

Date: October 28, 2021
To: Board Members, Citizen Complaint Authority
From: Gabriel Davis, Director
Subject: Investigation Summary – November 1, 2021 Board Meeting

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Complaint #	19002
Complainant	Joshua McClain
Incident Date	January 3, 2019
CCA Investigator	Dena Brown
CCA Findings	<p><u>Original Allegations</u></p> <p>Officer Marc Schildmeyer Improper Stop – EXONERATED Improper Search – SUSTAINED</p> <p>Officer Ryan Olthaus Sergeant Matthew Ventre Lieutenant David Schofield Improper Search – EXONERATED</p> <p>Officer Marc Schildmeyer Officer Ryan Olthaus Sergeant Matthew Ventre Lieutenant David Schofield Discrimination – UNFOUNDED Harassment – UNFOUNDED</p> <p><u>Collateral Allegation</u></p> <p>Officer Marc Schildmeyer Improper Procedure (Contact Card) - SUSTAINED</p>

Original Allegations

Allegation 1: Improper Stop

On January 3, 2019, Officer Schildmeyer, (M/W/52), (who did not recall “much of the incident”) initiated a traffic stop of Mr. Joshua McClain’s, (M/B/35), vehicle with darkly tinted windows. CPD Procedure §12.205, *Traffic Enforcement*, maintains that officers should take appropriate enforcement action whenever a violation is detected. According to the ORC §4513.241, car windows should not be tinted to the extent that a person of normal vision could not identify persons or objects inside the car. It is up to the discretion of the officers in each jurisdiction to judge if the windows are too dark. CPD policy permits citations for tint violations based on an officer’s observations alone, without the need for a tint meter reading. BWC footage confirmed the vehicle appeared to have dark window tint, which corroborated the officers’ statements. Therefore, Officer Schildmeyer was within CPD’s policy, procedure, and training when he stopped Mr. McClain.

Allegation 2: Improper Search

Mr. McClain alleged Officer Schildmeyer searched his person and Lieutenant Schofield (M/W/38), Officer Olthaus (M/W/39), and Sergeant Ventre (M/W/40), searched his vehicle without any reported justification. A review of the BWC showed Officer Schildmeyer asked Mr. McClain to roll down all his windows then asked for permission to search his vehicle, which he refused. Officer Schildmeyer then took Mr. McClain’s identification and queried it.

While Officer Schildmeyer queried Mr. McClain’s information, Lieutenant Schofield observed an open bottle of liquor in the backseat of Mr. McClain’s vehicle, which he placed on the roof of Mr. McClain’s vehicle. The query returned a driver’s license that was not valid.¹ Officer Schildmeyer had Mr. McClain exit his vehicle. A review of the BWC showed Mr. McClain was handcuffed, frisked, and placed inside Officer Schildmeyer’s cruiser.

CPD procedure 12.600 *Prisoners: Securing, Handling, and Transporting* states, for officer safety, it may be necessary to temporarily handcuff citable persons or persons under investigation. However, in *State v. Lozada_ 92 Ohio St. 3d 74*, the Ohio Supreme Court recognized that placing a driver in a patrol car during a routine traffic stop increases the intrusive nature of the detention, and that “[s]ubjecting a driver to a pat-down search for weapons before placing the driver in a patrol car further increases the level of intrusion because even a limited search of the outer clothing for weapons constitutes a severe, though brief, intrusion upon cherished personal security.”

Officer Schildmeyer did not recall this incident and did not review his BWC before being interviewed by CCA.² Therefore, Officer Schildmeyer did not articulate that he believed or observed any weapons were

¹ Ultimately, the officers determined that they had queried the wrong name, and that Mr. McClain’s license was not suspended. Mr. McClain was ultimately released without charge.

² Officer Schildmeyer’s CCA interview took place less than two months after the incident.

on Mr. McClain. Officer Schildmeyer did not provide any other basis for the pat-down that would have rendered the action permissible under law. Accordingly, Officer Schildmeyer's frisk was not in compliance with CPD's policy, procedure, and training.

Allegation 3: Improper Search

Lieutenant Schofield, Officer Olthaus, M/W/39, and Sergeant Ventre, M/W/40, searched Mr. McClain's vehicle. No additional contraband was found.

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, permitted the search of Mr. McClain's car. The exception is appropriate in this case because of the open container of alcohol that Lt. Schofield observed in the back seat of the vehicle.

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 evidence or contraband; the objects searched do not need to belong to the owner of the vehicle.

Consistent with the motor vehicle exception, when law enforcement sees an open container of alcohol in someone's vehicle, they can then search the rest of the car—with or without consent—as long as the officer has a reasonable and articulable suspicion that he or she will find something else that is connected to the original offense under investigation—here, possession of an open container of alcohol in violation of Ohio law.

We note that in addition to the presence of an open container of alcohol, our review of the BWC reveals that Mr. McClain advised Officer Schildmeyer he had previously been stopped for tint violation and cited for having marijuana in his vehicle. Given these facts, CCA concluded the officers were within CPD's policy, procedure, and training when they searched Mr. McClain's vehicle.

Allegation 4: Discrimination

Mr. McClain alleged that members of the Gang Unit used his race as the basis for the traffic stop and subsequent search of his property. In their statements, Officers Olthaus, Schildmeyer, and Sergeant Ventre, and Lieutenant Schofield denied the allegation and stated dark tint was the reason for the stop. 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, lifestyle, 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. A review of the BWC showed the presence of dark tint on the vehicle minimizes the opportunity for the officers to have observed that

Mr. McClain was Black at the time of the stop. This is especially true given that the stop occurred at approximately 9:00pm in January, when it was dark outside and visibility was low. Under the circumstances presented here, there is no support for the allegation that the officers discriminated against Mr. McClain.

Allegation 5: Harassment

Mr. McClain alleged the Gang Unit has harassed him. The officers denied the allegation. CPD does not define “harassment” in its policies, but the 2018 CCA Annual Report defined “harassment” to include behavior that threatens or torments somebody, especially persistently. At a minimum, under this definition, there must be proof of a pattern of wrongful conduct. A review of CPD’s RMS database reflected Mr. McClain has been stopped a total of six times for various traffic infractions since 2015. The officers who stopped Mr. McClain on those six prior occasions were not the same officers that stopped him on January 3, 2019. Accordingly, CCA determined that the car stop at issue in this case did not fit a pattern that could be reasonably described as persistent intimidation or persistent aggressive pressure. CCA determined there was no support for the allegation.

Collateral Allegation

Allegation 6: Improper Procedure (Contact Card)

CPD Procedure §12.554 Investigatory Stops stipulates that a Contact Card must be completed any time an officer stops a motor vehicle or conducts an inquiry of individuals in a stopped motor vehicle and a Contact Card is required in addition to any other documentation of the incident (e.g., Form 527, Arrest Report, NTA, MUTT). A review of CPD’s database did not present a contact card for Officer Schildmeyer’s traffic stop. Officer Schildmeyer’s failure to complete a contact card was not in compliance with CPD’s policy, procedure, and training.

FINDINGS

Original Allegations

Officer Marc Schildmeyer

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

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

Officer Ryan Olthaus
Sergeant Matthew Ventre
Lieutenant David Schofield

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

Officer Marc Schildmeyer
Officer Ryan Olthaus
Sergeant Matthew Ventre
Lieutenant David Schofield

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

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

Collateral Allegation

Officer Marc Schildmeyer

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**

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2 HELD UNTIL DECEMBER 6, 2021 MEETING

Complaint #	19007
Complainant	Lance Gaines
Incident Date	January 13, 2019
CCA Investigator	Jessalyn Goodman
CCA Findings	<u>Original Allegation</u> Sergeant Zachary Sterbling Excessive Force – SUSTAINED <u>Collateral Allegations</u> Sergeant Zachary Sterbling Officer Douglas Utecht Improper Procedure – SUSTAINED Lack of Service – SUSTAINED Sergeant Zachary Sterbling Discourtesy – SUSTAINED

Original Allegation

Allegation 1: Excessive Force

CPD Procedure §12.545 *Use of Force* details that CPD officers' use of force "is not limited to that amount of force necessary to protect themselves or others but extends to that amount reasonably necessary to enable them to effect the arrest of an actively resistant subject." It further defines active resistance as an attempt to break free of an officer's control of the subject. The test used to determine whether force used against a resistant subject is excessive is "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them." Procedure §12.545 (citing *Graham v. Connor*). CPD Manual of Rules and Regulations § 1.22 also states "members shall not verbally and/or physically mistreat persons who are in custody."

In this case, HCJC security footage and Sergeant Sterbling (M/W/36) confirmed that Mr. Gaines spat at Sergeant Sterbling, and that in response, Sergeant Sterbling delivered one closed-fist strike to Mr. Gaines's face. A second attempt at striking Mr. Gaines made glancing contact before Sergeant Sterbling and Officer Utecht (M/W/36) forced Mr. Gaines to the ground. Sergeant Sterbling stated that he delivered the strikes to Mr. Gaines to prevent him from spitting any further. The test, however, is not whether the officer who used force had a subjective belief that the force was necessary. As we have explained above, the test is whether the actions were objectively reasonable. The evidence establishes that the response to strike Mr. Gaines was not objectively reasonable since the conduct involved a closed fist (rather than an open hand), involved more than one strike, Mr. Gaines was handcuffed at the time, and there were other, less violent means available to prevent and control Mr. Gaines's behavior, such as the officers' subsequent use of physical force to take Mr. Gaines to the ground. As a result, Sergeant Sterbling violated CPD policies, procedures and training when he struck Mr. Gaines's face with a closed fist.

Collateral Allegations

Allegation 2: Improper Procedure

CPD Procedure § 12.110 *Handling Suspected Mentally Ill Individuals and Potential Suicides* states all Mental Health Response Team (MHRT) Officers have a duty to file a RMS Minor Aided Case 8 Report in addition to any other reports made when involved in any encounter with an individual suspected of being mentally ill. In their statements, Sergeant Sterbling and Officer Utecht (M/W/36) confirmed they are both MHRT trained. BWC footage showed Mrs. Gaines advised both officers that Mr. Gaines had mental health issues; Officer Utecht responded that he had known for a long time that Mr. Gaines was mentally ill and agreed with Mrs. Gaines that he needed treatment. During the arrest, Mr. Gaines made comments in response to Mrs. Gaines's assertion he needed a psychiatric evaluation; Sergeant Sterbling told Mr. Gaines, "We know you are mentally ill." Despite their recorded belief that Mr. Gaines suffered from a mental illness, and their MHRT training and the duties that entail, neither officer filed a RMS Minor Aided Case 8 Report. Furthermore, the policy clarifies that MHRT Officers should also use non-confrontational verbal skills, empathy, and/or active listening to stabilize a person in crisis or when confronted with a situation where control is required to effect an arrest or to protect the public's safety.

During Mr. Gaines's transport to the HCJC, BWC footage showed the officers did not employ these strategies (as detailed later). CCA finds that both Officers Sterbling and Utecht did not comply with CPD's policy, procedure, and training.

Allegation 3: Discourtesy

CPD's Manual of Rules and Regulations Section One – Failure of Good Behavior 1.06 states that members of CPD shall always be civil, orderly, and courteous in dealing with members of the public. Further, it states that they shall avoid using coarse, violent, or profane language. BWC footage showed Sergeant Sterbling engaged in inappropriate banter with Mr. Gaines and made unprofessional comments as detailed in the BWC transcription. Instead of de-escalating Mr. Gaines's behavior, the conversation maintained and fostered his hostility towards the officers. CCA finds that Sergeant Sterbling did not comply with CPD's policy, procedure, and training.

Allegation 4: Lack of Service

Sergeant Sterbling and Officer Utecht were dispatched to a domestic violence situation. Per the CAD Report, Mrs. Gaines reported her husband, Mr. Gaines, had a domestic violence warrant against him but indicated a new allegation when she added he "has been texting...very threatening messages" and was inside her home; she added that he has a history of violence and was unsure of his state of mind. In addition, video evidence confirms that after Mr. Gaines was handcuffed and placed in the police cruiser, Mrs. Gaines and Officer Utecht discussed Mr. Gaines's history of domestic violence against Mrs. Gaines.

CPD Procedure § 12.412 Domestic Violence states officers will respond without delay to reported incidents of domestic violence, "conduct a thorough investigation," and assess whether there is probable cause to make an arrest for a domestic violence offense. Procedure § 12.412 also requires the responding officers to take the following steps, among others: (i) complete a Motion for Temporary Protection Order for domestic violence offenses; (ii) offer to have the victim complete a Form 311FV; (iii) conduct a lethality screening and consider calling DVERT; (iii) provide the victim with domestic violence resources, including the Ohio Attorney General's "Your Rights and Responsibilities as a Crime Victim" booklet; and (iv) complete a 301 Case Report for domestic violence.

When Sergeant Sterbling and Officer Utecht arrived on scene, they subsequently located, arrested, and transported Mr. Gaines to HCJC; however, they did not address or investigate the new allegations of domestic violence. CCA did not receive or locate records related to a Motion for a Temporary Protection Order associated with the new allegations, Form 311VS, or Form 301 for that date. No domestic violence resources were provided to Mrs. Gaines. Furthermore, Mr. Gaines was not charged for any additional crimes. Due to the significant history of domestic violence perpetrated by Mr. Gaines against Mrs. Gaines, as evidenced through the Hamilton Clerk of Courts, this appears to have been a missed opportunity for an officer to provide resources to assist and possibly prevent further abuse. CCA finds that Officers Sterbling and Utecht did not comply with CPD's policy, procedure, and training.

Note:

1. Sergeant Sterbling received an ESL for violating CPD's Manual of Rules and Regulations regarding his improper conversation with Mr. Gaines.

2. This encounter occurred in January 2019. In January 2021, CPD issued a training bulletin which provided recommended responses for when individuals spit on officers, to include creating distance, verbal commands, repositioning the subject, and securing a spit hood/mask. The bulletin states that officers must determine whether the arrestee is actively resisting arrest as defined in CPD Procedure §12.545. If so, officers are permitted to use whatever force is reasonably necessary; however, if the individual’s only action is spitting, CPD procedure limits the amount of force permitted to address the conduct, stating, “Although a criminal offense, a subject who spits on an officer without engaging in any other actions/resistance is not considered a violent attack. Officers are prohibited from delivering physical strikes to a person who is solely spitting on them.” CPD also updated CPD Procedure §12.545 with that language.

FINDINGS

Original Allegation

Sergeant Zachary Sterbling

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

Collateral Allegations

Sergeant Zachary Sterbling
Officer Douglas Utecht

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

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

Sergeant Zachary Sterbling

Discourtesy – 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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3

Complaint #	19019
Complainant	Docquase Bates
Incident Date	January 17, 2019

CCA Investigator	Dena Brown
CCA Findings	Officer Charles Knapp Officer Cian McGrath Improper Stop – EXONERATED Excessive Force – EXONERATED Harassment – UNFOUNDED

ANALYSIS

Allegation 1: Improper Stop

On January 17, 2019, Officers Knapp (M/W/41) and McGrath (M/W/37) were on routine patrol in the Over-the-Rhine area when they observed an individual walking on East McMicken Street. According to their CCA interviews, both officers believed the individual was Mr. Carlos Orr (M/B/29), whom they were aware had an open warrant for Domestic Violence case #19CRB140, that was filed on January 2, 2019. CPD Procedure § 12.554, *Investigatory Stops*, maintains that when an officer has reasonable suspicion to believe a citizen is committing a crime or has committed a crime, the officer may forcibly stop and detain the citizen briefly. CCA reviewed the Hamilton County Clerk of Courts database which confirmed an open warrant for Mr. Orr. CPD Procedure §12.555 Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders states all adults charged with misdemeanor offenses are eligible for release via a Form 314, Notice to Appear (NTA), unless: they are charged with domestic violence.

After the initial contact, Officers Knapp and McGrath identified the individual as Mr. Bates (M/B/24). Officer Knapp stated to CCA that Mr. Orr and Mr. Bates “share similar stature, height, weight, skin tone, and tattoos on their faces, although Mr. Bates has hair that really stands out, but that day he had a hoodie pulled up and tied tightly so you could only see about two-thirds of his face. They also frequent the same area on McMicken and Vine Streets.” CCA reviewed a photo of Mr. Orr and BWC footage of Mr. Bates; the comparison corroborates Officer Knapp’s assertion that the two men shared a similar appearance. BWC footage showed once Mr. Bates was in custody, Officer Knapp stated to Mr. Bates, he “initially believed he was Mr. Orr.” CCA concluded that although Mr. Bates was not Mr. Orr, the officers reasonably believed they had the correct person, therefore they were within CPD’s policy, procedure, and training when they stopped Mr. Bates.

Allegation 2: Excessive Force

Mr. Bates alleged Officers Knapp and McGrath used excessive force taking him into custody. Officers Knapp and McGrath stated to CCA that Mr. Bates was taken to the ground and tased for suspicion of ingesting contraband/narcotics, which resulted in facial injuries and biting his tongue. BWC footage showed Mr. Bates walked away from the officers after being ordered to stop and did not comply with Officer McGrath’s commands to take his hands out of his pockets. With his back to the officers, Mr. Bates removed his left hand from his pocket; it appeared he placed something in his mouth. Officer McGrath advised Officer Knapp of this action. Officer McGrath placed his TASER against Mr. Bates’s back, took him to the ground, and then ordered him to spit out whatever he had in his mouth. Mr. Bates refused to be handcuffed, turned and twisted his body while on the ground, and stated he did not have anything in

his mouth. Officer McGrath repeated his command and warned Mr. Bates of the impending TASER use, but Mr. Bates did not comply. Officer McGrath used his TASER in drive stun mode once, applying it to Mr. Bates neck area to try to stop him from ingesting what the officer believed were drugs.

CPD Procedure §12.545, *Use of Force*, states:

[T]he TASER is the primary response for self-defense, defense of another or gaining compliance from a person(s) actively resisting arrest. . . . The use of . . . the TASER (in the drive stun mode) on an individual attempting to swallow evidence or contraband is only permitted when **all** of the following apply: [t]here is a clear indication the object or substance in the subject’s mouth is contraband and; [t]here are exigent circumstances such as the imminent destruction of evidence or medical emergency and; [t]he officer has issued verbal commands to spit out any contraband and the subject refuses to comply.

The evidence supports that each of these requirements were met when Officer McGrath deployed his TASER. Therefore, CCA determined that Officer McGrath’s TASER use was in compliance with CPD’s policy, procedure, and training.

CPD Procedure § 12.545, *Use of Force*, also states an officer’s privilege to use force “is not limited to the amount of force necessary to protect themselves or others but extend to that amount reasonably necessary to enable them to effect the arrest of an actively resistant subject.” The policy 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.”

BWC footage showed Mr. Bates physically attempted to resist the officers’ control by contorting his body in various positions. Officer Knapp held Mr. Bates’s legs down with his body weight as he tried to handcuff him; once he successfully handcuffed him, Officer Knapp shifted his weight off of Mr. Bates. BWC footage showed Officer Knapp used what the policy defines as “hard hands” in order to gain physical custody of Mr. Bates. CCA concluded that the physical force used against Mr. Bates was within CPD’s policy, procedure, and training.

Allegation 3: Harassment

Mr. Bates alleged Officer Knapp harassed him. Officer Knapp denied the allegation. CPD does not define “harassment,” in its policies, but CCA has defined “harassment” to include “persistent aggressive pressure or intimidation.” *See* CCA 2018 CCA Annual Report. At a minimum, under this definition, there must be proof of a pattern of wrongful conduct. While it is notable that Mr. Bates has had nine contacts with CPD (various officers) due to law violations, CCA determined that none of that contact could be reasonably described as persistent intimidation or persistent aggressive pressure. CCA determined there was no support for the allegation.

Observation

While reviewing the BWCs of the incident, CCA observed pedestrians attempt to approach and record Officer McGrath as he and Officer Knapp took Mr. Bates into custody. Officer McGrath continuously ordered bystanders to “Get the [expletive] back!” Cincinnati Police Academy Training Bulletin #2001-1, Verbal Stunning, Issued April 2001, allows an officer to use “voice volume, inflection, and language” to control a person who is not responding to voice commands. Under such circumstances, profanity is

allowed as a method of control when the language describes a physical act rather than personally attacking the citizen. Here, BWC evidence showed Officer McGrath’s use of profanity was an action to prevent bystanders from becoming involved in active police encounter and did not appear to be in violation of the CPD Manual of Rules and Regulations.

FINDINGS

Officer Charles Knapp
Officer Cian McGrath

Improper Stop – 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**

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

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Complaint #	19038
Complainant	Terry Lee Griffin
Incident Date	January 30, 2018; November 6, 2018; January 7, 2019; February 1, 2019; and February 22, 2019
CCA Investigator	Morgan Givens
CCA Findings	<u>Original Allegations</u> <i>January 30, 2018</i> <i>November 6, 2018</i> Officer Ken Dotson Officer Brandon Dean <i>January 7, 2019</i> Officer Clinton Butler Officer Alyssa Twehues Officer Elliott Miller <i>February 1, 2019</i> Officer Mackaye Rainey Officer Corey Jones

February 22, 2019
Officer Myles Abt
Officer Jerome Herring, Jr.

Harassment – UNFOUNDED

January 7, 2019
Officer Clinton Butler
Officer Alyssa Twehues
Officer Elliott Miller
Improper Stop – EXONERATED

February 1, 2019
Officer Corey Jones
Officer Mackaye Rainey
Improper Stop – EXONERATED

February 22, 2019
Officer Myles Abt
Officer Jerome Herring, Jr.
Improper Stop – EXONERATED

Collateral Allegations

January 7, 2019
Officer Clinton Butler
Officer Elliott Miller
Improper Search – SUSTAINED

ANALYSIS

Original Allegations

Allegation 1: Harassment

Mr. Terry Lee Griffin (M/B/38) alleged that officers of the Cincinnati Police Department harassed him by stopping, detaining, and citing him on several occasions, including on January 30, 2018; November 6, 2018; January 7, 2019; February 1, 2019; and February 22, 2019.

Dates:

- January 30, 2018
- November 6, 2018
- January 7, 2019
- February 1, 2019
- February 22, 2019

CPD does not have a definition or policy regarding harassment, but in the 2018 CCA Annual Report, CCA defined harassment to include “behavior that threatens or torments somebody, especially persistently.” At a minimum, under this definition, there must be proof of a pattern of wrongful conduct. While Mr. Griffin did not allege any specific CPD officers were involved in harassment in his complaint, CCA investigated the actions of multiple officers who had contacts with Mr. Griffin on the above dates to determine whether a pattern of wrongful conduct was present. The evidence did not establish such harassment.

All of the officers interviewed had no previous contact with Mr. Griffin other than that mentioned in this report, and none were aware of any other officers having had familiarity with him either. Officers Ken Dotson (M/W/28) and Brandon Dean (M/B/32) were the only two officers who were present for more than one encounter with Mr. Griffin, specifically, the stops and arrests on January 30, 2018, and November 6, 2018. Neither officer made the decision to arrest Mr. Griffin, seeing as both officers were backing up the Ohio State Patrol Troopers who had pulled over and then arrested Mr. Griffin. Moreover, for reasons stated below, the evidence does not support that either car stop, or detention was improper as a matter of law or policy. While CCA did conclude that the evidence established that an improper search occurred on January 7, 2019, that improper search constituted an isolated policy violation. In the absence of evidence of persistent wrongdoing, or a pattern of policy violations directed toward Mr. Griffin, CCA determined that no officers’ actions constituted harassment.

Allegation 2: Improper Stop

Dates:

January 3, 2018

November 6, 2018

According to statements from Officers Dotson and Dean, the January 2018 stop was made after the Troopers who they were backing up observed Mr. Griffin commit a traffic offense (driving with window tints in violation of the law). The Troopers stopped Mr. Griffin for that offense, and the complainant corroborated that the Troopers stated onsite that they were pulling him over for window tint violations. Following the car stop, officers observed marijuana in plain view inside of the car, and then subsequently detained Mr. Griffin and searched the car. An alleged stolen firearm was found inside of the car.

According to Officer Dean and a statement by the complainant, the November 2018 stop occurred after Troopers observed Mr. Griffin driving with window tints in violation of the law.

In both cases, the evidence shows that the Troopers made the decision to stop Mr. Griffin, with CPD playing only a supporting role. Moreover, 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. Further, CPD Procedure § 12.205 *Traffic Enforcement* directs officers to take the appropriate enforcement action(s) whenever a traffic violation is detected. Considering the observed window tint violations, as well as their relatively minor role in the detention of Mr. Griffin, Officers Dotson and Dean did not violate policy, procedure, or training.

Date:

January 7, 2019

Mr. Griffin alleged that CPD officers improperly stopped him while he was driving in January of 2019 and pulled him over in a Kroger parking lot. Once again, CPD Procedure § 12.554 *Investigatory Stops* and CPD Procedure § 12.205 *Traffic Enforcement* govern this interaction. According to statements by Officers Clinton Butler (M/W/29) and Alyssa Twehues (F/W/28), they observed Mr. Griffin commit traffic infractions while operating his car. In particular, Officer Twehues observed Mr. Griffin driving with dark tints and a license plate that was possibly obstructed. In his statement, Officer Butler reported that he ran Mr. Griffin's license plate and determined that he had several warrants. This is corroborated by the BWC of the other officers who responded to the scene later and well as by statements made by Officer Twehues and Mr. Griffin. According to statements by the officers, and their real-time admission captured by the BWC, an error in data entry by another county mistakenly crossed the records of Mr. Griffin with those of another suspect, which resulted in a false return showing that Mr. Griffin had warrants. Despite the fact that warrants in Mr. Griffin's name were ultimately proven to be erroneous, CCA determined Officer Butler's and Officer Twehues's effectuation of a traffic stop was within CPD's policy, procedure, and training, given that Officer Butler only needed reasonable suspicion of a crime to make the stop, and given the observed traffic infractions.

Date:

February 1, 2019

Mr. Griffin alleged that Officer Corey Jones (M/B/37) improperly stopped him one month later in February. Again, CPD Procedure § 12.554 *Investigatory Stops* and CPD Procedure § 12.205 *Traffic Enforcement* both govern this car stop. Officer Jones's statement and BWC, Officer Rainey's BWC, and Mr. Griffin's statement all show that Officer Jones pulled Mr. Griffin over for speeding while driving and for having an obscured license plate. CCA determined Officer Jones's decision to initiate a traffic stop was within CPD's policy, procedure, and training.

Mr. Griffin alleged that Officers Jones and Mackaye Rainey (M/W/22) improperly detained him at the scene. 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. Under the law, this brief period of detention can include the time that it takes to prepare a citation. Officer Jones's statements and BWC, as well as that of Officer Rainey, support Officer Jones's assertion that he detained Mr. Griffin at the scene while he wrote him a ticket for a window tint violation that he observed after stopping Mr. Griffin's car. Therefore, CCA determined Officer Jones's and Rainey's decision to detain Mr. Griffin was within CPD's policy, procedure, and training.

Date:

February 22, 2019

Mr. Griffin also alleged that CPD officers improperly stopped him while he was driving on February 22, 2019. According to statements provided by Officers Myles Abt (M/W/22) and Jerome Herring, Jr. (M/B/22), as well as their BWC recordings, Officers Abt and Herring stopped Mr. Griffin for driving with a heavy window tint on his car. The officers took Mr. Griffin's information and then released Mr. Griffin without a citation. Considering the policies cited above, CCA determined Officer Abt and Herring's decision to initiate a traffic stop was within CPD's policy, procedure, and training.

Collateral Allegation

Allegation 3: Improper Search

Date:

January 7, 2019

With respect to the car stop that occurred on January 7, 2019 at Kroger, while the evidence does not establish that an improper stop took place, it *does* establish that Mr. Griffin was improperly searched after the stop occurred. According to BWC footage, rather than simply pat-down Mr. Griffin and conduct a frisk, officers conducted a full-blown search of Mr. Griffin's person, immediately reaching inside of his pockets after he exited his vehicle. While Mr. Griffin was suspected of having felony warrants at the time of the search, he was not under lawful custodial arrest, and the warrants were soon discovered to be erroneously attached to his identity. He was ultimately released with a simple traffic citation. CPD Procedure 12.555 *Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders* states that when an officer addresses a traffic offense by issuing a traffic citation rather than making a custodial arrest, "The officer may only pat down or frisk the subject to assure his safety. The officer must have reasonable suspicion that the subject is armed and poses a threat of harm. **No search is permitted as would be lawful in an actual arrest**" (emphasis included in original). This policy is consistent with the law defining and limiting searches incident to lawful arrest. Given that Mr. Griffin was not under lawful custodial arrest at the time of the search, and given the absence of any other exception to the general requirement that a search warrant is required to search, CCA determined that Officers Elliott Miller (M/W/28) and Butler violated CPD's policy, procedure, and training by going inside of Mr. Griffin's pockets and searching him beyond a mere frisk.

FINDINGS

Original Allegations

January 30, 2018

November 6, 2018

Officer Ken Dotson

Officer Brandon Dean

January 7, 2019

Officer Clinton Butler

Officer Alyssa Twehues

Officer Elliott Miller

February 1, 2019

Officer Mackaye Rainey

Officer Corey Jones

February 22, 2019

Officer Myles Abt

Officer Jerome Herring, Jr.

Harassment – There is insufficient evidence to determine whether the alleged misconduct actually occurred. **UNFOUNDED**

January 7, 2019

Officer Clinton Butler
Officer Alyssa Twehues
Officer Elliott Miller

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

February 1, 2019

Officer Corey Jones
Officer Mackaye Rainey

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

February 22, 2019

Officer Myles Abt
Officer Jerome Herring, Jr.

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

Collateral Allegations

January 7, 2019

Officer Clinton Butler
Officer Elliott Miller

Improper Search – The evidence shows that the alleged incident did occur, and the actions of the officers were improper. **SUSTAINED**

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5

Complaint #	19083
Complainant	Armani Berry
Incident Date	April 24, 2019
CCA Investigator	Ikechukwu Ekeke
CCA Findings	Officer Amber Bolte Officer Kenneth Kober

Officer Colleen Deegan
Officer David Dozier
Improper Entry – NOT SUSTAINED
Improper Search – EXONERATED
Harassment – UNFOUNDED

ANALYSIS

On April 24, 2019, Officers Amber Bolte (F/W/36), Kenneth Kober (M/W/37), Colleen Deegan (F/W/43), Rocky Helton (M/W/38), and David Dozier (M/B/49) responded to 2339 Williamsburg Drive to arrest Mr. Eddie Fairbanks pursuant to an arrest warrant based on charges for: Involuntary Manslaughter, Corrupting Another With Drugs, Possession of Cocaine, and Trafficking Cocaine.

Allegation 1: Improper Entry

Ms. Berry (F/B/39) alleged Officers Bolte, Kober, Deegan, and Dozier improperly entered her residence. It is in dispute whether the officers opened the door of Ms. Berry's residence themselves or if the door was already open when the officers approached the residence—there is no BWC footage that captured the officer's initial approach to the residence. However, Officer Dozier's BWC video established, Officers Bolte, Kober, and Dozier entered the apartment before Ms. Berry came to the door to speak with the officers. Specifically, BWC footage captured Officers Bolte, Kober, and Dozier inside the living room area of Ms. Berry's residence as Officer Bolte continued to request Ms. Berry to "go ahead and come out so I [Officer Bolte] can speak to you [Ms. Berry]."

While Ohio Rev. Code Ann. § 2935.12 "Forcible entry in making arrest or executing search warrant" permits officers to forcibly enter a residence with a lawful warrant in the presence of refusal, if a door is open, the officer is not restricted from entering pursuant to the warrant. See State v. Applebury, 518 N.E.2d 977 (Ohio Ct. App. 1987).

Here, according to the Hamilton County Clerk of Courts, an arrest warrant for Mr. Fairbanks existed on April 24, 2019. Therefore, if the door to the Williamsburg location was open, Officers Bolte, Kober, and Dozier would not have been violating relevant law and policy by entering the apartment. However, there is no BWC video corroborating the officers' assertion that the door to the Williamsburg location was open and thereby refuting Ms. Berry's assertion that the door was closed, and the officers opened it. Therefore, there are insufficient facts to decide whether the alleged misconduct occurred.

Allegation 2: Improper Search

Additionally, Ms. Berry complained Officers Bolte, Kober, Deegan, and Dozier improperly searched her residence without her consent or providing her a search warrant.

The Fourth Amendment of the Constitution allows for a law enforcement officer to legally search for a subject of an arrest warrant in a dwelling that belongs to the suspect or a third party without a search warrant in the presence of exigent circumstances or consent. Steagald v. United States, 451 U.S. 204, 205-06 (1981). However—in the absence of exigent circumstances or consent—to legally search, the officers must either have a search warrant or probable cause that the suspect lives at the dwelling and reason to

believe the suspect is within the dwelling. Steagald v. United States, 451 U.S. 204, 205-06 (1981). Payton v. New York, 445 U.S. 573, 603, 100 S. Ct. 1371, 1388 (1980).

Here, even in the absence of BWC of the officer's initial approach to the door of the residence, Officer Bolte stated Cincinnati Police received information that Mr. Fairbanks, the subject of the arrest warrant, resided at the Williamsburg location. Further, Officer Bolte stated she acted on this information after corroborating another "tip" that Mr. Fairbanks "stays with [Ms. Berry]" and that Mr. Fairbanks drives a certain vehicle. Specifically, after Officer Bolte saw the described vehicle at the Williamsburg location, she approached the residence. Therefore, Officer Bolte may have legally executed the arrest warrant for Mr. Fairbanks at that location without the consent of the dwelling's owner or a search warrant.

Further, Ohio Criminal Rule 4 states, "The officer need not have the warrant in the officer's possession at the time of the arrest. In such case, the officer shall inform the defendant of the offense charged and of the fact that the warrant has been issued. A copy of the warrant shall be given to the defendant as soon as possible."

Accordingly, in this case, the officers would be required to give the defendant, Mr. Fairbanks, a copy of the present if he were present—but Mr. Fairbanks was not present. Even if Mr. Fairbanks was present, the police were not required to have the arrest warrant in their possession when immediately acting pursuant to that warrant. Therefore, the officers did not violate relevant law by not having or presenting the arrest warrant for Mr. Fairbanks to Ms. Berry.

Allegation 3: Harassment

Ms. Berry also alleged that unknown officers attempted to locate Mr. Fairbanks by searching for him at Cincinnati Children's Hospital, where her child received medical treatment. Ms. Berry told CCA she did not know which officers searched for Mr. Fairbanks at the hospital, nor does she know the date when the attempt to locate Mr. Fairbanks took place. Ms. Berry stated she learned of the officers coming to the hospital from a social worker who worked at the hospital. However, courts have held that a person has no reasonable expectation of privacy in the halls of the hospital and "[w]ith time of the essence, any hope of catching a suspect turns on nimble law enforcement willing to drop everything and rush to the hospital to gather information." United States v. Clancy, 979 F.3d 1135, 1138 (6th Cir. 2020). Without specific facts or details of officers invading a more private area of the hospital regarding her son, CCA lacks evidence to conclude the incident complained of actually occurred.

FINDINGS

Officer Amber Bolte
Officer Kenneth Kober
Officer Colleen Deegan
Officer David Dozier

Improper Entry— There are insufficient facts to decide whether the alleged misconduct occurred. **NOT 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 no facts to support the incident complained of occurred. **UNFOUNDED**

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6

Complaint #	19135
Complainant	Bobby Davis
Incident Date	June 12, 2019
CCA Investigator	Jessalyn Goodman
CCA Findings	<u>Original Allegations</u> Officer Terrance Dobbins Excessive Force – NOT SUSTAINED Officer Andrew Woedl Excessive Force – UNFOUNDED <u>Collateral Allegation</u> Officer Terrance Dobbins Discourtesy – SUSTAINED

ANALYSIS

Officers Dobbins (M/B/50), and Woedl (M/W/43), were dispatched to a radio run regarding an intoxicated individual, Mr. Davis (M/W/36); CFD requested assistance because Mr. Davis refused to receive medical treatment without the presence of CPD officers. Despite the officers' presence, Mr. Davis remained noncompliant. After Mr. Davis repeatedly refused to comply with CFD personnel and Officers Dobbins's and Woedl's directives, the officers advised Mr. Davis that he would be arrested; ultimately, Mr. Davis was charged with Ohio Revised Code (ORC) §2917.11 (B) Disorderly Conduct while Intoxicated and §2921.33 (A) Resisting Arrest.

Original Allegation

Allegation 1: Excessive Force

CPD Procedure §12.545 Use of Force states when officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. The procedure also states an officer's use of force extends to that amount reasonably necessary to enable them to effect the arrest of an actively resistant subject; it defines active resistance to be when a subject is making physically evasive movements to defeat the officer's attempt at control. The procedure lists "hard hands" as a force option, and it defines hard hands to include the use of physical pressure... joint manipulation... and pressure point control tactics."

BWC footage showed when the officers attempted to handcuff Mr. Davis, he ran into the street. In his statement, Officer Dobbins indicated he was concerned for Mr. Davis's safety, so he followed with a taser and threatened to tase him. BWC footage showed that after Mr. Davis returned to the sidewalk, he repeatedly moved his hands, arms, and body away from the officers as they attempted to handcuff him. Mr. Davis resisted the officers' efforts as they attempted to manipulate Mr. Davis's hands and arms into compliance. In his statement, Officer Dobbins reported he warned Mr. Davis before using a "leg sweep" to force him to the ground; Officer Woedl stated each officer held one of Mr. Davis's arms before he landed onto the grass; BWC footage confirmed these statements. Officer Dobbins explained Mr. Davis rolled onto the concrete while they tried to handcuff him, causing injuries to his face. Due to the positioning of the BWCs in relation to Mr. Davis, the camera did not capture exactly how Mr. Davis landed or what caused his injuries. UCMC records showed Mr. Davis was given x-rays on his wrists and diagnosed with right wrist pain and facial injuries. Due to BWC footage and corroborating statements from the officers, CCA concluded Officers Dobbins and Woedl's use of force in these circumstances was within CPD's policy, procedure, and training.

During the physical struggle, Officer Dobbins attempted to control Mr. Davis by holding his upper body. BWC footage captured Mr. Davis saying, "Will you quit choking me?" as Mr. Davis's throat and chin remained in the crook of Officer Dobbins's elbow for approximately 15-20 seconds. While Officer Woedl's arm did not appear to have physical contact with Mr. Davis's throat at the time, BWC footage appears to show his arm briefly wrapped around Mr. Davis's face and neck area in a headlock-like hold. Mr. Davis continued to speak while Officer Dobbins's held onto him; his voice became muffled briefly when he attempted to move his face under Officer Dobbins's elbow.

CPD Procedure §12.545 Use of Force elaborates that a "choke hold" "could be considered deadly force and that they "are prohibited unless a situation arises where the use of deadly force is permissible." CPD policy does not define what a "choke hold" is, but CCA learned during its investigation that CPD instructs its officers on how to defend against two different kinds of holds commonly regarded as choke holds: an airway chokehold and a carotid chokehold.

Officer Dobbins denied that he ever purposefully or accidentally choked Mr. Davis; he acknowledged that he placed his arm around Mr. Davis's chin but clarified his arm was never around Mr. Davis's throat, nor did he place pressure against Mr. Davis's throat. The footage showed Officer Dobbins's arm was wrapped along Mr. Davis's face and neck area beneath his chin; Mr. Davis's hands pushed against Officer Dobbins's forearm and his chin appeared above and below Officer Dobbins's forearm as they struggled. The footage was not clear as to whether Officer Dobbins's arm was directly against and/or placed pressure on Mr. Davis's throat. Mr. Davis's comment indicated he was able to breathe and speak clearly at the time of the allegation; additionally, the provided medical discharge paperwork did not reference any breathing problems or neck injuries. This evidence suggests he was able to breathe. However, given in large part that the video evidence does not clearly establish whether Officer Dobbins's hold applied pressure to other parts of Mr. Davis's neck, CCA was unable to determine if Officer Dobbins used a "choke hold," and was therefore unable to determine whether Officer Dobbins used excessive force against Mr. Davis.

Collateral Allegation

Allegation 2: Discourtesy

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. Officer Dobbins stated Mr. Davis did not complain of any discourtesy by the officers but acknowledged that he may have used profanity during the encounter due to the escalating situation and Mr. Davis's continuous noncompliant behavior. BWC footage showed he used profanity multiple times during the struggle, but also directed profanity towards Mr. Davis by saying, "[Expletive] you, we're done playing," and "Sit down, [expletive]." Therefore, Officer Dobbins was not in compliance with CPD's policy, procedure, and training.

Note:

Due to his comments towards Mr. Davis, Officer Dobbins received an ESL for violating CPD's Manual of Rules and Regulations.

Recommendation: #R2133 – Use of Force Policy/Procedure

CCA recommends CPD incorporate standardized language (such as from the National Consensus Policy on Use of Force or another comparable source) to clarify what qualifies as a "choke hold" under its Procedure Manual, preferably by including carotid holds in the definition for "choke hold."

In CPD Procedure §12.545 Use of Force, the definition section of the policy provides that "the courts could consider a choke hold or other similar type of holds as deadly force. Choke holds are prohibited unless a situation arises where the use of deadly force is permissible under exhibiting law and Department policy." The policy separately identifies and defines carotid arteries. However, the section does not clearly define what a "choke hold" or "similar type of hold" would be. Neither does the policy say, on its face, that carotid restraints or holds targeting the carotid artery constitute "choke holds" under CPD policy.

In this case, CCA was unable to determine whether an officer who wrapped his arm around the neck area of a citizen applied pressure to the carotid artery, or pressure to the neck generally. However, even if CCA had made such a determination, it is not clear whether the choke hold ban in CPD's Procedure Manual would have prohibited that officer's conduct, since the Procedure Manual does not clearly ban carotid holds. A standardized definition of "choke hold" that includes carotid holds would clarify the standard for officers, citizens, and investigators.

FINDINGS

Original Allegations

Officer Terrance Dobbins

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

Officer Andrew Woedl

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

Collateral Allegation

Officer Terrance Dobbins

Discourtesy – 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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7

Complaint #	19152
Complainant	DB (minor)
Incident Date	July 3, 2019
CCA Investigator	Morgan Givens
CCA Findings	Officer Joshua Espitia Excessive Force – Exonerated

ANALYSIS

CCA completed a review of CCA Complaint No. 19152 by DB, F/B/16 who alleged Officer Joshua Espitia, M/H/32, #P0284 used excessive force during her arrest on July 3, 2019.

CCA was unable to speak with DB due to her being a minor and without parental consent. CCA attempted to contact DB's thrice by phone; none of the calls were returned. DB provided a statement to CPD immediately following the incident; she alleged that Officer Espitia used excessive when he elbowed and punched her during her transport to Hamilton County Youth Detention Center (HCYDC).

Officers Espitia and Myles Abt, M/W/23, #P0076, were dispatched to 1603 Dorothy Lane on an "unknown trouble" call. The officers came into contact with her family, who informed the officers that DB had active warrants. Officers Espitia and Abt confirmed the juvenile warrants for felonious assault, theft, criminal damaging, and burglary. DB was ultimately transported to the HCYDC.

Upon arrival at 1603 Dorothy Lane, Officers Espitia and Abt learned that DB was not at her listed residence, but that of a family member who lived on the same street. Per BWC, the officers spoke to family members at the door who stated that DB was in the residence, upstairs, but would not come to door. Officers Espitia and Abt entered the residence and called for DB to surrender herself; she did not. The officers cleared the residence with their firearms drawn in low ready position, for their safety, as she was wanted for a felony warrant. DB was found, hiding under a bed in the upper portion of the residence.

Immediately DB was non-compliant and claimed that she had been struck in the stomach. Per BWC, at the time alleged, she was not struck by any officer. She was verbally and physically combative; she tensed her body and attempted to keep her hands in front of her, preventing the officers from placing her in handcuffs. Upon exiting the residence, she yelled, screamed, and attempted to walk faster than the officers who escorted her outside. Per BWC, DB was initially placed into a cruiser, but refused to sit back,

screamed, and kicked the plexiglass inside the cruiser. Per BWC, Officer Abt asked DB, “How can we make this easier?” DB replied, “I don’t give a [EXPLETIVE]. It’s gonna be hard regardless like every time, it’s gonna be hard, watch I’m a make sure.” Officer Abt responded, “All we’re trying to do is get you up there.” DB responded, “Well go ahead, [EXPLETIVE].” Lieutenant Brian Bender, M/W/42, made the decision to place DB in a SCOUT vehicle which allows a subject to be restrained during transport. DB was placed in restraints, which are designed to have a combative person lay horizontally; Officer Abt drove while Officer Espitia rode in the back with the DB. DB was able to wiggle out of the bottom portion of her restraints.

Per BWC footage, the officers stopped twice on the way to HCYDC to put her back into the restraints. Also, per BWC, DB can be seen sitting up, which defied the restraints. Officer Espitia ordered DB to stop removing the restraints and to lay on the board as designed; she continued to sit up and remove her restraints. While in transit to HCYDC, Officer Espitia physically restrained DB by her shoulders and held onto the back of the handcuffs, to keep her from removing her restraints and get to the HCYDC safety. Officer Espitia stated they both dripped sweat and she was actively resistant which made her difficult control. He physically restrained her for transport. BWC confirmed that both DB and Officer Espitia were visibly sweaty, and he attempted to restrain her by her shoulders and arms when she wiggled out of her restraints. Officer Espitia stated that as she continued to sit up and he used his arm to push her backward which forced her into a prone position so she could be strapped back into her restraints. Officer Espitia denied ever choking or elbowing DB, and neither were captured on BWC.

Policy 12.545 Use of Force states, “When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more.” The policy defines actively resisting arrest as, “Making physically evasive movements to defeat an officer’s attempt at control, including fleeing, bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.” Officer Espitia physically restrained DB as she physically was attempting to prevent being retained in custody. Additionally, DB continuously removed her restraints, tensed her body, and verbally stated that she would make sure they had a difficult time taking her to jail “like every [other] time” she was transported to jail. The Officers attempted to deescalate the situation by speaking with DB in an effort to persuade her to be more orderly; she continuously escalated the incident and Officer Espitia physically restrained her until they arrived at the HCYDC. CCA found that the alleged choking and elbowing allegations are unfounded, but Officer Espitia’s physical restraint of DB is a use of force which was properly documented and within CPD’s policies, procedures, or training.

CCA interviewed Officers Myles Abt, Joshua Espitia, and Christopher Wandstrat, reviewed CPD forms, and Body Worn Camera (BWC) footages. The BWC footage corroborated the officers’ version of what occurred. The allegation of Excessive Force is exonerated; the evidence supports that a use of force (physical restraint) occurred, but was within CPD procedures, policy, and training.

FINDINGS

Officer Joshua Espitia

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

8

Complaint #	19254
Complainant	Alfonso Chalk
Incident Date	November 10, 2019
CCA Investigator	Morgan Givens
CCA Findings	Officer Taylor Howard Officer Matthew Mauric Improper Stop – Exonerated Officer Taylor Howard Improper Search – Exonerated Officer Taylor Howard Officer Matthew Mauric Sergeant Luke Putnick Improper Search – Exonerated Officer Elliot Miller Excessive Force – Exonerated Sergeant Luke Putnick Harassment - Unfounded

ANALYSIS

CCA completed a review of CCA Complaint No. 19254 by Mr. Alfonso Chalk, M/B/31, alleging Improper Stop against Officers Matthew Mauric, #P0272, M/W/26, and Taylor Howard, #P0180, M/W/30; Improper Search against Officer Mauric and Sergeant Luke Putnick #S0001, M/W/39; Improper Search against Officer Howard, Excessive Force against Officer Elliott Miller, #P0250, M/W/29; and Harassment against Sergeant Putnick.

On November 10, 2019, Mr. Chalk alleged that he was stopped without cause, had his vehicle and person invasively searched, and was ultimately tased. Mr. Chalk additionally alleged that Sergeant Putnick harassed him because they have had multiple interactions over the years.

CCA interviewed Sergeant Putnick and Officers Howard, Miller, Mauric, Tighe, Horner, and Casey Carver. CCA additionally reviewed CPD forms, and Body Worn Camera (BWC) footages which corroborated the officers' version of what occurred.

Allegation 1: Improper Stop

Mr. Chalk alleged that Officers Howard and Mauric improperly stopped his vehicle. As confirmed by BWC, the aforementioned officers cited they initiated the traffic stop due to a suspected window tint violation. CPD Procedure § 12.205 Traffic Enforcement directs officers to take the appropriate enforcement action(s) whenever a traffic violation is detected. Further, 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. The suspected window tint violation afforded the officers cause to initiate the traffic stop on Mr. Chalk; therefore, they did not violate CPD policies, procedures, or training.

Allegation 2: Improper Search

Mr. Chalk alleged that Officer Howard searched his vehicle without cause. As confirmed by BWC footage, upon reaching the driver's side window, Officer Howard asked Mr. Chalk if there was anything illegal in his vehicle and asked if a "drug dog" would alert to narcotics in the vehicle if they requested one at the scene. Officer Howard then asked if he could search Mr. Chalk's vehicle. Mr. Chalk replied, "There's nothing in here, I don't care if y'all check my car." Mr. Chalk's reply can reasonably be understood to constitute verbal consent to a vehicle search. Therefore, Officer Howard's subsequent search of Mr. Chalk's vehicle did not violate CPD policies, procedures, or training.

Allegation 3: Improper Search

Mr. Chalk alleged that Sergeant Putnick and Officer Mauric searched his person illegally. As a part of his allegation, Mr. Chalk has accused Sergeant Putnick of committed misconduct by searching his cavities.

The evidence shows that after Mr. Chalk gave consent for Officer Howard to complete a search of his vehicle, Mr. Chalk was asked to step onto the sidewalk. Per BWC, after stepping out of the vehicle, Officer Howard conducted a frisk of Mr. Chalk's person; he patted down the outside of his clothing and at times, asked what was in his pockets if he felt a bulge; Officer Howard did not go into Mr. Chalk's pockets. CPD Procedure § 12.554 Investigatory Stops states that, "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." In his interview, Officer Howard articulated that the area had "Ongoing issues of violent crime including shootings and homicides. Also, a lot of drug sales and usage." Officer Howard further, stated that as he approached the car, Mr. Chalk was reaching around which he considered a furtive movement.; he specifically sated, "sometimes that's an indicator that someone is trying to hide something". Given Officer Howard's articulation, his frisk of Mr. Chalk was permitted. Officer Howard did not violate CPD policies, procedures, or training.

Per BWC, while searching Mr. Chalk's vehicle Officer Howard signaled to Sergeant Putnick to place Mr. Chalk into custody. Officer Howard articulated that he discovered heroin in pieces of paper that were folded under the floor mat on the driver's side of Mr. Chalk's vehicle. Upon getting Officer Howard's confirmation Sergeant Putnick began to conduct a search of Mr. Chalk, incident to arrest. Upon conducting said search, Sergeant Putnick, felt a bulge near Mr. Chalk's upper thigh/genitals region. Also at this time, Mr. Chalk disclosed to the officers, "I swallowed dope, I can't breathe." Mr. Chalk yelled and screamed and stated that he could not breath or stand. According to CPD Investigations Manual § 12.1.3 Search Incident to Lawful Arrest, an officer taking into custody any suspect, even if from another officer, shall conduct a search of the person arrested and the area within their immediate control. At the time that Officer Howard recovered the narcotics from the vehicle, Mr. Chalk was placed under arrest and consequently searched by Sergeant Putnick and Officer Mauric. Therefore, Officer Mauric and Sergeant Putnick's search did not violate CPD policies, procedures, or training.

Mr. Chalk's contention that his cavities were searched is refuted by body camera footage; Sergeant Putnick did not go inside Mr. Chalk's body cavities. Sergeant Putnick articulated feeling a bulge in Mr. Chalk's pants that he believed to be concealed narcotics. Per BWC, narcotics were removed from his upper thigh

after he arrived at the hospital. CCA found no evidence to concluded that the alleged conduct actually occurred; therefore, the Sergeant Putnick did not violate CPD policies, procedures, or training.

Allegation 4: Excessive Force

Mr. Chalk alleged that Officer Elliott Miller used excessive force when he deployed his TASER during the incident. Per BWC, at the time that Mr. Chalk was placed under arrest, he wiggled, screamed, and refused to stand. Sergeant Putnick ordered Mr. Chalk to “stand up” approximately 15 times. Sergeant Putnick stated to Mr. Chalk “If he didn’t stand, he would put him on a cot and in a SCOUT car where he could be strapped down.” Sergeant Putnick also stated to Officer Mauric, “He’s done this since 2004, he always fakes it.” When EMS arrived, Sergeant Putnick asked them to check Mr. Chalk’s vitals. EMS stated they could not treat Mr. Chalk because he was hysterical. Sergeant Putnick stated, “He’s got a bunch of drugs in his pants.” He exclaimed, “When you’re caught, you’re caught! You’ve been doing this since 2004, (you do this) every time the cuffs go on you. Knock it off.” Mr. Chalk yelled, “They’re squeezing my balls.” Sergeant Putnick stated that it was a knot of narcotics.

Sergeant Putnick told CFD to call an ambulance to transport Mr. Chalk as he continued to yell that he could not breath or stand. A struggle ensued as the officers tried to strap Mr. Chalk to the cot. Mr. Chalk continued to wiggle and struggle despite verbal commands. Sergeant Putnick ordered Officer Miller to remove his taser and stated, “If he doesn’t comply, he is getting tased.” Officer Miller and Sergeant Putnick gave verbal commands for Mr. Chalk to lay down and relax; Mr. Chalk continued to resist. Officer Miller stated, “Lay back or you’re getting tased. Officer Miller drive-stunned Mr. Chalk for one five-second cycle on his left thigh. The TASER had its desired effect, and Mr. Chalk was strapped down by paramedics and transported to University of Cincinnati Medical Center.

CPD Policy §12.545 Use of Force states, “When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more.” The policy defines actively resisting arrest as, “Making physically evasive movements to defeat an officer’s attempt at control, including fleeing, bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taking into or retained in custody.”

Officer Miller drive-stunned Mr. Chalk, as instructed by Sergeant Putnick, after minutes of active resistance, to be retained into custody and transported to University of Cincinnati Medical Center. Mr. Chalk was given verbal commands and efforts at de-escalation were made by multiple officers. Per BWC, CFD stated they could not treat Mr. Chalk due to his hysterical state. Mr. Chalk was given many warnings, displayed active physical resistance, and non-responsiveness to verbal commands or physical restraints, Officer Miller’s use of force was permitted. Therefore, Officer Miller did not violate CPD policies, procedures, or training.

Allegation 5: Harassment

Mr. Chalk alleged that Sergeant Putnick harassed him because Sergeant Putnick stopped him multiple times over the years. CCA has defined harassment to include “Persistent aggressive pressure or intimidation.” 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. Sergeant Putnick did not initiate the traffic stop but immediately recognized Mr. Chalk from past interactions. Although Sergeant Putnick had a familiarity with Mr. Chalk, the stop was not initiated by Sergeant Putnick and the stop was lawful as the officers had reasonable suspicion to believe that Mr. Chalk committed a window tint violation. Mr. Chalk gave consent to Officer Howard to search his vehicle, which

yielded narcotics, which gave Sergeant Putnick and Officer Mauric the ability to conduct a search of Mr. Chalk, incident to arrest. There is no evidence to support Mr. Chalk's harassment allegation. Therefore, Sergeant Putnick did not violate CPD policies, procedures, or training.

FINDINGS

Based on CCA's investigation, I recommend the following:

The allegation of Improper Stop is exonerated; the evidence supports that the officers had legal ground to initiate the traffic stop, which was within CPD procedures, policy and training. The allegation of Improper Search is exonerated; the evidence supports that the search of Mr. Chalk's vehicle was within CPD procedures, policy, and training. The allegation of Improper Search is exonerated; the evidence supports that the search of Mr. Chalk's person was within CPD procedures, policy, and training. The allegation of Excessive Force is exonerated; the evidence supports that Officer Elliott Miller's use of his Taser was permitted and fell within CPD procedures, policy, and training. The allegation of Harassment is unfounded; there is no evidence to support that the incident complaint of actually occurred.

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