

Case: #20124

Investigator: Dena Brown

Complaint Received: June 20, 2020

Complainant: Sidney Bryant

Complaint Summary:

On June 20, 2020, Witness A contacted the Emergency Communications Center (ECC-911) because she wanted Mr. Sidney Bryant to leave her Cincinnati Municipal Housing Authority (CMHA) residence and return the key. As Mr. Bryant walked outside with his duffle bag, Officer Nicholas Rosfeld detained him because he was under investigation for stealing the key from Witness A. Mr. Bryant explained to Officers Rosfeld and Tracy Dula he had been with Witness A for over 18 months, she had given him a key, and he had belongings in the apartment. Officer Dula recommended for Witness A to advise the rental office of her concerns because it was a civil matter; Mr. Bryant was told he could leave.

As Mr. Bryant attempted to leave, Sergeant William Kinney stopped and issued an ultimatum for Mr. Bryant to give him the key or go to jail for Disorderly Conduct. Mr. Bryant stated all the officers began to approach, which scared him, so he removed the wrong key off his key ring. Sergeant Kinney snatched the keys out of his hand, removed the correct key and tried to hand them back. When Mr. Bryant did not take the keys, Sergeant Kinney threw the key ring, which landed on his duffle bag. Mr. Bryant wanted to record Sergeant Kinney's nameplate on his cellphone and moved close to him. Sergeant Kinney touched his chest and pushed him away from him.

Although Mr. Bryant was not cited, charged, or handcuffed, he alleged the officers violated his rights when he was given an ultimatum to violate his rights or go to jail.

Persons Involved:

Officer Nicholas Rosfeld, #P0700, M/W/26, (CPD, Involved)
Officer Tracy Dula, #P0368, M/B/25, (CPD, Involved)
Sergeant William Kinney #S0369, M/W/45, (CPD, Involved)
Sidney Bryant, M/B/37, (Citizen, Complainant)
Witness A, F/Unknown/Unknown, (Citizen)

Evidence Reviewed:

CPD Records

- Computer Aided Dispatch (CAD)
- Body-Worn Camera (BWC) Officers Rosfeld, Dula and Sergeant Kinney
- CPD Internal Investigation Section (IIS) Report
- Statements by officer and complainant

Authorities:

State v. Waddy, 63 Ohio St. 3d 424, 442 (1992)
CPD Procedure § 12.554 Investigatory Stops
CPD Procedure § 12.715 Property and Evidence: Confiscation, Accountability, Processing, Storage, and Release
CPD Procedure § 12.545 Use of Force
CPD Manual of Rules and Regulations § 1.21 A/B

Analysis:

Original Allegations

Allegation: Improper Stop

On June 20, 2020, Witness A called the Emergency Communications Center (ECC-911) and reported her ex-boyfriend Mr. Bryant, M/B/37, entered her apartment without permission. Witness A advised the dispatcher that Mr. Bryant had a key. Officer Rosfeld, M/W/26, was the first officer to interact with Mr. Bryant who per the officer was intoxicated and did not comply with Officer Rosfeld's initial order to stop walking. Due to Mr. Bryant's non-compliance, Officer Rosfeld requested assistance. Per BWC footage that recorded the incident, Officer Dula and Sergeant Kinney, M/W/45, arrived on scene, and the officers explained to Mr. Bryant he was being detained for an investigation regarding the key Witness A wanted returned. Furthermore, the officers needed to determine per Sergeant Kinney if they had a "break in or boyfriend-girlfriend trouble." Mr. Bryant alleged Officers Rosfeld and Dula, M/B/25, violated his rights when they improperly detained him.

CPD Procedure § 12.554, Investigatory Stops, maintains that when an officer has reasonable suspicion to believe a citizen is committing a crime, the officer may forcibly stop and detain the citizen briefly. CCA determined Officers Rosfeld, Dula, and Sergeant Kinney had reasonable suspicion to believe Mr. Bryant committed a crime based on Witness A's call, and thus the officers were within CPD's policy, procedure, and training when they properly detained Mr. Bryant.

Allegation: Improper Seizure

When Witness A contacted ECC-911, she advised that Mr. Bryant had a key to her apartment and wanted it returned to her. Witness A explained to Officer Rosfeld that while Mr. Bryant stayed over sometimes, he was not on the lease nor a permanent resident. According to statements made by the officers, during their investigation, Mr. Bryant appeared highly intoxicated as he yelled, shouted, and denied having a key.

Per Mr. Bryant's statement to CCA, he was scared and removed the incorrect key off of his ring. In his statement to CCA, Sergeant Kinney maintained that he did not "grab" the key from Mr. Bryant, but rather that he asked for it, and Mr. Bryant handed it to him. BWC footage showed, however, that Sergeant Kinney did in fact grab the key from Mr. Bryant. Per the BWC footage, Sergeant Kinney first told Mr. Bryant he was "confiscating the key on behalf of CMHA (Cincinnati Metropolitan Housing Authority)." Sergeant Kinney then told Mr. Bryant to give the officers the key or "go to jail for disorderly conduct." According to the BWC, when Mr. Bryant gave Officer Rosfeld a key in response, Sergeant Kinney informed Mr. Bryant that Sergeant Kinney could see that the correct CMHA key was still on Mr. Bryant's key chain. Sergeant Kinney then snatched the key ring from Mr. Bryant's hand, removed what Sergeant Kinney believed to be the CMHA

key, and the attempted to return the incorrect key on the ring to Mr. Bryant. When Mr. Bryant refused to accept the key ring, Sergeant Kinney tossed the key ring onto Mr. Bryant's duffle bag.

CPD Procedure § 12.715 Property and Evidence: Confiscation, Accountability, Processing, Storage, and Release states: "Police personnel confiscating, seizing, or recovering property of any kind will be in compliance with local, State and Federal laws. . . . Police personnel will not confiscate lawfully possessed property." Under the law, an officer may seize property that is in "plain view" if the officer is lawfully permitted to be where they are when they seize the property, and if the incriminating nature of the evidence is immediately apparent to the officer. *See State v. Waddy*, 63 Ohio St. 3d 424, 442 (1992). Here, the evidence establishes that Sergeant Kinney reasonably believed (based on a report from Witness A and statements from Mr. Bryant) that the key he took from Mr. Bryant was not lawfully in Mr. Bryant's possession. That key had a very distinctive shape consistent with CMHA keys. According to the BWC, Sergeant Kinney immediately recognized it as a CMHA key when he observed it. Accordingly, CCA concluded that Sergeant Kinney was within CPD's policy, procedure, and training when he removed the key.

Allegation: Excessive Force

Mr. Bryant alleged Sergeant Kinney used excessive force when he pushed him when he tried to get his name and badge number on video. Sergeant Kinney stated to CCA that Mr. Bryant was "too close and he wanted him to keep his distance away from Mr. Bryant especially since he was belligerent and confrontational." Per a review of the BWC, Mr. Bryant had his cellphone out attempting to record the officers and wanted Sergeant Kinney's name. Mr. Bryant was still upset and loud when he closed the distance between Sergeant Kinney and himself. Sergeant Kinney extended his right arm and stopped Mr. Bryant from getting any closer before he stepped backwards away from Mr. Bryant.

CPD Procedure §12.545 Use of Force defines force as any physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person. CCA concluded the motion to stop Mr. Bryant was not done with force as alleged. Sergeant Kinney was in compliance with CPD's policy, procedure, and training.

Collateral Allegations

Allegation: Improper Procedure (Contact Card)

CPD Procedure §12.554, Investigatory Stops stipulates that a Contact Card must be completed for any pedestrian detention which meets the definition of a "Terry" stop unless the stop results in an arrest or citation. Officer Rosfeld initiated the stop of Mr. Bryant. A review of the CPD database showed that a Contact Card was not completed involving this stop. CCA determined Officer Rosfeld's failure to complete a contact card was not in compliance with CPD's policy, procedure, and training.

Findings:

Officer Nicholas Rosfeld

Improper Stop – The evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training. **EXONERATED**

Sergeant William Kinney

Improper Seizure - The evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training. **EXONERATED**

Excessive Force - There are no facts to support the incident complained of actually occurred. **UNFOUNDED**

Collateral Findings:

Officer Nicholas Rosfeld

Improper Procedure (Contact Card) - The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the Officer were improper. **SUSTAINED**



Dena Brown, Chief Investigator

February 25, 2022

Date



Gabriel Davis, Director

February 25, 2022

Date

Previous Contacts and Commendations:

Officer Rosfeld

Previous Contacts with CCA

Officer Rosfeld had no previous contacts with CCA in the past three years.

Previous Contacts with IIS

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

Commendations

Officer Rosfeld received no commendations in the past three years.

Officer Dula

Previous Contacts with CCA

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

Previous Contacts with IIS

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

Commendations

Officer Dula received no commendations in the past three years.

Sergeant Kinney

Previous Contacts with CCA

Sergeant Kinney had two previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
20107	Improper Procedure	Not Sustained
18244	Search (Vehicle)	Exonerated
18244	Discourtesy (Profanity)	Sustained
18244	Use of Force (Hard Hands)	Exonerated
18244	Procedure (Strip Search)	Sustained
18244	Use of Force (Taken to Ground)	Exonerated
18244	Search (Person)	Not Sustained

Previous Contacts with IIS

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

Commendations

Sergeant Kinney received two commendations in the past three years.

Date	Source of Commendation Received
01/05/2020	CPD
03/27/2018	CPD