

**Date:** July 28, 2023

**To:** Gabriel Davis, CCA Director

**From:** Joseph Vesper, CCA Investigator

**Subject:** **CCA Case No. 22279 - Review of Discrimination, Harassment, Improper Seizure, and Excessive Force Allegations by Ponnick Darden**

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CCA completed an investigation of CCA Complaint No. 22279 by Ponnick Darden, M/B/34, alleging Discrimination, Harassment, Improper Seizure, and Excessive Force against Officers Cameron Mullis, #P0464, M/W/27, and Benjamin Williamson, P0450, M/W/31. This memorandum is intended to convey the conclusions resulting from that investigation and the basis for those conclusions. This memorandum 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.

Mr. Darden alleged that around Thursday, December 15, 2022 11:30 PM - 12:00 AM, at 2745 Harrison Ave., Officer Mullis stopped Mr. Darden because his front headlight was out. This is not the first time Mr. Darden alleges Officer Mullis stopped him to harass him. Mr. Darden alleges Officer Mullins is racist in that regard. Furthermore, Mr. Darden alleged that Officer Williamson and Mullis were too forceful in the application of handcuffs. Mr. Darden also wishes to get his firearm back.

CCA interviewed Mr. Darden, Officers Mullis, and Williamson, about the incident. CCA also reviewed relevant body worn camera (BWC) recordings, Contact Cards, relevant police records, computer aided dispatch (CAD) records, and Motor Vehicle Recordings (MVR).

BWC footage corroborated the subject officer's version of what occurred. Per CCA's interview with Officer Mullis, Officer Mullins stopped Mr. Darden because Mr. Darden's headlights were inoperable. Officer Mullis did not know Mr. Darden was driving the vehicle and was only able to see who was driving when Mr. Darden had rolled down his window. Per BWC and admission of Mr. Darden, the windows were heavily tinted, and the headlight was inoperable. Review of the Contact Card provided no proof of a pattern of disparate treatment based on race to sustain a complaint of Discrimination.

Credible evidence, specifically, relevant BWC footage, proves that Officers Mullis and Williamson handcuffed Mr. Darden. However, despite the action, Cincinnati Procedure Manual Section 12.545, CPD Procedure Section 12.600, and legal precedent<sup>1</sup> allowed the conduct that occurred. Specifically, the evidence establishes the following:

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<sup>1</sup> "Unduly tight or excessively forceful handcuffing" may constitute excessive force, and the following three-part test, in addition to the standard *Graham v. Connor* factors, are relevant to the analysis: 1) whether the complainant "complained the handcuffs were too tight;" 2) whether "the officer ignored those complaints;" and 3) whether the complainant "experienced 'some physical injury' resulting from the handcuffing." See *Hughey v. Easlick*, 3 F.4th 283, 289 (6th Cir. 2021).

- In their CCA interviews, officers stated that after stopping Mr. Darden, they handcuffed him for their safety because Mr. Darden had initially refused to tell them whether he had a firearm in his possession when they asked him if he had “any drugs, guns anything in this vehicle.” After officers asked for the third time, Mr. Darden admitted he had “a gun.” Officers saw a handgun in the side door of the car and thereafter Mr. Darden told the officers that he had a “gun license.” Collectively, this prompted an investigation into a possible CCW violation (for Mr. Darden’s failure to notify the officers about the gun when asked) and thus prompted the handcuffing of Mr. Darden.
- Officers Mullis and Williamson confirmed that the handcuffs were applied to skin, above the wrist bone, checked, and double locked to prevent the handcuffs from slipping, in accordance with CPD Procedure Section 12.600, Prisoners: Securing, Handling, and Transporting. Mr. Darden did not supply photos of any injury to CCA.
- Per BWC Officer Williams noticed the handcuffs needed readjustment after Mr. Darden stated, “Look at how you have these handcuffs,” but did not complain of the handcuffs hurting him nor of any injuries at any that time. MVR of the handcuffing and escort back to the cruiser show no concerning problem with the handcuffs. Per BWC, Officer Williams then stated, “I’ll fix them,” and readjusted them accordingly, while he spoke to Mr. Darden near the cruiser. During Officer Williams CCA interview he did not recall readjusting the handcuffs.
- For the above reasons, the subject officer's use of force was objectively reasonable in light of the applicable factors for evaluating force under the Fourth Amendment and CPD policy.

Credible evidence, specifically, relevant BWC footage, proves that after Officers Mullis and Williamson handcuffed Mr. Darden, Officer Mullis seized Mr. Darden’s firearm. However, despite the action, CPD Procedure Manual Section 12.715, and legal precedent allowed the conduct that occurred. Specifically, the evidence establishes the following:

- Per CCA interview, Officer Mullis, when asked what probable cause he had to seize the firearm, responded that he noticed Mr. Darden had an FBI number when he ran his information through LEADs. An FBI number is associated with a violent felony, which would make Mr. Darden have a disability to legally possess a firearm.
- Per BWC, Mr. Darden claimed that his juvenile case was expunged. Officer Mullis contacted dispatch and inquired. Dispatch informed him that Mr. Darden had a juvenile record for a violent offense that was adjudicated and further told him that there was no known expungement. Officer Mullis seized the firearm to verify. In lieu of charging Mr. Darden, Officer Mullis called the Prosecutor’s Office the next morning, confirmed that there was an expungement for the juvenile case, and released the firearm from hold.
- In this case, Officer Mullis had probable cause to seize the firearm because he believed that Mr. Darden’s possession of a firearm was itself a crime. Therefore, the firearm was evidence. This belief was reasonable because of the inquiry results.<sup>2</sup>

Therefore, the actions of the subject officer were consistent with CPD policy, procedure, and training.

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<sup>2</sup> See *Heien v. North Carolina*, 574 U.S. 54 (2014) (“The Fourth Amendment prohibits ‘unreasonable searches and seizures.’ Under this standard, a search or seizure may be permissible even though the justification for the action includes a reasonable factual mistake. An officer might, for example, stop a motorist for traveling alone in a high-occupancy vehicle lane, only to discover upon approaching the car that two children are slumped over asleep in the back seat. The driver has not violated the law, but neither has the officer violated the Fourth Amendment.”).

In addition, the Contact Cards did show that since 2014, Mr. Darden has had six encounters with Officers. Officer Mullis encountered Mr. Darden on 11/28/2020 – Window Tint Equipment Violation (President Dr./ Faraday Ave.), 04/21/2022 – Window Tint Equipment Violation (McHenry Ave.), and 12/15/2022 – Headlight Violation (Harrison Ave.). In those three instances, Mr. Mullins was cited for traffic offenses. Those interactions provided no proof of a pattern of wrongdoing as would be necessary to sustain a complaint of Harassment. There is no information that established Officer Mullis acted in a harassing fashion as alleged.

**Findings:**

Based on my investigation and review of the evidence uncovered, I recommend the following findings for your endorsement (findings are defined in the attachment to this memorandum):

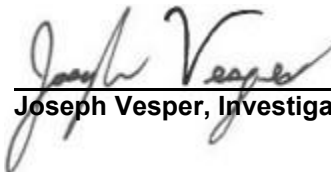
**Original Allegations**

No.	Allegation	Subject Officer	Involved Citizen	Finding
1	Discrimination	Cameron Mullis	Ponnick Darden	Unfounded
2	Harassment	Cameron Mullis	Ponnick Darden	Unfounded
3	Improper Seizure	Cameron Mullis	Ponnick Darden	Exonerated
4	Excessive Force	Cameron Mullis	Ponnick Darden	Exonerated
5	Excessive Force	Benjamin Williamson	Ponnick Darden	Exonerated

**Recommendation:**

**R2322: Harassment**

CCA recommends CPD create a specific definition and policy for “harassment” in order to clarify the line between persistent contact initiated by police that is permissible (such as necessary contact that might occur during an ongoing investigation focused on a person of interest), and impermissible patterns of contact that either have no legitimate purpose, are not tailored to a legitimate purpose, or that otherwise violate policy.



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Joseph Vesper, Investigator



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Gabriel Davis, Director