

**Case:** 20218

**Investigator:** Robert Stephens

**Complaint Received:** November 2, 2020

**Complainant:** Najah X

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**Complaint Summary:**

Date: October 22, 2020

Time: 18:00 PM

Location: 1530 Linn Street

Najah X stated that on October 22, 2020, an officer stopped her son and his two friends at the park. Mrs. X informed CCA that her son and his friends were minors. The officer then searched them for no reason. The officers made them place their hands up and searched them for guns. Even going through their backpack. Then after they didn't find anything just let them go.

**Allegations:**

Improper Stop  
Improper Search

**Persons Involved:**

Sergeant Luke Putnick, #S0001, M/W/40 (CPD, Involved)  
Officer Joshua Condon, #P0329, M/W/38 (CPD, Witness)  
Officer Thomas Chiappone, #P0331, M/W/37 (CPD, Witness)  
Najah X, F/B/40 (Citizen, Complainant)  
Witness A, M/B/14 (Citizen, Involved) CCA attempted to reach Witness A by phone and by mail without success  
Witness B, M/B/UNK (Citizen, Involved) CCA could not obtain any contact information for Witness B  
Witness C, M/B/UNK (Citizen, Involved) CCA could not obtain any contact information for Witness B

**Evidence Reviewed:**

CPD Records Management System (RMS)  
CPD Complaint resolution process document  
Body-Worn Camera (BWC) of Sergeant Putnick  
CPD Internal Investigation Section (IIS) Report  
Statements by officers, complainant, and relevant witnesses

**Authorities:**

CPD Procedure § 12.554 Investigatory Stops (Revised 08/01/19)

Terry v. Ohio

### Analysis:

According to Mrs. X's statement to CCA, Witnesses A, B, and C (minors) were together inside her vehicle charging their phone. Witnesses A, B, and C exited the vehicle and then walked to the park to film a music video. Officers Condon and Chiappone in plain clothes, observed the minors approach the vehicle, entered, and began to "rummage" through the vehicle.

Officers Condon and Chiappone stated to CCA that all three minors entered and exited the vehicle. The officers stated in the IIS interview that they observed the minors "place unidentifiable objects into a backpack" and "place items into bags." From the vantage point that the plain clothes officers had they were able to see license plate of the vehicle. In an interview conducted by Lt. Schofield in the CPD Complaint resolution process Officer Condon it states "Via police radio, Officers Condon and Chiappone asked Sergeant Luke Putnick to query the plate. The query showed the registered owner had a license to carry a concealed weapon; however, the license was expired."

Officers Condon and Chiappone observed the minors leave on foot and cross the street outside of the crosswalk. The officers were unsure of how the witness's gained entry into the vehicle. The officers approached the vehicle after the witnesses had left, they did not remember any signs of forced entry, no papers askew, or compartments left open; "nothing that we saw that raised any additional flags." The officers did note that the windows were down.

### **Allegation: Improper Stop**

Mrs. X alleged that an officer improperly stopped her son and his friends on October 22, 2020. Officers Condon and Chiappone were in plain clothes and operating in an unmarked vehicle, resulting in no BWC or DVR from those officers. Officers Condon and Chiappone stated that they observed the minors exit a vehicle and made their way across Linn Street but failed to cross in a marked cross walk. This observation was relayed to, Sergeant Putnick who according to the BWC and the contact card stopped the minors for a traffic violation.

CPD Procedure § 12.554 Investigatory Stops provides that officers may forcibly stop and detain the citizen for a brief investigatory period when an Officer has reasonable suspicion to believe the citizen is committing or has committed a crime. Ohio Revised Code ("ORC") Section 4511.50 (Pedestrian walking in roadway) provides that "Jaywalking" is a traffic offense, and that offense was observed by officers here. Therefore, Sergeant Putnick was within CPD's policy, procedure, and training.

### **Allegation: Improper Search**

Mrs. X alleged that officers improperly searched Witness A. In reviewing the BWC, Sergeant Putnick told the minors to step over along the wall of Cincinnati College Preparatory Academy. Then explained to the minors that he was "Just stopping you because you guys' jay walked across the street, that's it. That is the only reason." At no point through the encounter with the minors did Sergeant Putnick ask questions regarding the vehicle they were just in. Sergeant Putnick then frisked the three minors.

The frisk is also called a "Terry frisk," derived from the Supreme Court case *Terry v. Ohio*, 392 U.S. 1 (1968). Although the right to stop and frisk a citizen was provided by the courts with officer safety in mind, a conclusory claim of officer safety, by itself, is not a viable reason to stop and frisk a citizen.

Police officers have the right to detain a person for a short period of time, whether the person consents or not, if the officer can “point to specific and articulable” circumstances that would make any reasonable person believe the suspect was engaged in criminal activity. Furthermore, under *Terry*, an officer has the right to frisk a person for weapons if the officer “has reason to believe that he is dealing with an armed and dangerous individual,” and can articulate specific facts and observations, based on “reasonable inferences” that would cause any reasonable person to believe the subject is armed and presents a risk of harm.

In CCA’s interview with Sergeant Putnick, he explained that there were factors that lead him to think the minors might be armed: the stop was conducted in a high crime area, there was an increase in shooting in 2020, previous information held by various sources stating that the suspects of the shooting throughout the city are young individuals, the vehicle that the minors were in came back to a Concealed Carry Weapon license (CCW) holder, one suspect had a backpack and possibly placed something into it, and his experience.

Though Sergeant Putnick articulated factors that led him to think he was justified in frisking the minors. CCA weighed those facts, measured the reasonableness of the inferences, and ultimately found Sgt. Putnick’s justification for a frisk to be wanting. Many of the factors that Sergeant Putnick laid out in this case could simply be summed to an articulation that the frisk occurred in a “high crime area,” which does not alone warrant the use of a frisk.

Another fact offered in support of the frisk was the role that the CCW check played in Sgt. Putnick’s calculus. Specifically, CCA investigators considered the following statement by Officer Condon to Lt. Schofield in the CPD Complaint resolution process: “Via police radio, Officers Condon and Chiappone asked Police Sergeant Luke Putnick to query the plate. The query on the plate showed the registered owner had a license to carry a concealed weapon; however, the license was expired.” CCA concluded that this fact does not support a *Terry* frisk. This query provided Sergeant Putnick with the knowledge that there was an expired CCW tied to the owner of that vehicle; it did not provide any reasonable basis to believe that the minors possessed the vehicle owner’s weapon. A CCW is not tied to a vehicle but to a person, granting the person permission to carry a firearm. The possession of a CCW license by a third party, without more, does not inherently support the assertion that a firearm is present in a vehicle belonging to that third party. Neither does an expired CCW support that belief. In addition, a generalized statement that the minors *possibly* placed *some object* into a backpack while inside of the car moments before the frisk, does not provide a reasonable basis to believe that the minors armed themselves.

Sergeant Putnick did not attest to any other behavioral factors that might have led him to think the minors were armed and dangerous. The minors were not nervous, nor did they flee. Sergeant Putnick did not state that any of the minors had an unnatural gait, “firearm impressions”, palming, “concealing movements” or conducted security checks.<sup>1</sup> There was not one articulable fact of the behavior of the minors that would lead one to believe they were “armed and dangerous.” The only thing the minors did was get in and out of a vehicle in a “high crime” area, and possibly put

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<sup>1</sup> Consistent with the subject matter expertise of the undersigned CCA Investigator (a former law enforcement officer trained in the detection of concealed weapons), we note that terms like “unnatural gait,” “firearm impressions,” and “palming” and “security checks” are common law enforcement terms used in identifying signs of a person concealing a firearm (“unnatural gait” generally means walking abnormally; “firearm impressions” or “printing” generally indicates a bulge of a firearm through the clothing of a concealed carrier; “palming” generally means running a weapon along the arm or leg; “security checks” generally means touching or grasping the firearm). Sergeant Putnick was asked directly about firearm impressions and concealing movements, to which he denied the minors exhibiting either. He provided no information indicating that he observed any of the other traits or behaviors corresponding with the above terms.

something into a bag while inside of the car. Therefore, Sergeant Putnick was not within CPD's policy, procedure, and training.

**Note:**

Sergeant Putnick did request permission to search the backpack of one of the witnesses. Consent was granted and no weapon was found inside.

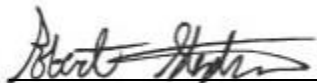
**Findings:**

Sergeant Luke Putnick

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

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

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Robert Stephens, Investigator



Gabriel Davis, Director

July 15, 2022

Date

**Previous Contacts and Commendations:**

**Officer Joshua Condon**

**Previous Contacts with CCA**

Officer Condon had five previous contact with CCA in the past three years.

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
20116	Discrimination	Pending
20116	Improper Stop	Pending
20116	Improper Search	Pending
20148	Improper Procedure	Exonerated
20148	Improper Search	Exonerated
20148	Improper Entry	Exonerated
20156	Seizure	Pending
20156	Improper Search	Pending
20156	Other-CPD Code	Pending
20156	Improper Search	Pending
20156	Improper Stop	Pending
20156	Improper Pointing of a Firearm	Pending
20195	Discrimination	Unfounded
20195	Harassment	Unfounded
20195	Improper Search	Exonerated
20206	Improper Search	Pending
20206	Harassment	Pending
20206	Improper Procedure	Pending
20206	Improper Search	Pending

**Previous Contacts with IIS**

Officer Condon had two previous contacts with IIS in the past three years.

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
18067	Improper Stop	Exonerated
18067	Improper Pointing of a Firearm	Exonerated
18127	Improper Procedure	Exonerated
18127	Discrimination	Unfounded

**Commendations**

Officer Condon received three commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
01/16/2019	CPD
10/01/2018	Civilian
09/06/2018	CPD

**Officer Thomas Chiappone**

### Previous Contacts with CCA

Officer Chiappone had two previous contact with CCA in the past three years.

Case Number	Allegation	Finding
20195	Harassment	Unfounded
20195	Improper Search	Exonerated
20195	Discrimination	Unfounded
20206	Harassment	Pending
20206	Improper Procedure	Pending
20206	Improper Search	Pending
20206	Improper Search	Pending

### Previous Contact with IIS

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

### Commendations

Officer Chiappone received one commendation in the past three years.

Date	Source of Commendation Received
08/17/2019	Civilian

### Officer Luke Putnick

### Previous Contacts with CCA

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

Case Number	Allegation	Finding
19254	Harassment	Unfounded
19254	Improper Search	Exonerated
19260	Improper Search	Exonerated
19260	Discrimination	Unfounded
19260	Discourtesy	Unfounded
19260	Improper Search	Exonerated
19260	Improper Stop	Exonerated
20116	Discourtesy	Pending

### Previous Contacts with IIS

Officer Putnick had one previous contacts with IIS in the past three years.

Case Number	Allegation	Finding
2019-026	Sexual Harassment	Not Sustained
2019-026	Discourtesy	Sustained Other

### Commendations

Officer Putnick received two commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
12/26/2019	CPD
12/26/2019	CPD