



CCA Case No. 20157

Andre Thomas

Investigation Report and Finding

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COMPLAINT SUMMARY

Date: August 11, 2020

Time: 3:30PM

Location: 2455 Compton Road

CCA Receipt: August 11, 2020

CPD Violent Crime Squad (VCS) plainclothes officers John Wolff, James Shook, John Brown, and Delecia Grisby conducted surveillance in the Mt. Airy neighborhood. Officer Grisby observed a hand-to-hand drug-transaction between a pedestrian and parked vehicle; she alerted Officers Brown and Shook, who followed the target vehicle in their unmarked vehicle. Officers Brown and Shook requested a Colerain Township Police Department (CTPD) officer to initiate a traffic stop.

Officers Brown and Shook followed the vehicle to a Shell gas station that travelled from Cincinnati into Colerain Township. CTPD Officer Christopher Thomas initiated his lights and parked behind the target vehicle at the gas pumps. The driver, Mr. Andre Thomas, stood at the pump. Officers Brown and Shook parked in front of Mr. Thomas's vehicle.

Mr. Thomas fled into his vehicle as Officers Brown and Shook exited their vehicle, displaying their firearms. They issued verbal commands for Mr. Thomas to show his hands. Officer Shook pointed his firearm, opened the passenger door, and again instructed Mr. Thomas to comply. Mr. Thomas exited his vehicle and attempted to flee on foot towards Officer Thomas, but then pivoted back towards Officers Brown and Shook. Mr. Thomas appeared to fall as the officers converged on his position. Officer Shook warned Mr. Thomas of impending CEW usage and deployed his CEW, which struck Mr. Thomas's shoulder but did not take full effect. Within seconds, Officer Brown discharged his firearm and Mr. Thomas sustained a gunshot wound to his lower back. Officers Brown, Wolff and Shook rendered aid until emergency services arrived on scene.

INVOLVED SUBJECT STATEMENTS

Andre Thomas

On August 18, 2020, Mr. Thomas declined to provide a statement to IIS regarding the incident.

CCA spoke to Mr. Andre Thomas on July 7, 2021 at Hamilton County Justice Center (HCJC). Mr. Thomas declined to provide a statement and instructed CCA to contact his attorney, Mr. Kenneth Crehan. Mr. Crehan directed CCA to coordinate with attorney Mr. Cornelius Lewis; CCA was unable to confirm a date for an interview with Mr. Lewis.

Officer James Shook

Officer James Shook, M/W/28, #P220, was assigned to District 5 VCS, and he had been a CPD member since 2016. Officer Shook resigned from CPD in 2021. At the time of the incident, Officer Shook was in plainclothes and in an unmarked vehicle with Officer Brown; he did not wear a BWC due to his plainclothes assignment.

CCA interviewed Officer Shook on June 22, 2021 at 2:09pm. He provided the following information:

Officers Grisby, Wolff, Shook and Brown conducted surveillance in Mt. Airy in a known high drug-trafficking area, near Shady Mist and Monfort Hills. Officers Grisby and Wolff were in a separate unmarked vehicle approximately one block away from Officers Shook and Brown. Officer Grisby observed a vehicle-to-vehicle drug transaction, radioed the information to Officers Shook and Brown, and provided a description of the suspected vehicle. Officers Shook and Brown located the suspected vehicle and followed it for approximately five minutes as it traveled to Colerain Township. Officer Shook contacted County West Radio, advised them of the situation, and requested a uniformed officer initiate a traffic stop for a drug trafficking offense.

The driver, Mr. Thomas, pulled into a gas station on Compton Road in Colerain Twp. Officers Shook and Brown waited across the street, approximately 200 feet away, for a uniformed officer to arrive and maintained visual surveillance. Mr. Thomas exited his vehicle, kept the driver's side door open, and remained near the gas pump. CTPD Officer Thomas pulled into the gas station and parked behind Mr. Thomas's vehicle, initiated his lights, and exited his cruiser. Officers Shook and Brown exited their vehicle and approached Mr. Thomas's vehicle from the front. Mr. Thomas re-entered his vehicle abruptly "as if he was going to pull out a gun or something like that that could hurt the – any officer." Officer Shook approached the passenger side of the vehicle and because he was unable to see inside due to the glare and window tint, he opened the passenger side door, identified himself as a Cincinnati Police officer and ordered Mr. Thomas to, "Put your hands up," and "Don't move." Officer Shook's firearm was pointed at Mr. Thomas but his finger was on the side, off the trigger. Mr. Thomas did not acknowledge him and continued to move around in the center console and refused to put up his hands or comply. Mr. Thomas exited the vehicle through the driver's side and ran back to the rear of the vehicle, towards Officer Thomas.

Mr. Thomas appeared to be "sprinting, attempting to flee," so Officer Shook holstered his firearm and withdrew his CEW. Officer Shook moved to the rear of the vehicle to initiate a brief foot pursuit; he gave verbal commands for Mr. Thomas to stop and warned that he would be tased. Mr. Thomas made "some sort of physical contact" with Officer Thomas before he pivoted and moved towards Officers Brown and Shook. Officer Shook deployed his CEW and struck Mr. Thomas in the back of his upper left shoulder; it had minimal effect. Mr. Thomas continued his attempt to flee and encountered Officer Brown. Officer Shook prepared to tase Mr. Thomas again but heard "a loud pop," and Mr. Thomas fell to the ground. Officer Brown fell to the ground on top of Mr. Thomas. At the time, Officer Shook could not discern the origin of the "pop."

Officer Shook holstered his CEW and assisted in handcuffing Mr. Thomas, who was "a little resistant." Officers Grisby and Wolff approached to assist. The officers instructed Mr. Thomas to place his hands behind his back and placed him in custody. Within a few seconds, the officers

realized Mr. Thomas had a gunshot wound to his lower back and removed the handcuffs. They advised Mr. Thomas of the situation, and Officers Brown, Shook, and Wolff rendered aid. Officer Grisby requested CFD.

Initially, there was confusion among the officers about the gunshot wound. Eventually, Officer Shook stated, “[Officer Brown], you shot him,” and Officer Brown “realized...he accidentally discharged his firearm in the physical struggle.” Officer Brown apologized to Mr. Thomas and everyone on scene.

Mr. Thomas was arrested for drug trafficking and obstructing official business. Officer Shook confirmed they had arrested Mr. Brown previously, but he only recognized him after they had called for CFD and removed his face mask.

Officer John Brown

Officer John Brown, #P288, M/B/38, is currently assigned to District 5 Investigation Unit, and he has been a CPD member since 2004. At the time of the incident, Officer Brown was assigned to the District 5 Violent Crimes Squad, was in plainclothes and operated an unmarked vehicle partnered with Officer Shook; he did not wear a BWC due to his plainclothes assignment.

CCA interviewed Officer Brown on June 22, 2021 at 2:48pm. He provided the following information:

Officers Brown, Shook, Grisby, and Wolff conducted surveillance in an area of Mt. Airy with recent gun violence, a “huge drug problem,” and known for regular hand-to-hand drug transactions. Officer Grisby, in a separate unmarked vehicle, observed a hand-to-hand transaction and notified Officers Brown and Shook. Officers Brown and Shook followed the vehicle as it travelled on Pippin Avenue and into Colerain Township. The officers attempted to have a CPD uniformed cruiser initiate a traffic stop, but the cruiser did not arrive before the vehicle travelled outside of the City’s jurisdiction. They continued to follow the vehicle and requested a local uniformed officer to initiate a traffic stop and provided CTPD with the details of the investigation.

Officers Brown and Shook observed the vehicle pull into a Shell gas station. They parked their vehicle across the street and maintained surveillance until the CTPD officer arrived. Mr. Thomas watched the CTPD cruiser as it travelled down the street. When CTPD Officer Thomas, pulled into the east entrance of the gas station, Mr. Thomas jumped back into his vehicle. Officers Brown and Shook slowly moved their vehicle towards the gas station in case Mr. Thomas attempted to flee. When Officer Thomas parked directly behind him, Mr. Thomas moved faster.

Officers Brown and Shook stopped their vehicle catty-corner to Mr. Thomas’s front passenger side bumper and immediately exited. Mr. Thomas was in his vehicle, in a downward position, with his face down and his hands moving around. Officer Brown knew Mr. Thomas was “startled” by police presence and did not know if Mr. Thomas was reaching for a weapon, so he drew his firearm and pointed it at Mr. Thomas but reported his finger was not on the trigger. Officers Brown and Shook directed Mr. Thomas to show his hands; he did not comply. Officer Brown tried to reposition himself to the driver’s side door, unaware whether Mr. Thomas would engage in violence or attempt to flee. Mr. Thomas jumped out and ran to the back of his vehicle.

Officer Brown was within arm’s length and grabbed Mr. Thomas by the shirt, but Mr. Thomas “slingshotted” away, causing the shirt to rip. Mr. Thomas ran towards Officer Thomas, but as Officer Thomas attempted to get custody of him Mr. Thomas moved away and ran back towards

the other officers. Officer Brown heard a CEW discharge, although he did not know who deployed the CEW or if it made contact with Mr. Thomas. Mr. Thomas was running past Officer Brown and “knocked” into him. Officer Brown turned his body and tripped in close proximity to Mr. Thomas. Officer Brown extended his arms to catch his fall while Mr. Thomas was simultaneously falling. He did not recall whether he caught himself with his right hand, left hand, or both, but sustained an injury to the pinky finger of his left hand. As Officer Brown went down, he heard a firearm discharge. Mr. Thomas lay on the ground in front of Officer Brown.

Officer Brown immediately checked Mr. Thomas and located a gunshot wound in Mr. Thomas’s lower back. He believed “[his] gun went off.” Officer Brown alerted the other officers about Mr. Thomas’s injury because no one else was aware. He used Mr. Thomas’s shirt to apply pressure to the wound while Officers Wolff and Shook assisted in rendering aid. EMS and supervisors were notified immediately. Mr. Thomas was charged with drug trafficking and possession of drugs. Officer Brown confirmed he had previous contact with Mr. Thomas due to previous drug investigations but was unaware the driver of the vehicle was Mr. Thomas until after the incident occurred.

OFFICER WITNESS STATEMENTS

Officer John Wolff

Officer John Wolff, #P117, M/W/36, is currently assigned to District 5 VCS, and he has been a CPD member since 2014. At the time of the incident, Officer Wolff was in plainclothes and was in an unmarked vehicle with Officer Grisby; he did not wear a BWC due to his plainclothes assignment.

CCA interviewed Officer Wolff on June 21, 2021 at 2:17pm. He provided the following information:

Officer Wolff’s initial statement corroborated Officers Brown and Shook. Officer Wolff did not observe the potential drug transaction. When the vehicle pulled away, Officers Wolff and Grisby followed for several minutes as Mr. Thomas drove into Colerain Township. The officers radioed for a CTPD officer to initiate a traffic stop.

Mr. Thomas pulled into a gas station and Officers Grisby and Wolff entered on the southwest corner; they arrived after Officers Brown, Shook, and CTPD Officer Thomas. Mr. Thomas stopped at a gas pump and exited his vehicle. CTPD Officer Thomas approached Mr. Thomas from behind his vehicle while Officers Brown and Shook approached from the front of the vehicle. Mr. Thomas moved quickly towards Officer Thomas; Officer Wolff was on the other side of the gas pump and lost the line of sight, so he did not see what happened next. Officer Wolff heard a CEW deploy and a single gunshot. He did not know which occurred first but noted they happened “within a second” of each other. Officer Wolff did not know which officer deployed their CEW or discharged their firearm. He could not discern whether the officers made any directives or commands to Mr. Thomas. Once Officer Wolff turned the corner, he observed Officers Brown and Shook on the rear passenger side of Mr. Thomas’s vehicle. Officer Wolff assisted the officers in handcuffing Mr. Thomas and directed Mr. Thomas to place his hands behind his back. Mr. Thomas offered “some resistance” including muscle tension. At that time, Officer Wolff realized Mr. Thomas was wounded in the back. Officer Wolff removed the handcuffs and immediately rendered aid.

During this time, Mr. Thomas did not say anything. The officers did not know who had discharged their firearm, but Officer Brown stated, "This is on me." Officer Brown did not elaborate, and Officer Wolff did not know what he was referring to.

Mr. Thomas was arrested for drug trafficking and drug possession. Officer Wolff confirmed he had previous knowledge of Mr. Thomas prior to this incident but had not recognized Mr. Thomas until after the encounter.

Officer Delecia Grisby

Officer Delecia Grisby, #P319, F/B/37, is currently assigned to the Investigations Bureau, and she has been a CPD member since 2016. At the time of the incident, Officer Grisby was in District 5 VCS, in plainclothes, and operated an unmarked vehicle with Officer Wolff; she did not wear a BWC due to her plainclothes assignment.

CCA interviewed Officer Grisby on June 21, 2021 at 2:40pm. She provided the following information:

Officer Grisby observed a black SUV with heavy window tint and an unidentified driver who completed an apparent hand-to-hand exchange with a woman who approached his vehicle. Officers Grisby and Wolff notified Officers Brown and Shook about their observation. When it left the area, Officers Grisby and Wolff followed the SUV while it traveled to Colerain Township. They followed the vehicle for three to five minutes and communicated with Hamilton County Dispatch to request a marked cruiser conduct a traffic stop of the occupant. During this time, they observed multiple road violations, including failure to signal.

The vehicle pulled into the gas station and stopped at the gas pump located closest to the street. Officer Grisby pulled into a driveway just beyond the gas station and waited for a CTPD officer to arrive. Mr. Thomas exited the vehicle to pump gas as a marked CTPD cruiser pulled up behind Mr. Thomas's vehicle with the lights activated. CTPD Officer Thomas and CPD Officers Shook and Brown approached the vehicle from behind as Officers Shook and Brown approached the vehicle from the front passenger side. Mr. Thomas ran "back and forth" between the gas pumps. Officer Grisby slowed down to allow Officer Wolff to exit their vehicle and assist while Officer Grisby pulled towards the gas station door in case Mr. Thomas fled in that direction.

Due to her position in a vehicle with the doors shut and windows up, Officer Grisby could not hear any directives given or specify Mr. Thomas's actions. She stated the officers attempted to place him under arrest. Officer Grisby heard two "pops" and realized a CEW deployed but did not know the circumstances or who deployed the CEW, although she observed Officer Shook with a CEW in his hand. Once she approached, she observed Mr. Thomas on the ground; Officer Shook was on one side, Officer Wolff was on the other, and Officer Brown was by Mr. Thomas's legs as they attempted to place Mr. Thomas's arms together to apply the handcuffs.

At that time, the officers' realized Mr. Thomas was shot in his lower back, although she did not know whose firearm had been discharged. She did not see any officer with a firearm in their hand. Officer Grisby requested CFD and supervisor assistance while Officers Wolff, Shook, and Brown rendered aid.

Mr. Thomas was under arrest for drug trafficking and drug possession. Officer Grisby noted she had previous contact with Mr. Thomas for other investigations conducted by VCS.

Colerain Township Officer Christopher Thomas

Officer Thomas expressed an initial willingness to be interviewed by CCA but then declined to be interviewed at the behest of the then-Colerain Township Police Chief Mark Denney.¹

Below is a summary of Officer Thomas's interview with CPD, which occurred on August 11, 2020:

Via police radio, CPD officers requested Officer Thomas to conduct a traffic stop of a "suspected drug trafficker" who was parked and outside his vehicle at a gas station. CPD officers gave a description and guided Officer Thomas to Mr. Thomas's location. Officer Thomas observed Mr. Thomas outside of the vehicle, in front of a gas pump, and pulled in behind Mr. Thomas. There was a CPD unmarked vehicle parked in front of Mr. Thomas's vehicle. When Officer Thomas activated his lights, Mr. Thomas returned to his vehicle as if to drive away but seemed to realize he was blocked in.

Officer Brown and Officer Shook were outside of their vehicle with their firearms in their hands, giving verbal commands. Officer Thomas held his firearm and took cover behind his driver's side door. Mr. Thomas exited the vehicle quickly and fled towards Officer Thomas. Officer Thomas saw Mr. Thomas did not have anything in his hands, so he holstered his weapon, closed his cruiser door, and moved towards Mr. Thomas. Mr. Thomas turned away and ran back towards Officer Brown and Officer Shook but stumbled.

Officers Brown and Shook attempted to physically take him into custody. Officer Thomas heard a CEW deploy, unknown by whom, and did not know if it completed a cycle. It struck Mr. Thomas in the shoulder and did not know if it took effect. Two to three seconds after the CEW deployed, he heard a single "pop," which he believed to be a gunshot. He was confused and did not know whose firearm discharged or where the shot originated because he did not see any officer pointing a firearm at the time. He observed Mr. Thomas and Officer Brown fall to the ground; he believed the officers took Mr. Thomas to the ground. As the officers handcuffed Mr. Thomas, he cleared the vehicle. After Mr. Thomas was handcuffed, the officers realized Mr. Thomas had a gunshot wound in his back. Officer Thomas requested Colerain Township Fire Department (CTFD) to respond. CPD offered medical aid until CTFD arrived.

¹ Specifically, CTPD Chief Denney refused to permit CCA's scheduled interview of Officer Thomas to proceed and explained that refusal in writing to CCA's Director as follows:

Mr. Davis, I am aware of how the relationship with the FOP and your agency has been strained and, by many accounts, been a cause of morale issues within the police department and has become a media issue. We do not have any desire to involve ourselves with that or cause our officers concern. I have spoked [sic] to Township leadership and respectfully decline.

Witnesses A, B, C, and D

Below is a summary of the statements the witnesses provided to CPD Officers Bill Hilbert and Marcus MacNeil:

Witness A

When Witness A, M/B/68, parked his vehicle at the Shell gas station pump, he observed Mr. Thomas at a gas pump but inside of his vehicle. Witness A had not left his vehicle yet, and his window was down. He observed a marked cruiser and an unmarked vehicle enter the Shell gas station and surround Mr. Thomas's vehicle.

Witness A observed two male CPD officers in plainclothes, one female CPD officer in plainclothes, and a CTPD officer. The officers issued Mr. Thomas commands to get out of the vehicle, put your hands up, and repeatedly stated, "Do not run." Mr. Thomas exited the vehicle "with the intent to run," and tried to break towards the right, near the gas station pump trash can. One of the plainclothes officers grabbed Mr. Thomas's arm, but Mr. Thomas pulled away and ran to the left, towards the passenger side of his vehicle.

Witness A was unable to observe what happened after Mr. Thomas went to the other side of the vehicle. He heard one gunshot, which he believed came from a plainclothes officer; another plainclothes officer held a CEW. Mr. Thomas appeared to be shot in the lower back, as the other officers attempted to put pressure on the injury. He did not recall if Mr. Thomas was handcuffed. The officers made reassuring comments to Mr. Thomas until medical assistance arrived.

Witness B

At the time of the incident, Witness B, M/B/37, was driving his vehicle on Coogan Drive and stopped at a stop sign. While preparing to turn left, he observed a "scuffle" at the Shell gas station involving Mr. Thomas and three plainclothes officers. He pulled over and observed Mr. Thomas attempt to run away, and the officers "smashed him" against the middle gas pump. One officer, wearing shorts (Officer Shook), held a CEW while another officer, wearing a black t-shirt with "Cincinnati Police" on the back (Officer Brown), held a gun low. A uniformed officer (Officer Thomas) attempted to handcuff Mr. Thomas and Witness B heard an officer say, "Taser, taser!"

A female plainclothes officer (Officer Grisby) tried to get near the scuffle as Mr. Thomas maneuvered away to the right side of the gas pump but fell. As Mr. Thomas fell, one officer was on the far side of the pump (closer to the Shell gas station store). Witness B heard one gunshot and everyone moved away. Initially, Witness B ducked his head in his vehicle; when he raised his head, he observed Mr. Thomas lying on the ground. The plainclothes officers handcuffed Mr. Thomas, laid him on his side, and rubbed his chest. Mr. Thomas appeared to have an injury to his lower back.

Witness C

Witness C, B/F/31, was parked at the Shell gas station. She was in her vehicle and using her personal cell phone. When she looked up, she observed Mr. Thomas traveling very fast into the gas station. He parked his vehicle at the middle gas pump, closest to the street. A marked cruiser, also traveling very fast, entered the parking lot. The cruiser lights were not activated until he parked behind Mr. Thomas. Witness C observed the cruiser lights in her rearview mirror and observed the subsequent interaction from her vehicle.

Witness C saw three officers, one in uniform and two in plainclothes. She heard them say, "Stop! Stop! Stop!" Mr. Thomas mumbled something, but she could not understand him. Mr. Thomas attempted to evade the officers at the middle pump. Several people converged and she heard one "pop!" sound as the officer attempted to apprehend Mr. Thomas. She did not observe anyone with a weapon. Witness C observed the officers conducted CPR and encouraged him to keep breathing.

Witness D

Witness D, M/W/20, stood outside in LaRosa's parking lot. He observed a vehicle traveling fast into the Shell gas station. Two plainclothes officers exited their vehicle; one officer wore a white t-shirt, the other officer wore a black t-shirt that "Cincinnati Police" on the back. They used their doors as cover while they pointed their firearms. The officers said, "Hands up!" Mr. Thomas took off in the opposite direction.

A marked police cruiser pulled up from the opposite side, so Mr. Thomas did a loop and double-backed towards his vehicle. The other officers attempted to chase him, but Mr. Thomas tripped over "something," causing Mr. Thomas to stumble and fall. Witness D could not see Mr. Thomas or the police officers. Witness D heard a single gunshot but did not see where it originated. A nearby woman screamed, so Witness D escorted her inside LaRosa's.

EVIDENCE

CCA responded to the scene and monitored the investigation being conducted by the Homicide Unit as well as the processing of the scene by the Criminal Investigations Section (CIS).

Police Documents

CCA reviewed all CPD-related forms, including but not limited to crime arrest forms, property receipts, the IIS Report, CIS evidence, and information from CPD's Records Management System (RMS).

Computer Aided Dispatch (CAD)

<u>Date</u>	<u>Time</u>	<u>Call Notes</u>
08/11/2020	15:24:38	OFFICER SHOT AT ALL OK
	15:25:32	Multi-agency CFD Agency Incident #: CFD200811000146
	15:25:41	OFFICER (sic) IN INVOLVED SHOT IN BACK
	15:26:26	5066 COLERAIN REQUESTING FIRE
	15:27:21	MALE SUSP SHOT – PO ALL OKAY
	15:27:38	***OFFICER NOT SHOT***
	15:29:50	COLERAIN FIRE IS RESPONDING....CFD CAN RESP IF NEEDED (sic)
	15:30:17	5063 ***SHOTS WERE FIRED BY CPD AT A SUBJ****
	15:31:38	SHOTS FIRED BY POLICE TOOK EFFECT ON MALE SUBJ **ALL PO OK**

Body Worn Camera (BWC)

CTPD Officer Thomas

Officer Thomas activated his BWC after the incident occurred. Officers Brown, Shook, and Wolff rendered medical aid while Officer Grisby radioed for assistance. Officer Thomas provided assistance to the officers on scene and prepared the crime scene perimeter before he was directed by CTPD command staff to leave the area.

Shell Station Surveillance Video

The angle of the Shell station camera is pointed at the Shell Station entrance; it does not capture Mr. Thomas's vehicle or where it is parked. At 15:05:02, CTPD Officer Thomas arrived and activated his cruiser lights activated at 15:05:04, as he pulled next to the middle pump on the side closest to the street. At 15:05:07, Officer Thomas exited his cruiser. At 15:05:11, Officer Thomas closed the cruiser door and ran to the other side of the middle pump, behind a parked vehicle, as Mr. Thomas ran towards him. Officer Shook ran up behind Mr. Thomas. As Mr. Thomas turned around, Officers Thomas and Shook followed; they moved out of the frame of the surveillance video.

The remainder of the video did not display footage related to the allegations.

Witness C Videos

Video 1: 1:27 minutes, Video 2: 3:10 minutes, Video 3: 2:06 minutes

Witness C recorded three videos while in the Shell Station parking lot. The videos showed Mr. Thomas lying on his side on the ground. Officers Brown, Wolff, and Shook rendered medical aid and made encouraging comments to Mr. Thomas as they waited for Colerain Fire Department. Witness C concluded recorded when directed by Officer Grisby.

Clerk of Courts

Mr. Thomas was charged with Ohio Revised Code (ORC) § 2925.03(A2) Trafficking in Cocaine, § 2925.11(A) Possession of Cocaine, § 2925.11 Possession of Drugs, and § 2921.33(A) Resisting Arrest. The charges of drug and cocaine possession were dismissed. Mr. Thomas was convicted of the remaining charges and sentenced to the Department of Corrections.

Taser Download

Officer Shook deployed his taser one time for a 4.987s cycle.

Photographs

CCA reviewed criminalistics evidence and scene photos.

Hamilton County Prosecutor's Office Letter of Declination

On December 3, 2020, Hamilton County Prosecutor Joseph T. Deters released a statement regarding the incident. The letter stated:

"The Hamilton County Prosecutor's Office has reviewed the investigative report prepared by the Cincinnati Police Department concerning the above-referenced police intervention of Andre Thomas. Based upon our review of the material provided, the weapon of Police Officer John Brown, Badge No. 288 of District 5 was accidentally discharged during a struggle with Andre Thomas. Since the discharge was accidental, we will not be pursuing any criminal charges as a result of this incident."

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

1. Officer identities were not always used by the individuals interviewed; the officers' names have been used where necessary for clarification.
2. There is a discrepancy between the officers' statements as to whether Mr. Thomas fell to the ground near the time of the gunshot or was instead taken to the ground by police officers. CPD Officers Brown and Shook told CCA that Mr. Thomas fell to the ground. CTPD Officer Thomas told CPD investigators that he believed officers took Mr. Thomas to the ground, stating that they "took him down like a regular use of force."
3. Officers Brown, Grisby, Shook, and Wolff were in plainclothes; they did not wear BWCs. At the time of the incident, CPD Procedure § 12.540 Body Worn Camera System did not require plainclothes officers wearing external vests to carry BWCs. As of April 2021, the procedure has been updated to require those officers to wear and activate BWCs.
4. Officer Thomas reported that CTPD marked cruisers do not have cameras. Furthermore, his BWC was not in the "on" position when he responded to assist CPD, so it did not capture the 30 seconds prior to the activation of his BWC. His BWC was activated on scene but after the incident occurred.
5. According to the IIS Report, Officer Brown violated CPD Procedure 12.550 Discharging of Firearms by Police Personnel and Manual of Rules and Regulation Rule 1.25A. He was referred to a District Level Hearing and ultimately received an eight-hour suspension.

AUTHORITIES

I. CPD Procedure Manual (in part)

§12.545 Use of Force (Revised 12/26/2019)

Definitions:

Actively Resisting Arrest – When the subject is making physically evasive movements to defeat the officer's attempt at control, including fleeing, bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

Deadly Force – Force likely to cause, or capable of causing, death.

Force – Any physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person. The term includes, but is not limited to, the use of: firearms, TASERs, chemical irritant, choke holds or hard hands, the taking of a subject to the ground, or the deployment of a canine. The term does not include escorting or handcuffing a person with no or minimal resistance.

Hard Hands – The use of physical pressure to force a person against an object or the ground, use of physical strength or skill that causes pain or leaves a mark, leverage displacement, joint manipulation, pain compliance, and pressure point control tactics.

Serious Use of Force – Any action that involves: a critical firearm discharge; the use of deadly force; a baton strike to the head; or a use of force in which the person is seriously injured or requires hospital admission, with the exception of individuals admitted for psychiatric evaluation not suffering serious injury.

Information:

Use of Force Continuum: Force situations do not allow for an ordinal progression up a continuum of force and officers but be ready to escalate or de-escalate as the situation evolves.

Policy:

The Cincinnati Police Department recognizes the value of all human life and is committed to respecting the Constitutional rights and dignity of every individual. Officers shall act within the boundaries of the United States Constitution, the laws, and constitution of the state of Ohio, the charter and ordinances of the city of Cincinnati, this use of force procedure, and all other relevant CPD procedures, policies, practices and training.

A police officer's right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to effect it. Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake (Graham v. Connor, 1989). 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. ...(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" (Graham v. Connor, 1989).

A number of factors may be taken into consideration to evaluate whether an officer has used objectively reasonable force. These factors include, but are not limited to:

- The conduct of the person being confronted as reasonably perceived by the officer at the time, including the level of threat or resistance presented by the subject.
- The officer's and subject's factors, including but not limited to: size, age, relative strength, skill level, injuries sustained, level of exhaustion or fatigue and the number of officers versus subjects.
- The influence of drugs or alcohol and the subject's mental capacity, if known.
- The proximity of weapons.
- The distance between the officer and subject.
- The degree to which the subject has been effectively restrained and his / her ability to resist despite being restrained.
- Time and circumstances permitting, the availability of other options (resources that are reasonably available to the officer under the circumstances).
- The seriousness of the suspected offense or reason for the contact with the individual.
- The training and experience of the officer.
- The potential for injury to citizens, officers and suspects.
- Whether the conduct of the individual being confronted reasonably appears to pose an imminent threat to the officers or others.
- The prior knowledge of the subject's propensity for violence.
- Any other exigent circumstance or special knowledge

Courtesy in all public contacts encourages understanding and cooperation. The most desirable method for effecting an arrest is where a suspect complies with clear and concise directions given by an officer.

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 safety of the officer and others.

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. The suspect should be allowed to submit to arrest before force is used, unless this causes unnecessary danger to the officer or others.

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. Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.

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.

An officer has a duty to stop, prevent and report the use of excessive force by another officer. Officers who use excessive force will be subject to discipline, possible criminal prosecution, and/or civil liability.

All members have a duty to ensure all use of force incidents and any citizen allegation of excessive force are reported to the Police Department. Whenever employees use any type of

force; or confront resistance that results in an injury or complaint of injury to a citizen; or have knowledge of any of the above; or are aware of a citizen complaint of excessive force, they will promptly notify a supervisor. The supervisor or command officer investigating the incident must be of at least the next higher rank than the officer(s) who used force. The only exception is when a lieutenant uses force and there is no captain or above working, but an acting Night Chief is available. In this case, the acting Night Chief can conduct the investigation.

Following any use of force resulting in a citizen's injury, officers will summon Cincinnati Fire Department (CFD) personnel to provide emergency medical treatment. Once the scene is stabilized and it is safe to do so, officers may administer CPR or basic first aid, if appropriate.

Officers will receive annual training specifically pertaining to Use of Force. Officers will acknowledge and be tested on their understanding of the procedure.

USE OF FORCE CONTINUUM

Examples of Subject Resistance

- Uncooperative: Subject fails to respond to verbal commands or other directions.
- Active resistance: Subject is making physically evasive movements to defeat the officer's attempt at control, including bracing, tensing, pushing, fleeing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.
- Assault or threat of assault: Subject assumes fighting stance, charges, strikes, or kicks an officer or verbally or physically indicates an intention to commit an assault combined with the subject's capability to assault.
- Life threatening assault or assault likely to cause serious physical harm: Subject commits an attack using an object, a weapon, or an empty hand assault, wherein the officer reasonably believes the assault will result in serious physical harm and/or death.

Depending on the circumstances, officers may find it necessary to escalate or de-escalate the use of force by progressing up and down the force continuum. It is not the intent of this continuum to require officers to try each of the options before moving to the next, as long as the level of force used is reasonable under the circumstances.

Disengagement is a reasonable option in consideration of officer safety and the necessity to apprehend promptly. Disengagement, area containment, surveillance, waiting-out a subject, summoning reinforcements, or calling in specialized units may be an appropriate response to a situation and should be considered.

Force options may be used simultaneously, for instance, combining verbal commands with use of chemical irritant. An officer must choose the necessary response based on law, department policy, training, and experience. An officer must exercise proper use of force decision making, which means the use of reasonable force, including proper tactics, and de-escalation techniques.

TASER: The TASER is an electronic control device that is a non-lethal force alternative used to assist officers in the performance of their duties. The TASER is designed for self-defense or to temporarily immobilize a subject who is actively resisting arrest. It generates electricity in a small, hand-held, battery operated unit about the size of a handgun.

When properly used, the TASER generates an electrical current that dominates the existing neuromuscular and sensory nervous system. Subjects become physically incapacitated and unable to control muscle movement, allowing officers to gain control.

The TASER may be used in situations where time and conditions permit. It can be an extremely effective control device for close range incapacitation.

When deploying a cartridge from the TASER, frontal shots are prohibited except in situations of self-defense or defense of another. The preferred target area is the back of the individual actively resisting arrest. The TASER should never be deployed on an individual operating a moving vehicle.

In rare circumstances, there have been medical concerns raised about TASER barbs deployed to the chest region causing sudden cardiac arrest. According to the manufacturer of the TASER, the aforementioned preferred target areas increase the distance of the dart-to-heart safety margin. When deployed in the drive stun mode, the groin is an acceptable target. The neck should not be targeted.

Procedure:

A. Use of the TASER

1. The TASER may be deployed on a suspect actively resisting arrest when there is probable cause to arrest the suspect, or to defend one's self or another from active aggression.
 - a. An individual simply fleeing from an officer, absent additional justification (i.e. reasonable suspicion to detain or probable cause to arrest) does not warrant the use of the TASER.
 - b. Officers shall consider the following prior to utilization of the TASER as a force option:
 - i. The severity of the crime at issue
 - ii. The risk of danger posed to others if the suspect is not promptly apprehended
 - iii. The potential risk of secondary injury to the suspect due to environmental conditions.
2. When possible, give the subject a verbal warning the TASER will be deployed unless exigent circumstances exist that would make it imprudent to do so.
3. Officers should avoid using the TASER on persons who reasonably appear to be, or are known to be, young children, elderly, medically infirm, pregnant, or uses of a cardiac pacemaker. Officers are not prohibited from using the TASER on such persons, but use is limited to those exceptional circumstances where the potential benefit of using the TASER (i.e. injury reduction) reasonably outweighs the risks and concerns.
4. Officers should avoid using the TASER on individuals who are on an elevated surface or are operating or riding any moving device or vehicle when a fall from such surface, or interrupted operation of such moving device or vehicle would likely cause serious injury or death, unless the encounter rises to the level of a deadly force situation.

5. Officers should, if possible, obtain backup before using the TASER to control the subject.
 6. Depressing the trigger on the TASER will propel two darts from the attached cartridge. Once the TASER is fired, it will automatically cycle for five seconds. The officer can turn it off before the five-second cycle stops. However, it is recommended officers permit the TASER to cycle for the full five seconds to maximize effectiveness. Officers should give commands to the subject and attempt to gain compliance.
 7. If the first shot is ineffective, the officer may reload an attempt a second shot. If the TASER deployments are ineffective, it may be used in the drive stun mode. The TASER can operate in the drive stun mode with or without the fired cartridge attached. You cannot use the TASER in the drive stun mode on the groin with a non-fired cartridge attached to the TASER.
- b. Due to the high voltage electronic spark of the TASER, **NEVER fire the TASER near flammable materials (such as chemical irritant with an alcohol-based propellant, gasoline, kerosene, or in a natural gas environment).**

§ 12.550 Discharging of Firearms by Police Personnel

(Revised: 06/22/2017)

Policy:

The most serious act in which a police officer can engage is the use of deadly force. The authority to carry and use firearms in the course of public service also carries with it the highest level of responsibility. Respect for human life requires that police officers exhaust all other reasonable means before resorting to the use of firearms and then only when an officer reasonably believes that such use of firearms is necessary to protect the officer or another from the risk of serious physical harm or loss of life.

In considering the use of firearms, understand that you are responsible for your acts and that you may be required to justify your acts in a court of law. The Hamilton County Prosecutor's Office will determine the legality of actions taken. You are not required to retreat in lieu of the justifiable use of deadly physical force.

The safety of innocent persons is of paramount importance. Where there is substantial risk to the safety or life of an innocent citizen, the safety of the citizen should take precedence over the apprehension of the suspect.

Officers should attempt to use non-confrontational verbal skills, empathy and/or active listening to stabilize a person in crisis or when confronted with a situation where control is required to effect an arrest or protect the public's safety. The suspect should be allowed to comply before force is used unless this causes unnecessary danger to the officer or others. De-escalation may also incorporate the use of additional time, distance and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force.

Police officers may not use deadly force merely to prevent escape in misdemeanor cases. The use of deadly force to prevent escape of felony suspects is constitutionally unreasonable except where the escape presents an immediate risk of death or serious physical harm to another.

Where the suspect poses no immediate threat of death or serious physical harm to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. If an officer uses unnecessary and/or excessive force, or acts wantonly and maliciously, he could be found guilty of assault, even of culpable homicide if he kills the person he is attempting to arrest.

At such time as a police officer perceives what he interprets to be a threat of loss of life or serious physical harm to himself or others at the hands of another, he has the authority to display a firearm, **with finger outside the trigger guard** and have it ready for self-defense. **The finger is only to be placed on the trigger when on target and ready to engage a threat.**

An officer has a duty to intervene to stop, prevent and report the use of excessive force by another officer when it safe and reasonable to do so.

Self-Defense: A police officer is authorized to use that force reasonably necessary to protect himself or others from death or serious physical harm at the hands of another.

- There must be an apprehension of real or immediate danger based on an overt and/or constructive act by another.

ANALYSIS

Allegation: Excessive Force

According to CPD Procedure Manual § 12.545, Use of Force, “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.” Moreover, § 12.545, citing *Graham v Connor*, details that, [t]he 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 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...”

Officers Brown and Shook approached Mr. Thomas at the Shell station gas pump. Per their statements to CCA, their intent was to arrest Mr. Thomas, who was suspected of drug trafficking. Upon seeing Officers Brown and Shook, Mr. Thomas ran in the opposite direction. CPD Procedure §12.545 Use of Force states an individual displays active resistance when making physically evasive movements to defeat the officer’s attempt at control, to include bracing, tensing, pushing, and fleeing. Although no BWC footage was available, security footage showed Mr. Thomas running towards Officer Thomas before pivoting and running in a different direction. Witness accounts of the incident confirmed Mr. Thomas displayed active resistance to the officers’ lawful attempts at control while being detained for a suspected crime.

Procedure §12.545 also provides that 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. At a minimum, under Ohio law, Mr. Thomas’s flight from the officers provided them with probable cause to arrest him for obstruction.

A. CEW Use

Procedure §12.545 includes the CEW as a non-lethal force alternative designed to temporarily immobilize a subject who is actively resisting arrest when there is probable cause to arrest. Witnesses reported Officer Shook displayed his CEW and gave a warning to Mr. Thomas, who ignored the officers' commands, before Officer Shook deployed his CEW for a five-second cycle, striking Mr. Brown. Therefore, Officer Shook was within CPD's policy, procedure, and training when he deployed his CEW.

B. Firearm Discharge and Resulting Injury

Officer Shook deployed his CEW, which struck Mr. Thomas in the back left shoulder, but had minimal effect. Mr. Thomas continued his attempt to evade the officers and ran through an opening between the gas pumps. However, in his flight, Mr. Thomas encountered Officer Brown, and Mr. Thomas ultimately went to the ground. During the descent, Officer Brown's firearm discharged, and struck Mr. Thomas in the back, causing a gunshot wound. In their statements to CCA, the officers recalled the confusion after hearing an apparent gunshot, and only later determined Mr. Thomas had been struck. Officer Shook specifically recalled telling Officer Brown it was his firearm, and Officer Brown "realized...he accidentally discharged his firearm in the physical struggle..." and "apologized to Mr. Thomas and everyone on scene."

Uses of force that are alleged to be accidental rather than intentional may still be deemed objectively unreasonable, and thus excessive, when such force occurs "by the very instrumentality set in motion or put in place in order to" seize the person. See *Brower v. Cty. of Inyo*, 489 U.S. 593, 599 (1989); *Pleasant v. Zamieski*, 895 F.2d 272, 274-77 (6th Cir. 1990) (allegedly negligent discharge of firearm was a seizure subject to analysis under the objective reasonableness standard for excessive force). Here, Officer Brown shot Mr. Thomas with the firearm that he intentionally withdrew for the purpose of taking Mr. Brown into custody, causing a gunshot wound. Accordingly, the gunshot, fired by the same instrument that Officer Brown intended to use to subdue Mr. Thomas, was a use of force that must be analyzed to determine whether it was objectively reasonable, even if it was accidentally fired.²

Under Procedure 12.545, we must examine the extent to which Mr. Thomas presented a threat to the immediate safety of others when assessing Officer Brown's firearm discharge resulting in injury. On this point, there is no evidence that Mr. Thomas ever presented a threat. In addition, Procedure 12.550, Discharging of Firearms by Police Personnel, provides the standard for use of deadly force and states as follows:

The use of deadly force to prevent escape of felony suspects is constitutionally unreasonable except where the escape presents an immediate risk of death or serious physical harm to another. Where the suspect poses no immediate threat of death or serious physical harm to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.

² Significantly, Manual of Rules and Regulations § 1.23(B) provides: Members shall use force in accordance with law and Department procedure (emphasis added). Under §§ 1.01(A) and (B), negligent violations of policy are punishable under CPD policy, not just intentional violations, and even violations of policy that occur with something less than negligence are punishable.

Given the absence of an immediate threat presented by the prospect of Mr. Thomas's escape, it was objectively unreasonable for him to have been struck by a bullet from Officer Brown's firearm, whether intentionally or negligently fired. Officer Brown was not in compliance with CPD policy, procedure, and training on the use of reasonable force.

C. Takedown

There is a discrepancy between the officers' statements as to whether Mr. Thomas fell to the ground near the time of the gunshot, or was instead taken to the ground by police officers. CPD Officers Brown and Shook told CCA that Mr. Thomas fell to the ground. CTPD Officer Thomas told CPD investigators that he believed officers took Mr. Thomas to the ground, stating that they "took him down like a regular use of force." CCA attempted to interview Officer Thomas to clarify the circumstances surrounding Mr. Thomas's impact with the ground, but was denied the opportunity to interview Officer Thomas (as is discussed in the Recommendation and Observation accompanying this report). In the absence of consistent and corroborated witness testimony, and in the absence of BWC footage or comparable evidence clarifying the incident, CCA is unable to determine by a preponderance how Mr. Thomas hit the ground and whether Mr. Thomas was taken to the ground by the officers in a manner consistent with policy, procedure, or training.

Allegation: Improper Discharge of Firearm

CPD Procedure § 12.550, Discharging of Firearms by Police Personnel, maintains that when an officer perceives what he interprets to be a threat of loss of life or serious physical harm to himself or others at the hands of another, he has the authority to use that force reasonably necessary to protect himself or others from death or serious physical harm at the hands of another. These criteria were not present at the time the firearm was discharged.

In addition, CPD Manual of Rules and Regulations § 1.25A states: "Members shall not use or handle firearms in a careless or imprudent manner."

Irrespective of any injury or contact caused by the discharge, the mere firing of the gun alone, under the circumstances presented in this case, was inconsistent with Procedure § 12.550 and Rules and Regulations § 1.25A. Based on the available information, Officer Brown's discharge of firearm was not in compliance with CPD's policy, procedures, and training.

Collateral Allegation:

Allegation: Improper Procedure

As discussed previously, Officer Shook deployed his CEW at Mr. Thomas at the Shell gas station, striking him in the shoulder. Per officers' and witnesses' statements, the interaction occurred directly next to the gas station pumps as Mr. Thomas attempted to flee; bystanders were nearby and pumping gas at the time. CPD Procedure §12.545 Use of Force states that due to the high voltage electronic spark of the TASER, officers should "NEVER fire the TASER near flammable materials (such as chemical irritant with an alcohol-based propellant, gasoline, kerosene, or in a natural gas environment)." Therefore, Officer Shook was not within CPD policy, procedure, and training.

FINDINGS

Original Allegations

No.	Allegation	Subject Officer	Involved Citizen	Finding
1	Excessive Force	John Brown	Andre Thomas	Sustained
2	Excessive Force	John Shook	Andre Thomas	Not Sustained
3	Improper Discharge of a Firearm	John Brown	Andre Thomas	Sustained

Collateral Allegations

No.	Allegation	Subject Officer	Involved Citizen	Finding
4	Improper Procedure	John Shook	Andre Thomas	Sustained

RECOMMENDATION

R2324: Citizen Complaint Handling

To ensure that independent administrative investigations of serious interventions and citizen complaints involving Cincinnati Police Officers are able to proceed with accurate, complete, and timely evidence that resolves the questions before investigators, the City of Cincinnati and Cincinnati Police Department should pursue interagency agreements with partner law enforcement agencies, that require such partner law enforcement agencies to make their officers available for interviews with the Citizen Complaint Authority in those cases where the officers are witnesses in CCA's investigations. This is consistent with guidance from International Association of Chiefs of Police (IACP) that law enforcement agencies who conduct multi-agency operations should develop interagency agreements (such as memoranda of understanding) to govern investigations resulting from those operations, and that "mutually acceptable provisions for all such investigations should be spelled out in the mutual assistance agreement to prevent disputes should an investigation become necessary."³

In this case, CCA sought to interview Colerain Township Police Department (CTPD) Officer Christopher Thomas, a material witness to the shooting of Mr. Thomas by CPD Officer Brown, in order to clarify issues and facts pertaining to the following topics, which were relevant to the Excessive Force and Improper Discharge of a Firearm issues before CCA: (a) the pointing of firearms at Mr. Thomas by officers before the shooting, including whether Officer Brown's finger was on the trigger; (b) where the officers' firearms were pointed during the attempt to take Mr. Brown into custody; (c) the type of force used to take Mr. Brown to the ground; and (d) other topics related to the stop of Mr. Brown. Officer Thomas's testimony was particularly important given the absence of BWC recordings in this case. In response to CCA's repeated requests for an interview

³ <https://www.theiacp.org/sites/default/files/2018-08/MutualAidPaper.pdf>

of Officer Thomas, then CTPD Chief Denney refused to permit the interview, and then explained the refusal in writing to CCA's Director as follows:

Mr. Davis, I am aware of how the relationship with the FOP and your agency has been strained and, by many accounts, been a cause of morale issues within the police department and has become a media issue. We do not have any desire to involve ourselves with that or cause our officers concern. I have spoked [sic] to Township leadership and respectfully decline.

CCA investigators regularly investigate complaints and/or serious interventions that similarly involve police witnesses from neighboring police departments (*for example, see* CCA Case No. 22178, CCA Case No. 21250). Attempts to interview police witnesses in cases such as those have sometimes been ignored by those police witnesses or their departments. In this case (Case No. 20157), the request to interview was declined for reasons having nothing to do with the substance of the investigation. The inability to conduct timely interviews of such witnesses can delay the completion of investigations and lead to an inability for CCA to resolve key allegations or issues. Pursuing interagency agreements that require law enforcement agencies who partner with the City of Cincinnati to make their officers available for CCA interviews when those officers are witnesses would address this problem and would minimize any delays or complications caused by seeking a subpoena to compel testimony from such witnesses.

OBSERVATIONS

1. Plainclothes Dress and Police Professionalism

Evidence photographs taken by the Criminalistics Team included full body shots of each officer present during the shooting, including Officer Brown. A review of that evidence showed Officer Brown wore a black t-shirt. The front of Officer Brown's t-shirt depicts a black background with white font. The text reads, "Cincinnati Police District 5 VCS Wolfpack." The back of Officer Brown's t-shirt depicts a black background with white font. There is a graphic of a cartoon wolf wearing a helmet labeled, "District 5 VCS Wolfpack," and an explosive attached to the side of the helmet. The text reads, "Cincinnati Police" and "We got a million ways to get you."

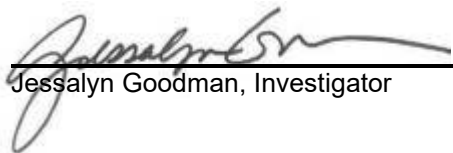
Although the origin and authorization history of this shirt is unknown, it is evident that this shirt was worn by Officer Brown, who was on-duty at the time, and wore this shirt that identified him as a police officer, despite being on a plainclothes assignment; witnesses recalled Officer Brown's shirt as saying "Cincinnati Police" on the back. Furthermore, the back of the t-shirt states, "We got a million ways to get you," which conveys a menacing tone that may call into question how CPD relates to the public and surrounding community. Particularly in the context of the incident that occurred, this shirt does not appear to be appropriate to wear during an on-duty assignment. Officers should be reminded that their actions – which include their dress and appearance – are representative of the CPD and subject to public scrutiny.

2. CCA's Subpoena Power


CCA's Director and investigative team considered whether to request that CCA's Board begin the process of issuing a subpoena to compel CTPD Officer Thomas's testimony after then-Chief Denney refused to permit Officer Thomas to speak to CCA.

Under Article 28, “when a key witness other than a city employee refuses to cooperate in an investigation, the executive director may recommend to the board that a subpoena be issued to compel such testimony, and the board shall have the authority to request such a subpoena from city council. Subpoenas for the attendance of persons shall be secured only through city council.”

Given that Officer Thomas would likely need to be served with such a subpoena out of the territorial limits of the City of Cincinnati, given likely challenges associated with such an extraterritorial subpoena, and given that CCA was not in possession of certain information necessary to make such a subpoena request until nearly three years after the shooting (when the evidentiary value of Officer Thomas’s statement would have arguably been weakened by the passage of time), CCA’s Director ultimately decided not to request such a subpoena in this case. However, Article 28’s text could not be clearer: CCA has the authority to request a subpoena to compel testimony from an uncooperative witness, including one employed as law enforcement, who is not a City of Cincinnati police officer. Article 28 neither shields nor excludes police officers from neighboring jurisdictions from the reach of a subpoena in service of CCA’s investigative process. CCA will continue to assess the need for such subpoenas on a case-by-case basis. Where there is a need for testimony from an uncooperative witness, CCA’s Director retains the authority under Article 28 to request that CCA’s Board seek a subpoena as a part of CCA’s independent investigative process. In the absence of interagency agreements guaranteeing CCA access to such witnesses, there may arise cases in the future where seeking a subpoena is the best course of action, otherwise Article 28’s grant of subpoena power to CCA risks becoming a dead letter.



Jessalyn Goodman, Investigator



Gabriel Davis, Director

**PREVIOUS
CONTACTS AND
COMMENDATIONS**

Officer John Brown

Previous Contacts with CCA

Officer Brown had two previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
18005	Use of Force (Physical)	Not Sustained
19138	Discourtesy	Unfounded
19138	Improper Search	Exonerated
19138	Pointing of a Firearm	IIS – Exonerated

Previous Contacts for CCA Referrals

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

Previous Contacts with IIS

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

Commendations

Officer Brown received one commendation in the past three years.

Date	Source of Commendation Received
02/04/2019	OLE

Officer James Shook

Previous Contacts with CCA

Officer Shook had two previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
17227	Improper Entry (Residence)	Sustained
17227	Procedure Violation (Consent to Search Form)	Sustained
18053	Excessive Force (Physical)	Unfounded

Previous Contacts for CCA Referrals

Officer Shook had two allegations referred to CPD for investigation in the past three years.

Case Number	Allegation	CPD Finding
18234	Lack of Service	Exonerated

Case Number	Allegation	CPD Finding
19041	Lack of Service	Exonerated

Previous Contacts with IIS

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

Commendations

Officer Shook received two commendations in the past three years.

Date	Source of Commendation Received
05/03/2019	CPD
05/10/2019	CPD