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**CCA Case No. 20223**

**Antonio Huff**

**Investigation Report and Finding**

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**Robert Stephens**  
**Investigator**

**Gabriel Davis**  
**Director**

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## COMPLAINT SUMMARY

Date: November 02, 2020

Time: 7:19 PM

Location: 311 Martin Luther King (MLK) Drive

CCA Receipt: November 05, 2020

On November 2, 2020, Mr. Antonio Huff drove along MLK then onto Jefferson Ave. and was followed by a marked CPD cruiser. After approximately one mile, the officers activated their sirens and claimed he made a marked lanes violation. When the officers approached the vehicle, they "grabbed" Mr. Huff out of the vehicle, placed him in handcuffs, and searched him locating crack. The officers "roughed him up," as they handcuffed him. He did not sustain any injuries.

Mr. Huff estimated there were at least 20 officers on the scene, both uniformed and in plainclothes. The officers searched Mr. Huff's vehicle without his consent. The officers used profanity and spoke "nasty" towards him, although he could not recall any specific remarks. Mr. Huff was charged with a marked lanes violation and possession of drugs and transported to the Hamilton County Justice Center (HCJC).

## INVOLVED SUBJECT STATEMENTS

### **Antonio Huff**

CCA interviewed Mr. Huff on 11/05/2020. He provided the following information:

On November 2, 2020, Mr. Huff, M/NA/53, drove on MLK taking a right onto Jefferson Ave. when CPD pulled him over for a marked lane violation. They "snatched" him out of his vehicle, handcuffed him, and immediately searched his vehicle. There were about 20 or 30 police there. He was leaving the Shell and was on his way to Kroger to get food for his family. He was going up Martin Luther King Boulevard, while the police were going the opposite direction. Mr. Huff went through the light, and the cruiser sitting at the light made a U-turn to follow him. They followed him for approximately a mile. The cruiser did not turn their lights on until they were on Jefferson Ave.

Mr. Huff turned on to the side street because he saw a parking spot and thought it would be better to stop there rather than in the middle of a busy, two-way street. Mr. Huff was confused why there were so many cops searching his vehicle for a routine traffic stop. The officers did not ask him for a license or registration. The officers began by opening his door and "snatching" him out the vehicle. Mr. Huff asked questions about the stop, but the officers got aggressive and started talking like they wanted to "beat him up." Mr. Huff did not know it was a marked lane violation until he got out of the HCJC and looked at the papers. Mr. Huff admitted that the officers found crack on him but found nothing in the vehicle.

Mr. Huff was concerned that there were so many officers at the stop but only one listed on the paperwork, since the one who stopped him never searched his vehicle. Mr. Huff did not know the officer who pulled him over but knew his badge number was #P189. Mr. Huff complained the

handcuffs were too tight, but he was not in handcuffs long enough to cause injury. He did not want to complain to the officers since they were being so “nasty” to him and “roughing” him up.

## INVOLVED OFFICER STATEMENTS

### Officer Jerome Herring

Officer Jerome Herring, #P0189, M/B/25, is currently assigned to the Gang Enforcement Squad (GES), and he has been a CPD member since 2017. Officer Herring was in uniform and operated a marked cruiser; his BWC was activated.

CCA interviewed Officer Herring on March 15, 2021, at 12:50 PM. He provided the following information:

On November 2, 2020, Officer Herring was informed by Officer Corey Gould, a plain clothes officer, that Mr. Huff had committed a marked lanes violation on Martin Luther King Drive. Officer Herring initiated a traffic stop as Mr. Huff was turning onto Jefferson Ave. Mr. Huff did not immediately respond to Officer Herring’s lights and sirens. He turned again onto Charleton Street before eventually stopping. Officer Herring informed other officers that Mr. Huff was not complying with the traffic stop, so other officers had converged on the area to put down stop sticks and generally assist. Officer Herring stated that he smelled the odor of marijuana coming from Mr. Huff’s vehicle while he was driving on Jefferson and observed marijuana smoke emanating from Mr. Huff’s vehicle when he stopped on Charleton St. Officer Herring arrested Mr. Huff for failure to comply and conducted a search of Mr. Huff’s person. Officer Herring did not recall whether Mr. Huff was grabbed out of the vehicle or not.

Officer Herring located cocaine during the search, filled out his paperwork, and transported Mr. Huff to jail. Officer Herring did not recall what was said between himself and Mr. Huff and could not recall whether his firearm was drawn. Officer Herring “utilized verbal stunning” (“something along the lines of ‘get in the [expletive] car’”) when getting Mr. Huff into his cruiser in an effort to avoid use of hard hands. Officer Herring charged him with possession of cocaine and marked lanes violation but did not charge him with failure to comply.

## OFFICER WITNESS STATEMENTS

### Officer Thomas Chiappone

Officer Thomas Chiappone, #P0331, M/W/33, is currently assigned to the GES, and he has been a CPD member since 2017. Officer Chiappone was on routine patrol, in uniform and operated a marked cruiser with Officer Condon; his BWC was activated.

CCA interviewed Officer Chiappone on March 24, 2021, at 11:24 AM. He provided the following information:

On November 2, 2020, Officer Chiappone was the cover officer for Officer Herring. He noted that once the lights and sirens were on, Mr. Huff was “very slow to stop”. He went a few blocks without stopping. After Mr. Huff stopped, Officer Herring detained him due to the fact he was slow to stop. The smell of marijuana was very strong emanating from the vehicle. There were also signs of marijuana shake on the floorboard. He further stated that Officer Herring found crack cocaine in

the pocket of Mr. Huff. Officer Chiappone did not remember if he had his firearm drawn during the investigation.

### **Officer Joshua Condon**

Officer Joshua Condon, #P0329, M/W/36, is currently assigned to the GES, and he has been a CPD member since 2016. Officer Condon was on routine patrol, in uniform and operated a marked cruiser with Officer Chiappone; his BWC was activated.

CCA interviewed Officer Condon on March 17, 2021, at 11:56 AM. He provided the following information:

On November 2, 2020, Officer Condon was in the second or third cruiser to show up to a traffic stop where the driver was slow to stop. Mr. Huff “in a very quick time” had been taken out of the vehicle, though Officer Condon did not remember if he witnessed Mr. Huff being removed from the vehicle. The vehicle was searched due to marijuana shake in the driver compartment. Officer Condon assisted in the search of the front passenger side, and he may have helped locate some of the marijuana but did not recall finding anything significant. Officer Condon did not recall whether his weapon was drawn during the stop.

### **Other Officer Interviews**

CCA interviewed four additional Officers. Those Officers were: **Officer Sean O'Connor, Officer Michael B. Smith, Officer Jason Wallace, and Specialist Kevin Newman**. The aforementioned interviews collectively provided no additional context of the incident.

### **WITNESS STATEMENTS**

There were no pertinent witnesses.

### **EVIDENCE**

### **Police Documents**

CCA reviewed all CPD-related forms, including but not limited to arrest forms, the IIS Report, and information from CPD's Records Management System (RMS).

### **Body Worn Camera (BWC)**

#### **Officer Herring**

The events recorded by Officer Herring's BWC occurred on November 2, 2020, starting at 7:19 PM, according to the BWC's timestamp. A review of that recording reveals the following:

Officer Herring pulled to a stop behind Mr. Huff's vehicle. He shouted to Mr. Huff “you don't need to be parking. Turn the car off.” He then asked Mr. Huff if he had seen the lights and sirens and Mr. Huff answered that he had not. Officer Herring ordered Mr. Huff out of the vehicle. Mr. Huff complied. Officer Herring put one hand on Mr. Huff's arm and one on his shoulder as Mr. Huff exited the vehicle. Officer Chiappone assisted Officer Herring by holding Mr. Huff's hands behind his back. Officer Herring put the handcuffs on Mr. Huff and escorted him to his cruiser. Mr. Huff

continued to insist that he did not see the lights before, but he continued to comply. Officer Herring conducted a search of Mr. Huff while he stood by his cruiser. He recovered bills in varying amounts and other papers. Mr. Huff asked what the purpose of this stop was, and Officer Herring informed him it was due to a failure to signal a lane change. Mr. Huff replied that the police "were waiting" on him. Officer Herring recovered cocaine in his search of Mr. Huff. Officer Herring handed the drug to Officer Fehrman, and then also recovered Mr. Huff's license from his person.

When the search was complete, Officer Herring told Mr. Huff to take a seat twice. Mr. Huff was talking to Officer Fehrman and did not respond initially. Mr. Huff then asked, "take a seat where" and Officer Herring said, "in the vehicle, where the door is open". Mr. Huff said "Man, you're talking really tough". Officer Herring said, "Yeah, I am. Take a seat". Mr. Huff said, "I guess you're the head man, huh?" Officer Herring said, "Sit in the [expletive] car." Mr. Huff complied while also saying "You don't scare me, bruh." Officer Herring said, "I'm not trying to [expletive] scare you." Mr. Huff responded again that Officer Herring did not scare him. Officer Herring replied "You seem not scared; your voice is shaking" while securing Mr. Huff into the car. Mr. Huff continued to repeat that Officer Herring did not scare him. Officer Herring closed the cruiser door and said "he's going to jail" to Officer Fehrman.

### **Officer Chiappone**

The events recorded by Officer Chiappone's BWC occurred on November 2, 2020, starting at 7:19 PM, according to the BWC's timestamp. A review of that recording reveals the following:

Officer Chiappone exited his cruiser with his firearm drawn. He holstered his firearm and assisted Officer Herring with handcuffing Mr. Huff. Both officers placed hands on Mr. Huff to get him from the vehicle. Officer Herring walked Mr. Huff to his cruiser, while Officer Chiappone began the search of the car. Officer Chiappone put on gloves to search and told Officer Lind that he was going to get a "contact buzz". Officer Chiappone searched the driver seat and recovered marijuana from the floor area. Officer Chiappone discovered lottery tickets in the front seat and began to search the back driver seat. Officer Chiappone continued to search but found no other contraband. Officer Chiappone made a comment to an unknown officer "I mean, it took him 30 seconds to pull over".

### **Officer Condon**

Officer Condon exited the cruiser with his firearm drawn. He approached the passenger side of the vehicle and attempted to open the door, but it was locked. Officer Condon used his flashlight to look through the windows. Officer Condon put on gloves and searched the back driver side of the vehicle. He closed the door and talked to another officer about what was recovered. Officer Condon told him he did not recover anything, but Officer Chiappone told them he had found shake in the front seat. Officer Condon said Mr. Huff "looked kind of dumb". Officer Dotson said that he was a nice guy. Officer Chiappone commented that Mr. Huff was a product of the Cincinnati Public School system. Officer Condon then turned off his BWC. Officer Condon, Dotson and Chiappone were located on the driver side of Mr. Huff's vehicle while Mr. Huff was being searched on the rear passenger side door of Officer Herring.

### **Specialist Newman**

Specialist Newman exited his cruiser and approached the driver side of the vehicle initially before going to the back passenger side when he saw Officer Herring had arrested Mr. Huff. Once Officer Herring and Mr. Huff walked past, Specialist Newman went to the passenger side. An officer commented about the marijuana odor, and Specialist Newman compared it to Cheech and Chong. Specialist Newman did a brief search of the back passenger side, noting the presence of marijuana on the floor. Specialist Newman saw a white unmarked car (determined by CCA to be a police car) parked in the driveway and used both hands to flip off the driver before approaching

him saying "I got you on my camera". The driver is heard laughing. Specialist Newman deactivated his BWC immediately after.

CCA reviewed the BWC footage from eight additional Officers. Those Officers were Officer Cameron Fehrman, Officer Robert Lind, Officer Trent Meucci, Officer Sean O'Connor, Officer Michael B. Smith, Officer Jason Wallace, Officer Andrew Burkett, and Officer John Dotson. The aforementioned BWC footage collectively affirmed the information provided, granting no additional context.

### **Digital Video Recording (DVR)**

**Equipment number: CPD 12313**

*Time: 19:19:50 – 19:54:38*

Officer Herring drove down MLK onto Jefferson Ave. At :28 his lights activated behind a white SUV. The SUV was behind another vehicle. The White SUV then made a left turn before pulling to the side of the street, known to be W. Charleton. The SUV stopped at 1:00. Officer Herring reached into Mr. Huff's car to unlock the door, then opened the door, and both he and Officer Chiappone assisted Mr. Huff out of the vehicle. Other officers surrounded the vehicle while Mr. Huff was put in handcuffs. At 1:43, Officer Herring walked Mr. Huff out of the camera sight, to the back of the cruiser. From 1:43 to 6:30, officers searched the vehicle. At 6:30, Officer Herring crossed the camera to the driver side of the cruiser. At 6:40 the officers appeared to complete the search of Mr. Huff's vehicle from the camera angle, at least on the driver's side. The camera continued to view the vehicle until 7:48, when the interior camera activated to show Mr. Huff in the back seat. Mr. Huff sat calmly, though he moved and looked around a little. Mr. Huff asked Officer Herring what they were doing to his car, and Officer Huff replied that they were moving it because it was parked illegally. Mr. Huff talked about the available spot next to the cruiser and seemed upset that they were moving his vehicle, but he did not act aggressively or fight the restraints. An officer was heard, off camera, informing Mr. Huff where his car was now parked, and answered Mr. Huff's questions about which side of the road the car was parked, whether the car was locked, and if the headlights were off. Officer Herring was heard talking to another officer off-camera, but the words were inaudible. At 16:23, the cruiser began moving. Officer Herring spoke to Mr. Huff and Mr. Huff responded but the words were inaudible. Mr. Huff spoke about his car again, saying that they did not need to move it. Officer Herring did not seem to respond. At 24:15, Officer Herring stopped his cruiser. Mr. Huff asked what Officer Herring was charging him with, and Officer Herring's response was inaudible, however Mr. Huff responded "Okay." Mr. Huff then sat in the cruiser for approximately 9 minutes until the camera showed the wall of the HCJC and was deactivated.

### **Clerk of Courts**

Mr. Huff was charged with possession of cocaine under Ohio Revised Code (ORC) § 2925.11A and driving in marked lanes under Cincinnati Municipal Code (CMC) § 506-61. The possession of cocaine resulted in Community Control and the traffic violation was dismissed.

### **SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS**

Mr. Huff took the first legal turn available and came to a stop within 32 seconds of the police cruiser lights being activated. This turn and stop was slowed due to the unmarked police vehicle that was directly in front of Mr. Huff's SUV.

## AUTHORITIES

### I. Caselaw

State v. Moore, 90 Ohio St. 3d 47, 52-53 (2000)

### II. CPD Procedure Manual (in part)

#### **§ 12.205 Traffic Enforcement**

##### **Policy:**

No law enforcement agency should condone or promote the use of any illegal profiling system in their enforcement program. Any member of the Department who engages in illegal profiling shall be subject to disciplinary action, in accordance with applicable civil service law, up to and including dismissal, and may face claims of civil rights violations in Federal court.

Officers must ensure video and audio recording equipment is activated when operating in emergency mode and when participating in traffic stops and pursuits. Recording will continue until the traffic stop is completed and the stopped vehicle departs, or until the officer's participation in the stop ends.

##### **Procedure:**

###### **A. On-duty Traffic Enforcement Guidelines**

1. On ALL motor vehicle traffic stops, officers will complete a Contact Card and submit it at the end of the shift. Officers will ensure the MUTT#, NTA# and CAD# are written on the Form 534.
2. When participating in traffic stops, officers must ensure video and audio equipment is activated.
3. Take appropriate enforcement action whenever a violation is detected, including provable violations determined as the result of accident investigations.

#### **§ 12.554 Investigatory Stops**

##### **Information:**

There are three levels of police/citizen contact.

The first level is a consensual encounter. A police officer may approach any person in a public place and request to talk to him. So long as the person is free to leave whenever he wants, no Fourth Amendment seizure has occurred, and no reasonable suspicion or probable cause is required.

The next level is the "Terry" type encounter. Here the officer has reasonable suspicion to believe the citizen is committing or has committed a crime. Based on this reasonable suspicion, the officer may forcibly stop and detain the citizen for a brief investigatory period. Although a citizen is required to properly identify oneself during the stop, failure to answer

investigatory questions asked by the officer cannot provide the justification for detaining a person past the period necessary to complete the brief "Terry" type investigation. Once the reasonable suspicion is determined to be unfounded, the citizen must be released.

The third level of police/citizen contact is the arrest. The arrest occurs when the citizen is no longer free to leave, and the officer has the intent to arrest. The arrest must be supported by probable cause to believe the citizen is committing or has committed a criminal offense.

Every "Terry" type stop does not automatically authorize a frisk. If a frisk is conducted, the officer must be able to articulate specific facts which led them to believe the individual could be armed and dangerous.

## **§ 12.545 Use of Force**

### **Definitions:**

**Actively Resisting Arrest** – When the subject is making physically evasive movements to defeat the officer's attempt at control, including fleeing, bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

**De-escalation** – Using non-confrontational verbal skills, empathy and active listening to stabilize a person in crisis.

De-escalation may also incorporate the use of additional time, distance, and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force.

**Escorting** – The use of light pressure to guide a person or keep a person in place.

**Force** – Any physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person. The term includes, but is not limited to, the use of firearms, Conducted Energy Weapons (Pain), chemical irritant, choke holds or hard hands, the taking of a subject to the ground, or the deployment of a canine. The term does not include escorting or handcuffing a person with no or minimal resistance.

**Hard Hands** – The use of physical pressure to force a person against an object or the ground, use of physical strength or skill that causes pain or leaves a mark, leverage displacement, joint manipulation, pain compliance, and pressure point control tactics.

**Objective Reasonableness** – The standard, as set forth by the Fourth Amendment U.S. Constitution and defined by Supreme Court of the United States, by which all uses of force will be judged.

### **Policy:**

The Cincinnati Police Department (CPD) recognizes the value of all human life and is committed to respecting the Constitutional rights and dignity of every individual. Officers shall act within the boundaries of the United States Constitution, the laws and constitution of the state of Ohio, the charter and ordinances of the city of Cincinnati, this use of force procedure, and all other relevant CPD procedures, policies, practices and training.

A police officer's right to make an arrest or an investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to effect it. Determining whether the force used to effect a particular seizure is reasonable under the Fourth

Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. 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" (Graham v. Connor, 1989).

Courtesy in all public contacts encourages understanding and cooperation. The most desirable method for effecting an arrest is where a suspect complies with clear and concise directions given by an officer.

Whenever possible, de-escalation techniques shall be employed to gain voluntary compliance by a subject. Officers shall use only the level of force that is objectively reasonable to effect an arrest or while protecting the safety of the officer and others. Officers should attempt to achieve control through advice, delay, warnings, and/or persuasion when confronted with a situation where control is required to effect an arrest or protect the public's safety. The suspect should be allowed to submit to arrest before force is used unless this causes unnecessary danger to the officer or others.

**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. Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.**

## **§ 12.600 Prisoners: Securing, Handling, And Transporting**

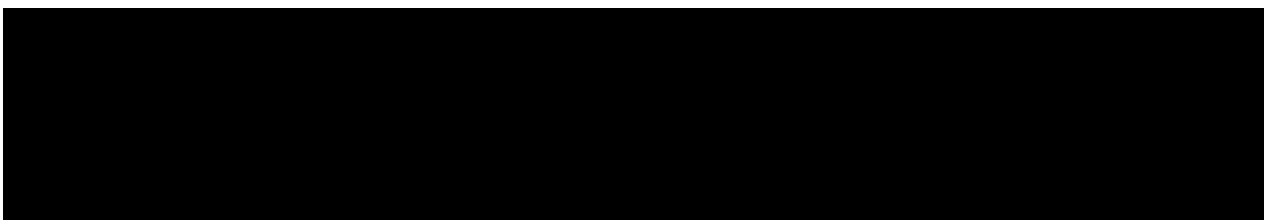
### **Procedure:**

#### **A. Handcuffing**

1. When possible, handcuff all prisoners with their hands behind their back. Apply handcuffs between the hand and protruding wrist bone with the prisoner's palms facing out and the keyholes facing up.
  - a. Apply handcuffs directly over the skin. They should be reasonably snug and double locked.

### **III. CPD Investigations Manual (in part)**

#### **§ 12.1.3 Search Incident to Lawful Arrest**



## **IV. CPD Manual of Rules and Regulations (in part)**

### **Section One – Failure of Good Behavior**

#### **1.06**

- a. Members of the department shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors and associates.
- b. Members of the Department shall avoid the use of coarse, violent, or profane language.

## **V. CPD Training Bulletin #2001-1 (in part)**

### **ANALYSIS**

#### **Allegation 1: Improper Stop**

Mr. Huff alleged that Officer Herring improperly stopped him on November 2, 2020. CPD Procedure § 12.205 Traffic Enforcement directs officers to “[t]ake appropriate enforcement action whenever a violation is detected.” In addition, 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. According to Officer Herring’s interview with CCA, Officer Herring stopped Mr. Huff based on Officer Corey Gould’s, a plain clothes officer’s, observation of Mr. Huff committing a lane violation. Traffic violations are stoppable offenses; thus, Officer Herring’s actions were within CPD policy, procedures, and training.

#### **Allegation 2: Improper Search**

Mr. Huff alleged that both his person and his vehicle were searched improperly on November 2, 2020.

Mr. Huff was signaled to pull over by Officer Herring. Mr. Huff pulled his SUV onto Charleton Street and stopped his vehicle. Officer Herring stated that Mr. Huff was placed under arrest immediately for Failure to Comply with Order or Signal of Police Officer (ORC § 2921.331(A)). According to CPD Investigations Manual § 12.1.3 Search Incident to Lawful Arrest, an officer taking into custody any suspect, even if from another officer, shall conduct a search of the person arrested and the area within their immediate control. Officer Herring conducted his search of Mr. Huff and located cocaine on his person.

Officer Herring expressed in his interview that due to finding cocaine on Mr. Huff; he did not charge Mr. Huff for the Failure to Comply charge. This is because the possession of cocaine is a higher felony compared to Failure to Comply. CCA does not believe a Failure to Comply charge would have been supported by the evidence, given that Mr. Huff took the first legal turn available and came to a stop within 32 seconds of the police cruiser lights being activated. Furthermore, Mr. Huff's turn and stop was slowed due to the unmarked police vehicle that was directly in front of Mr. Huff's SUV. Accordingly, an arrest for Failure to Comply, would not justify the search of Mr. Huff's person, given that such an arrest would have been of questionable legality. However, as we explain below, the facts justifying the search of Mr. Huff's car, also justify the search of his person under law.

The motor vehicle exception allows an officer to search a vehicle without a search warrant as long as he or she has probable cause to believe that evidence or contraband is located in the vehicle. The exception is based on the idea that there is a lower expectation of privacy in motor vehicles due to the regulations under which they operate. Additionally, the ease of mobility creates an inherent exigency to prevent the removal of evidence and contraband. The scope of the search is limited to only what area the officer has probable cause to search. This area can encompass the entire vehicle including the trunk. The motor vehicle exception, in addition to allowing officers to search the vehicle, also allows officers to search any containers found inside the vehicle that could contain evidence or contraband; the objects searched do not need to belong to the owner of the vehicle.

Given that before the search of the vehicle, officers observed the smell of marijuana emanating from the vehicle in plain smell, the officers had probable cause to search the vehicle. Marijuana was later located inside the vehicle upon its search.

Under Ohio law, the odor of marijuana emanating from a vehicle also generally provides a legal basis upon which to search a vehicle's occupant, under the exigent circumstances exception. See State v. Moore. Courts have held that such searches are proper because of the possibility that evidence of marijuana possession, specifically the marijuana odor, will be lost if a search warrant is required before the driver can be searched.

For these reasons, CCA determined that the actions of Officers Jerome Herring, Thomas Chiappone, Sean O'Connor, Jason Wallace, Michael Smith, Joshua Condon, and Specialist Kevin Newman were within CPD's policy, procedure, and training.

### **Allegation 3: Excessive Force**

Mr. Huff alleged that Officer Herring "yanked" him out of the vehicle as well as, put his handcuffs on too tight.

According to BWC, after stopping Mr. Huff, Officer Herring did place his hands on Mr. Huff to assist him out of the vehicle. Officer Chiappone also used his hands to assist Mr. Huff from the vehicle. Both the BWCs and the DVR showed the removal of Mr. Huff out of the vehicle and him being placed into handcuffs. The recorded action can best be described as "the use of light pressure to guide a person or keep a person in place," or what CPD § 12.545 terms "escorting." CPD policy does not consider "escorting" a use of force. Furthermore, excessive force cannot be found in the absence of a use of force.

Officers placed Mr. Huff into handcuffs to effectuate the arrest. § 12.600 Prisoners: Securing, Handling, and Transporting explains that officers should apply the handcuffs to be reasonably snug and double locked. In reviewing the BWCs, DVR and testimony, there was no apparent

breach of this procedure, and no mention was made by Mr. Huff of the handcuffs being too tight at the time of their placement. CCA determined that the actions of Officer Jerome Herring and Officer Thomas Chiappone, were within CPD's policy, procedure, and training.

#### **Allegation 4: Discourtesy**

Mr. Huff alleged that Officer Herring was discourteous during their interaction. According to CPD Manual of Rules and Regulations, Section § 1.06, officers are required to be civil, orderly, and courteous, and avoid coarse or profane language.

Officer Herring, while conducting the search of Mr. Huff, responded to Mr. Huff's comment that Officer Herring looked like he wanted to fight him by saying, "if I wanted to fight you, I would. I'm not gonna do that." Officer Herring also used profane language when he told Mr. Huff to "sit in the [expletive] car", after requesting Mr. Huff sit in the vehicle twice. Officer Herring stated in his interview that he employed "verbal stunning" to gain compliance.

"Verbal stunning" is a "technique utilizing voice volume, inflection, and language to control a person who is not responding to voice commands" (CPD Training Bulletin, #2001-1). The purpose of this technique is to "shock" the person into gaining compliance. The training bulletin stresses that "the use of voice volume and the demand language constitute verbal stunning", later stating "in certain circumstances, profanity may play a legitimate role in verbal stunning".

After reviewing BWC, though Officer Herring did not raise his volume or otherwise change his inflection, Officer Herring used profanity in an attempt to gain compliance. However, rather than "shock" Mr. Huff, Officer Herring's language gave rise to aggression, reflecting the warning in the training bulletin that "inappropriate use of profane language is likely to have the opposite effect." Mr. Huff started to sit in the cruiser when Mr. Huff responded that Officer Herring did not scare him, and Officer Herring said "I'm not trying to [expletive] scare you." Officer Herring then commented that "you seem not scared; your voice is shaking." The second use of profanity was used after compliance was obtained. While the first use of profanity may not have been discourteous on its own, the combination of Officer Herring's language and his mocking of Mr. Huff for a shaky voice was gratuitous and uncivil. CCA finds both the use of profanity and comments by Officer Herring to be discourteous, and not within CPD's policy, procedures, and trainings.

#### **Observations**

CPD Manual Rules and Regulations specifically states that officers should avoid the use of "coarse, violent, or profane language." While reviewing BWC footage, Specialist Newman used both of his middle fingers to flip off a fellow officer during a traffic stop. The gesture was not observable by Mr. Huff at the time of the incident. While speaking to another officer, Officer Condon referred to Mr. Huff by saying that Mr. Huff, "looked kind of dumb," and Officer Chiappone derisively commented that Mr. Huff was a product of the Cincinnati Public School system. Although those comments were not made within earshot of Mr. Huff, officers should be reminded that their actions – both verbal and physical – are representative of the Cincinnati Police Department, subject to public scrutiny, and affect the public trust, especially since BWCs are accessible by the public.

## FINDINGS

### Original Allegations

Officer Jerome Herring

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

**Improper Search** – 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**

**Discourtesy** – 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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Officer Thomas Chiappone

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

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Officer Thomas Chiappone  
Officer Sean O'Connor  
Officer Jason Wallace  
Officer Michael B. Smith  
Officer Joshua Condon  
Specialist Kevin Newman

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

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\_\_\_\_\_  
Robert Stephens, Investigator

May 10, 2022  
Date

  
\_\_\_\_\_  
Gabriel Davis, Director

May 10, 2022  
Date

## PREVIOUS CONTACTS AND COMMENDATIONS

### Officer Jerome Herring

#### Previous Contacts with CCA

Officer Herring had 11 previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
19009	Excessive Force	Exonerated
19020	Improper Procedure	CPD Info File
19038	Harassment	Unfounded
19038	Improper Stop	Exonerated
19160	Excessive Force	Pending
19186	Abuse of Authority	Not Sustained
19186	Improper Procedure	Exonerated
19186	Discourtesy	Exonerated
20022	Excessive Force	Pending
20022	Improper Stop	Pending
20233	Improper Search	Pending
20233	Improper Stop	Pending
20233	Unethical Conduct	Pending
21004	Improper Procedure	Pending
21004	Discourtesy	Pending
21004	Improper Pointing of a firearm	Pending
21023	Improper Search	Pending
21023	Improper Stop	Pending
21024	Discourtesy	Pending
21024	Improper Procedure	Pending
21024	Improper Stop	Pending
21024	Improper Pointing of a firearm	Pending
21024	Excessive Force	Pending
21064	Discourtesy	Pending
21064	Improper Procedure	Pending
21064	Excessive force	Pending

#### Previous Contacts with IIS

Officer Herring had 2 previous contacts with IIS in the past three years.

Case Number	Allegation	Finding
2019-191	Excessive Force	Unfounded
2019-064	Sexual Misconduct	Pending

#### Commendations

Officer Herring received 3 commendations in the past three years.

Date	Source of Commendation Received
06/25/2021	Civilian
07/05/2019	CPD

Date	Source of Commendation Received
05/25/2019	CPD

### Officer Chiappone

#### **Previous Contacts with CCA**

Officer Chiappone had 6 previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
20195	Discrimination	Unfounded
20195	Improper Search	Exonerated
20195	Harassment	Unfounded
20206	Improper Search	Pending
20206	Improper Procedure	Pending
20206	Harassment	Pending
20238	Improper Search	Pending
20238	Discourtesy	Pending
21045	Improper Search	Pending
21045	Excessive Force	Pending
21176	Improper Stop	Pending
21176	Improper Point of a Firearm	Pending
21230	Discourtesy	Pending
21230	Improper Search	Pending

#### **Previous Contacts with IIS**

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

#### **Commendations**

Officer Chiappone received 1 commendation in the past three years.

Date	Source of Commendation Received
08/17/2019	Civilian

### Specialist Kevin Newman

#### **Previous Contacts with CCA**

Specialist Newman had 8 previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
19248	Discrimination	Unfounded
20116	Discrimination	Pending
20116	Discourtesy	Pending
20189	Lack of Service	Pending
20189	Discourtesy	Pending
20189	Excessive Force	Pending
20227	Improper Search	Pending
20227	Improper Stop	Pending
20227	Improper Pointing of a Firearm	Pending
21006	Improper Detention	Pending

Case Number	Allegation	Finding
21006	Improper Search	Pending
21007	Discourtesy	Sustained
21007	Improper Procedure	Sustained
21007	Improper Search	Exonerated
21007	Improper Stop	Exonerated
21007	Discrimination	Not Sustained
21007	Discrimination	Sustained
21027	Pointing of a Firearm	Pending
21027	Improper Stop	Pending
21027	Harassment	Pending
21027	Improper Procedure	Pending
21123	Excessive Force	Pending
21123	Discourtesy	Pending

#### **Previous Contacts with IIS**

CCA is unaware of any additional previous contact by Specialist Newman with IIS in the past three years.

#### **Commendations**

Specialist Newman received 1 commendation in the past three years.

Date	Source of Commendation Received
01/05/2020	CPD

#### **Officer Sean O'Connor**

#### **Previous Contacts with CCA**

Officer O'Connor had 4 previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
20143	Lack of Service	Pending
21045	Excessive Force	Pending
21230	Improper Stop	Pending
22065	Lack of Service	Pending
22065	Improper Procedure	Pending

#### **Previous Contacts with IIS**

CCA is unaware of any additional previous contact by Officer O'Connor with IIS in the past three years.

#### **Commendations**

Officer O'Connor received 0 commendations in the past three years.

#### **Officer Jason Wallace**

#### **Previous Contacts with CCA**

Officer Wallace had 6 previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
19021	Lack of Service	Referred
20148	Improper Procedure	Exonerated
20148	Improper Search	Exonerated
20148	Improper Entry	Exonerated
20215	Pointing of a Firearm	Pending
20215	Improper Search	Pending
20215	Improper Procedure	Pending
20233	Improper Stop	Pending
20233	Improper Search	Pending
20233	Discrimination	Pending
20233	Discourtesy	Pending
21154	Improper Stop	Pending
21154	Excessive Force	Pending
21230	Improper Search	Pending

### Previous Contacts with IIS

CCA is unaware of any additional previous contact by Officer Wallace with IIS in the past three years.

### Recommendations

Officer Wallace received 0 commendations in the past three years.

### Officer Michael B. Smith

### Previous Contacts with CCA

Officer Smith had 8 previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
19097	Improper Stop	Exonerated
19097	Harassment	Unfounded
19132	Improper Stop	Exonerated
19132	Improper Search	Exonerated
19132	Discourtesy	Sustained
20189	Lack of service	Pending
20189	Discourtesy	Pending
20189	Excessive Force	Pending
20227	Improper Stop	Pending
20227	Improper Search	Pending
20227	Improper Procedure	Pending
20227	Improper Pointing of a Firearm	Pending
21006	Improper Search	Pending
21006	Improper Detention	Pending
21007	Improper Search	Exonerated
21007	Improper Procedure	Sustained
21007	Discourtesy	Sustained
21007	Discrimination	Not Sustained
21007	Improper Stop	Exonerated
21027	Improper Procedure	Pending

Case Number	Allegation	Finding
21027	Improper Search	Pending
21027	Improper Stop	Pending
21027	Harassment	Pending
21123	Excessive Force	Pending
21123	Discourtesy	Pending

### Previous Contacts with IIS

CCA is unaware of any additional previous contact by Officer Smith with IIS in the past three years.

### Commendations

Officer Smith received 1 commendation in the past three years.

Date	Source of Commendation Received
01/05/2020	CPD

### Officer Joshua Condon

#### Previous Contacts with CCA

Officer Condon had 13 previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
20116	Improper Search	Pending
20116	Discrimination	Pending
20116	Improper Stop	Pending
20148	Improper Procedure	Exonerated
20148	Improper Search	Exonerated
20148	Improper Entry	Exonerated
20156	Improper Search	Pending
20156	Improper Stop	Pending
20156	Improper Pointing of a Firearm	Pending
20156	Seizure	Pending
20195	Discrimination	Unfounded
20195	Harassment	Unfounded
20195	Improper Search	Exonerated
20206	Harassment	Pending
20206	Improper Search	Pending
20206	Improper Procedure	Pending
20238	Improper Search	Pending
20238	Discourtesy	Pending
21004	Improper Stop	Pending
21045	Excessive Force	Pending
21045	Improper Search	Pending
21154	Discourtesy	Pending
21160	Improper Stop	Pending
21160	Harassment	Pending
21176	Improper Stop	Pending
21176	Improper Pointing of a Firearm	Pending
21230	Improper Search	Pending

Case Number	Allegation	Finding
21244	Improper Search	Pending
21244	Improper Procedure	Pending

### **Previous Contacts with IIS**

CCA is unaware of any additional previous contact by Officer Condon with IIS in the past three years.

### **commendations**

Officer Condon received 0 commendations in the past three years.