

Date: November 17, 2022

Case: #22056

Investigator: Joseph Vesper

Complaint Received: March 22, 2022.

Complainant: Brandy Flantoill

CCA completed an investigation of CCA Complaint No. 22056 by Brandy Flantoill, F/B/46. This report is intended to convey the conclusions reached as a consequence of the investigation, and the basis for those conclusions. This report does not purport to summarize all evidence uncovered during the course of the investigation, nor is it intended to summarize the entirety of CCA's file on this matter.

Complaint Summary:

Date: February 3, 2022

Time: 17:43

Location: [REDACTED] Cincinnati, OH 45229

Ms. Flantoill alleged that on Thursday, February 3, 2022, at 17:43 at [REDACTED] Cincinnati, OH 45229, Cincinnati Police Department Officers Nathan Hallman, Braeden Knapp, Alexander Geers, Michael Massey, Richard Sulfsted, and Joseph Bricker, responded to her apartment when her ex-boyfriend, Witness A, called to report an argument between him and Ms. Flantoill. When the police responded, Witness A met the Officers in the hallway. Ms. Flantoill's door was then kicked in, and she was placed under arrest at gun and TASER point. During the arrest she was thrown into a wall, to the floor, and Officer Massey was on her back. Ms. Flantoill advised the officers that she could not breathe but was told that if she could talk, she could breathe. Once placed in the cruiser Ms. Flantoill requested a supervisor but was told none would be notified.

Allegations:

Improper Pointing of a Firearm
Excessive Force

Collateral Allegations:

Discourtesy
Improper Search
BWC

Persons Involved:

Officer Nathan Hallman, #PO402, M/W/29. (Subject Officer)
Officer Braeden Knapp, #PO426, M/W/25. (Subject Officer)
Officer Joseph Bricker, #PO212, M/W/26. (Subject Officer)

Officer Alexander Geers, #PO392, M/W/33. (Subject Officer)
Officer Michael Massey, #PO371, M/W/40. (Subject Officer)
Officer Richard Sulfsted, #SO699, M/W/56. (Subject Officer/Retired)
Witness A, M/W/Unknown (Witness)

Evidence Reviewed:

Hamilton County Clerk of Courts
CPD Records Management System (RMS)
CPD Internal Investigation Section (IIS) Report
CPD Computer Aided Dispatch (CAD)
Body-Worn Camera (BWC)
Statements by officers, and complainant

Significant Discrepancies or Clarifications:

Ms. Flantoill claimed that her door was kicked in and the Officers entered. BWC proved that Officers knocked on the door and commanded her to come out of the apartment. Ms. Flantoill reluctantly then opened the door to her apartment, after she had been commanded several times, and walked out into the hallway. Officers never kicked the door in/down to effectuate the arrest.

Ms. Flantoill alleged that Officer Massey was “on” her back during the arrest. BWC proved that while several officers were behind Ms. Flantoill, no officer placed their knee on nor straddled her back.

Ms. Flantoill claimed that she requested a supervisor and was told none would be notified by the Officers. BWC proved that Ms. Flantoill never asked for a supervisor. Furthermore, Sergeant Sulfsted, who was a supervisor at the scene, talked to Ms. Flantoill and told her that she would “be going to jail,” that night.

Earlier this year Sergeant Sulfsted retired from the Cincinnati Police Department. As a result, CCA mailed a request for statements to Sergeant Sulfsted but received no response.

Authorities:

CPD Procedure §12.545 Use of Force
CPD Manual of Rules and Regulations §1.21 (A) and §1.06 (A) (B) Failure of Good Behavior
Graham v. Connor, 490 U.S. 386 (1989).
CPD Procedure §12.550 Discharging of Firearms
Maryland v. Buie, 494 U.S. 325 (1990).
State v. Spradlin, 187 Ohio App. 3d 767, 2010-Ohio-2140.
State v. Sharpe, 174 Ohio App.3d 498, 2008-Ohio-267, 882 N.E.2d 960, ¶ 48 (2d Dist.). *Kentucky v. King*, 563 U.S. 452, 460, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011).
CPD Procedure §12.540 Body Worn Camera System

Analysis:

Allegations I-VI: Excessive Force

Ms. Flantoill alleged that during the arrest she was thrown into a wall, to the floor, and officer Massey was on her back. Ms. Flantoill believed this conduct to be excessive force in her arrest.

Credible evidence, specifically, relevant BWC footage, and corroborating subject officer statements, proved that the Officers Hallman, Knapp, Bricker, Geers, Massey, and Sergeant Sulfsted did use force against Ms. Flantoill. However, despite the action taken, CPD Procedure Manual §12.545 permitted the conduct that occurred. Specifically, the evidence establishes the following:

- Per BWC as Officers Hallman, Knapp, Bricker, Geers, Massey, and Sergeant Sulfsted attempted to arrest Ms. Flantoill she failed to obey officer commands, tensed her arms, and pulled away from the Officers. Officers Hallman, Knapp, Bricker, Geers, Massey, and Sergeant Sulfsted, eventually resorted to “hard hands” after Ms. Flantoill failed to follow the command, “put your hands up.”

CCA found that the force used was reasonably necessary to effectuate the arrest. Further noted, once Ms. Flantoill was handcuffed and relinquished resistance the arresting Officers ceased using force against her. The Officer's use of force was objectively reasonable in light of the applicable factors for evaluating force under the Fourth Amendment and CPD policy. Therefore, the actions of Officers Hallman, Knapp, Bricker, Geers, Massey, and Sergeant Sulfsted were consistent with CPD's policy, procedure, and training.

Allegation VII: Improper Procedure (Use of Force)

Ms. Flantoill alleged that during the arrest she had a TASER pointed at her person and that such action should not have occurred during her arrest.

Credible evidence, specifically, relevant BWC footage, proves that Officer Geers pulled his TASER during the incident while Ms. Flantoill opened the door to her apartment. However, despite the action taken, CPD Procedure Manual §12.545 Use of Force and CPD's Tactical Patrol Guide, permitted the conduct that occurred. Specifically, the evidence establishes the following:

- Per BWC, Officer Geers attempted to arrest Ms. Flantoill who was uncooperative when given commands to step out of her apartment. The TASER was withdrawn to gain compliance from an individual who was actively resisting arrest, and as less than lethal way to effectuate the arrest as Ms. Flantoill emerged.

Therefore, the actions of Officer Geers were consistent with CPD's policy, procedure, and training.

Allegation VIII-IX: Improper Pointing of a Firearm

Ms. Flantoill alleged that during the arrest she had firearms improperly pointed at her person and this was an unwarranted use of force in her arrest.

Credible evidence, specifically, relevant BWC footage, proves that Officer Knapp pointed his firearm at Ms. Flantoill, while Officer Massey, withdrew his firearm but did not point the firearm at

her. Despite the actions taken, CPD Procedure Manual §12.550 permitted the conduct that occurred. Specifically, the evidence establishes the following:

- In this case, per BWCs, Officers Knapp, and Massey withdrew their firearms. However, only Officer Knapp pointed his firearm at Ms. Flantoill as she exited her apartment and reached for her bathrobe. She disregarded commands to immediately put her “hands up” issued by Officer Knapp.
- At all times during the incident both Officers kept their index fingers at the side, along the trigger guard, of their firearms.
- As previously stated, Ms. Flantoill was allegedly armed with a firearm according to information communicated to Officer Knapp, and Massey via ECC and Witness A.

Therefore, the actions of Officers Knapp and Massey were consistent with CPD’s policy, procedure, and training.

Collateral Allegations:

Allegation X: Improper Search

During the investigation CCA identified a collateral issue for evaluation. Officer Hallman exceeded the scope of a performed protective sweep/search upon the apartment of Ms. Flantoill.

CPD Manual of Rules and Regulations §1.21 Failure of Good Behavior (A) states, “Members shall not make any arrest, search, or seizure not in accordance with law. The Fourth amendment to the United States Constitution outlines laws related to searches and seizures, The right of the people to be secure in their persons, house, papers, and effects against unreasonable searches and seizures, shall not be infringed upon and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and persons or things to be seized.”

However, in addition, “The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene.” *Maryland v. Buie*, 494 U.S. 325 (1990) (emphasis added). Importantly, a safety sweep is not unlimited.

In this case, similarly, Ms. Flantoill was arrested outside of her apartment after she exited and closed her door. Once Ms. Flantoill was secured in handcuffs Sergeant Sulfsted then entered the apartment to find the victim, Witness A. Officer Knapp told Officer Hallman, “Go with him, clear the house,” and Officer Hallman followed Sergeant Sulfsted inside. As Sergeant Sulfsted and Officer Hallman were in the apartment entrance hallway Sergeant Sulfsted called out for Witness A. Officer Bricker responded from outside of the apartment, “the victim is out here,” and Sergeant Sulfsted began to leave. According to BWC, this is when Officer Hallman spotted a firearm, in plain view, in the living room. The firearm was subsequently seized as evidence by Officer Massey who entered and took the firearm out of the apartment.

All of this was proper under the exigent circumstance exception and plain view exception to a warrantless entry and seizure. According to Officer Hallman’s CCA interview statements, he originally entered to find and help a victim of domestic violence who may need immediate emergency aid. Before being alerted by a fellow officer that Witness A was already outside, Officer Hallman could have reasonably believed Witness A was still inside and in need of aid. The

observation and seizure of the firearm was also proper under the plain view exception, as it was in plain view from the apartment's hallway.

However, after the firearm was removed, Officer Hallman continued with a protective sweep that included the bathroom and kitchen of the apartment. This should not have happened.

Notably Officer Hallman could not articulate any reasonable suspicion that another person who posed danger or needed assistance was within the apartment. In Officer Hallman's CCA interview, he stated that he originally entered to find Witness A, however, per BWC he was notified that the victim was outside of the apartment a little after he entered, while he was inside the apartment's hallway. Absent consent from either Witness A, the Defendant, or a search warrant, the full protective sweep that continued should have ended. Officer Hallman should not have proceeded further into other areas of the apartment which included the kitchen and bathroom.¹ Therefore, the actions of Officer Hallman were not within CPD's policy, procedure, and training.

Allegation XI: Discourtesy

Evidence obtained, reviewed, and considered during this investigation established the following violation of CPD policy, procedure, or training. CPD Manual of Rules and Regulations §1.06 Failure of Good Behavior, states under section (A), "Members of the Department shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors, and associates." And under section (B): "Members of the Department shall avoid the use of course, violent, or profane language."

Witness A was in the apartment stairwell recovering from the domestic violence situation. Witness A explained to several Officers the facts and circumstances that led to his 911 call. Per BWC, during the conversation there was confusion related to facts that occurred. Officer Massey stated to Witness A, "Get your fucking story straight, right now!" This comment, aimed at a potential domestic violence victim, was uncivil, discourteous, and unwarranted. Therefore, this action taken by Officer Massey was not consistent with CPD policy, procedure, and training.

Allegation XII: Improper Procedure (BWC)

According to CPD Policy and Procedure Manual §12.540 Body Worn Camera System, officers equipped with a BWC must activate the BWC when the officer arrives on-scene or announces he or she is in the area. The officer's BWC must be activated and must record the incident in its entirety, including responding to calls for service in emergency mode, and traffic stops. Whether they are acting as the primary officer or a backup officer, officers are required to continue to record until the stopped vehicle departs or until officers leave the scene.

In this case, Sergeant Sulfsted failed to activate his BWC and record his interactions with Ms. Flantoill. Only after Ms. Flantoill had been arrested did Sergeant Sulfsted turn on his BWC. CCA was unable to interview Sergeant Sulfsted as to the reason, given his retirement from the Police

¹ In *State v. Sharpe*, 174 Ohio App. 3d 498, 2008-Ohio-267, the Defendant came out of his house and surrendered. Officers then entered, conducted a protective sweep, and contraband was found in plain view. Officers in that case did not have articulable facts from which they might reasonably suspect the premises harbored another person who might launch an attack. Therefore, the court ruled that the search was unreasonable, even though the officers were sincere in their concern over the gun and might have had enough probable cause to then obtain a warrant for a search. Compare, *State v. Spradlin*, 187 Ohio App. 3d 767, 2010-Ohio-2140, where the officers heard multiple voices inside the apartment. Suspect was arrested in the doorway. Protective sweep was justified in that instance.

Department and his failure to respond to attempts to conduct a voluntary interview. However, CCA is aware of no policy permitting officers to fail to turn on their BWCs during key portions of enforcement actions. Such behavior violated CPD Procedure §12.540 Body Worn Camera System. Therefore, this inaction by Sergeant Sulfsted was not consistent with CPD policy, procedure, and training.

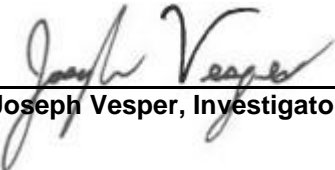
Findings:

Original Allegations

| No. | Allegation | Subject Officer | Involved Citizen | Finding |
|-----|-----------------------------------|------------------|------------------|------------|
| 1 | Excessive Force | Nathan Hallman | Brandy Flantoill | Exonerated |
| 2 | Excessive Force | Braeden Knapp | Brandy Flantoill | Exonerated |
| 3 | Excessive Force | Joseph Bricker | Brandy Flantoill | Exonerated |
| 4 | Excessive Force | Alexander Geers | Brandy Flantoill | Exonerated |
| 5 | Excessive Force | Michael Massey | Brandy Flantoill | Exonerated |
| 6 | Excessive Force | Richard Sulfsted | Brandy Flantoill | Exonerated |
| 7 | Improper Procedure (Use of Force) | Alexander Geers | Brandy Flantoill | Exonerated |
| 8 | Improper Pointing of a Firearm | Braeden Knapp | Brandy Flantoill | Exonerated |
| 9 | Improper Pointing of a Firearm | Michael Massey | Brandy Flantoill | Exonerated |

Collateral Allegations

| No. | Allegation | Subject Officer | Involved Citizen | Finding |
|-----|------------------------|------------------|------------------|-----------|
| 10 | Improper Search | Nathan Hallman | Brandy Flantoill | Sustained |
| 11 | Discourtesy | Michael Massey | Witness A | Sustained |
| 12 | Improper Procedure BWC | Richard Sulfsted | N/A | Sustained |



 Joseph Vesper, Investigator



 Gabriel Davis, Director

Previous Contacts and Commendations for Officers with Sustained Findings:

Officer Nathan Hallman

Previous Contact with CCA

Officer Hallman had no previous contact with CCA in the past three years.

Previous Contacts for CCA Referrals

Officer Hallman had 2 allegations referred to CPD for investigation in the past three years.

| Case Number | Allegation | CPD Finding |
|--------------------|-------------------|--------------------|
| 20109 | Lack of Service | Referred |
| 20078 | Lack of Service | Referred |

Previous Contact with IIS

CCA is unaware of any additional previous contact by Officer Hallman with IIS.

Commendations

Officer Hallman received no commendations in the past three years.

Officer Michael Massey

Previous Contacts with CCA

Officer Massey had no previous contact with CCA in the past three years.

Previous Contacts for CCA Referrals

Officer Massey had 1 allegation referred to CPD for investigation in the past three years.

| Case Number | Allegation | CPD Finding |
|--------------------|-------------------|--------------------|
| 20085 | Lack of Service | Referred |

Previous Contact/s with IIS

CCA is unaware of any additional previous contact by Officer Massey with IIS.

Commendations

Officer Massey received no commendation/s in the past three years.

Sergeant Richard Sulfsted

Previous Contact with CCA

Sergeant Sulfsted had one previous contact with CCA in the past three years.

| Case Number | Allegation | Finding |
|--------------------|--------------------|----------------|
| 21118 | Improper Procedure | Pending |
| 21118 | Discourtesy | Pending |
| 21118 | Excessive Force | Pending |

Previous Contacts for CCA Referrals

Sergeant Sulfsted had no allegations that CCA referred to CPD for investigation in the past three years.

Previous Contact/s with IIS

CCA is unaware of any additional previous contact by Sergeant Sulfsted with IIS.

Commendations

Sergeant Sulfsted received no commendation/s in the past three years.