



CCA Case No. 20135

Patrick Berthelot

Investigation Report and Finding

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COMPLAINT SUMMARY

Date: July 18, 2020

Time: 2:00pm

Location: I-275

CCA Receipt: July 18, 2020

While driving a semi-trailer truck on I-75, Mr. Patrick Berthelot and Witness A argued. Mr. Berthelot allegedly struck Witness A in the head multiple times and slammed on the brakes, resulting in Witness A hitting the dashboard and injuring her leg.

Mr. Berthelot drove erratically on the highway. An Ohio State Patrol (OSP) Trooper attempted to pull Mr. Berthelot over, but Mr. Berthelot refused. Multiple jurisdictions became involved and attempted to assist in stopping Mr. Berthelot by using stop sticks, which resulted in a flat tire. Mr. Berthelot continued driving along both I-71 and I-275. Mr. Berthelot called 911 and told the dispatcher he had a gun and a knife “so they [the police] would kill [him].” Later, Mr. Berthelot stopped on I-275, disconnected his trailer from the cab, and helped Witness A out of the semi-truck. Mr. Berthelot then drove into oncoming traffic and swerved his truck at police cruisers.

CPD's Special Weapons and Tactics (SWAT) responded to the scene. Lieutenant Brian Bender ordered Sergeant Ronald Hale to use the .50 caliber rifle to shoot at the engine block in order to disable the semi-truck. As Sergeant Hale positioned himself, Officer Michael Winslow fired 10 rounds from his rifle at the truck's radiator. Sergeant Hale fired two .50 caliber rounds at the engine block. As the semi-truck slowed, the armored SWAT vehicle positioned itself in front of the semi-truck to stop it.

Mr. Berthelot placed a knife to his throat and asked police to shoot him “in the head or chest.” Specialist Andrew Nogueira approached from the passenger side and fired a .40 caliber foam round at Mr. Berthelot. Mr. Berthelot exited the semi-truck with the knife at his throat and walked towards the officers. Sergeant Grant Hunter, Officers Kenneth Dotson and Tim Pappas deployed their CEWs which took effect and took Mr. Berthelot into custody without further incident.

INVOLVED SUBJECT STATEMENTS

Patrick Berthelot

CCA interviewed Mr. Patrick Berthelot on July 7, 2021. He provided the following information:

On July 18, 2020, Mr. Berthelot (M/W/39) and his wife, Witness A, were in Monroe, Michigan. While in Monroe, they had a heated argument regarding their marriage; they threatened to leave each other. Mr. Berthelot alleged Witness A had a Ruger handgun. According to Mr. Berthelot, their interaction was captured on the semi-truck's cameras, but CPD did not request those records; he believed CPD was not interested in the couple's circumstances prior to arriving in Ohio; there had been previous incidents between them for which Mr. Berthelot was incarcerated.

After leaving Michigan, Mr. Berthelot drove South on I-75 and Witness A was inside the cab. Witness A demanded attention, yelled at Mr. Berthelot, and told him to drop her off at an airport. Witness A hit him with several objects, including a computer tablet. When just north of I-275, Witness A struck Mr. Berthelot again, causing him to veer into another lane. One of the vehicles witnessed the semi-truck's movement and contacted 911. Afterwards, an OSP officer followed Mr. Berthelot and attempted to pull him over, but Mr. Berthelot would not stop.

Mr. Berthelot understood the severity of the situation and wanted to let Witness A out of the semi-truck. Mr. Berthelot contacted 911, which transferred him to Hamilton County Dispatch. The dispatcher advised Mr. Berthelot that as he was driving on I-71 and the I-275 Loop, he was driving between Hamilton County and Clermont County; she told him not to stop for the police officers while he was in Clermont County. He updated the dispatcher as to his location and followed the dispatcher's directions. At some point during the drive, Witness A hurt her leg against the truck's dashboard.

Eventually, Mr. Berthelot stopped on I-275 and disconnected his trailer. At that time, Witness A exited the semi-truck. Mr. Berthelot returned to the semi-truck, completed a U-Turn, and continued to drive. CPD SWAT officers fired approximately 10 bullets at the engine block, causing damage to the radiator. When the semi-truck stopped, something struck Mr. Berthelot's side, but he was uninjured. He exited the semi-truck holding a knife; he did not remember why he was holding a knife. An officer fired a beanbag round, which struck Mr. Berthelot in the torso; he sustained bruising and possibly fractured ribs. Several officers approached him; he did not remember what their commands were. He stated he made comments that he wanted to end his life. He was tased three times: one on each side of his torso and on his lower back. The taser barbs took effect and he fell to the ground. The officers continued to tase him, and yelled, "Stop fighting!" even after he had fallen to the ground and was not fighting.

Mr. Berthelot was transported to the University of Cincinnati Medical Center (UCMC) for treatment. He briefly saw a mental health assessment worker before CPD decided "it was taking too long" and made him leave. Mr. Berthelot completed a mental health assessment at the Hamilton County Justice Center (HCJC) and was diagnosed with depression and Post Traumatic Stress Disorder (PTSD).

INVOLVED OFFICER STATEMENTS

Lieutenant Brian Bender

Lieutenant Brian Bender, #L0318, M/W/43, is currently assigned to SWAT and Tactical Coordination Unit, and he has been a CPD member since 1999. At the time of the incident, Lieutenant Bender was the command leader for the unit.

CCA interviewed Lieutenant Bender on November 1, 2022 at 10:10am. He provided the following information:

On this date, Lieutenant Bender was advised OSP was in pursuit of a semi-truck, in which Mr. Berthelot, had taken his wife hostage. Mr. Berthelot was reported to have a firearm and was threatening to shoot her regarding a domestic disagreement. As the pursuit continued, it covered portions of I-75, I-71, and I-275. Multiple agencies responded to assist, including CPD cruisers. Lieutenant Bender advised then-Lieutenant Colonel Paul Neudigate of the situation, who confirmed the SWAT team should respond to assist.

Law enforcement agencies coordinated to block streets and both sides of the highways were shut down. Kentucky law enforcement blocked access to the bridge. When SWAT arrived, Mr. Berthelot had stopped his semi-truck in the middle of the highway on I-275. Mr. Berthelot had telephoned ECC, who communicated information to law enforcement: Mr. Berthelot claimed he had a firearm and would kill his wife because she had cheated on him. He was approximately 100 yards away and told CPD to stay back.

According to Lieutenant Bender, the first priority in the situation was to prevent the mobilization of the truck because a hostage rescue cannot be conducted on a moving semi-truck. OSP had previously attempted to use commercial grade stop sticks (designed for tractor trailers), but they were ineffective. One of the stop sticks had caused the front left tire to be on its rims, but Mr. Berthelot still drove at approximately 70mph. Lieutenant Bender relayed to CCA that previously, there had been SWAT trainings to fire rounds into an engine block; the SWAT team has access to .50 caliber rounds which are specifically designed to stop vehicles. Lieutenant Bender advised Sergeant Hale, a sniper on the SWAT team, to get into position to take a profile shot (e.g. shooting the truck from the side rather than the front) into the engine block while the semi-truck was stopped.

During this time, Mr. Berthelot exited the truck and told everyone to stay back, or he would kill his wife, who was still in the truck. Mr. Berthelot moved up to approximately 30 yards and appeared to be doing "something" to the trailer. At the time, Lieutenant Bender was unaware of what he was doing. The hostage used the opportunity and escaped; she indicated an injury to her leg but was too distraught to provide additional information. Mr. Berthelot, who had been unhooking the trailer, returned to the truck and drove away.

Once the woman was secured, SWAT's focus turned to apprehending Mr. Berthelot. Mr. Berthelot drove northbound at approximately 70mph, directly towards stopped traffic. While the SWAT truck (BEAR) attempted to follow, it was unable to maintain the same speed. Mr. Berthelot, still speaking to ECC staff, appeared "very distraught" since his wife left. Lieutenant Bender stated there was increased concern he would proceed into the stopped traffic and the truck needed to be stopped.

Mr. Berthelot turned southbound and continued to drive at approximately 70mph, again the BEAR could not keep up. Air support advised SWAT of Mr. Berthelot's location. Lieutenant Bender conferred with Lieutenant Colonel Neudigate about the options since the stop sticks did not work. They discussed firing rounds into the radiator, causing fluid to leak out, which would result in the truck's computer shutting down the truck. Lieutenant Bender told him, "This is the only option I have to stop this thing."

Lieutenant Bender advised Officer Winslow to get into the turret so he had a downward angle at the radiator, which would lessen the likelihood of hitting Mr. Berthelot. He directed Officer Winslow to "put as many rounds as he can" into the radiator at a "nice, smooth cadence." Officer Winslow fired 10-12 .556 caliber rounds into the radiator, with the wooded area along the highway as his backstop; but Mr. Berthelot continued to drive at 70mph.

Lieutenant Bender authorized Sergeant Hale to fire the .50 caliber rounds, with the same goal. Sergeant Hale fired one shot, but Mr. Berthelot continued and then turned around. Sergeant Hale fired again, and immediately the cab began to slow, eventually to 5mph after four or five minutes.

Lieutenant Bender advised Officer Pappas, who drove the BEAR, to force Mr. Berthelot to the side of the road; Officer Pappas complied, which caused Mr. Berthelot to edge over towards the road shoulder. The truck eventually came to a complete stop.

The REACT team (a group of SWAT officers in the BEAR) approached the cab. Lieutenant Bender directed Specialist Norguiera to deploy one 40mm foam round to force Mr. Berthelot out of the truck. The foam round struck Mr. Berthelot but did not affect his behavior. When Mr. Berthelot exited the cab, he held a knife to his neck. The officers issued commands, but Mr. Berthelot did not comply. Officer Pappas and another officer deployed their CEWs, which took immediate effect. Mr. Berthelot fell backward onto the ground, causing one of the taser barbs to become more deeply imbedded. The REACT team placed him into custody and was transported to UCMC Hospital.

Lieutenant Bender explained there were limited options to resolve the situation, such as stop sticks, which had already been attempted, and “ramming” the semi-truck. He acknowledged that CPD policy states not to discharge firearms against a moving vehicle. Lieutenant Bender stated that, “In my mind, when she got out, he was an extreme danger to the stopped traffic because of his excessive emotional state, we did not know what he was going to do.” Further, he was extremely worried about Mr. Berthelot driving the semi-truck into stopped traffic, which would have killed many people. Further, he believed the intent of the policy is not use a lethal force against the driver of the vehicle, which would create an even bigger danger to the officer and community and reiterated that the officers involved are the part of a unit with access to trained snipers and scoped weapons, whose focus was against a specific target (not the driver).

Sergeant Ron Hale

Sergeant Ron Hale, S067, M/W/51, is currently assigned to the Patrol Bureau, and he has been a CPD member since 1997. At the time of the incident, Sergeant Hale was engaged as a member of the SWAT team and was the leader of the sniper team.

CCA interviewed Sergeant Hale on November 1, 2022 at 11:14am. He provided the following information:

On this date, Sergeant Hale was activated as a member of SWAT and his initial statement corroborated information provided by Lieutenant Bender. He was aware that OSP and police cruisers unsuccessfully attempted to deploy stop sticks. Lieutenant Bender and Sergeant Hale attempted to determine how to resolve the situation peacefully, to include the safety of the hostage and the safety of the hundreds of people stuck on the interstate.

In 2007, CPD had purchased a Barrett .50 caliber sniper rifle with the specific use to strike equipment (cars, trucks, vehicle) which people use to cause injury or destruction to other people or property. Sergeant Hale suggested using the .50 caliber to disable the vehicle, which Lieutenant Bender affirmed. According to Sergeant Hale, the goal was to get into a position to fire the .50 caliber, if/when it was authorized by then-Lieutenant Colonel Neudigate and Lieutenant Bender and the hostage was no longer in the truck.

Sergeant Hale prepared the rifle and rode on the outside of the Bear, trying to follow Mr. Berthelot's truck and get into position, but by the time Sergeant Hale was in a good position, Mr. Berthelot's truck would move. This continued for 20 to 30 minutes before Sergeant Hale realized Mr. Berthelot had developed a driving pattern and would not go beyond a specific 2.5 mile stretch. This gave Sergeant Hale an opportunity to develop a stationary position, with a high ground, clear backstop, and appropriate angle as necessitated by the round caliber. During this time, Officer Winslow attempted to use .556 caliber rounds to stop the vehicle but was unsuccessful.

Sergeant Hale received authorization from Lieutenant Bender. Sergeant Hale did not take the initial shot because the officers who were still in pursuit were too close to the rear of the truck. Sergeant Hale advised over the radio for the cruisers to back off more before he fired a shot.

He waited for Mr. Berthelot at 65mph, coming from the right, to be at a specific angle and aimed directly at the radiator. Sergeant Hale was advised that Mr. Berthelot had turned around and was coming back around; Sergeant Hale pivoted, identified a new, appropriate backstop, and fired the second round directly into the engine block. The truck went approximately one mile before it stopped moving.

Sergeant Hale stated he was comfortable with the decision to discharge the .50 caliber rounds into the moving vehicle, as SWAT was “out of options” to prevent Mr. Berthelot from using the semi-truck to potentially kill individuals. He noted that other law enforcement agencies have used this option previously to bring peaceful resolutions and he believed, due to his skill set, he could accomplish the task effectively.

Officer Michael Winslow

Officer Winslow, #P0728, M/B/41, is currently assigned to the Target Range and Firearms Training Unit, and he has been a CPD member since 2002. At the time of the incident, Officer Winslow was engaged as a member of the SWAT team.

CCA interviewed Officer Winslow on November 2, 2022 at 10:00am. He provided the following information:

On this date, Officer Winslow was activated as a member of SWAT and his initial statement corroborated information provided by Lieutenant Bender. When he arrived on-scene, Officer Winslow observed Mr. Berthelot’s driving to be like “a trapped rat,” driving on the opposite side of the highway, going through the median, turning around, swerving at police cruisers, and driving very close to stopped traffic.

At one time, Mr. Berthelot stopped and detached the tractor trailer from the cab. The SWAT team was approximately 200 yards away; they considered a canine deployment but decided against it due to the distance and hostage involvement. Mr. Berthelot appeared “irate” and screamed but could not be understood. Mr. Berthelot’s wife escaped out of the passenger side of the cab. Officer Winslow did not have any contact with her and did not know of any injuries. Mr. Berthelot returned inside the cab and continued driving. Now that the trailer was detached and excess weight was gone, the truck traveled at approximately 75-80mph.

There was concern Mr. Berthelot was going to “weaponize” the semi-truck and cause “harm and death” along the highway. Mr. Berthelot had demonstrated he had already weaponized the vehicle by swerving toward cruisers and driving at a high rate of speed toward stopped traffic. He did not believe they had any commercial grade stop sticks available for use. Officer Winslow stated that the threat he presented to the police and others could not be allowed to continue “to drive in a manner that may cause harm to the citizens in stopped traffic who cannot leave. It was the only way to stop the vehicle, to shut the engine down.”

At the direction of command staff then-Lieutenant Colonel Neudigate and Lieutenant Bender, Officer Winslow was authorized to neutralize the truck by “blowing out key components,” such as the engine block, radiator/transmission fluid, by delivering accurate shots with a safe backdrop. One of the SWAT team members has a CDL license and thoroughly explained to him the location of the engine and radiator compartment.

The BEAR was pulled onto the west shoulder of the highway, on the opposite side from Mr. Berthelot. Officer Winslow stood in the turret and had a downward trajectory, with a wood lot and ground backdrop for the rounds. The pursuing cruisers slowed to allow for the shot. He discharged 11 .556 caliber rounds from his department issued AR-15. Each of the 11 shots hit the grill of the truck.

Although it was later determined that the shots hit crucial components in the hose line, it did not have an immediate effect. Mr. Berthelot continued to do loops along the highway for 8-10 minutes.

Sergeant Hale was approximately a mile away. Officer Winslow knew that Sergeant Hale fired two .50 caliber rounds at the truck but did not witness those circumstances. Officer Winslow believed that if Sergeant Hale had not discharged the .50 caliber rounds, the pursuit and Mr. Berthelot's dangerous driving would have continued.

Officer Winslow was present when the truck came to a slow rolling stop. The BEAR was used to force the semi-truck to a stop by getting in front of the semi-truck. He provided lethal coverage from the turret in the BEAR. Officer Winslow observed Mr. Berthelot exit the cab with a knife to his throat.

A REACT team gave commands to Mr. Berthelot. Eventually, CEWs were deployed, which took effect and allowed the officers to place Mr. Berthelot in custody. Mr. Berthelot did not have any injuries; he claimed he was shot, but he was not. One taser barb on Mr. Berthelot's back caused Mr. Berthelot to bleed, and he was evaluated and taken to the hospital.

Sergeant Grant Hunter

Sergeant Grant Hunter, #S0020, M/W/32, is currently assigned to District 2, and he has been a CPD member since 2016. At the time of the incident, Sergeant Hunter was engaged as a member of the SWAT team.

CCA interviewed Sergeant Hunter on November 21, 2022, at 3:42pm. He provided the following information:

On this date, Sergeant Hunter was activated as a member of SWAT and his initial statement corroborated information provided by Lieutenant Bender. On arrival, the SWAT team followed Mr. Berthelot along the highway. Mr. Berthelot would drive the semi-truck, exit the truck holding a knife to his throat, and then continue driving. He drove erratically, on the right and wrong side of the highway, and crossed the grass medians. Law enforcement had vehicles stopped and traffic restricted from entering the highway.

Sergeant Hunter could not recall some specifics of the incident, but stated that at one time, Mr. Berthelot detached the trailer component of the semi-truck. Eventually, Mr. Berthelot released his hostage. Based on Mr. Berthelot's mental state, Sergeant Hunter believed Mr. Berthelot could have passed through law enforcement's staged barricades, placing countless people in danger.

After Officer Winslow and Sergeant Hale discharged their firearms at the truck, it came to a slow stop. An officer approached Mr. Berthelot and struck him with a .40mm foam round; however, the foam round did not have the desired effect. (Mr. Berthelot was noted to be "a very big man.") Mr. Berthelot exited the cab and held a knife to his throat. Sergeant Hunter and Officer Dotson were designated with "less lethal" options and pointed their CEWs, while other SWAT officers maintained coverage with rifles. Sergeant Hunter and Officer Dotson deployed their CEWs simultaneously but did not recall if a warning was given.

Mr. Berthelot fell back onto the asphalt. The officers placed him into custody, but noted he was sweating profusely, and the officers used gloves to maintain grip and custody of him. Mr. Berthelot was placed on his side in the recovery position as the SWAT physician evaluated him. He was moved off the road when he complained about the heat from the pavement.

Sergeant Hunter described the situation as an "exigent circumstance." He explained that due to all of the involved factors, including Mr. Berthelot's unstable behavior and taking a hostage, that he could have permeated the vehicle barricade and endangered citizens' lives. He added that

the tools available to stop a normal vehicle are not the same for stopping a semi-truck, and believed their actions potentially saved many people. Sergeant Hunter did not believe there were any other alternatives.

Officer Kenneth Dotson

Officer Kenneth Dotson, #P0132, M/W/30, is currently assigned to the Training Unit, and he has been a CPD member since 2014. At the time of the incident, Officer Dotson was engaged as a member of the SWAT team.

CCA interviewed Officer Kenneth Dotson on November 3, 2022, at 9:57am. He provided the following information:

On this date, Officer Dotson was activated as a member of SWAT and his initial statement corroborated information provided by Lieutenant Bender. Officer Dotson explained the BEAR vehicle is fully armored, and therefore heavier and slower.

The SWAT Team arrived on I-275 near the Kellogg exit. Officer Dotson observed Mr. Berthelot's semi-truck with OSP troops following it. The SWAT Equipment truck was pulled off the highway and the BEAR was used to follow the semi-truck. Officer Dotson observed Mr. Berthelot drive "wildly" at a high rate of speed, using all of the lanes and then emergency cut-throughs to be on the right and wrong sides of the highway. Mr. Berthelot would also swerve to make it appear that he was about to strike police cruisers. Officer Dotson was unsure how many loops on the highway Mr. Berthelot made, but it went on for a long time. The highways were blocked to prevent Mr. Berthelot's access to towns and suburbs. Officer Dotson stated he did not know if OSP had used any stop sticks prior to SWAT's involvement. Officer Dotson believed OSP had a commercial grade stop stick but it did not arrive in time.

The semi-truck made several passes along the highway as the team was given updates from either ECC staff or negotiators that Mr. Berthelot held a female passenger against her will. There was information that she may be injured, but no details were provided; at one time, there was a report the hostage was shot.

He remembered that at one time, Mr. Berthelot had stopped the truck and his feet could be seen under the truck. Officer Dotson was unsure if Mr. Berthelot was preparing a fighting position, but instead, Mr. Berthelot had detached his trailer. The SWAT team tried to contact the female since Mr. Berthelot was out of the cab; she was either shoved or she jumped out of the cab, onto the sidewalk. Officer Dotson left the BEAR and ran up to her. She was "very hysterical" and unable to provide a lot of information but did not appear to have any puncture or bullet wounds.

After Officer Winslow and Sergeant Hale discharged their firearms, the truck leaked fluids and came to a stop. The BEAR was able to get in front of the semi-truck and force it to stop. The passenger door was open. Someone remained in the BEAR's turret and Officer Dotson heard someone deploy a .40mm round at Mr. Berthelot but did not know the details of the encounter.

When Mr. Berthelot exited the cab, Officer Dotson was unsure of what Mr. Berthelot was going to do. Initially, Officer Dotson pointed his rifle, but Mr. Berthelot held a knife his own neck, saying, "Shoot me! Shoot me!" Officer Dotson side-stepped to his right to off-set himself and create distance and transitioned to a CEW. He deployed two cartridges onto Mr. Berthelot's left side, which took immediate effect. Officer Dotson did not know how long he held the charge, but stated it was long enough to give the SWAT officers time to place Mr. Berthelot into custody.

Mr. Berthelot did not sustain any gunshot wounds or have any substantial injuries. He may have received scrapes from falling to the pavement after the CEW deployment. He was transported to UCMC.

Officer Dotson described Mr. Berthelot as “fully committed” and his driving showed intent to strike others with his cab. He believed Mr. Berthelot was capable of becoming more agitated and driving to place people and property at risk. Officer Dotson stated that the firearm discharges were the “quickest and safest” way to stop him, and there was “no other way” to resolve the situation.

Officer Tim Pappas

Officer Tim Pappas, #P0514, M/W/53, was a CPD member since 1997. Officer Pappas retired from CPD in July 2022 and was unable to be interviewed. CCA attempted to reach Officer Pappas by mail but there was no response. To date, CCA has not heard from Officer Pappas.

Officer Pappas was not interviewed by the Homicide Unit regarding this incident. However, in IIS’s review, Sergeant Andrew Fusselman conducted a phone interview of Officer Pappas. CPD’s summary of their interview is included below:

Officer Pappas was on duty, in uniform, when he heard a traffic pursuit entering the District Two area.

Officer Pappas heard, via police radio, other officers were involved in a traffic pursuit involving a semi-truck. Officer Pappas started toward the pursuit when he heard the driver of the semi-truck was holding a hostage, refusing to stop, and attempting “suicide by cop.”

Officer Pappas caught up to the pursuit on Interstate 71 heading north and continued following behind the semi-truck. During the pursuit Officer Pappas was activated as a SWAT officer. Officer Pappas met other SWAT officers when the semi-truck came to a stop on Interstate 275 at MM70.4. Lieutenant Bender ordered Officer Pappas to take over as driver for the SWAT Armored vehicle (Bear).

Officer Pappas followed behind the semi-truck with the Bear. At one point Officer Pappas lost sight of the semi-truck. The semi-truck made a U-Turn and began heading in the direction of the Bear truck. Officer Winslow fired his rifle, striking the radiator of the semi-truck in an attempt to disable it.

Officer Pappas continued to follow the semi-truck until it came to a stop. When the semi-truck stopped, Officer Pappas pulled the Bear directly in front of the semi-truck to keep it from moving forward.

Officer Pappas exited the Bear and saw Mr. Berthelot outside of the semi-truck holding a knife to his neck. Mr. Berthelot was facing away from Officer Pappas and walking toward other SWAT officers with the knife to his neck yelling at the SWAT officers to kill him.

Officer Pappas took cover behind the front bumper of the semi-truck and looked around the semi-truck and saw no SWAT officer had their firearms drawn. As other SWAT officers gave verbal commands for Officer Berthelot to drop the knife, Officer Pappas came around the front of the semi-truck, drew his TASER 7 (CEW), approached Mr. Berthelot, targeted Mr. Berthelot’s back, and pulled the trigger of his TASER 7 (CEW). The TASER had the desired effect, causing Mr. Berthelot to become incapacitated and fall to the ground.

Officer Pappas, unaware if Mr. Berthelot still had the knife in his hand, continued to depress the trigger of his TASER 7, to keep Mr. Berthelot immobilized until other SWAT officers were able to disarm and place him in custody.

After securing the scene, Officer Pappas responded to CIS.

Specialist Andrew Nogueira

Specialist Andrew Nogueira, #PS077, M/W/56, was a CPD member since 1989. Specialist Nogueira retired from CPD in July 2021 and was unable to be interviewed. CCA attempted to reach Specialist Nogueira by mail but there was no response. To date, CCA has not heard from Specialist Nogueira.

Specialist Nogueira was interviewed by Homicide Unit Specialist Greg Gehring and Officer Jake Wloszek. CPD's summary of their interview is included below:

Specialist Nogueira was recalled to Interstate 275 at 70.4-mile marker for a rolling barricaded person with a hostage as a member of SWAT.

Upon arrival, Specialist Nogueira was in the Bear truck with other members of SWAT following the semi-truck up and down Interstate 275. Specialist Nogueira held this assignment until the semi-truck became immobilized.

Specialist Nogueira along with other SWAT members approached the semi-truck to take Mr. Berthelot into custody. While approaching, Specialist Nogueira observed Mr. Berthelot with a knife in his hands. Specialist Nogueira issued several verbal commands before he deployed .40 foam caliber foam round, striking Mr. Berthelot. Mr. Berthelot exited the semi-truck with the knife on the driver's side. While Specialist Nogueira was attempting to reload the .40 caliber foam round and run to the driver's side, Mr. Berthelot was TASED and taken into custody by other SWAT members.

After securing the scene, Specialist Nogueira responded to Criminal Investigation Section for an interview.

OFFICER WITNESS STATEMENTS

Several CPD officers were present during the incident and provided Police Officer Notes to the Homicide Unit. CCA reviewed the notes as completed by Sergeants Robert Lind, John Heine, Michael Hudepohl, Brian Meyer, and Anthony Mitchell and Officers Taylor Howard, Marcus McNeil, Jennifer Myers James Ball, John Dotson, Barry Rogers, and Donald Meece. Nothing additional was gained from these notes.

WITNESS STATEMENTS

Witness A

Witness A was interviewed by Homicide Unit Specialist Greg Gehring and Officer Jake Wloszek. CCA witnessed the interview. CPD's summary of their interview is included below:

Witness A stated she and Mr. Berthelot have been married for a little over a year and they reside in Bessemer, Alabama. She arrived in the Cincinnati area on July 18, 2020 after Mr. Berthelot picked her up in Chicago at O'Hare airport.

From the O'Hare airport, both traveled to Michigan and then to Monroe, Ohio where they slept at the Days Inn Hotel.

During the hotel stay, Mr. Berthelot became upset with Witness A after she refused to have sex. In addition, he started striking her in the head with his hands after discovering Witness A was in a sexual relationship with another man. He later grabbed Witness A by her arm, forcefully walked her outside, and placed her in the semi-truck.

Once inside the semi-truck, Mr. Berthelot struck Witness A about the face and head as she screamed for help. He told her he was going to kill himself and her. Witness A overheard Mr. Berthelot telling his Probation Officer and his boss he was going to kill himself and her, via phone conversation he had with them.

Witness A signaled passing vehicles by waving out the passenger side window and screaming for help and police. She was unable to flee from the semi-truck, as she was held at knife point at times and instructed to “shut the fuck up” by Mr. Berthelot.

During the police pursuit, Mr. Berthelot made more threats and stated, “I should’ve killed you, bitch.” She believes at some point he called police dispatch to negotiate her release.

Witness A, along with her belongings, were removed from the semi-truck and placed on the interstate roadway. Due to her injury, Witness A was unable to walk. She was assisted to a police vehicle by a police officer after Mr. Berthelot drove away.

EVIDENCE

Police Documents

CCA reviewed all CPD-related forms, including but not limited to the Homicide Binder, ECC recordings of City and County dispatch, search warrant and subsequent inventory sheet for the semi-truck, property receipts, arrest forms, crime scene diagrams, evidence examination worksheets, Records Management System (RMS) reports, and the IIS Report.

Computer Aided Dispatch (CAD)

The following is provided in part; the original CAD report is 21 pages long and details the account as it happened.

<u>Date</u>	<u>Time</u>	<u>Call Notes</u>
07/18/2020	13:01:39	OSP pursuing a wht semi in left lane. Semi driver states he will not pull over for OSP, police will have to kill him. Female screaming in background.
	13:07:29	Threatening to commit suicide by cop
	13:08:54	Female and male in semi approaching 3.0 MM
	13:08:58	Knife and gun
	13:14:41	Spike sticks will not work on a semi
	13:15:10	Problems if stop sticks used, K9 is in pursuit
	13:15:34	Male claiming female stabbed him six times
	13:20:10	Driver advised he will start to drive recklessly if units do not back off
	13:21:13	Veh slowing down before Montgomery exit
	13:21:20	Subj is slowing down before Montgomery Exit
	13:22:06	Veh stopped opening door
	13:22:17	Subj dropped something in roadway
	13:23:12	Male states PO are not backing off and now h is going to have some

fun

13:32:35 Male wants to talk to wife before pullover over and Miami Twp is dropping stop sticks on E 275

13:33:36 Agitated due to stop sticks took Exit 57 and tried to strike Miami Twp Unit

13:38:32 Male susp threatening to shoot PO if they don't stop

13:43:29 If he sees another set of stop sticks he's driving into oncoming traffic

13:55:37 He is going to let her off at the ramp and is going to keep going

13:55:44 Tried to strike sheriff at exit

14:04:41 Subj will let her out if PO back off. Female states she will not be able to walk due to leg injury – HamCo getting squad

14:20:23 OSP no longer lead agency giving it to CPD

14:30:28 Wrong way up ramp

14:44:15 Susp states truck stopped – req PO stop yelling at him as he helps his wife out of veh – attempting to block all lanes of traffic with his truck.

14:46:32 Subj will hold knife to wife's neck if PO don't stop approaching.

14:55:03 Male threatening to shoot SWAT truck

14:59:55 Susp out of truck feet on the ground

15:00:44 Cab is disconnected trailer in middle of road

15:03:44 Both subjs out of veh – male has knife to victs chest

15:04:32 Female secured by SWAT

15:09:15 No city cars in pursuit

15:27:19 Shots fired at engine block

15:29:13 2 shots deployed at engine block

15:34:15 Male advising he may have been shot in side

15:38:05 Slow to roll

15:38:19 No firearms per female

15:40:18 Tased getting into custody

15:50:55 Shots deployed by Sergeant Hale WB at 69-4

Body Worn Camera (BWC)

CCA reviewed the BWCs for Sergeants Jerome Herring, Robert Lind, and John Heine and Officers Joshua Jordan, Jonathan Kane, Kyle Strunk, Jason Wallace, Taylor Howard, Katelyn Hoffbauer, Zachary Kress, and Jeremy Randolph. The BWCs captured the traffic officers' actions to maintain the highway pursuit of Mr. Berthelot.

Officer Tim Pappas

Officer Pappas's BWC activated as he was in the passenger seat of a CPD cruiser. He maintained control of a rifle. At approximately 2:55pm, Officer Pappas transitioned to the SWAT Bear vehicle and drove it. At 3:39pm, Officer Pappas drove the SWAT vehicle in front of the stopped semi-truck and parked. CPD officers can be heard giving Mr. Berthelot repeated commands to "stop," "give it up," and "put your hands up!"

Officer Pappas exited the SWAT vehicle with his CEW in his right hand as SWAT officers can be heard yelling, "Taser! Taser!" repeatedly. As Officer Pappas turned the corner of the semi-truck, Officer Pappas pointed his CEW at Mr. Berthelot, who had his back to him. Five SWAT officers stood in front of Mr. Berthelot, with the two officers closest to Mr. Berthelot pointing CEWs. Mr. Berthelot took a step forward with a knife in his left hand.

Officer Pappas deployed his CEW. The barbs took effect as Mr. Berthelot fell onto the asphalt, landing on his back. The knife dropped from Mr. Berthelot's hand. Officer Pappas maintained the deployment as SWAT officers surrounded Mr. Berthelot and approached him with a shield

before turning him onto his stomach. Minor bleeding appeared on the back of Mr. Berthelot's shirt. One SWAT officer held Mr. Berthelot's legs down with a shield while other officers applied flex-cuffs. Mr. Berthelot was repositioned to his side; he was assessed by the on-scene physician.

Officers Pappas and Winslow cleared the truck's cab. Officers assessed the front of Mr. Berthelot's vehicle and the damage incurred by the fired shots. Officer Pappas remained on scene as Mr. Berthelot was led away and he deactivated his BWC.

Digital Video Recording/Mobile Video Recording

CCA reviewed the MVRs for Units #17320, #11314, #08338, #16347, #17330, #18338, #16331, which showed CPD's efforts to follow Mr. Berthelot's semi-truck as it navigated I-71 and I-275.

Clerk of Courts

Mr. Berthelot was charged with:

- one count of Ohio Revised Code (ORC) §2905.02 (A) (2) Abduction,
- one count of ORC §2923.02 Attempt to Commit an Offense,
- two counts of ORC §2921.331(B) Failure to Comply with an Order or Signal of a Police Officer, and
- three counts of ORC §2903.11 (A) (2) Felonious Assault

Mr. Berthelot was sentenced to the Department of Corrections for seven years with credit for 669 days. He was convicted of one count of Abduction, one count of Attempt to Commit an Offense, and one count of Failure to Comply with an Order or Signal of a Police Officer. The remaining charges were dismissed.

Taser Download Reports

Three officers deployed their CEWs at Mr. Berthelot. Sergeant Hunter deployed his CEW once for 4.96 second cycle. Officer Dotson deployed his taser twice: the first deployment lasted for 1.50 second cycle; the second deployment lasted for 5.17 second cycle. Officer Tim Pappas deployed his taser once for a 19.3 second cycle.

Photographs

CCA reviewed several photographs of the incident scene, Mr. Berthelot's semi-truck, evidence processing, involved officers, and involved parties. The photographs documented Mr. Berthelot's injuries, including a large contusion on the right side of his torso and several small lacerations from the CEW barbs.

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

1. The responding SWAT officers did not wear BWCs. At the time of the incident, CPD Procedure § 12.540 Body Worn Camera System did not require SWAT officers to carry BWCs. As of April 2021, the procedure has been updated to require SWAT officers to wear and activate BWCs.
2. At the time of the incident, Sergeant Hunter was an officer. He was promoted to Sergeant in April 2022.

3. The IIS Report issued a finding of “Exonerated” regarding Sergeant Hale’s and Officer Winslow’s use of their weapons. However, the report stated the officers’ use was “in accordance with the laws of the State of Ohio and the Cincinnati Police Department’s policies, procedures, rules, and recommendations,” even though it was directly in conflict with § 12.550 Discharging of Firearms by Police Personnel.
4. CCA contacted AXON, the company which provides CPD with their TASER 7s. According to Axon, deploying multiple CEWs into the same target does not multiply the amount of charge an individual receives; the weapons “discharge into different paths, meaning different muscle tissues would be affected. It would not double the charge or any risk to the subject any more than one TASERS 7 deployment. At worst, you would get more effective muscle control.”

AUTHORITIES

I. CPD Procedure Manual (in part)

§ 10.000 Procedure Manual and Other Binding Written Directives

Purpose:

To provide an official guide outlining the way to do many of the routine operations which confront the Cincinnati Police Department.

To provide efficient methods and high standards for procedures, rules, regulations, policies, and directives recognized as official policy and applied on a department-wide basis.

Policy:

The Cincinnati Police Department Procedure Manual, as well as all other Police Department procedures, rules, regulations, policies, and directives are used to maintain compliance with Federal, State, and Local laws and ordinances, Labor Agreements, Civil Service Rules and Regulations, Administrative Rules and Regulations, and Personnel Policies and Procedures.

The nature of police service is such that it is impossible to develop a procedure, plan, or other binding directive for every situation that might arise. Therefore, district/section/unit commanders have the duty of thoroughly reviewing the activities of subordinates, as they must assume the ultimate responsibility for defects and weaknesses in police work.

§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.

40mm Foam Marking Round – Rounds which are similar to, and used in the same manner as, 40mm foam rounds. The 40mm foam marking rounds are designed to leave a green powder substance on the subject(s) struck by these rounds.

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.

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.

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.

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.

40mm Foam Rounds: The 40mm foam rounds are impact projectile devices that offer a less lethal alternative for subduing or incapacitating a subject and to prevent imminent physical harm, while maintaining officer safety. The 40mm foam rounds are restricted for use by SWAT personnel and grenadiers trained by TSU or CDRT.

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:
 - 1) The severity of the crime at issue.
 - 2) The risk of danger posed to others if the suspect is not promptly apprehended.
 - 3) 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 and 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).**
8. **Avoid prolonged, extended, uninterrupted discharges or extensive multiple discharges.**
 - a. Use of the TASER should be combined with physical restraint techniques to minimize the total duration of the struggle and TASER use.
 - 1) Additional officers on the scene of a TASER deployment should attempt to restrain and handcuff a subject during an active TASER cycle.
 - 2) Officers should transition to a different force option if multiple TASER deployments fail to gain compliance or continued TASER applications are not making sufficient progress toward gaining compliance.

F. Use of the 40mm Foam Round

1. Only SWAT officers and grenadiers trained in the use of the 40mm foam round launcher are permitted to use this system.
 - a. The presence of a second officer is highly recommended in the event the officer using the 40mm foam round launcher encounters lethal resistance.
 - b. Where the distance between the officer and the target makes it practical, verbal warnings will be given prior to use, absent exigent circumstances. When feasible, officers will allow a reasonable time between the warning and the use of the foam round.
 - c. If serious injury requiring hospitalization occurs from using a 40mm foam round, follow the notification process for shots fired as outlined in Procedure 12.550.
2. The 40mm foam round consists of a soft rubber sponged nose attached to a hard plastic carrier.
3. The 40mm foam round launcher is a single shot, shoulder-mounted weapon.
4. When using the 40mm foam round, target a specific part of the body. Avoid the head, neck, throat, heart, and genitals, if possible. The 40mm foam round will prove most successful for incapacitation when used within its optimal energy range of approximately 10 to 75 feet, although it may be used in situations from 5 to 120 feet.
5. Officers should avoid using the 40mm foam round on persons who reasonably appear to be, or are known to be, young children, elderly, medical infirm, pregnant, or users of a cardiac pacemaker. Officers are not prohibited from using the 40mm foam round

on such persons, but its use is limited to those exceptional circumstances where the potential benefit of using the 40mm foam round (i.e. injury reduction) reasonably outweighs the risks and concerns.

6. If four rounds prove to be ineffective, officers need to consider another option.
7. After using the 40mm foam round launcher, and after an individual is under control, inform onlookers the 40mm foam round is a less lethal alternative designed to apprehend individuals without causing serious injury.

§ 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.

Felonies: When all other reasonable means at the officer's disposal have failed, the use of firearms is authorized, only under the following circumstances, as a last resort to apprehend a fleeing felon:

- The officer has probable cause to believe the suspect has committed or is committing a felony, and
- The suspect presents an immediate risk of death or serious physical harm, either to the officer or another person if not immediately apprehended.
- If possible, the officer will give verbal warning before using the firearm.

By itself, notification by Emergency Communications Section (ECS) resulting from a general information broadcast or computer query that a subject is wanted will not provide authority for the police officer to use a firearm.

All Other Felonies and Misdemeanors: In all other felonies or misdemeanors, police personnel will not fire shots even if the perpetrator attempts or succeeds in his attempt to flee.

Moving Vehicles: Officers shall not discharge their firearms at a moving vehicle or its occupants unless the occupants are using deadly physical force against the officer or another person present, by means other than the vehicle.

ANALYSIS

Allegation 1: Improper Discharge of Firearm

On July 18, 2020, CPD officers assisted OSP in a highway pursuit of a semi-truck driven by Mr. Berthelot, who had kidnapped and caused injury to his wife, Witness A. Per the CAD Report, Mr. Berthelot maintained phone contact with dispatchers, made suicidal statements, and displayed dangerous and erratic roadway behavior by driving the wrong way on the highway and highway ramps and attempted to damage law enforcement cruisers with his vehicle. Multiple jurisdictions attempted to assist in the pursuit by deploying stop sticks, which had minimal effect.

CPD Procedure § 12.550 Discharging of Firearms by Police Personnel states that 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. Further, it clarifies that the use of a firearm to apprehend a fleeing felon is authorized when probable cause exists that the suspect has committed or is committing a felony, and the suspect presents an immediate risk of death or serious physical harm to the officer or another person if not immediately apprehended. At the time CPD became the lead agency in the pursuit, the officers had probable cause to believe Mr. Berthelot had committed multiple felonies, including Abduction, Felonious Assault, and Failure to Comply with an Order or Signal of a Police Officer. Additionally, Mr. Berthelot's flight, if left to continue, can be objectively viewed as placing motorists and pedestrians at risk, and necessitated CPD's continued involvement.

Per Lieutenant Bender's statement, CPD had considered, attempted, and/or utilized other possible alternatives and determined, based on Mr. Berthelot's "excessive emotional state" and evident lack of control, his semi-truck needed to be disabled for the safety of the stopped traffic. He authorized and directed Officer Winslow to discharge an AR .556 rifle into the semi-truck's radiator at a controlled cadence; when that did not have immediate effect, Lieutenant Bender instructed Sergeant Hale to use a .50 caliber rifle. Sergeant Hale and Officer Winslow confirmed their actions were in accordance with the directives issued by command staff. A review of the evidence showed the rounds fired by Officer Winslow and Sergeant Hale were concentrated in the front compartment of the semi-truck; photographs of the scene confirmed the backdrop to be of a wooded area with little-to-no chance of bystanders.

CPD Procedure § 12.550 Discharging of Firearms by Police Personnel specifically states that officers shall not discharge their firearms at a moving vehicle or its occupants unless the occupants are using deadly physical force against the officer or another person present, by means other than the vehicle. At the time Officer Winslow fired at the semi-truck, Witness A was no longer present or at risk of further injury by Mr. Berthelot. However, Mr. Berthelot had the potential of harming other motorists with the use of his truck. CPD command staff and involved CPD officers acknowledged that discharging a weapon at a moving vehicle was in violation of CPD Procedure § 12.550 Discharging of Firearms by Police Personnel; they affirmed the policy as it stands, but stated the deviation was necessary due to extenuating circumstances.

In this instance, CCA recognizes CPD Procedure § 10.000 Procedure Manual and Other Binding Written Directives, which allows that the nature of police service is such that it is impossible to develop a procedure, plan, or other binding directive for every situation that might arise. Mr. Berthelot's abduction of Witness A and subsequent perilous operation of a semi-truck on a highway was an extreme, anomalous circumstance that required an alternative solution when standard methods of controlling the situation and disabling the vehicle were unsuccessful. A review of the command decisions leading to the discharge of firearms at the vehicle showed careful consideration of the circumstances and risks and gradual implementation of escalating force. Therefore, CCA determined the actions of Sergeant Hale and Officer Winslow, though contrary to CPD Procedure § 12.550 Discharging of Firearms, prevented/lessened a substantial risk of loss of life.

Allegation 2: Excessive Force (Foam Round)

After the semi-truck became inoperable, Mr. Berthelot prepared to leave the semi-truck. In Mr. Berthelot's statement, he stated that he was "struck in the side" and believed an officer deployed a bean bag round, causing injury. A review of the available information and evidence confirmed Specialist Nogueira deployed .40 foam caliber foam round at Mr. Berthelot; photographs showed Mr. Berthelot sustained significant bruising to his torso.

CPD Procedure § 12.545 Use of Force states the 40mm foam rounds are impact projectile devices that offer a less lethal alternative for subduing or incapacitating a subject and to prevent imminent physical harm, while maintaining officer safety. The 40mm foam rounds are restricted for use by SWAT personnel. In his statement to CCA, Lieutenant Bender confirmed he authorized Specialist Nogueira, who was SWAT personnel at the time, to use the 40mm round against Mr. Berthelot to force Mr. Berthelot out of the truck; he described the totality of Mr. Berthelot's actions and apparent emotional state, to include an allegation of a knife and possible firearm in his possession. The procedure also states that "where the distance between the officer and target makes it practical, verbal warnings will be given prior to use, absent exigent circumstances,"; although

CCA does not know if Specialist Nogueira gave a warning, the entirety of the situation indicates the Specialist Nogueira was in an exigent circumstances when the foam round was discharged.

CPD procedure determined an individual is 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. Crucially, *Graham v. Connor* (1989) states, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight....the question is whether the officers' actions are 'objectively reasonable' in the light of the facts and circumstances confronting them." Although no BWC footage is available of Specialist Nogueira's interaction with Mr. Berthelot, based on the available statements from Mr. Berthelot and involved officers, CCA determined Specialist Nogueira's actions were within CPD policy, training, and procedure.

Allegation 3: Excessive Force (CEW)

In their statements to CCA, all officers reported that when Mr. Berthelot exited the cab of the semi-truck, he held a knife to his neck and made suicidal comments; Mr. Berthelot confirmed he held the knife but could not recall why.

CPD Procedure § 12.545 Use of Force states a CEW 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. As referenced earlier, the procedure defined active resistance to include 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.

Officer Pappas's BWC footage captured officers warning Mr. Berthelot of impending CEW use, but Mr. Berthelot maintained possession of his knife. A review of the TASER Download Reports showed Sergeant Hunter and Officers Pappas and Dotson deployed their CEWs within seconds of each other. Sergeant Hunter and Officer Dotson deployed their CEWs while facing Mr. Berthelot for the recommended five-second cycle; however, Officer Pappas deployed his CEW to Mr. Berthelot's back. CPD Procedure § 12.545 Use of Force states that when deploying a cartridge from the CEW, frontal shots are prohibited except in situations of self-defense or defense of another. BWC footage showed that at the time of the deployment, Mr. Berthelot held a knife to his throat. This action, in combination with his previous verbalized intention to be killed, provided a substantive belief that Mr. Berthelot intended to harm himself.

Crucially, under the rubric of *Graham v. Connor* (1989), as stated above, after a thorough review of the circumstances, CCA determined Sergeant Hunter and Officer Dotson were within CPD policy, procedure, and training when they deployed their CEWs at Mr. Berthelot.

Collateral Allegation

Allegation 3: Improper Procedure (Prolonged Taser Use)

As indicated above, the TASER Download Reports showed Sergeant Hunter and Officers Pappas and Dotson deployed their CEWs at Mr. Berthelot, but only three of the deployments were within the recommended approximated five second cycle. The TASER Download Report detailed that Officer Tim Pappas deployed his taser once for a 19.3 second cycle.

CPD's Procedure § 12.545, Use of Force, states officers deploying a TASER should permit the TASER to cycle for the full five seconds to maximize effectiveness, but specifically clarifies that officers should avoid prolonged, extended, uninterrupted discharges or extensive multiple

discharges. CCA was unable to interview Officer Pappas to determine why he deployed his CEW for almost four times over the recommended duration, when other experienced CPD officers, present in the same circumstances and with the same weapon, did not. In his statement to IIS, Officer Pappas, was “unaware if Mr. Berthelot still had the knife in his hand, continued to depress the trigger of his TASER 7, to keep Mr. Berthelot immobilized until other SWAT officers were able to disarm and place him in custody.” Officer Pappas’s BWC, showed SWAT officers advised, “The knife’s away!” approximately 14 seconds after his CEW was deployed; multiple officers maintained physical control of Mr. Berthelot, with one officer applying a shield against his legs at least one officer handling each of his arms. Officer Pappas continued to depress the CEW trigger until Mr. Berthelot was placed on his stomach.

Although an additional five seconds may seem minor, five seconds is the entirety of *one* TASER cycle; in essence, Officer Pappas tased Mr. Berthelot for an additional cycle unnecessarily, after the knife had been clearly identified as no longer in Mr. Berthelot’s possession, and when other officers present were able to maintain physical custody of Mr. Berthelot, who was not actively resisting. Therefore, CCA determined Officer Pappas’s actions were not within CPD policy, procedure, and training.

FINDINGS

Original Allegations

No.	Allegation	Subject Officer	Involved Citizen	Finding
1	Improper Discharge of a Firearm	Ron Hale	Patrick Berthelot	Exonerated
2	Improper Discharge of a Firearm	Michael Winslow	Patrick Berthelot	Exonerated
3	Excessive Force	Grant Hunter	Patrick Berthelot	Exonerated
4	Excessive Force	Kenneth Dotson	Patrick Berthelot	Exonerated
5	Excessive Force	Tim Pappas	Patrick Berthelot	Exonerated
6	Excessive Force	Andrew Nogueira	Patrick Berthelot	Exonerated

Collateral Allegations

No.	Allegation	Subject Officer	Involved Citizen	Finding
7	Improper Procedure	Tim Pappas	Patrick Berthelot	Sustained

RECOMMENDATION

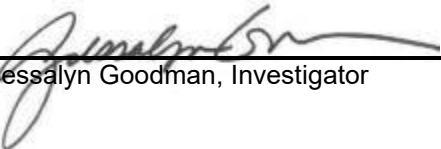
Recommendation No. R2326 - (Original R2128)

(Previously presented in CCA Case #19047, June 2021)

Use of Force Policy and Procedure (TASER/Conducted Electrical Weapon)

CCA understands that incidents involving people who are displaying non-compliant behavior can be challenging and stressful situations for CPD officers. In these situations, officers may not realize that they have prolonged a TASER deployment. To minimize the risk that excessive use will occur, CCA recommends that CPD further develop the TASER/Conducted Electrical Weapon (CEW) section of CPD Procedure § 12.545 Use of Force, particularly the portion regarding avoidance of prolonged, extended, uninterrupted discharges or extensive multiple discharges. To support its development, a study should be conducted to review these types of TASER discharges

that includes analyses of the number of incidents, length and number of discharges, demographics of citizens involved in these incidents, types of behaviors that result in a citizen being the target, and any injuries sustained. Such a study can be impactful in assisting CPD to ensure operational TASER practices align with policy and training.



Jessalyn Goodman, Investigator



Makiedah Messam, Interim Director

**PREVIOUS
CONTACTS AND
COMMENDATIONS**

Sergeant Ron Hale

Previous Contacts with CCA

Sergeant Hale had no previous contact with CCA in the past three years.

Previous Contacts for CCA Referrals

Sergeant Hale 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 Sergeant Hale with IIS.

Commendations

Sergeant Hale received eight commendations in the past three years.

Date	Source of Commendation Received
08/04/2017	CPD
10/01/2017	Civilian
08/21/2018	CPD
09/06/2018	CPD
02/04/2019	Other Law Enforcement (OLE)
05/13/2019	CPD
09/04/2019	Civilian
01/05/2020	CPD

Officer Michael Winslow

Previous Contacts with CCA

Officer Winslow had one previous contact with CCA in the past three years.

Case Number	Allegation	Finding
20119	Excessive Force	Not Sustained

Previous Contacts for CCA Referrals

Officer Winslow had one allegation referred to CPD for investigation in the past three years.

Case Number	Allegation	CPD Finding
20118	Improper Procedure	Unfounded

Previous Contacts with IIS

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

Commendations

Officer Winslow received two commendations in the past three years.

Date	Source of Commendation Received
08/04/2017	CPD
08/15/2017	Civilian

Sergeant Grant Hunter

Previous Contacts with CCA

Sergeant Hunter had two previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
18071	Discrimination (Ethnicity)	Not Sustained
18222	Stop (Person)	Exonerated
18222	Use of Force (Taken to the Ground)	Exonerated

Previous Contacts for CCA Referrals

Sergeant Hunter had two allegations referred to CPD for investigation in the past three years.

Case Number	Allegation	CPD Finding
18188	Harassment	Not Reported
19033	Discourtesy	Exonerated

Previous Contacts with IIS

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

Commendations

Sergeant Hunter received two commendations in the past three years.

Date	Source of Commendation Received
01/03/2020	CPD
01/03/2020	CPD

Officer Tim Pappas

Previous Contacts with CCA

Officer Dotson had one previous contact with CCA in the past three years.

Case Number	Allegation	Finding
17234	Search (Vehicle)	Exonerated
17234	Discrimination	Not Sustained

Previous Contacts with IIS

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

Commendations

Officer Pappas received nine commendations in the past three years.

Date	Source of Commendation Received
08/04/2017	CPD
11/29/2017	CPD
01/05/2018	Civilian
06/29/2018	CPD
01/08/2019	Civilian
04/11/2019	Civilian
05/13/2019	CPD
01/05/2020	CPD
01/05/2020	CPD

Officer Kenneth Dotson

Previous Contacts with CCA

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

Case Number	Allegation	Finding
18053	Excessive Force (Physical)	Not Sustained
18053	Stop (Person)	Exonerated
19038	Harassment	Unfounded
19241	Discrimination	Not Sustained

Previous Contacts with IIS

Officer Dotson had one additional previous with IIS in the past three years.

Case Number	Allegation	CPD Finding
19038	Serous Misconduct	Unfounded

Commendations

Officer Dotson received one commendation in the past three years.

Date	Source of Commendation Received
06/14/2018	Civilian

Specialist Andrew Nogueira

Previous Contacts with CCA

Specialist Nogueira had no previous contact with CCA in the past three years.

Previous Contacts for CCA Referrals

Specialist Nogueira 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 Specialist Nogueira with IIS.

Commendations

Specialist Nogueira received three commendations in the past three years.

Date	Source of Commendation Received
08/04/2017	CPD
09/06/2018	CPD
02/04/2019	OLE