

**Date:** September 29, 2021  
**To:** Board Members, Citizen Complaint Authority  
**From:** Gabriel Davis, Director  
**Subject:** Investigation Summary – October 4, 2021 Board Meeting

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# 1

<b>Complaint #</b>	<b>19009</b>
<b>Complainant</b>	<b>ML (Minor)</b>
<b>Incident Date</b>	<b>January 14, 2019</b>
<b>CCA Investigator</b>	<b>Dena Brown</b>
<b>CCA Findings</b>	Officer Jerome Herring, Jr. Sergeant Eric Kohler <b>Excessive Force - EXONERATED</b>  Sergeant Mark Schutte <b>Excessive Force - NOT SUSTAINED</b>

**ANALYSIS**

**Allegation: Excessive Force**

The staff at Talbert House called CPD for ML (F/B/15) who had assaulted three people at their facility. Per BWC footage, upon CPDs arrival, ML actively resisted being taken into custody by refusing to comply with Sergeant Kohler’s (M/W/38) verbal commands. Sergeant Kohler and Officer Herring (M/B/23) grabbed ML’s arms and advised that she was under arrest. While handcuffed, ML kicked a chair and table; consequently, Sergeant Kohler and Officer Herring placed her against a wall and she yelled, “get off of me!”

Officer Herring and Sergeant Schutte (M/W/35) escorted ML out of the building to a cruiser; she continued to scream and yelled, “Get off me.” ML continued her resistive behavior and would not place her feet inside the cruiser. Sergeant Kohler used his body weight and physically pushed ML into the cruiser’s rear passenger side.

Sergeant Schutte placed the seatbelt/restraints on ML and closed the door; ML immediately forced her head against the plexi-glass partition several times. Sergeant Schutte told ML to stop hurting herself and

attempted to place her back in the seatbelt/restraints. Officer Herring assisted Sergeant Schutte by holding ML back against the seat with his right arm across her chest and his left hand held her legs down while Sergeant Schutte secured her into the restraints.

ML yet again, freed herself from the restraints and struck her head against the plexi-glass partition several more times. Sergeant Schutte again told ML to “stop hurting yourself!” ML yelled, “I don’t care” and kicked Sergeant Schutte in the leg.

Due to the close proximity of Sergeant Schutte’s BWC in relation to ML, the footage did not capture where his right hand was in relation to her neck. Officer Herring’s BWC showed the lower half of Sergeant Schutte’s left forearm across ML’s chest, resting near her left armpit as she moved her feet rapidly in an up and down motion in resistance to being restrained in the cruiser.

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.” An officer is permitted to use force in an “amount reasonably necessary to enable them to effect the arrest of an actively resistant subject.” The procedure defines “actively resisting” as when the subject is “making physically evasive movements to defeat the 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.” In addition, it lists “hard hands” as a viable force option and defines “hard hands” as the use of “Physical pressure... joint manipulation... and pressure point control tactics.”

In his statement to CCA, Sergeant Schutte denied choking ML and further stated he attempted to place the seatbelt and restraints on ML to prevent her from further striking her head. He stated that in his attempt to restrain her for her own safety, he was kicked in the leg (which ML has admitted) and almost “headbutted.” While Sergeant Schutte’s BWC was activated that night, due to the poor lighting in and around the police vehicle, and due to the placement of the BWC, it cannot be determined where Sergeant Schutte’s hands were with respect to ML’s neck. The BWC recording reveals that ML was consistently yelling throughout the incident, suggesting that she could breathe and that his hand was not around her throat, but the recording does not clearly establish his hand placement with respect to other parts of the neck. After a review of all evidence, CCA could not determine if Sergeant Schutte grabbed ML’s neck as alleged.

CCA concluded Sergeant Kohler and Officer Herring were in compliance with CPD’s policy, procedure, and training when they used their body weight to force ML inside the cruiser and hold her down/still as she actively resisted being placed inside and placed in the seatbelt/restraints.

The BWC did not show any officer stepping on ML’s foot as alleged. The BWC did capture her foot being struck by the door when she refused to place her feet inside the cruiser.

## FINDINGS

Officer Jerome Herring  
Sergeant Eric Kohler

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

Sergeant Mark Schutte

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

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# 2

<b>Complaint #</b>	<b>19077</b>
<b>Complainant</b>	<b>Andre Hogan</b>
<b>Incident Date</b>	<b>April 13, 2019</b>
<b>CCA Investigator</b>	<b>Dena Brown</b>
<b>CCA Findings</b>	Officer Whitley Nelson Officer Alicia Bruewer <b>Improper Stop - EXONERATED</b>  Officer Alicia Bruewer <b>Discourtesy - EXONERATED</b>

## ANALYSIS

### Allegation: Improper Stop

Mr. Hogan (M/B/23) reported that he believed he was stopped because of a vendetta that Officer Bruewer (F/W/34) has against him. A review of the BWC showed Officer Nelson (F/B/29) actually conducted the traffic stop. Officer Bruewer was on a bicycle and provided backup for Officer Nelson for the stop. Accordingly, the conduct of both officers is considered here.

According to § 12.205 of CPD’s Traffic Enforcement policy, officers must, “take appropriate enforcement action whenever a violation is detected.” Officers must also not initiate a stop due to any type of racial profiling or impermissible discriminatory bias. Officers Bruewer and Nelson stated that the stop was initiated because they observed the vehicle driving at least 10-15 MPH over the posted speed limit and they noticed that the tint on the windows was excessively dark. The Ohio Revised Code limits the extent to which car windows can be tinted in a manner that prevents a person of normal vision from identifying persons or objects inside the car. ORC § 4513.241. More specifically, “Ohio law requires that tinted windows allow at least fifty percent of the light to pass through the window.” *United States v. Shank*, 543 F.3d 309 (6th Cir. 2008); *see* Ohio Administrative Code (OAC) § 4501-41-03. Although this percentage is difficult to ascertain *from just looking at a window, the law permits officers to use discretion in judging if the windows* are too dark for purposes of enforcement. In this case Officers Bruewer and Nelson have stated that the windows were in violation of the local window tint regulations. Therefore, because the stop was conducted because of credibly observed traffic infringements such as speeding, driving without a valid license plate, and having excessively tinted windows (and in the absence of proof of any discriminatory motives) the stop was proper according to CPD policy and Ohio laws on traffic

enforcement. Officer Nelson's actions were within CPD policy, procedure, and training for the Improper Stop allegation.

However, while Mr. Hogan may have had several encounters with Officer Bruewer, that fact, standing alone, does not mean he was being targeted improperly. According to Officer Bruewer, Mr. Hogan is a known "player in the OTR area" that he patrols. She stated that she had an ongoing illegal weapons possession case against him at the time that she stopped him here. While Mr. Hogan was known to Officer Bruewer, CCA saw no evidence to support that any police conduct in this case was motivated by a vendetta or an impermissible purpose.<sup>1</sup>

### **Allegation: Discourtesy**

With respect to this allegation, the conduct about which Mr. Hogan complains is Officer Bruewer's reference to him as "Hoagie Bear." According to § 1 of the Manual of Rules and Regulations, an officer must, "always be civil, orderly, and courteous in dealing with the public" and shall not verbally mistreat persons in custody. They also may not, "express, verbally or in writing any prejudice or offensive comments concerning age, gender, sexual orientation, gender expression and identity, marital status, disability, religion, race, color, ethnicity, nation origin, Appalachian regional ancestry, veteran status, military status, genetic history, or HIV status." Any such comments or treatment is considered, at a minimum, discourteous behavior according to CPD policy.

According to Officer Bruewer "Hoagie Bear" is Mr. Hogan's "street name." Although Mr. Hogan claims to have no nicknames, Officer Sarchet corroborated Officer Bruewer's assertion that Mr. Hogan was widely referred to as "Hoagie Bear" by "everyone," and that "Hoagie Bear" is his "street name." Furthermore, according to BWC evidence, Mr. Hogan never informed Officer Bruewer that he did not want her to refer to him using a nickname. In addition, while negative intent is not necessarily required for discourtesy, the evidence here does not prove that Officer Bruewer used the name "Hoagie Bear" with the intent to be disrespectful. Accordingly, the evidence does not establish a violation of CPD's policy against discourtesy. Officer Bruewer's actions were within CPD policy, procedure, and training.

## **FINDINGS**

Officer Whitley Nelson  
Officer Alicia Bruewer

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

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<sup>1</sup> Additionally, although Mr. Hogan does not challenge the legality of the search of his person and the vehicle, CCA notes that the search was proper according to Ohio law. According to Ohio law, an officer has probable cause to search when something is in plain sight or view. Courts have specifically held that, "A police officer may seize contraband in plain view inside a vehicle when the officer has a lawful reason to stop or investigate an automobile." See, e.g., *State v. Mesley*, 732 N.E.2d 477. In Mr. Hogan's case, the marijuana in the vehicle was in plain view and the officers had a lawful reason to stop the vehicle on account of it driving too fast and the windows being too darkly tinted. Officers Nelson and Bruewer also smelled marijuana emanating from the vehicle and observed the remnants of marijuana on Mr. Hogan while he was in the vehicle. Under Ohio law, these factors justified the search of Mr. Hogan's person under the "exigent circumstances" exception, as well as the search of his car. Mr. Hogan also admitted to Officer Sarchet he had a "joint" on him, and upon the frisk of his person, Officer Sarchet had Mr. Hogan reach inside his underwear and remove a baggie of marijuana. No impermissible search occurred.

Officer Alicia Bruewer

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

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# 3

<b>Complaint #</b>	<b>19178</b>
<b>Complainant</b>	<b>Sonya Staley</b>
<b>Incident Date</b>	<b>August 5, 2019</b>
<b>CCA Investigator</b>	<b>Ikechukwu Ekeke</b>
<b>CCA Findings</b>	<b><u>Original Allegation</u></b> Officer Carlos Sherman <b>Excessive Force - EXONERATED</b>  <b><u>Collateral Allegation</u></b> Officer Carlos Sherman <b>Improper Procedure (Reporting Use of Force) - SUSTAINED</b>

**ANALYSIS**

On August 1, 2019, Officer Sherman (M/B/46) worked a detail at Zeigler Park, owned by 3CDC (a non-profit organization). While at Ziegler Park, Officer Sherman interacted with Ms. Staley (F/B/39), who was lying down a stone-like ledge in the park. Officer Sherman instructed Ms. Staley to sit up at the park, “[3CDC] don’t want you to lay down at the park.” Officer Sherman noted in his interview that this situation occurred during the heroin epidemic and that 3CDC didn’t want people lying down at the park. After Ms. Staley continued to lay down, Officer Sherman asked Ms. Staley “to leave the park” and advised that Ziegler Park is a “private park.” Officer Sherman warned Ms. Staley if she did not leave, she would be arrested for criminal trespass. After Ms. Staley attempted to appeal to Officer Sherman and that failed, Ms. Staley began to curse and insult the officer. Ms. Staley and her son began leaving the park as Ms. Staley continued to insult Officer Sherman and protest her mistreatment. Before Ms. Staley fully exited the park onto the sidewalk, Officer Sherman announced Ms. Staley was under arrest for disorderly conduct. Ms. Staley continued to walk across the street to the Zeigler Park basketball court. Before backup officers appeared, Officer Sherman attempted to grab Ms. Staley’s arm to no avail as he repeats that Ms. Staley is under arrest. Multiple officers assisted with the arrest of Ms. Staley as she physically evaded contact with Officer Sherman and verbally insisted that the other officers—not Officer Sherman—detain her.

**Allegation: Excessive Force**

Ms. Staley complained that Officer Sherman grabbed her throat, choked her, pulled her hair, and threatened to use a taser against her. However, when asked by CCA Investigator, Officer Sherman stated that “no use of force was used on [Ms. Staley]” and denied pulling Ms. Staley’s hair.

CPD Procedure §12.545 Use of Force states a police officer's right to make an arrest or an investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to effect it. CPD Procedure §12.545 defines force as any "physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person." CPD Procedure §12.545 further defines the "use of physical pressure to force a person against an object or the ground, use of physical strength or skill that causes pain or leaves a mark" as "Hard Hands." In this case, multiple bodycam video footages (including BWC from Officers' Regina Adams and Carlos Sherman) showed Officer Sherman grabbed and gripped Ms. Staley's hair for nearly two full seconds, whereby Officer Adams assisted in removing Officer Sherman's hand. Almost immediately after these actions occur, Ms. Staley exclaimed and complained about Officer Sherman pulling her hair. Therefore, Officer Sherman's physical contact with Ms. Staley constituted a use of force, specifically by using hard hands.

In the presence of use of force, an assessment of the reasonableness of the force requires: careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. ... (T)he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight ... the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them. (Graham v. Connor, 1989).

However, CPD Procedure §12.545 states: Officers should attempt to achieve control through advice, delay, warnings, and/or persuasion when confronted with a situation where control is required to effect an arrest or protect the public's safety. However, whenever possible, de-escalation techniques shall be employed to gain voluntary compliance by a subject. Officers shall use only the level of force that is objectively reasonable to effect an arrest or while protecting the officer's safety and others. In this case, though Officer Sherman threatened to tase Ms. Staley due to her noncompliance, BWC does not show Officer Sherman pointing or using his taser against Ms. Staley. Therefore, there was no taser use to analyze for reasonableness of force.

CPD Procedure §12.545 defines "Actively Resisting Arrest [as w]hen the subject is making physically evasive movements to defeat the 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." The evidence supports the conclusion that Ms. Staley's action could constitute actively resisting arrest, thereby warranting the use of Hard Hands according to CPD Policies and Procedures. Therefore, the use of hard hands by Officer Sherman did not violate CPD Policies and Procedures or Relevant Law.

#### **Allegation: Improper Procedure (Reporting Use of Force)**

CPD Procedure §12.545 states that in the event of hard hands, an "arresting officer [is required] to notify a supervisor." In this case, Officer Sherman used hard hands while arresting Ms. Staley but did not notify a supervisor of the use of force. Therefore, Officer Sherman violated the mandatory reporting according to CPD Policy and Procedure.

**Observation:**

IIS issued a Sustained-Other finding to Officers Adams and Sherman in case #2019-192 for his violation of Rule 1.01 (A) of the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Department because they did not notify a supervisor or initiate a complaint on Ms. Staley’s behalf, though IIS concluded that the primary allegation of excessive force was unfounded.

**FINDINGS**

**Original Allegation**

Officer Carlos Sherman

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

**Collateral Allegation**

Officer Carlos Sherman

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

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# 4

<b>Complaint #</b>	<b>19223</b>
<b>Complainant</b>	<b>Adrian Sutherlin</b>
<b>Incident Date</b>	<b>September 19, 2019</b>
<b>CCA Investigator</b>	<b>Morgan Givens</b>
<b>CCA Findings</b>	Sergeant Nathan Asbury Officer James Ball Officer Amber Bolte Officer James Lewis <b>Improper Entry – UNFOUNDED</b> <b>Improper Pointing of a Firearm – EXONERATED</b> <b>Excessive Force – UNFOUNDED</b> <b>Discourtesy – UNFOUNDED</b> <b>Abuse of Authority – EXONERATED</b>  Officer Carlos Sherman <b>Abuse of Authority – SUSTAINED</b>

**Allegation: Improper Entry**

Mr. Sutherlin (M/B/43) alleged that Officers Amber Bolte (F/W37), James Lewis (M/B/48), James Ball (M/W/31) and Sergeant Nathan Asbury (M/W39) entered his residence illegally. The aforementioned officers arrived at 1825 Section Rd. #1 to apprehend Mr. Sutherlin. Per Officer Lewis' investigation, as assigned by Sergeant Asbury, there were three legitimate misdemeanor arrest warrants for Mr. Sutherlin: one for alleged Domestic Violence and two for alleged Criminal Damaging. Although after several elapsed minutes, Mr. Sutherlin exited the residence voluntarily and without incident. A review of BWC footage confirmed that no officer broke the plane of the door to enter the residence and Mr. Sutherlin freely walked of his residence. CCA found that there are no facts to support that the officers actually entered the residence; therefore, they did not violate CPD policies, procedure or training.

**Allegation: Improper Pointing of a Firearm**

Mr. Sutherlin alleged that Officers Bolte, Lewis, and Ball and Sergeant Asbury pointed their firearms at him in the commission of executing the arrest warrant. The officers did not recall pointing any firearms directly at Mr. Sutherlin, but Sergeant Asbury did articulate that his shotgun was out, in low ready position, with his finger off the trigger. Sergeant Asbury further stated that the length of time it took Mr. Sutherlin to open the door led the officers to believe that there may have been a hostage situation, as the voice of Mr. Sutherlin's mother could faintly be heard from inside; they allege she stated, "I can't open the door." Per BWC, the voice of Sutherlin's mother can faintly be heard through the door, and Officers Lewis, Ball and Bolte commented that she may be held against her will. Also, per BWC footage, Officer Ball pointed his firearm in the direction of the door prior to it being opened by Mr. Sutherlin. When Mr. Sutherlin exited the premises, Officer Ball holstered his firearm. The only BWC footage that CCA received was that of Officer Ball who used ballistic shield, which at times obstructed the viewing field. CPD Procedure §12.550 Discharging of Firearms by Police states, "At such time as a police 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 display a firearm." Although BWC footage does not show Officers Bolte and Lewis and Sergeant Asbury brandish their firearms, given their articulation of fear of a potential hostage situation, their display of firearms would have been permitted. CCA determined that the alleged conduct likely occurred, but the officers' actions were within CPD policies, procedure, or training.

**Allegation: Excessive Force**

Mr. Sutherlin alleged that he was removed from his residence with force that was excessive. Per BWC, when Mr. Sutherlin opened the door, he walked out of the apartment and adhered to the verbal commands of the officers. Mr. Sutherlin was handcuffed and escorted out of the building. Per BWC footage, no force was used against Mr. Sutherlin. Therefore, the officers did not violate CPD policies, procedure, or training.

**Allegation: Discourtesy**

Mr. Sutherlin alleged that the officers were discourteous towards him by using profanity. Per BWC footage, none of the officers used profanity directed towards Mr. Sutherlin. The officers used verbal commands to motivate Mr. Sutherlin to open the door, but none included profanity, rather demands to



open the door and threats that they would kick the door down as their suspicion began to grow that Mr. Sutherlin's mother was being held against her will. CCA determined the officers did not violate CPD policies, procedure, or training.

### **Allegation: Abuse of Authority**

Mr. Sutherlin alleged that he was treated unfairly because Officer Sherman (M/B/44) "pulled strings" to have him arrested by officers with "riot gear" for misdemeanor warrants; he further cited Officer Sherman's relationship with the mother of his children as the reason behind the alleged mistreatment. Mr. Sutherlin stated that as he was awaiting processing at the HCJC, after being apprehended by FAS Officer Sherman walked in and attempted to get his attention; when Mr. Sutherlin ignored him, he alleged Officer Sherman directed his attention to a clerk at a desk and stated, "I got me a new family. Yeah, I got me a girl that I'm going to be spending a lot of time with. Oh, and I will be spending a lot of time with my four new step-kids, yeah they love me; they call me daddy." Mr. Sutherlin believed that it was his own children, who Officer Sherman referenced, as Officer Sherman was engaged in a personal relationship with their mother.

In early September 2019, in Mt. Healthy, Ohio, Officer Sherman alleged that he was a victim of a crime perpetrated by Mr. Sutherlin. Mt. Healthy PD was called, and two counts of Criminal Damaging and Domestic Violence charges were filed against Mr. Sutherlin. In subsequent days, Officer Sherman admittedly approached Sergeant Asbury with the information and asked if they could locate Mr. Sutherlin, "If they had time"; Sergeant Asbury was made aware of the personal nature of the relationship to the alleged perpetrator, Mr. Sutherlin. Sergeant Asbury found that Mr. Sutherlin had warrants and assigned the case to Officer Lewis, who located Mr. Sutherlin.

CPD Manual of Rules and Regulations states § 1.16 Failure of Good Behavior, "Members shall not interfere with cases being handled by other member of the Department or other governmental agencies. Interference with a case includes but is not limited to actions taken which may affect an arrest, bond setting, prosecution, sentencing, or any facet of an investigation." The warrants issued for Mr. Sutherlin were from Mt. Healthy, as that's where the alleged incident occurred. At the time that Officer Sherman approached Sergeant Asbury, the case was not on the radar of FAS and had it become so, Officer Sherman would not be permitted to become involved given his personal connection to the case. CPD Manual of Rules and Regulations further states in § 1.32, "Members shall not use or attempt to use their position as a police officer to influence the decisions of government officials to the members' personal advantage." Officer Sherman's position as a police officer afforded him direct access to a specialty unit, which he inappropriately used as a tool for a personal matter. CCA determined that Officer Sherman violated CPD's policy, procedure, and training.

Officer Sherman admittedly was in the HCJC at the time when Mr. Sutherlin was awaiting processing; he alleged he was assisting another officer who requested help with the transport of a prisoner. CCA reviewed footage from inside the HCJC which has no audio. Officer Sherman can be seen walking slowly and talking and it does appear that he addressed Mr. Sutherlin; he also addressed a clerk at a counter. In his interview, Officer Sherman stated that Mr. Sutherlin asked him to take care of his children, to which Officer Sherman responded that he would. He also stated that he talked to the clerk at the counter but denied taunting Mr. Sutherlin. Given that the video did not contain audio, CCA could not determine if these actions violated CPD policy procedure or training.

Although the FAS may have come across the warrant via routine means, given Officer Sherman’s intrusion, we will never know. For the FAS is a specialty unit who routinely tracks violent offenders, typically with serious felonies such as warrants for murder. CCA questions the likelihood of Sergeant Asbury stumbling across Mr. Sutherlin’s three (3) misdemeanor warrants had it not been for the request of Officer Sherman. Although FAS was notified of the warrants by improper means, CCA observed three legitimate misdemeanor warrants for Mr. Sutherlin. Officers Ball, Bolte, and Lewis executed the warrant in good faith, as assigned by their direct supervisor, Sergeant Asbury. Sergeant Asbury has been with CPD for more than 15 years, and as a supervisor, should be aware of what activities constitute interference. Nonetheless, given that Sergeant Asbury and the FAS were on the receiving end of said interference, and executing warrants is within their regular duties, the evidence did not establish violations of CPD’s policy, procedure, and training and therefore did not meet the threshold of Abuse of Authority.

**FINDINGS**

Sergeant Nathan Asbury  
Officer James Ball  
Officer Amber Bolte  
Officer James Lewis

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

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

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

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

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

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Officer Carlos Sherman

**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**

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# 5

<b>Complaint #</b>	<b>19235</b>
<b>Complainant</b>	<b>Christopher Booth</b>

<b>Incident Date</b>	<b>October 12, 2019</b>
<b>CCA Investigator</b>	<b>Jessalyn Goodman</b>
<b>CCA Findings</b>	<p><b><u>Original Allegation</u></b> Sergeant Daniel Carder <b>Excessive Force – UNFOUNDED</b></p> <p><b><u>Collateral Allegations</u></b> Sergeant Daniel Carder <b>Improper Procedure (BWC) – SUSTAINED</b> <b>Improper Procedure (Use of Force) – SUSTAINED</b></p>

## ANALYSIS

### **Allegation: Excessive Force**

Mr. Booth (Male/Unknown), alleged Sergeant Carder (M/W/49), deployed a TASER on an unknown motorcyclist during a “group ride” of approximately 150 motorcyclists. In his statement, Sergeant Carder confirmed he observed several motorcyclists driving through the downtown area; he described some of the motorcyclists to be engaging in unlawful behavior, including riding on sidewalks. He stated he witnessed a motorcyclist “pop a wheelie” and initiated a stop in order to identify him; he drew his TASER to prevent the motorcyclist from driving away but did not deploy it. Video footage confirmed Sergeant Carder drew and pointed his TASER at a motorcyclist. CPD’s TASER Download report established that Sergeant Carder did not deploy his TASER at any time during the encounter. CCA determined that the allegation of excessive force by Sergeant Carder is unfounded.

### **Allegation: Improper Procedure (Use of Force)**

In his statement, Sergeant Carder explained that he drew his TASER to prevent the initial motorcyclist from leaving the area. Sergeant Carder initially stated that the motorcyclist complied and turned off the engine, but “started to act like he was going to start it back up.” Later in his statement, however, Sergeant Carder stated he drew his TASER before he told the motorcyclist to turn off the key. Sergeant Carder also stated that he pointed his TASER at a second motorist who “came up right beside” the first motorist he attempted to stop.

While CPD Procedure §12.545 Use of Force states a “police officer’s right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to effect it,” it clarifies that officers “should avoid using the TASER on individuals who are on an elevated surface or are operating or riding any moving device or vehicle when a fall from such surface, or interrupted operation of such moving device or vehicle would likely cause serious injury or death, unless the encounter rises to the level of a deadly force situation.” This situation did not rise to the level of deadly force and had Sergeant Carder deployed his TASER, it might have caused serious injury. Furthermore, during the first discussion of a TASER’s permissible use in Procedure §12.545, it instructs that the “TASER should never be deployed on an individual operating a moving vehicle.”

Although at least some of the motorcyclists in this case were stopped, they remained seated on the motorcycles and still had the keys. According to at least one portion of Sergeant Carder’s statement, the

initial motorcyclist had not yet turned off the engine and appeared reluctant to do so, and another motorist was driving toward the initial motorcyclist. Either motorcyclist could have fled at any moment. Therefore, in this situation, Sergeant Carder would not have been permitted under CPD policy to deploy the TASER against either motorcyclist, who were seated on vehicles that were not yet turned off and, therefore, in operation. Despite not being authorized to discharge the TASER, Sergeant Carder pointed it at both motorcyclists. CPD's Tactical Patrol Guide instructs officers that they should ordinarily refrain from withdrawing their TASERS until they identify a threat that would permit the actual discharge of the TASER. Given that CPD's Procedure Manual would not have permitted an officer to discharge that officer's TASER under these circumstances, Sergeant Carder did not follow CPD's Tactical Patrol Guide when he withdrew and then pointed his TASER.

### **Allegation: Improper Procedure (BWC)**

CPD Procedure §12.540 Body Worn Camera System states officers are required to activate their BWC system during law enforcement-related encounters and self-initiated activities including traffic stops, which in turn includes "the investigation of a vehicle and occupants already stopped or parked." Sergeant Carder stated he believed he activated his BWC but confirmed it did not record the encounter. Per the IIS Report, CPD's Information and Technology Management & Systems Sergeant Smith reviewed Sergeant Carder's BWC and did not note any malfunctions. As a result of his failure to activate his BWC, CCA was not able to view the entirety of the contact that led to the allegations. CCA concluded Sergeant Carder was in violation of CPD's policy, procedure, and training.

## RECOMMENDATION

### **#R2132**

#### **Use of Force Policy/Procedure (TASER – Conducted Electrical Weapon Policy/Procedure)**

CCA recommends that CPD consider a revision of CPD Procedure §12.545 Use of Force that would bring that policy into greater alignment with CPD's Tactical Patrol Guide by adopting the Patrol Guide's instruction that officers should generally not withdraw their TASERS from their holsters under circumstances where the discharge of those TASERS would be impermissible or before it would be permissible to discharge a TASER.

CPD's Patrol Guide expressly cautions police officers against become overdependent on TASERS and withdrawing them from their holsters before it is appropriate to do so. Those concerns mirror the International Association of Chiefs of Police (IACP's) guidance that a Conducted Electrical Weapon such as a TASER "should be pointed at a person only when the officer reasonably perceives that discharge, if it proves necessary, is reasonably justified under the totality of the circumstances, and the officer reasonably believes that the existing circumstances will require discharge of the device." Adding provisions to CPD Procedure §12.545 that mirror the Patrol Guide's limits on the display of TASERS would improve safety for officers and citizens alike, help provide greater notice to officers and citizens about when it is appropriate to point a TASER and would assist in preventing complaints related to TASER pointing or use.

## FINDINGS

### Original Allegation

Sergeant Daniel Carder

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

### Collateral Allegations

Sergeant Daniel Carder

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

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

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# 6

<b>Complaint #</b>	<b>19259</b>
<b>Complainant</b>	<b>Sarah Shackelford</b>
<b>Incident Date</b>	<b>November 19, 2019</b>
<b>CCA Investigator</b>	<b>Ikechukwu Ekeke</b>
<b>CCA Findings</b>	Officer Edward Bedinghaus Officer William Remley <b>Discrimination - UNFOUNDED</b> <b>Lack of Service - UNFOUNDED</b> <b>Discourtesy - UNFOUNDED</b>  Officer Michael Schneider <b>Lack of Service - UNFOUNDED</b>

## ANALYSIS

Ms. Sarah Shackelford (F/B/57) alleged that on November 19, 2019, Officers Bedinghaus (M/W/34) and Remley (M/W/40) failed to enforce a protection order that she had against a man that she stated was outside her home. Further, Ms. Shackelford alleged that those officers did not enforce the protection order due to them discriminating against her based on her "socio-economic" status, "living in Walnut Hills," and because she is not a "hysterical" victim and those officers' made fun of and laughed at her.

Additionally, Ms. Shackelford alleged that Officer Schneider failed to call her when she was told that he would call her.

According to CPD procedure § 12.413 Enforcement of Court Orders, "[g]enerally, officers do not enforce orders issued by the Court of Common Pleas, Juvenile Court, or the Municipal Court. The enforcement of most court orders is the responsibility of the Hamilton County Sheriff's Office." However, respectively the following statutes of the Ohio Revised Code (ORC) grant "any officer of a law enforcement agency" with authority to enforce court orders (in this case a protection order) issued by any court in Ohio in accordance with the provisions of the order, including removing the respondent from the premises, if appropriate: Petition for protection order in menacing by stalking cases ORC 2903.214(F)(4), Motion for and hearing on protection order ORC 2919.26(G)(1), Violating protection order ORC 2919.27, and Domestic violence definitions; hearings ORC 3113.31(F)(4). In this case, Officers Bedinghaus and Remley do not dispute their authority nor discuss their willingness to enforce the protection order, but rather—as seen in their respective BWC videos—the officers cite the respondent's absence on or nearby the premises as the factor that leaves them without much to act upon. According to BWC, Officer Remley specifically urged Ms. Shackelford to call the police to respond even if she "feels [or thinks] that [the man that she has a protection order against] is around"—over Ms. Shackelford's expressed reservation. While this report should not be construed to invalidate the basis of the request for service nor the seriousness of violent crimes, in this instance, CCA does not have the facts to support the allegation that the officer failed to act according to the call for service.

Additionally, after reviewing the statements from Officers Bedinghaus and Remley and their respective BWC videos, CCA found no evidence that either officer relied upon or expressed any discriminatory views or intent when they failed to arrest the respondent. Rather, the officers informed Ms. Shackelford that they "have to see [the violator of the protection order]" to arrest him but did not see the respondent or his registered vehicle in the described area.

After reviewing the statements from Officers Bedinghaus and Remley and their respective BWC videos, CCA found no evidence that either officer laughed or made a joke toward or at Ms. Shackelford's expense.

As to the allegation of lack of service by Officer Schneider (M/W/48), according to the BWC video, Officer Schneider was not present, nor was he mentioned during the encounter. When interviewed by CCA, Officer Schneider stated he recalled speaking to Ms. Shackelford and referred Ms. Shackelford to another Detective, who was assigned Ms. Shackelford's case. Officer Schneider stated he did not know who provided Ms. Shackelford his direct desk line number. In the absence of any corroborating evidence that Officer Schneider failed to provide proper service to Ms. Shackelford, CCA determined that there are no facts that support the allegation of lack of service against Officer Schneider.

## FINDINGS

Officer Edward Bedinghaus  
Officer William Remley

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

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

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

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Officer Michael Schneider

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

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# 7

<b>Complaint #</b>	<b>20062</b>
<b>Complainants</b>	<b>Airionne Chambers and Karla Fields</b>
<b>Incident Date</b>	<b>April 6, 2020</b>
<b>CCA Investigator</b>	<b>Jessalyn Goodman</b>
<b>CCA Findings</b>	<b><u>Original Allegations</u></b> Officer Rommell Coman <b>Discrimination – UNFOUNDED</b> <b>Discourtesy – UNFOUNDED</b>  Officer Willie Coman <b>Lack of Service – EXONERATED</b>  <b><u>Collateral Allegation</u></b> Officer Willie Coman <b>Improper Procedure (BWC) – SUSTAINED</b>

## ANALYSIS

### **Allegation: Lack of Service**

Ms. Chambers (F/B/34), alleged CPD did not thoroughly investigate her concerns of a suspected abduction attempt of her daughter, EB, prior to their decision not to file an incident report for abduction. CPD Procedure § 12.400 Incident and Miscellaneous Reporting states officers will conduct a preliminary investigation when called to the scene of an offense. Officers W. Coman (M/B/60), and R. Coman (M/B/49), initially responded to the ECC call made by Ms. Schroeder; subsequently, Officer W. Coman responded to Ms. Chambers's residence. In his statement, Officer W. Coman believed he had enough information to suggest that a crime had not been committed, which he communicated to his supervisor, Sergeant White M/W/55; Sergeant White confirmed that an incident report would not be required. At the time, Ms. Chambers was concerned that Ms. Schroeder called the police *after* Ms. Chambers had retrieved

EB from Ms. Schroeder's possession. The CAD report showed that Ms. Schroeder contacted ECC at 17:19, while ECC received the initial call from Mr. Davis and Ms. Fields F/B/54, at 17:26; further, in the ECC recording, a young, female child can be heard answering Ms. Schroeder's question about her age. Additionally, in BWC footage, Ms. Chambers and Ms. Cunningham described the alleged offender to have black or brown hair and wearing a bubble jacket and jogging suit; BWC footage of Ms. Schroeder showed she did not match that description. Based on the evidence available, Officer W. Coman's determination not to file a report was within CPD's policy, procedure, and training.

### **Allegation: Discrimination**

Per CPD's Manual of Rules and Regulation, Section One mandates that officers shall not express any prejudice concerning race, sex, religion, national origin, life-style, or similar personal characteristics. Ms. Chambers alleged that Officer R. Coman's discriminated against her due to her race and appearance. Officer R. Coman denied that his actions involving Ms. Chambers were discriminatory. CPD Procedure § 15.430 Endangering Children Offenses states due to Ohio Revised Code (ORC) 2151.421 requires officers to report all child abuse and neglect cases to the Hamilton County Department of Jobs and Family Services (JFS) at 241-KIDS and complete a Personal Crimes Complaint Memorandum (Form 506), which Officer R. Coman completed. CCA did not observe any independent evidence to support the claims of discrimination. Under the circumstances, Officer Coman reasonably believed he was a mandated reporter. There is no indication that Officer R. Coman discriminated against Ms. Chambers and Ms. Fields as alleged.

### **Allegation: Discourtesy**

Per CPD's Manual of Rules and Regulation, Section One states that officers shall always be civil, orderly, and courteous in dealing with the public and shall avoid the use of coarse, violent, or profane language. Ms. Chambers alleged that Officer R. Coman's demeanor and tone were "aggressive" and "disrespectful." Officer R. Coman denied his conversation with Ms. Chambers was discourteous. BWC footage showed Ms. Chambers stated that Ms. Fields "was pushing" her to file charges against Ms. Schroeder; Officer R. Coman repeatedly explained the disparity between their allegations and the facts the officers knew. At one point, Officer R. Coman stated, "Your mother is filling your head up with nonsense." The BWC did not show Officer R. Coman be discourteous or use an aggressive or disrespectful tone with Ms. Chambers. There are no indications that the improper behavior occurred as alleged.

### **Allegation: Improper Procedure (BWC)**

CPD Procedure § 15.540 Body Worn Camera System states officers are required to activate their BWC system during law enforcement-related encounters and self-initiated activities. Specifically, it states that the BWC must be activated when the officer arrives on-scene and must be recorded in its entirety. During Officer W. Coman's interaction with Ms. Chambers, Ms. Fields, and Ms. Cunningham, he deactivated his BWC from 21:01:34 to 21:03:00; after he reactivated his BWC, Ms. Fields asked why he deactivated his BWC, and he said, "I turned it off because there was a little bit of a strategy or an information session that did not need to be part of this." Officer W. Coman confirmed in his statement to CCA that the "session" that was not captured by his BWC included a conversation he had with Ms. Chambers and Ms. Fields. CCA concluded Officer W. Coman was in violation of CPD's policy, procedure, and training.



## FINDINGS

### Complainants Airionne Chambers and Karla Fields

#### Original Allegations

Officer Rommell Coman

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

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

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Officer Willie Coman

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

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#### Collateral Allegation

Officer Willie Coman

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

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# 8

<b>Complaint #</b>	<b>20110</b>
<b>Complainant</b>	<b>Philiana Irvin</b>
<b>Incident Date</b>	<b>June 22, 2020</b>
<b>CCA Investigator</b>	<b>Jessalyn Goodman</b>
<b>CCA Findings</b>	<b><u>Original Allegation</u></b> Officer Eric Weyda <b>Excessive Force – EXONERATED</b>  <b><u>Collateral Allegations</u></b> Officer Eric Weyda <b>Discourtesy – SUSTAINED</b>  Sergeant Andrew Fusselman <b>Improper Procedure – SUSTAINED</b>

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On June 21, 2020, ECC dispatched Officers Weyda, (M/W/48), and Wherle, (M/W/40), due to concerns from a minor, KL, (F/B/17), who had been “assaulted” by her relatives. KL’s sister, Ms. Philiana Irvin, (F/B/28), remained in her vehicle until the officers arrived to retrieve some personal items from within KL’s residence.

### **Allegation: Excessive Force**

BWC footage showed after the officers arrived, KL exited her residence, highly agitated, and stepped outside onto the porch. Then, she grabbed a metal implement and moved it around wildly as she forcefully argued with Ms. Irvin, who stood on the steps inches away. In their statements, Officers Wherle and Weyda believed that the situation could escalate into a physical confrontation. Officer Weyda confirmed that when Ms. Irvin did not respond to his verbal command to move, he “forcefully moved” her off the steps to separate her from KL.

CPD Procedure §12.545 Use of Force states that while officers must avoid using unnecessary violence, an officer’s privilege to use force includes the amount of objectively reasonable force necessary to protect themselves or others. According to the procedure, the use of “hard hands” is a force option that officers may consider in situations where force is appropriate. The procedure defines “hard hands” to include the use of physical pressure to force a person against an object or the ground and use of physical strength or skill that causes pain or leaves a mark.

BWC footage showed Officer Weyda used both hands in an attempt to remove Ms. Irvin’s left hand from the railing, and then clenched the front of her sweatshirt with both of his hands. He pried her left hand from the railing before he bodily moved her off the steps and thrust her onto the grass. Due to the escalating tension between Ms. Irvin and KL and the limited environment to separate the siblings, Officer Weyda had reasonable justification to physically remove Ms. Irvin from the steps and away from KL in order to protect KL. Therefore, Officer Weyda’s actions were within CPD’s policy, procedure, and training.

### **Allegation: Discourtesy**

BWC footage captured Officer Weyda use profanity when he asked Ms. Irvin, “Why you gotta be like that? Why you got to be a smart [expletive]?” When Ms. Irvin responded, “I already got an attitude about this situation,” Officer Weyda replied, “Well, I am here to figure it out. That does not mean I got to take [expletive] from you.” Later, after Officer Weyda physically removed Ms. Irvin from the porch steps, Ms. Irvin asked for his badge number, but he refused. Officer Weyda acknowledged his use of profanity while speaking with Ms. Irvin and his refusal to provide his badge number; he explained that his actions were in response to her antagonistic behavior, and he did not consider his remarks to be discourteous. CPD’s Manual of Rules and Regulations states members shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors and associates and shall avoid the use of coarse, violent, or profane language. Officer Weyda’s conduct was not within CPD’s policy, procedure, and training.

## **Allegation: Improper Procedure**

After her physical encounter with Officer Weyda, Ms. Irvin contacted ECC to request an evaluation by the Cincinnati Fire Department (CFD) due to her high-risk pregnancy and a reported bruise on her arm from the encounter. Meanwhile, ECC assigned Sergeants Fusselman and Lindsey to respond to her allegation that Officer Weyda assaulted her. Sergeants Fusselman and Lindsey spoke to Ms. Irvin, and she showed her arm; per their statements, neither observed any injuries on Ms. Irvin.

CPD Procedure § 15.100 Citizen Complaints and Reports of Favorable Police Conduct states while taking a citizen complaint, an officer should specifically note any visible marks or injuries about the complainant and take photographs when the complaint involves any injury, claimed injury, or damaged clothing, etc., whether visible or not. Per his statement, Sergeant Fusselman did not photograph Ms. Irvin's injury because he had forgotten his cell phone at District 3; he attempted to use his flashlight and BWC to capture the injury. Ms. Irvin refused transport by CFD and advised Sergeant Fusselman she would go to Christ Hospital. In his statement, Sergeant Fusselman stated he obtained his cell phone from District 3 and phoned Ms. Irvin to meet her at Christ Hospital. When he and Sergeant Lindsay arrived, Ms. Irvin was not present and did not respond to his subsequent attempts to reach her. Sergeant Fusselman was not within CPD's policy, procedure, and training.

### **Notes:**

1. Before the report was assigned to IIS for review, Officer Weyda received an official reprimand due his violation of CPD's Manual of Rules and Regulations due his discourteous speech.
2. Per the IIS Report, District Three Captain Paul Broxterman "reminded Sergeant Fusselman of the importance of obtaining photographs of alleged injuries."

### **Observation:**

A review of the BWC footage shows Officer Weyda's physical encounter with Ms. Irvin, who was reportedly pregnant at the time, and who was never arrested. While Officer Weyda's actions were ultimately deemed to be within CPD's policy, Officer Weyda's treatment of Ms. Irvin can be jarring to watch, and also prompted Ms. Irvin to complain that she had been assaulted by police. CPD's Use of Force policy primarily addresses the use of physical force by officers against those under investigation or imminent arrest, with much less stated about when and how officers may use physical force against other parties who are neither arrested nor subject to an investigatory stop.

CCA will continue to review CPD's Use of Force policy and its application to future cases involving force used against parties who are neither arrested nor detained, and CCA will consider any appropriate recommendations that may clarify the issues involved, or otherwise benefit community members or officers.

## FINDINGS

### **Original Allegation**

Officer Eric Weyda

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

### **Collateral Allegations**

Officer Eric Weyda

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

Sergeant Andrew Fusselman

**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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