

Date: December 20, 2024

Case: 24090

Investigator: Ronald Pugh

Complaint Received: April 17, 2024

Complainant: Juane Madaris

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CCA completed an investigation of CCA Complaint No. 24090 by Juane Madaris. 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 intend to summarize all evidence uncovered during the investigation, nor is it intended to summarize the entirety of CCA's file on this matter.

### **Complaint Summary:**

Date: April 17, 2024

Time: 6:26 pm

Location: 3719 Reading Rd.

Ms. Madaris alleged that her son, Mister Kendall, was "TASED while standing next to a flight of stairs" and fell down the flight of stairs onto his head. She further stated that officers failed to render aid and removed the barbs from Mr. Kendall versus him being cleared by CFD. Ms. Madaris also stated that when CPD attempted to take Mr. Kendall to the Hamilton County Justice Center (HCJC) he was refused and was then taken to the University of Cincinnati Medical Center (UCMC) where she alleged, he remains in the ICU with "blood in his brain." She doesn't believe the officers' use of the TASER, lack of aid rendered, and removal of the barbs were within policy.

### **Allegations:**

Excessive Force  
Improper Procedure

### **Persons Involved:**

Officer Nicholas Dezarn, P0002, M/W/28, (Involved)  
Officer Jeremy Chitwood, P0049, M/W/35, (Witness)  
Officer Grace Chaney, P0135, F/W/23, (Witness)  
Juane Madaris, F/B/51, (Complainant)  
Mister Kendall, M/B/31, (Involved)

### **Evidence Reviewed:**

Hamilton County Clerk of Courts  
CPD Internal Investigation Section (IIS) Report  
CPD Computer Aided Dispatch (CAD)  
Body-Worn Camera (BWC) of Officers Dezarn, Chitwood, and Chaney

Statements by officers, complainant, and relevant witnesses

**Authorities:**

CPD Procedure § 12.545 Use of Force

**Analysis:**

**Allegation: Excessive Force**

Ms. Madaris alleged Mister Kendall was “TASED while standing next to a flight of stairs” and fell down the flight of stairs onto his head. She further stated that officers failed to render aid and removed the barbs from Mr. Kendall versus him being cleared by CFD.

Officers have a Conducted Energy Weapon (CEW) available for use, TASER is the name brand that CPD uses. Under CPD Procedure § 12.545 Use of Force, CEW is defined as: an electronic control device that is a non-lethal force alternative used to assist officers in the performance of their duties. A CEW is designed for self-defense or to temporarily immobilize a subject who is actively resisting arrest. When properly used, a CEW generates electrical impulses that cause Neuro Muscular Incapacitation (NMI). NMI occurs when the CEW causes involuntary stimulation of both the sensory nerves and the motor nerves. Subjects become physically incapacitated and unable to control muscle movement, allowing officers to gain control.

District Four Violent Crimes Squad was investigating an illegal gaming ring in the area of 3719 Reading Road. CPD has a Right of Entry (CPD Procedure 12.113) at 3719 Reading Road which allows them to conduct investigations and trespass individuals from the property. Mr. Kendall was involved in the illegal gaming which was being investigated and fled when he saw officers’ approach 3719 Reading Road. Officers Dezan and Chitwood entered the unit through a rear staircase and saw Mr. Kendall fleeing and noticed a firearm in his waistband. Officer Dezan gave multiple warnings to Mr. Kendall to stop or be tased, but he did not comply. Mr. Kendall actively resisted arrest by fleeing from officers and there was probable cause to arrest him. Officer Dezan deployed his CEW, striking Mr. Kendall in the upper part of his back.

12.545 states 1. 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.

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 a CEW.

B. Officers shall consider the following prior to utilization of a CEW 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 before a CEW is deployed unless exigent circumstances exist that would make it imprudent to do so. If a warning arc is displayed, it must be accompanied by a verbal warning. A warning arc cannot be displayed unless the threshold is met for a probe deployment.

4. Officers should avoid using a CEW 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.

BWC footage corroborated the subject officer's version of what occurred. Credible witness statements corroborated the subject officer's version of what occurred. Credible evidence, specifically, relevant BWC footage, proves that while Officer Dezarn did Deploy his CEW, he did have probable cause to do so because Mr. Kendall was actively fleeing and did not heed to warnings to stop. At 18:35:50 Mr. Kendall is observed running in the hall toward the door, at 18:35:51 Mr. Kendall is told to stop or he will be tased and the CEW is deployed at 18:35:53.

While Officer Dezarn did use force by deploying his CEW to an actively fleeing suspect, there is no information establishing that Officer Dezarn used Excessive Force.

### **Collateral Allegation: Improper Procedure**

Ms. Madaris alleged that her son, Mister Kendall, was TASED while "standing next to a flight of stairs" and fell down the flight of stairs onto his head. She further stated that officers failed to render aid and removed the barbs from Mr. Kendall versus him being cleared by CFD.

CPD Procedure § 12.545 Use of Force, as defined above states Officers should avoid using a CEW 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.

Per review of the BWC, Officer Dezarn deployed his CEW after giving warnings to stop. Mr. Kendall was still inside of the building; it was Mr. Kendall's forward momentum that carried him through the door falling down the steps. Officers Dezarn, Chitwood and Chaney rendered immediate aid to Mr. Kendall.

Officer Dezarn advised CCA he was familiar with the layout of the property because he has been to the location multiple times. Officers are permitted to remove the barbs of the CEW if they are trained to do so in accordance with CPD Procedure § 12.545.

Credible evidence, specifically, relevant BWC footage, proves Officer DeZarn's actions were not consistent with CPD policy, procedure, and training, due to the CEW being deployed while Mr. Kendall was on an elevated surface causing him to fall down the flight of stairs onto his head.

"Elevated Surface" is not defined in the procedure manual which led to a recommendation of updating the procedure manual.

### **Findings:**

#### **Original Allegations**

<b>No.</b>	<b>Allegation</b>	<b>Involved Officer</b>	<b>Involved Citizen</b>	<b>Finding</b>
1	Excessive Force	Nicholas Dezarn	Mister Kendall	Exonerated

## Collateral Allegation

No.	Allegation	Involved Officer	Involved Citizen	Finding
2	Improper Procedure	Nicholas Dezarn	Mister Kendall	Sustained

### Recommendations/Observations:

**#R2416**

CCA recommends CPD revise its use of force policies to define an “elevated surface” and clarify what qualifies as an “elevated surface” under its Procedure Manual. Procedure §12.545 Use of Force, “Officers should avoid using a CEW 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.” However, the section does not define what an elevated surface is. In this case the CEW was deployed while the subject was running towards a doorway that led down a flight of steps.



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Ronald Pugh, Investigator



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Dena Brown, Interim Director

**Previous Contacts and Commendations for Officers with Sustained Findings:**

**Officer Dezarn**

**Previous Contacts with CCA**

Officer Dezarn had no previous contact with CCA in the past three years.

**Previous Contacts for CCA Referrals**

Officer Dezarn had four allegations referred to CPD for investigation in the past three years.

<b>Case Number</b>	<b>Allegation</b>	<b>CPD Finding</b>
23164	Improper Search	Exonerated
23164	Harassment	Unfounded
23164	Law Violation	Non-Sustained
23164	Improper Procedure	Unfounded

**Previous Contact with IIS**

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

**Commendations**

Officer Dezarn received one commendation/s in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
01/13/2024	CPD