



CCA Case No. 21006

Anonymous Complainant

Investigation Report and Finding

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Date: August 26, 2022

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COMPLAINT SUMMARY

Date: January 14, 2021

Time: 7:20PM

Location: 1523 Race Street

CCA Receipt: January 21, 2021

CCA received an anonymous complaint that stated Cincinnati Police officers stopped a vehicle on Race Street, removed four people from the vehicle, and improperly searched and detained them before releasing everyone.

INVOLVED SUBJECT STATEMENTS

Anonymous

CCA interviewed the complainant after receiving the complaint. They provided the following information:

On January 14, 2021, at approximately 7:30PM, the complainant observed three cruisers conduct a traffic stop on a silver compact vehicle. The traffic stop occurred in the 1500 block of Race Street, south of Liberty. The complainant watched for around twenty minutes and saw one cruiser in front of the silver vehicle, and two cruisers were parked behind it. The officers walked around the vehicle, one by one, taking the four African American occupants out of the vehicle, handcuffing them, searching them, and patting them down. The handcuffed occupants stood near the cruiser for some time, and it looked like the officers were talking to them. The complainant could not hear what was being said but could see that the police searched the entire vehicle. It appeared the officers did not find anything because they eventually allowed everyone to get back in their vehicle and were free to go. The Complainant did not have any connection to the occupants, nor the officers involved, just thought it "just didn't seem quite right."

INVOLVED OFFICER STATEMENTS

Specialist Kevin Newman

Specialist Kevin Newman, #PS074, M/W/50, is currently assigned to District Five and he has been a CPD member since 2004. Specialist Newman was on routine patrol, in uniform and operated a marked cruiser with Officer Smith; his BWC was activated.

CCA interviewed Specialist Newman on May 27, 2022, at 1:27PM. He provided the following information:

Undercover officers had been watching a vehicle which Specialist Newman pulled over. Specialist Newman could not recall to CCA the exact reason for the stop but stated "It might have been tint or- I couldn't say because but- it might have been equipment violation, or something, yeah. Maybe tint, or... I can't remember." Specialist Newman approached the vehicle and smelled the odor of marijuana. Officer Smith also observed an open container in the vehicle, so they detained everyone and searched them. Everyone was released because no firearms were located, and no one in the vehicle had any warrants. According to Specialist Newman, the policies at CPD were constantly changing regarding marijuana after marijuana was decriminalized in Cincinnati. Specialist Newman said people thanked him for returning marijuana and he felt he was helping citizens. Specialist Newman explained to CCA that the prosecutor's office was dismissing all charges regarding marijuana, and there was a period of time that lasted about two to four weeks, during which officers had been instructed not to touch people's marijuana, but other times they were told to seize the marijuana and tag it to be destroyed before being placed in Property.

Specialist Newman stated to CCA that there was a Staff Note from 2019 that said to "tag and destroy" marijuana under one hundred grams in weight. He added, "In between that - 2019, and the gun unit, they had a period of time where it was -um, they didn't care. It specifically said don't, don't touch anybody's stuff, then it changed back. This particular incident, I believe, that it was still, uh, you had to tag and destroy it. It went back to the old policy... of "tag and destroy." So, I think that the people- the management- was mad that some of us were just overlooking it."

Specialist Newman stated to CCA, " in order to - I don't want to say curry favor- but sometimes you'll pull over like an innocent person who doesn't have a gun and has a small bag of weed and then we would just say 'alright well have a good night' and they would be happy because we inconvenienced them. Specialist Newman added that everything he did "was helpful to a citizen" and he was "thanked for it." Specialist Newman stated that people who were able to drive off with a "small bag of weed" were "very thankful" and he and the officers he worked with were more favorable to citizens.

Specialist Newman had doubts regarding the validity of the anonymous complaint, and the motive behind it. GES received an email on February 2, 2021, shortly after this incident, which was a directive from upper management instructing officers that from that day forward, marijuana would be tagged and destroyed, but no one would be charged for marijuana possession.

Specialist Newman said that he and the other officers in the Gun Unit had been informed of policy changes by Lieutenant Schofield, who informed the officers "through email and roll call," and officers are also required to read the weekly Staff Notes, put out by the Chief's Office. Specialist Newman specified to CCA that the Staff Note which instructed officers "not to seize marijuana" was from 2020, and "after two to four weeks," the policy changed back to officers being required to seize and destroy marijuana.

Specialist Newman could not recall to CCA whether or not a contact card was completed. Specialist Newman also could not recall when his BWC was deactivated but speculated it would have been at the conclusion of the traffic stop.

Officer Michael Smith

Officer Michael Smith, #P0071, M/W/33, is currently assigned to District Five, and he has been a CPD member since 2014. Officer Smith was on routine patrol, in uniform and was a passenger in a marked cruiser operated by Specialist Newman; his BWC was activated.

CCA interviewed Officer Smith on May 27, 2022, at 2:08PM. He provided the following information:

An undercover police officer was watching a vehicle at a gas station and called out on the Tac channel for the marked units in the Gun Unit to stop the vehicle. This was common practice for the Gun Unit: an undercover unit would observe drug or gun activity, and instruct a uniformed unit, who would make a traffic stop. Officer Smith and Specialist Newman stopped the vehicle on Race Street due to heavy window tint.

Officer Smith and Specialist Newman requested the occupants roll the windows down. After the windows were rolled down, Officer Smith saw an open bottle of alcohol on the floorboard of the front passenger side of the vehicle. Officer Smith informed Specialist Newman there was probable cause to get everyone out and search the vehicle. Specialist Newman later relayed to Officer Smith that he smelled marijuana coming from the vehicle as well, but Officer Smith did not recall the odor of marijuana.

The officers searched the vehicle and the occupants. Two baggies of marijuana were found during the search, and the two subjects who possessed the marijuana were sent on their way with the marijuana. Everyone was given a warning and sent on their way. Officer Smith did not recall anyone having a warrant.

Officer Smith recalled that during that time period, officers had been instructed to seize marijuana but not cite people criminally, then they had been instructed not to take it, because the THC could not be measured by the State of Ohio to determine if the substance was “hemp” or “marijuana.” Later, the officers were again instructed to seize marijuana and to give the subject a written warning, or a “receipt” stating CPD had confiscated marijuana. On February 2, 2021, the unit got an email stating “Not sure if this has been going on, but...” marijuana was supposed to be seized, tagged, and destroyed. Officer Smith recalled that when they got this email, they had all been under the impression that marijuana was decriminalized. According to Officer Smith, the prosecutor’s office was told by the City of Cincinnati not to charge anyone for marijuana, so Specialist Newman, he, and other officers, whom Officer Smith could not recall specifically, had been giving subjects their marijuana back.

Officer Smith said the decision of whether or not to seize the marijuana would have been made by whoever located the marijuana, unlike a Contact Card where the responsibility falls on the primary officer making the stop. Officer Smith said that the decision to give marijuana back had been uniformed officers acting individually, without the directive of any supervisors. Further, Officer Smith added that no supervisors were even aware it was happening, because they usually were in the undercover units and rarely assisted on the traffic stops.

Officer Smith did not recall a Contact Card being filled out but stated it would have been the responsibility of him and Specialist Newman.

Officer Aubrey Pitts

Officer Aubrey Pitts, #P0280, M/B/31, is currently assigned to the Homicide Unit, and he has been a CPD member since 2016. Officer Pitts was on routine patrol, in uniform and operated a marked cruiser with Officer Mauric; his BWC was activated.

CCA interviewed Officer Pitts on May 2, 2022, at 12:02PM. He provided the following information:

Officers Pitts and Mauric were the secondary unit on a traffic stop conducted by Specialist Newman and Officer Smith. The vehicle was stopped for window tint primarily, but the area the vehicle was stopped in was known for shots fired, public intoxication, drug trafficking, and

homicides, and other illegal activities. Officer Pitts covered Specialist Newman as he approached the driver side of the vehicle.

Officer Pitts smelled a strong odor of marijuana and alcohol coming from the vehicle, and he saw marijuana residue, known as "shake," in the vehicle, which he verbalized on his BWC. The occupants were detained so the officers could investigate drug use and alcohol consumption inside the vehicle.

Officer Pitts searched one occupant, who was seated in the backseat behind the driver. There was no contraband found on that occupant. Officer Pitts said marijuana was recovered but did not recall which officers recovered the marijuana. He saw marijuana on the hood of Specialist Newman's cruiser. Officer Pitts said he deactivated his BWC after he had released his occupant, and he was talking to Specialist Newman, who was still trying to positively identify Witness A (M/B/32).

Officer Pitts stated to CCA, when marijuana is found, it is procedurally supposed to be recovered and destroyed. He could not recall if a written marijuana warning was required at that time or not, but did specify to CCA that either way, the marijuana was supposed to be recovered and placed in Property to be destroyed later. Officer Pitts did not fill out a contact card for the stop, due to Specialist Newman being the primary officer on the traffic stop.

Officer Matthew Mauric

Officer Mauric, #P0272, M/W/27, is currently assigned to the PIVOT team, and he has been a CPD member since 2016. Officer Mauric was on routine patrol, in uniform and was a passenger in a marked cruiser, operated by Officer Pitts; his BWC was activated.

CCA attempted to interview Officer Mauric on May 2, 2022, but was unable to complete the interview. CCA interviewed Officer Mauric on May 17, 2022, at 1:11PM. He provided the following information:

Officers Mauric and Pitts covered Specialist Newman and Officer Smith on a traffic stop. Officer Mauric approached the passenger side of the vehicle behind Officer Smith. As Officer Mauric approached the vehicle, he smelled the odor of marijuana coming from the vehicle. Officer Smith told Specialist Newman that he observed an open container on the floor of the vehicle. The officers began getting the occupants out of the vehicle based on the odor of marijuana and the open container being observed in plain view. As Officer Mauric opened the back passenger side door, he noticed a bag of marijuana sticking out of the coat pocket of the occupant sitting behind the passenger seat, who was identified as Witness B (M/B/33).

Officer Mauric stated all four occupants of the vehicle were detained for officer safety purposes: the presence of drugs increased the probability of the presence of weapons, and there were four occupants to investigate. Officer Mauric took Witness B to the front of Specialist Newman and Officer Smith's cruiser, searched him, and found marijuana on his person but nothing else. The marijuana found on Witness B was probably around 50 grams in total, and he possibly had two bags on him, both of which were plastic baggies.

Officer Mauric stated to CCA during that time period, it was common for Specialist Newman and Officer Smith to give marijuana back to people, or to allow people to take their marijuana back if marijuana was the only thing they found during a search. Officer Mauric knew that ultimately the marijuana would be given back to Witness B, since the traffic stop was initiated by Specialist Newman and Officer Smith, so he allowed Witness B to retrieve his marijuana. Officer Mauric knew that marijuana under one hundred grams was supposed to be seized to be destroyed, and

Witness B should have received a written marijuana warning, according to CPD practice. Because the traffic stop was initiated by Specialist Newman and Officer Smith, the paperwork would have been their responsibility, therefore Officer Mauric did not complete a contact card as a backup officer. He deactivated his BWC after the search of Witness B was complete.

OFFICER WITNESS STATEMENTS

Officer Thomas Back

Officer Thomas Back, #P0029, M/W/40, is currently assigned to the District Two and he has been a CPD member since 2015. Officer Back was on routine patrol, in uniform and operated a marked cruiser with Officer Tyler Lane; his BWC was activated.

CCA interviewed Officer Back on May 2, 2022, at 11:42AM. He provided the following information:

Officers Back and Lane, arrived as cover officers on a traffic stop. Officers Back and Lane were positioned in front of the stopped vehicle in order to deploy stop sticks if the vehicle fled the traffic stop. Once the occupants of the vehicle were being secured, Officer Back assisted in a vehicle search, but he could not recall the probable stop for the search. Officer Back did not find anything in his search, and he was unaware if anyone else did. Officers Back and Lane left the traffic stop to assist on another radio run for a subject with a firearm.

Officer Tyler Lane

Officer Tyler Lane, #P0278, M/W/36, is currently assigned to the Crime Gun Intelligence Unit (CGIU), and he has been a CPD member since 2016. Officer Lane was on routine patrol, in uniform and was a passenger in a marked cruiser operated by Officer Back; his BWC was activated.

CCA interviewed Officer Lane on April 27, 2022, at 11:15AM. He provided the following information:

Officers Lane and Back assisted on a traffic stop by pulling in front of the vehicle so they could deploy stop sticks if the vehicle tried to leave the traffic stop. Officer Mauric talked to a backseat passenger, who admitted he had marijuana. That occupant was detained, and Officer Lane verbalized on his BWC that the passenger had “big bag of weed.” Officer Lane searched the front passenger seat for about 30 seconds before his partner told him they needed to “break away,” or leave the scene, in order to assist on a run with a firearm. Officer Lane confirmed if no one was charged for possession of marijuana, the marijuana should have been seized, tagged, and destroyed.

Officer Trent Meucci

Officer Trent Meucci, #P0190, M/W/36, is currently assigned to District Three, and he has been a CPD member since 2015. Officer Meucci was on routine patrol, in uniform and operated a marked cruiser; his BWC was activated.

CCA interviewed Officer Meucci on May 6, 2022, at 6:29AM. He provided the following information:

When Officer Meucci arrived on scene, the other officers had already made contact with the occupants of the vehicle. Officer Meucci stood and covered while four people were removed from the vehicle by the other officers. He was told by another officer there was an open container of alcohol in the vehicle, and there was marijuana shake visible in the vehicle. Officer Meucci was not there when the decision was made to search the vehicle, and the occupants were removed from the vehicle and detained. Officer Meucci assisted by searching the vehicle. He did not recover any marijuana, but marijuana was recovered by other officers. Officer Meucci moved a small bag of marijuana from the trunk of the vehicle to the hood of the police cruiser where other officers were, so it was not sitting by itself. Officer Meucci left to respond to another incident, after making sure he was no longer needed.

WITNESS STATEMENTS

CCA was unable to interview Witness A, Witness B, or any of the other vehicle occupants, although attempts were made to reach the subject whose phone number was ascertained.

EVIDENCE

Police Documents

CCA reviewed all CPD-related forms, including but not limited to arrest forms, property receipts, the IIS Report, Hamilton County Court Records, CAD report, and information from CPD's Records Management System (RMS).

Computer Aided Dispatch (CAD)

<u>Date</u>	<u>Time</u>	<u>Call Notes</u>
01/14/2021	19:20:18	Traffic Stop initiated by Specialist Newman and Officer Smith.
	19:20:26	Officer Back and Officer Lane arrive as backup.
	19:20:46	Officer Meucci arrives on scene as backup.
	19:23:48	Officer Back and Officer Lane clear the incident.
	19:34:08	Specialist Newman and Officer Smith clear the incident.
	19:47:04	Officer Meucci clears the incident.

Note: Officers Mauric and Pitts are not attached to this incident on CAD report, and Officer Dunahay is listed as Officer Meucci's partner, but he remained in the vehicle for the duration of the traffic stop.

Body Worn Camera (BWC)

Specialist Newman

The events recorded by Specialist Newman's BWC occurred on 01/14/2021 starting at 19:19:17 and ending at 19:30:11, according to the BWC's timestamp. A review of that recording reveals the following:

Specialist Newman and Officer Smith initiated a traffic stop on a silver Honda. As Specialist Newman approached the vehicle, he informed the driver, later identified as Witness A, that he

had stopped the vehicle for the window tint. The BWC corroborated that the windows on the Honda did have heavy window tint. Specialist Newman asked Witness A if he had his driver's license with him and he replied that he did not. Officer Smith said "Kevin" and nodded to Specialist Newman. Specialist Newman instructed Witness A to step out of the vehicle. Specialist Newman handcuffed the driver and mentioned there was marijuana in the vehicle. He patted Witness A down while walking him to his cruiser and told him to "watch the weed in the car." Specialist Newman told Witness A that he "likes to give warnings" and placed him in the back seat of the cruiser. Specialist Newman returned to the Honda and there was one occupant searched by Officer Smith, who pulled a sandwich baggie of marijuana out of the occupant's pocket and placed it on the trunk of the Honda. There was another occupant searched outside the vehicle by Officer Pitts, and Officer Mauric talked to Witness B behind the passenger seat. Officer Mauric got Witness B out of the vehicle and handcuffed him, then led him to the front of the cruiser and searched him.

Specialist Newman got back in his cruiser and queried Witness A's information. He did not think the picture looked like Witness A. Specialist Newman queried the other occupants' information on his computer and confirmed that no one had warrants. Specialist Newman continued trying to positively identify Witness A and told the occupants that they could go get back in the vehicle. Specialist Newman turned toward Officer Mauric and said, "I'm good with it if my coworkers are. I don't care." Specialist Newman put his hand up and said, "But hey, hey listen..." He paused and agreed with whatever Officer Mauric said, which was inaudible. Specialist Newman talked to Witness A about his birthday. Officer Smith and Specialist Newman identified Witness A and helped him out of the cruiser. Specialist Newman took his handcuff key out, and turned his BWC off, before Witness A's handcuffs were removed.

Officer Smith

The events recorded by Officer Smith's BWC occurred on 01/14/2021 starting at 19:19:25, according to the BWC's timestamp. A review of that recording reveals the following:

When Specialist Newman conducted the traffic stop on the Honda, Officer Smith approached the vehicle on the passenger side. Officer Smith looked in the window of the passenger door and said "Kevin" to get Specialist Newman's attention, and after looking at Officer Smith, Specialist Newman told Witness A he needed to step out of the vehicle. Officer Smith then informed Specialist Newman, and Officers Pitts and Mauric, that there was an open bottle in the vehicle. Officer Smith opened the door and asked the front passenger to step out. Officer Smith told the front seat passenger that one of the other occupants had marijuana in his possession, and he did too. Officer Smith took a baggie of marijuana out of the male's pocket and put it on the trunk of the vehicle. The male asked questions about being detained, and Officer Smith told him it was because the vehicle smelled like marijuana, and he had it in his possession. Officer Smith placed the front seat passenger in the back of the cruiser with Witness A, and then searched the vehicle. Specialist Newman asked Officer Smith to help him identify Witness A. Officer Smith looked at the picture, and then spoke to Witness A in the back of the cruiser. Officer Smith told the front seat passenger that he could go and assisted him out of the back of the cruiser. Officer Smith took the handcuffs off the front seat occupant, who then asked if he could have his marijuana back. Officer Smith said "yep, no problem" and "Go ahead and take that shit off there and have a great day." Officer Smith helped identify Witness A, and Specialist Newman assisted Witness A out of the cruiser and removed the handcuffs. Specialist Newman told Witness A to go get his driver's license fixed, and then added, "And we gave you your weed back, so be nice." Once Witness A walked back to his vehicle, Officer Smith walked back to the passenger side of the cruiser and deactivated his BWC.

Officer Lane

The events recorded by Officer Lane's BWC occurred on 01/14/2021 starting at 19:19:54 according to the BWC's timestamp. A review of that recording reveals the following:

Officer Lane was the passenger in a cruiser driven by Officer Back, at Specialist Newman's traffic stop, parked in front of the traffic stop. Officers Lane and Back assisted with searching the front of the vehicle. Officer Back called to Officer Lane and told him, "Let's break away." Officer Lane walked back toward his cruiser and turned his BWC off.

Officer Back

The events recorded by Officer Back's BWC occurred on 01/14/2021 starting at 19:19:07, according to the BWC's timestamp. A review of that recording reveals that Officer Back's BWC corroborates Officer Lane's BWC, and Officer Back's statement made to CCA.

Officer Meucci

The events recorded by Officer Meucci's BWC occurred on 01/14/2021 starting at 19:19:25, according to the BWC's timestamp. A review of that recording reveals that Officer Meucci's BWC corroborates his statement made to CCA.

Officer Mauric

The events recorded by Officer Mauric's BWC occurred on 01/14/2021 starting at 19:19:58 according to the BWC's timestamp. A review of that recording reveals the following:

Officer Mauric's BWC corroborated his statement to CCA. When Witness B got out of the vehicle, Officer Mauric handcuffed him and told him he saw marijuana in his pocket. Officer Mauric then stood Witness B in front of the cruiser and searched his pockets. Officer Mauric pulled a freezer bag of marijuana out of his right coat pocket and placed it on the hood of the cruiser. Officer Mauric explained they can give warnings for marijuana so long as everybody is "cool," and Witness B made a comment about getting his weed back. Specialist Newman told Officers Mauric and Pitts that everyone could leave if no one had warrants. Officer Mauric took Witness B's left handcuff off, and Specialist Newman was heard saying, "I'm good with it if my coworkers are. I don't care." Officer Mauric then stepped to the side of Witness B and said, "Trace amounts. There was barely any, right?" as he deactivated his BWC.

Officer Pitts

The events recorded by Officer Pitts' BWC occurred on 01/14/2021 starting at 19:19:35 and ending at 19:27:56, according to the BWC's timestamp. A review of that recording reveals the following:

Officers Mauric and Pitts arrived on scene of the traffic stop and approached the driver's side. He directed the backseat passenger behind the driver's seat to keep his hands on the back of the headrest in front of him. Officer Pitts verbalized that there is marijuana "shake" or residue inside the vehicle on the center console. Officer Pitts instructed the backseat driver's side passenger to get out of the vehicle, and then handcuffed him and searched his pockets. Officer Pitts queried the occupants' social security numbers and confirmed that no one had any warrants. Officer Pitts asked the occupants about Witness A's identity. Officer Pitts took the handcuffs off the backseat passenger he had searched, and then walked back over to help Specialist Newman. Officer Pitts opened the back door to the cruiser and spoke to Witness A, who was upset, because the officers

did not believe he was who he said he was. Officer Pitts calmed him down and explained that they had to verify what he told them. Officer Pitts closed the cruiser door and whispered something to Officer Mauric, as he turned his BWC off. Witness A was still handcuffed in the back of the cruiser at that time.

Clerk of Courts

There were no charges as a result of this incident.

Digital Video Recording/Mobile Video Recording

Equipment number:

Time: 19:19:37 – 19:31:54

Specialist Newman operated a marked cruiser as he approached an intersection. There was a silver Honda sedan in the left turn lane, and Specialist Newman got behind it as it turned left. Specialist Newman activated his overhead lights, initiating a traffic stop on a one-way street. The Honda pulled over to the left side of the road. Officers Smith and Mauric approached the passenger side of the vehicle, while Specialist Newman and Officer Pitts approached on the driver's side. Specialist Newman talked to the vehicle driver, Witness A, and then opened the driver door, as another officer arrived on scene and approached the driver's side from behind Specialist Newman's cruiser. Witness A stepped out of the vehicle and walked off camera. The officers on the passenger side of the vehicle opened the front passenger door and that occupant stepped out as well. He was handcuffed and walked to the back of the vehicle, as the third occupant got out of the back seat of the vehicle on the driver's side. Officer Mauric pulled a Styrofoam cup out of the vehicle, and Witness B was taken out of the vehicle by Officer Mauric and walked to the front of the cruiser. Officer Mauric searched Witness Bs pockets and pulled a freezer bag of marijuana out of his coat pocket. Officer Mauric continued searching Witness B's pockets.

Officer Meucci walked over with a baggie of marijuana and set it on the hood of the cruiser. Officer Mauric stood with Witness B for several minutes, and then after talking to another officer, who was off camera, began to remove the handcuffs. Once Officer Mauric took Witness B's left hand out of handcuffs, Witness B smiled and reached slowly for the freezer bag of marijuana while looking to the left, off camera. Witness B held the marijuana close to his body and kept smiling, before placing the marijuana back in his pocket.

Officer Mauric smiled and looked off camera to the left as well. He removed Witness B's right arm from handcuffs, and walked to the left, off camera. Witness B returned to the cruiser and picked up the small sandwich baggie of marijuana from the hood, and handed it to the front seat passenger, who was walked past him toward the Honda. That passenger placed the baggie of marijuana back in his pocket. The three males continued standing between the cruiser and the Honda, talking amongst themselves for a few minutes, watching to the left, off camera. Witness A got back into his vehicle and parked it in a parking spot on the left side of the road. The other occupants got back in the vehicle, and Witness B got out and looked in the road at something. The recording ended as the cruiser was leaving the scene, and the Honda was still parked to the left side of the road.

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

Specialist Newman and Officer Smith both stated there were many changes by CPD regarding how marijuana was to be handled. Further, Specialist Newman stated there was a two-to-four-week period where CPD officers were instructed to leave marijuana where it was and not seize it at all, according to Staff Notes. However, the other officers interviewed by CCA all stated the policy was always to seize the marijuana, and whether to give a written warning or not was the portion that changed. CCA examined Staff Notes distributed from January of 2019 to December of 2020, and the seizing of marijuana directive never changed, only the written warning portion.

AUTHORITIES

I. Case Law

Carroll v. United States, 267 U.S. 132 (1925)

A decision by the United States Supreme Court that upheld the warrantless searches of an automobile.

State v. Waddy, 63 Ohio St. 3d 424, 442 (1992)

Upholding searches and seizures of evidence when evidence found in “plain view.”

State v. Moore, 90 Ohio St. 3d 47, 52-53 (2000)

Upholding search of a car and its occupants based on “exigent circumstances” because of odor of marijuana coming from car and occupants.

Beck v. Ohio, 379 U.S. 89, 91 (1964)

A decision defining “probable cause.”

II. CPD Procedure Manual (in part)

§ 12.205 - Traffic Enforcement (Revised 2019)

Purpose:

To afford the public a fair measure of enforcement consistent with the objectives of efficient traffic regulation, accident investigation, and relieving traffic congestion. To 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.
- There is a logical possibility of malfunction of mechanical equipment without knowledge or intent on the part of the driver.

- The content of the particular law, which was violated, is not common knowledge.

Policy:

No law enforcement agency should condone or promote the use of any illegal profiling system in their enforcement program. Any member of the Department who engages in illegal profiling shall be subject to disciplinary action, in accordance with applicable civil service law, up to and including dismissal, and may face claims of civil rights violations in Federal court.

Procedure:

- A. On-duty Traffic Enforcement Guidelines 1. On ALL motor vehicle traffic stops, officers will complete a Contact Card and submit it at the end of the shift. Officers will ensure the MUTT#, NTA# and CAD# are written on the Form 534. 2. When participating in traffic stops, officers must ensure video and audio equipment is activated. 3. Take appropriate enforcement action whenever a violation is detected, including provable violations determined as the result of accident investigations.

§ 12.554 Investigatory Stops (Revised 2019)

Information:

There are three levels of police/citizen contact. The first level is a consensual encounter. A police officer may approach any person in a public place and request to talk to him. So long as the person is free to leave whenever he wants, no Fourth Amendment seizure has occurred, and no reasonable suspicion or probable cause is required.

The next level is the "Terry" type encounter. Here the officer has reasonable suspicion to believe the citizen is committing or has committed a crime. Based on this reasonable suspicion, the officer may forcibly stop and detain the citizen for a brief investigatory period. Although a citizen is required to properly identify oneself during the stop, failure to answer investigatory questions asked by the officer cannot provide the justification for detaining a person past the period necessary to complete the brief "Terry" type investigation. Once the reasonable suspicion is determined to be unfounded, the citizen must be released.

The third level of police/citizen contact is the arrest. 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 committing or has committed a criminal offense.

Policy:

No law enforcement agency should condone or promote the use of any illegal profiling system in its enforcement program. Criminal elements exist in every segment of our society. An officer whose enforcement stops are based on race or ethnicity is engaged in a practice which undermines legitimate law enforcement and may face claims in Federal courts of civil rights violations. To focus on a single segment of society is to limit enforcement efforts.

Procedure:

- A. Completing a Form 534, Contact Card 1. A Contact Card must be completed any time an officer stops a motor vehicle or conducts an inquiry of individuals in a stopped motor

vehicle. a. When more than one vehicle is stopped as result of a single incident (same CAD number), officers will note the vehicle number (#2, #3, #4, etc.) in the designated block on the Contact Card. If only one vehicle is stopped it is not necessary to put #1 in the block. b. A Contact Card is required in addition to any other documentation of the incident (e.g., Form 527, Arrest Report, NTA, MUTT).

§ 12.540 Body Worn Camera System

Purpose:

Establish guidelines regarding the use, management, storage, release, and retention of video and audio files captured by the Body Worn Camera system. BWC systems promote accountability and transparency for law enforcement by providing a video record of police activity. Police operations become more transparent to the public and help resolve questions following encounters between officers and citizens.

Policy:

Officers are required to activate their BWC system during all law enforcement-related encounters and activities as defined in this procedure. Officers will deactivate the BWC system only at the conclusion of the event, or with supervisor approval. When an officer is involved in a police intervention shooting, their BWC will be subject to the process outlined in Procedure 12.550, Discharging of Firearms by Police Personnel.

Procedure:

2. Officers will use BWC equipment to record all calls for service and self-initiated activities listed below. The BWC must be activated when the officer arrives on-scene or announces he/she is on-scene in the area and must be recorded in its entirety. This includes:
 - a. While responding for calls for service in emergency mode.
 - b. Traffic stops, including the investigation of a vehicle and occupants already stopped or parked.
 - 1) Officers equipped with the BWC (primary or backup officers) will continue to record until the stopped vehicle departs or officers leave the scene.
 - d. When assisting other officers on any call for service or self-initiated activity.
 - 1) Officers **must** ensure they are added to the CAD incident when assisting other officers.
4. The BWC may be deactivated after:
 - a. Clearing the call for service/self-initiated activity.
 - 1) Officers are not required to keep the BWC activated while completing paperwork, e.g. case report, as long as they are not interacting with the public.

- b. The DVR is activated and recording a subject being transported in the police vehicle.

§ 12.715 Property and Evidence: Confiscation, Accountability, Processing, Storage, and Release.

Policy:

Police personnel confiscating, seizing or recovering property of any kind will be in compliance with local, State and Federal laws.

Property used in an unlawful manner will be seized and held as evidence in connection with the arrest.

II. Ohio Revised Code

§ 4513.241 - Using tinted glass and other vision obscuring materials.

The director of public safety, in accordance with Chapter 119. of the Revised Code, shall adopt rules governing the use of tinted glass, and the use of transparent, nontransparent, translucent, and reflectorized materials in or on motor vehicle windshields, side windows, sidewings, and rear windows that prevent a person of normal vision looking into the motor vehicle from seeing or identifying persons or objects inside the motor vehicle.

§ 2901.01(A)(13)

A) As used in the Revised Code:

- (13) "Contraband" means any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. "Contraband" includes, but is not limited to, all of the following:

- (a) Any controlled substance,

§ 4301.62 Opened container of beer or intoxicating liquor prohibited at certain premises.

B) No person shall have in the person's possession an opened container of beer or intoxicating liquor in any of the following circumstances:

- (4) Except as provided in division (D) or (E) of this section, while operating or being a passenger in or on a motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking;

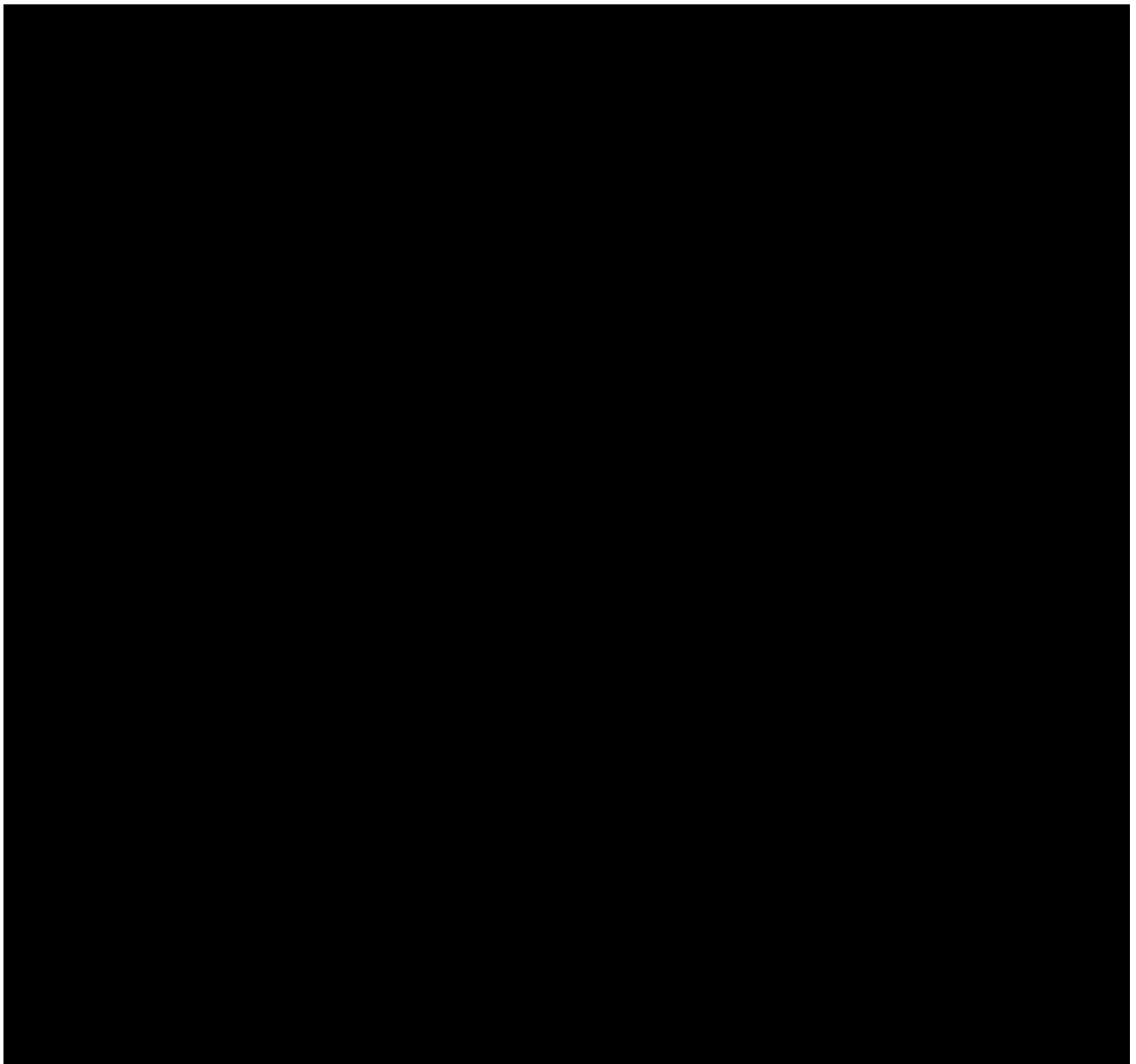
III. Cincinnati Municipal Code

Sec. 910-23. - Possession of Marijuana.

- (A) No person aged eighteen or over shall knowingly obtain, possess, or use marijuana, in an amount less than one hundred grams.

- (B) Whoever violates this section is guilty of possession of marijuana, a minor misdemeanor. Persons convicted of violating this section shall be fined \$0.00, provided that any such use of marijuana did not occur in a public place, defined for purposes of this section as places generally open to the public, including, but not limited to, sidewalks, streets, parks, and places of public accommodation.
- (C) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.
- (D) All court costs shall be \$0.00 for violations of this section herein.

IV. Cincinnati Police Department Investigations Manual



V. CPD Staff Notes

January 2019-December 2020

1. July 11, 2019 INTERIM PROCESSESSING FOR VIOLATIONS OF THE NEW CINCINNATI MUNICIPAL CODE 910-23, POSSESSION OF MARIJUANA

On June 12, 2019, City Council enacted Cincinnati Municipal Code 910-23, Possession of Marijuana, which made possession of less than 100 grams of marijuana a Minor Misdemeanor carrying a penalty of \$0.00. Planning Section and Law Department Personnel are continuing to develop policy and procedure as it relates to CMC 910-23. In the interim, all Department members are directed to issue WARNING citations for violations of CMC 910-23.

Effective 0001 hours on July 12, 2019, officers **shall do the following** if they encounter a person possessing or using marijuana:

ADULTS:

POSSESSION of <100g of marijuana in **ANY PLACE** or **USE** in a **PRIVATE PLACE**:

- o Complete an NTA for CMC 910-23 and write "WARNING" over the court date area 910-23 reads, "No person shall knowingly obtain, possess, or use marijuana, in an amount less than one hundred grams"
- o Seize the marijuana:
 - Tag it for DESTRUCTION if CMC 910-23 is the ONLY violation
 - Tag it as EVIDENCE if the possession or use of marijuana is the basis for an accompanying charge (e.g., Carrying Concealed Weapons, discovery of other contraband, etc.)
- o Attach a copy of the NTA to the property envelope
- o Submit the original NTA to the District/Section/Unit Q&A clerk

USE of <100g of marijuana in a **PUBLIC PLACE**:

- o Cite under ORC 2925.11 and process according to current procedures (12.555)
 - Issue an NTA
 - Seize the marijuana, tag it as **EVIDENCE** and submit to the lab for testing

Nothing in CMC 910-23 "legalizes" possession or use of marijuana – officers and supervisors must be prepared to encounter subjects who believe the possession or use of marijuana is legal.

September 5, 2019

1. DIRECTIVES FOR MARIJUANA INVESTIGATIONS AND PROCESSING ADULTS:

A. POSSESSION of <100g of marijuana in ANY PLACE or USE in a PRIVATE PLACE

Complete an NTA for CMC 910-23 and write "WARNING" over the court date area

- 910-23 reads, "No person shall knowingly obtain, possess, or use marijuana, in an amount less than one hundred grams"

Seize the marijuana:

- Tag it for **DESTRUCTION** if CMC 910-23 is the ONLY violation
- Tag it as **EVIDENCE** if the possession or use of marijuana is the basis for an accompanying charge (e.g., Carrying Concealed Weapons, discovery of other contraband, etc.)
- Attach a copy of the NTA to the property envelope
- Submit the original NTA to the District/Section/Unit DQA clerk

B. USE of <100g of marijuana in a PUBLIC PLACE:

Cite under ORC 2925.11 and process according to current procedures (12.555)

- Issue an NTA
- Seize the marijuana, tag it as EVIDENCE and submit to the lab for testing

ANALYSIS

Allegation 1: Improper Search (Vehicle)

An anonymous Complainant alleged that a vehicle was searched, and all four occupants were searched. Specialist Newman and Officer Smith stated they conducted a traffic stop due to the windows of the vehicle being dark, which is a violation of §4513.241 of the Ohio Revised Code (ORC). The window tint can be observed on the BWC and is excessively dark. When the officers approached the vehicle, they observed in plain view an open container of alcohol and marijuana "shake" or residue inside the vehicle. It is well established by caselaw such as Carroll v. United States that officers are permitted to search a vehicle without a search warrant if there is probable cause to believe the vehicle contains evidence of a crime, including drugs or other contraband. In this case, due to fact that the officers observed drugs and an open container of alcohol in plain view, after having performed a legal traffic stop, the officers could both search the car and seize the evidence. Therefore, CCA determined the search of the vehicle by Specialist Newman and

Officers Back, Lane, Smith, and Meucci was legal and consistent with CPD's policies, procedures, and training.

Allegation 2: Improper Stop

The anonymous Complainant alleged that CPD officers improperly detained the occupants of the motor vehicle while on a traffic stop.

CPD Procedure §12.554 Investigatory Stops permits an officer to stop and detain a person when probable cause exists to believe that the person has committed an offense. Under the policy an officer may "forcibly stop and detain" a citizen "for a brief investigatory period" even if there is less than probable cause; such a detention requires only "reasonable suspicion" to believe the citizen has committed a crime.

Here Specialist Newman and Officer Smith had probable cause to stop the vehicle due to the window tint violation. Officer Smith observed the open container inside the vehicle, which provided probable cause to support a violation of §4301.62 of the ORC. The open container was within reach of both the front seat passenger and the operator of the vehicle. Specialist Newman detained the vehicle operator, and he was removed from the vehicle.

Once he was out of the vehicle, other officers could observe marijuana "shake," or residue, on the driver's seat and on center console of the vehicle. Officers Smith and Pitts commented that that vehicle had the odor of marijuana, which builds on the officers' probable cause to search the vehicle. The officers ordered the occupants out of the vehicle so it could be searched. Because the marijuana "shake" was within reach of all four occupants of the vehicle, and because of concerns expressed by the officers that the presence of marijuana increased the likelihood that firearms were present, the officers had a right to detain the occupants to investigate the presence of marijuana, any other contraband, and the consumption of alcohol inside the motor vehicle. It is also significant that the detentions all occurred for less than 11 minutes, rather than for a prolonged period. CCA determined the detention of the occupants was consistent with CPD's policies, procedures, and training.

Allegation 3: Improper Search (Person)

The complainant alleged it was improper that all four occupants were handcuffed and searched.

CPD's Investigations Manual 12.0.0 Search and Seizure specifies when officers may search persons or property to include if the person gives consent, lawful frisks leading to lawful searches, and search incident to arrest. Police may also seize evidence or contraband found in plain view. Moreover, Ohio law generally permits police searches of persons removed from an automobile when an odor of marijuana is present. Under State v. Moore such searches are permissible because the possibility that the marijuana odor will fade if an officer is required to secure a search warrant before searching constitutes an "exigent circumstance" that permits the search.

Based on these principles, the officers in this case likely had authority to search the driver (Witness A), front seat passenger, and rear passenger behind the driver based on the odor of marijuana emanating from the car. The other backseat passenger (Witness B) had a large freezer bag of marijuana which was plainly visible upon him exiting the vehicle, so officers were permitted to search him and take control of the marijuana based on the fact that it was in plain view.

For all of these reasons, CCA determined that the searches of the car's occupants were likely consistent with CPD's policies, procedures or training.

Collateral Allegations:

Allegation 1: Improper Procedure

According to the Ohio Revised Code §2901.01(A)(13), “contraband” is defined as any property that is illegal for a person to possess. While amounts of marijuana less than 100 grams had been “decriminalized” at the time of the car stop at issue, it was still illegal for citizens to possess marijuana. The Cincinnati Municipal Code Section 910-23 stated “No person aged eighteen or over shall knowingly obtain, possess, or use marijuana, in an amount less than one hundred grams.” The lack of court fine and the lack of criminal conviction as penalties for possessing marijuana does not grant permission for persons in Cincinnati to possess marijuana. The officers had a duty to seize and secure the marijuana and submit it to be destroyed, which was policy according to several officers involved.

While Specialist Newman stated the officers had been directed to give marijuana back to citizens, or at the least, not to seize it, that information was not corroborated by the other officers, and CPD Staff Notes from 2019 and 2020 clearly instructed officers to seize marijuana. Following the decriminalization of marijuana in Cincinnati, there appears to have been some confusion expressed by officers interviewed for this case regarding whether or not subjects with marijuana were required to receive a verbal warning or a written warning, but there is no information to suggest that the Cincinnati Police Department instructed officers to give marijuana back. CCA determined that the action, or rather lack of action, taken by Specialist Newman, Officer Smith, and Officer Mauric was improper and not consistent with CPD policies and procedures.

Allegation 2: Improper Procedure (Contact Card)

According to the CPD Policy and Procedure Manual §12.554 Investigatory Stops, officers are required to complete a contact card any time an officer stopped a motor vehicle or “conducts an inquiry of individuals in a stopped motor vehicle.” There was no contact card completed for this traffic stop, which was initiated and led by Specialist Newman and Officer Smith. CCA determined that not filling out a contact card in this situation is not consistent with CPD policies and procedures.

Allegation 3: Improper Procedure (BWC)

According to CPD Policy and Procedure Manual §12.540 Body Worn Camera System, officers equipped with the 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 must record the incident in its entirety, including responding for calls for service in emergency mode, and traffic stops. Whether they are acting as the primary officer or a backup officer, they are required to continue to record until the stopped vehicle departs or until officers leave the scene.

Specialist Newman turned his BWC off before the driver was released from handcuffs. Officers Mauric and Pitts turned their BWCs off while Witness A was still detained, in handcuffs in the back of the cruiser. CCA determined that by turning off their BWCs while a subject was still in custody and the officers remained on scene, their actions were not consistent with CPD policies and procedures.

Allegation 4: Improper Procedure

Furthermore, CPD Policy and Procedure Manual 12.540 also states that officers “ensure they are added to the CAD incident when assisting other officers.” However, Officers Pitts and Mauric are not listed on the CAD as officers assigned to this traffic stop, although both played an active role and remained on scene for the entirety of the stop.

Note:

IIS investigated this incident along with several others around the same time frame. IIS Exonerated all officers involved for Improper Detention and Improper Search.

IIS Sustained several officers for Improper Procedures: Specialist Newman, and Officers Smith and Mauric were Sustained for Mishandling of Property; Specialist Newman and Officer Smith were Sustained for Failure to Submit a Contact Card; and Specialist Newman, Officers Smith and Mauric were Sustained for Body Worn Camera Violation and Failure to Submit Marijuana Warnings.

Officer Mauric was also Sustained for “Serious Misconduct (Dishonesty)” for making false statements to IIS regarding the officers’ handling of the marijuana at issue in this case.

The officers received discipline for these matters.

Observation:

When officers abuse their discretion by disregarding police policy relating to the enforcement of local and state drug laws, especially when they do so on arbitrary or subjective bases, they create troubling inconsistencies and risk engaging in biased policing. At a minimum, where there is inconsistency in treatment of the public, there is the perception of bias.

When questioned about his decision to return marijuana to the motorists in this case, Specialist Newman indicated that he had a habit of returning seized marijuana to individuals based in part on whether those persons were “innocent,” a subjective measure not found in policy. When trying to justify his practice of returning marijuana to IIS, he stated: Sometimes there are *good people* that get pulled over (emphasis added).” On another car stop involving a marijuana seizure that occurred just days before the traffic stop complained of in this case, Specialist Newman declined to charge a motorist with trafficking when the evidence otherwise supported it because the motorist was a “college student.”

Exercises of discretion to search, seize, or charge based on factors such as a citizen’s education, occupation, or perceived “goodness” (or lack thereof) threaten the principle of bias-free policing. While the officers involved in this car stop told CCA they were trying to build community relations or rapport and “be helpful to a citizen” by allowing the motorists to keep their marijuana, such favorable action, especially when motivated by subjective factors or character assessments, opens the door to other citizens, whose marijuana was seized by CPD, to feel as if they were treated unfairly or more harshly by police because they lacked certain characteristics favored by certain officers. CCA is monitoring this issue, including any future occurrences of similar behavior, and will make any appropriate recommendations to address concerning patterns.

FINDINGS

Original Allegations

Specialist Kevin Newman
Officer Michael Smith

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**

Specialist Kevin Newman
Officer Michael Smith
Officer Thomas Back
Officer Tyler Lane
Officer Trent Meucci
Officer Aubrey Pitts

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

Collateral Allegations

Specialist Kevin Newman
Officer Michael Smith
Officer Matthew Mauric

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

Specialist Kevin Newman
Officer Michael Smith

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**

Specialist Kevin Newman
Officer Aubrey Pitts
Officer Matthew Mauric

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

Officer Matthew Mauric
Officer Aubrey Pitts

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



Kerrie Kimpel, Investigator



Gabriel Davis, Director

PREVIOUS CONTACTS AND COMMENDATIONS

Specialist Newman

Previous Contacts with CCA

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

Case Number	Allegation	Finding
20227	Pointing of a Firearm	Active
20227	Improper Search	Active
20227	Improper Search	Active
20227	Improper Stop	Active
20223	Improper Search	Exonerated
20189	Excessive Force	Active
20189	Discourtesy	Active
20189	Lack of Service	Active
20116	Discrimination	Active
20116	Discourtesy	Active
19248	Discrimination	Unfounded

Previous Contacts with IIS

Specialist Newman had one previous contact with IIS in the past three years.

Case Number	Allegation	Finding
2019-001	Improper Procedure	Sustained

Commendations

Specialist Newman received one commendation in the past three years.

Date	Source of Commendation Received
01/05/2020	CPD

Officer Smith

Previous Contacts with CCA

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

Case Number	Allegation	Finding
20227	Pointing of a Firearm	Active
20227	Improper Search	Active
20227	Improper Search	Active
20227	Improper Stop	Active
20227	Improper Procedure	Active
20223	Improper Search	Exonerated
20189	Excessive Force	Active
20189	Discourtesy	Active

Case Number	Allegation	Finding
20189	Lack of Service	Active
19132	Discourtesy	Sustained
19132	Improper Stop	Exonerated
19132	Improper Stop	Exonerated
19097	Harassment	Unfounded
19097	Improper Stop	Exonerated
18096	Improper Procedure	Sustained
18096	Excessive Force	Sustained
18096	Excessive Force	Not Sustained
18096	Improper Procedure (Taser-Failure to Warn	Sustained
18096	Improper Stop	Exonerated
18070	Discourtesy	Sustained
18070	Improper Search (person)	Exonerated
18070	Improper Stop (vehicle)	Exonerated
18070	Improper Search (person	Exonerated
18070	Improper Search (vehicle)	Exonerated
18070	Use of Force	Exonerated
18026	Discourtesy	Referred

Previous Contacts with IIS

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

Commendations

Officer Smith received two commendations in the past three years.

Date	Source of Commendation Received
01/05/2020	CPD
03/13/2018	Civilian

Officer Pitts

Previous Contacts with CCA

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

Previous Contacts with IIS

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

Commendations

Officer Pitts received three commendations in the past three years.

Date	Source of Commendation Received
01/05/2020	CPD
11/25/2018	Civilian
06/15/2018	CPD

Officer Mauric

Previous Contacts with CCA

Officer Mauric had four previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
20156	Improper Search	Active
20156	Improper Search	Active
20156	Pointing of a Firearm	Active
20156	Improper Procedure	Active
20156	Improper Stop	Active
20116	Improper Search (Vehicle)	Active
20116	Improper Procedure	Active
20116	Discrimination (Racial)	Active
19260	Improper Search	Sustained
19260	Improper Search	Exonerated
19254	Improper Stop	Exonerated
19254	Improper Search	Exonerated

Previous Contacts with IIS

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

Commendations

Officer Mauric received two commendations in the past three years.

Date	Source of Commendation Received
01/03/20	CPD
01/03/20	CPD