

Case: #20180

Investigator: Morgan Givens

Complaint Received: September 2, 2020

Complainant: Kandis Gibson

Complaint Summary:

Kandis Gibson (K. Gibson), alleged Improper Entry, Improper Search, and Improper Pointing of Firearms allegations against Sergeant Nathan Asbury (Sgt. Asbury), and Officers James Ball (P.O. Ball), Amber Bolte (P.O. Bolte), and James Lewis (P.O. Lewis). K. Gibson additionally alleged excessive force against Sgt. Asbury.

K. Gibson alleged that on August 28, 2020, Sgt. Asbury, and Officers Ball, Lewis, and Bolte of the Fugitive Apprehension Squad (FAS) entered and searched her residence without consent nor a search warrant, despite her physical and verbal objections. K. Gibson further alleged Excessive Force against Sgt. Asbury for pulling her out of her doorway by her right arm.

Persons Involved:

- Sergeant Nathan Asbury, #S0008, M/W/40 (CPD, Involved)
- Officer James Ball, #P0066, M/W/32 (CPD, Involved)
- Officer Amber Bolte, #P0877, F/W/38 (CPD, Involved)
- Officer James Lewis, #P0695, M/B/48 (CPD, Involved)
 - CCA was unable to speak with Officer Lewis due to his extended leave. His statement to IIS was used in this investigation
- Kandis Gibson, F/B/35 (Civilian, complainant)
- Witness A
 - CCA attempted to contact witness A but was referred to Witness A's attorney. To date, neither the attorney nor Witness A has contacted CCA to provide a statement.

Evidence Reviewed:

CPD Records

- Computer Aided Dispatch (CAD)
- Form F648 Citizen Complaint
- Arrest warrant for Joshua Gibson which was granted on August 25, 2020
- Internal Investigation Section (IIS) Report
- Body-Worn Camera (BWC) footage of Officers Ball, Brennan Hiatt, and Gerald Knight
- Records Management System (RMS)
- Statements provided by officers and complainant

Hamilton County Clerk of Courts

- Case 20/CRA/16219 regarding Mr. Joshua Gibson

Authorities:

CPD Manual of Rules and Regulations § 1.21
CPD Procedure § 12.260 Warrants for Adults: Service and Recording
CPD Procedure §12.545 Use of Force
CPD Procedure §12.550 Discharging of Firearms by Police
CPD Procedure § 12.700 Search Warrant/Consent to Search
Payton v. New York, United States Supreme Court
Steagald v. United States, United States Supreme Court
Fourth Amendment to the United States Constitution

Discrepancies and Clarifications

Each officer was asked to explain the evidence which brought them to K. Gibson's residence and their justification to search the residence despite her objections; their responses are listed below:

Sgt Asbury to CCA:

- "We had reason to believe that someone wanted with a felony murder warrant was there"
- "The car that he operated was at his home address the day before; it was parked in her driveway"
- Witness A "told us he's staying with his cousin on Pedretti, and met him there earlier that day"

P.O. Ball to CCA

- Witness A "indicated he was living with his cousin on Pedretti"
- J. Gibson's "vehicle that was not there before, was parked in the driveway"
- After seeing his car in the driveway, the FAS believed, "not only is he living there, but he's there right now"

P.O. Bolte to CCA

- "He had a murder warrant"
- The FAS received information that he was there
- The suspects' vehicle was in the driveway

P.O. Lewis to IIS

- Witness A "told us he was staying there"
- He was staying with a cousin
- When they searched his listed residence, his vehicle was in the garage
- The same vehicle was sandwiched between two cars on Pedretti the following day

Analysis:

Allegation: Improper Entry & Improper Search

K. Gibson alleged that on August 28, 2020, Sgt. Asbury and Officers James Ball, James Lewis, and Amber Bolte of the Fugitive Apprehension Squad (FAS) entered and searched her residence for her cousin, Joshua Gibson (J. Gibson) without consent nor a search warrant, despite her physical and verbal objections. K. Gibson further alleged Excessive Force against Sgt. Asbury for pulling her out of her doorway by her right arm.

On August 27, 2020, the FAS reported to what Sgt. Asbury referred to as, J. Gibson's "home" residence, 1211 Cutter Street, pursuant to an arrest warrant for J. Gibson; he was not present. Witness A was at 1211 Cutter Street and allegedly told the FAS that J. Gibson was at K. Gibson's residence, [REDACTED] Avenue. Additionally, Witness A stated they met J. Gibson at [REDACTED] Avenue the day prior. Lastly, the FAS alleged a vehicle registered to J. Gibson that was observed at 1211 Cutter Street, was later observed at [REDACTED] Avenue the following day.

On August 28, 2020, at approximately 8:15 AM, Sgt. Asbury and Officers Ball, Bolte, and Lewis arrived at [REDACTED] Avenue in search of J. Gibson. The FAS arrived at K. Gibson's residence after developments in their investigation, but to maintain the anonymity of their source, per BWC they did not reveal why they believed J. Gibson was inside. The FAS did state that a vehicle in his name, which was observed at his listed residence the day prior, was now in her driveway.

Upon the FAS arrival, K. Gibson's son, a juvenile, opened the door. Officers waited on the porch while Sgt. Asbury stood perpendicular to the plane of the door. Sgt. Asbury explained that they were searching for J. Gibson, but K. Gibson stated that that he was not in the residence, and they were not permitted to enter without a warrant. K. Gibson attempted to shut her front door, but Sgt. Asbury prevented her from shutting the door by grabbing her right arm which partially pulled her through the door frame. She objected to being grabbed. Sgt. Asbury released her arm, but stated, "We have the right to search and we're going to." K. Gibson responded, "No you do not." To which Sgt. Asbury responded, "We don't want to have to take you to jail." K. Gibson made several phone calls as the officers waited to conduct the search. Sgt. Asbury stated that she needed to sit down while the search was conducted and she was ordered to sit on her couch in her living room with her children, while Sgt. Asbury and Officers Ball, Bolte, and Lewis searched the residence for J. Gibson. The FAS departed after their realization that J. Gibson was not inside the dwelling.

CPD Manual of Rules and Regulations § 1.21 A states, "Members shall not make any arrest, search, or seizure not in accordance with law. The Fourth amendment to the United States Constitution outlines laws related searches and seizures, "The right of the people to be secure in their persons, house, papers, and effects against unreasonable searches and seizures, shall not be infringed upon and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and persons or things to be seized." The FAS did not possess a search warrant (required by the fourth amendment) to search K. Gibson's residence; but rather FAS only possessed an arrest warrant—which did not have K. Gibson's residence as the place to execute that arrest warrant.

1. Lack of Sufficient Proof of Residency

In Payton v. New York, the United States Supreme Court held that "an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling *in which the suspect lives* when there is reason to believe the suspect within" (emphasis added). While the FAS had reason to believe J. Gibson was within the residence at [REDACTED], the police did not provide CCA sufficient evidence to justify a reasonable belief that J. Gibson lived at K. Gibson's residence. Per Sgt. Asbury, the police were at J. Gibson's "home" residence when they were at 1211 Cutter Street. Merely believing that J. Gibson was within K. Gibson's residence, due to Witness A's statement, does not give police the authority to enter, as K. Gibson's residence is that of a third party to the warrant.

Moreover, a mere belief that J. Gibson was "staying" at his cousin's residence, without any other information about how long he was "staying" there, or whether his "stay" temporary, transitory, or long-lasting, does not provide a reasonable basis under law to believe that J. Gibson was living

at that residence. Witness A provided the officers with no information to indicate whether J. Gibson was “staying” at K. Gibson’s residence for one night, a handful of nights, or for the foreseeable future; and it does not appear that the officers asked those questions. Witness A also did not provide any information about how long J. Gibson had been “staying” at his cousin’s house in the recent past. Again, it does not appear that the officers asked those questions. The answers to those questions have a considerable bearing on whether the officers’ belief that J. Gibson was living with K. Gibson was reasonable. It is also significant that only one of the four officers told CCA that Witness A used the word “living” to describe J. Gibson’s relationship to his cousin’s residence; two of those four officers reported that were informed Mr. J. Gibson was merely “staying” at his cousin’s home, and one of the four officers did not speak of Witness A’s description of the suspect’s living arrangements.

While the police observed J. Gibson’s car parked at his cousin’s residence on the day the officers entered his cousin’s residence, that was the only day that the police observed the car there. By the officers’ own admission, that car was parked at J. Gibson’s home address the day before. Without more, proof of the car’s transient presence does not indicate residency.

2. Lack of Exigent Circumstances

Since the enactment of the Fourth Amendment, cases have been heard which set a precedent regarding searches of residences belonging to third parties when suspects who have arrest warrants are sought at the residences of those third parties. In Stealqald v. United States, the Supreme Court concluded that “a search warrant must be obtained absent exigent circumstances or consent” for a law enforcement officer to legally search for the subject of an arrest warrant in the home of a third party.

In this case, K. Gibson was a third party, and thus a search of her residence would have required a search warrant or exigent circumstances absent reason to believe J. Gibson lived there. Given that there was neither a search warrant, nor consent, CCA must consider whether there were exigent circumstances to permit the entry and search. A review of the evidence does not establish that such circumstances were present. The mere fact that a suspect is wanted for homicide, while compelling, does not satisfy the law’s exigent circumstances test, even where there is probable cause to believe a suspect is in a particular residence. Any exigency argument here is also undercut by the fact that the FAS waited until the following day to act on the intelligence information received from Witness A. Specifically, the officers did not visit Ms. Gibson’s residence, let alone attempt to enter it, until a day after receiving the tip that J. Gibson was there. The interviewed officers did not provide CCA with sufficient evidence to conclude exigent circumstances were present.

3. Significance of Need for Search Warrant

When addressing the practicalities of seeking a search warrant even after an arrest warrant has already been obtained, the Supreme Court stated the following in Stealqald:

[I]n those situations in which a search warrant is necessary, the inconvenience incurred by the police is simply not that significant. First, if the police know of the location of the felon when they obtain an arrest warrant, the additional burden of obtaining a search warrant at the same time is miniscule. The inconvenience of obtaining such a warrant does not increase significantly when an outstanding arrest warrant already exists... In contrast, the right protected -- that of

presumptively innocent people to be secure in their homes from unjustified, forcible intrusions by the Government -- is weighty.

Thus, in Stealgald, the United States Supreme Court affirmed the importance of protecting citizens from unauthorized intrusions into their residences.

Per their own statements, the FAS believed J. Gibson was within K. Gibson's residence, but they referred his listed and last known residence as his "home" and merely had reason to believe that he was "staying" with K. Gibson. Again, the differentiation between "staying" and "living" is vital, as allowing law enforcement to search the residence of anyone where they think a wanted person may be present or visiting, is simply not permitted by the law. Search warrants are required to ensure that citizens' rights are upheld and the requirement for probable cause is met. Given the evidence they had, the officers should have obtained a search warrant and allowed a judge to determine if there was enough probable cause to grant them access into the home of the suspect's cousin, K. Gibson. CCA found that the members of the FAS acted in violation of the Fourth amendment of the US Constitution, CPD training, policy, and procedure.

Allegation: Excessive Force

After declining the FAS to enter her residence, Ms. Gibson attempted to shut the door; Sgt. Asbury grabbed her arm and pulled her towards the door. He released her arm after telling her that she was not able to shut the door and her home would be searched despite her objections.

CPD Policy 12.545 Use of Force states, "When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more." The policy cites to caselaw in stating that:

The decision to use force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight ...the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them." CPD Policy 12.545 Use of Force.

While K. Gibson pulled away from Sgt. Asbury as he stood in her doorway, Sgt. Asbury did not have a legal right to enter her residence and search. Sgt. Asbury stated that he grabbed K. Gibson's arm to prevent the door from hitting him as he stood in the plane of the door. However, the BWC shows that while Sgt. Asbury was pulling K. Gibson's arm, the door was not moving toward his body, nor did the door appear to be shutting on him or in the process of impacting his body. The fairest interpretation of all of the evidence is that Officer Asbury's pulling of Ms. Gibson's arm was not reasonably necessary to protect himself but was instead done to gain continued entry into the residence. Sgt. Asbury was entitled to use a reasonable amount of force to protect himself, but not to effectuate an entry that was unlawful. While CCA did not see any evidence of injury, and while his grabbing and pulling did not progress to higher levels of force, those facts are not dispositive. Given that Sgt. Asbury did not have the right to enter, faced no threat from Ms. Gibson, and had no legal basis to arrest or detain Ms. Gibson, no force was permitted, and his force was therefore objectively unreasonable.

Allegation: Improper Pointing of Firearms

Ms. Gibson alleged an officer kept "his gun on us while the other 4-5 officers proceeded to search my house with their rifles drawn."

Procedure §12.550 Discharging of Firearms by Police states, "At such time as a police officer perceives what he interprets to be a threat of loss of life or serious physical harm to himself or others at the hands of another, he has the authority to display a firearm." Given that executing a search warrant for someone who has a warrant for Ohio Revised Code (ORC) 2903.02 Murder is inherently and objectively dangerous, it's reasonable that the officers interpreted there to be a threat of loss of life or the possibility for serious physical harm to themselves or others, as such their display of firearms was permitted. Per BWC the officers did not point their firearms at K. Gibson or her children. For the foregoing reasons, they did not violate CPD Policy, Procedures or Training.

Findings:

Sergeant Nathan Asbury
Officer James Ball
Officer Amber Bolte
Officer James Lewis

Improper Entry – The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the officers were improper. **SUSTAINED**

Improper Search – The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the officers were improper. **SUSTAINED**

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

Sergeant Nathan Asbury

Excessive Force -- The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the officers were improper. **SUSTAINED**


Morgan Givens, Investigator

March 29, 2022
Date


Gabriel Davis, Director

March 29, 2022
Date

Previous Contacts and Commendations

Sergeant Nathan Asbury

Previous Contacts with CCA

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

Case Number	Allegation	Finding
17225	Excessive Force	Not Sustained
18185	Improper Entry	Not Sustained
18185	Improper Search	Not Sustained
18185	Improper Procedure	Sustained

Previous Contacts with IIS

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

Commendations

Sergeant Asbury received six commendations in the past three years.

Date	Source of Commendation
03/29/2016	CPD
04/06/2016	CPD
09/27/2016	CPD
10/14/2016	CPD
07/21/2017	CPD
08/09/2018	CPD

Officer James Ball

Previous Contacts with CCA

Officer Ball had four previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
18021	Excessive Force (Choking)	Not Sustained
18021	Excessive Force (Tasing)	Exonerated
18021	Excessive Force (Hard Hands)	Exonerated
18146	Excessive Force	Unfounded
18182	Excessive Force (Tasing)	Exonerated
18182	Improper Stop	Not Sustained
18182	Improper Procedure (Contact Card)	Sustained
18183	Improper Stop	Exonerated
18183	Harassment	Unfounded
18183	Improper Search	Exonerated

Previous Contacts with IIS

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

Commendations

Officer Ball received five commendations in the past three years.

Date	Source of Commendation
02/13/2017	CPD
03/14/2018	CPD
08/31/2018	CPD
08/13/2018	CPD
02/04/2019	Other Law Enforcement (OLE)

Officer Amber Bolte

Previous Contacts with CCA

Officer Bolte had four previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
17020	Improper Entry	Not Sustained
17042	Improper Entry	Exonerated
18087	Improper Entry	Exonerated
19083	Improper Entry	Pending

Previous Contacts with IIS

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

Commendations

Officer Bolte received six commendations in the past three years.

Date	Source of Commendation
12/07/2016	Civilian
04/19/2017	OLE
05/10/2017	OLE
08/31/2017	CPD
09/25/2017	CPD
10/01/2018	CPD

Officer James Lewis

Previous Contacts with CCA

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

Case Number	Allegation	Finding
17020	Improper Entry	Not Sustained

Previous Contacts with IIS

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

Commendations

Officer Lewis received five commendations in the past three years.

Date	Source of Commendation
12/7/2016	Civil
01/10/2017	CPD
04/19/2017	OLE
05/10/2017	OLE
08/31/2017	CPD