

Date: September 7, 2021

To: Board Members, Citizen Complaint Authority

From: Gabriel Davis, Director

Subject: Investigation Summary – September 13, 2021 Board Meeting

1

Complaint #	19026
Complainant	Kyle Ferguson
Incident Date	February 2, 2019
CCA Investigator	Dena Brown
CCA Findings	Officer Thomas Stanton Improper Search – EXONERATED Discrimination – NOT SUSTAINED

ANALYSIS

Allegation: Improper Search

Mr. Ferguson, M/W/36, alleged Officer Stanton, M/W/55 improperly searched Mr. Newbill’s vehicle. Officer Stanton was dispatched to a two-motor vehicle accident where Mr. David Beasley failed to control his vehicle and struck Mr. Newbill’s vehicle. Both vehicles were disabled and had to be towed. CPD Procedure §12.265, Wrecker and Towing states Department personnel will conduct a thorough inventory search of all vehicles taken into custody per Cincinnati Municipal Code 513-1, Impoundment of Motor Vehicles. During the inventory search of Mr. Newbill’s vehicle, Officer Stanton located a nearly empty bottle of liquor inside. CPD Procedure §12.205, Traffic Enforcement, maintains that officers should take appropriate enforcement action whenever a violation is detected. Officer Stanton cited Mr. Newbill for Ohio Revised Code (ORC) § 4301-62 for Possession of Open Container. Officer Stanton’s search of Mr. Newbill’s vehicle was within CPD’s policy, procedure, and training.

Allegation: Discrimination

Per CPD’s Manual of Rules and Regulations §1.23 C, officers shall not express any prejudice or offensive comments concerning gender, race, ethnicity, national origin, or similar personal characteristics. Mr. Ferguson reported concerns that Officer Stanton made comments about Mr. Newbill which were “highly

unprofessional” and may have been discriminatory. BWC footage confirmed Officer Stanton stated, “Do you know what is happening here? I've been doing this a long time. People in accidents don't just get out of their cars. I found what ails him in his car. He's been drinking. That's why I maybe seem cold. This would be different if it were you.” In his statement to CCA, Officer Stanton denied that his comments related to Mr. Newbill were discriminatory. He elaborated that his comments described Mr. Newbill’s actions (such as leaving his vehicle, considering the weather) as making “no sense.” CCA did not observe any independent evidence to support or refute the claims of discrimination. Therefore, CCA is unable to determine if CPD’s policies, procedures, and training were violated.

FINDINGS

Officer Thomas Stanton

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

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

■

2

Complaint #	19125
Complainant	Rennetta James
Incident Date	June 4, 2019
CCA Investigator	Dena Brown
CCA Findings	<p><u>Original Allegations</u> Officer Craig Graening Excessive Force – UNFOUNDED</p> <p>Officer Todd Dawson Excessive Force - NOT SUSTAINED</p> <p><u>Collateral Allegations</u> Officer Craig Graening Discourtesy - SUSTAINED Improper Procedure (BWC) - SUSTAINED</p> <p>Officer Todd Dawson Improper Procedure (BWC) - SUSTAINED</p>

Allegation #1: Excessive Force

Mrs. James alleged that Officer Graening punched her in the stomach and twisted her arms. CCA reviewed all BWC and DVR and found no evidence of either of these acts. Additionally, there are no witness statements that support Mrs. James's claim that she was punched. Simply put: the evidence does not corroborate her assertion.

Allegation #2: Discourtesy

Officer Graening detained Mrs. James because she matched the description of a suspect in a robbery. Officer Graening became frustrated with Mrs. James after repeated questions and interruptions while he was attempting to question her. Officer Graening engaged in a shouting match with Mrs. James. During this exchange, Officer Graening told Mrs. James that he was yelling at her, because she was yelling at him. The shouting match ended with Officer Graening slamming the cruiser door shut. Officer Graening stated in his interview that he slammed the car door "out of frustration" when Mrs. James kept making him repeat himself and asking repetitive questions.

CPD Rules and Regulations 1.06 requires all officers to behave in a matter that is civil, orderly, and courteous when dealing with citizens. Officer Graening's actions were not civil, orderly, or courteous. Therefore, Officer Graening's actions were not in compliance with CPD policies, procedures, and trainings.

Allegation #3: Improper Procedure (BWC)

Mrs. James alleges that Officer Dawson pushed her while in the Justice Center. CCA reviewed all BWC and DVR from the incident but had no footage that covered the time in the Justice Center. Officer Dawson and Officer Graening deactivated their BWC once inside the cruiser when the DVR was recording, in compliance with CPD procedure. However, under the circumstances presented here, once the officers exited their cruiser at the Justice Center, the officers should have reactivated their BWC.

According to §12.540(A)(5)(D), officers generally do not need to record inside the Justice Center, "except during an active incident" (emphasis on "except" in original). Under the policy, an "active incident" includes one that involves a "disorderly person." Mrs. James had already engaged in disorderly behavior by cursing and yelling while inside the cruiser, as seen on the DVR. In their interviews, both Officer Dawson and Officer Graening said that although Mrs. James did not require physical guidance, she needed verbal direction in order to enter the Justice Center. Mrs. James is seen on the DVR continuing to be irate and yelling and cursing up until the video is stopped. Under §12.540, both Officer Dawson and Officer Graening should have reactivated their BWC to record an incident that was plainly still active. Therefore, Officer Dawson and Officer Graening's actions were not within CPD policies, procedures, and trainings.

Allegation #4: Excessive Force

Mrs. James's allegation that Officer Dawson used excessive force by pushing her at the Justice Center cannot be proven or disproven using any evidence that CCA has obtained and reviewed. Neither officer's BWC was active during at the Justice Center and CCA was not provided with any surveillance from within the Justice Center. Accordingly, CCA cannot conclude whether Officer Dawson's actions were within CPD policies, procedures, and trainings.

FINDINGS

Original Allegations

Officer Craig Graening

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

UNFOUNDED

Officer Todd Dawson

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

Collateral Allegations

Officer Craig Graening

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

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**

Officer Todd Dawson

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**

■

3 REVIEW MEMO

Complaint #	19138
Complainant	Kimberly Bowers
Incident Date	June 7, 2019
CCA Investigator	Morgan Givens
CCA Findings	Officer Barry Rogers Improper Entry – EXONERATED Improper Pointing of a Firearm – EXONERATED Officer John Brown Officer Delicia Grisby Officer Barry Rogers Sergeant Craig Copenhaver Improper Search – EXONERATED Officer Brown Discourtesy – UNFOUNDED

ANALYSIS

K. Bowers alleged that on June 7, 2019, Officer Brown and the SWAT team entered and searched her residence, pointed firearms at all present and were generally discourteous. She additionally alleged that her son, Mr. Alphonso Robinson (A. Robinson) was arrested, although the officers only recovered a scale from the residence.

On June 7, 2019, at approximately 7:00 AM, a search warrant was executed at K. Bowers' residence, 2795 Baker Avenue. A. Robinson was the target of an ongoing narcotics investigation for which Officer Brown was the lead investigator. Officer Brown linked A. Robinson's alleged activity to K. Bowers' residence and was consequently granted a search warrant that was signed by a judge. Due to many factors, the search warrant was deemed high risk; SWAT was called upon to execute said warrant. After SWAT cleared the residence, Officer Brown entered, delegated tasks, obtained information for all residents of the residence. Mr. Robinson was taken into custody for further questioning; he was ultimately charged with Ohio Revised Code (ORC) § 2925.03 Trafficking in Drugs.

Sergeant Copenhaver and Officers Brown and Grisby of the Violent Crime Squad did not enter the residence until it was deemed safe and cleared by SWAT. CCA reviewed the search warrant which provided CPD the legal basis for their entrance and subsequent search of K. Bowers' residence. As previously stated, the search warrant was executed by SWAT as is typical of those classified in the high-risk category. Per CPD Procedure §12.550 Discharging of Firearms by Police, "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.” Given that executing a high-risk search warrant is inherently and objectively dangerous, it’s reasonable that the officers interpreted there to be a threat of loss of life or the possibility for serious physical harm to themselves or others, as such their display of firearms was permitted.

Ms. Bowers alleged that members of the residence were not permitted to use the restroom. After watching the Body Worn Camera (BWC) footage in its entirety, CCA determined that no person requested to use the restroom and all officers were well-mannered during the incident. Upon SWAT securing the residence, all occupants’ information was queried, and they were free to leave after Mr. Robinson was detained and transported.

CCA interviewed Sergeant Copenhaver and Officers James Bolt, Brown, Jerry Turner, Rogers, and Delicia Grisby. CCA additionally reviewed CPD forms and Body Worn Camera (BWC) footages which corroborated the officers’ version of what occurred. The allegations of Improper Entry, Improper Pointing of a Firearm and Improper Search are Exonerated; the allegation of Discourtesy is unfounded; there is no evidence to support that the alleged conduct occurred.

FINDINGS

Officer Barry Rogers

Improper Entry Improper Pointing of a Firearm

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

Officer John Brown
Officer Delicia Grisby
Officer Barry Rogers
Sergeant Craig Copenhaver

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

Officer Brown

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

■

4

Complaint #	19222
Complainant	Misha Beatty
Incident Date	September 28, 2020
CCA Investigator	Jessalyn Goodman
CCA Findings	<u>Original Allegations</u> Officer Mary Kilgore Excessive Force – NOT SUSTAINED Discourtesy – NOT SUSTAINED <u>Collateral Allegation</u> Officer Mary Kilgore Sergeant Shawn George Improper Procedure – SUSTAINED

ANALYSIS

Allegation: Excessive Force

Ms. Beatty, F/B/29, alleged Officer Kilgore, F/W/47, used force and “slammed” her against a brick wall. 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; officers shall only use the level of force that is objectively reasonable to effect an arrest or while protecting the safety of the officer and others. The officers present, Officer Kilgore and Sergeant George, M/B/54, denied Officer Kilgore used any force against Ms. Beatty. In her statement, Officer Kilgore indicated she intervened in an apparent conflict between Ms. Beatty and Mr. Webster, M/B/36. She believed Ms. Beatty grabbed her arm, which inadvertently caused Officer Kilgore to fall to the ground with Ms. Beatty. Sergeant George corroborated Officer Kilgore’s statement, though he believed Officer Kilgore had hold of Ms. Beatty’s arm; he confirmed Ms. Beatty’s head hit the building. Rusconi Pizza Pub security footage only captured a portion of the incident; it did not capture any physical contact between Ms. Beatty and Officer Kilgore, except as Officer Kilgore escorted Ms. Beatty away from Mr. Webster. Officer Kilgore’s and Sergeant George’s BWCs were not activated during the encounter to clarify the nature of the interaction or the origin of Ms. Beatty’s head injury. Due to the lack of footage available for review, CCA was unable to determine if Officer Kilgore was within CPD’s policy, procedure, and training.

Allegation: 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. Ms. Beatty alleged Officer Kilgore used profanity when she told Ms. Beatty to “get the [expletive] out of here” or be arrested. Officer Kilgore and Sergeant George denied that either officer was discourteous towards Ms. Beatty during their encounter. BWC footage did not capture their interaction and the security footage did not record any audio. Therefore, CCA was unable to determine if Officer Kilgore was discourteous towards Ms. Beatty as alleged.

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. Sergeant George and Officer Kilgore confirmed they did not activate their BWCs and record the interaction with Ms. Beatty; they stated that the incident occurred too quickly to activate their BWCs. However, Rusconi Pizza Pub security footage showed the officers were speaking to Ms. Beatty for at least a minute prior to Mr. Webster’s continued quarrel with Ms. Beatty, indicating they had time to activate their BWCs in accordance with policy. As a result of their failure to activate their BWCs, CCA was not able to view the entirety of the contact that led to the allegations. CCA concluded Sergeant George and Officer Kilgore were in violation of CPD’s policy, procedure, and training.

FINDINGS

Original Allegations

Officer Mary Kilgore

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

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

Collateral Allegation

Officer Mary Kilgore
Sergeant Shawn George

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

■

5

Complaint #	19253
Complainant	Tasha Day
Incident Date	November 12, 2019
CCA Investigator	Jessalyn Goodman
CCA Findings	Officer Dustin Peet Officer Joseph Bricker Officer Whittley Nelson Officer Terrill Saylor Lack of Service – EXONERATED Officer James Mathews Officer Terrell Hamilton Lack of Service – UNFOUNDED Officer Whittley Nelson Discrimination – UNFOUNDED

ANALYSIS

Allegation: Discrimination

Ms. Day reported an assault at Eagle Watch Apartments. While reporting her concerns to the responding officers, Ms. Day reported that Officer Nelson made a discriminatory comment when she said, “What is a white girl doing up here in Price Hill, anyway, unless you’re doing something bad.” CPD’s Manual of Rules and Regulations §1.23 C states all CPD members shall not express, verbally or in writing, any prejudice or offensive comments regarding personal characteristics, including race, color, ethnicity, national origin, or Appalachian regional ancestry. Officer Nelson denied that she made any discriminatory statements or actions to Ms. Day. BWC footage confirmed neither Officer Nelson nor any other officer made any remarks to Ms. Day or anyone else regarding Ms. Day’s race or ethnicity; when Officer Nelson staffed the case with Sergeant Kenneth Hall by speaker phone for direction, no individual’s race was mentioned. There is no indication that race or ethnicity was a consideration in the officers’ resolution of the incident. CCA concluded that Officer Nelson did not make the discriminatory remarks as alleged.

Allegation: Lack of Service

Ms. Day alleged Officers Nelson, Peet, Saylor, Hamilton, Mathews, and Bricker failed to investigate her concerns after her report that Ms. Richardson assaulted her. CPD Procedure § 12.415 Reporting and Classifying Assault Offenses states that officers will conduct a preliminary investigation when called to the scene of an incident and must record all facts and actions fairly and impartially. BWC footage showed

the officers spoke with Ms. Day, her alleged assailants, and canvassed the area for potential witnesses. Officers Nelson, Bricker, Saylor and Peet received conflicting accounts as to which person appeared to be the aggressor and ultimately determined both parties engaged in the subsequent fight. After conferring about the gathered information with each other and Sergeant Hall, Officers Nelson and Bricker cited both parties for Disorderly Conduct. Additionally, Officer Bricker completed an Incident Report for Ohio Revised Code (ORC) §2913.02 Theft. CPD records show that after the initial resolution, Ms. Day contacted CPD to provide additional information related to her injuries. Subsequently, Officer Peet filed an Incident Report for Ohio Revised Code (ORC) §2903.13 Assault, which Sergeant Hall approved and submitted for further investigation. CCA concluded that Officers Nelson, Peet, Saylor, and Bricker followed CPD's policy, procedure, and training.

Although Officers Hamilton, Saylor, and Mathews responded to assist, they denied they were involved in the resolution. BWC footage confirmed Officers Hamilton and Mathews left the scene prior to any decisions about its outcome and did not participate in its determination. Therefore, there are no indications that Officers Hamilton or Mathews did not provide adequate service as alleged.

Note: BWC footage showed a clear bag of (apparent) marijuana fall from Mr. Taylor's pocket; Officer Bricker retrieved the marijuana and placed it in his cruiser. Per the IIS report, Officer Bricker discarded marijuana without completing a Warning Form 314, Notice to Appear, or processing the marijuana for destruction. Officer Bricker received an Instructional ESL.

FINDINGS

Officer Dustin Peet
Officer Joseph Bricker
Officer Whittley Nelson
Officer Terrill Saylor

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

Officer James Mathews
Officer Terrell Hamilton

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

Officer Whittley Nelson

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

■

6

Complaint #	19280
Complainant	Cortland Gundling
Incident Date	December 9, 2019
CCA Investigator	Jessalyn Goodman
CCA Findings	Officer Robert Kidd Discrimination – NOT SUSTAINED Discourtesy – SUSTAINED

ANALYSIS

Allegation: Discourtesy

Mr. Gundling alleged Officer Kidd was discourteous to Mr. Gundling and Mrs. Gundling. At the beginning of the run, BWC footage captured Officer Kidd state, “I can’t stand this (inaudible). He needs to get into another profession.” Later, BWC footage showed a heated exchange between Officer Kidd and Mrs. Gundling; after Mrs. Gundling walked away in an attempt to end their conversation, Officer Kidd continued to raise his voice and yell at Mrs. Gundling. Officer Hunter attempted to intervene and calm Officer Kidd. Officer Kidd continued, he said, “If you don’t want to be yelled at, you don’t yell at me.” When Mr. Gundling asked, “Was it necessary to get that mad?” Officer Kidd replied, “I give what I get.” They also had a strained exchange and Mr. Gundling expressed his concerns about how he was treated by Officer Kidd in the past before Officer Kidd left the scene.

In his statement, Officer Kidd stated that he “took offense” to some of the comments made by Mr. Gundling and Mrs. Gundling because Mrs. Gundling repeatedly referenced “these people” and “those people,” although he was not sure which group of people she was specifically referring to. He stated he attempted to “de-escalate” the situation by explaining the owners’ and tenant’s rights but recognized that his tone “was probably at a level it shouldn’t have been” when speaking to Mrs. Gundling and “may have been elevated” while speaking to Mr. Gundling. He stated he held himself “a little bit responsible for the emotions that – that got out of control” and he could have “done a few things better” to avoid the result. 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 Kidd’s behavior was not appropriate to the situation and therefore not within CPD’s policy, procedure, and training.

Allegation: Discrimination

Mr. Gundling believed Officer Kidd’s behavior and comments were “racially motivated.” BWC footage captured Officer Kidd and Mrs. Gundling converse about how Mr. Gundling and Mrs. Gundling treat their tenants based on their previous experiences. Officer Kidd asked Mrs. Gundling, “What race or ethnicity

are you? Are you Jewish or anything?” and Mrs. Gundling responded, “I’m Polish. I’m German.” Officer Kidd continued, “Okay, so, so, that’s like classifying all Polish people and all that other stuff together. You can’t hold them responsible.” Mrs. Gundling replied, “That’s kind of racist, isn’t it?” BWC footage showed Officer Kidd reiterated that she and Mr. Gundling could not hold the current tenants responsible for the actions of previous tenants.

Officer Kidd denied that race was a factor in his interactions with Mr. and Mrs. Gundling and denied that his comments involving Mrs. Gundling were discriminatory; he clarified that he used comments related to race as examples to explain why Mrs. Gundling could not treat the current tenants based on the actions of previous tenants. He acknowledged that the example may have been a poor choice. Per CPD’s Rules and Regulations, officers shall not express any prejudice concerning race, sex, religion, national origin, life-style, or similar personal characteristics. CCA neither observed nor obtained any independent evidence to support or refute the claims of discrimination. While the evidence establishes that Officer Kidd made race-related comments, it does not establish by a preponderance whether his discourteous conduct was motivated by race. Therefore, CCA is unable to determine if Officer Kidd violated CPD’s policies, procedures, and training.

Note: Officer Kidd received an ESL for violating CPD’s Manual of Rules and Regulations.

FINDINGS

Officer Robert Kidd

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

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

COMMENDATION

BWC footage showed Officer Hunter observed the escalating interaction between Officer Kidd and Mrs. Gundling in Ms. Johnson’s doorway; Officer Hunter addressed Officer Kidd multiple times and gestured in an attempt to de-escalate Officer Kidd’s behavior. Officer Hunter’s intervention helped to control the tense interaction before it worsened; after Officer Kidd left, he remained to conclude the run. CCA commends Officer Hunter for recognizing and attempting to mediate Officer Kidd’s conduct.

■

7

Complaint #	20030
Complainant	Dontez Hall
Incident Date	February 10-11, 2020
CCA Investigator	Dena Brown
CCA Findings	Officer David Harris Sergeant Jason Lindsey Improper Pointing of a Firearm –EXONERATED Officer David Harris Sergeant Jason Lindsey Lieutenant Brian Bender Death in Custody –UNFOUNDED

ANALYSIS

Allegation: Pointing of a Firearm

ECC dispatched Officers Harris (M/B/32) and Lindsey (M/W/37) to 3076 Jadaro Court for “Shots Fired.” After arriving, they were fired upon when Officer Lindsey knocked on the closed apartment door. Officers Harris and Lindsey immediately drew their firearms and retreated to safety. Officer Lindsey advised ECC of the shots fired at them and Sergeant Hall notified CPD’s Special Weapons and Tactics Unit (SWAT). A review of the BWC footage confirmed the officers’ actions toward Mr. Hall.

CPD Procedure § 12.550, Discharging of Firearms by Police Personnel, maintains that “when an officer perceives what he interprets to be a threat of loss of life or serious physical harm to himself or others at the hands of another, he has the authority to display a firearm to protect himself or others from death or serious physical harm at the hands of another.” Due to Mr. Hall actively shooting Witness A and randomly shooting at the officers, it was reasonable for the officers to conclude Mr. Hall presented a threat of loss of life to the public, as well as to themselves. CCA concluded Officer Harris and Sergeant Lindsey did not violate CPD’s policy, procedures, or training by having their weapons drawn.

Allegation: Death in Custody

CCA examined policies pertaining to CPD’s Special Weapons and Tactics Unit (SWAT) and other relevant policies and concluded that no violations of policy occurred. The officers acted appropriately to resolve a hostage situation. The Hamilton County Coroner ruled Mr. Hall’s death a suicide. There is no indication that Mr. Hall’s death was due to any action or inaction of CPD. CCA concluded that the actions of Officers David Harris, Jason Lindsey, and Lieutenant Brian Bender were in compliance with CPD’s policy, procedure, and training.

FINDINGS

Officer David Harris
Sergeant Jason Lindsey

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

Officer David Harris
Sergeant Jason Lindsey
Lieutenant Brian Bender

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

■

8

Complaint #	20067
Complainant	Steven Young
Incident Date	April 21, 2020
CCA Investigator	Jonathan Batista
CCA Findings	Officer Cian McGrath Improper Stop – EXONERATED Excessive Force – EXONERATED Discourtesy – EXONERATED

ANALYSIS

Allegation: Improper Stop

Officer Burkett, M/W/33, was working in plainclothes in an unmarked vehicle when he observed Mr. Young, M/B/35, in his vehicle meet with another vehicle and make a hand-to-hand drug transaction. Officer Burkett stated that Mr. Young was known to be involved in drug transactions and fled a previous encounter on a prior date. Officer Burkett further stated that Mr. Young had excessive window tint on his vehicle in violation of ORC 4513.241 (Using Tinted Glass and Other Vision Obscuring Materials). Officer Burkett advised uniformed officers about his observations. Officer McGrath, M/W/37, observed the vehicle as described by Officer Burkett and initiated the traffic stop for the illegal window tints. CPD

Procedure §12.205, Traffic Enforcement, maintains that officers should take appropriate enforcement action whenever a violation is detected. While Mr. Young was not cited for excessive window tint, the fact that his car windows were excessively tinted was corroborated by statements to CCA from Officers Burkett and McGrath. CCA's review of BWC footage confirms that Mr. Young's rear windows appeared to be darkly tinted, and although his front windows were rolled down on camera and not visible when the officers walked up to the car, the fact that the rear windows were tinted provides at least some corroboration for what the officers say they observed. The observation of the tint, in turn, provided reasonable suspicion for a lawful traffic stop. CCA concluded that Officer McGrath's car stop was within CPD's Policy, procedure, and training.¹

Allegation: Excessive Force

Mr. Young alleged that Officer McGrath used excessive force on him. After Mr. Young was pulled over, Officers McGrath and Hesselbrock, M/W/38, approached his vehicle, with Officer McGrath approaching the driver's side and Officer Hesselbrock approaching from the passenger's side. Due to the excessive tint on Mr. Young's vehicle—which according to the officers interviewed, can present a safety issue—Officer McGrath ordered Mr. Young to lower all his windows.

According to the BWC evidence, upon being ordered to lower all his windows, Mr. Young (whose rear windows were raised) responded by stating that he did not “have to do all that” since the police did not have a reason for the stop. Officer McGrath continued to order Mr. Young to lower his window, however Mr. Young refused and also made threats to “beat” Officer McGrath's “[expletive].”

After giving numerous commands, Officer McGrath then ordered Mr. Young to exit his vehicle. Mr. Young, however, instead of complying, reached into his passenger seat. Officer McGrath reacted by pulling his TASER and demanded Mr. Young show his hands. Mr. Young opened his vehicle door and exited. As he exited the vehicle, Mr. Young who was visibly angry, yelled profanities which were directed towards Officer McGrath. Officer McGrath ordered Mr. Young to place his hands against his vehicle to be handcuffed. Mr. Young, while facing Officer McGrath, stepped toward Officer McGrath, causing Officer McGrath to take a step back and command Mr. Young to step away from him. Officer McGrath then ordered Mr. Young to place his hands on the vehicle. Officer McGrath grabbed Mr. Young and told him to place his hands behind his back.

Mr. Young continued to use profane language throughout the traffic stop, including while he closed his left hand and made a fist. Officer Hesselbrock placed a handcuff on Mr. Young's right wrist. Officer McGrath attempted to handcuff Mr. Young's left wrist, but Mr. Young resisted by clenching his fist, attempting to turn his body around, and continuously yelling expletives. Mr. Young asked if Officer McGrath was “scared.” Officer McGrath used profanity by telling Mr. Young to “give me your [expletive] hands.” According to the BWC, Mr. Young attempted to turn toward Officer McGrath and made an audible growling sound, which caused Officer McGrath to use his left hand to control Mr. Young. With his TASER in his right hand, Officer McGrath attempted to restrain Mr. Young by repositioning that right hand from Mr. Young's shoulder, which (according to Officer McGrath) caused the TASER to make contact with Mr. Young's left check. This resulted in Mr. Young receiving a minor cut. Mr. Young was

¹ Mr. Young was ultimately arrested as a result of conduct described below, and he was charged with ORC 2921.31 (Obstruction of Official Business) and ORC 2921.33 (Resisting Arrest).

handcuffed and placed in the cruiser, after which time no other force was used. Mr. Young refused medical attention on scene and at the Hamilton County Justice Center.

CPD Procedure § 12.545 Use of Force, defines “active resistance” as when a “subject is making physically evasive movements to defeat the officer’s attempt at control, including bracing, tensing, pushing, fleeing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.” The policy also states, “Officers must avoid using unnecessary violence. Their 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.” According to BWC footage, Mr. Young displayed active resistance by clenching his fist, making continuous threats directed toward Officer McGrath, and by attempting to turn around while being handcuffed.

According to Officer McGrath’s statement, Mr. Young’s actions prompted Officer McGrath to use “hard hands” to restrain Mr. Young. Due to Mr. Young’s behavior, Officer McGrath stated that he felt it was necessary to keep his TASER out of his holster and continuously have it available as he handcuffed Mr. Young. The relevant BWC recordings sufficiently corroborate Officer McGrath’s statement that while he was restraining a combative Mr. Young, Officer McGrath’s TASER inadvertently made contact with Mr. Young in his face. Therefore, the evidence does not establish that Officer McGrath used force that was objectively unreasonable. He was therefore within CPD’s policy, procedure, and training.

Allegation: Discourtesy

The evidence shows that Officer McGrath, while attempting to handcuff Mr. Young, did use expletives that were directed towards Mr. Young. 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 shows that as Officer McGrath was handcuffing Mr. Young, he continuously ordered Mr. Young to “put your hands behind your [expletive] back.” Mr. Young continuously yelled back with expletives, causing Officer McGrath to respond, “Put your hands behind your back or I’m going to [expletive] tase you.” After Mr. Young was eventually handcuffed, and as he was being escorted to the Officer McGrath’s vehicle, Mr. Young continued to attempt to turn around towards Officer McGrath. Officer McGrath commanded Mr. Young to stay still and shouted, “Stay [expletive] still.” Officer McGrath told CCA that due to Mr. Young’s lack of cooperation and refusal of orders, he believed using verbal stunning was necessary in order to bring Mr. Young under control. CCA determined that Officer McGrath was within CPD’s policy, procedure, and training.

FINDINGS

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**

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

■

9

Complaint #	20074
Complainant	Terry Stanford
Incident Date	May 2, 2020
CCA Investigator	Jessalyn Goodman
CCA Findings	<u>Original Allegations</u> Officer Genesis Steele Improper Stop – EXONERATED Discourtesy – UNFOUNDED Officer Chelsey Sharpe Discourtesy – EXONERATED <u>Collateral Allegations</u> Officer Genesis Steele Improper Procedure (BWC) – SUSTAINED Sergeant Robert White, II Discourtesy – SUSTAINED

ANALYSIS

Allegation: Improper Stop

Officer Steele worked an off-duty detail at the Shell gas station on Gilbert Ave. Per Officer Steele’s statement, she had asked Mr. Stanford to leave the property on two prior occasions that night at the request of Shell gas station staff; however, Mr. Stanford returned to the property for a third time. BWC footage confirmed that when Officer Steele spoke with Mr. Stanford during the third encounter, he appeared intoxicated; once she determined he was not patronizing the Shell gas station, she directed him to leave, but he refused and sat down. CPD Procedure § 12.554, Investigatory Stops, maintains that when an officer has reasonable suspicion to believe a citizen is committing a crime, the officer may forcibly stop and detain the citizen briefly. Officer Steele detained Mr. Stanford and arrested him for Disorderly Conduct and Criminal Trespass. CCA concluded Officer Steele’s actions were within CPD’s policy, procedure, and training.

Allegation: Discourtesy

Mr. Stanford alleged Officers Steele and Sharpe were discourteous. CPD's Manual of Rules and Regulations §1.06 A 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 Steele denied being discourteous towards Mr. Stanford. BWC footage confirmed that Officer Steele did not use any discourteous or coarse language towards Mr. Stanford. Therefore, CCA determined that Officer Steele did not make any unprofessional remarks as alleged.

Throughout his interaction with Sergeant White and Officers Sharpe and Steele, BWC footage showed Mr. Stanford made several profane comments and threats; once placed in the rear of the cruiser, Mr. Stanford lay on his side and repeatedly kicked the cruiser windows. Officer Sharpe acknowledged she used verbal stunning (specifically, profanity) to encourage cooperation from Mr. Stanford. CPD's Tactical Patrol Guide defines verbal stunning to include the use of coarse, violent, or profane language when responding to a subject that refuses to cooperate. BWC footage verified that in this instance, her language described physical acts and did not personally attack Mr. Stanford; afterwards, Mr. Stanford complied with the officers' directives. CCA determined that Officer Sharpe's comments were within CPD's policy, procedure, and training.

BWC footage also recorded an exchange between Sergeant White and Mr. Stanford in which Sergeant White used profanity while he assisted Officer Steele. Specifically, while handcuffing Mr. Stanford, Sergeant White said, "Quit being an [expletive]." Although Sergeant White denied he was discourteous during the encounter, his comments violated CPD's Manual of Rules and Regulations §1.06 A. CCA concluded Sergeant White's comments were not within CPD's policy, procedure, and training.

Allegation: Improper Procedure (BWC)

CPD Procedure §12.540 Body Worn Camera System denotes that officers are required to activate their BWC system on any call for service or self-initiated activity during all law enforcement-related encounters and activities. Officer Steele did not activate her BWC until after her initial encounter with Mr. Stanford. She relayed that she did not activate her BWC initially because she believed Mr. Stanford would leave the property; she activated her BWC as the incident escalated. As the policy requires officers to activate their BWC for self-initiated activity, and Officer Steele confirmed she initiated an interaction with Mr. Stanford for express purpose of a law enforcement-related objective, Officer Steele did not comply with CPD's policy, procedure, and training.

FINDINGS

Original Allegations

Officer Genesis Steele

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

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

Officer Chelsey Sharpe

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

Collateral Allegations

Officer Genesis Steele

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**

Sergeant Robert White, II

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

■

10

Complaint #	20107
Complainant	LaKisha Madaris
Incident Date	May 28, 2020
CCA Investigator	Morgan Givens
CCA Findings	Sergeant William Kinney Improper Procedure – NOT SUSTAINED

ANALYSIS

Allegation: Improper Procedure

On May 28, 2020, an ATV owned by Ms. Madaris, F/B/44, but operated by her 16-year-old daughter and other unknown people in the neighborhood, struck Officer Abt's parked cruiser. Specialist Campo observed the ATV drive past him and go behind the buildings. As documented by BWC, Officer Abt and Specialist Campo walked behind the building and secured the abandoned ATV, absent the key; as they guided it toward the front of the complex, the alarm rang loudly and consistently. In his statement,

Sergeant Kinney alleged the sound of the alarm made it difficult for officers to communicate with one another and the Emergency Communications Center; consequently, he mounted the ATV and guided the ATV down a slight incline, away from the scene. When he reached the bottom of the hill, he deactivated his BWC. Sergeant Kinney admittedly detached a cord from the battery in an effort to silence the ATV since they could not determine who or what made the alarm sound.

Ms. Madaris alleged that CPD damaged her ATV prior to it being impounded for a hit-skip investigation. She emphasized that the ATV was operable prior to being transported and not functioning upon retrieving the ATV. CPD's District 4 mechanic determined that Sergeant Kinney's removal of the battery cable would not permanently damage the ATV, but CCA has seen no independent evidence to corroborate or refute that fact. While Sergeant Kinney admitted to detaching attachable wires, CCA could not determine if detaching said wire would permanently disable the ATV. Given the lack of relevant evidence, CCA could neither corroborate nor refute the allegation that CPD rendered the vehicle permanently inoperable.

FINDINGS

Sergeant William Kinney

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

■