



CCA Case No. 22066

**Discharge of a Firearm - Britt Born
Investigation Report and Finding**

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COMPLAINT SUMMARY

Date: March 5, 2022

Time: 11:20 AM

Location: Corner of McMicken and Dunlap, Over-the-Rhine

CCA Receipt: March 23, 2022

On March 5, 2022, at approximately 11:20 AM, at the 5k Bock Fest race, Ms. Britt Born observed Officer Kevin Butler discharge his firearm toward an unleashed dog who was involved in a fight with another dog who was leashed with its owner.

Ms. Born also expressed concern over the apparent lack of investigation or follow-up regarding and alleged dismissal of a firearm discharge investigation.

INVOLVED SUBJECT STATEMENTS

Britt Born

CCA interviewed Ms. Born on March 31st at 3:30 PM. She provided the following information:

On March 5, 2022, Ms. Britt Born, F/W/Unknown, participated in the 5K race associated with Bock Fest. Ms. Born noticed an unleashed dog running down the sidewalk; the dog appeared to be “happy to be a part of the race” and people along the race route were, “cheering for him, laughing and commenting on how happy he was.” Ms. Born attempted to catch up to the dog and asked if the dog belonged to anyone, but no one knew to whom the dog belonged.

As Ms. Born ran down the hill, she noticed a person with a dog on a leash. The unleashed dog “bounced right up to the leashed dog with his tail wagging,” but it was evident that the leashed dog and her owner were “startled.” From Ms. Born’s experience in working with rescue dogs she realized that this was a “high anxiety situation that could easily end in a dog fight.” As she ran up, “The leashed dog snapped at the unleashed dog, and a dog fight ensued.

To avoid sticking her hands in between the dogs, she “kicked” at the dogs to get them to separate. “An officer working the race detail ran through race participants with his gun drawn. He stopped several feet back from the scuffle and aimed his weapon.” The officer moved around the scuffle to attempt to “pull off a good shot.” The officer ultimately fired two shots at the unleashed dog. “One shot passed through the unleashed dog, bounced off the ground, and hit the leashed dog.” Ms. Born expressed concern that the bullets could have hit “anyone.” Ms. Born stated to CCA that the SCPA needed to be called so the other dog could be humanely euthanized, but she stated that her request, “fell on deaf ears.”

After the incident, Ms. Born provided her information to the officer who fired the shots. He told her, “He didn’t see anything only saw two dogs fighting and ran over.”

After the incident, she was told, “There would not be an incident report, and no one would be calling to take my statement because ‘it wouldn’t change anything.’” Ms. Born expressed concern

that it took her, “calling Sgt. Brazile multiple times with no return phone calls, calling Internal, and eventually contacting the chief before someone reached out to me to take my statement.” Ms. Born further expressed concern for CPD’s lack of motivation to obtain party witness statements. Specifically, she expressed concern with three aspects of the case, “The poor investigation and lack of reports; firing a weapon in a large group of people and pointed at the asphalt where it will surely ricochet; and the assumption that the dog’s attack was unprovoked or that the bully breed is inherently to blame for what occurred.”

**INVOLVED
OFFICER
STATEMENTS**

Officer Kevin Butler

Officer Kevin Butler, #P0128, M/B/46, is currently assigned to District 2, and he has been a CPD member since 2003. Officer Butler was in uniform, working an off-duty detail, and operated a marked cruiser; his BWC was not activated until after the discharge of his firearm.

CCA interviewed Officer Kevin Butler on June 8, 2022, at 9:00 AM. He provided the following information:

On March 5, 2022, Officer Butler worked an off-duty detail; assigned to a traffic post at Bock Fest 5K. As the race occurred, he noticed a person standing on side of the street with Weimaraner breed of dog that was leashed. Officer Butler then “heard dogs barking and growling, one dog yelping like it was hurt.” He observed a brown Pitbull attacking the other dog, specifically, “the owner tried to pull its dog by the leash, but the Pitbull had it by the neck. From what I understand it’s how dogs attack other dogs to kill the other dog.” Officer Butler stated to CCA, “I discharged my firearm to keep the Pitbull from trying to kill the Weimaraner.” Before he discharged his firearm, he “told everyone that was around told to step back, including the owner of the other dog.” Officer Butler “shot the Pitbull once,” but it continued to “attack.” Officer Butler “discharged it again and the Pitbull disengaged, walked away, and rested in the street near the yellow lines.”

Officer Butler was approximately within a foot from the Pitbull. After the incident, he spoke with Ms. Born and got her information. Another officer came and spoke to the owner of Weimaraner. The Pitbull had no collar or leash or presence of an owner in “a timely manner.” Ms. Born stated the Pitbull acted appropriately. He stated that he “didn’t see the initial interaction between the dogs but heard one dog growl and one dog cry” Officer Butler further stated that he, “didn’t want to stand there while the Pitbull killed the other dog.” He passed her information along to another officer who passed it to Sergeant Brian Brazile, he did an investigation for the Discharge of Firearm. He stated his finger was not on the trigger at any time other than to engage the Pitbull.

Officer Butler acknowledged that he shot into a roadway and felt confident that his bullets were going to hit the dog. After twenty minutes the Pitbull’s owner showed up. He stated, “Their story was that the dog ran out of the house as they were giving it a treat and it became a part of the race before it encountered the other dog.”

He stated that his BWC was not turned on. After the incident he activated his BWC.

Sergeant Brian Brazile

Sergeant Brian Brazile, #S0398, M/B/51, is currently assigned to Central Business Section, and he has been a CPD member since 1999. Sergeant Brazile responded to the scene because Officer Butler discharged his firearm; his BWC was activated.

CCA interviewed Sergeant Brian Brazile on May 6, 2022, at 2:00 PM. He provided the following information:

Sergeant Brazile was the supervisor assigned to the Bock Fest 5K. There were multiple officers outside working the race that day. Officer Kevin Butler via radio stated that he “struck a dog.” Sergeant Brazile responded to the scene and Officer Butler stated, “a dog ran down McMicken southbound and when it got to corner, it began attacking another dog.” Sergeant Brazile continued, “He had other dog in life threatening lock. He had to discharge his firearm to stop the attack of the aggressive dog of the smaller dog.” The shot took effect, and he released his hold on the other dog. Sergeant Brazile did not recall if Ms. Born was on scene but instructed his officers to “take down everyone’s information.” Sergeant Brazile completed his investigation and completed an ESL for Officer Butler not having his BWC on during the incident. Sergeant Brazile stated to CCA Officer Butler’s BWC was not on during the incident, because “things happened fast, he didn’t have time to put it on, but he did put it on after he relaxed.”

During Sergeant Brazile’s investigation of Officer Butler’s discharge of a firearm, he attempted to contact Ms. Born in the days following the race, but he alleged that his call went unanswered. Sergeant Brazile spoke with the owners of both dogs and witnesses whose information was gathered at the scene. Both dogs were taken to MedVet.

WITNESS OFFICER STATEMENTS

Officer Carrie Hollyfield

Officer Carrie Hollyfield, #P0159, F/W/49, is currently a School Resource Officer, and has been a CPD member since 2014. Officer Hollyfield was on routine patrol, in uniform and operated a marked cruiser; her BWC was activated.

CCA interviewed Officer Hollyfield on May 11, 2022, at 10 AM. She provided the following information:

Officer Hollyfield was working a 5K traffic detail. From her post she heard dogs barking and fighting; she ran towards the sound to inquire about the commotion. Prior to reaching the dogs, she heard screaming and two gunshots. When she arrived, she saw Officer Butler standing in front of the Pitbull, in the raceway.

The owner of the “Brown Labrador” was on scene, and she quickly obtained his contact information before he transported his dog to an animal hospital. Witness A’s dog was still on the leash; he picked her up and walked her to their vehicle. Officer Hollyfield “saw blood everywhere and the dog’s eye was messed up.” Officer Butler asked Officer Hollyfield to obtain witness statements. Officer Butler sat in a cruiser until Sergeant Brazile arrived. There was a woman parked westbound, in an SUV; Officer Hollyfield obtained her name and her information.

WITNESS STATEMENTS

Witness A

CCA interviewed Witness A (M/W/Unknown) on May 17, 2022, at 11AM. He provided the following information:

Witness A and his dog, Gia, a leashed Weimaraner, stood along the Bock Fest 5K route to cheer on people who participated in the event. Witness A observed an unleashed Pitbull running towards them, and it immediately attacked Gia. The Pitbull had its jaw clenched on Gia's neck and witnesses attempted to punch and kick the Pitbull to free Gia from his jaw. The Pitbull "let up" but regained control of the Weimaraner by readjusting his grip on her neck. Officer Butler ran over to the sidewalk where Gia was attacked. From approximately one foot away, Officer Butler discharged his firearm once and it appeared to have no effect. Officer Butler discharged his firearm again and the Pitbull relinquished his grip on the Weimaraner; the Pitbull stumbled to the middle of the raceway where he eventually collapsed. Witness A's hand was bit during the incident.

Witness A transported Gia to MedVet where they addressed her wounds and prepared her for surgery; she lost all sight in her left eye. Although shrapnel struck Gia, Witness A believed that Officer Butler saved Gia's life; if not for Officer Butler's intervention, the Pitbull would have killed Gia. Witness A stated that he observed Pablo walk into MedVet after he arrived with Gia.

Witness B

The unleashed dog's owner, Witness B, M/Unknown/36, was unable to be interviewed. CCA attempted to contact Witness B by telephone, but there was no response. To date, Witness B has not contacted CCA.

EVIDENCE

Police Documents

CCA reviewed all CPD-related forms, including but not limited to Evaluation Supplement Log (ESL), Civil Citation #9812, Supervisor Investigation Form, Tactical Review and information from CPD's Records Management System (RMS).

Photographs

CCA reviewed numerous photographs of the scene.

Firearm Qualifications and Discharges

Officer Butler's firearm qualification occurred on July 19, 2021. Officer Butler discharged his firearm twice times during the incident.

Body Worn Camera (BWC)

Officer Kevin Butler

The events recorded by Kevin Butler's BWC occurred on March 5, 2022, starting at 10:36:43, according to the BWC's timestamp. A review of that recording reveals the following:

A brown and white unleashed dog was standing then laid down in the street. As runners pass by blood can be seen on Officer Butler's hand. A friend of the unleashed dog's owner ran toward his dog which was bleeding and laying in the road. Ms. Born approached Officer Butler and stated that she saw the entire interaction. Officer Butler got her contact information and took a statement from her. She stated, it was an "appropriate interaction" and the leashed dog snapped at the unleashed dog who then "reacted." Ms. Born stated that she was fearful that the narrative would just be from that of the leashed dog owner. Officer Butler responded, "There is no narrative, there is only me, seeing a dog that's not on a leash, a Pitbull, attacking another dog. I had to make a split-second decision to save a dog's life." Runners passed by and expressed concern for the dog who was on the ground.

As Officer Butler sat in the front passenger's side of the cruiser and Sergeant Brazile approached, Officer Butler stated, "I would never want to do something like that. I just felt like there was no other real choice to make." Sergeant Brazile asked if the deceased dog was "getting the best" of the other and Officer Hollyfield responded, "It was bad. The owner's friend said he was getting the dog a treat and when the door unlatched, he took off." Sergeant Brazile stated, "I had to make sure that criminalistics wasn't supposed to come down, but since no human was affected, we do our own investigation."

Officer Carrie Hollyfield

The events recorded by Carrie Hollyfield's BWC occurred on March 5, 2022, starting at 10:38:11, according to the BWC's timestamp. A review of that recording reveals the following:

Officer Hollyfield's BWC was activated as she approached the scene. The brown and white dog laid in the road and another dog, which was grey in color, laid on the sidewalk surround by blood. Lacerations can be seen on the grey dog's mouth and head; it appears that it's left eye is gone. Runners helped Witness A lift the grey dog to the vehicle and they rushed her to the MedVet on Red Bank.

An unknown witness stated that she saw the whole interaction and Officer Hollyfield proceeded to take her statement. The witness stated, she "was walking up the road and saw the guy with the brown dog sitting there and clapping for the runners. She got in her car and heard screaming and through her mirrors saw the dogs "going at it." There were 4 or 5 people around them and they couldn't get them off and then she turned back around and heard shots. Pablo remained on scene approximately 25 minutes until he was transported to MedVet in what appeared to the personal vehicle of a witness who was parked on the street.

Sergeant Brian Brazile

The events recorded by Brain Brazile's BWC occurred on March 5, 2022, starting at 10:42:51, according to the BWC's timestamp. A review of that recording reveals the following:

When Officer Brazile arrived on scene, Officer Hollyfield explained what transpired. A witness stated to Sergeant Brazile that the other dog looks like his face was attacked. The witness asked

if someone would help the dog who was shot and he responded that, "SCPA was in route." He obtained the contact information for that witness.

Medical Records

CCA reviewed Medical Records from MedVet Cincinnati:

Pablo, (Male/Neutered/American Pitbull) was seen on March 5, 2022, after getting into a fight and shot. The doctor found that, "All findings are consistent with ballistic intrathoracic trauma. A Metallic bullet/pellet is presumed to of entered the patient at a level lateral to the left scapula/left caudal dorsal neck/left cranial dorsal thoracic region, with the bullet traversing medially and ventrally through the cranial thoracic cavity to come to rest in the right ventral/distal axillary soft tissues. Only one bullet/pellet is identified." The MedVet report mentioned a human dog bite, it reads, "Discussed with owners that Pablo did bite someone. For any dog that bites a person and is euthanized or passes away, we must send away samples for testing. Explained that the owners will hear from public health as the government tracks bite wounds due to rabies. Owners understanding. Pablo was ultimately euthanized in the presence of his owner, [Witness B]."

Gia, (Female/Spayed/Labrador) was seen on March 5, 2022, after she was "attacked." The doctor wrote, "Bullet within the left side of the skull, soft tissue swelling around the orbit and globe. No evidence of trauma to the chest, neck, or trachea on radiographs. The best recommendation is to hospitalize Gia on fluids and pain meds to stabilize her overnight then transfer to surgery."

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

1. There are discrepancies regarding whether the leashed dog "snapped" at the dog which was ultimately shot.
 - a. In Ms. Born's statement, she indicated that the incident began when, "The leashed dog snapped at the unleashed dog, and a dog fight ensued." Conversely, Witness A stated the unleashed ran up and immediately began attacking Gia. Other witnesses interviewed at the scene indicated that they did not see the initial interaction; rather, their attention was caught by the sound of the dogs fighting.
 - b. Officer Butler's BWC captured him telling Witness B, an acquaintance of Pablo's owner, that Officer Butler shot Pablo after Pablo "was attacking that dog over there, unprovoked." He continued, "That dog was standing there with his owner, and your dog ran up and latched onto his neck." He did not state that he observed those facts, but seemed to be relaying hearsay. Officer Butler told CCA that he did not see the initial interaction between the dogs."
2. Medical records for Gia referred to her as a Labrador. Gia's owner, Witness A, and others, referred to Gia as a Weimaraner.

I. CPD Procedure Manual (in part)**§ 12.115 Handling Wild/Exotic Animals, Dangerous/Vicious Dogs, and Animal Reports**

Policy:

Department members will exhaust every reasonable means before using firearms to dispose of vicious dogs, dangerous dogs, or wild and potentially dangerous animals as defined in Cincinnati Municipal Code (CMC) Sections 701-1-D-1, 701-1-V or 701-42. Use of the firearm should always involve consideration for the safety of bystanders.

J. Humane Destruction of Dangerous/Sick/Injured Wild Animals

1. Sworn personnel may, when reasonable, use their firearm to prevent an undomesticated wild animal from inhumane suffering or to protect themselves and others from a dangerous animal.
 - a. When applicable, sworn personnel should utilize the animal's owner to gain control over a dangerous animal or render aid to an injured animal.
2. In deciding whether it is necessary to destroy a wild animal, an officer must consider the type and size of the animal as well as the urgency to prevent prolonged suffering. An officer may use his service pistol to euthanize an animal if it appears to be:
 - a. A danger to the officer or the public
 - b. Seriously injured
 - c. Disabled or diseased past recovery
 - d. Unfit for useful purpose.
3. When an officer deems it necessary to destroy an animal, the officer will immediately request his supervisor to respond to the scene.
4. Officer Responsibilities
 - a. Wear eye and ear protection
 - 1) Ensure the officers, citizens, etc., are far enough behind the officer to avoid the need for eye and ear protection (Approximately 25 to 50 yards away).
 - b. The officer must sue their service pistol for the application.
 - 1) The officer's firearm must remain in the holster until the officer has approached, is stationary and is comfortable enough with the movement of the animal to take the shot.

- c. Approach the animal from the rear on the opposite side of the head and legs to avoid being kecked or thrown off balance.
 - 1) The animal may start to thrash around more when it senses the officer approaching. If that happens, the officer should wait a few seconds and the animal may calm down give the officer a more accurate shot.
 - 2) Wait until the animal is stationary. There may be body movement or thrashing, but the animal cannot be mobile. The officer needs to be sure the animal is immobile enough to take an accurate head shot.
 - a. The shot should be taken up close but far enough away to allow the officer to hold firearm at a downward angle of approximately 34-40 degrees. Officers should not shoot straight down at their feet but approximately 5 feet away.
 - d. When euthanizing a deer aim for the best target locations for the deer with care:
 - 1) In or below the eye with the bullet traveling toward the back of the skull.
 - 2) In the back of the head or the same line as the eye with the bullet traveling toward the front of the skull.
 - 3) Anywhere in the head in line with the eye with the bullet traveling into the skull.
5. Euthanizing animals on asphalt, concrete, or another hard surface
- a. The preferred surface to euthanize the animal is on dirt or grass, not asphalt or concrete.
 - 1) After a bullet strikes a hard object, it is unpredictable. When deciding whether to euthanize an animal on asphalt, concrete or other hard surface, the officer must keep in mind they are responsible for the bullet and any bullet fragments.
 - a. Officers must consider the backstop and should have 180-degree clearance in front of them.
 - 2) If the officer determines there is not an appropriate backstop or that do not have 180-degree clearance in front of them, the SPCA should be contacted to respond to the scene.
6. Supervisor Responsibilities
- a. Respond to the scene.
 - b. Provide the officer euthanizing the animal with eye and ear protection.
 - 1) Each District CDOP van is equipped with protective eye glasses and disposable ear plugs.
 - c. Notify ECC of the shots fired and the outcome.

- d. Complete a Form 18A Supervisor's Preliminary Investigation: Weapons, Discharge at an Animal and forward it through the chain of command.
 - 1) Fax a copy of the report to Inspections Unit.
- e. Notify the District Commander if the incident occurs during regular business hours. During non-regular business hours notify the Night Inspector or Duty Officer of the encounter and outcome.
- f. If the animal is known or suspected to have bit a human, notify the SPCA to pick up the dead animal pending a later examination by the Board of Health.
- g. If the animal is not suspected of biting a human:
 - 1) Notify Ohio Department of Transportation (ODOT) to pick up the dead animal if located on an expressway.
 - 2) Notify the Department of Public Services to pick up the dead animal if located on a city street.

§ 12.550 Discharging of Firearms by Police Personnel

Policy:

The most serious act in which a police officer can engage is the use of deadly force. The authority to carry and use firearms in the course of public service also carries with it the highest level of responsibility. Respect for human life requires that police officers exhaust all other reasonable means before resorting to the use of firearms and then only when an officer reasonably believes that such use of firearms is necessary to protect the officer or another from the risk of serious physical harm or loss of life.

In considering the use of firearms, understand that you are responsible for your acts and that you may be required to justify your acts in a court of law. The Hamilton County Prosecutor's Office will determine the legality of actions taken. You are not required to retreat in lieu of the justifiable use of deadly physical force.

The safety of innocent persons is of paramount importance. Where there is substantial risk to the safety or life of an innocent citizen, the safety of the citizen should take precedence over the apprehension of the suspect.

At such time as a police officer perceives what he interprets to be a threat of loss of life or serious physical harm to himself or others at the hands of another, he has the authority to display a firearm, **with finger outside the trigger guard** and have it ready for self-defense. **The finger is only to be placed on the trigger when on target and ready to engage a threat. . .**

Shots Fired at Animals: An officer may, when reasonable, use their firearm to prevent an undomesticated wild animal from inhumane suffering or to protect themselves and others from a dangerous animal. If possible, use one of the following alternative solutions:

- Call the Society for the Prevention of Cruelty to Animals (SPCA). This organization has

equipment to handle most animals safely.

- In some instances, Cincinnati Zoological Society personnel will respond upon request.
- The use of chemical irritant is effective on many animals.

C. Shots Fired at Animals

1. Notify ECS

- a. ECS will notify the appropriate personnel on the Situational occurrences Notification List.

2. The investigating supervisor will complete a Form 18A, Supervisor's Preliminary Investigation: Weapons Discharge at an Animal, including review of the BWC, if applicable.

- a. Fax the Form 18A to Inspections Section.

3. If the shots take effect, and the animal is known or suspected of having bit a human, notify the SPCA to pick up the dead animal pending a later examination by the Board of Health.

4. If the animal is not suspected of biting a human:

- a. Notify Ohio Department of Transportation (ODOT) to pick up the dead animal if located on an expressway.
- b. Notify the Department of Public Services to pick up the dead animal if located on a city street.

5. Refer also to Produce 12.115, Handling Wild/Exotic Animals, Dangerous/Viscous Dogs, and Animal Reports.

II. City of Cincinnati Ordinance

§ 701-1-D-1. Dangerous Dog

A. "Dangerous Dog" Means a dog that, without provocation, has done any of the following:

- a. Caused injury, other than killing or serious injury, to any person;
- b. Killed or caused serious injury to another dog: or
- c. Been the subject of a third or subsequent violation of either Section 701-2 (A) of this chapter or section 955.22 (C) of the Ohio Revised Code.

B. "Dangerous dog" does not include a police dog that has caused injury, other than killing or serious injury to any person or has caused serious injury or killed another dog while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.

§ 701-1-W: Without Provocation

“Without provocation” shall, for the purposes of Chapter 701, mean that a dog which acted in the menacing fashion or caused injury or serious injury was not teased, or abuse by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.”

ANALYSIS

Gia is a grey Weimaraner breed of dog who was leashed and with her owner, Witness A, at the time of the incident. She will be referred to as Gia for the duration of this report.

Pablo was a brown and white American Pitbull breed of dog, who was unleashed and without his owner, Witness B, at the time of the incident. He will be referred to as Pablo for the duration of this report.

Allegation: Improper Discharge of a Firearm

Ms. Born raised concerns regarding Officer Butler’s discharge of his firearm at the 5K race associated with Bock Fest that fatally wounded an unleashed dog.

Per CPD Procedure Manual § 12.115 (Handling Wild/Exotic Animals, Dangerous/Vicious Dogs, and Animal Reports), “Department members will exhaust every reasonable means before using firearms to dispose of vicious dogs, dangers dogs, or wild and potentially dangerous animals as defined in Cincinnati Municipal Code (CMC) Sections 701-1-D-1, 701-1-V or 701-42.”

CMC section 701-1-D-1 defines a dangerous dog as a dog that has, without provocation, done any of the following:

- Caused injury, other than killing or serious injury, to any person
- Killed or caused serious injury to another dog; or
- Been the subject of a third or subsequent violation of either Section 701-2 (A) of this chapter or section 955.22 (C) of the Ohio Revised Code

The CMC defines “without provocation” as “a dog which acted in the menacing fashion or caused injury or serious injury was not teased, or abuse by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.”

Accordingly, under CPD’s policy, § 12.115 Handling Wild/Exotic Animals, Dangerous/Vicious Dogs, and Animal Reports, Officers are permitted to shoot a “dangers dog” as that term is defined by the Cincinnati Municipal Code, if certain criteria under § 12.115 are met.

A. Defining “Dangerous”

Because Pablo caused serious injury to another dog and “was not teased, tormented, or abused by a person” while causing such injury, Pablo acted “without provocation,” under the CMC and thus met § 12.115’s definition of a “dangerous dog.” Ms. Born’s allegation that Gia “snapped” at

Pablo has been contested by another witness, Witness A. However, even if assumed to be true, such action by Gia does not meet the CMC's standard for "provocation."

It is also noteworthy that despite the fact that Officer Butler was likely not aware of the fact that Pablo had allegedly bitten Witness A's hand at the time of the shooting, that fact corroborates the dangers that Officer Butler perceived when he discharged his weapon.

B. Reasonableness

Given that Pablo qualified as a "dangerous dog" under CPD Procedure § 12.115 required Officer Butler "to exhaust every reasonable" option before discharging his firearm at Pablo. The policy ultimately permitted Officer Butler to, "when reasonable," use his firearm "to protect [himself] and others from a dangerous animal." The reasonableness of his actions must be viewed in the context of what he reasonably perceived when he first confronted Pablo and Gia.

In his CCA interview, Officer Butler stated that he was working an off-duty detail when he heard the sounds of dogs fighting; specifically, he heard one dog growling and the other whimpering. As he approached the dogs, he observed Pablo locked onto Gia's neck. Witness A and Britt Born also indicated in their interviews that bystanders and Witness A attempted to punch and kick the other dog in an effort to get it to release Gia from his grasp, but their attempts were unsuccessful. Officer Butler stated that he announced that he was going to discharge his firearm and told people to stand clear. He discharged his firearm once, but Pablo's jaw was still locked on Gia's neck. Officer Butler discharged his firearm a second time and Pablo released his grasp.

Statements of unknown witnesses were taken at the scene and captured on BWC; they provided statements of what transpired and were captured directly following the incident. One witness stated, she "was walking up the road and saw the guy with the brown dog sitting there and clapping for the runners. She got in her car and heard screaming and through her mirrors saw the dogs "going at it." There were 4 or 5 people around them and they couldn't get them off and then she turned back around and heard shots.

Officer Butler expressed on BWC, "I would never want to do something like that. I just felt like there was no other real choice to make." Witness A stated that Gia would be dead if not for Officer Butler's action.

Based on all of these facts—in particular the officer's perception of life-threatening harm to another dog as corroborated by Witness A; the risk that persons might also be harmed by Pablo; and the multiple witness statements that attested to unsuccessful efforts by certain individuals onsite to forcibly remove Pablo from Gia by striking Pablo before the shooting—the evidence more likely than not supports a conclusion that Officer Butler acted reasonably to protect others from danger. To be sure, Officer Butler discharged his weapon with bystanders positioned nearby, and he discharged it while it was aimed toward the ground, but those facts must be weighed against the dangers that he reasonably perceived and against the failed attempts by others to dislodge Pablo.

Given that CPD's policy allows officers to discharge their firearms on dogs determined to be "dangerous" by CMC's standards in situations where it is reasonable to do so and where protection of life is at stake, CCA found that Officer Butler's actions were within CPD policy, procedure, and training.

Allegation: Improper Procedure

Ms. Born expressed concerns with CPD's subsequent investigation of Officer Butler's discharge of firearm; she specifically mentioned Sergeant Brazile.

CPD Procedure Manual § 12.115 (Handling Wild/Exotic Animals, Dangerous/Vicious Dogs, and Animal Reports) and § 12.550 (Discharging of Firearms by Police Personnel), in relevant part, require a supervising officer who responds to the scene of an animal shooting by police to take the following steps in investigating the incident: i) "respond to the scene;" ii) "notify ECC of the shots fired and outcome;" iii) "complete a Form 18A Supervisors Preliminary Investigation" to document the preliminary investigation; and iv) notify outside agencies to remove the body of the animal, if deceased.

Sergeant Brazile responded as supervisor after Officer Butler radioed his discharge of firearm. BWC evidence confirmed that upon his arrival on scene, Sergeant Brazile instructed responding officers to obtain contact information for all witnesses who were at the scene. As part of his investigation, he contacted witnesses, MedVet, and Gia and Pablo's owners.

As confirmed by CPD's database, Sergeant Brazile completed a supervisory investigation report and completed a tactical review of Officer Butler's discharge of firearm in which he found that Officer Butler's actions were tactically sound. Also available were images that he took at the scene, medical reports and X-Rays obtained from MedVet, and BWC which he flagged for retention. Officer Butler indicated that he spoke to Witnesses A and B and attempted to contact Ms. Born, but he alleged his call was not returned.

CCA found that Sergeant Brazile met CPD's standards for conducting an investigation of the incident. Any materials from that investigation not subject to disclosure under a public records request would not have been readily available to members of the public, including witnesses to the shooting. Furthermore, CPD policy does not appear to require officers who are investigating a shooting to provide early updates to witnesses on to the investigative steps undertaken, even witnesses who express a concern pertaining to a particular use of force. To be sure, CPD Procedure Manual § 15.100 (Citizen Complaints and Reports of Favorable Police Conduct) requires that the "complainant will be kept informed, every 30 days, regarding the status of" an investigation into their complaint, but this provision does not appear to apply to shootings absent a complaint, and the investigation that is the subject of this CCA complaint addressed actions that all occurred within 30 days of when Ms. Born first provided her information to CPD onsite, meaning that there was no failure to communicate with her that is actionable under CPD policy. CCA found no evidence that any officer broke policy with respect to quality of service or investigation.

Collateral Allegation: Improper Procedure (BWC Violation)

Officer Butler admittedly failed to activate his BWC prior to discharging his firearm. Officer Butler activated his BWC and captured the aftermath of the incident. CPD Procedure § 12.50, "Equipment is the responsibly of the officer assigned" and "Officers who fail to use the equipment as required or fail to report damage to the equipment are in violation of the Manual of Rules and Regulations and are subject to the disciplinary process for the CPD." Sergeant Brazile completed a negative Employee Supplemental Log (ESL) for Officer Butler for failing to have his BWC activated at the time of the incident. CCA found that Officer Butler violated CPD policy procedure of training when he failed to activate his BWC.

FINDINGS

Original Allegations

Officer Kevin Butler

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

Sergeant Brian Brazile

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

Collateral Allegation

Officer Kevin Butler

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

RECOMMENDATION

Recommendation #R2208

Use of Force Policy/Procedure: Discharging of Firearms Policy/Procedure

CCA recommends that 1) CPD institute a practice of convening the Firearms Discharge Board (FDB) or Critical Incident Review Board (CIRB) for any firearm discharge directed at an animal where such firearm discharge occurred in close proximity to an individual person, or where the animal who was targeted by such discharge was positioned in close proximity to an individual person at the time of the discharge; and 2) that any police policies or procedures that would prohibit the convening of such Boards be amended to permit the same if necessary.

CPD Procedure § 12.550 Discharging of Firearms states that the “Police Chief has authorized a comprehensive review of critical firearm discharges,” which are “defined as: [a]ll shots fired by Department employees,” with the exception of (among other things) situations where shots are fired “[a]t animals.” Procedure 12.550 provides that in situations where FDB is convened, it should issue a final report to the Police Chief within 90 days of receipt of material relevant to the shooting. The report is required to “identify training issues and corrective measures, tactical response issues and corrective measures, and outline any recommended policy and/or procedure.” While the FDB has not been historically convened in situations involving animal shootings, CCA believes an exception is warranted in cases where an officer shoots an animal while a human being is nearby in close proximity, given the heightened risk to human life that is involved with such shootings.

Similarly, CPD has recently created a Critical Incident Review Board (CIRB) as a “quality control

mechanism” for critical incidents, including firearms discharges. See CPD Procedure § 12.545 Use of Force (Revised 01/28/21). CIRB’s purpose is to conduct “a detailed and comprehensive review” of such discharges and “to recommend to the Police Chief changes in investigative protocols, procedures, and training.” Shootings of animals, however, are exempt from review by the CIRB, according to Procedure § 12.545, even in cases where an officer shoots an animal while human beings are nearby in close proximity. Again, we believe an exception is warranted where a shooting of an animal occurs while an individual is proximate, given the heightened risks.

While there are forums other than the CIRB or FDB that exist to probe discharges of firearms—including concurrent investigations of citizen complaints by CCA and IIS—a CIRB or FDB review still adds tremendous value. Among other things, those other reviews convene a broad array of command and supervisory personnel with valuable perspectives on the issues under consideration, and they review tactical issues that may be broader than the issues of misconduct considered in other concurrent investigations.



Morgan Givens, Investigator



Gabriel Davis, Director

July 15, 2022

Date

**PREVIOUS
CONTACTS AND
COMMENDATIONS**

Officer Kevin Butler

Previous Contacts with CCA

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

Case Number	Allegation	Finding
20208	Harassment	Pending
20208	Discourtesy	Pending

Previous Contacts with IIS

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

Commendations

Officer Butler had no commendations in the past three years.

Sergeant Brian Brazile

Previous Contacts with CCA

Sergeant Brazile had no previous contact with CCA in the past three years.

Previous Contacts with IIS

CCA is unaware of any additional previous contact by Sergeant Brazile with IIS.

Commendations

Officer Butler had no commendations in the past three years.