

**Date:** February 22, 2021  
**To:** Board Members, Citizen Complaint Authority  
**From:** Gabriel Davis, Director  
**Subject:** Investigation Summary – March 1, 2021 Board Meeting

# 1

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| <b>Complaint #</b>           | <b>18097</b>   |
| <b>Complainant</b>           | <b>Khayree Waller</b>  |
| <b>CCA Investigator</b>      | <b>Dena Brown</b>  |
| <b>CCA Findings</b>          | Officer Adarryl Birch<br>Specialist Kenneth Byrne<br><b>Improper Discharging of a Firearm – EXONERATED</b><br><br>Specialist Kenneth Byrne<br><b>Improper Pointing of a Firearm – EXONERATED</b> |
| <b>Board Findings</b>        | <b>Pending</b>   |
| <b>City Manager Findings</b> | <b>Pending</b>   |

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| <b>ANALYSIS</b> |  |
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On May 2, 2018, ECC received several phone calls in reference to gunshots being fired in the area of East Way and Cedar Avenue. On May 3, 2018, ECC received a phone call from Witness A stating Mr. Waller made threats that he had just “shot up” Witness B’s and Witness C’s residence. Specialist Byrne and Officer Birch were dispatched to that residence to conduct the welfare check. The evidence establishes that after the officers knocked on the door of the residence, Witness B opened the door, and gunshots rang out from Mr. Waller’s vehicle as the vehicle drove down Groesbeck Road.

CPD Procedure § 12.550 Discharging of Firearms by Police Personnel maintains that when an officer perceives what the officer interprets to be a threat of loss of life or serious physical harm to the officer or to others at the hands of another, the officer has the authority to display a firearm and to use force reasonably necessary to protect himself or others from death or serious physical harm. The policy specifically provides that after all other reasonable means have been exhausted, an officer may “resort[] to the use of firearms . . . when an officer reasonably believes that such use of firearms is necessary to protect the officer or another from risk of serious physical harm or loss of life.”

During interviews with CCA, Specialist Byrne and Officer Birch stated they believed that the gunshots coming from Mr. Waller’s vehicle were aimed at them and, being in fear for their lives, returned fire, discharging several rounds at Mr. Waller’s vehicle. Their accounts are corroborated by the officers’ BWC recordings, which indicate that shots were fired from Mr. Waller’s vehicle as Mr. Waller approached the officers in that vehicle; by Witness B’s account of the incident; by the physical evidence recovered; and by Mr. Waller’s guilty plea to charges of attempted murder in connection with the incident. In light of the threat presented and perceived, CCA concluded that Specialist Byrne and Officer Birch complied with CPD’s policy, procedure, and training when they discharged their firearms.

With respect to the officers’ conduct following the shots they fired, the officers’ BWCs establish that Specialist Byrne and Officer Birch initiated a vehicle pursuit, joined by Sergeant Cotton after Mr. Waller continued driving on Groesbeck Road. CPD Procedure § 12.535 Emergency Operation of Police Vehicles and Pursuit Driving states that “emergency operation (lights and siren) of a police vehicle is authorized in emergency cases,” including cases when there are “crimes in progress requiring the immediate presence of a police officer,” and in cases involving “pursuit driving.” In such cases, officers must ensure their DVR and BWC is activated. Here, Mr. Waller ended the twenty-minute pursuit when he reached his residence and exited his vehicle. After examining the pursuit, CCA uncovered no evidence establishing that Specialist Byrne and Officer Birch failed to comply with CPD’s policy, procedure, and training when they pursued after Mr. Waller.

With respect to the officers’ conduct following the termination of the vehicle pursuit, the BWC footage showed that Specialist Byrne ordered Mr. Waller to the ground at gunpoint. Mr. Waller complied. Officer Birch then handcuffed Mr. Waller and placed him into custody. Specialist Byrne’s display of a firearm while ordering Mr. Waller to the ground is governed by the same policy governing the discharge of firearms, CPD Procedure § 12.550 Discharging of Firearms. Under Section 12.550 (which is cited above), Mr. Waller’s use of deadly force directed towards Specialist Byrne just before the pursuit made it reasonable to believe that Mr. Waller presented a risk of substantial harm to the officers. Accordingly, CCA concluded that Specialist Byrne was in compliance with CPD’s policies, procedures, and training when he had his firearm pointed at Mr. Waller upon apprehension.

## FINDINGS

Officer Adarryl Birch  
Specialist Kenneth Byrne

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

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Specialist Kenneth Byrne

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

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# 2

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| <b>Complaint #</b>           | <b>18135</b>  |
| <b>Complainant</b>           | <b>Heather Rawzicki-Gibson</b>  |
| <b>CCA Investigator</b>      | <b>Dena Brown</b>   |
| <b>CCA Findings</b>          | Officer Sean Farris<br><b>Excessive Force – EXONERATED</b><br><b>Improper Discharge of a Firearm – EXONERATED</b> |
| <b>Board Findings</b>        | <b>Pending</b>  |
| <b>City Manager Findings</b> | <b>Pending</b>  |

## ANALYSIS

Witness A and Ms. Gibson had a dispute; her canine became agitated and bit Witness A several times. Witness B and Ms. Gibson contacted ECC for Witness A’s injuries. Officer Farris was dispatched to the residence. BWC footage showed that on arrival, he walked to the rear of Ms. Gibson’s residence, carrying his shotgun, and observed blood on the storm door. Ms. Gibson came to the door and Officer Farris requested that she place her canine in another room. Ms. Gibson complied and responded back to the storm door. As soon as she opened the door, the canine ran toward Officer Farris. Officer Farris discharged his shotgun once at the canine, striking it. CPD Procedure § 12.550 Discharging of Firearms by Police Personnel maintains that an officer may, when reasonable, use their firearm to protect themselves and others from a dangerous animal. In his statement, Officer Farris articulated that, due to the canine’s reported behavior, he perceived the canine as a threat of harm and fired his weapon on that basis. The BWC footage corroborates that claim. While Gibson was struck by pellets from Officer Farris’s shotgun, the evidence does not establish that Officer Farris discharged his weapon with the intent to strike Ms. Gibson. Given the threat presented by the aforementioned canine, CCA concluded that Officer Farris complied with CPD’s policy, procedure, and training when he discharged his shotgun and used deadly force.

## FINDINGS

Officer Sean Farris

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

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

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| <b># 3</b>                   |  |
| <b>Complaint #</b>           | <b>18167</b>   |
| <b>Complainant</b>           | <b>Della Riley</b>   |
| <b>CCA Investigator</b>      | <b>Dena Brown</b>  |
| <b>CCA Findings</b>          | Officer Andrew Snape<br>Officer Morgan St. John<br><b>Improper Discharge of a Firearm – EXONERATED</b> |
| <b>Board Findings</b>        | <b>Pending</b>   |
| <b>City Manager Findings</b> | <b>Pending</b>   |

**ANALYSIS**

CFD responded to an ECC call for Ms. Riley having a seizure. CFD responded and observed a canine attacking Ms. Riley. BWC footage showed Officers Snape and St. John responded to the residence and entered with their firearms drawn; they observed a canine attacking Ms. Riley’s body. Subsequently, the canine lunged toward the officers, who discharged their firearms, killing the canine.

CPD Procedure § 12.550, Discharging of Firearms by Police Personnel, maintains that when an officer perceives what the officer interprets to be a threat of loss of life or serious physical harm to the officer or to others at the hands of another, the officer has the authority to display a firearm and to use force reasonably necessary to protect himself or others from death or serious physical harm. The policy specifically provides that after all other reasonable means have been exhausted, an officer may “resort[] to the use of firearms . . . when an officer reasonably believes that such use of firearms is necessary to protect the officer or another from risk of serious physical harm or loss of life.” Section 12.550 also specifically permits an officer to discharge the officer’s firearm to protect themselves and others from a dangerous animal.

In this case, the officers reported that they discharged their firearms for their personal safety, which is consistent with what the relevant BWC footage shows. CIS determined that a discharged round passed through the mattress, box spring and ricocheted off the floor before striking Ms. Riley postmortem. The evidence does not establish that the officers discharged their weapons with the intent to strike Ms. Riley. Given the threat presented by the aforementioned canine, CCA concluded that Officers Snape and St. John complied with CPD’s policy, procedure, and training when they discharged their firearms.

**FINDINGS**

Officer Andrew Snape  
Officer Morgan St. John

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



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| <b># 4</b>                   |  |
| <b>Complaint #</b>           | <b>19151</b>   |
| <b>Complainant</b>           | <b>Devin Johnson</b>   |
| <b>CCA Investigator</b>      | <b>Jessalyn Goodman</b>  |
| <b>CCA Findings</b>          | Officer Albert Brown<br><b>Improper Discharge of a Firearm – EXONERATED</b><br><b>Excessive Force – EXONERATED</b> |
| <b>Board Findings</b>        | <b>Pending</b>   |
| <b>City Manager Findings</b> | <b>Pending</b>   |

**ANALYSIS**

Officers Albert Brown and Kevin Brown responded to a dispatched radio run for an individual “going crazy” with a knife at Bramble Park. CPD Procedure §12.554 Investigatory Stops states that in a "Terry" type encounter, an officer has reasonable suspicion to believe the citizen is committing or has committed a crime. Based on this reasonable suspicion, the officer may forcibly stop and detain the citizen for a brief investigatory period. The physical description of the individual provided in the ECC call matched the appearance of Mr. Johnson. Officers Albert Brown and Kevin Brown had reason to believe Mr. Johnson was involved in the related radio run. 13 BWC footage showed Mr. Johnson advance towards Officer Albert Brown with a knife. Officers Albert Brown and Kevin Brown issued several commands for Mr. Johnson to drop the knife; Mr. Johnson failed to respond to these verbal commands. Instead, Mr. Johnson continued towards Officer Albert Brown in a threatening manner with a weapon. As a result of the life-threatening resistance, Officer Albert Brown discharged his weapon three times and struck Mr. Johnson. CPD Procedure § 12.550 Discharging of Firearms by Police Personnel maintains that when an officer perceives what he interprets to be a threat of loss of life or serious physical harm to himself or others at the hands of another, he has the authority to use that force reasonably necessary to protect himself or others from death or serious physical harm at the hands of another. In his statement, Officer Albert Brown believed Mr. Johnson’s behavior indicated a threat of serious physical harm to himself. CCA concluded that Officer Albert Brown complied with CPD’s policy, procedure, and training when he discharged his firearm.

**Observation:**

Per CPD Procedure § 12.110 Handling Suspected Mentally Ill Individuals and Potential Suicides, a subject having a mental health crisis should not be charged criminally, even if force is used against them. However, Mr. Johnson was charged with Aggravated Menacing and Felonious Assault, despite indications that Mr. Johnson was suffering from a mental health crisis at the time of the incident. CCA recognizes that CPD has discretion on when and how individuals are charged with criminal actions; however, CCA encourages CPD to remember their procedure does allow for some flexibility for individuals who commit criminal acts while under mental duress.

## FINDINGS

Officer Albert Brown

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

**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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| # 5                          |   |
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| <b>Complaint #</b>           | <b>20048</b>  |
| <b>Complainant</b>           | <b>Ladon Mitchell</b>   |
| <b>CCA Investigator</b>      | <b>Jessalyn Goodman</b>   |
| <b>CCA Findings</b>          | <p>Officer Alyssa Twehues<br/><b>Improper Stop – EXONERATED</b></p> <p>Officer Alyssa Twehues<br/>Officer Clinton Butler<br/>Officer Corey Gould<br/><b>Improper Search – EXONERATED</b></p> <p>Officer Alyssa Twehues<br/>Officer Clinton Butler<br/>Officer Corey Gould<br/><b>Discrimination – UNFOUNDED</b></p> |
| <b>Board Findings</b>        | <b>Pending</b>  |
| <b>City Manager Findings</b> | <b>Pending</b>  |

## ANALYSIS

Officer Twehues observed a vehicle with heavy window tint and a covered license plate; she noted the vehicle matched the description of a suspicious vehicle that had been reported previously to VCS. CPD Procedure §12.205, Traffic Enforcement, maintains that officers should take appropriate enforcement action whenever a violation is detected. BWC footage confirmed the vehicle appeared to have heavy dark window tint, which corroborated the officers' reports. CPD policy permits citations for tint violations based on an officer's observations alone, without the need for a tint meter reading. Therefore, Officer Twehues was within CPD's policy, procedure, and training.

Mr. Mitchell alleged Officers Twehues, Butler and Gould did not have probable cause to request a canine and that the length of the traffic stop was too long. CPD Procedure § 12.140, Canine Operations, states that, an officer does not need reasonable suspicion for a dog to sniff the outside of an automobile during a traffic stop. However, a traffic stop can become unlawful if the officer prolongs the stop beyond the time reasonably required to issue a traffic citation. Officer Twehues requested a canine officer to the traffic stop to conduct a sniff of the perimeter of Mr. Mitchell's vehicle. Officer Thomas with his canine, Drago, arrived and conducted the sniff. The time awaiting Officer Thomas arrival, as well as the perimeter sniff of the vehicle, was approximately 17 minutes total, which was reasonable.

CPD Procedure § 12.140 also states that if the narcotic canine alerts to contraband inside the vehicle, probable cause now exists to search the entire vehicle and any containers within the passenger area without a search warrant. The canine alerted to the indication of drugs. The alert provided Officers Twehues, Gould, and Butler with probable cause to search Mr. Mitchell's vehicle. Subsequently, a small bag of marijuana was found; Mr. Mitchell acknowledged the baggie was his. Officer Twehues cited Mr. Mitchell for the equipment-related offenses.

The Cincinnati Code of Ordinances Section 4. 4-A dictates that no member of the police force shall engage in racial profiling. 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. CPD Procedure § 12.554 Investigatory Stops similarly states that no law enforcement agency should condone or promote the use of any illegal profiling system in its enforcement program and an officer whose enforcement stops are based on race or ethnicity is engaged in a practice which undermines legitimate law enforcement and may face claims in Federal courts of civil rights violations.

Mr. Mitchell alleged that Officers Twehues, Gould, and Butler employed racial profiling as the basis for the traffic stop and subsequent search of his property. Officers Twehues, Gould, and Butler denied the use of racial profiling in their determination to stop Mr. Mitchell. All officers stated that the equipment violations on Mr. Mitchell's vehicle were some of the factors that led to the stop. While the existence of genuine and provable traffic infractions alone would not be enough to defeat an accusation of racial profiling, given that race could still be a factor in an officer's decision to stop an offending driver, in this case we have more than just a provable traffic infraction. Officers Twehues, Gould, and Butler all asserted that information from neighborhood reports of drug dealing involving a vehicle matching the description of Mr. Mitchell's vehicle was the controlling factor that led to the stop. While CCA is not aware of any documentary evidence or police reports generated at the time of the alleged complaints of drug dealing that would corroborate the officers' claims that the complaints were made, there is other corroboration for those assertions. Officer Twehues' BWC reveals that at the time of the stop of Mr. Mitchell's car, Officer Twehues told at least one other person that someone had "seen him slinging dope out of this car before." This undercuts any notion that the reports of drug dealing involving Mr. Mitchell's car were fabricated by the officers after a citizen complaint was made in order to justify an inappropriate stop. The presence of heavy tints on the car also minimizes the opportunity for the officers to have observed that Mr. Mitchell was Black at the time of the stop. Finally, no other aspects of the officers' encounter with Mr. Mitchell, such as the search of his car, violated policy, procedure, or training. Under the circumstances presented here, there is no support for the allegation that the officers discriminated against Mr. Mitchell by engaging in racial profiling.

**Observation:**

Due to the weather conditions during the encounter, Officer Thomas zipped up his jacket, which obscured his BWC. IIS investigated the incident and provided verbal counseling to Officer Thomas.

## FINDINGS

Officer Alyssa Twehues

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

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Officer Alyssa Twehues  
Officer Clinton Butler  
Officer Corey Gould

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

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Officer Alyssa Twehues  
Officer Clinton Butler  
Officer Corey Gould

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

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