

**Date:** August 26, 2022

**Case:** #21241

**Investigator:** Ikechukwu Ekeke

**Complaint Received:** March 27, 2020

**Complainant:** Alisha Crittenden

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**Complaint Summary:**

On December 3, 2021, Ms. Alisha Crittenden (F/B/38) alleged that Officer Elizabeth McNay, (F/B/41) P0436, struck Ms. Crittenden in the face while handcuffing her with the bottom palm of her hand.

**Allegations:**

Excessive Force

**Persons Involved:**

Officer Elizabeth McNay, #P0436, F/B/41 (CPD, Involved)  
Officer Dylan Scalf, #P0388, M/W/23, (CPD, Witness)  
Sergeant Matthew Spradlin, #S0115  
Alisha Crittenden, F/B/38 (Citizen, Complainant)  
Witness A, M/B/U (Citizen, Witness)  
Witness B, M/B/U (Citizen, Witness)

**Evidence Reviewed:**

Mobile Digital Video Recording from Officers Scalf's and McNay's cruiser  
CPD Internal Investigation Section (IIS) Report  
CPD Computer Aided Dispatch (CAD)  
Body-Worn Camera (BWC) for Officers McNay, Scalf, and Sergeant Spradlin  
Statements by officers, complainant, and relevant witnesses  
Hamilton County Clerk of Courts Docket

**Authorities:**

CPD Procedure 12.554 Investigatory Stops  
CPD Procedure 12.545 Use of Force  
United States v. Mendenhall, 446 U.S. 544, 553-554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980), citing United States v. Martinez-Fuerte, 428 U.S. 543, 554.  
Graham v. Connor, 490 US 386 (1989).

## Analysis:

### **Allegation: Excessive Force**

On November 15, 2021, Officers McNay and Scalf responded to a dispatch run regarding a domestic dispute. Officers McNay and Scalf arrived on scene and spoke with Witness B, one of the subjects of the call. A review of the officers' BWCs showed while speaking with Witness B, Ms. Crittenden returned to the scene (the home that she shares with Witness B) and spoke with Officer Scalf in her driveway. Officer McNay followed Witness B into the residence to see the scene of the domestic dispute, Ms. Crittenden also attempted to enter the residence. Officer Scalf detained Ms. Crittenden after Ms. Crittenden refused to remain outside. After viewing the scene in the residence, Officer McNay returned outside and assisted Officer Scalf in detaining Ms. Crittenden. While detaining Ms. Crittenden, Officer McNay and Ms. Crittenden argued. Specifically, Officer McNay stated, "you obviously you cannot listen to instruction...when we're doing an investigation, we tell you whatever we want to tell you." Ms. Crittenden turned her head and responded, "no, you can't". Then Officer McNay, with her hand outstretched, redirected Ms. Crittenden's face away from her own and kept her hand on Ms. Crittenden's face for over thirty seconds. Ms. Crittenden verbally objected to the physical contact made by Officer McNay and requested a supervisor before being placed into Officer Scalf's cruiser by Officer McNay. CPD Arresting report documents a description of Ms. Crittenden's injury as busted lip bruise(s)/abrasion(s) tiny cut on Ms. Crittenden's finger and busted lip claimed at Hamilton County Jail.

While placing Ms. Crittenden into Officer Scalf's cruiser, Officer McNay told Ms. Crittenden she was being arrested for domestic violence. Sergeant Spradlin, the requested supervisor, arrived at the scene and spoke with Ms. Crittenden before Ms. Crittenden was taken to the Hamilton County Justice Center (HCJC) for Domestic Violence and Obstruction of Official Business (OOB). While Ms. Crittenden plead no contest to the OOB charge, the Court dismissed the domestic violence charge.

Ms. Crittenden alleged excessive force occurred when Officer McNay "hit" her in the face. According to United States Supreme Court in United States v. Mendenhall, the "purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." 446 U.S. 544, 553-554, (1980), citing United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976).

CPD Procedure § 12.554 Investigatory Stops provides that officers may forcibly stop and detain the citizen for a brief investigatory period when an officer has reasonable suspicion to believe the citizen is committing or has committed a crime. Accordingly, Officer Scalf's detainment of Ms. Crittenden allowed Officer McNay the opportunity to investigate the cause of the domestic dispute further, which was captured on her BWC.

CPD Procedure §12.545 Use of Force states a police officer's right to make an arrest or an investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to effect it. CPD Procedure §12.545 defines force as any "physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person." Additionally, CPD Procedure §12.545 regards the use of physical strength that causes pain or leaves a mark (force alleged by Ms. Crittenden) as hard hands, which merits an use of force analysis. In this case, Officer McNay moving, hitting, or redirecting Ms. Crittenden's face

equals significant physical contact that restricted Ms. Crittenden's movement; thereby, Officer McNay's actions constituted a use of force.

According to Graham v. Connor, 490 US 386 (1989), in the presence of use of force, an assessment of the reasonableness of the 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 she is actively resisting arrest or attempting to evade arrest by flight. ... (T)he '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.

Additionally, CPD Procedure §12.545 states:

Officers should attempt to achieve control through advice, delay, warnings, and/or persuasion when confronted with a situation where control is required to effect an arrest or protect the public's safety. However, whenever possible, de-escalation techniques shall be employed to gain voluntary compliance by a subject. Officers shall use only the level of force that is objectively reasonable to effect an arrest or while protecting the officer's safety and others... Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others but extends to that amount reasonably necessary to enable them to effect the arrest of an actively resistant subject. Although a criminal offense, a subject who spits on an officer without engaging in any other actions/resistance is not a violent attack. Officers are prohibited from using physical strikes to protect themselves from a subject who is solely spitting on them.

In her statement to CCA, Officer McNay asserted she redirected Ms. Crittenden's head with her hand after telling Ms. Crittenden she was going to be under arrest and Ms. Crittenden "indicated with an upper half of her body in a movement toward [Officer McNay] that she was going to assault [Officer McNay] ... whether it be spitting headbutting [Officer McNay] something of that nature." However, Officer Scalf's BWC captured (at 7:05PM) Officer McNay stating, "you obviously you cannot listen to instruction... when we're doing an investigation, we tell you whatever we want to tell you." Not until Ms. Crittenden turned her head and stated, "no, you can't" in response did Officer McNay with her hand, push Ms. Crittenden's face away from her (Officer McNay). Simultaneously, per Officer Scalf's BWC, Officer Scalf was successfully handcuffing Ms. Crittenden. While Officer McNay's BWC is blocked from visually capturing the circumstance of Officer's McNay physical contact with Ms. Crittenden's face (due to the proximity of Officer McNay to Ms. Crittenden), Officer Scalf's BWC footage does not support PO McNay's claim that an assault was imminent. The evidence does not establish that a reasonable officer on the scene would have perceived the threat or movement toward Officer McNay that she described in her statement to CCA.

Additionally, in her statement to CCA, Officer McNay mentioned Ms. Crittenden's resisting arrest when describing her reasoning for making contact with Ms. Crittenden's face. Officer Scalf's and Officer McNay's BWC video conflict with Officer McNay's statement to CCA that when she exited the Crittenden residence, she placed Ms. Crittenden under arrest and told Ms. Crittenden she

was going to be under arrest for domestic violence. Specifically, Officer Scalf's and Officer McNay's BWC video (at 7:05PM) captured Officer McNay participating in handcuffing Ms. Crittenden while both officers tell Ms. Crittenden she was being "detained." Not until when Ms. Crittenden made a comment about her detainment while being searched to be placed into Officer Scalf's cruiser (*after* Officer McNay's contact with Ms. Crittenden's face) did Officer McNay state, "actually I'm going to arrest you for domestic... you're arrested"—according to Officer McNay's and Officer Scalf's BWC around 7:06PM.

Furthermore, the act of verbal protest by an arrested person who is turning their head toward an arresting officer, standing alone, does not constitute active resistance to arrest under CPD policy. CPD Procedure §12.545 defines active resistance as either "physically evasive movements **to defeat the officer's attempt at control**" (emphasis in original) or "verbally signaling an intention to avoid or prevent being taken into or retained in custody." Here, Ms. Crittenden's statement ("no, you can't") in response to Officer McNay's assertion of authority ("when we're doing an investigation, we tell you whatever we want to tell you") is merely a statement of protest. It does not indicate an intention by Ms. Crittenden to take an action to prevent being retained in custody. Therefore, Ms. Crittenden's conduct at the time, did not constitute active resistance.

While not outcome determinative, CCA also finds relevant the absence of a charge of Resisting Arrest against Ms. Crittenden by the officers, suggesting that there was no probable cause to support that resisting arrest occurred. Therefore, CCA does not find persuasive Officer McNay's assertion that Ms. Crittenden was arrested and was resisting arrest at the time she (Officer McNay) used her hand to redirect Ms. Crittenden's face.

While Ms. Crittenden verbally disagreed with the officers' authority to detain her, the successful handcuffing of Ms. Crittenden by Officer Scalf supported the determination that the force deployed by Officer McNay was unnecessary to effectuate an arrest in this circumstance. Rather than use de-escalation techniques to gain compliance of Ms. Crittenden, Officer McNay escalated the situation and used force that was not reasonably necessary to apprehend Ms. Crittenden. Further, CPD discouraged using this kind of force in the presence of actively being spat upon—let alone the speculation that one might be spat upon, as alleged by Officer McNay—in CPD Procedure §12.545. Therefore, CCA finds sufficient evidence exists to conclude Officer McNay used excessive force while detaining Ms. Crittenden.

### **Findings:**

Officer Elizabeth McNay

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



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**Ikechukwu Ekeke, Investigator**



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**Gabriel Davis, Director**

**Previous Contacts and Commendations:**

**Officer Elizabeth McNay**

**Previous Contact with CCA**

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

**Previous Contact with IIS**

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

**Commendations**

Officer McNay received no commendations in the past three years.