

Date: July 27, 2023

Case: #22247

Investigator: Joseph Vesper

Complaint Received: November 2, 2022

Complainant: Veronica Johnson and Jovan Jett

CCA completed an investigation of CCA Complaint No. 22247 by Veronica Johnson. This report is intended to convey the conclusions reached as a consequence of the investigation, and the basis for those conclusions. This report does not purport to summarize all evidence uncovered during the course of the investigation, nor is it intended to summarize the entirety of CCA's file on this matter.

Complaint Summary:

Date: October 31, 2022

Time: 11:40 AM

Location: [REDACTED]

Ms. Johnson alleged that on October 30, 2022, Detective Aubrey Pitts acted unprofessionally when he obtained a search warrant to access her home surveillance footage in the investigation of a murder that occurred on Ms. Johnson's street. She further alleged that officers returned to her residence with a search warrant on the morning of October 31, 2022, and vandalized her property. That same day, shortly after the search was conducted, her son Jovan Jett (Mr. Jett) was improperly stopped, and his vehicle was improperly searched by a canine unit.

Allegations:

Improper Search
Discourtesy
Improper Procedure
Improper Stop

Persons Involved:

Officer Christopher Wermuth, #P073, M/W/43 (Subject Officer)
Officer Brett Thomas, #P791, M/W/41 (Subject Officer)
Detective Aubrey Pitts, #P280, M/W/35 (Subject Officer)
Sergeant Nathan Asbury, #S008, M/W/43 (Subject Officer)
Officer Charles Knapp, #P297, M/W/45 (Subject Officer)
Veronica Johnson, F/B/55 (Complainant)
Jovan Jett, M/B/29 (Complainant)

Evidence Reviewed:

Search Warrant
CPD Records Management System (RMS)
CPD CAD Incident Reports
Body-Worn Camera (BWC) Recordings: Asbury, Beavers, Blythe, Edwards, Harper, Knapp, Longworth, Thomas, Traufler, Wermuth
Motor Vehicle Recordings (MVR): Officers Blythe and Wermuth
Statements by officers, complainant, and relevant witnesses

Significant Discrepancies or Clarifications

Ms. Johnson's complaint alleged damage to her cameras and home. CCA did not receive any photographs or documentation of damaged property from Ms. Johnson or CPD.

Authorities:

CPD Procedure § 12.140 Canine Operations (Revised 10/19/17)
CPD Procedure § 12.205 Traffic Enforcement (Revised 09/23/22)
CPD Procedure § 12.545 Use of Force (Revised 02/17/22)
CPD Procedure § 12.700 Search Warrants/Consent to Search (Revised 04/21/23)
CPD Manual of Rules and Regulations – Code of Ethics
CPD Manual of Rules and Regulations – Section 1.06
CPD Tactical Patrol Guide 2020 – Utilizing Non-Lethal Options
Florida v. Harris, 568 U.S. 237 (2013)
Graham v. Connor, 490 U.S. 386 (1989)
Hill v. McIntyre, 884 F.2d 271 (6th Cir. 1989).
State v. Johnson, 2002-Ohio-2884 (Ct. App.)
Terry v. Ohio, 392 U.S. 1 (1968)
United States v. Ramirez, 523 U.S. 65, 71, 118 S. Ct. 992 (1998)

Analysis:

Original Allegations

Allegation 1: Improper Search

Ms. Johnson alleged that Detective Pitts and other officers improperly searched her residence in violation of her 4th Amendment rights, when he improperly obtained a search warrant for the video footage and “trashed” her house.

Credible evidence, specifically officer statements and BWC footage, proves that officers searched Ms. Johnson's residence. However, despite these actions taken, CPD Procedures Manual § 12.700 Search Warrants/Consent to Search, the 4th Amendment, and the search warrant permitted the conduct that occurred. Specifically, the evidence establishes the following:

- CPD Procedure § 12.700 Search Warrants/Consent to Search states that all search warrants must be supported by probable cause and signed by a judge to authorize a search. The affidavit for a search warrant must demonstrate probable cause to support the officer's belief that the items sought are on the premises to be searched. The procedure also describes proper service of the warrant. Officers must conduct the search

“in a thorough, orderly fashion.” Some degree of property damage during the execution of a search warrant does not render the search unreasonable so long as such damage is not unnecessary or excessive. *See United States v. Ramirez*, 523 U.S. 65, 71, 118 S. Ct. 992 (1998) and *Hill v. McIntyre*, 884 F.2d 271, 278 (6th Cir. 1989).

- In his statements to CCA, Detective Pitts stated that when he first encountered Ms. Johnson, she allowed him to view her home surveillance footage which captured potential murder suspects fleeing a crime scene near Ms. Johnson’s home. Based on this preliminary viewing, Detective Pitts knew that the surveillance video contained valuable evidence. Though Ms. Johnson initially permitted Detective Pitts to view the video, she later became unwilling to cooperate for further access, at which point a search warrant was sought.
- Per court documents obtained by CCA, the search was conducted pursuant to a valid search warrant supported by probable cause.
- Per BWC footage and CCA statements, officers waited a sufficient time to allow Mr. Jett to open the door to the residence and properly conducted a security sweep, thereby freezing the scene for detectives. The officers did not cause damage within the residence and the only item seized was the camera system.

Therefore, the actions of Detective Pitts were consistent with CPD’s policy, procedure, and training.

Allegation 2: Discourtesy

Ms. Johnson alleged that Detective Pitts was discourteous to her when he improperly and unprofessionally coordinated with her to gain access to surveillance footage. Specifically, Ms. Johnson alleged that despite her attempts to help police with their investigation, she “was treated like a criminal.”

The CPD Manual of Rules and Regulations Section 1.06 requires that officers shall always be civil, orderly, and courteous in dealing with the public. It instructs officers to avoid using coarse, violent, or profane language. Additionally, the CPD Code of Ethics requires that officers remain respectful and courteous to all citizens.

CCA reviewed evidence, specifically BWC footage and credible witness statements. There is no information to establish that Detective Pitts used coarse, violent, or profane language, or failed to act civilly and orderly when he spoke with Ms. Johnson. While Detective Pitts obtained a search warrant, this action was also not discourteous as alleged.

Therefore, the actions of Detective Pitts were consistent with CPD’s policy, procedure, and training.

Allegation 3: Improper Procedure

Ms. Johnson alleged that a CPD officer, identified by CCA to be Officer Knapp, damaged her home security cameras during the execution of a search warrant.

BWC showed Officers Knapp and Longworth on the front porch of [REDACTED]. After being told by Sergeant Asbury that “the camera guys watch us,” Officer Longworth used a broom found on the porch to attempt to point one camera away from the officers.¹ Officer Knapp used

¹ See BWC footage at 11:41:29

the battering ram to knock down one of two surveillance cameras mounted to a window frame immediately left of the front door of the residence.

CPD Procedure § 12.700 Search Warrants/Consent to Search states that upon completion of the search, officers must note the “nature and extent of any damage caused during the entry and searching procedure.” Officers then must prepare a Form 17 to document this damage.

After a thorough review of police files, CCA did not find a Form 17 associated with the execution of this search warrant. Credible evidence, specifically BWC footage, shows that Ms. Johnson’s camera was knocked off the window frame and Ms. Johnson’s complaint specifically alleged that officers used a broom to knock down her camera.

Officer statements to CCA indicate that it is common practice for CPD to move or cover cameras during the execution of search warrants. Officers will try to point cameras in a different direction or cover them with tape so the cameras cannot capture the movements of police officers. The purpose is to protect the safety of the officers.

BWC shows that during this search, the cameras were not just re-directed, but rather one was knocked off the wall it was mounted on. Officer Knapp used a battering ram, typically reserved for forcing entry, to hit the security camera off of its mount on the window and onto the ground.² BWC footage verifies Sergeant Asbury’s CCA statements that he warned the officers that they did not want to break the cameras.³ Sergeant Asbury also told CCA that when he engaged Mr. Jett, he could see on his phone that both cameras were still operational, but BWC was inconclusive.

Officer Knapp did not recall many specifics from this incident. From his recollection, he had never seen “anyone deliberately try to damage a camera.” Officer Knapp stated he had “no idea what you’re talking about” and laughed (chuckled) when CCA investigators told him that the camera was knocked down with the battering ram. He did “not recall breaking the camera, nor would I set out to damage a camera.” He was not aware of any forms that need to be filled out for property damage and did “not recall filling out any forms nor breaking any property.” Officer Knapp stated that if any damage was caused, an officer would “need to bring it to the attention of the supervisor,” but did not do so here because he did not recall anything broken or damaged.

The CPD Procedure instructs that the Form 17 must be completed to document “**any** damage.” The procedure’s language of “nature and extent” of damage implies that the form should be completed for damage of varying degrees and types, not solely the destruction of property. Regardless of whether the camera was still functional after being knocked to the ground, it was certainly damaged when it was forcefully struck by an instrument designed to break down doors and entirely displaced from its position above the window to the hard ground below. At the very least the frame the camera was mounted to now holds distinguishable empty spaces.

Therefore, Officer Knapp was not within CPD’s policy, procedure, and training.

Allegation 4: Improper Stop

Ms. Johnson alleged that Officer Wermuth violated Mr. Jett’s 4th Amendment rights when he conducted an illegal traffic stop.

² See BWC footage at 11:41:34 – 11:41:42

³ See BWC footage at 11:41:45

Credible evidence, specifically MVR and BWC footage, proves that Officer Wermuth stopped and detained Mr. Jett. However, despite the action taken, CPD Procedures Manual § 12.205 Traffic Enforcement and relevant case law permitted the conduct that occurred. Specifically, the evidence establishes the following:

- In *State v. Johnson*, 2002-Ohio-2884, ¶ 1 (Ct. App.), the First District held that a police officer's observation of a traffic offense, however minor, constitutes probable cause for a traffic stop. CPD Procedure § 12.205 Traffic Enforcement instructs officers to fairly enforce traffic laws, conduct stops, and issue citations when appropriate.
- Per BWC footage and CCA statements, Officer Wermuth observed Mr. Jett speeding and nearly hit his cruiser on Reading Road. Officer Wermuth stopped Mr. Jett, queried his license, and discovered two capias warrants. Officer Wermuth told CCA investigators that Mr. Jett was under arrest after this discovery and Mr. Jett was subsequently arrested and searched. Officer Wermuth ultimately cited Mr. Jett for his traffic infraction, re-cited him for his capias warrants, and released Mr. Jett.
- Officer Wermuth personally observed the traffic infraction, which provided sufficient probable cause to conduct a traffic stop. When he discovered the outstanding capias warrants, he then had probable cause and in fact did arrest Mr. Jett.

Therefore, the actions of Officer Wermuth were consistent with CPD's policy, procedure, and training.

Allegations 5 & 6: Improper Search

Ms. Johnson alleged that Officers Wermuth and Thomas violated Mr. Jett's 4th Amendment rights when they improperly searched his vehicle.

Credible evidence, specifically BWC footage, proves that Officers Wermuth and Thomas searched Mr. Jett's vehicle. However, despite the actions taken, CPD Procedures Manual § 12.140 Canine Operations and relevant case law permitted the conduct that occurred.

Specifically, the evidence establishes the following:

- CPD Procedure § 12.140 Canine Operations states that officers do not need reasonable suspicion for a dog to sniff the outside of an automobile during a traffic stop if it does not prolong the stop. The procedure and relevant case law, including *Florida v. Harris* 568 U.S. 237 (2013), provide that a narcotic canine's alert to contraband inside the car provides probable cause to search the entire vehicle.
- In his statement to CCA, Officer Wermuth said he called a K9 unit due to the "slow roll" of the vehicle, the failure to originally stop when Officer Wermuth activated his lights on Hutchins Ave, which is supported by MVR footage. Importantly, Officer Wermuth did not extend the length of the traffic stop to wait for the canine and was amid the citation process when the canine unit arrived, thirteen minutes after it was requested. Specifically, while he waited for the canine unit, Officer Wermuth wrote citations and spoke with Ms. Johnson.
- Per BWC footage and statements made by Officer Thomas, his canine alerted to the presence of illegal substances on the vehicle. Pursuant to that alert, Officers Thomas and Wermuth then had probable cause to conduct a further search.

Therefore, the actions of Officers Wermuth and Thomas were consistent with CPD's policy, procedure, and training.

Collateral Allegations

Allegation 7: Improper Procedure (Use of Force)

During its investigation, CCA became aware of information that indicated Sergeant Asbury pointed a CEW at Mr. Jett under questionable circumstances.

BWC footage showed that Sergeant Asbury and a group of officers executed a search warrant at [REDACTED] around 11:40 a.m. on October 31, 2022. The officers knocked on the door and announced to any occupants their presence. Shortly after, Mr. Jett answered, and the officers instructed him to step outside. The officers ordered Mr. Jett to sit down and told him they were there for a search warrant for cameras. Sergeant Asbury twice demanded Mr. Jett turn over his cell phone. Mr. Jett refused and asked if he could call his mother.

At this point, Sergeant Asbury removed his CEW and pointed it at Mr. Jett's chest, then told Mr. Jett that they "have a search warrant" and his phone was included. Sergeant Asbury then put away his CEW, took the phone from Mr. Jett's outstretched hand, and Mr. Jett was handcuffed on the front porch of the residence.

CPD Procedure § 12.545 Use of Force states in part that "A CEW may be deployed on a suspect **actively resisting arrest** when there is probable cause to arrest the suspect, or to defend oneself or another from **active aggression** (emphasis added)." The procedure defines actively resisting arrest as "making physically evasive movements to defeat the officer's attempt to control, including fleeing, bracing, tensing, pushing, or verbally signaling an intention to **avoid or prevent being taken into or retained in custody** (emphasis added)." The CPD Procedure Manual does not directly address the pointing of a CEW rather than deployment of the device. However, the Department's Tactical Patrol Guide "Utilizing Non-Lethal Weapons" section instructs that "[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]" Taking these policies together, the analysis for whether an officer's pointing of a taser is appropriate under the circumstances necessarily mirrors the question of whether that officer would be justified in actually deploying the device.

CPD Procedure § 12.545 further advises officers of the factors to consider for any use of force. Officers are instructed to only use the level of force necessary and proportionate to the threat they are facing. When they use CEWs, officers are required to consider the severity of the crime at issue and the risk of danger to others if the target individual is not subdued. CPD Procedure § 12.545 cites *Graham v. Connor* 490 U.S. 386 (1989), and states that any use of force must be reasonable in light of the particular facts and circumstances in each case, as judged from the perspective of an objectively reasonable officer on the scene.

In his statements to CCA, Sergeant Asbury explained his reason for pointing his CEW at Mr. Jett. He said that when Mr. Jett answered the door, "he had the cameras up and rolling" on his cell phone. Mr. Jett rejected requests to turn the phone over and "tried to pull the phone away." Sergeant Asbury stated these actions were "quickly approaching ... either obstructing, tampering with evidence, or resisting arrest" because he was not turning over evidence listed on the search warrant. If Mr. Jett "continued to resist, he was definitely going to face arrest" according to

Sergeant Asbury. He believed the taser got Mr. Jett to “calm down and cooperate.” Mr. Jett was “not in a position to flee,” the concern was that he would destroy or obstruct access to evidence. Sergeant Asbury then re-holstered the CEW after only a few seconds at which point Mr. Jett turned over the phone, was handcuffed, and sat on a chair on the porch. However, the subjective viewpoint of the officers in the situation and their opinion on the appropriateness of force is not dispositive in analyzing whether such force was justified, rather the question is whether the use of force was objectively reasonable under the totality of the circumstances. See *Graham* at 396.

Mr. Jett was not under arrest and officers had no probable cause to arrest him when force was used. His actions therefore cannot be characterized as resisting arrest. The contact with Mr. Jett was pursuant to the search warrant, which carries a limited authority to detain individuals on the premises to be searched. Sergeant Asbury did not state the belief that Mr. Jett was a threat, nor was there any objective basis for such a belief. At the time, there were at least four officers on the porch available to assist Sergeant Asbury. Moreover, Mr. Jett avoided commands to turn over his device, but did not actively resist arrest or behave aggressively. An objectively reasonable officer on the scene would have evaluated these factors and not used this degree of force to gain compliance.

Applying these factors and principles to the present factual situation, CCA concludes that Sergeant Asbury would not have been permitted to discharge his CEW and was not permitted to point his CEW at Mr. Jett either. Therefore, Sergeant Asbury was not within CPD’s policy, procedure, and training.

Allegation 8: Improper Procedure (Contact Card)

During its investigation, CCA learned that the officers who executed the search warrant at Ms. Johnson’s residence did not submit a Contact Card for Mr. Jett.

Credible evidence shows that officers served a search warrant at [REDACTED] Mr. Jovan Jett opened the front door before they forced entry into the home. Mr. Jett was the only individual present in the home when these actions took place. Mr. Jett was briefly detained pursuant to the execution of the search warrant.

CPD Procedure § 12.700 Search Warrants/Consent to Search states that after securing occupants, officers should complete a Form 534, Contact Card, for all subjects on the scene and indicate on the form that the reason for the contact was the search warrant execution.

After a thorough investigation of police files, CCA did not discover a contact card for Mr. Jett associated with the execution of this search warrant. When asked if a contact card was completed in his CCA interview, Sergeant Asbury stated that he did not complete one and was not aware of one being completed by any other officers. As the officer with the most contact with Mr. Jett and the one who seemingly directed the execution of the search warrant, he had the ultimate responsibility to complete the contact card.

Therefore, the actions of Sergeant Asbury were inconsistent with CPD’s policy, procedure, and training.

Findings:

Original Allegations

No.	Allegation	Subject Officer	Involved Citizen	Finding
1	Improper Search	Aubrey Pitts	Veronica Johnson	Exonerated
2	Discourtesy	Aubrey Pitts	Veronica Johnson	Unfounded
3	Improper Procedure	Charles Knapp	Veronica Johnson	Sustained
4	Improper Stop	Christopher Wermuth	Jovan Jett	Exonerated
5	Improper Search	Christopher Wermuth	Jovan Jett	Exonerated
6	Improper Search	Brett Thomas	Jovan Jett	Exonerated

Collateral Allegations

No.	Allegation	Subject Officer	Involved Citizen	Finding
7	Improper Procedure (Use of Force)	Nathan Asbury	Jovan Jett	Sustained
8	Improper Procedure (Contact Card)	Nathan Asbury	Jovan Jett	Sustained

Observation:

During the investigation, CCA observed inconsistency in internal guidance regarding the pointing of CEWs. CPD Procedure § 12.545 Use of Force does not address the pointing of CEWs at all, while the Tactical Patrol Guide instructs officers that they should not point (i.e. target) their CEW in situations where the discharge of the CEW would not be warranted. Standardizing these directives would provide greater clarity about the appropriateness of CEW pointing, which would enhance officer and citizen safety, promote trust, and reduce citizen complaints. CCA will continue to monitor CPD policy updates and CEW pointing by CPD officers.



Joseph Vesper, Investigator



Gabriel Davis, Director

Previous Contacts and Commendations for Officers with Sustained Findings:

Sergeant Nathan Asbury

Previous Contacts with CCA

Sergeant Asbury had five previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
22193	Improper Procedure	Pending
22193	Discourtesy	Pending
22193	Improper Search	Pending
22174	Excessive Force	Exonerated
22174	Improper Search	Not Sustained
22174	Discourtesy	Sustained
21013	Improper Search	Exonerated
20235	Improper POF	Exonerated
20180	Improper POF	Exonerated
20180	Excessive Force	Sustained
20180	Improper Entry	Sustained
20180	Improper Search	Sustained

Previous Contacts with IIS

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

Commendations

Sergeant Asbury received no commendation/s in the past three years.

Officer Charles Knapp

Previous Contacts with CCA

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

Case Number	Allegation	Finding
22231	Improper POF	Exonerated
22231	Discourtesy	Exonerated

Case Number	Allegation	Finding
22231	Improper Procedure	Unfounded
22193	Discourtesy	Pending
22193	Improper Procedure	Pending
22193	Improper Search	Pending
22174	Excessive Force	Exonerated
22174	Improper Search	Not Sustained
22123	Improper Procedure	Sustained
22123	Improper Seizure	Exonerated
22123	Excessive Force	Unfounded
22123	Improper Search	Not Sustained
22075	Improper DOF	Pending
22021	Discourtesy	Exonerated
22021	Improper Seizure	Sustained
22021	Improper Search	Sustained
21037	Improper Search	Sustained
21037	Discrimination	Unfounded
21037	Improper Stop	Not Sustained
20070	Improper Search	Exonerated
20070	Improper Procedure	Unfounded

Previous Contacts with IIS

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

Commendations

Officer Knapp received no commendation/s in the past three years.