

Date: December 3, 2021
To: Board Members, Citizen Complaint Authority
From: Gabriel Davis, Director
Subject: Investigation Summary – December 6, 2021 Board Meeting

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

ANALYSIS

Original Allegation

Allegation 1: Excessive Force

CPD Procedure §12.545 *Use of Force* details that CPD officers’ use of force “is not limited to that amount of force necessary to protect themselves or others but extends to that amount reasonably necessary to enable them to effect the arrest of an actively resistant subject.” It further defines active resistance as an attempt to break free of an officer’s control of the subject. The test used to determine whether force used

against a resistant subject is excessive is “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.” Procedure §12.545 (citing *Graham v. Connor*). CPD Manual of Rules and Regulations § 1.22 also states “members shall not verbally and/or physically mistreat persons who are in custody.”

In this case, HCJC security footage and Sergeant Zachary Sterbling (M/W/36) confirmed that Mr. Lance Gaines (M/B/28) spat at Sergeant Sterbling, and that in response, Sergeant Sterbling delivered one closed-fist strike to Mr. Gaines’s face. A second attempt at striking Mr. Gaines made glancing contact before Sergeant Sterbling and Officer Douglas Utecht (M/W/36) forced Mr. Gaines to the ground. Sergeant Sterbling stated that he delivered the strikes to Mr. Gaines to prevent him from spitting any further. The test, however, is not whether the officer who used force had a subjective belief that the force was necessary. As we have explained above, the test is whether the actions were objectively reasonable. The evidence establishes that the response to strike Mr. Gaines was not objectively reasonable since the conduct involved a closed fist (rather than an open hand), involved more than one strike, Mr. Gaines was handcuffed at the time, and there were other, less violent means available to prevent and control Mr. Gaines’s behavior, such as the officers’ subsequent use of physical force to take Mr. Gaines to the ground. As a result, Sergeant Sterbling violated CPD policies, procedures and training when he struck Mr. Gaines’s face with a closed fist.

Collateral Allegations

Allegation 2: Improper Procedure

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

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

Allegation 3: Discourtesy

CPD’s Manual of Rules and Regulations Section One – Failure of Good Behavior 1.06 states that members of CPD shall always be civil, orderly, and courteous in dealing with members of the public. Further, it states that they shall avoid using coarse, violent, or profane language. BWC footage showed Sergeant Sterbling engaged in inappropriate banter with Mr. Gaines and made unprofessional comments as detailed in the BWC transcription. Instead of de-escalating Mr. Gaines’s behavior, the conversation maintained

and fostered his hostility towards the officers. CCA finds that Sergeant Sterbling did not comply with CPD's policy, procedure, and training.

Allegation 4: Lack of Service

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

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

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

Notes:

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

FINDINGS

Original Allegation

Sergeant Zachary Sterbling

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

Collateral Allegations

Sergeant Zachary Sterbling
Officer Douglas Utecht

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

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

Sergeant Zachary Sterbling

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

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2 REVIEW MEMO

Complaint #	19128
Complainant	Darion Reese
Incident Date	June 8, 2019
CCA Investigator	Morgan Givens
CCA Findings	Specialist Kenneth Byrne Officer Anthony Hill Sergeant Kraig Kunz Excessive Force – UNFOUNDED

ANALYSIS

CCA completed a review of CCA Complaint No.19128 by Mr. Darion Reese (M/B/25), alleging Excessive Force against Officers Anthony Hill, #P0425, (M/B/53), Kraig Kunz, #P0571, (M/W/40) and Specialist Kenneth Byrne #PS195, (M/W/48).

Mr. Reese alleged that on June 8, 2019, he was physically removed from the passenger seat of a vehicle parked in the lot of Thornton's gas station located at 2568 West Northbend Road. Further, he alleged that the officers used excessive force when he was forcibly "thrown" into a police cruiser which resulted in an injury to his foot.

On June 8, 2019, at approximately 1:09 AM, Officer Kunz was on patrol and queried the license plate of a vehicle in the parking lot of a gas station; the query returned that said vehicle was associated with a wanted person, Mr. Reese. Officer Hill was working an off-duty detail at the gas station; Specialist Byrne responded to the scene as backup. Upon approaching the vehicle, Officer Kunz requested the occupants provide their identifying information. Mr. Reese the passenger initially provided Officer Kunz with a false name and date of birth; he additionally stated that he did not know his social security number. Mr. Reese was handcuffed by Officer Hill who, from experience, determined that Mr. Reese may be uncooperative due to his "jumpy" temperament and failure to provide identifying information. Officer Kunz again asked Mr. Reese to provide his identifying information; again, he responded with a false identity. Officer Kunz explained to the unknown female driver that a warrant was attached to her license plate because Mr. Reese, who had a warrant for Ohio Revised Code (ORC) 2903.13 Assault and ORC 2909.06 Criminal Damaging, was affiliated with the vehicle; the driver confirmed Mr. Reese's identity.

Officer Kunz searched Mr. Reese incident to arrest prior to attempting to place him in the cruiser. Mr. Reese became agitated and stated, "y'all are going to have to kill me, I'm not going to jail." Officer Hill attempted to deescalate the situation by asking Mr. Reese to relax and stated that he just needed to get the warrant resolved. Mr. Reese' agitation continued to mount, and he began to actively resist the officers; he pulled away from the officers and resisted being placed in the cruiser by putting both of his feet on the outside of the cruiser door to prevent himself from being put into the cruiser. Officers Hill, Kunz and Specialist Byrne were able to get his feet from the side of cruiser by forcibly putting him back inside the cruiser. Mr. Reese then used his feet to keep the door from shutting, but given the time of day, it was dark and BWC did not show where his feet were placed at the time that the officers attempted to shut the door. Upon being placed in the cruiser, Mr. Reese exclaimed, "y'all have my foot caught in the door." Approximately one minute later, Officer Kunz opened the door and removed Mr. Reese' shoe which was lodged in the door. Per DVR footage of Mr. Reese in the back of the cruiser, he can be seen sliding his foot out of his shoe, which was caught in the door, he further moved his handcuffs from behind his back to in front of his person by lifting his legs through his arms which were handcuffed. Mr. Reese was transported to the Hamilton County Justice Center (HCJC) who refused him based on his allegations that an unknown officer slammed his foot in the door, resulting in his foot being injured. Mr. Reese was taken to the University of Cincinnati Medical Center (UCMC), where he was escorted in by wheelchair; he later walked out, without assistance, after stating that he was not injured. Officer Kunz and Mr. Reese departed UCMC and later arrived at the HCJC. Mr. Reese was arrested for ORC §2921.33 Resisting Arrest and ORC §2921.31 Obstructing Official Business.

CPD Policy §12.545 Use of Force states, “When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more.” The policy defines actively resisting arrest as, “Making physically evasive movements to defeat an officer’s attempt at control, including fleeing, bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.” Officer Kunz arrested Mr. Reese for his active warrants and Mr. Reese made physically evasive movements such as putting his feet on the outside of the cruiser to prevent being taken into custody. The officers’ use of force was permitted, given Mr. Reese’ active resistance and statements that he was not getting in the cruiser.

In Officer Kunz’ interview, he stated, “once we got the door open to where we were getting him in, he spread his feet apart, his legs apart with one foot on the door that was opened and one in the frame to prevent us from putting him in.” Officer Kunz went to the other side of the cruiser to attempt to pull him through from the other side, but Officer Hill and Specialist Byrne were able to get the door shut. Officer Kunz did not see Mr. Reese’ foot in the door frame when the door was shut.

In Officer Hill’s interview, he stated, “He was kicking, but we got him in the car, he was like trying to kick the door and we had to push the door close.” Mr. Reese stated they had his foot in the door, but Officer Hill explained that his foot could not be stuck in the door if he was able to get his handcuffs in front of him. Lastly, in Specialist Byrne’s interview, he stated, that he heard Mr. Reese state that his foot was stuck in the door after the door was shut. He further stated, “We didn’t put his foot in the door and slam it. Not on purpose or anything like that. I mean, if he had his foot in the door when it was being closed its because he put his foot there to try to keep us from closing the door.”

CCA found no evidence that the involved officers intentionally slammed Mr. Reese’s foot in the door or had knowledge of his foot being in the door prior to it being shut. Given the amount of resistance displayed throughout the incident, it is reasonable that they believed he used his feet to push against Officer Hill and Specialist Byrne as he did earlier in the incident to prevent them from placing him in the cruiser. Mr. Reese’ ability to almost immediately remove his foot from the shoe lodged in the door, coupled with his statement to CPD after he arrived at the hospital that he was not injured, lends toward the officer’s version of what occurred.

CCA interviewed Officers Hill, Kunz, and Specialist Byrne and reviewed CPD forms and Body Worn Camera (BWC) footages. The BWC footage corroborated the officers’ version of what occurred. Neither Officers Hill, Kunz nor Specialist Byrne used force that was excessive as Mr. Reese alleged. For the foregoing reasons, the evidence supports a conclusion that this allegation of Excessive Force is Unfounded.

FINDINGS

Specialist Kenneth Byrne
Officer Anthony Hill
Sergeant Kraig Kunz

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

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Complaint #	19165
Complainant	Tyrone Smith
Incident Date	July 14, 2019
CCA Investigator	Morgan Givens
CCA Findings	<u>Original Allegations</u> Officer Carlos Sherman Improper Stop – EXONERATED Excessive Force – EXONERATED <u>Collateral Allegation</u> Officer Carlos Sherman Improper Procedure – SUSTAINED

ANALYSIS

Original Allegations

Allegation 1: Improper Stop

Mr. Tyrone Smith (M/B/27) alleged that Officer Carlos Sherman (M/B/46) improperly stopped him; Officer Sherman had placed a ticket on the windshield of the vehicle and Mr. Smith did not understand the reason for their continued contact.

On July 14, 2019, Officer Sherman observed an unoccupied, running vehicle parked in the fire lane of Kroger located at 4777 Kenard Avenue. Officer Sherman placed a citation on the windshield of the vehicle and waited for the owner of the vehicle to return. Mr. Smith, Ms. Shaneca Myles, and three children arrived at the vehicle; Mr. Smith and Ms. Myles approached Officer Sherman's cruiser at his request. Officer Sherman requested both of their contact information. Mr. Smith stated they already had the citation and questioned why he needed to provide his information. Officer Sherman stated, "If you want to, we can dance, I can dance with you all day. One thing I hate is liar." Officer Sherman then exited his cruiser. Mr. Smith walked away towards the entrance to Kroger; Officer Sherman called for backup. Upon Mr. Smith's return, approximately 10 seconds, Mr. Smith stated, "Okay, you want my social, are you going to write it down or just stand there?" Officer Sherman replied, "I'm going to stand here and wait for backup because I don't like the way that you're acting." Officer Douglas Horton (M/W/39) arrived, and Mr. Smith was arrested by Officer Sherman for Obstructing Official Business (Ohio Revised Code ORC) 2921.31) and escorted to his cruiser.

CPD Procedure § 12.205 Traffic Enforcement directs officers to take the appropriate enforcement action(s) whenever a traffic violation is detected. Additionally, according to CPD Policy §12.554

Investigatory Stops, “The arrest occurs when the citizen is no longer free to leave, and the officer has the intent to arrest. The arrest must be supported by probable cause to believe the citizen is coming or has committed a criminal offense.” Officer Sherman reported to CCA that he wrote one ticket for leaving the vehicle running. Upon Mr. Smith’s and Ms. Myles’s return to the vehicle, Officer Sherman asked them to walk back towards his cruiser. In his interview with CCA, Officer Sherman stated that he wanted Mr. Smith’s identifying information so that he could add Mr. Smith to a “second ticket,” believing that Mr. Smith was the driver of the vehicle. When Mr. Smith refused to provide his information, the situation escalated; Officer Sherman exited his cruiser and requested backup. The evidence does not disprove Officer Sherman’s assertion that he sought to detain Mr. Smith for the purpose of issuing him a traffic citation, and the weight of the evidence favors that assertion. Therefore, CCA found that Officer Sherman did not violate CPD policy, procedure, or training when he stopped Mr. Smith.

Allegation 2: Excessive Force

Mr. Smith alleged that as he was placed into the cruiser, Officer Sherman pushed him, which caused Mr. Smith to hit his head on the outside of the door prior to being placed in the cruiser.

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

As Officer Sherman attempted to retrieve Mr. Smith’s phone from his hand, Mr. Smith tensed his body and Officer Sherman pushed his body against Mr. Smith to retrieve the phone. Per Body Worn Camera (BWC) footages, Mr. Smith’s head did hit the outside of the cruiser at the time when Officer Sherman went for Mr. Smith’s phone. Officer Sherman denied intentionally hitting Mr. Smith’s head on the door and told CCA that Mr. Smith tried to prevent him from obtaining Mr. Smith’s phone. Per Body Worn Camera (BWC) footages, at the time of the incident, Officer Sherman denied that he pushed Mr. Smith’s head into the door; he also denied the allegation in his interview with CCA. Officer Sherman transported Mr. Smith to the Hamilton County Justice Center (HCJC). CCA found no evidence that Officer Sherman intentionally hit Mr. Smith’s head on the cruiser and found that Officer Sherman did not violate CPD policy, procedure, or training.

Collateral Allegation

Allegation 3: Improper Procedure

Before he was transported to HCJC, Mr. Smith alleged that Officer Sherman hit his head against the cruiser door frame; in his interview, Officer Sherman confirmed that Mr. Smith accused him the alleged misconduct. Although Officer Sherman denied that he intentionally caused Mr. Smith to hit his head, CPD Policy §15.100 Citizen Complaints and Reports of Favorable Police Conduct states, “If a citizen objects to an officer’s conduct, that officer will inform the citizen of their right to make a complaint. The officer will provide the citizen Form 648CCI, Citizen Complaint Information brochure and a Form 648, Citizen Complaint. Officers will not discourage any person from making a complaint. Given Mr. Smith’s verbalization of his objection to Officer Sherman’s Conduct, CPD Policy §15.100 required Officer Sherman to inform Mr. Smith of the citizen complaint process, rather than dismiss his grievance. Therefore, CCA found that Officer Sherman did violate CPD Policy, Procedure, or training.

FINDINGS

Original Allegations

Officer Carlos Sherman

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**

Collateral Allegation

Officer Carlos Sherman

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

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Complaint #	19186
Complainant	Nadine McCurdy
Incident Date	July 25, 2019
CCA Investigator	Ikechukwu Ekeke
CCA Findings	<i>Complainants Aurthur and Nadine McCurdy</i> <u>Original Allegations</u> Officers Jerome Herring Officer Justin Bittinger Discourtesy - EXONERATED Abuse of Authority - NOT SUSTAINED <i>Complainant Nadine McCurdy</i> <u>Original Allegation</u> Officers Jerome Herring Officer Justin Bittinger Improper Procedure - EXONERATED

Complainants Aurthur and Nadine McCurdy

Original Allegations

Officer Douglas Utecht

Discourtesy - NOT SUSTAINED

Discrimination - NOT SUSTAINED

ANALYSIS

Allegation 1: Improper Procedure

This complaint was filed in connection with a dispute between Ms. Nadine McCurdy (F/B/Unknown) and Ms. Jowanda Spivey (F/B/Unknown) over the custody of Minor A (F/B/11), a minor child, who is Ms. Spivey’s daughter and Ms. McCurdy’s granddaughter. Ms. McCurdy complained that after Ms. Spivey took Minor A to Ms. Spivey’s residence, Officer Justin Bittinger (M/W/35) spoke to the child while blocking Ms. McCurdy’s view. While CPD Procedure §12.900 *Processing Juvenile Offenders* requires certain notification levels of the parent (guardian) when taking a juvenile into custody, CPD Procedure does not require notification of a parent or guardian for voluntary interactions between police and juveniles that occur when those juveniles are not in custody. In this case, Ms. Spivey permitted Officer Bittinger to speak with her child, who was not in police custody. With no apparent evidence of coercion, the child spoke with Officer Bittinger, who explained why the child had to go with her grandmother. Accordingly, the child walked back to Ms. McCurdy and Mr. McCurdy. In the absence of a rule restricting the voluntary interaction between police and juvenile children, CCA concluded Officer Bittinger did not violate CPD rules or relevant law.

Allegation 2: Discourtesy

Ms. McCurdy alleged that on multiple occasions, she and Mr. McCurdy were told to “Shut Up.” Specifically, Officer Herring (M/B/22) told Mr. McCurdy to “Shut Up” when the officers initially attempted to speak to Ms. Spivey. CPD Manual of Rules and Regulations §1.06 requires that officers shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors, and associates. However, according to CPD training, coarse or profane language is sometimes permitted if it qualifies as “verbal stunning.” According to CPD Training Bulletin #2001-1, “[v]erbal stunning is a technique utilizing voice volume, inflection, and language to control a person who is not responding to voice commands.” In this case, according to the BWC footage and statements from Officers Herring and Bittinger, Mr. McCurdy did not comply with their request to remove himself from the situation involving his daughter as the officers tried to de-escalate the state of affairs, whereby his presence seemed to escalate the situation between Ms. Spivey and those around her. Officer Herring warned Mr. McCurdy that he would be arrested for “disorderly conduct” if he did not get in his car. According to the BWC footage, neither officer told anyone to shut up, including Mr. and Ms. McCurdy. Furthermore, though Mr. McCurdy believed he shouldn’t have been threatened to be arrested, the officers had the discretion to gain his compliance and de-escalate the argument (disorderly conduct) between the people with Ms. Spivey and Mr. McCurdy.

Ms. McCurdy also complained that Officer Douglas Utecht (M/W/37) (the plainclothes officer at the front desk of District 3) interrogated and told her and Mr. McCurdy to “Shut Up.” As for the allegation that Officer Utecht interrogated Ms. McCurdy and Mr. McCurdy, Officer Utecht is not prohibited from asking questions of citizens, especially in cases where those citizens were neither in the custody of the police nor subject to any police coercion. Also, in this case, without audio or BWC footage corroborating Officer Utecht’s or Ms. McCurdy’s version of what occurred, CCA cannot determine whether harsh words or tone alleged were used or warranted.

Allegation 3: Discrimination

Ms. McCurdy complained that Officer Utecht stated. “Shut up [black racial slur]” to her and Mr. McCurdy. Officer Utecht denied the allegation. Conversely, there would be no acceptable basis for using a slur under verbal stunning or any other CPD rule or procedure. CPD’s Manual of Rules and Regulations § 1.23 provides that members shall not express, verbally or in writing, any prejudice or offensive comments concerning personal characteristics, including race, color, and ethnicity. Furthermore, City of Cincinnati Administrative Regulation No. 25 prohibits discriminatory harassment based on race. In this case, the lack of corroborating audio or video footage¹ leaves CCA unable to determine whether the racial slur was used. Therefore, CCA has insufficient facts to decide whether the alleged misconduct occurred.

Allegation 4: Abuse of Authority

Ms. McCurdy complained Officers Herring and Bittinger wrongly informed Mr. McCurdy he did not have a valid driver’s license and that he could not drive. After checking with the BMV, Mr. McCurdy found out there was no suspension on his license. CPD Manual of Rules and Regulations Cincinnati Police Department Discipline Philosophy states the authority to deprive persons of their liberty, serve search and arrest warrants, and investigate a person’s activities can be abused. CPD Procedure §12.205 Traffic Enforcement authorizes officers “[t]o employ discretion as directed in borderline cases when: There is a reasonable possibility of human error in judgment on the part of either the police officer or the public... [t]ake appropriate enforcement action whenever a violation is detected, including provable violations determined as the result of accident investigations.” When interviewed, Officer Herring stated he notified Mr. McCurdy of his invalid license due to a query of Mr. McCurdy’s license. Without corroborating evidence that Officers Herring and Bittinger intentionally falsely notified Mr. McCurdy that he had an invalid license, CCA has insufficient facts to decide whether the alleged misconduct occurred.

Observation:

In this case, CCA is concerned regarding Officer Utecht’s statements, “you may have been lying... fill out whatever you want.... well, we’re going to write him a ticket if he’s driving... you know the complaint is going to happen so he can get whatever.” Though CCA did not possess further evidence of Ms. McCurdy’s discrimination allegation about Officer Utecht, BWC shows Mr. McCurdy was not only frustrated by his interaction with Officers Herring and Bittinger, but he was also frustrated by the assertions of Officer Utecht in response to Mr. McCurdy attempting to file a complaint. Officer Utecht’s statements regarding McCurdy’s circumstance and complaint could be viewed as an attempt to dissuade, discourage, or retaliate against the complainant submitting a complaint, which would violate CPD Procedure §15.100 Citizen Complaints and Reports of Favorable Police Conduct. Officers would do well

¹ Though non-uniformed assignment officers “functioning in a law enforcement capacity where enforcement action may be possible” or “identifying themselves as law enforcement” are required to wear and power on their BWC effective April 15, 2021, they were not required to wear or power on BWC while managing the front desk at the time of this incident.

to avoid making similar statements to future complainants. CCA will monitor any similar interactions in future cases and make any appropriate findings and recommendations.

FINDINGS

Complainants Aurthur and Nadine McCurdy

Original Allegations

Officers Jerome Herring
Officer Justin Bittinger

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

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

Complainants Nadine McCurdy

Original Allegation

Officers Jerome Herring
Officer Justin Bittinger

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

Complainants Aurthur and Nadine McCurdy

Original Allegations

Officer Douglas Utecht

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

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

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Complaint #	19220
Complainant	Shane Satterfield
Incident Date	September 24, 2019

CCA Investigator	Jessalyn Goodman
CCA Findings	Officer Thomas Buttlerwerth Discrimination – NOT SUSTAINED Lack of Service – UNFOUNDED Discourtesy – UNFOUNDED

ANALYSIS

Allegation 1: Discrimination

Mr. Shane Satterfield (M/B/48), alleged that Officer Thomas Buttlerwerth (M/W/24), discriminated against him based on his decision to not pursue charges against Ms. Jennifer Coburn’s (F/W/51), traffic infractions and cite Mr. Satterfield; all decisions Officer Buttlerwerth made without speaking to the passengers in Ms. Coburn’s vehicle or nearby witnesses. Per CPD’s Procedure Manual, officers shall not express any prejudice concerning race, sex, religion, national origin, lifestyle, or similar personal characteristics. In his statement, Officer Buttlerwerth denied the allegation. He stated both drivers advised Ms. Coburn’s vehicle was at a stop sign and when she started to advance, her vehicle rolled back and struck Mr. Satterfield’s vehicle; based on their statements, Officer Buttlerwerth believed Mr. Satterfield failed to “give a reasonable amount of distance” between their vehicles and was in violation of Cincinnati Municipal Code (CMC) § 506-8 *Assured Clear Distance Ahead (ACDA)*. CCA reviewed CPD’s RMS database to determine if Officer Buttlerwerth had a pattern of similar decisions in other vehicular accidents; however, the OH-1 form, designed by The Ohio Department of Public Safety, does not include racial information. There is no additional information to validate or refute the allegations of discrimination or determine the basis for Officer Buttlerwerth’s discretion and actions towards Ms. Coburn and Mr. Satterfield. Therefore, CCA was unable to determine whether Officer Buttlerwerth was within CPD’s policy, procedure, and training.

Allegation 2: Lack of Service

Mr. Satterfield alleged that Officer Buttlerwerth did not provide adequate service because he did not speak to witnesses. In his statement, Officer Buttlerwerth stated he did not “catch” Mr. Satterfield’s report of witnesses when it was first mentioned; when he mentioned it afterwards, Officer Buttlerwerth had “already made up [his] mind” but they were “not going to discuss this here.” BWC footage confirmed Mr. Satterfield twice advised Officer Buttlerwerth there were two witnesses to the accident; after Officer Buttlerwerth decided to issue the citation, he said, “We’re not going to contest this here,” but did not state, “There is no need for me to talk to them,” or “Because I don’t have to.” CPD Procedure § 12.225 *Vehicular Crash Reporting* states officers must conduct a thorough investigation and accurately document vehicular crashes while making every effort to ensure the safety of the community and return to the roadway to a normal traffic pattern. The procedure requires for officers to assess for medical assistance, ensure the vehicles are not impeding traffic, and to complete necessary paperwork; it does not specify that officers are required to canvas for, or necessarily speak to, witnesses as part of the “thorough investigation.”

Further, Mr. Satterfield stated that Officer Buttlerwerth did not cite Ms. Coburn for her invalid insurance. BWC footage showed Ms. Coburn state she had valid insurance and provided a card to Officer Buttlerwerth; Ms. Coburn appeared unaware she had the insurance card for a different vehicle when

confronted with the discrepancy and reported the card also covered her vehicle. In his statement, Officer Buttlerwerth explained that her insurance card was valid, but it was for a different vehicle; he was unable to verify she had current insurance on the vehicle without a physical copy. CPD Procedure § 12.205 *Traffic Enforcement* states officers “may employ discretion in ‘borderline cases’ when...there is a reasonable possibility of human error in judgment on the part of...the public.”

Additionally, Mr. Satterfield reported that Officer Buttlerwerth would not allow the drivers to exchange information. BWC footage showed that Officer Buttlerwerth initially suggested the drivers could exchange information; he did not make any further comments related to the drivers’ exchange of information prior to leaving the scene. CCA concluded there is no indication that Officer Buttlerwerth failed to provide adequate service related to the investigation, documentation, and report of the vehicular accident.

Allegation 3: Discourtesy

Mr. Satterfield alleged Officer Buttlerwerth Bishop displayed an unprofessional attitude. 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. BWC footage did not capture any footage to show discourtesy or unprofessional behavior by Officer Buttlerwerth. There is no indication Officer Buttlerwerth violated CPD training, policy, or procedure as alleged.

Recommendation #R2134:

Bias-Free Policing (Discrimination or Prejudicial Treatment)

To address complaints related to equitable treatment of those involved in vehicular accidents, CCA recommends CPD consider a revision to CPD Procedure § 12.225 *Vehicular Crash Reporting* that would require officers who respond to traffic accidents to complete documentation similar to a contact card that would include racial information for the drivers involved.

CCA has received multiple complaints that race has been a factor in officers’ decisions when they render determinations regarding fault in vehicular accidents. Cincinnati Administrative Code Article IV, Section 4-A *Duties with Respect to Racial Profiling* states that no member of the police force shall engage in racial profiling, to mean the detention, interdiction, or disparate treatment of an individual, using the racial or ethnic status of such individual as a factor. In an effort to track data to prevent racial profiling, it requires CPD officers to complete contact cards for all motor vehicle stops; the contact card requires specific information, including race. However, CPD Procedure § 12.225 *Vehicular Crash Reporting* does not require officers to complete a contact card; instead, officers complete a State of Ohio Traffic Crash Report, Form OH-1. As designed by the Ohio Department of Public Safety, the OH-1 does not include a field to input involved parties’ racial or ethnic information. Therefore, it is not possible to obtain data and conduct an analysis to research the community’s concerns about the possibility of disparate treatment based on race. To address these concerns, CPD should require officers to track this information.

FINDINGS

Officer Thomas Buttelwerth

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

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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6

Complaint #	19269
Complainant	Rhame Giles
Incident Date	November 13 and 15, 2019
CCA Investigator	Jessalyn Goodman
CCA Findings	<p><u>Original Allegations</u></p> <p><i>November 13, 2019</i></p> <p>Officer Kevin Broering Improper Stop - EXONERATED Improper Search - EXONERATED Improper Search - EXONERATED Harassment - NOT SUSTAINED</p> <p>Officer Mark McChristian Officer Mark Bode Improper Search - EXONERATED</p> <p><i>November 15, 2019</i></p> <p>Sergeant Matthew Ventre Improper Stop - EXONERATED Improper Search - EXONERATED Improper Search - EXONERATED</p> <p>Sergeant James Davis Improper Search - EXONERATED</p> <p><u>Collateral Allegations</u></p>

November 13, 2019

Officer Kevin Broering
Improper Procedure (Contact Card) - SUSTAINED

Sergeant James Davis
Harassment – NOT SUSTAINED

ANALYSIS

Original Allegations

November 13, 2019

Allegation 1: Improper Stop (Officer Broering)

On November 13, 2019, Mr. Rhame Giles (M/B/24) alleged he was improperly stopped by Officer Broering (M/W/44). Officer Broering stated his reason for stopping Mr. Giles was that he discovered warrants for Mr. Giles after observing Mr. Giles drive with a window tint violation, which prompted Officer Broering to query Mr. Giles's license plates. According to CPD Procedure § 12.554, *Investigatory Stops*, police are allowed to stop citizens when they have reasonable suspicion that they have committed or are about to commit a crime. Moreover, under Procedure § 12.555, *Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders*, officers may detain and arrest individuals with active warrants. CCA Investigators reviewed records with the Clerk of Court's Office that corroborated the existence of those warrants. Therefore, Officer Broering's stop of Mr. Giles was within CPD's policy, procedure, and training.

Allegation 2: Improper Search (Officer Broering)

Mr. Giles also alleged he was improperly searched. BWC evidence established that Officer Broering informed Mr. Giles as to why he was pulled over and asked him to exit the vehicle. Officer Broering handcuffed Mr. Giles then searched him. According to CPD Procedure §12.600, *Prisoners: Securing, Handling, and Transporting*, all prisoners must be thoroughly searched after being handcuffed. As Mr. Giles was under arrest at this point, the search of his person was legal and consistent with CPD policies as a search incident to arrest. No other searches of the persons present in the vehicle were found to be improper.²

² According to BWC footage and Officer McChristian's statement to CCA, after Officer McChristian observed marijuana in the vehicle in plain view, he asked AC to exit the vehicle and handcuffed him. Officer McChristian then frisked AC.

According to CPD Procedure 12.554, "If a frisk is conducted, the officer must be able to articulate specific facts which led them to believe the individual could be armed and dangerous." In this case, Officer McChristian reported to CCA that AC was frisked due to the connection between the drugs found on AC and the association between drugs and firearms. Additionally, according to the BWC, Officer Broering stated at the scene that he was handcuffing AC because Mr. Giles had stopped the car in the center lane while being pulled over, which Officer Broering believed to be suspicious behavior. Under those circumstances, the frisk of AC was consistent with policy, procedure, and training.

After searching the car, Officer McChristian recovered the firearm from under AC's seat. AC claimed ownership of the firearm and was then arrested and searched beyond the earlier frisk. Given AC's arrest, this search of his person was allowed.

Allegation 3: Improper Search (Officers Broering, McChristian, and Bode)

Officers Broering, McChristian (M/W/40), and Bode (M/W/42) also searched Mr. Giles's vehicle. According to Section 12.1.3 of CPD's Investigations Manual, which allows searches of persons and vehicles incident to arrest, the officers were permitted to search the vehicle, since Mr. Giles was taken into custody. Given that before the search, Officer McChristian observed marijuana in the vehicle in plain view, the officers also had probable cause to search the vehicle and seize the drugs under Section 12.1.6 of the Investigations Manual and the automobile exception to the Fourth Amendment's search warrant requirement. CCA determined that the actions of Officers Broering, McChristian, and Bode were within CPD's policy, procedure, and training.

Allegation 4: Improper Procedure (Contact Card) (Officer Broering)

CPD Procedure §12.205 Traffic Enforcement stipulates that a Contact Card must be completed for all motor vehicle traffic stops. A review of the CPD database failed to produce a contact card for Mr. Giles, who was operating the vehicle involved during the November 13, 2019 traffic stop. As Officer Broering initiated that traffic stop but failed to complete a contact card, CCA determined Officer Broering's actions were not within CPD policy, procedure, and training.

November 15, 2019

Allegation 5: Improper Stop (Sergeant Ventre)

On November 15, 2019, Sergeant Ventre (M/W/40) stopped Mr. Giles at the request of Sergeant Davis (M/W/45). Sergeant Davis had observed the vehicle driving with tint violation while on duty in plainclothes. Police are allowed to stop vehicles when they have reasonable suspicion of a crime, according to CPD Procedure § 12.554. Furthermore, Ohio Revised Code (ORC) § 4513.241 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 vehicle. 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. The law and CPD policy both permit officers to rely on their observations alone, without using a tint meter, in judging if windows are excessively tinted. Vehicle stops based on such observations are permissible. Therefore, Sergeant Ventre's actions were within CPD policy, procedure, and training.

Allegation 6: Improper Search (Sergeant Ventre)

According to Sergeant Ventre's statement to CCA, he observed marijuana smoke and smelled the odor of marijuana after stopping Mr. Giles's vehicles. BWC footages corroborates Sergeant Ventre's assertion that he smelled marijuana; the video shows him confronting the passengers and asking them to tell him who was smoking the drug.

According to the BWC, the officer ran all the passengers' information. One of the women came back with a *capias*, he asked all the occupants to exit the vehicle. He did not search or frisk either woman, which was in compliance with CPD policy. He frisked Mr. Rhame Giles, the driver, and then frisked the passenger, Mr. Rhameko Giles. Under Ohio law, officers are permitted to search persons who they have

stopped in automobiles when those officers smell the odor of marijuana coming from the vehicle. Therefore, Sergeant Ventre's frisks of the vehicle occupants was consistent with the law and police policy.³

Allegation 7: Improper Search (Sergeants Ventre and Davis)

Sergeant's Ventre and Davis also searched the vehicle, which was permissible incident to arrest under Section 12.1.3 of CPD's Investigations Manual, given that Rhameko Giles was arrested onsite for drug possession. The search was also justified under the automobile exception to the Fourth Amendment's search warrant requirement, given the odor of marijuana smelled by Sergeant Ventre. Therefore, Sergeant Ventre and Sergeant Davis's actions were within CPD policy, procedure, and training.

November 13 and 15, 2019

Allegation 8: Harassment (Officer Broering and Sergeant Davis)

Mr. Rhame Giles alleged that Officer Broering was harassing him. At the time of these incidents, CCA defined harassment as "behavior that threatens or torments somebody, especially persistently." At a minimum, there must be proof of a pattern of wrongdoing to substantiate this allegation.

Ultimately, the only repeated involuntary contact between an officer and Mr. Giles for which CCA had uncontroverted evidence was Sergeant Davis's involvement in the traffic stops of Mr. Giles on both November 13, 2019, and November 15, 2019. Specifically, Sergeant Davis provided backup for Officer Broering during Officer Broering's stop on November 13, and then on November 15, Sergeant Davis asked Sergeant Ventre to stop Mr. Giles, telling Sergeant Ventre that officers had stopped and searched the same vehicle two days prior, finding a weapon. (Sergeant Davis was also present at the stop of Mr. Allen on November 24, 2019, according to the incident report.) While more than one officer told CCA that Mr. Giles was known to be involved with drug dealing and criminal activity, and while his conduct was under scrutiny by members of the Gang Unit, none of the information available to CCA pertaining to the stops of Mr. Giles on November 13th and 15th reveals any instance, let alone a pattern, of an unlawful stop, unlawful search, or conduct with an impermissible motive.

CCA's review of the contact cards for Mr. Giles revealed that he has had at least eight (8) contacts with CPD officers in the last 5 years. Based on the contact cards available, no pattern of stops by a particular officer is discernable. However, it is possible that more contacts or stops of Mr. Giles have occurred but were never documented. For instance, in this case, Officer Broering failed to complete a contact card for his stop of Mr. Giles on November 13, 2019 and he acknowledged that prior contact between himself and Mr. Giles was possible, even though Officer Broering maintained that any such contact would have been "consensual" and would not have resulted in an arrest. Without being able to examine any potential contacts occurring prior to November 13, 2019, CCA is unable to consider whether any of those contacts were improper.

To be sure, the evidence here indicated that later in November (November 24, 2019), CPD stopped a friend of Mr. Giles, Mr. Atlantis Allen, who drove a similar vehicle to Mr. Giles. (Mr. Giles drove a 2015

³ In addition, Rhameko Giles informed Sergeant Ventre that he had pills on him, and Sergeant Ventre placed him in cuffs and searched him, recovering the pills. Rhameko Giles was then arrested for drug possession. Therefore, Sergeant Ventre's search of Rhameko Giles was allowed under CPD policies, cited above, permitting searches incident to arrest.

gray Kia Optima with an Ohio plate, and Mr. Allen drove a 2012 silver Kia Optima with an Ohio plate.) Mr. Giles reported to CCA that he believed the police stopped Mr. Allen thinking Mr. Allen was Mr. Giles due to the similarity of their vehicles. However, CCA reviewed the BWC and did not have audio for the time when police initially addressed Mr. Allen (due to the automatic delayed start in audio recording on BWCs) so CCA cannot confirm Mr. Giles's assertion. In addition, irrespective of the motive for the stop of Mr. Allen, Sergeant Davis was the only officer who was at both Mr. Allen's stop and Mr. Giles's stops.

None of the other officers at Mr. Allen's stop have had any contact with Mr. Giles. Moreover, Mr. Giles was not present when Mr. Allen was stopped. Ultimately, there is insufficient evidence of CPD's interaction with Mr. Allen to support a sustained allegation of harassment pertaining to Mr. Giles.

As a part of his harassment complaint, Mr. Giles also reported that Officer Broering stopped Mr. Donminik Walker and mentioned Mr. Giles's name to Mr. Walker. CCA's records request did not produce any BWC corresponding to the stop of Mr. Walker, which occurred on December 2, 2019. While Officer Broering admitted to CCA that he brought up Mr. Giles to Mr. Walker after stopping Mr. Walker, he could not recall what specifically was discussed, and CCA has obtained no other evidence that sheds light on that conversation.

Given the lack of evidence clarifying any contacts between the officers in this case and Mr. Giles that might have preceded November 13, 2019, and given the lack of proof for the initial conversation that occurred between officers and Mr. Allen on November 24, 2019, CCA concluded that there are insufficient facts to determine whether Officer Broering's actions or Sergeant Davis's actions were within CPD policy, procedure, and training.

Recommendation #2135:

Corrective and Disciplinary

In light of repeated failures by Police Officer Kevin Broering to complete contact cards as required by Cincinnati Police Department policy, CCA recommends that CPD review Officer Broering's performance both before and after the incidents at issue here, including his traffic and pedestrian stops, and that CPD consider taking corrective action to ensure that future contact card violations do not occur by Officer Broering.

CCA's investigation of Improper Stop, Improper Search, and Harassment allegations in this case produced evidence sufficient to sustain Officer Kevin Broering for Improper Procedure for neglecting to submit a contact card as required by CPD policy after a November 13, 2019 traffic stop. This represents Officer Broering's third such contact card violation during the three-year period preceding and including this stop. *See* CCA Case No. 18138 and 18139 (sustaining violations for contact card procedures). This pattern merits review by CPD and consideration of corrective action.

FINDINGS

Original Allegations

November 13, 2019

Officer Kevin Broering

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

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

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

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

Officer Mark McChristian

Officer Mark Bode

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

November 15, 2019

Sergeant Matthew Ventre

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

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

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

Sergeant James Davis

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

Collateral Allegations

November 13, 2019

Officer Kevin Broering

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**

Sergeant James Davis

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

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7

Complaint #	20038
Complainant	Gregory Love
Incident Date	October 18, 2019
CCA Investigator	Jessalyn Goodman
CCA Findings	<u>Original Allegations</u> Specialist Kevin Kroger Officer Richard Minella Improper Seizure – EXONERATED Specialist Kevin Kroger Improper Search – EXONERATED Officer Mary Werner Discrimination – UNFOUNDED <u>Collateral Allegation</u> Specialist Kevin Kroger Officer Richard Minella Improper Procedure – SUSTAINED

Original Allegations

Allegation 1: Improper Seizure

On October 18, 2019, Specialist Kevin Kroger (M/W/43), and Officer Richard Minella (M/W/53), assisted the Vice Squad. They responded to a notification that Mr. Gregory Love (M/B/31), had attempted to solicit prostitution from an undercover Vice Officer and they initiated a traffic stop of Mr. Love's vehicle. The officers arrested Mr. Love and he was charged with Soliciting under Ohio Revised Code (ORC) §2907.24 (A), in addition to a related offense, for offering an "undercover officer \$30.00 for "anal sex" - "the back." See Criminal Complaint.

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. It further states when 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. Under Ohio law, probable cause must be assessed as follows:

The test for establishing probable cause to arrest without a warrant is whether the facts and circumstances within an officer's knowledge were sufficient to warrant a prudent individual in believing that the defendant had committed or was committing an offense. . . . Probable cause is a lesser standard of proof than that required for a conviction, which is proof beyond a reasonable doubt. . . . It requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.

State v. Jordan, 2020-Ohio-689, 145 N.E.3d 357, ¶ 11 (1st Dist.) (internal citations and quotation marks omitted).

Here, the involved officers confirmed the criminal activity before making the arrest. A review of the CIS documents, to include surveillance footage and audio-recordings, verified the officers' probable cause that Mr. Love may have committed a crime. More specifically, that evidence corroborated the charge that Mr. Love offered an undercover officer money in exchange for sexual activity. Therefore, Specialist Kroger's and Officer Minella's stop and arrest of Mr. Love was within CPD policy, procedure, and training.

Allegation 2: Improper Search

Mr. Love alleged he was improperly searched. CPD Investigations Manual and Ohio law both provide that officers are able to search an individual incident to arrest. The officers acknowledged and BWC footage confirmed that after Mr. Love exited his vehicle, Specialist Kroger confirmed he was under arrest; afterwards, Specialist Kroger searched Mr. Love's person. Officer Minella drove Mr. Love's vehicle to the Vice Squad's staging area, which was located nearby. CCA concluded that Specialist Kroger's search of Mr. Love was within CPD policy, procedures, and training.

Allegation 3: Discrimination

Mr. Love stated that he was concerned that the officers' treatment was based on race as they wrongly believed the term "back" (which Mr. Love admitted was used during his conversation with the undercover officer), indicated "anal sex." According to Mr. Love, "I feel like they discriminated against my whole culture because we always say 'back' or 'to back' or 'back' . . . when we telling you to give us space." He clarified he was specifically concerned about Officer Mary Werner (F/W/45) who interviewed him at the District: Mr. Love stated that when he gave a statement to Officer Werner, she stated, "All black people do it," referring to anal sex.

Per CPD's Procedure Manual § 1.06 C, officers shall not express any prejudice concerning race, sex, religion, national origin, lifestyle, or similar personal characteristics.

All officers involved denied their actions and statements with Mr. Love were discriminatory and instead were based on Mr. Love's criminal activity. While being interviewed by CCA, the Vice Officer stated Mr. Love's use of the word "back" clearly referred to anal sex in their interaction. BWC footage captured Officer Werner's interview of Mr. Love; at one time, Officer Werner indicated that "a lot of individuals" seek sexual activity outside of relationships and specified the officers cannot go by "what a person looks like" but never referenced race or ethnicity. There is no indication that Officer Werner discriminated against Mr. Love.

Collateral Allegation

Allegation 4: Improper Procedure

CPD Procedure §12.554, Investigatory Stops stipulates that a Contact Card must be completed any time an officer stops a motor vehicle; further, it states that the Contact Card is required in addition to any other documentation of the incident (e.g., Form 527, Arrest Report.). Specialist Kroger and Officer Minella initiated a traffic stop involving Mr. Love. A review of the CPD database showed that a Contact Card was not completed involving this traffic stop. CCA determined Specialist Kroger's and Officer Minella's failure to complete a contact card was not in compliance with CPD's policy, procedure, and training.

Note: Mr. Love alleged the involved officers fabricated evidence and intentionally used faulty equipment so the judge would believe the officers' statements. This aspect of Mr. Love's complaint is criminal in nature and, therefore, outside of CCA's purview to investigate.

FINDINGS

Original Allegations

Specialist Kevin Kroger
Officer Richard Minella

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

Specialist Kevin Kroger

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

Officer Mary Werner

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

Collateral Allegation

Specialist Kevin Kroger
Officer Richard Minella

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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8 REVIEW MEMO

Complaint #	20173
Complainant	Tracye Pitts
Incident Date	August 13, 2020
CCA Investigator	Dena Brown
CCA Findings	Officer Bryan Stormes Discrimination – UNFOUNDED Discourtesy – UNFOUNDED Officer John Haynes Discourtesy – UNFOUNDED

ANALYSIS

CCA completed a review of CCA Complaint No. 20173 by Ms. Tracye Pitts, (F/B/52), alleging Discrimination and Discourtesy against Officers Bryan Stormes, #P0720, (M/W/45) and John Haynes, #P0467, (M/B/50) (retired 04/17/21). CCA interviewed Ms. Pitts and Officers Stormes and Haynes.

According to Ms. Pitts, on August 13, 2020, she drove on Interstate 75-South near Paddock Road. A vehicle was involved in an accident ahead of her and debris (headlight) travelled into the middle lane. Ms. Pitts drove over a headlight, moved to the far-left lane, and waited for a CPD officer to arrive. Officer Bryan Stormes arrived and instructed her to move her vehicle. Ms. Pitts explained she could not move

because of debris stuck under her vehicle; she preferred to have her vehicle towed to prevent damage. Ms. Pitts stated Officer Stormes raised his voice (yelling) and repeatedly told her to move her vehicle. Eventually, CFD responders removed the headlight.

After Ms. Pitts moved her vehicle to the right side of the highway, Officer Stormes apologized for yelling at her. Ms. Pitts believed Officer Stormes had been "dismissive" of her concerns and statements because she was a woman. His "approach and actions" lacked the empathy Ms. Pitts would have expected as a responder to an accident.

According to Ms. Pitts, when she filed a complaint at District 1, desk Officer John Haynes informed her how to make a complaint and provided information regarding the accident report. However, Officer Haynes did not show Ms. Pitts any consideration or "compassion" regarding the incident. When Ms. Pitts questioned his demeanor, he responded, "That's my personality." Ms. Pitts believes both officers could benefit from customer service training.

CCA interviewed Officers Stormes and Haynes. Officer Stormes confirmed he responded to assist Officer Ryan Dettmer, who was investigating a motor vehicle accident with injuries on I-75 South near Paddock Road. Officer Stormes confirmed his interaction with Ms. Pitts as stated above but clarified that while his "tone might have been a little loud because traffic was still passing by," he was not discourteous or discriminatory. Similarly, Officer Haynes confirmed he assisted Ms. Pitts on how to obtain a copy of the accident form and how to file a complaint but denied any discourtesy to Ms. Pitts.

CCA reviewed CPD's forms, databases (including RMS, ETS, and EVT), Officer Stormes's Body Worn Camera (BWC) footage, and officer statements. That evidence corroborated the officers' version of what occurred.

There is no evidence establishing that Officer Stormes's conduct or comments toward Ms. Pitts were motivated by her gender. Furthermore, while CPD's Manual of Rules and Regulation requires officers to "always be civil, orderly, and courteous in dealing with the public," Officer Stormes conduct in this case, under the circumstances, does not rise to the level of discourtesy under the policy. Officer Stormes admitted he raised his voice, but only because they were on the interstate with active traffic.

Ms. Pitts alleged Officer Haynes was discourteous because he did not show compassion for her incident. At the time of the incident, desk officers were not required to wear BWCs. However, although there is no BWC recording of this incident, her description of Officer Haynes's behavior, even if assumed to be true, does not constitute a violation CPD's policy, procedure, and training. A lack of a compassionate demeanor alone does not constitute discourtesy under the policy.

FINDINGS

Officer Bryan Stormes

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**

Officer John Haynes

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

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