

Case: 20195

Investigator: Makiedah Messam

Complaint Received: September 24, 2020

Complainant: Charles Edward Stewart

Complaint Summary:

Mr. Charles Edward Stewart, reported that on August 30, 2020, at approximately 1:30 a.m. his vehicle, a red Hummer H3, was parked along Poplar Street when CPD officers, unjustifiably and without probable cause, entered his vehicle and caused it to be towed and impounded. Mr. Stewart further alleged that Officer Oscar Cyranek and other CPD officers routinely stop him when he is driving through his neighborhood. He further stated Officer Cyranek enters vehicles causing damage, improperly removes property, and seizes or removes vehicles in the downtown area of Poplar and John Streets without the legal right to do so.

Persons Involved:

Officer Thomas Chiappone, P331 M/W/35 (CPD, Involved)
Officer Joshua Condon, P329 M/W/36 (CPD, Involved)
Officer Elliott Miller, P250 M/W/30 (CPD, Involved)
Mr. Charles Edward Stewart, M/B/54 (Citizen, Complainant)

Evidence Reviewed:

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

Authorities:

Horton v California, 496 U.S. 128 (1990)
City of Cincinnati – Code of Ordinances – Article IV – Section 4-A Duties with Respect to Racial Profiling (Amended by Ord. No. 299-1979, eff. Aug. 4, 1979; r. Ord. No. 418-2001, eff. Jan. 18, 2002)
Cincinnati Municipal Code (CMC) 759-5, Impoundment of Use of Motor Vehicles Used to Facilitate Officer Evasion, Prostitution or Drug Related Crimes (Ordained by Ord. No. 330-2002, § 1, eff. Oct. 9, 2002; a. Ord. No. 451-2005, § 1, eff. Dec. 22, 2005; Emer. Ord. No. 139-2006, §§ 3, 4, eff. 5-10-06; a. Ord. No. 059-2010, § 6, eff. April 10, 2010)
CPD Procedure Manual § 12.205 Traffic Enforcement (Revised 8/01/2019)
CPD Procedure Manual § 12.270 Impounding, Moving, and Release of Vehicles (Revised 10/7/2021)

Analysis:

According to statements from Mr. Stewart, the officers and BWC viewed, near 1 a.m. on August 30, 2020, CPD officers entered and searched a locked red Hummer parked on Poplar Street. The officers gained entry into the vehicle without the permission or the presence of the vehicle's owner or occupants.

Allegation 1: Improper Search & Seizure

Mr. Stewart alleged that the officers searched his vehicle violating his right to privacy and his vehicle was towed without cause. CPD officers were assigned to patrol the area of Poplar and John in the department's effort to increase police visibility in high crime areas. BWC footage showed the officers, in execution of this duty, peering into vehicles which were parked along the street. When the officers peered into Mr. Stewart's vehicle they noticed a firearm in the rear passenger console of the vehicle, a marijuana cigarette on the front area of the vehicle and what appeared to be an open container of alcohol. The BWC footage also showed officers, using tools, entered the vehicle and retrieved the items viewed. Further search of the vehicle revealed a knapsack containing several Ziplock bags filled with marijuana in the vicinity of the recovered firearm.

Mr. Stewart's vehicle was parked along a public roadway and the interior of the vehicle could be viewed by any passerby. There can be no expectation of the right to privacy in this circumstance. The Fourth Amendment allows the warrantless seizure of evidence in plain view, even though the discovery of the evidence was not inadvertent (e.g., police patrolling a high crime area looking for evidence of crime). The discovery of the firearm and marijuana in plain view gave rise to the search the vehicle. Mr. Stewart's vehicle was also parked illegally and per City Ordinance could be towed. CCA has concluded the Officers were within CPD's policy, procedure, and training.

Allegation 2: Harassment

In his statement to CCA, Mr. Stewart alleged that there were three officers on Poplar and John Streets when his vehicle was entered, searched, and towed. Of the three officers, he recognized one of them to be Officer Oscar Cyranek. Mr. Stewart further alleged that "because of the type of vehicle I drive, they [police] are always harassing me". He claimed that he is stopped by different CPD officers to include Officer Cyranek, every time he drives through his Westside neighborhood. The officers stop him but do not give a reason for stopping him. Mr. Stewart also stated he has been stopped two times in 2020 prior to this current incident.

A search of CPD's RMS did not reveal any stops of Mr. Stewart or his vehicle, prior to August 30, 2020. Based on the footage from the BWC, before reaching Mr. Stewart's vehicle, the officers can be seen peering into other vehicles on Poplar Street. Mr. Stewart was not present during the search of his vehicle.

There is no evidence to impute knowledge of vehicle ownership to the officers. Further checks revealed that Officer Cyranek was not present on Poplar at the time of the incident. There is no evidence of to support Mr. Stewart's claim of harassment. CCA has concluded that the allegation of harassment is unfounded.

Allegation 3: Discrimination

Mr. Stewart alleged that one of these officers, Officer Oscar Cyranek, was known to him before and had previously stopped him on a different occasion. Mr. Stewart insinuated that Officer Cyranek stopped him because he is a black male driving a nice vehicle.

CPD Procedure Manual § 12.205 states, “[n]o law enforcement agency should condone or promote the use of any illegal profiling system in their enforcement program.” CPD Manual of Rules and Regulations (in part) Failure of Good Behavior 1.23C prohibits any prejudice concerning race.

Article IV §4 A of the City’s Municipal Code defines racial profiling as “the detention, interdiction or other disparate treatment of an individual using the racial or ethnic status of such individual as a factor, other than in the case of a physical description.” The Ordinance makes such actions on the part of the police subject to disciplinary action or dismissal.

In his statement to CCA, Mr. Stewart stated that he was present on Poplar and John Streets on the night of August 30, 2020. However, Mr. Stewart was not identified in any of the BWC footage. Of the men spoken to by the officers on the night of the incident none identified himself as Mr. Stewart or the owner of the red Hummer. It cannot be made out that any of the CPD officers on Poplar and John Streets on the night of August 30, 2020, profiled Mr. Stewart. The officer identified by Mr. Stewart as Officer Cyranek was also not present at the scene. CCA has concluded that the allegation of discrimination is unfounded.

Findings:

Officer Thomas Chiappone
Officer Joshua Condon
Officer Elliott Miller

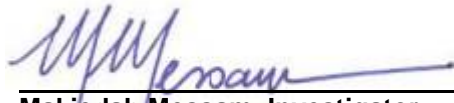
Harassment - There are no facts to support the incident complained of actually occurred.
UNFOUNDED

Officer Thomas Chiappone
Officer Joshua Condon
Officer Elliott Miller

Discrimination - There are no facts to support the incident complained of actually occurred.
UNFOUNDED

Officer Thomas Chiappone
Officer Joshua Condon

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



Makiedah Messam, Investigator

March 31, 2022

Date



Gabriel Davis, Director

March 31, 2022

Date

Previous Contacts and Commendations:

Thomas Chiappone

Previous Contact/s with CCA

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

Previous Contact/s with IIS

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

Commendations

Officer Chiappone has received one commendation in the past three years.

Date	Source of Commendation Received
8/17/2019	Civilian

Joshua Condon

Previous Contact/s with CCA

Officer Condon has had five (5) previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
18117	Improper Stop - Person	Exonerated
	Improper Planting of a Weapon	Exonerated
	Improper Search - Vehicle	Exonerated
	Improper Procedure - BWC	Not Sustained
18205	Harassment	Unfounded
	Discrimination	Unfounded
	Procedure Violation	Unfounded
20116	Discrimination	Pending
	Improper Search - Vehicle	Pending
	Improper Search - Person	Pending
20148	Improper Search	Exonerated
	Improper Entry	Exonerated
	Improper Procedure	Exonerated
20156	Improper Stop	Pending
	Improper Pointing of a Firearm	Pending
	Improper Search	Pending
	Improper Seizure	Pending

Previous Contact/s with IIS

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

Commendations

Officer Condon has received three commendations in the past three years.

Date	Source of Commendation Received
09/16/2018	CPD
10/1/2018	CITY Medal of Valor
1/16/2019	CPD

Elliott Miller

Previous Contact/s with CCA

Officer Miller has had four (4) previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
19038	Improper Search	Sustained
	Harassment	Unfounded
19084	Improper Procedure	Referred
19254	Excessive Force	Exonerated
20014	Improper Search	Exonerated
	Improper Stop	Exonerated

Previous Contact/s with IIS

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

Commendations

Officer Miller has received four commendations in the past three years.

Date	Source of Commendation Received
12/30/2018	Civilian
03/25/2019	CPD
06/25/2019	CPD
08/24/2020	Civilian