

Date: April 1, 2021
To: Board Members, Citizen Complaint Authority
From: Gabriel Davis, Director
Subject: Investigation Summary – April 5, 2021 Board Meeting

1 Old Business

Complaint #	18097
Incident Date	May 3, 2018
Complainant	Khayree Waller
CCA Investigator	Dena Brown
CCA Findings	Officer Adarryl Birch Specialist Kenneth Byrne Improper Discharge of a Firearm – EXONERATED Specialist Kenneth Byrne Improper Pointing of a Firearm – EXONERATED
Board Findings	Pending
City Manager Findings	Pending

ANALYSIS

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

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

During interviews with CCA, Specialist Byrne and Officer Birch stated they believed that the gunshots

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

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

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

See CCA Recommendation Number R2112 in connection with this case.

FINDINGS

Officer Adarryl Birch
Specialist Kenneth Byrne

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

Specialist Kenneth Byrne

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

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2

Complaint #	19151
Incident Date	July 4, 2019
Complainant	Devin Johnson
CCA Investigator	Jessalyn Goodman
CCA Findings	Officer Albert Brown Improper Discharge of a Firearm – EXONERATED Excessive Force – EXONERATED
Board Findings	Pending
City Manager Findings	Pending

ANALYSIS

Officers Albert Brown and Kevin Brown responded to a dispatched radio run for an individual “going crazy” with a knife at Bramble Park. CPD Procedure §12.554 Investigatory Stops states that in a "Terry" type encounter, an officer has reasonable suspicion to believe the citizen is committing or has committed a crime. Based on this reasonable suspicion, the officer may forcibly stop and detain the citizen for a brief investigatory period. The physical description of the individual provided in the ECC call matched the appearance of Mr. Johnson. Officers Albert Brown and Kevin Brown had reason to believe Mr. Johnson was involved in the related radio run.

BWC footage showed Mr. Johnson advance towards Officer Albert Brown with a knife. Officers Albert Brown and Kevin Brown issued several commands for Mr. Johnson to drop the knife; Mr. Johnson failed to respond to these verbal commands. Instead, Mr. Johnson continued towards Officer Albert Brown in a threatening manner with a weapon. As a result of the life-threatening resistance, Officer Albert Brown discharged his weapon three times and struck Mr. Johnson. CPD Procedure § 12.550 Discharging of Firearms by Police Personnel maintains that when an officer perceives what he interprets to be a threat of loss of life or serious physical harm to himself or others at the hands of another, he has the authority to use that force reasonably necessary to protect himself or others from death or serious physical harm at the hands of another. In his statement, Officer Albert Brown believed Mr. Johnson’s behavior indicated a threat of serious physical harm to himself. CCA concluded that Officer Albert Brown complied with CPD’s policy, procedure, and training when he discharged his firearm.

Observation

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

See CCA Recommendation Numbers R2107, R2109, R2115, R2119 in connection with this case.

FINDINGS

Officer Albert Brown

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

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

1 New Business

Complaint #	18169
Incident Date	August 24, 2018
Complainant	James Clay
CCA Investigator	Dena Brown
CCA Findings	Specialist Ronald Schultz Officer Stephen Bender Officer Thomas Wells Excessive Force – EXONERATED Officer Stephen Bender Officer Thomas Wells Improper Discharge of a Firearm – EXONERATED
Board Findings	Pending
City Manager Findings	Pending

ANALYSIS

On August 22, 2018, ECC received a phone call from the manager of Boost Mobile who stated his employee, Mr. Garber, had been robbed. Officer Bender developed probable cause to arrest Mr. Clay for the robbery based on his review of video images capturing the robbery, and the confirmations of those at the Shakely Shelter who recognized Mr. Clay. On the basis of that probable cause, Officer Bender obtained a felony arrest warrant for Mr. Clay.

On August 24, 2018, Officers Bender, Wells, and Specialist Schultz responded to Mr. Clay's address to arrest him for the robbery. Mr. Clay would not open his door. Talbert House staff member, Witness A, unlocked the door and advised Mr. Clay the police wanted to speak to him. Officers Bender, Wells, and Specialist Schultz entered Mr. Clay's apartment. Officer Bender advised Mr. Clay he was under arrest and attempted to place him into custody.

CPD Procedure 12.555, Arrest/Citation, instructs officers to “make a physical arrest on all original felony arrests and felony warrants.” CPD Procedure 12.554, Investigatory Stops, maintains that a valid arrest occurs when the citizen is not free to leave, and the officer has the intent to arrest. The arrest must be supported by probable cause to believe the citizen is committing or has committed a criminal offense. Finally, under the law in Ohio, police officers in possession of an arrest warrant are permitted to enter the residence of the person for whom the warrant was obtained without needing to also obtain a search warrant. Given that the officers in this case had an arrest warrant supported by probable cause, the officers’ seizure of Mr. Clay and entry into his apartment were both proper.

When Officer Bender attempted to place Mr. Clay into custody, Mr. Clay did not comply with the handcuffing process. CPD Procedure § 12.545 Use of Force states when officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. The procedure also defines the taser as a non-lethal force alternative designed to temporarily immobilize a subject who is actively resisting arrest. Here, BWC footage showed Specialist Schultz stood in front of Mr. Clay with his taser drawn and warned of the impending taser deployment before Mr. Clay grabbed Specialist Schultz’s arm and produced an imitation firearm from his rear waistband. Specialist Schultz deployed his taser to Mr. Clay’s chest; which had no effect. Section 12.545 authorizes such force under the circumstances, and notes that when deploying a cartridge from the Taser, frontal shots are prohibited except in situations of self-defense or defense of another. Accordingly, CCA concluded Specialist Schultz’s use of a taser against Mr. Clay was not a violation and in compliance with CPD’s policy, procedure, and training.

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

Officers Bender and Wells stated they believed Mr. Clay was going to shoot Specialist Schultz, so they discharged their firearms, striking and fatally wounding Mr. Clay. The statements that Officers Bender and Wells gave to CCA were corroborated by their BWC recordings, which revealed that Mr. Clay produced a weapon approximating a firearm and aimed it at Specialist Schultz. Those accounts were also corroborated by a first-hand account from Witness A, who observed Mr. Clay reach for his waistband before being shot by police, and who believed that Mr. Clay did so in order to retrieve a weapon. Accordingly, CCA concluded that Officers Bender and Wells complied with CPD’s policy, procedure, and training when they discharged their firearms and used deadly force.

Observation:

This tragic incident arose from a law enforcement operation to serve a warrant at an apartment, and resistance encountered during that operation. It resulted in the death of a citizen and a shooting injury to a police officer. While CCA in no way minimizes the threat that the officers confronted when Mr. Clay produced an apparent firearm and resisted arrest, and while we acknowledge the unpredictable nature of police work, we note that the encounter between Mr. Clay and police was not the result of an emergency call for service with limited time for preparation. Instead, it was a planned police action to serve an arrest warrant, one that afforded time for a preliminary investigation into Mr. Clay’s mental health. CCA is not

aware of any documentation to suggest that the officer leading the operation conducted any background check or research into Mr. Clay's mental health status, or other risk factors, before serving the arrest warrant. According to that officer's statement, he could not recall having ever considered such mental health risk factors, nor could he recall whether he had made any inquiry into whether Mr. Clay, a suspect in a violent robbery who resided at the Talbert House, also suffered from mental illness. To be sure, we will never know whether any part of the shooting would have turned out differently had research into Mr. Clay's mental health been performed. Likewise, it may not be possible to know with certainty whether the operation would have been carried out differently if police had been in possession of such information. Nonetheless, we believe it is prudent for officers to make demonstrable and documented efforts to obtain such information in future similar situations in order to minimize the risk of injury and loss of life to both officers and citizens alike.

See CCA Recommendation Numbers R2105, R2108, R2113, R2118 in connection with this case.

FINDINGS

Specialist Ronald Schultz
Officer Stephen Bender
Officer Thomas Wells

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

Officer Stephen Bender
Officer Thomas Wells

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

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Complaint #	18178
Incident Date	September 6, 2018
Complainant	Omar Enrique Santa Perez
CCA Investigator	Dena Brown
CCA Findings	Officer Antonio Etter Officer Jennifer Chilton Specialist Gregory Toyegas Sergeant Eric Kaminsky Excessive Force - EXONERATED Officer Antonio Etter Officer Jennifer Chilton Specialist Gregory Toyegas Sergeant Eric Kaminsky

	Improper Discharge of a Firearm – EXONERATED
Board Findings	Pending
City Manager Findings	Pending
ANALYSIS	

On September 6, 2018, Mr. Santa Perez entered the lobby of the FTC, armed with a semi-automatic pistol, and began shooting at citizens. ECC received several 911 phone calls in reference to an “active shooter” at the FTC.

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

Officers Etter, Chilton, Specialist Toyegas, and Sergeant Kaminsky responded to the scene. During their interviews with CIS the officers provided statements they observed Mr. Santa Perez with a firearm and was actively shooting at civilians. Officers Etter, Chilton, Specialist Toyegas and Sergeant Kaminsky discharged their firearms, fatally wounding Mr. Santa Perez. BWC and security camera footage confirmed the officers’ observations of Mr. Santa Perez’s actions. Due to Mr. Santa Perez actively shooting at civilians, it was reasonable for the officers to conclude Mr. Santa Perez was a threat to the public, as well as themselves. CCA concluded that Officers Etter, Chilton, Specialist Toyegas and Sergeant Kaminsky complied with CPD’s policy, procedure, and training.

Commendation

CCA commends Officers Etter, Chilton, Specialist Toyegas, and Sergeant Kaminsky for their bravery and courage when immediately reacting and stopping an active shooter, saving numerous citizens lives who were in harm’s way.

See CCA Recommendation Number R2114 in connection with this case.

FINDINGS	
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Officer Antonio Etter
Officer Jennifer Chilton
Specialist Gregory Toyegas
Sergeant Eric Kaminsky

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

Officer Antonio Etter
 Officer Jennifer Chilton
 Specialist Gregory Toyneas
 Sergeant Eric Kaminsky

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

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3

Complaint #	18241
Incident Date	December 7, 2018
Complainants	Daryl Johnson and Michelle Johnson
CCA Investigator	Dena Brown
CCA Findings	<p><u>Complainant Daryl Johnson</u></p> <p>Officer Kevin Broering Officer Charles Knapp Improper Stop - EXONERATED</p> <p>Officer Ryan Olthaus Officer Matthew Ventre Officer Marc Schildmeyer Officer Kerri Maloney Officer Cian McGrath Sergeant Timothy Lanter Improper Search - EXONERATED</p> <p><u>Complainants Daryl Johnson and Complainant Michelle Johnson</u></p> <p>Officer Kevin Broering Officer Ryan Olthaus Harassment - NOT SUSTAINED</p> <p>COLLATERAL FINDING</p> <p>Officer Charles Knapp Improper Procedure (Contact Card) - SUSTAINED</p>
Board Findings	Pending
City Manager Findings	Pending

ANALYSIS

October 22, 2018

Mr. Johnson alleges that Cincinnati police officers acted improperly by stopping him while he was driving. Officer Knapp relayed to CCA that Officer Knapp was advised by Officer Broering that before the stop, Officer Broering observed Mr. Johnson with a firearm, which Mr. Johnson was not lawfully permitted to

possess based on prior felony charges. When Officer Knapp initiated a traffic stop on Mr. Johnson's vehicle, Officer Knapp was also aware that Mr. Johnson did not have a valid driver's license based on Officer Knapp's query of Mr. Johnson at the time of the stop. Finally, Officer Knapp cited Mr. Johnson for leaving the curb without signaling. Driving without a valid license and leaving the curb without signaling are both traffic violations.

CPD Procedure § 12.205, Traffic Enforcement instructs officers to take appropriate enforcement action whenever a violation is detected. Furthermore, CPD Procedure § 12.554 Investigatory Stops provides that officers may forcibly stop and detain the citizen for a brief investigatory period when an officer has reasonable suspicion to believe the citizen is committing or has committed a crime. Given that one officer observed Mr. Johnson commit what appeared to be two traffic violations, and one other officer observed Mr. Johnson commit what appeared to be a weapons possession offense, CCA concluded Officer Knapp was in compliance with CPD's policy, procedure, and training when he stopped Mr. Johnson.

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

December 7, 2018

The complainants also take issue with a police search of Ms. Jones' residence. On December 7, 2018, SWAT and the Gang Unit conducted a search of Ms. Jones's apartment pursuant to a search warrant. A day earlier, on December 6, 2018, Officer Olthaus obtained a search warrant that was signed by Judge Berry. The warrant authorized a search of that apartment and listed the items that could be seized. The officers conducting the search included Officers Broering, Olthaus, Ventre, and Maloney. Officer McGrath and Sergeant Lanter could not recall if they were involved with the search of the apartment. Officer Schildmeyer stated he did not search the apartment.

CPD Procedure §12.700 Search Warrants/Consent to Search governs searches pursuant to a search warrant, along with other applicable law. Specifically, Section 12.700 states the "life of all Ohio search warrants is 72 hours from the time of issuance by the judge." Based on all evidence reviewed, CCA determined that the search of Ms. Jones's apartment was in compliance with CPD's policy, procedure, and training.

Mr. Johnson and Ms. Johnson also both alleged that Gang Unit officers have harassed them. CPD does not have a definition or policy regarding "harassment," but CCA has defined "harassment" to include behavior that threatens or torments someone, especially persistently. At a minimum, under this definition, there must be proof of a pattern of wrongful conduct. Officers Broering and Olthaus relayed they had prior contact with Mr. Johnson due to concerns of criminal activity. Officer Broering stated that this contact occurred during "a handful of times" since 2010. Officer Schildmeyer mentioned he was "aware" of Mr. Johnson. A review of CPD's Records Management System (RMS) reflected one contact card involving Mr. Johnson who was a passenger in a vehicle that was stopped by Officer Knapp. CCA also reviewed the Hamilton County Clerk of Courts records and did not locate any past cases involving the subject officers. Given the lack of specific information and documentation regarding contacts between Mr. Johnson and police that predated this complaint, and given the lack of independent information pertaining to those

encounters, CCA lacked sufficient evidence to determine by a preponderance whether Mr. Johnson or Ms. Johnson were being harassed as alleged.

Note:

CCA initially requested a copy of the BWCs and relevant footage, but due to IIS not investigating the complaint, the records were not retained. CCA does not believe similar BWC retention issues will be an ongoing issue in future investigations, but we note it here to place our investigation and its limitations into context.

CCA also notes that images of the plainclothes officers were redacted in the received BWC footage. Due to these redactions, CCA was unable to identify and interview additional plainclothes officers. This limitation impacted CCA's ability to conduct a more thorough and exhaustive investigation into the incident. CCA looks forward to working with CPD to minimize the potential for these kinds of redactions to affect future investigations.

Recommendation:

R2122: CCA recommends CPD create a specific definition and policy for "harassment" in order to clarify the line between persistent contact initiated by police that is permissible (such as necessary contact that might occur during an ongoing investigation focused on a person of interest), and impermissible patterns of contact that either have no legitimate purpose, are not tailored to a legitimate purpose, or that otherwise violate policy. At a minimum, CPD should provide such instruction in the Cincinnati Police Department Procedure or Manual of Rules and Regulation, so that citizens are on notice as to what standards govern persistent contacts and/or monitoring, and so that officers have specific direction and guidance. This approach would protect officers and citizens alike. CCA also believes that community engagement initiatives that educate the public about these standards would lead to a reduction of complaints alleging "harassment" against officers.

FINDINGS

Complainant Daryl Johnson

Officer Kevin Broering
Officer Charles Knapp

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

Complainant Daryl Johnson

Officer Ryan Olthaus
Officer Matthew Ventre
Officer Marc Schildmeyer
Officer Kerri Maloney
Officer Cian McGrath
Sergeant Timothy Lanter

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

Complainants Daryl Johnson and Complainant Michelle Johnson

Officer Kevin Broering
Officer Ryan Olthaus

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

COLLATERAL FINDINGS

Officer Charles Knapp

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

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Complaint #	19163
Incident Date	July 16, 2019
Complainant	Ebony Singley
CCA Investigator	Jessalyn Goodman
CCA Findings	Officer Andrew Snape Officer Joshua Wallet Excessive Force – EXONERATED Officer Joshua Wallet Improper Discharge of Firearm – EXONERATED
Board Findings	Pending
City Manager Findings	Pending

ANALYSIS

Officers Wallet and Snape responded to a dispatched radio run for Ms. Singley, who self-reported suicidal ideations; subsequently, Witness A contacted ECC to report Ms. Singley was “on her porch with a knife.” CPD Procedure §12.554 Investigatory Stops states that if an officer has reasonable suspicion to believe the citizen is committing or has committed a crime, then based on this reasonable suspicion, the officer may forcibly stop and detain the citizen for a brief investigatory period. The physical description of the individual provided in the ECC call matched the appearance and actions of Ms. Singley. Officers Wallet and Snape had reason to believe Ms. Singley was the person of interest in the related radio run.

BWC footage showed Ms. Singley on the front porch of a residence, holding a knife in her hand. Officers Wallet and Snape issued multiple commands for Ms. Singley to drop the knife; Ms. Singley failed to respond to these verbal commands. Officer Snape warned Ms. Singley she would be tased if her behavior did not desist. CPD Procedure § 12.545 Use of Forces states the privilege for officers to use force, including a taser, includes force necessary to protect themselves or others. BWC footage showed Officer Snape deployed his taser twice after Ms. Singley advanced towards a bystander with a lethal weapon. Therefore, Officer Snape's use of a taser against Ms. Singley was not a violation.

BWC footage showed the taser did not take effect on Ms. Singley; instead, she continued to pursue Witness A into her home. CPD Procedure § 12.550 Discharging of Firearms by Police Personnel maintains that when an officer perceives what he interprets to be a threat of loss of life or serious physical harm to himself or others at the hands of another, he has the authority to use that force reasonably necessary to protect himself or others from death or serious physical harm at the hands of another. As a result of Ms. Singley's life-threatening behavior, Officer Wallet discharged his firearm once and struck Ms. Singley in the left leg. In his statement, Officer Wallet believed Ms. Singley's behavior indicated a threat of serious physical harm to the occupants of the residence. The evidence, including BWC footage, and Officer Singley's statement corroborated Officer Wallet's account. CCA concluded that Officer Wallet complied with CPD's policy, procedure, and training when he discharged his firearm.

Commendation:

CCA commends Officer Wallet for immediately offering first aid to Ms. Singley following the use of force (i.e. the shooting) that resulted in injury to Ms. Singley, particularly given that current policy provides officers with the discretion to offer such aid but does not require them to do so.

Observation:

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

See CCA Recommendation Numbers R2106, R2110, R2116, R2120 in connection with this case.

FINDINGS

Officer Andrew Snape
Officer Joshua Wallet

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

Officer Joshua Wallet

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

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Complaint #	19206
Incident Date	September 11, 2019
Complainant	Vernell Jackson
CCA Investigator	Jessalyn Goodman
CCA Findings	Officer Marc Schildmeyer Improper Discharge of a Firearm – EXONERATED Excessive Force – EXONERATED Sergeant James Davis Improper Pointing of a Firearm – EXONERATED
Board Findings	Pending
City Manager Findings	Pending

ANALYSIS

On September 11, 2019, while on routine patrol in a neighborhood that had experienced a recent increase in gun crime, Sergeant Davis observed Mr. Jackson with a concealed handgun. ORC § 2923.12A Carrying Concealed Weapons makes carrying a concealed handgun a criminal offense, absent limited circumstances. Sgt. Davis radioed for assistance and communicated that a person matching Mr. Jackson’s description was armed. In response, Officer Schildmeyer drove to the area to assist and conducted a pedestrian stop of Mr. Jackson. CPD Procedure § 12.554 Investigatory Stops enables an officer to stop a pedestrian if the officer has reasonable suspicion to believe the citizen is committing or has committed a crime.

When Officer Schildmeyer approached Mr. Jackson, the officer displayed his firearm and directed Mr. Jackson to show his hands twice. During CCA’s interview with Officer Schildmeyer, he stated Mr. Jackson did not comply with his directives but instead produced a firearm from behind his back and pointed it at him. Being in fear for his life, Officer Schildmeyer discharged one round at Mr. Jackson. CPD Procedure § 12.550 Discharging of Firearms by Police Personnel maintains that when an officer perceives what the officer interprets to be a threat of loss of life or serious physical harm to the officer or to others at the hands of another, the officer has the authority to display a firearm and to use force reasonably necessary to protect himself or others from death or serious physical harm. The policy specifically provides that after all other reasonable means have been exhausted, an officer may “resort to

the use of firearms . . . when an officer reasonably believes that such use of firearms is necessary to protect the officer or another from risk of serious physical harm or loss of life.” Officer Schildmeyer’s account was corroborated by his BWC/MVR recording. CCA concluded that Officer Schildmeyer complied with CPD’s policy, procedure, and training when he discharged his firearm.

The BWC footage showed that Sergeant Davis placed Mr. Jackson at gunpoint after he observed Mr. Jackson’s firearm. Sergeant Davis’s display of a firearm while after observing Mr. Jackson retrieve and move a firearm towards Officer Schildmeyer is governed by the same policy governing the discharge of firearms, CPD Procedure § 12.550 Discharging of Firearms. Under Section 12.550 (which is cited above), Mr. Jackson’s possession of a concealed handgun and failure to follow Officer Schildmeyer’s commands made it reasonable to believe that Mr. Jackson presented a risk of substantial harm to the officers. Accordingly, CCA concluded that Sergeant Davis was in compliance with CPD’s policies, procedures, and training when he had his firearm pointed at Mr. Jackson prior to his apprehension.

Commendation:

CCA commends Officer Schildmeyer for immediately offering first aid to Mr. Jackson following the use of force (i.e. the shooting) that resulted in injury to Mr. Jackson, particularly given that current policy provides officers with the discretion to offer such aid but does not require them to do so.

See CCA Recommendation Numbers R2111, R2117, R2121 in connection with this case.

FINDINGS

Officer Marc Schildmeyer

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

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

Sergeant James Davis

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

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RECOMMENDATIONS

Consistent with CCA's responsibilities under Article 28 of Cincinnati's Administrative Code, we submit the following five (5) unique recommendations in connection with completed investigations into discharges of firearms by officers of the Cincinnati Police Department (CPD).

The recommendations address opportunities that CCA has identified for strengthening CPD's policies, procedures, and training with respect to scenarios involving the use of deadly force. They are intended to highlight areas of community concern and interest, and advance constructive dialogue about those matters. They are also intended to build on Cincinnati's and CPD's progress over the past several years as it relates to policing in our community. CCA looks forward to partnering with CPD and the community in enhancing the delivery of safe police services for citizens and officers alike.

Mental Health

1. Recommendation No. R2105

CCA Case No: 18169 (James Clay)

CCA recommends that CPD create a risk assessment tool for use in planning all executions of search or residential arrest warrants that specifically requires an officer to conduct a preliminary investigation into the mental health status of the person who is the subject of the warrant, where such an inquiry is feasible. Among other things, this kind of a preliminary investigation or background check could involve the following: efforts to obtain mental health information from databases accessible to police; efforts to seek such information from court dockets or other records; consulting with colleagues in law enforcement who may have prior knowledge of the suspect; or outreach to family, friends, and acquaintances (assuming efforts to locate the subject are overt and not confidential). The risk assessment tool could take the form of a checklist, tactical plan, or threat matrix, but it should be a written tool that requires due diligence as it relates to a subject's potential mental health, documents that due diligence, and then documents known or learned information about the subject's mental health. It should also include planning to address any mental health risks identified.

If there are barriers to an officer's ability to obtain information pertaining to a subject's mental health in preparation for the execution of a warrant that would weaken the effectiveness of such a risk assessment tool, CPD is encouraged to identify them for potential problem-solving, and for purposes of community education.

2. Recommendation Nos. R2106 & R2107¹

CCA Case Nos: 19163 (Ebony Singley) & 19151 (Devin Johnson)

CCA recommends that CPD (i) amend its policies and make corresponding adjustments to its training in order to clarify the circumstances under which a person who is suffering from a mental health crisis may be charged criminally when the charges are related to the crisis, and (ii) strengthen its presumption against such charges.

CPD Procedure § 12.110 Handling Suspected Mentally Ill Individuals and Potential Suicides, states that a “subject having a mental health crisis should not be charged criminally, even if force is used against them.” However, multiple persons shot by police in discharge cases in 2019 were charged with crimes, despite indications that they were suffering from a mental health crisis at the time of the shooting and the events that gave rise to the charge. At least one of those persons was found unable to stand trial due to that person’s mental health.

Medical Aid to Subjects Wounded by Use of Force

3. Recommendation Nos. R2108, R2109, R2110 & R2111²

CCA Case Nos: 18169 (James Clay); 19151 (Devin Johnson); 19163 (Ebony Singley); and 19206 (Vernell Jackson).

CCA recommends that CPD include a provision in its Use of Force policy (Procedure 12.545) that requires officers, where feasible, to provide first aid following uses of force that result in a citizen’s injury.

Current policy, as articulated in Procedure 12.545, states, “Once the scene is stabilized and it is safe to do so, officers *may* administer CPR or basic first aid, if appropriate.” (Emphasis added.) CPD should revise this language to state that officers “shall” or “must” administer such aid “if appropriate,” making such assistance mandatory unless it is not feasible to provide it. This revision would be consistent with guidance from the United States Conference of Mayors, which recommended in its Report on Police Reform and Racial Justice (August 2020) that police departments “provide first aid training to their officers and *require* officers to provide first aid following uses of force, commensurate with their training and protecting the safety of the subject and their own safety” (Emphasis added).

While CCA commends the officers who chose to render first aid in some of the cases covered by this Report (including the Singley and Jackson cases), in the absence of a stronger policy requirement, future persons who are injured due to a use of force may not receive the same level of care, even where it is feasible to provide it.

¹ While this is one (1) unique recommendation, a separate recommendation number is being issued to track each submission of the recommendation, since it is being submitted in connection with multiple cases.

² While this is one (1) unique recommendation, a separate recommendation number is being issued to track each submission of the recommendation, since it is being submitted in connection with multiple cases.

CPD Review Boards

4. Recommendation Nos: R2112, R2113, R2114, R2115, R2116 & R2117³

CCA Case Nos: 18097 (Khayree Waller); 18169 (James Clay); 18178 (Omar Enrique Santa Perez); 19151 (Devin Johnson); 19163 (Ebony Singley); and 19206 (Vernell Jackson).

CCA recommends that CPD convene the Firearms Discharge Board (FDB) or Critical Incident Review Board (CIRB) for all critical firearm discharges, and that it do so upon the conclusion of any criminal investigation into those shootings. CCA requested a copy of CPD's FDB report for all officer-involved shootings that occurred in 2018 and 2019, but CCA has not yet received such reports, and our understanding is that neither review board has yet to be convened for those shootings.

CPD Procedure § 12.550 Discharging of Firearms states that the "Police Chief has authorized a comprehensive review of critical firearm discharges," which are "defined as: [a]ll shots fired by Department employees," with limited exceptions. Procedure 12.550 provides that the FDB is to conduct this review, and is tasked with issuing a final report to the Police Chief within 90 days of receipt of material relevant to the shooting. The report is required to "identify training issues and corrective measures, tactical response issues and corrective measures, and outline any recommended policy and/or procedure."

Similarly, CPD has recently created a Critical Incident Review Board (CIRB) as a "quality control mechanism" for critical incidents, including firearms discharges. *See* CPD Procedure § 12.545 Use of Force (Revised 01/28/21). CIRB's purpose is to conduct "a detailed and comprehensive review" of such discharges and "to recommend to the Police Chief changes in investigative protocols, procedures, and training."

While there are forums other than the CIRB or FDB that exist to probe discharges of firearms—including concurrent investigations of citizen complaints by CCA and IIS—a CIRB or FDB review still adds tremendous value. Among other things, those other reviews convene a broad array of command and supervisory personnel with valuable perspectives on the issues under consideration, and they review tactical issues that may be broader than the issues of misconduct considered in other concurrent investigations. CCA believes such a review should be required in every DFA case that qualifies, for the benefit of both officer and citizen safety.

³ While this is one (1) unique recommendation, a separate recommendation number is being issued to track each submission of the recommendation, since it is being submitted in connection with multiple cases.

5. **Recommendation No: R2118, R2119, R2120, R2121**

Case Nos: 18169 (James Clay); 19151 (Devin Johnson); 19163 (Ebony Singley); and 19206 (Vernell Jackson).

CCA recommends that at the next opportunity, CPD amend its policy regarding the Critical Incident Review Board (CIRB), found in CPD Procedure § 12.545 Use of Force (Revised 01/28/21), to include in its “Investigative Format and Report” section the explicit requirement that CIRB will determine (i) whether the use of additional de-escalation techniques was possible, and (ii) whether the officer(s) involved properly considered and followed CPD’s policies, training, and protocols for addressing persons with mental illness. Similar changes should be made to CPD’s policy governing its Firearms Discharge Board (FDB).