

Case: #21021

Investigator: Morgan Givens

Complaint Received: February 23, 2021

Complainant: Mario Baker

Complaint Summary:

Mr. Mario Baker (M/B/40) alleged Improper Search, Theft, Lack of Service and Discourtesy against Officers Cameron Mullis and Dylan Scalf.

Mr. Baker alleged that on February 4, 2021, at approximately 8:00 PM, he observed Officers Mullis and Scalf looking through the window of his friend's rented vehicle. Mr. Baker exited the residence to inquire as to why the officers were looking at the vehicle. The officers explained that they saw marijuana in plain view in the cup holder of the vehicle. Mr. Baker explained that the vehicle was not rented in his name, but that the marijuana was his and that he would accept the citation. Mr. Baker was ultimately arrested for Ohio Revised Code (ORC) 2925.03 Trafficking in Drugs, his money seized, the vehicle towed, and his acquaintance's residence was searched.

Mr. Baker was released from the Hamilton County Justice Center (HCJC) after the laboratory determined that the substance Officers Mullis and Scalf recovered was not methamphetamine as believed. Mr. Baker alleged Officer Mullis was rude and did not return his belongings promptly after being dismissed from the HCJC.

Persons Involved:

Officer Cameron Mullis #P0464, M/W/26 (CPD, Involved)

Officer Dylan Scalf, #P0388, M/W/23 (CPD, Involved)

Mario Baker, M/B/40 (Citizen, Complainant)

Witness A

- CCA has been unable to contact Witness A. A letter has been sent to their residence, but they have not contacted CCA to make a statement.

Evidence Reviewed:

Hamilton County Clerk of Courts

CPD Records Management System (RMS)

CPD Criminal Investigation Section (CIS) documents

CPD Internal Investigation Section (IIS) Report

CPD Computer Aided Dispatch (CAD)

Body-Worn Camera (BWC) for Officers Dylan Scalf and Cameron Mullis

Statements by officers and complainant

Authorities:

CPD Manual of Rules and Regulations – Section One – Failure of Good Behavior

CPD Procedure § 12.700 Search Warrant/Consent to Search

Peace Officer Basic Training SPO #20

Analysis:

Allegation: Improper Search (Vehicle)

On February 4, 2021, at approximately 7:49 PM, Officers Scalf and Mullis observed Mr. Baker and three occupants exit a vehicle and enter 3997 W. 8th Street. Per BWC, Officers Scalf and Mullis proceeded to look inside of the empty vehicle with a flashlight and discovered marijuana in the cup holder of the vehicle. Mr. Baker exited the residence and asked the officers if there was a problem with the way the vehicle was parked. Officer Mullis stated that the vehicle was blocking the driveway and was far off the curb. Mr. Baker explained that the driveway they alleged was blocked belonged to the person with whom he visited. Mr. Baker attempted to move the vehicle to satisfy the officers. Mr. Baker explained that it was not his rental vehicle, but that of a friend.

Officer Mullis and Scalf attempted to ascertain who else was in the vehicle and their current whereabouts. Mr. Baker stated that he was dropping off a friend and they stated that the marijuana they saw in the vehicle was his. Mr. Baker stood by the vehicle and watched as the vehicle was searched. Officers Mullis and Scalf searched the vehicle based on the marijuana that was seen in plain view. Officer Scalf discovered a bag of what he believed was methamphetamine based on its appearance and his training and experience. Mr. Baker maintained that his friend was a vegan, and that what they discovered was a dietary supplement. Officer Mullis handcuffed Mr. Baker and searched him incident to arrest; he recovered \$2,630 and two iPhones. Mr. Baker was charged with Ohio Revised Code (ORC) 2925.03 Trafficking in Drugs and taken to the HCJC. Mr. Baker was released from the HCJC days later after a lab test returned that the substance was not a methamphetamine.

CCA believes that the motor vehicle exception, allowing the search of a vehicle without a search warrant normally required by the Fourth Amendment to the United States Constitution, applied. 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. CCA determined that Officers Mullis and Scalf did not violate CPD policies, procedures, or training.

Allegation: Improper Search (Residence)

After Mr. Baker was secured in the cruiser, Officer Mullis requested to speak to the person who resided in 3997 W. 8th Street, Witness A. Mr. Baker told Officer Mullis that he could search the residence to prove that there were no weapons or narcotics. Mr. Baker told Officer Mullis to ask "the girl" to search the residence. When Officer Mullis approached witness A he stated, "This is kind of serious. Who is that guy to you?" Witness A stated, "I don't know him." Officer Mullis responded, "You're not in trouble and you're not going to be in trouble." Officer Mullis inquired as to who else was in the vehicle and Witness A stated that she didn't know because she was upstairs on the phone. Officer Mullis stated, "You said you were twenty-two, and you've got kids, right?" Witness A replied, "Yes." Officer Mullis walked Witness A out of earshot of others at the

scene and said, "I don't want them listening in." He then continued, "So look, how many kids you got?" She replied that she had two children. Officer Mullis asked how old the kids were, she replied that they were ages two and five. Officer Mullis continued, "Boy, girls, both? One of both?" Witness A confirmed that she had a boy and a girl.

Officer Mullis accused Witness A, "You know what's going on in this car...well you know what they were doing, right?" Witness A emphatically replied, "No." Officer Mullis said, "I'm going to tell you this. They're selling drugs out of this car in front of your house" she replied, "In front of my house?" Mullis confirmed, "They were sitting right here selling drugs." She asked again, "In front of my house?" Officer Mullis confirmed, "Yes, ma'am... we found plenty of drugs in there." He continued, "You know the sad thing is we saw four people get out of this car and they took a lot of stuff inside." Witness A replied, "I didn't know" and began to cry. Witness A said, "Whatever is in there [her residence], it's his" Officer Mullis stated, "So, what I'm asking, do you give us permission to try to go inside and get this stuff out? You're not in trouble." She replied, "Yes".

Prior to Witness A signing the Consent to Search form, family members arrived on scene and were concerned about the circumstances of the situation and police involvement. Witness A stated to family members on scene, "I guess they been selling drugs in front of my house... He told me they been watching it. Whatever they got in my house they can do a search warrant. I didn't know." Officer Mullis corrected her, "Well we don't need one if you're giving us consent." Per BWC, Witness A can be seen crying uncontrollably, but ultimately allows the officers to search her residence. Officer Mullis attempted to comfort her and said, "What I'm saying is we are getting multiple calls about this vehicle... Usually where there are drugs and money guns come along with that. Like I told her, she's not in trouble and we want to make sure that she's going to be safe and that her kids are going to be safe."

CPD Procedure § 12.700 Search Warrant/Consent to Search states, "All requests without a warrant, including searches of persons, buildings, or vehicles, will be recorded with a Body Worn Camera (BWC). Both audio and video recordings will be made of the request and consent when practical." It goes on to say, "Request individuals to sign form 604, or Form 601PV before conducting **all** consent searches including vehicles, persons, buildings, areas, computers, electronic devices or residence **except** when capturing consent via BWC."

Peace Officer Basic Training states the following regarding the determination whether a Consent Search is Valid:

- Consent is voluntarily given
- The person giving consent has authority to do so and no other person with authority, that is present, has refused
- The search is limited to only those places and things that the person expressly or impliedly authorized to be searched
- The search is not unduly intrusive

It further states, while officers may be thorough in their search, they are not permitted to be destructive.

- In addition, the length of the search must be type and complexity of the search for which the permission was granted.

In addition to verbal consent, Officer Mullis requested that she sign a Consent to Search form. Prior to Witness A signing the form, Officer Mullis stated, "This is not an environment that you want kids in." After Officer Mullis assisted her to fill out the form, Officers Mullis and Scalf searched

her residence; they recovered a box of ammunition. In Officer Mullis' CCA interview he stated, "She wanted us to destroy it for her." CCA requested a copy of the signed consent to search form, but per CPD-IIS, the form could not be located.

Per BWC, Officer Mullis obtained verbal and written consent to search Witness A's residence. Although an agreement to search was obtained, the evidence raises questions as to whether Witness A fully understood the form and whether her visible and inconsolable distress affected her ability to voluntarily consent or underscored a lack of voluntary consent.

Consent must be voluntary, and while Witness A did eventually agree to the search, she can be seen on BWC unconsolably crying during the discussion with Officer Mullis about his desire to search. Officer Mullis initially asked Witness A if she had children; once she confirmed she had two, he continuously mentioned her children. Per BWC, Officer Mullis specifically stated, "That's not an environment you want kids in." He additionally stated that he recovered "plenty of drugs" from the vehicle and believed Mr. Baker may have left narcotics or weapons in her residence. Officer Mullis did not directly threaten to call children's services but did mention Witness A's children multiple times and the danger they may be in should Mr. Baker have left any narcotics or weapons in the residence. The insinuation can be reasonably made that her children may be in jeopardy should she not provide consent to Officer Mullis.

While explaining the consent form to Witness A, Officer Mullis contradicted the form by explaining that the officers had no intention of searching for or seizing items that the form expressly permitted the officers to search and seize, creating the potential for a confused understanding of the scope of the search.

In addition, while filling out the Consent to Search Form, Witness A could not recall her address. After Officer Mullis told her the address, she still did not write the entire address, only the numerical digits; Officer Mullis had to instruct Witness A to write "W 8" for West eight street. She additionally had to be instructed to write her entire name, rather than just her first name.

Lastly, Witness A told the officers that she was "scared" prior to when Officers Mullis and Scalf entered her residence. Although she did ultimately sign the consent form, CCA questions Witness A's capacity to comprehend, her ability to consent, and if she truly understood what she signed. Witness A has not responded to CCA's attempts to interview her. Therefore, the investigation lacked the benefit of her statement regarding the voluntariness of her consent. There are insufficient facts to decide whether the officers violated policy and training.

Allegation: Discourtesy

Mr. Baker alleged Officer Mullis was generally discourteous during the incident. CPD Manual of Rules and Regulations §1.06 requires that officers shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors, and associates. However, according to CPD training, coarse or profane language is sometimes permitted if it qualifies as "verbal stunning." In their CCA interview, Officers Scalf and Mullis denied being discourteous or using profanity against Mr. Baker. Per review of the BWC, CCA found that neither Officers Mullis nor Scalf were discourteous during incident; therefore, they did not violate CPD policies, procedures, or training.

Allegation: Lack of Service

Mr. Baker alleged Lack of Service against Officer Mullis and CPD in general for failing to return his belongings in a timely manner. Per the CPD Property receipt, \$2,2630 dollars and two iPhones

were confiscated from Mr. Baker in connection to suspected drug trafficking. While Mr. Baker was released from the HCJC after the laboratory determined that the substance was not methamphetamine, his belongings weren't returned to him until a later date. Mr. Baker alleged that on March 1, 2021, when he called District Three, Officer Mullis refused to put him into contact with someone who could tell him how to receive his money and cell phones. Mr. Baker alleged that Officer Mullis told him that they had to wait to hear it from the prosecutor's office. In his CCA interview, Officer Mullis denied keeping any of Mr. Baker's belongings. Following Mr. Baker's arrest, his money and phones were seized, but CCA found no evidence that Officer Mullis purposely retained his belongings longer than what was permitted by policy. According to the Internal Investigation Section report pertaining to this matter, Mr. Baker signed a release receipt for the property on March 2, 2021. Therefore, CCA found that Officer Mullis did not violate CPD procedures or training.

The allegation of theft is criminal in nature and therefore out of CCA's purview.

Observation:

Per BWC, Officer Mullis obtained verbal and written consent to search Witness A's residence. Although an agreement to search was obtained, CCA is concerned that Officer Mullis came close the line of coercion in the manner in which he obtained that consent, as it appeared Witness A may not have fully understood the search form and was visibly and unconsolably distressed during much of her encounter with the officers. Submission is not consent, and while CCA's investigation was unable to resolve key factual questions at issue in this case with respect to the search, CCA will continue to monitor the manner in which officers secure consent when conducting future searches in order to ensure any such searches are truly voluntary.

Findings:

Officer Cameron Mullis
Officer Dylan Scalf


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

Improper Search – There are insufficient facts to decide whether the alleged misconduct occurred. **NOT SUSTAINED**

Officer Cameron Mullis

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

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



Morgan Givens, Investigator

May 10, 2022

Date



Gabriel Davis, Director

May 10, 2022

Date

Previous Contacts and Commendations:

Officer Cameron Mullis

Previous Contacts with CCA

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

Case Number	Allegation	Finding
20126	Excessive Force	Unfounded

Previous Contacts with IIS

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

Commendations

Officer Mullis received no commendations in the past three years.

Officer Dylan Scalf

Previous Contacts with CCA

Officer Scalf had no previous contacts with CCA in the past three years.

Previous Contacts with IIS

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

Commendations

Officer Scalf received no commendations in the past three years.