

Date: September 19, 2022

Case: 21123

Investigator: Morgan Givens

Complaint Received: July 8, 2021

Complainant: Anthony Hogan

Complaint Summary:

Mr. Anthony Hogan alleged that on July 7, 2021, he visited the Kroger Store located at 4777 Kenard Avenue to address an issue with a previously issued money order. During the incident, Mr. Hogan operated an electric wheelchair owned by Kroger. A dispute transpired at the customer service counter and a Kroger manager ultimately called 911.

Mr. Hogan advised the officers he was disabled. He alleged he was dragged out of Kroger and put into a cruiser. Upon arriving at the Hamilton County Justice Center (HCJC), the officers laughed at his condition and stated that he was “faking” and could walk. He also stated that his arms and wrists hurt because of the way he was handcuffed. A nurse at the HCJC ultimately refused to accept Mr. Hogan and he was taken to his residence. Mr. Hogan asked for a supervisor but was not granted the opportunity to speak with one.

Allegations:

Excessive Force
Discourtesy
Discrimination
Abuse of Authority
Improper Procedure (BWC)
Improper Procedure

Persons Involved:

Specialist Kevin Newman, #PS074, M/W/51 (CPD, Involved)
Officer Michael B. Smith, #P0071 M/W/31(CPD, Involved)
Anthony Hogan, M/B/46 (Citizen, Complainant)
Kroger Supervising Employee (Citizen, Witness)

Evidence Reviewed:

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

Authorities:

City of Cincinnati – Code of Ordinances – Article IV – Section 4-A Duties with Respect to Racial Profiling
CPD Policy § 12.555 Arrest/ Citation: Processing of Adult Misdemeanor and Felony Offenders
CPD Policy § 12.600 Prisoners: Securing, Handling and Transporting
CPD Manual of Rules and Regulations §1.06
CPD Policy § 12.545 Use of Force
CPD Policy § Policy 12.600 Prisoners: Securing, Handling, and Transporting states
CPD Policy §15.100 Citizen Complaints and Reports of Favorable Police Conduct
Americans with Disabilities Act – Title II

Significant Discrepancies and Clarifications:

There is a discrepancy regarding how Mr. Hogan arrived on the ground prior to being placed into the cruiser and after he was removed from Kroger. Mr. Hogan stated he was dropped on the ground. Officer Smith and Specialist Newman stated in their CCA interviews that Mr. Hogan was “placed” on the ground and then fell. Specifically, when questioned in his CCA interview, Officer Smith said Mr. Hogan was “placed” on the ground, “propped up against [Officer Smith’s] leg,” and then “fell over.” Specialist Newman told CCA that the officers “gently set” Mr. Hogan on the ground and that he “fell over” after “he bucked over.”

BWC evidence showed that while Mr. Hogan’s feet were on the ground when he reached the cruiser with the officers, the rest of Mr. Hogan’s body fell to the ground after the officers released their grip on Mr. Hogan’s arms and legs, with Mr. Hogan’s bottom hitting the ground from an elevated position of approximately one (1) foot, and Mr. Hogan’s upper body falling over on the ground thereafter. Mr. Hogan was not “gently set on the ground” as was claimed by Specialist Newman, and he did not appear to be “bucking” when he fell. At best, Mr. Hogan fell to the ground, when the officers released him from their grasp from an elevated position during an attempt to place him on the ground. Additionally, while Specialist Newman claimed that Mr. Hogan was “bucking and twisting” his body while the officers carried him to the police cruiser, BWC does not show Mr. Hogan twisting or moving his body while the offices carried him.

Analysis:

The information outlined below is the summation of all the evidence collected throughout the investigation. To thoroughly illustrate what transpired, the facts are presented chronologically below, followed by the analysis of all allegations.

Summary of Facts:

Arrival at Kroger

On July 7, 2021, Mr. Hogan arrived at the Kroger to address an error with a previously issued money order which prevented him from paying his rent on time. When he arrived at the customer service counter, he was told that there was no issue with the money order, although as later confirmed by Kroger, there was an issue with the money order. According to statements to CCA from Mr. Hogan and the manager (as well statements made by store security onsite that were captured on BWC), a dispute transpired and a manger from Kroger ultimately called 911 and alleged that Mr. Hogan was yelling at employees.

Specialist Newman and Officer Smith were dispatched to the scene. As confirmed by BWC, upon their arrival, Mr. Hogan was observed sitting in an electric wheelchair, in the foyer area of the store, between the outside entrance and second set of doors which lead to the interior of the grocery store. When questioned by officers about how he got into the wheelchair, Mr. Hogan stated that his friend dropped him off and helped him into the wheelchair which appeared to belong to Kroger. Both Specialist Newman and Officer Smith walked past Mr. Hogan who appeared to talk on a cellular phone. Specialist Newman and Officer Smith approached the customer service counter; they were pointed in the direction of an armed security guard; the armed security guard walked them back to the foyer area where Mr. Hogan sat.

Initial Interaction with Mr. Hogan

As seen on BWC, the security guard said, "He's trying to get something straitened out about his money order, but he's not being very cooperative." Mr. Hogan stated, "The manager is handling the business, he isn't anybody to Kroger." Specialist Newman stated, "Watch him" to Officer Smith; Mr. Hogan appeared to become agitated. Specialist Newman reentered the store to ascertain the reason for the call while Officer Smith remained with Mr. Hogan. Mr. Hogan stated, "Ain't no watch me. What the fuck you mean, watch me? Man, suck something, he can't watch me. Suck a dick. How the fuck are you watching me?" Officer Smith stated, "You curse one more time I'm taking you to jail for disorderly conduct." Mr. Hogan replied, "You're not even needed in this situation. What's wrong with you? I'm trying to get my money. This is Kroger. This is a private business."

The manager walked to the foyer and stood present with the armed security guard, Specialist Newman, Officer Smith, and Mr. Hogan. Officer Smith stated, "I think he needs to go" and Specialist Newman replied, "It's up to the manager." Officer Smith reiterated, "He's out here swearing and stuff, I think he needs to go." The manager stated to Mr. Hogan, "I asked you to calm down." Officer Smith again interjected, "He's telling people to suck their wiener or whatever." Specialist Newman asked for Mr. Hogan's identification or social security number because he was under investigation for being disorderly. Mr. Hogan asked if he was being detained and Specialist Newman replied, "not yet." Mr. Hogan asked for a supervisor and Specialist Newman replied, "No." When Specialist Newman requested Mr. Hogan's identification again, Mr. Hogan refused to provide it.

Physical Contact with Mr. Hogan

Specialist Newman and Officer Smith approached Mr. Hogan who remained seated in the electronic wheelchair. Specialist Newman said, "Stand up." Mr. Hogan replied, "I can't stand up, I'm disabled." While Mr. Hogan remained seated, Specialist Newman and Officer Smith grabbed Mr. Hogan's arms and wrists and handcuffed his hands behind his back. Mr. Hogan expressed frustration by saying, "Little racist ass. Suck my dick, you're being racist as hell. Mr. Hogan asked the Kroger manager, "Can I get my money?" Both Specialist Newman and Officer Smith replied, "No." Mr. Hogan stated, "You're going down for this because I told you I was disabled." He additionally stated, "I can't stand up, dumb bitch." Per the officers' BWC and Kroger surveillance footage, Specialist Newman and Officer Smith proceeded to physically pick Mr. Hogan up out of the chair and carried him out of Kroger; the officers were on opposite sides of Mr. Hogan, both held one arm and one leg.

Placing Mr. Hogan into the Cruiser

Per BWC, once they arrived at their cruiser, and as Mr. Hogan told the officers that he would “sue” them for their actions, Specialist Newman and Officer Smith released their grasp of Mr. Hogan’s arm and legs (with Specialist Newman holding on to Mr. Hogan’s shorts). Mr. Hogan’s legs were already on the ground, but the rest of Mr. Hogan’s body fell to the ground. Specifically, Mr. Hogan’s bottom hit the ground from an elevated position of approximately one (1) foot, and Mr. Hogan’s upper body fell over on the ground thereafter.

Per BWC, Officer Smith said, “You fell down on purpose.” Mr. Hogan replied, “I can’t fall down.” Officer Smith replied, “You’re fighting sitting up.” Mr. Hogan replied, “I can’t sit up, dumbass.” Specialist Newman asked, “How’d you get in the cart?” Mr. Hogan replied, “They helped me, dumbass. Y’all are about to get sued.” Mr. Hogan remained on the ground outside of the cruiser while Specialist Newman and Officer Smith decided how to get him into the back of the cruiser. They attempted to again, lift Mr. Hogan by grabbing him by his clothing to place him into the cruiser; they were unable to physically lift him into the cruiser. Specialist Newman said, “He’s forcing it.” Mr. Hogan replied, “How? I can’t walk, dumbass.” Mr. Hogan was placed on the ground while the officers began a brief discussion among themselves, devising a plan on how to place Mr. Hogan into the cruiser.

Specialist Newman remained on the right side of the cruiser with Mr. Hogan on the ground, while Officer Smith opened the back left cruiser door. Mr. Hogan again asked for a supervisor; they denied his requests. Specialist Newman lifted Mr. Hogan and Officer Smith attempted to pull him across through the back left cruiser door. As Mr. Hogan was pulled through the back of the cruiser, he stated, “You’re breaking my wrist.” As Mr. Hogan was stretched across the back of the cruiser, Specialist Newman said, “He’s doing this on purpose.” Specialist Newman and Officer Smith were able to physically get Mr. Hogan in the back of the cruiser and Specialist Newman lifted his legs into the cruiser; Mr. Hogan’s right foot remained in the door frame. Specialist Newman closed the right cruiser door on Mr. Hogan’s foot, he yelled out in pain, “What are you doing? And you thought it was funny?” Specialist Newman replied, “It’s hilarious.”

While in the back of the cruiser, Mr. Hogan again asked for a supervisor and for Mr. Hogan’s identifying information. Officer Newman stated, “You’re under arrest. Do you know your name and date of birth? You do not get a supervisor.” Officer Smith returned to the cruiser and provided Mr. Hogan’s identifying information after flipping through Mr. Hogan’s wallet. When Specialist Newman queried his information he said, “Look at your record. It’s terrible. What’s wrong with you?”

CPD Interaction with Kroger Personnel Post Incident

Specialist Newman returned to Kroger and spoke to the armed security guard and the manger. Specialist Newman asked, “How did he even get in here, did he walk? The manager stated, “Somebody dropped him off.” The armed security guard stated, “A buddy of his drove the cart out to him. So, I didn’t actually ever see him standing up.” Specialist Newman asked what Mr. Hogan was doing while seated in the foyer of the store. The manager replied, “He was waiting for me to look at the situation and try to find out if he purchased the money order or if he didn’t. I’m thinking that he did actually purchase it, and something was lost in translation.” Specialist Newman departed the store and returned to his cruiser.

Transporting Mr. Hogan to the HCJC

Before departing Kroger, Officer Smith and Mr. Hogan engaged in a dialog where Mr. Hogan expressed his frustration through obscenities and stated that he and Specialist Newman would get sued for “dragging him.” Officer Smith responded, “How else were we supposed to get you in the car? Were you going to walk out? If we were dragging you, we would have dragged you across the ground, but you never touched the ground.” Mr. Hogan said, “I want a supervisor, Mr. Smartass. See if the jail accepts me.” Officer Smith said you like to name call a lot, what happens if I name called you?” Mr. Hogan alleged that Officer Smith was racist, and Officer Smith replied that “He was ignorant.” Mr. Hogan stated that Officer Smith was uneducated and in a racist job. Officer Smith replied by saying, “Did you finish the 12th grade, sir?” Mr. Hogan replied, “Look at my record dumbass, I graduated from college, twice.” Officer Smith asked, “What college did you go to?” Mr. Hogan replied, “UCLA.” Officer Smith followed up, “Is the University of Cocaine Los Angeles?” Officer Smith continued, “How did you become paralyzed? I can take a guess.” When questioned about the last statement in his CCA interview, Officer Smith could not recall the “guess” as to how Mr. Hogan became paralyzed. Specialist Newman returned to the cruiser and Mr. Hogan was transported to the HCJC.

As captured by BWC while departing Kroger’s parking lot, Specialist Newman said, “You’re ignorant of the law sir, you’re going to jail.” Mr. Hogan said, “I’m not ignorant of shit, y’all are racist.” Specialist Newman replied, “I don’t care what color you are.” Specialist Newman then mirandized Mr. Hogan and deactivated his BWC for the remainder of the transport to the HCJC; Officer Smith also deactivated his BWC for the transport. MVR picked up the remainder of the conversation. Mr. Hogan stated, “Racist ass people think you you’re going to make charges on blacks.” Specialist Newman stated, “Always blame it on racism as an excuse for your own failures.” Mr. Hogan responded by asking why they don’t treat white people the same. Specialist Newman asked, “Have you looked in the mirror? If you looked in right, you know what you saw today? You saw a man regardless of color, swearing in a store with kids.” Mr. Hogan said, “No don’t try to make up stuff. I got a police officer approaching me for no reason. They don’t even know the situation.” Specialist Newman replied, “No, we were called there.” Mr. Hogan replied, “No you didn’t know anything. You went to go find out some information and said, ‘watch him’. This not your job.” Specialist Newman stated, “We gave you an opportunity and you would not stop.” Mr. Hogan replied, “What? You’re not anybody’s supervisor or daddy.” Specialist Newman replied, “I mean I can’t reason with you; you have to be one of the most ignorant people I’ve ever met.”

Mr. Hogan said, “I need medical assistance.” The response was difficult to decipher because the windows in the back of the cruiser were down during the transport and the remainder of the conversation was difficult to translate.

Arrival at the HCJC

Specialist Newman’s BWC was activated upon arrival to the HCJC. Officer Smith went into the HCJC while Mr. Hogan remained in the back of the cruiser; a dialog transpired between Mr. Hogan and Specialist Newman:

- Mr. Hogan: “You’re talking about jail, who do you think you’re talking to?”
- Specialist Newman: “It doesn’t matter to us, we got 800 guns off the street last year.”
- Mr. Hogan: “And all that shooting is still going on and that’s why y’all are going to keep getting shot. And y’all kids are going to keep getting shot.”

- Specialist Newman: "I wasn't shot in the military. I wasn't shot out here."
- Mr. Hogan said: "You can protect yourself, but who is going to protect your kids?"
- Specialist Newman: "Nobody is going to protect them. You know why? Because they're tough."
- Mr. Hogan said, "Nah, niggas gonna come get them."
- Specialist Newman: "Where you from, Cincinnati? You're from a bitch city. I'm from Boston and you're a bitch."
- Mr. Hogan said, "Did you look at my fucking record, dumbass? I'm from Pasadena California."
- Specialist Newman: "Man, you ain't shit. Pasadena, little rich area. Shut the fuck up. You were probably in the 8-mile movie. Give me a break."
- Mr. Hogan: "Are you high? I said Pasadena."
- Specialist Newman: "Pasadena ain't shit."
- Mr. Hogan: "That's California, what the fuck do you mean?"
- Specialist Newman: "It ain't shit. I'm from Boston."
- Mr. Hogan: "8-mile is in Detroit"
- Specialist Newman: "Yeah, It's in Detroit. You're probably in the movie too, acting like a little bitch."

Specialist Newman closed the cruiser door went inside the HCJC to request a wheelchair. His BWC was deactivated at that time.

Mr. Hogan's Experience at the HCJC

CCA obtained surveillance footage from the HCJC which collectively showed Mr. Hogan's experience at the HCJC. Mr. Hogan was placed into and restrained by a restrictive chair provided by the HCJC. Per the HCJC video, Mr. Hogan was wheeled into the intake area and examined by their staff. Mr. Hogan was ultimately refused by the HCJC as confirmed by Officer Smith, Specialist Newman, and Mr. Hogan. CCA contacted the HCJC, but the staff were unable to state the precise reason for his refusal. Mr. Hogan stated to CCA that in 2018 he was refused because of his physical disability. He alleged a nurse viewed his HCJC history and confirmed that he was disabled and at that time rejected his admittance.

Per video, Mr. Hogan was wheeled toward the sallyport area, outside the HCJC, but still on property. There is no audio of the footage, but Mr. Hogan can be seen restrained by the shoulders, wrists, and legs. He appeared to be animated and yelled, as Specialist Newman removed the restraints. When wheeled into the HCJC, Mr. Hogan wore grey sweatpants. Upon being wheeled to the sallyport area, Mr. Hogan was in only in his boxers and a t-shirt. According to video, correctional officers that arrived and departed the HCJC walked around Mr. Hogan who appeared to be crying. Specialist Newman and Officer Smith released the remainder of his restraints and Mr. Hogan adjusted his exposed penis while he sat in the wheelchair.

An unknown correctional officer and Officer Smith helped get Mr. Hogan towards the front of the wheelchair. A dialog transpired between the jail staff, Mr. Hogan, and Specialist Newman. Five correctional officers, two of whom were women, Specialist Newman, and Officer Smith observed Mr. Hogan as he urinated on himself. A stream of liquid can be seen collecting beneath Mr. Hogan's feet and an unknown correctional officer can be seen behind Mr. Hogan, smiling and clapping. Officer Smith and an unknown correctional officer also smile as Mr. Hogan urinated on himself while surrounded by those serving in their official capacity. Once Mr. Hogan was finished,

he was helped from the front of the seat back into the rear portion of the seat; He appeared to be yelling and crying as he was wheeled towards the cruiser.

Specialist Newman activated his BWC during Mr. Hogan's time inside the HCJC; there is a 30 second buffer, but a portion of the conversation was captured. Per BWC, Mr. Hogan is in the wheelchair with HCJC personnel and Officer Smith standing in what appears to be the intake area. Mr. Hogan can be heard crying and yelling. The interaction went as follows:

- Officer Smith: "I understand why you're upset"
- Mr. Hogan: "No you don't, I'm handicapped for real"
- Officer Smith: "I believe you're handicapped"
- Mr. Hogan: "No, I'm not faking it"
- Specialist Newman: "Why are you sorry though?"
- Mr. Hogan: "I was mad when you said watch me"
- Specialist Newman: "You did swear in Kroger, right"
- Mr. Hogan, "I was talking to him" (directed towards Officer Smith)
- Specialist Newman: "But the whole store heard you"
- Mr. Hogan, "Aw man you don't care because I'm peeing on myself"
- Officer Smith: "We didn't want you to pee on yourself"
- Mr. Hogan: "I'm already doing it. And y'all didn't care"

Mr. Hogan's Transport Home

Audio from Mr. Hogan's transport home was not captured on MVR due to excessive wind interference. Specialist Newman activated his BWC a short period of time during transport when he attempted to get Mr. Hogan to acknowledge that he previously apologized from cursing in the store. Mr. Hogan did not acknowledge it on BWC, and Specialist Newman promptly deactivated his BWC.

Specialist Newman reactivated his BWC upon arriving at Mr. Hogan's residence. Specialist Newman asked if his friend was going come down and help him. Officer Smith said, "Well we've got to get you out of our car." Mr. Hogan asked, "Can I get out on the ground?" Specialist Newman replied, "No we can't leave a person on the ground. You're a human being." Mr. Hogan called his friend to come and assist him. "Hey man, can you come help me get in the house. I'm in the back of the police car and I don't have a way to get in because I don't have my walker or my chair." Mr. Smith said, "We are going to help you out. I could've put you on my shoulder and carried you up the steps." Mr. Hogan asked if he could smoke a cigarette. Specialist Newman stated, "We're not allowed. We're allowed to cuff you and carry you, but I'm not going to leave you on the sidewalk. Wait until his friend comes down." Mr. Hogan remained in the back of the cruiser with the door open.

Specialist Newman said, "You peeing on the sidewalk was funny as fuck." Mr. Hogan did not respond. Officer Smith asked, "You alright?" Mr. Hogan replied, "Hell na, I can't use my hands for real." Officer Smith asked, "Where is your stenosis at? The whole spine or the neck?" Before he could respond, two of Mr. Hogan's friends walk out to assist him inside. Officer Smith greeted them, "We had a little bit of a rough time here", Specialist Newman echoed his statement. His friend walked towards the cruiser with a seated walker, "What's up, chief? What happened to you, man?" Specialist Newman said, "It was terrible. We were helping him get a money order, he started flipping out saying suck my whatever. We took him to jail, he got refused, so we brought him here to be nice. Instead of just dropping him off." Mr. Hogan said to his friend, "At the Kroger

on Kenard, they took \$300 from me and now I can't pay my rent." His friend replied, "Why?" He replied, "I don't know." Specialist Newman interjected, "All his stuff is in his bag, Sir. His wallet and his phone." Mr. Hogan expressed that he still has no way to get back to Kroger. Officer Smith stated, "He's going to help you out." Specialist Newman stated, "I'm going to talk to the manager." Specialist Newman said to his friend, "He was so upset. He's screaming suck my dick in Kroger's, but the jail refused him. So, to be nice, we dropped him off here. But he was still mad at us, but it's not our fault. Mr. Hogan was wheeled into his residence and Specialist Newman and Officer Smith departed the scene.

Mr. Hogan was ultimately charged with Ohio Revised Code 2917.11 Disorderly Conduct. The proceedings for the charge are ongoing.

Allegations 1-2: Discourtesy

Mr. Hogan alleged that the officers were discourteous during the incident.

Specialist Newman during transport:

- "I can't reason with you. You have to be one of the most ignorant people I've ever met."
- "Always blame it on racism as an excuse for your own failures."
- "The only person that's racist is you."

Officer Smith during Transport:

- "Did you finish the 12th grade, Sir?"
- "How else were we going to get you in the back of the car? Where you going to walk?"
- Asked if he attended the "University of Cocaine Los Angeles"
- "How'd you become paralyzed? I can take a guess."
- "You're an ignorant fuck"

Specialist Newman upon arrival at the HCJC:

- "Where you from Cincinnati? You're from a bitch city. I'm from Boston and you're a bitch."
- "Man, you ain't shit. Pasadena? Little rich area. Shut the Fuck up. You were probably in the 8-mile movie acting like a little bitch."

Specialist Newman at Mr. Hogan's residence:

- "You peeing on the sidewalk was funny as fuck"

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. While Mr. Hogan was also engaged in banter, he was articulating his belief that his detention was unjust and alleged during transport that policing was a racist job. As demonstrated above, the statements made by Officer Smith and Specialist Newman were objectively discourteous in nature. For the foregoing reasons the officers violated CPD policies, procedures, and training.

In his CCA interview, Specialist Newman acknowledged his commentary as discourteous and stated that Mr. Hogan "Got under his skin." He also stated that "99 percent of the time I treat people good, but he was a foul-mouthed guy and that's it. I got a reprimand for it". When asked if he would have done anything differently, he said, "Yeah. Totally, would have just sucked it up and listened to him tell me he was going to fuck my daughter and what all the other nasty things he was saying." CCA found that Officer Newman's statements outlined above violated CPD policy, procedures, or training.

In his CCA interview, Officer Smith initially remembered making the statement “You’re an ignorant fuck” to Mr. Hogan, but after reviewing his BWC confirmed that he did make the additional statements outlined above. He acknowledged that his statements were inappropriate, but also stated that Mr. Hogan’s statements were inappropriate. CCA found that Officer Smith’s statements outlined above violated CPD policy, procedures, or training.

Allegations 3-4: Excessive Force

Mr. Hogan alleged that Officer Smith and Specialist Newman used excessive force during the incident. He further alleged that he was injured from the manner in which he was handcuffed, dropped on the ground, and his foot shut in the door of 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 cites to caselaw in stating that:

The decision to use force “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight ...the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.” CPD Policy 12.545 Use of Force.

In addition, CPD Policy 12.600 Prisoners: Securing, Handling, and Transporting states, “The transporting officer has a duty of care to protect the prisoner from injury.”

Mr. Hogan sat in an electric wheelchair when Officer Smith and Specialist Newman first made physical contact with his person. Prior to the contact, Mr. Hogan stated “I can’t stand, I’m disabled.” Per BWC, Mr. Hogan did not show any signs of resistance. Despite this fact, he was handcuffed and physically lifted off of the electric wheelchair and walked to the cruiser outside. Mr. Hogan hit the ground before being placed on the ground by either officer. Officer Smith’s and Specialist Newman’s contention that Mr. Hogan was first “placed” on the ground and then fell is refuted by BWC, which shows that his bottom and upper body hit the ground only after the officers released their grip on him while they were carrying him in an elevated position.

By the admission of the officers, they intended to physically position Mr. Hogan (while carrying him with their hands) on the ground for the purpose of taking Mr. Hogan into custody at the time that the BWC shows them releasing their grip, causing him to hit the ground. Accordingly, by definition, the officers used force to affect Mr. Hogan’s arrest. At the time the force was used and at the time Mr. Hogan made harsh contact with the ground, he was making no attempt to evade being taken into custody. He was not actively resisting arrest. Additionally, while Specialist Newman claimed that Mr. Hogan was “bucking and twisting” his body while the officers carried him to the police cruiser, BWC does not show Mr. Hogan twisting or moving his body while the officers carried him. Moreover, Mr. Hogan presented no threat to either officer. Accordingly, the force used during the course of the arrest was not objectively reasonable.

To be sure, when Mr. Hogan alleged that they threw him on the ground, the officers stated that “He’s doing it on purpose.” However, their claim that Mr. Hogan purposefully fell to the ground,

was “fighting sitting up,” or that he was “forcing it” conflicts with any reasonable view of the circumstances by any reasonable officer at the time. For one, when the officers first encountered Mr. Hogan, he sat in a wheelchair and never left that seated position. He told the officers repeatedly that he could not stand on his own and stated that he was “disabled.” The officers carried Mr. Hogan to their police car by his arms and legs, suggesting that they understood he had limitations of physical mobility. Moreover, on the Arrest Report corresponding to Mr. Hogan’s arrest, the officer ultimately listed his condition as “paralyzed.” Given all of these facts, it is far from clear that the officers genuinely believed Mr. Hogan was faking a disability. What is clear, however, is that the officers’ decision to take Mr. Hogan into custody by handling him in a careless manner, despite clear evidence of disability, was not objectively reasonable under Policy 12.545. It is equally clear under Policy 12.600 that they were required to exercise care when handling a prisoner who was in their custody.

Moreover, Specialist Newman shut Mr. Hogan’s foot in the door of the cruiser after the officers placed him inside the vehicle. Mr. Hogan yelled in pain when Specialist Newman shut his right foot in the cruiser door. Per BWC, directly after Mr. Hogan’s foot was shut in the door, Mr. Hogan asked, “It’s funny?” Specialist Newman replied, “It’s hilarious,” rather than show remorse for failing to remove his foot from the door before shutting it and rather than checking on Mr. Hogan to see if Mr. Hogan sustained an injury from the door. In his CCA interview, Specialist Newman maintained he did not recall Mr. Hogan’s foot being slammed in the door of the cruiser. His retort to Mr. Hogan at the time indicates he was aware of it on the day of the incident. At a minimum, because Mr. Hogan stated that he was physically disabled and was unable to move his foot after it was placed inside the cruiser, it was Specialist Newman’s responsibility to ensure that Mr. Hogan’s foot was clear of the door prior to shutting it to prevent injury. Specialist Newman’s callous response (“It’s hilarious”) indicates physical mistreatment that was more than simply negligent. Instead, it suggests spite.

For the foregoing reasons, CCA determined that Specialist Newman and Officer Smith violated CPD policies, procedures, or training.

Allegation 5 (Collateral): Discrimination

CCA found comments at the scene by Specialist Newman to be troubling in a manner that exceeded discourtesy. A statement made by Specialist Newman at the time of Mr. Hogan’s detention caused CCA particular concern. Specifically, after Mr. Hogan said, “Racist ass people think you you’re going to make charges on blacks.” Specialist Newman replied, “Always using race an excuse for your own failures.” Specialist Newman stated, “Have you looked in the mirror? If you looked in right, you know what you saw today? You saw a man regardless of color, swearing in a store with kids.” Mr. Hogan expressed frustration in CPD’s involvement and Specialist Newman explained that they gave Mr. Hogan the opportunity to stop talking and he would not stop. Mr. Hogan replied, “You’re not anyone’s supervisor or daddy.”

CPD’s Manual of Rules and Regulations § 1.23 C. provides that members “shall not express, verbally or in writing, any prejudice or *offensive comments concerning*... race, color, and ethnicity ... or similar personal characteristics” (emphasis added). Furthermore, City of Cincinnati Administrative Regulation No. 25 (AR 25) prohibits discriminatory harassment based on race, and specifically prohibits oral communications that contain “negative stereotyping” and “comments . . . that are distasteful or targeted at individuals based on . . . age . . . race, color, [or] ethnicity.”

While CCA did not determine that Specialist Newman engaged with Mr. Hogan because of his race, Specialist Newman’s sentiment regarding race as outlined in the previous section was not

appropriate. At a minimum, the comments “using race as an excuse for your failures” a rebuke of Mr. Hogan using language that was racially offensive and distasteful. Viewed in another light, the attempt to berate Mr. Hogan by using the phrase “*always* using race as an excuse for your failures” (emphasis added) evoked negative racial stereotypes by suggesting that citizens who complain of racial discrimination do not have a genuine belief that they face discrimination, but instead are “making excuses” for others who share that citizen’s race. These comments fit a troubling pattern by Specialist Newman, who in another incident investigated by CCA (occurring on January 20, 2021), chastised a citizen complaining of racial profiling by saying, “Stop making excuses for your race.” See e.g., CCA Case No. 21007.

Irrespective of how one understands Specialist Newman’s words, and his comment “always using race as an excuse for your own failures,” those statements speak for themselves. Under the plain terms of CPD’s Manual of Rules and Regulations § 1.23 C, the words are “offensive comments concerning . . . race.” Because Specialist Newman made the distasteful remarks invoking race in direct response to a complaint of racial profiling, they are also, by definition, “based on . . . race” under AR 25.

Finally, CCA notes that CPD have both previously Sustained violations of CPD’s anti-discrimination policy in cases similar to this one where officers engage in speech that, on its face, is offensive “concerning race.” See e.g., CCA Case No. 18158 DG (agreeing with CPD’s Internal Investigation Section and Sustaining an officer for lecturing a shoplifter with comments such as “This is why there is no grocery stores in the black community because all of this is going on.”). CCA’s conclusion in this case is consistent with those precedents.

CCA is mindful of the fact that Specialist Newman has denied any improper motive or prejudicial intent for his communications. In his interview, Specialist Newman stated Mr. Hogan was a “foul-mouthed guy” and that he got under his skin. Specialist Newman further stated that “people are too scared to talk about race.” Regardless of Specialist Newman’s articulated intention, CCA found that Specialist Newman’s comments were an inappropriate response to a complaint of alleged racism, were racially offensive, and thus constituted discriminatory communication in violation of CPD policies, procedures, and training.

Allegation 6-7 (Collateral): Improper Procedure (Citizen Complaint)

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. Hogan’s blatant racism allegations, CPD Policy §15.100 required Specialist Newman and Officer Smith to inform Mr. Hogan of the citizen complaint process, rather than dismiss his grievance or criticize Mr. Hogan for believing himself the victim of racism. Mr. Hogan also requested the presence of a supervisor through the incident, and those requests were also not enough to move Specialist Newman to offer Mr. Hogan the option of filing a complaint. Therefore, CCA found that Officer Smith and Specialist Newman violated CPD policies, procedure, and training.

Allegation 8-9 (Collateral): Abuse of Authority

While at the HCJC, Mr. Hogan urinated on himself. While Specialist Newman and Officer Smith stated that he was in the care of the HCJC at the time, CCA found that he had already been refused by the HCJC. While CCA understands that might not be unusual for a subject to urinate

on oneself in police custody, the circumstances surrounding this particular incident require special consideration. Officer Smith moved Mr. Hogan to the front of the chair to urinate. In video evidence obtained from HCJC, Mr. Hogan can be seen crying, with his penis exposed, outside of the HCJC but still on their property and surrounded by men, women and many passing by; both Officer Smith and HCJC personnel smiled as Mr. Hogan urinated on himself and an unknown jailer clapped. Both HCJC personnel and Specialist Newman and Officer Smith could have taken action to mitigate the sheer humiliation experienced by Mr. Hogan, but instead Specialist Newman doubled down by saying it was “funny as fuck.”

Late in the incident, in response to Mr. Hogan asking if he can get out on the ground, Specialist Newman replied, “No, we can’t leave a person on the ground. You’re a human being.” CCA found it disturbing that Specialist Newman made the aforementioned statement but failed to understand the lack of humane treatment of Mr. Hogan throughout their interaction. Mr. Hogan presented no physical threat; was in custody only for a disorderly conduct misdemeanor, rather than a violent offense; and disclosed his physical disability. Still he was:

- Lifted from a motorized wheelchair
- Handcuffed behind his back
- Carried by two officers to a cruiser, each grabbed an arm and a leg
- Was put on the ground while they figured out how to secure him into a cruiser not designed to transport the physically disabled
- Was asked “How else were we supposed to get you out here? Were you going to walk?”
- Was asked how he became disabled
- Was asked if he finished the twelfth grade
- Was called an “ignorant fuck”
- Was told that he used race as an excuse for his failures
- Was called a “bitch”
- Was told to “shut the fuck up”
- Was asked if he attended the University of Cocaine Los Angeles
- Had his foot shut in the cruiser door
- Urinated on himself in front of two women and five men, with his penis exposed while others walked by; some smiled and one clapped
- Was told him urinating on himself was “funny as fuck”

CPD Manual of Rules and Regulations states section 1.22 states, Members shall not verbally and/or physically mistreat person who are in custody and shall protect them from treatment by others. Members shall handle such persons in accordance with law and Department procedure. For the foregoing reasons, CCA found Specialist Newman and Officer Smith’s actions did not fall within CPD Polices, Procedures and Training.

Allegation 10 (Collateral): Improper Procedure (BWC)

Officer Smith’s BWC was activated during the Kroger incident, but CCA was provided no BWC for the interactions which took place thereafter. After Mr. Hogan was refused from the HCJC, Officer Smith should have activated his BWC to capture all remaining interactions which included Mr. Hogan being taken home. CPD policy § 12.50, “Equipment is the responsibly of the officer assigned” and that officers are required to activate their BWC system during all law enforcement related encounters. CCA found that Officer Smith violated CPD policy procedure of training when he failed to activate his BWC for the entirety of the interaction with Mr. Hogan absent the transport and HCJC interaction.

Allegation 11-12 (Collateral): Improper Procedure (Handcuffing Persons with a Physical Disability)

CPD Policy 12.600 Prisoners: Securing, Handling and Transporting states, "When necessary, handcuff physically handicapped or injured prisoners in front."

Mr. Hogan stated that his wrists hurt from the way the officers bent his wrists behind his back. Because Mr. Hogan was in a motorized wheelchair and stated, "I can't stand, I'm disabled", Officer Smith and Specialist Newman should have handcuffed Mr. Hogan in front of his person as required by policy. The verbiage in the policy indicates that handcuffing a person in the front should be done when "necessary;" given that Mr. Hogan was seated and vocalized his disability, officers were required to at minimum evaluate the situation to see if handcuffing him in front was feasible.

As Specialist Newman and Officer Smith attempted to get Mr. Hogan into the back of the cruiser, they stated that he was "faking" it, indicating that they may not have initially believed that he was physically disabled. However, as this Investigation Report argues above, such a belief is unreasonable given the circumstances leading up to the officers's attempt to place Mr. Hogan into the cruiser, specifically, their observations of him in a wheelchair and Mr. Hogan's assertion that he was disabled. Furthermore, the officers also asked how Mr. Hogan got into the motorized wheelchair, and he informed them he was assisted into the chair. While the officers struggled to get Mr. Hogan into the cruiser, he stated "Y'all are breaking my wrists." Additionally on Arrest Form 527, the officers listed Mr. Hogan's medical condition as "paralyzed", and he was asked how he became paralyzed. For the foregoing reasons, the officers' actions and statements indicate that they were aware of his physical disability and per policy should have handcuffed Mr. Hogan in the front, which they never did. CCA found that Specialist Newman and Officer Smith violated CPD policy, procedures, or training.

Allegation 13-14 (Collateral): Improper Procedure (Transporting Persons with a Physical Disability)

CPD Policy 12.600 states, "Officers will transport a physically or mentally disabled prisoner using a vehicle appropriate for providing the necessary care for the prisoner." It further states, "If a patrol vehicle is not appropriate, consider using the Scout Car or Prisoner Van." As established, Specialist Newman and Officer Smith, physically lifted Mr. Hogan from his seat, carried and placed him on the ground, where he remained until they were able to secure him into the cruiser. The officers vocalized their frustration and belief that he was "faking it". Officer Smith had to go to the opposite side of the cruiser and pull Mr. Hogan across the back seat to get him into the cruiser. In his CCA interview when questioned about his knowledge of how to transport those who are believed to be physically disabled versus anyone else, Specialist Newman stated, "I mean there's no difference. I mean you have to treat them kindly and put them in the car."

A portion of the mistreatment and humiliation Mr. Hogan experienced that day may have been mitigated if either offer would have adhered to policy and requested a Scout Car or prisoner van which would have been better equipped to transport Mr. Hogan. In his CCA interview, Specialist Newman acknowledged that Mr. Hogan stated that he was disabled but Specialist Newman rebutted, "If you're paralyzed you can't move... he had mobility in his body." Neither Specialist Newman nor Officer Smith are medical professionals; it is not their place to determine the amount of bodily mobility possessed by a person seated in a wheelchair who has self-disclosed their disability. A reasonable officer would have concluded that a different means of transportation

would have been more appropriate. Neither Specialist Newman nor Officer Smith requested other means of transportation; Mr. Hogan presented no physical threat and consideration should have been given to a more appropriate means of transportation. CCA found that Specialist Newman and Officer Smith violated CPD Policy, Procedure, and Training.

Observation:

Specialist Newman made several troubling statements to CCA regarding his outlook on what his responsibilities are as a law enforcement officer, including statements revealing a problematic disregard for citizen complaints and a dismissive attitude regarding racially offensive speech directed at those in police custody. In his CCA interview, he was asked why he participates in conversations about race when people allege racial profiling or discrimination. His response is outlined below:

“I think people are too afraid to talk about it and it has nothing to do with race. And just because of the color or my skin, if someone wants to say... cops are racist. They don't just get carte blanche to do that... I'm not going to get in trouble. I'm a free speaking human being. You know if someone's racist. If someone prevents Rosa Parks from sitting on a bus or someone tells you can't work at CCA because of the color of your skin, that's racism. But getting arrested has nothing to do with it and I'm not going to listen to someone who makes that up. That's a very serious thing. Racism is serious against any person whether it's oh you can't work here because you're a woman. I'd be the first one to defend you. I hate bullies and Mr. Hogan is a bully. So, if you want to know where that passion comes from it's that. That's not you know who's going to get me in trouble. I'm not afraid to... people are too afraid to address things and that's ridiculous. I'd be the first person to stand with Mayor Canley. And I would get a bully who hurt someone. That's why I signed up for this job.”

He went on to say:

“They always forget... like when I at Christmas time I do ten burglary reports. And I might chase a kid and them come to CCA because I tased him or whatever. They're forgetting that kid broke in and stole... the victims in society are not the bad guys... I'm a hero in Winton Terrance... I give away bikes, pizza, candy. Like 99 percent of the people do not want a drug dealer in their neighborhood and so when I come down here sometimes it's a badge of honor because I have to come deal with bull crap at CCA because someone complains. But it's worth it because the women that I protect or the people in the neighborhoods, they need policing.”

In the CCA interview, for the case at hand and previous cases, Specialist Newman has failed to acknowledge the inappropriate nature of the racial conversations in which he engages when confronted with an allegation of discrimination or racial profiling. These conversations take place with those who are in his custody. Rather, Specialist Newman doubles down on his philosophy of policing irrespective of governing police policy and irrespective of the community trust endangered by his practices. Specialist Newman fails to understand that when he has these conversations, he is engaging with a subject while in his official capacity as a Cincinnati police officer, not an off-duty civilian. His on-duty engagement with persons under his power, and his categorical dismissiveness toward citizen complaints, are both inappropriate and risk future harm to community problem-oriented policing.

Findings:

Original Allegations

No.	Allegation	Subject Officer	Involved Citizen	Finding
1	Discourtesy	PO Michael Smith	Anthony Hogan	Sustained
2	Discourtesy	PS Kevin Newman	Anthony Hogan	Sustained
3	Excessive Force	PO Michael Smith	Anthony Hogan	Sustained
4	Excessive Force	PS Kevin Newman	Anthony Hogan	Sustained

Collateral Allegations

No.	Allegation	Subject Officer	Involved Citizen	Finding
5	Discrimination	PS Kevin Newman	Anthony Hogan	Sustained
6	Improper Procedure	PO Michael Smith	Anthony Hogan	Sustained
7	Improper Procedure	PS Kevin Newman	Anthony Hogan	Sustained
8	Abuse of Authority	PO Michael Smith	Anthony Hogan	Sustained
9	Abuse of Authority	PS Kevin Newman	Anthony Hogan	Sustained
10	Improper Procedure (BWC)	PO Michael Smith	Anthony Hogan	Sustained
11	Improper Procedure	PO Michael Smith	Anthony Hogan	Sustained
12	Improper Procedure	PS Kevin Newman	Anthony Hogan	Sustained
13	Improper Procedure	PO Michael Smith	Anthony Hogan	Sustained
14	Improper Procedure	PS Kevin Newman	Anthony Hogan	Sustained

Recommendations:

#R2211: Disability & Accessibility

CCA recommends the Cincinnati Police Department strengthen its policies regarding interactions with people who are suspected to be physically or developmentally disabled and review existing policies to ensure the handling, detention, and transportation of such persons complies with the Americans with Disability Act (ADA). CPD Policy 12.110 outlines how officers should interact with "Suspected Mentally Ill Individuals," and Policy 18.103 outlines how officers should treat "People Who are Deaf or Hearing Impaired;" a similar policy should be created regarding physically or developmentally disabled persons that specifies ADA-compliant standards for moving, detaining, or otherwise handling such persons. At a minimum, CPD should follow the example of the Columbus Police Division for the treatment of "Non-Ambulatory" prisoners, and (a) require its officers "to make reasonable accommodations to ensure their safety;" (b) require officers to transport such prisoners in a manner that "allows the prisoner to remain in his or her mobility device," such as a wheelchair; (c) mandate that officers must transport such disabled persons in an "ADA accessible vehicle;" and (d) require a supervisor to respond to the scene when "there is a question concerning whether a non-ambulatory prisoner needs to be transported by a medic or other ADA accessible vehicle." See Columbus PD Division Directive 3.03. CPD's new policy should also adopt the IACP's (International Association Chief of Police) guidance that "when reasonable and practical, avoid physical restraints," which can "injure the person or limit the person's ability to communicate," or limit the person's ability to "move independently (e.g., someone who uses a wheelchair)." See <https://www.theiacp.org/sites/default/files/2018-08/IntellectualDevelopmentalDisabilityPolicy.pdf>

Officers should note that people experience physical or developmental disabilities on a spectrum; a person may appear to have a range of mobility, but still be disabled.

With respect to the use of force, if the physically or developmentally disabled person presents an immediate threat, the threat should be neutralized, and a supervisor should immediately be requested regardless of if force is used. If the person presents no physical threat, then consistent with IACP guidance (particularly for persons with developmental disabilities), the supervisor should be called before going hands on with said person. CPD policy should require supervisors to make the ultimate decision regarding next steps and transportation to the HCJC if it is determined necessary.

CPD policy on handling persons with disabilities should be reviewed for compliance with the Americans with Disability Act (ADA), Title II, which prohibits discrimination in the services of public entities. See e.g., *The Americans with Disabilities Act (ADA) and On-the-Street Police Encounters*, published by the Congressional Research Service, 9/30/2021 (stating that “The courts have consistently held that police departments are ‘public entities and that Title II applies to at least some state and local law enforcement functions.”)

#R2212: Corrective & Disciplinary

Given recurring violations of police policy by Specialist Kevin Newman during a consecutive multi-year period—including repeated improper enforcement activity that resulted in four (4) Sustained findings from CCA for Improper Search, Discrimination, and Discourtesy in 2020 and 2021, as well as numerous Sustained findings in the present 2021 case for Abuse of Authority, Discourtesy, Discrimination, and Excessive Force—CCA recommends that CPD review Specialist Newman’s performance and begin Supervisory Monitoring. Moreover, given repeated Sustained findings for Discrimination relating to discriminatory speech directed towards detained citizens by Specialist Newman, as well as the patent mistreatment of a prisoner in this case by Specialist Newman, CCA also recommends that CPD take all appropriate disciplinary action under CPD’s Disciplinary Table/Matrix, including action such as suspension, requiring a disciplinary hearing.

#R2213: Corrective & Disciplinary

Given recurring violations of police policy by Police Officer Michael Smith during a consecutive multi-year period—including repeated improper enforcement activity that resulted in eight (8) Sustained findings from CCA for Excessive Force, Discourtesy, and Improper Procedure in 2018, 2019, and 2021, as well as numerous Sustained findings in the present 2021 case for Abuse of Authority, Discourtesy, Discrimination, and Excessive Force—CCA recommends that CPD review Officer Smith’s performance and begin Supervisory Monitoring. Moreover, given repeated Sustained findings for Discourtesy, as well as the patent mistreatment of a prisoner in this case by Officer Smith, CCA also recommends that CPD take all appropriate disciplinary action under

CPD's Disciplinary Table/Matrix, including action such as suspension, requiring a disciplinary hearing.



Morgan Givens, Investigator



Gabriel Davis, Director

Previous Contacts and Commendations:

Officer Michael B. Smith

Previous Contacts with CCA

Officer Smith had eight previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
18070	Excessive Force	Exonerated
18070	Improper Stop	Exonerated
18070	Improper Search (Vehicle)	Exonerated
18070	Discourtesy	Sustained
18070	Improper Search (Vehicle)	Exonerated
18096	Excessive force	Not Sustained
18096	Improper Procedure (Taser-failure to warn)	Sustained
18096	Improper Procedure (foot Pursuit)	Sustained
18096	Improper Stop (Person)	Exonerated
18096	Excessive force (Taser)	Sustained
19097	Improper Stop (Person)	Exonerated
19097	Harassment	Unfounded
19132	Discourtesy	Sustained
19132	Improper Search	Exonerated
19132	Improper Stop	Exonerated
20189	Excessive Force	Pending
20189	Discourtesy	Pending
20189	Lack of Service	Pending
20223	Improper Search	Exonerated
20227	Improper Search	Exonerated
20227	Improper Pointing of a Firearm	NFR
20227	Improper Stop	Exonerated
20227	Improper Procedure	Sustained
21007	Improper Stop	Exonerated
21007	Improper Search	Exonerated
21007	Discourtesy	Sustained
21007	Discrimination	Not Sustained
21007	Improper Procedure (Citizen Complaint)	Sustained

Previous Contacts with IIS

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

Commendations

Officer Smith received one commendation in the past three years.

Date	Source of Commendation Received
01/05/2020	CPD

Specialist Kevin Newman

Previous Contacts with CCA

Specialist Newman had seven previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
19248	Discrimination	Unfounded
20116	Discrimination	Pending
20116	Discourtesy	Pending
20189	Excessive Force	Pending
20189	Discourtesy	Pending
20189	Lack of Service	Pending
20215	Improper Search	Sustained
20215	Discourtesy	Sustained
20223	Improper Search	Exonerated
20227	Improper Search	Exonerated
20227	Improper Stop	Exonerated
20227	Improper Pointing of a Firearm	NFR
21007	Improper Stop	Exonerated
21007	Improper Search	Exonerated
21007	Discourtesy	Sustained
21007	Discrimination	Not sustained
21007	Improper Procedure (Citizen Complaint)	Sustained
21007	Discrimination	Sustained

Previous Contacts with IIS

CCA is unaware of any additional previous contact by Specialist Newman with IIS.

Commendations

Specialist Newman received no commendations in the past three years.

Date	Source of Commendation Received
01/05/2020	CPD