

Date: July 28, 2023

Case: #23004

Investigator: Makiedah Messam

Complaint Received: December 30, 2022

Complainant: Ms. Marion Allman-Roseberry

CCA completed an investigation of CCA Complaint No. 23004 by Ms. Marion Allman-Roseberry. 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: December 30, 2022

Time: 7:07PM

Location: 4200 Erie Avenue, Cincinnati, OH 45208

Ms. Allman-Roseberry alleged that on Friday, December 30, 2022, at approximately 7:07PM, Officer Michael Webb improperly stopped her son, Mr. Richard O'Neal Allman, for speeding near 4200 Erie Avenue, Cincinnati, OH 45208. Ms. Allman-Roseberry's fifteen-year-old grandson, K.A., was a passenger in the vehicle and was on the phone with her at the time of the stop.

Through the phone call with K.A., Ms. Allman-Roseberry became aware that officers were arresting Mr. Allman and were asking K.A. to get out of the vehicle. She drove to the scene. When she arrived, Ms. Allman-Roseberry saw officers leading a handcuffed K.A. to a cruiser. Sergeant Grant Hunter approached her and tried to explain what happened. Ms. Allman-Roseberry alleged that officers improperly stopped Mr. Allman and that Sergeant Hunter and officers were discourteous to her, stating she "did not like or agree with the way they spoke to [her]."

Allegations:

Improper Stop
Discourtesy

Collateral Allegations:

Improper Search
Improper Procedure (Processing Juvenile Offenders)

Persons Involved:

Officer Michael Webb, #P0679, M/W/45 (CPD, Involved)
Sergeant Grant Hunter, #P0020 M/W/35 (CPD, Involved)
Officer Merlin Murrell, Jr., #P0926, M/B/51 (CPD, Involved)

Officer Edward Bedinghaus, #P0031, M/W/37 (CPD, Involved)
Officer Thomas Buttelwerth, #P0235 M/W/28 (CPD, Witness)
Officer Christopher Taylor, #P0480 M/W/47 (CPD, Witness)
Officer Steven Bosse, Jr., #P0313, M/W/41 (CPD, Witness)
Marion Allman-Roseberry, F/B/69 (Citizen, Complainant/Involved)
Richard O'Neal Allman, M/B/51 (Citizen, Involved)
K.A., (minor) M/B/15 (Citizen, Involved)

Evidence Reviewed:

Hamilton County Clerk of Courts
CPD Records Management System (RMS)
CPD Criminal Investigation Section (CIS) documents
CPD Internal Investigation Section (IIS) Report
CPD Computer Aided Dispatch (CAD)
CPD Mobile Video Recording (MVR) for Units 2428 and 2416
Body-Worn Camera (BWC) of Officers Webb, Bosse, Bedinghaus, Murrell, Buttelwerth, Taylor,
and Sergeant Hunter
Statements by officers, complainant, and relevant witnesses
CPD Use of Force Report

Significant Discrepancies or Clarifications:

There were none.

Authorities:

CPD Procedure § 12.205 Traffic Enforcement (Revised 09/23/2022)
CPD Procedure § 12.554 Investigatory Stops (Revised 08/19/2021)
CPD Procedure § 12.545 Use of Force (Revised 02/17/2022)
CPD Procedure § 12.900 Processing Juvenile Offenders (Revised 08/19/2022)
CPD Procedure § 12.270 Impounding, Moving, and Release of Vehicles (Revised 06/02/2023)
CPD Manual of Rules and Regulations – Section 1.06(A)-(B) – Failure of Good Behavior
State v Roberts 2010 WL 334913 (Ohio Ct. App.2nd Dist. 2010).
Terry v. Ohio, 392 US 1 (1968).
Graham v. Connor, 490 U.S. 386 (1989).

Analysis:

Allegation 1: Improper Stop

Ms. Allman-Roseberry alleged that CPD officers improperly stopped Mr. Allman.

CPD Procedure § 12.205 Traffic Enforcement permits officers to enforce Ohio Revised Code and municipal speed limits using pacing, radar, and laser.

Officer Webb stated in his CCA interview that he used the radar system in his assigned cruiser to determine that Mr. Allman was driving approximately 15-20 miles per hour over the designated speed limit, providing him with probable cause to stop the vehicle. He then turned on his lights and sirens to execute the stop. BWC footage also showed that Mr. Allman did not question why

he was stopped but instead asked Officer Webb to let him off with a warning. The evidence examined showed that Officer Webb had probable cause to stop Mr. Allman.

Thus, the stop of Mr. Allman's vehicle did not violate CPD policies, procedures, or training.

Allegation 2: Discourtesy

Ms. Allman-Roseberry alleged that Sergeant Hunter and other officers were discourteous in their interactions with her and stated she "did not like nor agree with the way they spoke to [her]."

CPD Manual of Rules and Regulations § 1.06 Failure of Good Behavior establishes that "(A) Members of the Department shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors and associates" and "(B) Members of the Department shall avoid the use of coarse, violent, or profane language."

BWC evidence showed Ms. Allman-Roseberry arrived as officers were leading a cuffed K.A. to a marked cruiser. Ms. Allman-Roseberry walked up and down the sidewalk and questioned why officers were arresting her son and grandson. Sergeant Hunter spoke with Ms. Allman-Roseberry and attempted to explain that K.A. was under arrest for obstructing official business. Ms. Allman-Roseberry explained that she had told K.A. not to get out of the vehicle until she got there. Sergeant Hunter responded, "So when a police officer tells him to do something, you're going to tell him, 'no, no, no, don't listen to a police officer?'" In a raised tone, Ms. Allman-Roseberry told Sergeant Hunter, "I probably know more than you do" and said Sergeant Hunter needed additional education. Sergeant Hunter told her they could talk again when she was calmer and said, "We're done. This conversation is over."

At no point did Sergeant Hunter raise his voice at Ms. Allman-Roseberry or use coarse, violent, or profane language. While Ms. Allman-Roseberry may not have agreed with what Sergeant Hunter was saying, however, he was not discourteous in the way he spoke. Interviews with officers and BWC footage also showed no other officers used coarse, violent, or profane language toward her.

Therefore, the actions of Sergeant Hunter and the other officers were consistent with CPD policies, procedures, and training.

Collateral Allegations:

Allegation 3: Improper Search (Person)

Evidence obtained, reviewed, and considered during this investigation established a violation of CPD policy, procedure, or training related to the frisk of K.A.'s person.

BWC footage showed that after Officer Webb stopped Mr. Allman, Mr. Allman refused to provide his date of birth. Sergeant Hunter ordered Mr. Allman out of the vehicle and arrested him for failure to disclose.¹

¹ O.R.C. § 2921.29(a) states "No person who is in a public place shall refuse to disclose the person's name, address, or date of birth, when requested by a law enforcement officer who reasonably suspects

Sergeant Hunter then directed K.A. to step out of the vehicle so officers could initiate a tow. At the same time, Ms. Allman-Roseberry told K.A. over the phone to remain in the vehicle until she arrived. K.A. refused to get out of the vehicle for several minutes. Eventually, after repeated orders, K.A. stepped out. Officers Murrell and Bedinghaus immediately frisked K.A. for weapons.

To frisk a passenger in a traffic stop, officers must have consent or reasonable suspicion that the passenger is armed and dangerous. CPD Procedure § 12.554 Investigatory Stops states that frisks are not automatically allowed, explaining, “If a frisk is conducted, the officer must be able to articulate specific facts which led them to believe the individual could be armed and dangerous.”

In this case, K.A. stepped out of the vehicle and said, “Don’t touch me,” making clear that officers did not have his consent to frisk him. Officer Murrell stated in his CCA interview that the justification for the frisk was a “reasonable suspicion of weapons.” He also stated that K.A.’s desire to remain inside the vehicle “made it seem like he had something to hide.” But Officer Murrell also admitted that he believed K.A. was noncompliant because his father had already told him not to cooperate with the police, undercutting his argument that K.A.’s actions were suspicious.

Officer Murrell was unable to articulate anything about K.A. specifically that would indicate he was armed. When asked what he saw that made him believe K.A. was carrying a weapon, Officer Murrell admitted he “didn’t see anything.” And Mr. Allman was stopped for a traffic violation, not drug trafficking, so Officer Murrell could not have inferred that K.A. was armed and dangerous from the stop alone. [*State v. Roberts*].

BWC evidence also showed Officer Bedinghaus joined Officer Murrell in frisking K.A. In his interview with CCA Officer Bedinghaus did not articulate any specific circumstances that would lead a reasonable officer to believe K.A. was armed and dangerous, besides a comment that the truck could have contained weapons. Reasonable suspicion requires more than vague musings about potential danger.

Additionally, BWC evidence showed Officer Bedinghaus squeezed K.A.’s front sweatshirt pocket during the frisk. Based on CPD training, officers conducting a *Terry* frisk may only pat down the outside of a suspect’s clothing to find weapons. Officers cannot squeeze or manipulate the clothing to find contraband.² BWC footage showed Officer Bedinghaus manipulated K.A.’s clothing.

Because Officers Murrell and Bedinghaus did not have consent, nor did they articulate any reasonable suspicion that K.A. was armed and dangerous, their frisk of K.A. violated CPD policies, procedures, and training. Additionally, Officer Bedinghaus’s manipulation of K.A.’s clothing violated CPD policies, procedures, and training.

either of the following: (1) The person is committing, has committed, or is about to commit a criminal offense.” Failure to disclose one’s personal information is a misdemeanor of the fourth degree. O.R.C. § 2921.29(B).

² See *United States v. Ayers*, 2011 U.S. Dist. LEXIS 123532 at *22-23 (S.D. Ohio 2011) (“If the officer is unsure of the character of the object, and squeezes or manipulates the object in order to determine its true nature, then the search has exceeded the bounds of a *Terry* pat down and is impermissible.”) (citing *Minnesota v. Dickerson*, 508 U.S. 366, 38-39 (1993)).

Allegation 5: Improper Procedure (Processing Juvenile Offenders)

Evidence obtained, reviewed, and considered during this investigation established a violation of CPD policy, procedure, or training related to the processing of juvenile offenders.

After K.A. was frisked, Sergeant Hunter told him to stand by a nearby fence to wait for his grandmother. K.A. walked in a different direction. Officer Murrell reached out and placed his hand on K.A.'s shoulder. K.A. swatted at Officer Murrell's hand, stating, "Stop touching me."

Officer Murrell closed the distance between them, grabbed the front of K.A.'s arms, and shouted at him to "put [his] hands behind his back." Officer Murrell then spun K.A. around and tried to pull K.A.'s hands behind his back. K.A. tensed his muscles and actively resisted. Sergeant Hunter and Officer Bedinghaus assisted Officer Murrell with holding K.A.'s legs and executing a balance displacement maneuver. In his CCA interview, Sergeant Hunter stated this maneuver was necessary because of K.A.'s muscle tension and physical resistance. Officers Taylor, Buttelwerth, and Bosse also assisted. Together, Sergeant Hunter and the five officers slowly lowered K.A. to the ground where he was cuffed. K.A. did not report any injuries or complained about the use of force.

Officer Murrell arrested K.A. for obstruction of official business and took him to juvenile detention.

CPD Procedure § 12.900, Processing Juvenile Offenders, states that "When dealing with juvenile offenders, it is Department policy to employ the least coercive of the enforcement directives available to properly address the situation." The policy lists five "reasons" that could allow an officer to physically arrest a juvenile: (a) the seriousness of the offense, with priority given to violent offenses involving a victim and consideration of a history of minor offenses allowed; (b) protection of the juvenile from immediate or threatened physical or emotional harm, (c) the juvenile may abscond or be removed from the jurisdiction of the court; (d) the juvenile has no parent, guardian, custodian, or other person able to provide supervision and care for the juvenile or return the juvenile to court when required; and (e) an order for placement of the juvenile in detention or shelter care has been made by the court. This suggests CPD officers should avoid arresting juveniles for minor offenses, particularly where there is no history of criminal activity.

Officer Murrell stated in his CCA interview that he made the decision to arrest in response to K.A.'s swat. In his CCA interview, Officer Murrell described K.A. as "non-violent" but chose to charge K.A. with obstruction. Officer Murrell had the ability to hold K.A. accountable without resorting to a physical arrest. By the time K.A. was cuffed and placed in a cruiser, Ms. Roseberry-Allman was on scene and could have taken custody of K.A. Instead, Officer Murrell chose to involve a non-violent juvenile with no criminal history in the criminal justice system.

Officer Murrell arrested and transported K.A. to juvenile detention arrest for a minor non-violent offense rather than releasing the juvenile to a suitable guardian on scene, violated the intent and directions set forth in CPD policies and procedures.

Findings:

Original Allegations

| No. | Allegation | Subject Officer | Involved Citizen | Finding |
|-----|---------------|-----------------|----------------------|------------|
| 1 | Improper Stop | Michael Webb | Mr. Allman | Exonerated |
| 2 | Discourtesy | Grant Hunter | Ms. Allman-Roseberry | Unfounded |

Collateral Allegations

| No. | Allegation | Subject Officer | Involved Citizen | Finding |
|-----|--------------------|-------------------|------------------|-----------|
| 3 | Improper Search | Merlin Murrell | K.A. | Sustained |
| 4 | Improper Search | Edward Bedinghaus | K.A. | Sustained |
| 5 | Improper Procedure | Merlin Murrell | K.A. | Sustained |

Recommendation:

R2321 – Juvenile Engagement and Enforcement

CPD should update Procedure § 12.900 to better align with IACP’s Model Policy and clarify for officers that juvenile incarceration should be the last resort when attempting to hold juveniles accountable for illegal behavior.

Studies suggest that juvenile involvement in the criminal justice system can have significant long-term effects—including greater involvement with the system as an adult.³ Diverting juveniles from formal processing in the juvenile justice system would help to reduce recidivism rates while ensuring that juvenile offenders are still held accountable for their actions.⁴

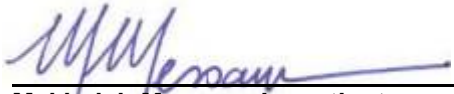
IACP’s Model Policy on Juvenile Diversion and Custody recommends that “taking juveniles into custody should be avoided whenever possible.”⁵ It also provides officers with other options that could be taken, including: (1) release; (2) informal counseling; (3) release to a parent or guardian; (4) notification of parent or guardian; (5) use of diversion or extrajudicial measures; and (6) issuance of a written warning or citation.

Involving juveniles in the criminal justice system should not be done lightly. As put forward by CCA Recommendations R2316 and R2317, CPD should revise Procedure § 12.900 to ensure that juveniles are kept out of the criminal justice system whenever possible.

³ William E. Copeland, et al., *Adult criminal outcomes of juvenile justice involvement*, available at https://www.cambridge.org/core/journals/psychological-medicine/article/abs/adult-criminal-outcomes-of-juvenile-justice-involvement/A5DD76522B6FE63C869419B21E07ABCD?utm_campaign=shareaholic&utm_medium=copy_link&utm_source=bookmark].

⁴ National Institute of Justice, *Juvenile Diversion Programs* (Feb. 23, 2015), available at <https://crimesolutions.ojp.gov/ratedpractices/37#practicecost>.

⁵ IACP, *Model Policy on Juvenile Diversion and Custody* (May 2019), available at <https://www.theiacp.org/sites/default/files/2019-05/Juvenile%20Diversion%20and%20Custody%20Policy%20-%202019.pdf>.



Makiedah Messam, Investigator



Gabriel Davis, Director

Previous Contacts and Commendations for Officers with Sustained Findings:

Merlin Murrell

Previous Contact/s with CCA

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

| Case Number | Allegation | Finding |
|--------------------|--------------------|----------------|
| 20244 | Improper Procedure | Not Sustained |

Previous Contacts for CCA Referrals

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

Previous Contact/s with IIS

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

Commendations

Officer Murrell received two commendations in the past three years.

| Date | Source of Commendation Received |
|-------------|--|
| 06/14/2021 | CPD- Award for Exemplary Conduct |
| 10/20/2021 | Civilian |

Edward Bedinghaus

Previous Contacts with CCA

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

| Case Number | Allegation | Finding |
|--------------------|--------------------------------|----------------|
| 20208 | Improper Search | Exonerated |
| 20208 | Discourtesy | Sustained |
| 20208 | Discourtesy | Sustained |
| 20208 | Excessive Force | Unfounded |
| 22108 | Improper Seizure | Exonerated |
| 22108 | Improper Stop | Exonerated |
| 22108 | Improper Pointing of a Firearm | Exonerated |
| 22108 | Excessive Force | Exonerated |

Previous Contacts for CCA Referrals

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

Previous Contacts with IIS

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

Commendations

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