

Case: 21217

Investigator: Jessalyn Goodman

Complaint Received: October 20, 2021

Complainant: Maxime Tchinda

Complaint Summary:

Date: September 30, 2021

Time: 12:31am

Location: 198 Main Street

Mr. Maxime Tchinda parked his vehicle downtown near the Banks. As he was leaving Galla Park, a restaurant near the Banks, he observed Officer Brent Eve near his vehicle, writing a citation. When Mr. Tchinda asked why Officer Brent Eve chose to cite his vehicle, when other vehicles were similarly parked and Mr. Tchinda was about to leave, Officer Eve got “mad.” Officer Eve attempted to hand Mr. Tchinda the citation, but Mr. Tchinda instructed him to put it on the vehicle. The officer responded by saying that his vehicle would be towed because his vehicle was parked in the wrong place.

Officer Eve asked for Mr. Tchinda’s information, and Mr. Tchinda provided his name and date of birth. However, when the officer asked for his social security number, Mr. Tchinda stated he did not know. The officer claimed that Mr. Tchinda refused to provide his information and would be arrested. Mr. Tchinda did not understand how the officer could claim that he refused to provide his information when he gave his name, date of birth, and his additional information was attached to the license plate.

Officer Eve arrested Mr. Tchinda and claimed he resisted arrest, which Mr. Tchinda denied. Mr. Tchinda asked for a friend to move the vehicle rather than have it towed, but Officer Eve refused.

Allegations:

Improper Seizure

Persons Involved:

Officer Brent Eve, #P0647, M/W/39 (CPD, Involved)
Specialist Jeffrey Bley, #PS306, M/W/52 (CPD, Witness)
Officer David Hayes, #P356, M/W/40 (CPD, Witness)
Sergeant Benjamin Schneider, #S0100, M/W/50 (CPD, Witness)
Maxime Tiomagwou Tchinda, M/B/24 (Citizen, Complainant)

Evidence Reviewed:

Hamilton County Clerk of Courts
City of Cincinnati Citation Portal

CPD Records

- 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

Significant Clarifications:

1. Mr. Tchinda was cited for Cincinnati Municipal Code (CMC) §508-26 Parking at Curbs and CMC §508-6 No-Standing, No-Stopping and No-Parking Zones. He was charged with Ohio Revised Code (ORC) §1921-29 Failure to Disclose Personal Information, ORC §2921-33 Resisting Arrest, and CMC §506-47 Pedestrian Violation. The first two charges were dismissed; the third charge was convicted by plea.
2. The incident date, time, and officer's name were identified for the Complaint Summary.

Authorities:

ORC Section §2935.23 Minor Misdemeanor citation

ORC Section §2921.29 Failure to disclose personal information

CPD Procedure §12.205 Traffic Enforcement (Revised: 08/01/2019)

CPD Procedure §12.555 Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders (revised 08/19/2021) ("A police officer must issue a citation to appear in court rather than physically arrest an individual for any violation which is a minor misdemeanor . . . unless . . . [t]he individual cannot or does not offer satisfactory proof of identity, *except pedestrian violations* (refer to Procedure 12.205).

Analysis:

During routine patrol, Officer Eve observed several vehicles parked in a No Parking Zone, including Mr. Tchinda's vehicle. BWC footage showed Officer Eve and Specialist Bley began at opposite ends of the street to issue citations; Mr. Tchinda's vehicle was the first vehicle on Officer Eve's end of the street. CPD Procedure § 12.205 Traffic Enforcement directs officers to objectively enforce parking regulations. Officer Eve issued a citation for Cincinnati Municipal Code § 508-6 "No Standing, Stopping, Parking Anytime." BWC footage confirmed Mr. Tchinda's vehicle was parked next sign which read, "No Stopping Parking Any Time – Tow Zone." Therefore, Officer Eve's decision to stop and issue a citation was within CPD's policy, procedure, and training.

Allegation: Improper Seizure

Per BWC footage, Mr. Tchinda approached as Officer Eve wrote the citation. Officer Eve directed Mr. Tchinda to move the vehicle, but Mr. Tchinda refused. As they discussed the situation further, Officer Eve gave Mr. Tchinda multiple verbal commands to exit the street; when Mr. Tchinda did not immediately comply, Officer Eve asked Mr. Tchinda for his ID, but Mr. Tchinda stated he did not have it. Officer Eve requested Mr. Tchinda's name, date of birth, and address; Mr. Tchinda provided his name and date of birth but declined to provide his address, claiming Officer Eve could obtain that information after querying his name and looking up the temporary tags on his vehicle. In his interview, Officer Eve stated that based on Mr. Tchinda's actions, he decided to arrest Mr. Tchinda for failing to identify himself.

ORC Section §2935.23 Minor Misdemeanor citation states that when a law enforcement officer is otherwise authorized to arrest a person for the commission of a minor misdemeanor, the officer shall not arrest the person, but shall issue a citation.” It lists exceptions, including “(2) the offender cannot or will not offer satisfactory evidence of his identity.” ORC Section §2921.29 Failure to disclose personal information further clarifies “no person who is in a public place shall refuse to disclose the person’s name, address, or date of birth, when requested by law enforcement officer that reasonably suspects (1) the person is committing, has committed, or is about to commit a criminal offense.”

Applying these statutes to the evidence in this case, it appears that Officer Eve had probable cause to arrest Mr. Tchinda for Failure to Disclose and the pedestrian violation of jaywalking (CMC §506-47). Nonetheless, the most logical interpretation of CPD Procedure Manual 12.555 (Arrest/Citation), subsection D, is that officers are prohibited, as a matter of policy, from making physical arrests based on an offender’s failure to identify themselves when the criminal conduct at issue is a pedestrian violation.

CPD Procedure §12.555 Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders states that an officer must issue a citation rather than physically arrest an individual for any violation which is a minor misdemeanor. However, the procedure clarifies that while there are exceptions which necessitate a physical arrest, such as when “the individual cannot or does not offer satisfactory proof of identity,” it specifically excludes “pedestrian violations.” Mr. Tchinda’s charge for Failure to Disclose Personal Information stemmed from failing to provide information that Officer Eve was seeking for the purpose of citing Mr. Tchinda for a violation CMC §506-47 Pedestrian Violation (a minor misdemeanor). Rather than permit a physical arrest under such circumstances, Procedure §12.555 instructs officers that they must follow a separate policy, “Procedure §12.205,” which in turn requires the officer to “[m]ake every effort to obtain proof of identification from the violator,” but nowhere permits the arrest that Procedure §12.555 forbids. Therefore, CCA determined Officer Eve was not within CPD’s policy, procedure, and training when he physically arrested (i.e. seized) Mr. Tchinda for charges precipitated by a pedestrian violation.

Findings:

Officer Brent Eve

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

Recommendation:

Recommendation #R2209


Arrest Policy/Procedure

CCA recommends CPD reconsider and clarify the language in CPD Procedures §12.205 (Traffic Enforcement) and CPD Procedure §12.555 (Arrest/Citation) to ensure the regulation provides unambiguous and congruous guidelines for officers on the question of what enforcement action should apply to violators of pedestrian offenses (such as jaywalking or playing in the street) who refuse to identify themselves or are unable to do so.

A review of CPD Procedural Manual showed crucial incongruities and ambiguities pertaining to policy-produced guidance for officers encountering pedestrian violators. Specifically, CPD

Procedure §12.555 Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders states that, regarding violations that are minor misdemeanors, officers must issue citations rather than physically arrest individuals unless the situation meets specific requirements. Among those exceptions, the policy stipulates that a physical arrest would be necessary if “the individual cannot or does not offer satisfactory proof of identity, *except* pedestrian violations (refer to Procedure 12.205) (emphasis added)” CPD Procedure §12.205 Traffic Enforcement instructs officers to “make every effort to obtain proof of identification from a [pedestrian violator].” The policy continues that “if the pedestrian violator does not possess some kind of identification, the officer shall attempt to obtain accurate information in order to properly complete the citation, through careful and courteous questioning.” Accordingly, under the most logical reading of those policies, while an officer may be able to physically arrest an individual under the ORC for failing to disclose information to be used in writing a jaywalking ticket, such an arrest would be outside Department policy. However, the policy does not provide further instruction for officers or citizens on what must occur if the officers have made “every effort” to obtain proof of identification but are still unable to obtain “accurate information in order to properly complete the citation.” Instead, officers must refer back to CPD Procedure §12.555, which does not allow the officer to make a physical arrest for failure to identify.

This vagueness is problematic and leaves several questions unanswered for officers and the community. For example, what must occur if a citizen fails to provide identification or is unable to do so during an extensive attempt to get the information for purposes of completing a citation for jaywalking or playing in the street? Must a warning be given in lieu of a citation, or should some other process apply? For purposes of completing a citation, must the officer rely on other information proving identity that is readily ascertainable in spite of the citizen’s refusal to speak or provide certain pieces of information? The language of CPD Procedure §§12.555 and 12.205 should be revised to provide greater clarity with respect to these issues.



Jessalyn Goodman, Investigator



Gabriel Davis, Director

July 15, 2022

Date

Previous Contacts and Commendations:

Officer Brent Eve

Previous Contacts with CCA

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

Case Number	Allegation	Finding
19181	Excessive Force (Physical)	Unfounded
20006	Discourtesy	Referred
20149	Discourtesy	Referred
21033	Lack of Service	Referred
21033	Discourtesy	Referred
21147	Discourtesy	Referred
21147	Harassment	Referred
21147	Improper Procedure	Referred

Previous Contacts with IIS

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

Case Number	Allegation	Finding
18121	Improper Procedure (Improper Arrest)	Unfounded
18121	Other (Insubordination)	Unfounded

Commendations

Officer Eve has not received any commendations in the past three years.