

Case: 20233

Investigator: Robert Stephens

Complaint Received: November 30, 2020

Complainant: Andrew Criswell

Complaint Summary:

Date: November 25, 2020

Time: 4:16 PM

Location: Elam Street

Per CPD: I was at City Gear parking lot talking to a friend when I pulled out the lot, five police cars pulled out in front of me. The officers pulled me out the car. I asked why, they said nothing. The officers then searched my car while they ran my name. Then just pulled off with no explanation. I asked for their badge numbers, yet again they said nothing.

Allegations:

Improper Stop
Improper Search
Discourtesy

Persons Involved:

Officer Jerome Herring, #P0189, M/B/26 (CPD, Involved)
Officer Nicholas Davis, #P0044, M/W/36 (CPD, Involved)
Officer Cole Dunahay, #P0263, M/W/29 (CPD, Involved)
Officer Cameron Fehrman, #P0234, M/W/33 (CPD, Involved)
Officer Taylor Howard, #P0180, M/W/33 (CPD, Involved)
Officer Trent Meucci, #P0190, M/W/38 (CPD, Involved)
Officer Jason Wallace, #P0070, M/W/44 (CPD, Involved)
Sergeant Luke Putnick, #S0001, M/W/40 (CPD, Involved)
Andrew Criswell, M/B/29 (Citizen, Complainant) CCA attempted to reach Mr. Criswell by phone and by mail without success. To date, Mr. Criswell has not contacted CCA.

Evidence Reviewed:

CPD Records Management System (RMS)
CPD Computer Aided Dispatch (CAD)
Body-Worn Camera (BWC)
Digital Video Recording (DVR)
CPD Internal Investigation Section (IIS) Report
Statements by officers and complainant

Significant Discrepancies and Clarification:

Mr. Criswell was detained for approximately four minutes before being released with no charges.

The driver of the second vehicle (B/M/27) that was observed to conduct a hand-to-hand transaction was stopped by officers as well. According to the contact card, that driver was searched. The search produced white powder and marijuana.

Authorities:

CPD Procedure § 12.554 Investigatory Stops (Revised 01/19/2017)
CPD Manual of Rules and Regulations – Section One – Failure of Good Behavior
CPD's Investigations Manual 12.0.0 Search and Seizure

Analysis:

Allegation: Improper Stop

Mr. Criswell alleged that officers improperly stopped him on November 25, 2020.

Under Ohio law, the observation of drug trafficking behavior in a high-crime area has been deemed sufficient evidence to meet the threshold of reasonable suspicion of drug trafficking. The authority granted to an officer to detain a citizen for investigatory purposes based on reasonable suspicion is explained in CPD Procedure Manual § 12.554 Investigatory Stops, which provides that if an officer “has reasonable suspicion to believe the citizen is committing or has committed a crime” then “the officer may forcibly stop and detain the citizen for a brief investigatory period.”

According to CCA’s interviews with officers, on that date, Sergeant Putnick, a plain clothes officer noticed a white vehicle, later identified as Mr. Criswell’s vehicle pull into the Gear City lot. Sergeant Putnick stated that he did not recognize Mr. Criswell from any previous contact. Mr. Criswell stayed in his vehicle for approximately 30 minutes. He did not enter any stores or restaurants. After approximately 30 minutes, another vehicle approached and parked next to Mr. Criswell. Mr. Criswell then entered the second vehicle’s front passenger door.

Sergeant Putnick reportedly observed this behavior from the rear of the vehicles approximately 30-40 feet away. Sergeant Putnick could not see fully the interaction of the two, however, stated that he observed what appeared to be a hand-to-hand transaction between the two individuals. Sergeant Putnick stated “Some sort of interaction with their hands... but you could not tell what was being exchanged because it was down low.” Mr. Criswell left the second vehicle within 30 seconds and entered his own vehicle and left. Sergeant Putnick attested that “this behavior in its totality was indicative of a possible drug transaction.”

Sgt. Putnick’s statement to CCA about his observations was consistent with his statement to IIS about the incident, and was consistent with the accounts of other officers who told CCA that they responded to the scene of Mr. Criswell’s ultimate detention because of information relayed to them about a possible drug transaction by Sgt. Putnick. Accordingly, CCA investigators determined Sgt. Putnick’s account to be credible.

Once Mr. Criswell was seen conducting a possible hand-to-hand drug transaction, Officers Herring, Davis, Dunahay, Fehrman, Howard, Meucci, and Wallace converged on Mr. Criswell’s

location, and approached from both directions of Elam Street. It can be seen from multiple BWCs and the DVR that Mr. Criswell exited the vehicle upon the initial approach of the officers. Officer Howard placed Mr. Criswell into handcuffs then took him to the front of his cruiser.

Officer Howard explained to CCA that the location from which the plain clothes officer observed the alleged drug transaction is known by officers, and he stated, "I personally, and our unit, have recovered numerous drugs and guns from that lot at City Gear; um, it's high a high crime drug area." Officer Howard continued to explain that "when drug transactions are taking place, weapons are generally involved." Per Sergeant Putnick Mr. Criswell was identified conducting in behavior that emulated drug trafficking behavior. This observation, combined with the knowledge of drug trafficking and weapons use in the area, likely permits the detainment of Mr. Criswell for further investigation under the law. Therefore, Officers Dunahay, Howard, and Wallace were within CPD's policy, procedure, and training.

Allegation: Improper Search

Mr. Criswell alleged that officers improperly searched him on November 25, 2020. In reviewing the BWC, the officers handcuffed Mr. Criswell and took him to the front of Officer Howard's police cruiser. During the escort of Mr. Criswell to Officer Howard's police cruiser, Officer Howard asked Mr. Criswell for consent to search his vehicle. Mr. Criswell granted officers permission to search his vehicle. Mr. Criswell did not give consent to search his person.

Officer Wallace noted on his BWC that "shake" was observed on the front driver side floorboards, by removing his BWC from its mount and moving it in a manner, to ensure a closer view of the Marijuana residue. He also stated, "There is a bunch of shake right here." After that statement, Officers Davis, Dunahay, Fehrman, Meucci, and Wallace searched Mr. Criswell's vehicle. The officers did not find any other contraband in the vehicle. Based on the consent that was granted, CCA determined Officers Davis, Dunahay, Fehrman, Meucci, and Wallace did not improperly search Mr. Criswell's vehicle.

Allegation: Discourtesy

Mr. Criswell alleged that officers ignored his requests for badge numbers and the reason for being stopped during his November 25, 2020 detention. 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. In reviewing the BWC, Officer Howard and Herring were the two officers that spoke with Mr. Criswell. The officers both attempted to explain the reasoning for the stop, informing Mr. Criswell that they were conducting a drug investigation. Per review of the BWCs during the conversation with Mr. Criswell, no discourteous comments or unprofessional behavior was noted by CCA. Officer Howard provided his badge number to Mr. Criswell after he was taken out of handcuffs and was free to leave. Therefore, Officers Howard and Herring were within CPD's policy, procedure, and training.

Collateral Allegation: Improper Search

CPD's Investigations Manual 12.0.0 Search and Seizure specifies when officers may search and/or seize persons or property, including by authorizing searches with consent, lawful frisks leading to lawful searches, and searches incident to lawful arrest. The Manual also details the parameters of a frisk during a Terry stop: it clarifies that an officer may frisk a person for weapons if the officer reasonably believes the person may be armed, with the frisk being limited to a "crush

and feel” of a suspect’s outer clothing for weapons, followed by a seizure of any detected weapons.

In CCA’s interview with Officer Howard, he explained that he conducted a frisk of Mr. Criswell. Officer Howard stated in his CCA interview that the location where the plain clothes officer observed the alleged drug transaction is known by officers. Officer Howard went on to state, “I personally, and our unit, have recovered numerous drugs and guns from that lot at City Gear; um, it’s high a high crime drug area.” Officer Howard continued to explain that when drug transactions are taking place, weapons are generally involved, which is why he frisked Mr. Criswell. Officer Howard also stated that he could only remember frisking Mr. Criswell (as opposed to conducting a more intrusive search), and that during his frisk of Mr. Criswell, there was nothing to indicate a need for a further investigation.

However, in reviewing the relevant BWC and DVR, CCA investigators learned that while Officer Howard initially conducted only a frisk of Mr. Criswell, he then proceeded to place latex gloves on and search Mr. Criswell. According to the DVR evidence, Officer Howard inserted his hands into the pockets of Mr. Criswell (DVR time stamp: 16:34:44). This inserting into the pockets of Mr. Criswell plainly constitutes a full-blown search, not a mere frisk (i.e. pat-down search). Officer Howard did not find any contraband on Mr. Criswell.

Officer Howard also informed CCA that at the time of his search of Mr. Criswell’s person, he lacked knowledge of the marijuana shake located in the vehicle. When evaluating the lawfulness of Officer Howard’s conduct (and therefore whether it was within policy), Officer Howard’s knowledge at the time of the search must be evaluated, not the information available to him in hindsight. The information known to Officer Howard at the time of the search was insufficient to grant him an exception to the warrant requirement to search Mr. Criswell. Therefore, Officer Howard was not within CPD’s policy, procedure, and training when he searched Mr. Criswell.

Observation:

CPD Manual Rules and Regulations specifically states that officers should avoid the use of “coarse, violent, or profane language.” While reviewing BWC footage, Officer Davis called Mr. Criswell a “Mother fucker.” Although those comments were not made within earshot of Mr. Criswell, 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.

Recommendation:

Recommendation #R2206

Stop, Detention, or Arrest Policy/Procedure

CCA’s recommends that CPD review their report-completion and records-keeping policies and implement rules ensuring that when a citizen is seized, detained, or stopped involuntarily as a result of alleged criminal conduct observed by a police officer, that all officers who observed such conduct firsthand—including plain clothes officers—are listed and identified (by name or unique identifier) in at least one police record corresponding to the resulting stop, detention, or seizure.

The preservation of all relevant evidence is crucial in any criminal case as well as in administrative investigations (such as those carried out by CCA or IIS). Throughout the course of CCA’s

investigation of Mr. Criswell's complaint, the agency faced roadblocks in ascertaining the names of all officers involved. This challenge of identification has often presented itself during CCA's investigations that involve a plain clothes officer who has reportedly observed criminal behavior, such as a drug transaction, and then relayed those observations to other officers. There appears to be no current CPD reporting policy or practice that would require a documented link between officers that observe alleged behavior and the resulting police stop or detention, unless an arrest is made or unless the officer observing the conduct is the officer who made the stop. Plain clothes officers are generally not referenced in contact cards, CAD reports, or citations. Instituting rules to ensure a paper trail connecting plain clothes officers who observe criminal conduct to the suspect who is stopped or detained would strengthen all related investigations by identifying all witness officers who participated in or observed the incident under consideration.

Findings:

Original Allegations

Officer Cole Dunahay
Officer Taylor Howard
Officer Jason Wallace
Sergeant Luke Putnick

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

Officer Nicholas Davis
Officer Cole Dunahay
Officer Cameron Fehrman
Officer Trent Meucci
Officer Jason Wallace

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

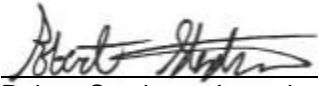
Officer Jerome Herring
Officer Taylor Howard

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

Collateral Allegation

Officer Taylor Howard

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



Robert Stephens, Investigator



Gabriel Davis, Director

July 15, 2022

Date

Previous Contacts and Commendations:

Officer Jerome Herring

Previous Contacts with CCA

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

Case Number	Allegation	Finding
19009	Excessive Force	Exonerated
19020	Improper Procedure	CPD Info File
19038	Improper Stop	Exonerated
19038	Harassment	Unfounded
19160	Excessive Force	Exonerated
19160	Excessive Force	Exonerated
19186	Abuse of Authority	Not Sustained
19186	Abuse of Authority	Not Sustained
19186	Discourtesy	Exonerated
19186	Improper Procedure	Exonerated
20022	Stop (Person)	Pending
20022	Excessive Force	Pending

Previous Contacts with IIS

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

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

Commendations

Officer Herring received three commendations in the past three years.

Date	Source of Commendation Received
07/05/2019	Civilian
05/24/2019	CPD
12/12/2018	CPD

Officer Nicholas Davis

Previous Contact with IIS

Officer Davis had one previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
19107	Improper Stop	Exonerated
19107	Improper Search	Sustained
19107	Discourtesy	Unfounded

Previous Contact with IIS

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

Commendations

Officer Davis received five commendation/s in the past three years.

Date	Source of Commendation Received
10/06/2020	FOPA
08/17/2019	Civilian
09/06/2018	Civilian
03/15/2018	CPD
03/15/2018	CPD

Officer Cole Dunahay

Previous Contact with CCA

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

Case Number	Allegation	Finding
20116	Improper Procedure	Pending

Previous Contact with IIS

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

Commendations

Officer Dunahay received three commendations in the past three years.

Date	Source of Commendation Received
01/05/2020	CPD
01/13/2019	Civilian
12/17/2018	Civilian

Officer Cameron Fehrman

Previous Contacts with CCA

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

Case Number	Allegation	Finding
19103	LOS	Referred
20170	LOS	Pending
20170	Discourtesy	Pending
20170	Discrimination	Pending
20215	Improper Point of a Firearm	Pending

Case Number	Allegation	Finding
20215	Improper Search	Pending
20227	Improper Procedure	Pending

Previous Contact with IIS

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

Commendations

Officer Fehrman received no commendation in the past three years.

Officer Taylor Howard

Previous Contacts with CCA

Officer Howard had six previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
18180	Excessive Force	Unfounded
18183	Improper Search	Exonerated
18183	Harassment	Unfounded
18183	Improper Stop	Exonerated
18214	Improper Search	Exonerated
18214	Improper Search	Exonerated
19254	Improper Stop	Exonerated
19254	Improper Search	Exonerated
19254	Improper Search	Exonerated
19260	Improper Stop	Exonerated
19260	Discrimination	Unfounded
19260	Improper Search	Exonerated
20148	Improper Entry	Exonerated
20148	Improper Search	Exonerated
20148	Improper Procedure	Exonerated

Previous Contacts with IIS

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

Case Number	Allegation	Finding
18128	Improper Stop	Exonerated
18128	Improper Search	Exonerated
18107	Improper Stop	Exonerated
18107	Improper Search	Exonerated

Commendations

Officer Howard received five commendations in the past three years.

Date	Source of Commendation Received
10/06/2020	FOPA
02/04/2019	CPD
10/09/2018	Civilian
03/15/2018	CPD
03/15/2018	CPD

Officer Trent Meucci

Previous Contacts with CCA

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

Previous Contact with IIS

Officer Meucci had one previous contact with IIS in the past three years.

Case Number	Allegation	Finding
18022	Improper Procedure	Exonerated

Commendations

Officer Meucci received three commendations in the past three years.

Date	Source of Commendation Received
03/15/2020	CPD
01/05/2020	CPD
03/13/2018	Civilian

Officer Jason Wallace

Previous Contacts with CCA

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

Case Number	Allegation	Finding
19021	LOS	Referred
20148	Improper Procedure	Exonerated
20148	Improper Search	Exonerated
20148	Improper Entry	Exonerated
20215	Improper Pointing of a Firearm	Pending
20215	Improper Search	Pending
20215	Improper Procedure	Pending

Previous Contacts with IIS

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

Commendations

Officer Wallace received three commendations in the past three years.

Date	Source of Commendation Received
12/30/2018	CPD
08/31/2018	CPD
08/31/2018	CPD

Sergeant Luke Putnick

Previous Contacts with CCA

Officer Putnick had four previous contacts 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
20218	Improper Search	Pending
20218	Improper Stop	Pending

Previous Contacts with IIS

Sergeant 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

Sergeant Putnick received two commendations in the past three years.

Date	Source of Commendation Received
12/26/2019	CPD
12/26/2019	CPD