

Date: February 14, 2024

Case: #23073

Investigator: Morgan Givens

Complaint Received: April 13, 2023

Complainant: William Rosenthal

CCA completed an investigation of CCA Complaint No. 23073 by William Rosenthal. 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: May 5, 2023

Time: 3:00 AM

Location: 2138 Elenor Place, Cincinnati, OH

Mr. Rosenthal alleged that excessive force was used against him by CPD.

Mr. Rosenthal's wife was transported by CFD to The Christ Hospital because of a medical emergency; Mr. Rosenthal followed in his vehicle. He alleged that a CFD employee (Witness A), stopped the ambulance that carried his wife and chastised him for following so closely. Mr. Rosenthal stated that once he arrived at the hospital, he was assaulted by the CFD employee, and at the end of the physical interaction, he was placed into custody by CPD. He doesn't believe he should have been arrested.

Mr. Rosenthal further alleged that he attempted to file assault charges against the CFD employee and has been unsuccessful because he's gotten the "run around".

Allegations:

Excessive Force
Improper Seizure
Lack of Service

Collateral Allegations:

Improper Procedure

Persons Involved:

Officer Dennis Barnette, #P0019, M/W/64 (CPD, Subject Officer)
Officer Robin White, #P0583, F/W/47 (CPD, Subject Officer)

William Rosenthal, M/W/63 (Citizen, Involved)
John Volz, M/W/ Unknown (CFD, Involved)

Evidence Reviewed:

Hamilton County Clerk of Courts
CPD Records Management System (RMS)
CPD Computer Aided Dispatch (CAD)
Body-Worn Camera (BWC)
Statements by officers and the complainant

Significant Discrepancies or Clarifications:

Mr. Rosenthal's wife experienced a medical emergency; she was transported by ambulance to The Christ Hospital.

Mr. Rosenthal and Firefighter Volz engaged in a verbal altercation prior to their arrival at The Christ Hospital. Per Mr. Rosenthal and Officer White, Firefighter Volz stopped the vehicle on a highway exit ramp and asked Mr. Rosenthal to stop following so closely behind the ambulance. Mr. Rosenthal alleged Witness A used aggressive language. Mr. Rosenthal stated that he wanted to ensure he was able to know exactly where the ambulance was taking his wife as The Christ Hospital has many entrances.

Officer White worked an off-duty detail at The Christ Hospital the night of the incident. She received a call from CFD stating that they had a disorderly individual who was the husband of the person being transported.

Upon the arrival of the ambulance, Officer White stated she observed Mr. Rosenthal approach and struck Firefighter Volz in the face. She stated Firefighter Volz pushed Mr. Rosenthal back forcefully, which pushed him into herself and a Christ Hospital security guard, and all three fell to the ground.

Officer White maintained that she did not use force against Mr. Rosenthal; rather, he landed on top of her when they all fell to the ground. Mr. Rosenthal stated that force was used to take him to the ground but was unaware of by whom.

There is no BWC for the interaction as Officer White's BWC was not activated; she stated that she didn't have time to activate it as the incident developed quickly.

Officers White and Barnette believed Mr. Rosenthal was intoxicated based on their training and experience. Mr. Rosenthal was not charged with any alcohol-related criminal offenses.

Officer White observed what appeared to be blood coming from Mr. Rosenthal's elbow; consequently, she requested a supervisor. The injury to prisoner report was completed, and Mr. Rosenthal was transported to the University of Cincinnati Medical Center for assessment before he was ultimately transported to the Hamilton County Justice Center.

Mr. Rosenthal was charged with Ohio Revised Code 2903.13 Assault; the case was not prosecuted by Hamilton County.

CCA obtained CCTV footage from Christ Hospital; it did not show the interaction because the cameras were not pointed in the direction of the interaction.

CCA requested internal documentation from Christ Hospital, but to date, it has not been provided to CCA.

CCA attempted to interview Firefighter Volz, but to date, he has not provided a statement to CCA.

CFD completed an investigation regarding the incident; CFD concluded that they were unable to substantiate that John Volz was in violation of any "Any Cincinnati Fire Department Policies and Procedures or Administrative Regulations."

Authorities:

CPD Procedure §12.540 Body Worn Camera System

CPD Policy §12.545 Use of Force

CPD Policy §12.555 Arrest/ Citation: Processing of Adult Misdemeanor and Felony Offenders

Analysis:

Allegation 1: Excessive Force

Mr. Rosenthal alleged excessive force against an unknown CPD officer; CCA later identified the subject officer as Officer White.

Despite the facts uncovered during the course of this investigation, neither BWC footage nor any other credible evidence clarified material facts necessary to prove or disprove Mr. Rosenthal's allegation of Excessive Force by a preponderance of the evidence. Specifically, notwithstanding our efforts to obtain such evidence, CCA does not have information revealing the force with which Mr. Rosenthal was taken into custody.

CCA obtained footage from The Christ Hospital but it did not show Mr. Rosenthal being taken into custody. Officer White's BWC was not activated for the incident; a collateral BWC improper procedure finding has been issued. Officer White stated that no force was used to take Mr. Rosenthal into custody; she maintained that Mr. Rosenthal fell into her, and the blood on his elbow was a result of him falling to the ground after being pushed by Firefighter Volz.

Therefore, there are insufficient facts to determine whether excessive force was used to take Mr. Rosenthal into custody.

Allegation 2: Improper Seizure

Credible evidence, specifically, consistent statements provided by the subject officer, proved that Officer Barnette seized Mr. Rosenthal's person as alleged. However, despite the action taken, CPD Procedure Manual § 12.555 permitted the conduct that occurred. Specifically, the evidence established the following:

- 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;

Officer Barnette responded to The Christ Hospital for the purpose of transporting Mr. Rosenthal. Officer Barnette was not present for the incident and did not observe the assault. He was the transport officer and, therefore, the arresting officer. Officer White attested to observing Mr. Rosenthal strike Firefighter Volz. Therefore, Officer Barnette's actions were consistent with CPD's policy, procedure, and training.

Allegation 3: Lack of Service

Despite the facts uncovered during the course of this investigation, neither BWC footage nor any other credible evidence clarified the material facts necessary to prove or disprove Mr. Rosenthal's allegation of lack of service by a preponderance of the evidence. Specifically, notwithstanding our efforts to obtain such evidence, CCA does not have information revealing what officer has the obligation to take Mr. Rosenthal's allegation to file assault charges on Firefighter Volz.

Mr. Rosenthal stated that he went to District 5 where the incident happened, which was not the same district where the arresting officer was stationed. He stated that the desk officer told him that the arresting officer or someone involved in the incident had to file the charges and told him he needed to go to District 4. Mr. Rosenthal has been unable to speak to anyone on CPD about the possibility of filing charges against Firefighter Volz.

In their CCA interviews, both officers stated that they had not received any indication since the incident that Mr. Rosenthal wished to file assault charges against Witness A. They stated that since Officer White observed Mr. Rosenthal strike Firefighter Volz, he was charged with assault. It's also notable that the arresting officer, Officer Barnette, was not involved in the initial altercation, merely the transporting officer and arresting officer because Officer White was working a detail. Therefore, there are insufficient facts to decide who was to file charges after the incident.

Collateral Allegation: Improper Procedure BWC

In CCA's review of the evidence for this case, it was noted that Officer White did not have her BWC initiated for the incident. CPD policy § 12.540 Body Worn Camera System, "Equipment is the responsibility of the officer assigned," and officers are required to activate their BWC system during all law enforcement-related encounters.

Although Officer White worked an off-duty detail, the policy required her to activate her BWC for this interaction. In her CCA interview, she stated that the incident evolved rapidly, and she was consequently unable to activate her BWC. Also, in her CCA interview, Officer White stated that she was notified that an unruly person was approaching The Christ Hospital; while the event unfolded rapidly, she knew they were approaching and should have activated her BWC. Furthermore, through BWC of other officers on the scene, CCA observed Officer White speaking with Firefighter Volz; such a conversation would have been enlightening for this investigation. CCA found that Officer White violated CPD policies, procedures, and training.

Findings:

Original Allegations

No.	Allegation	Subject Officer	Involved Citizen	Finding
1	Excessive Force	Officer Robin White	William Rosenthal	Not Sustained

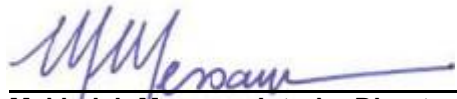
No.	Allegation	Subject Officer	Involved Citizen	Finding
2	Improper Seizure	Officer Dennis Barnette	William Rosenthal	Exonerated
3	Lack of Service	Unknown Officer	William Rosenthal	Not Sustained

Collateral Allegation

No.	Allegation	Subject Officer	Involved citizen	Finding
4	Improper Procedure (BWC)	Officer Robin White	William Rosenthal	Sustained



Morgan Givens, Investigator



Makiedah Messam, Interim Director