ward relayed they wanted to detain Mr. Davis in order to talk to him, but that Mr. Davis did not follow their directives. BWC footage showed Officers Ward and Voss issued Mr. Davis several verbal commands, but he did not comply and tried to leave the area. When Officer Voss attempted to detain and handcuff him, Mr. Davis struggled against Officer Voss. CPD Procedure § 15.545 Use of Force defines active resistance as when a subject is making physically evasive movements to defeat the officer's attempt at control, including bracing, tensing, pushing, fleeing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody. Officer Voss acknowledged he used "hard hands" techniques against Mr. Davis to detain him in an attempt to handcuff him.

Although CPD procedure states that an officer is allowed to use whatever force is reasonably necessary to enable an arrest of an actively resistant subject, BWC footage confirmed the officers never advised Mr. Davis he was under arrest, nor that he was being cited, prior to using hard hands. The officers confirmed for CCA that they were only intending to question him about the park offense. Indeed, when the officers testified under oath at Mr. Davis's trial, they did not testify that they intended to arrest Mr. Davis, or cite him, only that he was to be detained for questioning. The offense that gave rise to the stop, remaining in the park after hours, only allowed for a citation, not an arrest.¹ These factors limit the amount of force that

¹ CPD Procedure § 12.555 Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders provides that generally a "police officer must issue a citation to appear in court rather than physically arrest an individual for any violation which is a minor misdemeanor" unless the "individual cannot or does not offer satisfactory proof of identity," or the "individual refuses to sign the citation." In addition, a police officer "may not make a physical arrest on traffic or criminal minor misdemeanors" unless those same exceptions apply. In this case, there is no evidence that Mr. Davis refused an offer to sign a citation for remaining in the park after hours, nor is there any evidence that the officers attempted to cite him, but that he refused to offer proof of identity.

could be permissibly used under the Fourth Amendment to detain Mr. Davis. Nonetheless, the fact that Mr. Davis's conduct was not arrestable, and that officers did not intend to arrest him, does not prohibit all use of force, because CPD's policy permits "some degree" of force, even in making an investigatory stop, which is consistent with the law. The question is: was the *amount* of force used against Mr. Davis reasonable. CCA's investigation determined that significant portions of the officers' elevated use of force, specifically the tasing of Mr. Davis, was not reasonable.

As the situation escalated, BWC footage showed Officer Voss direct Officer Ward to use a TASER. CPD's policy for all uses of force incorporates the Constitution's Fourth Amendment standard and elucidates that the decision to use force "requires careful attention to the facts and circumstances of each particular case, including *the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight*" (emphasis added). Additionally, CPD Procedure § 15.545 Use of Force specifically states that the "TASER may be deployed on a suspect actively resisting arrest when there is *probable cause to arrest* the suspect, *or to defend one's self or another from active aggression*" (emphasis added). Accordingly, active resistance alone will not justify the use of a TASER, there must be either active resistance *and* probable cause to arrest, *or* active resistance *and* active aggression creating a need to defend oneself or another.

As CCA has stated above, at the time of the officer's encounter with Mr. Davis, the officers suspected him of a minor misdemeanor offense that was not arrestable. The officers did not advise Mr. Davis he was under arrest, and the officers' statements confirm that he was not under arrest. At the time of the stop, the officers were not even attempting to cite Mr. Davis for being in the park; they were admittedly still investigating his presence in the park. Moreover, both officers later testified at trial that they saw him at different places in or near the park, calling into question the probable cause for a park offense, even if it such an offense had been arrestable.

In the absence of probable cause to arrest, we must consider whether there was active aggression. If there was no such active aggression, then under CPD's TASER procedures, the use of the TASER was impermissible. The evidence shows that at a minimum, the application of the TASER in drive stun mode to Mr. Davis's shoulder at approximately 11:21:09 PM—the drive stun that brought Mr. Davis to the ground—occurred when he was engaged in no acts of active aggression. To be sure, Mr. Davis refused to place his hands behind his back as ordered, and BWC footage shows that Officer Voss struggled to handcuff him in the minutes prior. But when Officer Voss instructed Officer Ward to stun Mr. Davis in the shoulder, and when Officer Ward followed that instruction, Mr. Davis had been standing still speaking with his mother on the phone for at least 40 seconds, and Officer Voss had Mr. Davis pinned against a fence. Moments earlier, Mr. Davis had shown the phone to officers when they asked what was in his hands. BWC footage shows that during those 40 seconds, Mr. Davis did not appear to be attacking the officers, pushing them, or swinging his arms or elbows, undercutting any notion that the officers faced immediate harm from Mr. Davis or that they were defending themselves from "active aggression" at the moment he was drive stunned.

Furthermore, the BWC shows that the officers had already communicated to Mr. Davis a willingness to use their TASERS in the absence of active aggression when Officer Voss told Mr. Davis minutes earlier that Mr. Davis would be tased if he didn't stop walking away from the officers. Officer Voss testified in court that he first pointed his TASER at Mr. Davis "because he was walking away when he was not allowed to." Under CPD policy, merely fleeing from an investigatory stop does not justify the use of a TASER without more.

Taken together, the facts uncovered in CCA's investigation cause CCA to conclude that the officers unnecessarily escalated the encounter by displaying a TASER and then using a TASER in the absence of probable cause to arrest and in the absence of active aggression from Mr. Davis. Those facts, combined with the minor offense at issue here, and the lack of immediate threat to safety, establish that Officer Ward's use of her TASER at approximately 11:21:09 PM as directed by Officer Voss was not reasonable.

Officer Ward's use of her TASER against Mr. Davis was also excessively prolonged. CPD's Taser Download showed that Officer Ward drive stunned Mr. Davis approximately seven times. Section 15.545 clarifies that officers should avoid prolonged, extended, uninterrupted discharges or extensive multiple discharges. While BWC footage confirmed Officer Ward's TASER use stopped once Mr. Davis was under complete police control, at least part of that TASER use was uninterrupted and occurred in between periods of only brief pause where Mr. Davis, while lying on his stomach, was given little opportunity to submit before being subjected to additional repeated drive stuns. Section 15.545 provides that "Officers should transition to a different force option if multiple TASER deployments fail to gain compliance or continued TASER applications are not making sufficient progress toward gaining compliance." Such a transition to a different force option did not occur in this case.

Under the circumstances presented here—in light of the minimal nature of the alleged offense, the absence of an immediate threat, the absence of probable cause to arrest, and absence of active aggression—CCA concluded that Officers Voss and Ward used excessive force.

Improper Seizure

Following his tasing, Mr. Davis was arrested and charged with Resisting Arrest (R.C. § 2921.33); After Hours in Park (755-07-21); and a Pedestrian Violation (Cincinnati Municipal Code § 506-46) for allegedly jaywalking. Under the Fourth Amendment, an arrest constitutes a "seizure" of a person, one that requires probable cause. Additionally, under Ohio law, before an officer may arrest someone for the offense of Resisting Arrest, there must be an underlying crime that is the basis for a lawful arrest in the first place. In this case, the only underlying offenses charged were the offenses related to Mr. Davis's alleged presence in the park after hours, and the jaywalking offense—both of which are minor misdemeanors or traffic offenses. Accordingly, if Mr. Davis was not resisting a lawful attempt to arrest him for those underlying offenses, then the officers could not lawfully take him into custody for the offense of Resisting Arrest.

As we have explained above, at the time of his resistance, even if Mr. Davis was subject to lawful detention for a Terry stop, Mr. Davis was not under lawful arrest for any offenses. The park and jaywalking offense were not arrestable, merely citable. Therefore, under the law, he could not have been lawfully arrested for Resisting Arrest.

Even if the offenses were the kind for which an arrest could be made, the evidence in this case does not establish that the arrest would have been with probable cause. Given the multiple inconsistent accounts of where Mr. Davis was at the time of the officers' observations, and the lack of independent evidence proving his whereabouts, the evidence does not establish by a preponderance whether Mr. Davis was walking in the park. We also note that Mr. Davis was acquitted of all charges at trial. For all of these reasons, CCA determined that the officers violated police policy, training, or procedure when they placed Mr. Davis under custodial arrest.

Discrimination

Ms. Davis alleged Officers Voss and Ward discriminated against Mr. Davis on account of his race. CPD's Manual of Rules and Regulations states members shall not express any prejudice concerning race, sex, religion, national origin, life-style, or similar personal characteristics. The officers denied the allegation. A review of BWC footage, officer statements and other evidence offered no independent evidence to prove the allegation that the officers were motivated by prejudice in their treatment of Mr. Davis. Nevertheless, as we have stated, CCA did find evidence of improper conduct (e.g. excessive force), and CCA has seen no evidence shedding light as to how the officers involved here have treated other non-Black persons who they believed broke park rules, committed Pedestrian Violations, or resisted arrest. Given the lack of evidence revealing how the officers have treated similarly situated non-Black suspects, CCA has insufficient facts to decide this question by a preponderance. Accordingly, CCA could not determine by a preponderance whether Mr. Davis suffered disparate treatment because of a protected characteristic such as race, or if the officers discriminated against Mr. Davis as alleged.

FINDINGS

Complainant Nicole Davis
Complainant Brandon Davis

Officer Weston Voss
Officer Emily Ward

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

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

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

Discrimination - There are insufficient facts to decide whether the alleged misconduct occurred. **NOT SUSTAINED**

RECOMMENDATIONS

#R2128

Use of Force Policy/Procedure (TASER/Conducted Electrical Weapon (CEW) Policy/ Procedure

CCA understands that incidents involving people who are displaying non-compliant behavior can be challenging and stressful situations for CPD officers. In these situations, officers may not realize that they

have prolonged a TASER deployment. To minimize the risk that excessive use will occur, CCA recommends that CPD further develop the TASER/Conducted Electrical Weapon (CEW) section of CPD Procedure § 12.545 Use of Force, particularly the portion regarding avoidance of prolonged, extended, uninterrupted discharges or extensive multiple discharges. To support its development, a study should be conducted to review these types of TASER discharges that includes analyses of the number of incidents, length and number of discharges, demographics of citizens involved in these incidents, types of behaviors that result in a citizen being the target, and any injuries sustained. Such a study can be impactful in assisting CPD to ensure operational TASER practices align with policy and training.

#R2129

Critical Incident Review or Firearm Discharge Board

Effective consistent review processes are key to ensure that operational practices align with policy and training. For future cases like this one involving an allegation of Excessive Force involving a TASER, CCA recommends that CPD convene its Critical Incident Review Board (CIRB), consistent with CPD Procedure § 12.545 Use of Force, in order to serve as “a quality control mechanism for the incident being reviewed” with the “authority and responsibility to recommend to the Police Chief changes in investigative protocols, procedures, and training.” While there are forums other than the CIRB or FDB that exist to probe discharges of firearms—including concurrent investigations of citizen complaints by CCA and IIS—a CIRB review still adds tremendous value. Among other things, those other reviews convene a broad array of command and supervisory personnel with valuable perspectives on the issues under consideration, and they review tactical issues that may be broader than the issues of misconduct considered in other concurrent investigations. Since use of force is still the underlying cause of many CPD and CCA complaints, CCA believes the CIRB is imperative. By convening the CIRB, protocols and patterns may be further identified that can lead to a decrease in Use of Force complaints. ■

2

Complaint #	19064
Incident Date	03/23/2019
Complainant	Darlene Canady
CCA Investigator	Jessalyn Goodman
CCA Findings	<p><i>Original Allegations</i></p> <p>Officer John Goebel Improper Stop – EXONERATED Harassment – UNFOUNDED</p> <p>Officer John Goebel Officer Kevin Tighe Improper Search – EXONERATED</p> <p>Unknown Officer</p>

	Improper Stop – UNFOUNDED Improper Search – UNFOUNDED <i>Collateral Allegation</i> Lieutenant Jerry Hodges Improper Procedure (BWC) – SUSTAINED
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS

On March 23, 2019, Officer Goebel initiated a traffic stop of Mr. Fred Canady’s vehicle when he observed darkly tinted windows. CPD Procedure §12.205, Traffic Enforcement, maintains that officers should take appropriate enforcement action whenever a violation is detected. CPD Procedure § 12.554, Investigatory Stops, maintains that when an officer has reasonable suspicion to believe a citizen is committing a crime, the officer may forcibly stop and detain the citizen briefly. From BWC footage, CCA was able to verify that Mr. Fred Canady’s vehicle had dark-tinted windows. After Officer Goebel addressed the window tint violation, the odor of marijuana emanating from the vehicle provided further reason to detain Mr. Fred Canady for an investigatory stop. Therefore, Officer Goebel was able to lawfully detain him, and the investigatory stop of Mr. Fred Canady was within CPD policy, procedure and training.

Officers Goebel and Tighe instructed the occupants to exit the vehicle. Upon exiting, the officers frisked each person for weapons. Per CPD Procedure § 12.554, Investigatory Stops, every "Terry" type stop does not automatically authorize a frisk. If a frisk is conducted, the officer must be able to articulate specific facts which led them to believe the individual could be armed and dangerous. BWC footage confirmed Mr. Fred Canady advised Officer Goebel he possessed a CCW and had a firearm in the vehicle that was not in Mr. Fred Canady’s possession. Subsequently, Mr. Fred Canady, Mr. Kaufman, and Mr. Raphael Canady were searched with their consent. While Mr. Johnson did not give consent for a search of his person, according to BWC footage, Officers Goebel and Tighe commented near the time of the search that they could not determine whether the marijuana odor derived from the vehicle or from its occupants. Pursuant to CPD Procedure § 12.554, Investigatory Stops, this information provided the officers’ reasonable suspicion that Mr. Johnson may have committed a drug crime. That information, combined with Mr. Fred Canady’s assertion that the men had been riding in a car with a firearm, provided reasonable suspicion to believe that Mr. Johnson could be armed. Therefore, the officers were within policy, procedure and training when they searched Mr. Johnson as well.

Officers Goebel and Tighe searched the vehicle. When Mr. Fred Canady rolled down the windows, Officer Goebel identified an odor of marijuana emanating from the vehicle. CCA believes that the motor vehicle exception, allowing the search of a vehicle without a search warrant normally required by the Fourth Amendment to the United States Constitution, applies. The motor vehicle exception allows an officer to search a vehicle without a search warrant as long as he or she has probable cause to believe that evidence or contraband is located in the vehicle. The exception is based on the idea that there is a lower expectation of privacy in motor vehicles due to the regulations under which they operate. Additionally, the ease of mobility creates an inherent exigency to prevent the removal of evidence and contraband. The scope of the search is limited to only what area the officer has probable cause to search. This area can

encompass the entire vehicle including the trunk. The motor vehicle exception, in addition to allowing officers to search the vehicle, also allows officers to search any containers found inside the vehicle that could contain the evidence or contraband being searched for; the objects searched do not need to belong to the owner of the vehicle. The officers were within CPD policy, procedure and training when they searched Mr. Fred Canady's vehicle.

During Lieutenant Hodge's initial interaction during the traffic stop, he activated his BWC. However, after conferring with Officer Goebel, Lieutenant Hodge failed to reactivate his BWC when he returned to stand with Mr. Canady and the vehicle's passengers. CPD Procedure § 15.540 Body Worn Camera System states officers are required to activate their BWC system during law enforcement-related encounters and self-initiated activities. CPD Manual of Rules and Regulations § 2.18 states that members of the department shall not fail to activate their BWC system except for a good cause. CCA concluded Lieutenant Hodges was in violation of CPD's policy, procedure, and training.

Ms. Canady alleged CPD officers harassed Mr. Fred Canady. CCA has defined harassment to include behavior that threatens or torments someone, especially persistently. Officer Goebel denied any prior contact with Mr. Fred Canady until the traffic stop. CPD records did not show any additional contacts between them. Officer Goebel denied making any comments to Mr. Fred Canady about future contact. Therefore, CCA determined there is no indication that Officer Goebel maintained any persistent or threatening behavior towards Mr. Fred Canady.

Ms. Canady alleged an unknown officer improperly stopped and searched Mr. Fred Canady and his vehicle; she clarified this traffic stop occurred on the same day but prior to the traffic stop that resulted in his arrest. CCA requested all records involving Mr. Fred Canady for the reported date and reviewed CPD's records management system (RMS); the records did not show any additional contact between CPD officers and Mr. Fred Canady for that date. The officers interviewed were not aware of any previous stops involving Mr. Fred Canady. Without additional information, CCA is unable to identify a basis for these allegations.

Observation

CPD Manual Rules and Regulations specifically states that officers should avoid the use of coarse, violent, or profane language. While reviewing BWC footage, Officer Goebel used profanity when referring to Mr. Fred Canady, though the comment was not within earshot of Mr. Fred Canady or any of the individuals present. Since BWCs are accessible by the public, officers should be reminded that their actions – both verbal and physical – are representative of the CPD and subject to public scrutiny.

FINDINGS

Original Allegations

Officer John Goebel

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

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

Officer John Goebel
Officer Kevin Tighe

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

Unknown Officer

Improper Stop – There are no facts to support the incident complained of actually occurred.
UNFOUNDED

Improper Search – There are no facts to support the incident complained of actually occurred.
UNFOUNDED

Collateral Allegation

Lieutenant Jerry Hodges

Improper Procedure (BWC) – The allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper. **SUSTAINED**

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Complaint #	19273
Incident Date	12/15/2019
Complainants	Nicholas Reiland
CCA Investigator	Jessalyn Goodman
CCA Findings	Officer Richard Longworth Excessive Force – NOT SUSTAINED Improper Procedure (BWC) – EXONERATED Lack of Service – UNFOUNDED Discourtesy – NOT SUSTAINED Sergeant Demeco Anderson Officer Richard Longworth Improper Seizure – EXONERATED
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS

While at Paul Brown stadium, Mr. Nicholas Reiland alleged that Officer Longworth “grabbed” his jacket and “pushed” his shoulder, causing pain. CPD Procedure §12.545 Use of Force defines force as any physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person. Officer Longworth indicated he extended his arms, but did not exert force, to maintain distance between Mr. Nicholas Reiland and another individual at the stadium. Per his statement and BWC footage, Officer Longworth confirmed he “touched” Mr. Nicholas Reiland. The angle of the footage from Paul Brown Stadium neither confirmed nor refuted the allegations by Mr. Nicholas Reiland. Therefore, CCA could not determine whether Officer Longworth’s actions were within CPD’s policy, procedure, and training.

Mr. Nicholas Reiland alleged Officer Longworth failed to speak to the unidentified man involved in the encounter. The footage obtained from Paul Brown Stadium showed that after Officer Longworth intervened between Mr. Nicholas Reiland and the other individuals, Mr. Nicholas Reiland appeared to call after them; Officer Longworth remained with Mr. Nicholas Reiland to prevent further interaction as the other individuals left the area. In his statement, Officer Longworth stated his purpose was to de-escalate the encounter by ending all individuals’ contact with each other, and to ensure they left the stadium. Once the individuals complied with the directive, he had no reason to maintain contact. Police officers have the authority to exercise discretion. Based on the available information, CCA determined that Officer Longworth did not fail to provide service as directed by CPD’s policy, procedure, and training.

Mr. Nicholas Reiland alleged Officer Longworth’s BWC was not activated at the time of the encounter. Officer Longworth explained he did not activate his BWC prior to initiating contact with the group of individuals due to the urgent nature of the interaction. CPD Procedure § 12.540 Body Worn Camera System states that officers will use BWC equipment to record all calls for service and self-initiated activities; however, it clarifies that officer safety and public safety take precedence over recording, and in extenuating circumstances, BWC recording may not be possible. Stadium footage confirmed that Officer Longworth responded immediately to the emerging situation that occurred within a few yards of his post. § 12.540 Body Worn Camera System added that when an officer fails to activate their BWC according to policy, the incident must be reported to their supervisor. Officer Longworth advised Sergeant Shields of the incident, which was documented in consequent reports. Additional records showed Officer Longworth activated his BWC in his subsequent interactions with Mr. Nicholas Reiland. Therefore, CCA determined that Officer Longworth did not violate CPD’s policy, procedure, and training.

CPD’s Manual of Rules and Regulations § 1.06 states members shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors, and associates, and avoid the use of coarse, violent or profane language. Mr. Nicholas Reiland alleged Officer Longworth did not identify himself initially and refused to identify himself after Mr. Nicholas Reiland left the stadium. BWC footage did not capture the initial incident and the footage from the stadium did not record any audio. Therefore, CCA was unable to determine if Officer Longworth was discourteous towards Mr. Reiland as alleged.

Mr. Reiland alleged that Officer Longworth improperly detained and cited him for Disorderly Conduct. Under the 4th Amendment, a detention constitutes a “seizure” of a person. CPD Procedure § 12.555 Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders provides that generally a “police officer must issue a citation to appear in court rather than physically arrest an individual for any violation which is a minor misdemeanor.” The law allows an officer issuing a citation to detain the person to be cited for a reasonable period of time necessary to issue the citation. The Disorderly Conduct charge for which Officer Longworth cited Mr. Reiland is a minor misdemeanor. Therefore, both the law CPD policy permitted Officer Longworth to cite Mr. Reiland, provided there was probable cause to charge him with that offense. BWC evidence corroborates the accounts of Officer Longworth and Sergeant Anderson that Mr. Reiland appeared intoxicated (for instance his speech was slurred) and that he was combative. Accordingly, CCA concluded that there was probable cause for the Disorderly Conduct charge. In addition, given that Officer Longworth needed to wait for the arrival of NTA paperwork in order to issue the citation, and given that Mr. Reiland’s waiting time was less than 30 minutes according to the BWC, Mr. Reiland’s detention while awaiting citation was not unreasonable. Therefore, CCA determined that Officer Longworth did not violate CPD’s policy, procedure, and training.

FINDINGS

Officer Richard Longworth

Excessive Force – There are insufficient facts to decide whether the alleged misconduct occurred. **NOT SUSTAINED**

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

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

Discourtesy – There are insufficient facts to decide whether the alleged misconduct occurred. **NOT SUSTAINED**

Sergeant Demeco Anderson
Officer Richard Longworth

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

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Complaint #	20045
Incident Date	02/23/2020
Complainant	Ricardo Lee
CCA Investigator	Jonathan Batista
CCA Findings	Sergeant Zachary Sterbling Officer Braeden Knapp Improper Stop – EXONERATED Officer Grant Perry Officer Adarius Brown Sergeant Zachary Sterbling Improper Entry – EXONERATED <u>Collateral Allegation</u> Officer Emily Ward Improper Procedure – SUSTAINED
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS

Officers Knapp and Ward responded to a dispatched radio run for a possible domestic violence incident. They made contact with Mr. Lee, who denied them entry into his residence. Mr. Lee alleged that subsequently, the officers improperly entered his apartment. CPD Procedure §12.105 allows warrantless entries into a residence when officers believe emergency aid is needed. Furthermore, in *United States vs. Martinez, 406 F.3d 1160 (2005)*, the Supreme Court provided clarification on the search warrant exception for exigent circumstances which allow officers to enter under these circumstances. Officers Ward and Knapp relayed when initial entry was denied, they requested for a supervisor and other officers to assist. Upon further investigation, including contact with Witness B and an observation of blood on Mr. Lee, the officers determined that entrance into Mr. Lee's apartment was necessary to ensure Witness A's welfare. Therefore, exigent circumstances were present, and CCA determined that the entry into Mr. Lee's apartment by Sergeant Sterbling, Officer Perry, and Officer Brown was within CPD's policy, procedure, and training.

Based on his professional training and experience, and on what was learned from his investigation into the domestic violence 911 call, Sergeant Sterbling thought entry into the apartment was needed in order to assure the safety of the woman inside the apartment (Witness A). Pursuant to CPD Procedure § 12.554, Investigatory Stops, this information provided the officers with reasonable suspicion to believe that Mr. Lee was committing a crime. Based on this reasonable suspicion, the officers could forcibly stop and detain Mr. Lee for a brief investigatory period.

In addition, CPD Procedure §12.600, Prisoners: Securing, Handling, and Transporting, states it may be

necessary to temporarily handcuff citable persons or persons under investigation for officer safety. BWC footage showed the encounter lasted less than five minutes and that Officer Knapp handcuffed Mr. Lee at the order of Sergeant Sterbling and advised Mr. Lee that he would be released after the incident was investigated. Mr. Lee was released after approximately four minutes when the investigation concluded. Therefore, CCA concluded Officer Knapp was within CPD policy, procedure, and training when he detained and handcuffed Mr. Lee for the investigation.

CPD Procedure § 12.540 Body Worn Camera System requires officers to use BWC equipment to record all calls for service and self-initiated activities. Officer Ward did not activate her BWC during the second encounter with Mr. Lee or the subsequent entry of Mr. Lee’s apartment. Therefore, Officer Ward did not comply with CPD’s policy, procedure, and training.

FINDINGS

Original Allegations

Sergeant Zachary Sterbling
Officer Braeden Knapp

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

Officer Grant Perry
Officer Adarius Brown
Sergeant Zachary Sterbling

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

Collateral Allegation

Officer Emily Ward

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

RECOMMENDATIONS

#R2130

Tracking System (Domestic Violence)

CCA recommends that CPD strengthen its reporting requirements in situations involving domestic violence incidents by (a) creating a Domestic Incident Report form that is specifically intended for documenting observations made and actions taken regarding domestic violence incidents and dispatches, and (b) expanding Procedure §12.412 Domestic Violence to require officers to complete that report following all responses to or investigations of an allegation of domestic violence, whether or not an arrest was made. This approach is endorsed by the International Association of Chiefs of Police (IACP). *See* IACP Domestic Violence Concepts & Issues Paper, April 2019 (select pages including checklist for form attached to this CCA Investigation Report).² This practice is also endorsed in guidance published by the United States Department of Justice, which has recommended that all law enforcement agencies have a domestic violence policy that specifies, at a minimum, that written reports be completed on all domestic violence calls and, if no arrest is made, that reports fully explain the circumstances surrounding the decision not to arrest. *See* Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges.³

Providing for such documentation can play a crucial role in corroborating allegations of abuse, documenting patterns of potential abuse in cases where emergency calls to law enforcement are reoccurring, flagging dangerous suspects for future encounters, and in assisting with risk assessments and planning pertaining to domestic violence runs and investigations. Ultimately, more comprehensive reporting would both protect victims of domestic violence and reduce safety risks to police officers who respond to domestic violence calls.

Such incident reports can also play a crucial role in facilitating the completion of investigations into citizen complaints related to domestic violence calls. For instance, as with all of its investigations, in this case, CCA was tasked with evaluating the credibility of all witnesses (including police officers) who provided statements to CCA regarding the allegations at issue. This evaluation included an assessment of whether there was corroboration for the officers' contention that entering the complainant's apartment was of such urgency that a warrant was not needed. In this case, CCA's ability to review a contemporaneous account of the subject officer's actions during the incident was hampered by the fact that CPD policy appears to require no documentation in cases where a domestic violence call is answered but the response does not result in an arrest. While CPD requires the completion of a 311 VS in some circumstances involving a domestic violence call, that form is not required in cases where officers determine that they lack probable cause for a domestic violence arrest.

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² https://www.theiacp.org/sites/default/files/2019-04/Domestic%20Violence%20Paper%20-%202019_0.pdf

³ <https://www.ojp.gov/pdffiles1/nij/225722.pdf>

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Complaint #	20055
Incident Date	06/08/2019
Complainant	Chico Chappell
CCA Investigator	Morgan Givens
CCA Findings	<u>Original Allegations</u> Sgt. Daniel Ray Officer Weston Voss Improper Procedure – EXONERATED Officer Tyler Merritt Excessive Force – EXONERATED
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS

Allegation 1: Excessive Force

According to C. Baird, C.C. Chappell verbalized suicidal ideations and needed to be transported to PES. C. Chappell refused to voluntarily leave with the officers. CPD Procedure §12.545 Use of Force states that whenever possible, de-escalation techniques shall be employed to gain voluntary compliance by a subject. For approximately 20 minutes, the officers stood in a circular formation as Sgt. Ray talked to C. Chappell and attempted to de-escalate the situation. As corroborated with BWC footage, C. Chappell took a fighting stance, paced, clenched his fists, and said, “I’m not going down without a fight,” and “Shoot me. I’m ready to die and go to heaven. I’m not scared.” This posturing coincides with CPD Procedure §12.545’s definition of assaultive behavior by a resisting subject, which includes when a subject assumes fighting stance or verbally or physically indicates an intention to commit an assault combined with the subject’s capability to assault. The procedure also stipulates that officers shall use only the level of force that is objectively reasonable to effect an arrest or while protecting the safety of the officer and others. C. Chappell was deemed uncooperative and potentially posed a threat to himself. Sgt. Ray gave P.O Merritt a non-verbal cue to P.O. Merritt to deploy his taser at C. Chappell. Based on the information provided, P.O. Merritt’s use of the taser did not violate CPD Procedure, policy, and training.

Allegation 2: Improper Procedure

P.O. Weston and Sgt. Ray are both MHRT trained. C. Chappell was taken to UCMC and was later discharged. C. Baird alleged C. Chappell was charged criminally due to the force that was used during the incident and she believed the charges were a violation of CPD Procedure §12.110 Handling Suspected Mentally Ill Individuals and Potential Suicides.

At the time of the incident (June 8, 2019) §12.110, stated the following:

- Whenever there is any use of force or other significant police action with a state mental hold, sign appropriate criminal charges against the individual. This includes any use of force, use of chemical irritant, canine apprehension, or use of the Taser, beanbag shotgun, 40mm foam round, or pepperball launcher.

The aforementioned policy was effective from 7/27/17 to 6/13/2019. CPD procedure manual §12.110 Handling Suspected Mentally Ill Individuals and Potential Suicides was updated, effective 6/13/2019. Critical changes include:

- A subject having a mental health crisis should not be charged criminally, even if force is used against them. Officers should follow normal protocol if there are charges unrelated to the mental health crisis.
- Criminal charges for lower-level offenses are dependent on the facts and might benefit from discretion used by the officer on scene if little harm to others or property was caused.

Sgt. Ray can be heard pleading with C. Chappell on BWC to go with the officers voluntarily because, “We’re trying to avoid taking you to jail.” Additionally, BWC footage showed officers discussing the charges that would have to be assigned if force was used. Having applied the actions of the officers to the policy as it was written at the time of the incident, Sgt. Ray and P.O. Weston were bound by the policy to assign criminal charges after the deployment of the taser. CCA found that the actions of Sgt. Ray and P.O. Weston did not violate CPD’s procedure, policy, and training.

Allegation 3: Dishonesty

C. Baird’s allegation of perjury is criminal in nature; therefore, it is out of CCA’s purview to investigate.

Observations

1. While CCA is encouraged by the change in CPD’s mental health policy whereby criminal charges are now discouraged when those charges would be related to a mental health crisis; and while CCA is also encouraged by CPD’s acknowledgement that officers should attempt to handle subjects with known mental illnesses by using de-escalation techniques such as non-confrontational verbal skills, empathy, and active listening (as were displayed by the officers in this case); it is disheartening that C. Chappell and an unknown number of others are left with criminal convictions stemming from mental health crises.
2. IIS issued a Sustained-Other finding to Sgt. Ray in their parallel case #2020-072 for his violation of Rule 1.01 (A) of the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Department, because he did not have P.O. Merritt’s BWC flagged for retention, which caused it to be routinely deleted. Under these circumstances, given the administrative nature of the procedure violation, CCA declines to enter a finding.

Commendation

Sgt. Ray spoke with C. Chappell for approximately 20 minutes in an attempt to deescalate the tense situation. Sgt. Ray engaged in a gentle manner and implored C. Chappell to let the officers take him to PES. The way that Sgt. Ray engaged with C. Chappell was commendable and set a good example for the

many lower-ranking officers on scene. Sgt. Ray exhausted options that did not include force prior to his decision to tase C. Chappell. Once C. Chappell was on the ground, he was calm and non-defiant. The officers stated, “We still just want to get you help,” “We didn’t want to do that,” and assured him that “It’s going to be okay.” CCA believes BWC footage of the incident could be a valuable training tool for CPD, as it is a good example of policing with compassion and empathy while also displaying tactical awareness.

FINDINGS

Original Allegations

Sergeant Daniel Ray
Officer Weston Voss

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

Officer Tyler Merritt

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

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