

Date: April 30, 2021
To: Board Members, Citizen Complaint Authority
From: Gabriel Davis, Director
Subject: Investigation Summary – May 3, 2021 Board Meeting

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Complaint #	19252
Complainant	Cathy Riley
Incident Dates	September 19, 2019 November 13, 2019
CCA Investigator	Dena Brown
CCA Findings	<p><u>Original Allegations</u></p> <p>Sergeant Dennis Zucker <i>September 19, 2019</i> Improper Stop – NOT SUSTAINED Discourtesy – NOT SUSTAINED</p> <p><i>November 13, 2019</i> Improper Stop – EXONERATED Harassment – NOT SUSTAINED</p> <p><u>Collateral Allegations</u></p> <p>Sergeant Dennis Zucker <i>September 19, 2019</i> Improper Procedure (Contact Card) – SUSTAINED</p> <p><i>November 13, 2019</i> Improper Procedure (Contact Card) – SUSTAINED</p>
Board Findings	Agree
City Manager Findings	Pending

Ms. Cathy Riley alleged that Sergeant Dennis Zucker improperly stopped her, was discourteous, and harassed her.

September 19, 2019

During routine patrol, Sergeant Zucker stated he observed Ms. Riley's taxicab without brake lights. CPD Procedure § 12.205 Traffic Enforcement directs officers to take appropriate enforcement action whenever a violation is detected. The City of Cincinnati Public Vehicle Squad Rules & Regulations for Taxicab Drivers states all public vehicles shall be free of body damage, mechanical defects, and that taxicab drivers must remain in or beside their vehicle when parked at a taxi stand. CPD Procedure § 12.540 Body Worn Camera System requires officers to use BWC equipment to record all calls for service and self-initiated activities. Due to the lack of BWC footage CCA could not confirm Sergeant Zucker's statement of facts or if Sergeant Zucker's decision to initiate a traffic stop was within CPD's policy, procedure, and training.

Ms. Riley alleged Sergeant Zucker was discourteous; Sergeant Zucker denied the allegation. 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. Due to the lack of BWC footage, CCA could not determine if Sergeant Zucker was discourteous towards Ms. Riley.

November 13, 2019

During routine patrol, Sergeant Zucker stated he observed Ms. Riley's taxicab commit two violations: she failed to use a turn signal and her vehicle was without brake lights. CPD Procedure § 12.205 Traffic Enforcement directs officers to take appropriate enforcement action whenever a violation is detected. The City of Cincinnati Public Vehicle Squad Rules & Regulations for Taxicab Drivers also states all public vehicles shall be free of body damage, mechanical defects, cracked windows and broken lamps. MVR footage confirmed the taxicab did not have working brake lights or a turn signal both are violations. A review of CPD's Impound Lot Inspection sheet deemed Ms. Riley's taxicab as unroadworthy due to damages to the battery, radio, brake lights and turn signals. CCA determined Sergeant Zucker's decision to initiate a traffic stop was within CPD's policy, procedure, and training.

Ms. Riley alleged Sergeant Zucker was harassing her. CPD does not have a definition or policy regarding harassment, but CCA has defined harassment to include behavior that threatens or torments someone, especially persistently. At a minimum, under this definition, there must be proof of a pattern of wrongful conduct. Sergeant Zucker denied the allegation. In part because CCA lacked sufficient BWC evidence (and other corroborative evidence) to make determinations about the preceding September 19th traffic stop, CCA also lacked sufficient evidence to determine by a preponderance whether Ms. Riley was harassed as alleged.

September 19, 2019 & November 13, 2019

CPD Procedure § 12.205 Traffic Enforcement states on ALL motor vehicle traffic stops, officers will complete a Contact Card and submit it at the end of the shift. A review of CPD's database did not present

a contact card on either stop. CCA determined Sergeant Zucker's failure to complete a contact card was not in compliance with CPD's policy, procedure, and training.

Note:

In this case, CCA requested MVR/DVR and BWC footage of the incident. CCA did not receive BWC video footage from one of the dates in question and was informed by CPD that the footage could not be located. In response to previous CCA recommendations calling for a review of CPD's policies for processing CCA requests, CPD has informed CCA that such BWC retention and retrieval problems have since been resolved. Nonetheless, we note our lack of access to the necessary BWC to place the limitations of this investigation into context, and for tracking purposes should the issue arise in future cases.

FINDINGS

Original Allegations

Sergeant Dennis Zucker

September 19, 2019

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

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

November 13, 2019

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

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

Collateral Allegations

Sergeant Dennis Zucker

September 19, 2019

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

November 13, 2019

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

RECOMMENDATIONS

R2123

Tracking System (Contact Card Policy/Procedure)

CCA attempted to locate the contact card in this matter. The applicable policy and procedure were implemented to keep track of the number, types, and other demographic information for stops conducted by CPD. If contact cards are not located or cannot be found, not only can this pose a problem for the officer but signals a larger systemic issue that has potentially legal and public policy implications. CCA strongly recommends that CPD review the contact card process from creation to file maintenance to ensure the intended impact regarding the accurate collection of data in addition to the potential impact on CPD officers.

R2124

Citizen Complaint Handling

During the traffic stop, Ms. Riley requested a supervisor respond. Citizens have the right to request a supervisor if a citizen objects to an officer's conduct. At a minimum, Sergeant Zucker should have informed the complainant of her right to make a complaint, providing CPD's Citizen Complaint brochure and form. To promote transparency and community goodwill, CCA recommends that CPD officers request a supervisor (or higher ranking) when asked to do so by involved individuals, with the understanding that CPD supervisors have discretion whether to respond.

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Complaint #	19277
Complainant	Eric Turner
Incident Dates	November 25, 2019 December 5, 2019
CCA Investigator	Ike Ekeke
CCA Findings	<u>Original Allegations</u> Officer Deon Mack <i>November 25, 2019</i> Improper Stop – NOT SUSTAINED Improper Search – SUSTAINED Improper Search – EXONERATED Harassment – NOT SUSTAINED Officer Matthew Ventre <i>December 5, 2019</i> Improper Stop – EXONERATED

	<p>Improper Search – EXONERATED Improper Pointing of Firearm – EXONERATED Officer Merlin Murrell</p> <p><i>December 5, 2019</i> Improper Pointing of Firearm – EXONERATED</p> <p><u>Collateral Allegations</u></p> <p>Officer Deon Mack <i>November 25, 2019</i> Discourtesy – SUSTAINED Abuse of Authority – SUSTAINED</p> <p>Officer Matthew Ventre <i>December 5, 2019</i> Improper Procedure (Contact Card) – SUSTAINED</p>
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS

November 25, 2019

Allegation 1: Improper Stop

Mr. Turner alleged Officer Ventre improperly stopped him. Officer Olthaus requested officers to stop Mr. Turner based on Officer Olthaus’s observing Mr. Turner and another individual conduct a hand-to-hand transaction that identifiably involved money and baggies in the transactions. CPD Procedure § 12.554 Investigatory Stops provides that officers may forcibly stop and detain the citizen for a brief investigatory period when an officer has reasonable suspicion to believe the citizen is committing or has committed a crime. However, Officer Olthaus was in plain clothes and did not wear a BWC; therefore, the incident was not recorded. At the time of the encounter, CPD policy did not require plainclothes officers to wear BWC. Without independent footage or corroborating evidence to verify Officer Olthaus’s observations, it is unknown whether the stop was proper. Therefore, the evidence does not sufficiently support that Officer Mack's stop of Mr. Turner based on a “drug investigation” complied with CPD's policy, procedure, and training.

Allegation 2: Improper Search

After Officer Mack and other unidentified officers stopped Mr. Turner, neither the stop nor the eventual search produced any recoverable evidence of the suspected criminal activity. According to Officer Mack’s BWC, Officer Mack patted down Mr. Turner after asking about weapons. CPD Procedure § 12.554 states every "Terry" type stop does not automatically authorize a frisk. To substantiate the use of a Terry Frisk, the officer must articulate specific facts that led them to believe the individual could be armed and dangerous. Officer Mack did not articulate why he believed Mr. Turner was armed or possessed a weapon

warranting a pat-down for weapons. Furthermore, because Mr. Turner was not under lawful arrest at the time of the frisk, the frisk cannot be justified under law or policy as a search incident to arrest. Therefore, the frisk conducted by Officer Mack violated CPD's policy Investigatory Stops 12.554.

Allegation 3: Improper Search

In his statement, Officer Mack articulated that he suspected Mr. Turner of concealing contraband based on his observations of Mr. Turner's behavior and the presence of a "white substance" on Mr. Turner. Officer Mack arrested Mr. Turner and ordered Mr. Turner to be transported to District 4 for a strip search. CPD Procedure § 12.600 Prisoners: Securing, handling, and transporting defines strip search as an inspection of the genitalia or buttocks after the removal or rearrangement of some or all of the person's clothing directly covering the person's genitalia or buttocks of the person arrested for a criminal offense. The procedure also states an officer cannot insert a finger or another instrument into the subject's orifice during the strip search. Here Officer Olthaus observed the strip search while Officer Mack conducted the strip search. Though Officer Mack grabbed Mr. Turner's buttocks and unsuccessfully attempted to separate the buttocks (according to the body camera video), Officer Mack did not insert his finger or any other instrument into Mr. Turner's orifice during the strip search. Based on the evidence provided, Officer Mack did not violate CPD's strip search policy.

Allegation 4: Abuse of Authority

After the search, Officer Mack refused Mr. Turner's request to put his underwear on. Instead, Officer Mack placed Mr. Turner's underwear in the hood of the sweatshirt that Mr. Turner was wearing. When Mr. Turner asked for his underwear, Officer Mack asserted that Officer Mack returned the underwear and patted the hood of Mr. Turner's sweatshirt. During his interview, Officer Mack initially stated there was no place to put Mr. Turner's underwear but later added it would be difficult to put the underwear back on Mr. Turner. However, this explanation insufficiently addresses the gratuitous and inappropriate placement of Mr. Turner's underwear in his sweatshirt. CPD's Manual of Rules and Regulations Section One – Failure of Good Behavior 1.22 states members of the CPD shall not verbally and/or physically mistreat persons who are in custody and shall protect them from mistreatment by others. Officer Mack's conduct in this regard fell below the bar of serving the public well and abused the authority Officer Mack possessed when he investigated Mr. Turner.

Allegation 5: Discourtesy

CPD's Manual of Rules and Regulations Section One – Failure of Good Behavior 1.06 states members of the CPD shall always be civil, orderly, and courteous in dealing with the public.

During the encounter, Officer Mack used profanity on multiple occasions, as evidenced by BWC footage. Officer Mack's profane statements included:

- "I ain't [expletive] touching you with no pissy [expletive] drawers,"
- "Why the [expletive] are you wet?"
- "Your [expletive] over there. Your [expletive] will go with you... man you ass gon [expletive] around go to jail without no underwear on."

When interviewed, Officer Mack did not provide an adequate explanation for his use of profanity directed towards Mr. Turner. The language used by Officer Mack violated CPD's policy, procedure, and training.

Allegation 6: Harassment

Mr. Turner alleged Officer Mack's behavior harassed Mr. Turner to the point of "fearing for [his] life." CCA has defined harassment to include behavior that threatens or torments someone, especially persistently. At a minimum, under this definition, there must be proof of a pattern of wrongful conduct. However, without evidence of the persistent occurrence of this behavior, harassment was not found. CCA received no other evidence showing any other interaction between Mr. Turner and Officer Mack. Therefore, there is no indication of whether Officer Mack's actions rose to the level of harassment.

December 5, 2019

Allegation 7: Improper Stop

While conducting surveillance, Sergeant Davis developed reasonable suspicion that Mr. Turner was involved in an apparent hand-to-hand drug transaction with another individual. Sergeant Davis radioed for a uniform officer to initiate a traffic stop. Officer Ventre responded to assist and activated his sirens. MVR footage showed Mr. Turner drove approximately two more blocks before he stopped. Officer Ventre concluded the stop became a "high risk" stop due to not knowing if Mr. Turner will "take off or try to run on foot."

After the deployment of stop sticks, Mr. Turner stopped his vehicle. BWC footage showed Officer Ventre displayed his firearm, with his finger outside the trigger guard, and pointed it at the vehicle. Officer Ventre ordered Mr. Turner to throw out the car keys; Mr. Turner complied eventually. CCA determined that Officer Ventre's stop did not violate CPD's Procedure Manual or applicable law.

Allegation 8: Improper Search

According to 12.1.3 of the CPD Investigation Manual, when an officer arrests a suspect, the officer must "conduct a search of the person arrested." BWC footage showed Officer Ventre arrested Mr. Turner for Failure to Comply and searched Mr. Turner incident to that arrest. Therefore, the subsequent search to that arrest did not violate CPD's policy, procedure, and training.

Allegations 9 & 10: Improper Discharge of Firearm

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. Based on Mr. Turner's failing to stop after Officer Ventre signaled his siren, Officer Ventre believed it was a high-risk stop. Officer Ventre stated he believed "people who don't stop their car usually are trying to hide something... maybe a firearm... maybe drugs. He's already giving -- showing us that he's not being compliant." Once Mr. Turner's vehicle stopped, Officer Ventre exits his vehicle and points his firearm toward the vehicle while making commands to Mr. Turner, who was still in the stopped vehicle. As Officer Ventre exited his cruiser to give commands, Officer Murrell exited his cruiser, drew his firearm, and pointed it in the direction of the stopped vehicle. After Mr. Turner threw out his keys, Officer Ventre holstered his firearm as he

approached Mr. Turner and placed Mr. Turner in handcuffs. As Officer Murrell approach Mr. Turner, Officer Murrell pointed his firearm down and holstered the firearm as Officer Ventre placed Mr. Turner in handcuffs. Since Officers Ventre and Murrell pointed their firearms in response to their perceived high-risk stop and holstered their weapons after observing Mr. Turner’s compliance, the pointing of their firearms did not violate CPD’s policy.

Allegation 11: Improper Procedure (Contact Card)

After reviewing the IIS report related to this complaint, CCA concludes that Officer Ventre did not complete a Form 534 contact card—mandated by CPD's policy Investigatory Stops 12.554—after stopping Mr. Turner. Therefore, Officer Ventre violated CPD's policy requiring a contact card.

FINDINGS

Original Allegations

Officer Deon Mack

November 25, 2019

Improper Stop – There are sufficient facts to decide whether the alleged misconduct occurred. **NOT SUSTAINED**

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

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

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

Officer Matthew Ventre

December 5, 2019

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

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

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

Officer Merlin Murrell

December 5, 2019

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

Collateral Allegations

Officer Deon Mack

November 25, 2019

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

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

Officer Matthew Ventre

December 5, 2019

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

RECOMMENDATIONS

R2127

Search or Entry Policy/Procedure

CCA recommends that CPD adds a mandate to its policies and procedures that when a CPD member conducts a strip search, the CPD member must record the strip search unless the subject of the strip search knowingly and verbally waives and consents to the strip search occurring without being recorded.

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Complaint #	19283
Complainant	Deshrayona Stegall
Incident Date	October 30, 2019
CCA Investigator	Jonathan Batista

CCA Findings	<p><u>Original Allegations</u></p> <p>Officer Charlene Hahn-Holley Officer Jamie Landrum Improper Entry – EXONERATED Excessive Force – EXONERATED</p> <p>Officer Charlene Hahn-Holley Officer Jamie Landrum Discourtesy – UNFOUNDED</p> <p><u>Collateral Allegations</u></p> <p>Officer Charlene Hahn-Holley Officer Jamie Landrum Improper Procedure – SUSTAINED</p>
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS

Officers Hahn-Holley and Landrum were dispatched to Colerain Avenue to assist an individual with mental health issues. Witness A reported the individual was arguing and making threats of assault. Officers Hahn-Holley and Landrum attempted to contact Ms. Stegall; however, she refused to open her door and made incoherent comments. CPD Procedure § 12.110: Handling Suspected Mentally Ill Individuals and Potential Suicides states Mobile Crisis Team (MCT) is a mental health crisis resource that is an aid to Department personnel, providing around-the-clock, on-site psychiatric crisis intervention. Officer Landrum contacted an MCT member to assist with the situation. MCT investigated the situation and signed a psychiatric hold for Ms. Stegall at PES.

Ms. Stegall alleged the officers improperly entered her residence. Generally, a search warrant is required to enter a residence, absent an exception. BWC footage confirmed Officer Landrum asked the apartment’s landlord for permission to enter the apartment, which the landlord granted. While Ohio law may provide landlords with the ability to enter an apartment without notice to a tenant under some circumstances, courts have generally concluded that a landlord does not possess authority under the Constitution to grant consent to the police for entry into a tenant’s private residence. Nevertheless, CPD’s training does instruct that officers are permitted to enter a private residence, without a warrant, in cases of exigent circumstances, such as when lives are believed to be imminently in danger. That training is consistent with the law governing entries into private residences. In this case, MCT made the determination that Ms. Stegall was in a state to receive emergency mental health services prior to police entry into the apartment. Therefore, exigent circumstances were present, and CCA concluded the officers were in compliance with CPD’s policy, procedures, and training.

Officers Hahn-Holley and Landrum entered and handcuffed Ms. Stegall. Ms. Stegall alleged the officers used excessive force when they pulled her arms in opposite directions prior to handcuffing her; she reported the incident resulted in 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. Both officers denied using force against Ms. Stegall. BWC footage showed Officers Hahn-Holley and Landrum held Ms. Stegall underneath each of her arm pits and escorted her to the cruiser, pursuant to CPD Procedure § 12.545 Use of Force defines escorting as the use of light pressure to guide a person or keep a person in place CCA concluded the officers used force however were in compliance of CPD's policy, procedures, and training.

Ms. Stegall alleged that Officers Hahn-Holley and Landrum laughed at her during their interaction. CPD's Manual of Rules and Regulations states members of the Department shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors, and associates. A review of the BWC footage confirmed at the officers were not discourteous towards Ms. Stegall as alleged. Therefore, CCA determined Officers Hahn-Holley and Landrum did not violate CPD's policies, procedures, and training.

CPD Procedure § 12.110 Mental Health states to document all encounters with suspected mentally ill individuals on an RMS Minor Aided Case Report. Finally, A review of CPD's records determined that RMS Minor Aided Case report was not completed by either officer. CCA concluded Officers Hahn-Holley and Landrum did not comply with CPD's policies, procedures, and training.

FINDINGS

Original Allegations

Officer Charlene Hahn-Holley
Officer Jamie Landrum

Improper Entry - 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**

Officer Charlene Hahn-Holley
Officer Jamie Landrum

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

Collateral Allegations

Officer Charlene Hahn-Holley
Officer Jamie Landrum

Improper Procedure – 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 #	20026
Complainant	Mikkel Wells
Incident Date	January 8, 2020
CCA Investigator	Morgan Givens
CCA Findings	<u>Original Allegations</u> Lt. Vogelpohl Sgt. Shircliff Harassment - NOT SUSTAINED Improper Entry - NOT SUSTAINED Lt. Vogelpohl Excessive Force - UNFOUNDED Discourtesy - SUSTAINED
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS

Mr. Mikkel Wells alleged that CPD officers were discourteous, entered his residence improperly, “put” his child’s mother outside, and that he had been the subject of their harassment.

On January 8, 2020, frSgt. Shircliff and Lt. Vogelpohl were working an off-duty detail for CMHA; they were asked to conduct “knock and talks” regarding complaints or allegations of misconduct that were in violation of the subject’s lease agreement. When they attempted to contact M. Wells, M. Lewis answered the door and refused entry. Lt. Vogelpohl informed CMHA; they sent someone who had a key for the apartment. In his statement, M. Wells acknowledged he opened the door prior to the key being used by Lt. Vogelpohl. It is unclear if they were welcomed into the apartment or walked past M. Wells after he opened the door. Although M. Wells’s lease was not provided by him or CMHA upon request, the documents provided to him highlighted security violations section of his lease; specifically, M. Lewis’ “refusal to let the police in.” CCA could not determine if Lt. Vogelpohl or Sgt. Shircliff improperly entered the residence.

M. Lewis stated that Lt. Vogelpohl attempted to grab her arm; he denied physically making her leave the apartment. From both Lt. Vogelpohl and M. Lewis’ statements, no force was used; as M. Lewis moved away to prevent Lt. Vogelpohl from touching her person.

Lt. Vogelpohl admittedly he used profanity during the incident by telling M. Wells “if she would have just shut the [expletive] up, none of this would have happened.” He confirmed that he made the comment to M. Wells but believed the comment was out of earshot of M. Lewis. On P.O. Espitia’s BWC, M. Wells stated to the officers, “Thank you, I can never get her to shut up,” which corroborated their narrative that

M. Lewis was made to leave at the request of M. Wells. Nevertheless, CPD Manual of Rules and Regulations Section 1.06 states that, “Members of the Department shall avoid the use of coarse, violent or profane language.” CCA concluded Lt. Vogelpohl’s use of profanity violated CPD’s policy, procedure, and training.

Sgt. Shircliff and Lt. Vogelpohl denied any previous contact with M. Wells. M. Wells indicated that CPD had been to his residence on prior occasions, but CPD stated CMHA security knocked on the door twice prior to address alleged lease agreement violation. In M. Wells’s statement he received a notice from CMHA that indicated that he got into a dispute with security. CCA was unable to confirm through CMHA, but IIS report 2020-036 indicated that the two prior contacts at M. Wells’s apartment were made by CMHA contracted security and not CPD. CMHA confirmed that M. Wells’s building has contracted security and CPD-detailed officers for security purposes. No information was provided by CMHA confirming whether it was private security or CPD who made contact on any prior occasion. Sgt. Shircliff and Lt. Vogelpohl denied any interactions with M. Wells prior to the incident. CCA could not determine if Sgt. Shircliff or Lt. Vogelpohl had conducted the prior contact that M. Wells alleged.

Notes

IIS issued a Sustained-Other finding to Lt. Vogelpohl in their parallel case # 2020-036 for his violation of rule 1.12 of the Manual of Rules and Regulations for “failing to submit the necessary detail paperwork as the detail coordinator.” As a result, he received ESL #2021-254174.

FINDINGS

Original Allegations

Lt. Vogelpohl
Sgt. Shircliff

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

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

Lt. Vogelpohl

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

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

RECOMMENDATIONS

R2125

Access to Police Records (Access to BWC/MVR)

Cincinnati Municipal Code (CMC), Article XXVIII, § 3-B reads (in part), “The executive director of CCA shall have reasonable access to city records, documents. . . .” In this case, CCA requested MVR/DVR and BWC footage of the incident; CCA did not receive all of the BWC video footage. Based on the officer’s statement and BWC footage of the incident, there are indications that there was additional footage CCA did not receive. The retention of Sgt. Shircliff’s BWC footage would have played a vital role in providing clarity in understanding what transpired as the officers engaged with M. Wells and M. Lewis. CCA recommends a review by the CPD of its handling of and response to CCA’s requests for information to ensure CPD’s compliance with CMC, Article XXVIII and the Collaborative Agreement. It is imperative that CCA receive all relevant evidence from CPD timely to conduct a viable investigation. CCA shares all complaints it investigates with CPD, any records related to the complaint should be flagged and provided to CCA upon notification of CCA’s investigation.

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Complaint #	20072
Complainant	Rashaan Davis
Incident Date	April 4, 2020
CCA Investigator	Morgan Givens
CCA Findings	<u>Original Allegation</u> Lieutenant David Schofield Discrimination - UNFOUNDED
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS

Mr. Davis participated in a large gathering that protested the public response to COVID-19. Mr. Davis recorded a Facebook Live video of the event, which was posted on YouTube. Lieutenant Schofield identified Mr. Davis from the video based on prior encounters. Because heed was not taken to the prior warnings from police pertaining to the Ohio Health Department Director’s *Order that All Persons Stay at Home Unless Engaged in Essential Work or Activity*, dated April 2, 2021 (“Stay at Home Order”), and because Lieutenant Schofield identified Mr. Davis as the ringleader for the nightly gatherings, Lt. Schofield arrested Mr. Davis and charged him via criminal complaint for violating that order. The additional felony charge of Inciting to Violence was added at the request of the HCPO.

CPD Procedure § 12.554, Investigatory Stops, states that an arrest must be supported by probable cause to believe the citizen is committing or has committed a criminal offense. The arrest in this case was made pursuant to a determination that there was probable cause for the offense of R.C. 3701.352, which makes it a crime to violate the Stay at Home Order. The Facebook Live video indicates that Mr. Davis was likely in the company of more than 10 persons at the time of its recording (a violation of the Order), and there is no indication that police who observed Mr. Davis's conduct were aware of any information suggesting that lawful exceptions to the Stay at Home Order's provisions applied to Mr. Davis's conduct. For instance, there is no information suggesting that at the time of Mr. Davis's conduct, police officers should have reasonably viewed him to be engaging in essential activities, essential government functions, or essential business operations (all exceptions to the mandate to stay at home). Under those circumstances, the evidence does not establish by a preponderance that the arrest violated police policy, training or procedure.

Mr. Davis alleged he was arrested because of his race. Lieutenant Schofield denied that his actions were discriminatory. CPD's Manual of Rules and Regulations § 1.23C states members shall not express any prejudice concerning race, sex, religion, national origin, lifestyle, or similar personal characteristic. A review of BWC footage, officer statements and other evidence offered no independent evidence to prove or conclusively refute the allegation that Mr. Davis was generally treated differently by Lieutenant Schofield or any other police officer because of his race. However, CCA has seen no other examples of persons in Cincinnati who went "viral" on the internet by openly defying the "Stay at Home Order", in the process providing evidence against themselves. In that sense, Mr. Davis's behavior is distinguishable from that of others who were not arrested for violating health orders, undercutting the notion that he was treated differently because of race. Under those circumstances, and given that no other violation of policy occurred by the officers involved in this matter, CCA determined that a claim of Discrimination was not supported by the facts and could not be proven against any particular officers.

There may be legitimate questions about the equal application and enforcement of the "Stay at Home Order" as a general matter, and about the tracking of such information in Cincinnati. Nonetheless, such questions, which require an analysis of data and a comprehensive examination of information pertaining to police contacts from this period, is beyond the purview of this particular investigation.

Questions pertaining to the specific charges against Mr. Davis pursued by prosecutors, or pertaining to Mr. Davis's pre-trial detention or bond amount, are also beyond the purview of this investigation.¹

¹ Judge Alan Triggs dropped the misdemeanor charge at the request of the HCPO. Mayor John Cranley revealed that the decision to drop the misdemeanor was, "in concert with Prosecutor Deters, this was a coordinated effort". Judge Alan Triggs posed the question, "How can I keep one person locked up when on my way home, I see 50 more doing the same thing? And they're not being charged". He also stated that when people are ultimately charged with defying the order, "most of them receive own recognizance or low bonds, where they're released same day. I think Mr. Davis was the only one with a very high bond, and when I say very high, \$350,000 is a very high bond".

Battipaglia, H. (2020, April 16). Charge dismissed for man accused of posting video of large gathering in OTR. Retrieved March 09, 2021, from <https://www.wlwt.com/article/charge-dismissed-for-man-accused-of-posting-video-of-large-gathering-in-otr/32164492>

FINDINGS

Original Allegation

Lieutenant David Schofield

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

RECOMMENDATIONS

R2126

Bias Free Policing (Discrimination or Prejudicial Treatment)

As we have noted in this investigation, questions have been raised from some in the community about whether the Ohio Health Director's "Stay at Home Order" and other COVID-19 mandates have been equally applied and enforced since the beginning of the pandemic, or whether there has been any bias in the enforcement of such rules, regulations, and laws. We recommend that CPD undertake a specific project to collect, review, analyze, and release data pertaining to its enforcement of COVID-19 restrictions. Such data should bear on the demographics of those charged with crimes or cited and note any trends, or lack thereof. Such a review would prove useful in addressing community contentions and concerns that the law enforcement response to COVID-19 has been biased.

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Complaint #	20148
Complainant	Jannell Morgan
Incident Date	July 27, 2020
CCA Investigator	Dena Brown
CCA Findings	Sergeant John Heine Officer Joshua Condon Officer Taylor Howard Officer Jason Wallace Officer Jonathan Gordon Improper Entry, Search, and Procedure - EXONERATED
Board Findings	Agree
City Manager Findings	Pending

ANALYSIS

CCA completed a review of CCA Complaint No. 20148 by Mr. Jonnell Morgan alleging Improper Entry, Improper Search, and Improper Procedure against Sergeant John Heine #S150, Officers Joshua Condon #P329, Taylor Howard #P180, Jason Wallace #P070, and Jonathan Gordon #P794.

On July 27, 2020, Mr. Morgan alleged Sergeant Heine, Officers Condon, Howard, Wallace, and Gordon improperly entered, searched, and towed his vehicle without cause. Mr. Morgan admitted to CCA that he had parked on the wrong side of the street. Mr. Morgan advised he later found out from an officer at the Impound lot that CPD will enter and conduct an inventory search of the vehicle before it is towed.

Officer Howard and members of the Bike Unit were on Police Visibility Overtime (PVO) and observed Mr. Morgan's vehicle parked on the wrong side of Livingston Street. They had been outside with the vehicle for approximately 20 minutes and had Mr. Morgan's vehicle attached to the tow truck before Mr. Morgan responded outside. Officer Gordon used a Lockout Kit and entered the vehicle for the inventory search to be conducted.

CCA interviewed all the officers involved and reviewed CPD's policy, procedure, issued citations, and recorded footage. A review of the officer's BWC's showed Mr. Morgan's vehicle was parked on the wrong side of the street. The BWC footage corroborated the officer's versions of what occurred. At no time did the officers improperly enter, search, or tow his vehicle as alleged. CCA recommends the allegation of Improper Entry, Improper Search, and Improper Procedure be closed Exonerated. The alleged conduct did occur but did not violate CPD policies, procedures, or training.

FINDINGS

Sergeant John Heine
Officer Joshua Condon
Officer Taylor Howard
Officer Jason Wallace
Officer Jonathan Gordon

Improper Entry, Search, and Procedure.

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

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