

**Case:** 22069

**Investigator:** Robert Stephens

**Complaint Received:** March 29, 2021

**Complainant:** Ndubuisi Ezeh

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**Complaint Summary:**

Date: September 15, 2021

Time: 8:00 PM

Location: Corner of Walnut Street and E Court Street

On September 15, 2021, Mr. Ndubuisi Ezeh was leaving the city streetcar, when he flipped off the conductor due to a conflict they had. Mr. Ezeh left the area only to be followed by a police officer (later determined by CCA to be Officer Kilgore). Mr. Ezeh carried a stick in his hand. Officer Kilgore ordered him to drop the stick, he complied. When Mr. Ezeh tried to leave the area, Officer Kilgore tried to grab him. Mr. Ezeh broke free and was tased. After the first cycle, Mr. Ezeh turned to the officer and said, "Please stop, I have a bad heart." The officer tased him again. Mr. Ezeh said that once arrested, no medical assistance was called. Mr. Ezeh has been arrested and stopped by multiple officers over the past year; he is also concerned that he is being threatened and harassed.

**Allegations:**

Improper Stop  
Improper Seizure  
Excessive Force  
Harassment

**Persons Involved:**

Officer Charles Kilgore, #P0151, M/A/44 (CPD, Involved)  
Officer David Price, #P0562, M/W/47 (CPD, Witness)  
Ndubuisi Ezeh, M/B/40 (Citizen, Complainant)  
Witness A, M/W/37 (Citizen, Witness)  
Witness B, M/W/43 (Citizen, Witness)  
Witness C, M/W/23 (Citizen, Witness)  
Witness D, F/W/22 (Citizen, Witness)  
Witness E, F/W/41 (Citizen, Witness)  
Witness F, F/W/UNK (Citizen, Witness)  
Witness G, F/B/21 (Citizen, Witness)  
Witness H, M/B/21 (Citizen, Witness)

**Evidence Reviewed:**

Hamilton County Clerk of Courts

CPD Records Management System (RMS)  
CPD Computer Aided Dispatch (CAD)  
Summit Behavioral Health Medical Records  
Body-Worn Camera (BWC) of Officers Kilgore and Price  
Statements by officers, complainant, and relevant witnesses

- CCA interviewed Witnesses B, C, and D.
- CCA reviewed video recordings of oral statements by Witnesses A, E, F, G, and H, each of whom provided a statement to CPD Sgt. Kara Graves on the night of the incident. Sgt. Graves investigated the use of force on the scene, and recorded the statements on her BWC.
- CCA attempted to interview Witnesses A, E, F, G, and H, but those attempts were unsuccessful.

### **Significant Discrepancies and Clarifications:**

#### **Mr. Ezeh's Actions Immediately Preceding Tasing**

Officer Kilgore and multiple witnesses who observed relevant portions of the incident gave conflicting accounts pertaining to (i) what Mr. Ezeh was doing immediately before Officer Kilgore's use of his TASER and (ii) where Mr. Ezeh's hands were. While the BWC evidence does not clearly show where Mr. Ezeh's hands were at the time of the second tasing, that evidence establishes that Mr. Ezeh was not moving his body from the ground at the time of the second tasing.

##### *Officer Kilgore*

Officer Kilgore told CCA that when he tased Mr. Ezeh a second time, it was because Mr. Ezeh, who was on the ground, did not comply with the officer's commands, "continued to try to get up in an aggressive manner," and was "trying to push off the ground."

Although the majority of witnesses who saw the second tasing confirmed that they saw Mr. Ezeh fail to comply with commands, no witness recounted any observations corroborating Officer Kilgore's statement that Mr. Ezeh was trying to get up from the ground before being tased a second time. Neither does the BWC corroborate that assertion.

Officer Kilgore has never stated that Mr. Ezeh's hands were concealed at the time of the second tasing.

##### *Witnesses A and B*

Witnesses A and B jointly told Sgt. Graves that Mr. Ezeh did not place his hands behind his back after an initial tasing, and then received a second tasing, after which time he placed his hands behind his back. They both explicitly denied that Mr. Ezeh was "combative." One of them said "He was just laying on his stomach with his hands up around his head." The other witness stated, "He was not being violent, but he was not complying."

In CCA's interview of Witness B, when asked if he saw if Mr. Ezeh was trying to get up, Witness B said that "he was relatively incapacitated."

### *Witnesses C and D*

Witness C told Sgt. Graves (in Witness D's presence) that while on the ground after being tased, Mr. Ezeh failed to follow commands to put his hands behind his back and instead had his hands underneath him at his stomach or his chest. At that point, Officer Kilgore then tased him the second time.

Witness C later told CCA that after the first tasing, Mr. Ezeh "was trying to turn around to look at them" while he was lying on the ground, and was then tased for the second time. That assertion was not conveyed to Sgt. Graves on the evening of the incident.

Witness D told CCA that after being initially tased, Mr. Ezeh "refused" the officer's directions, but Witness D could not recall what those directions were. Witness D also stated, "I guess he was trying to get away because he was obviously being tased," but Witness D could not recall seeing any physical movements from Mr. Ezeh.

The BWC evidence does not establish Witness C's statement to CCA that Mr. Ezeh was "trying to turn around to look" before being tased, nor is it consistent with Witness D's assumption in her statement to CCA that she "guessed" Mr. Ezeh was attempting to flee because he was "obviously" being tased.

### *Witnesses G and H*

Witness G and H jointly told Sgt. Graves that they observed Mr. Ezeh "on his stomach" on the ground at the time of the second tasing. Witness G stated Mr. Ezeh "was being compliant, just on the ground" and that Officer Kilgore "was tasing him like this [Witness G held right arm out parallel to the ground]. . . . just power, I guess, over him. He wasn't doing anything." Witness H stated that after Mr. Ezech was tased initially, he hit the ground, "he did not move at all then he got tased again." Witness G confirmed she did not see Mr. Ezeh move and then added, "In the way he [Officer Kilgore] tased him it didn't look like he was in danger. Cause if you were scared you would have been moving, he was just standing there like this [Witness G held right arm out parallel to the ground]." When Sergeant Graves asked if Ezech was being violent, they said "no." When asked if Mr. Ezech turned towards the officer, the witnesses said no. They could not hear what Officer Kilgore was saying to Mr. Ezech.

### **Authorities:**

Graham v. Connor, 490 U.S. 386 (1989)  
CPD Procedure § 12.554 Investigatory Stops (Revised 08/19/2021)  
CPD Procedure § 12.545 Use of Force (Revised 08/19/2021)  
CPD Procedure § 12.600 Prisoners: Securing, Handling, and Transporting (Revised 08/19/21)

### **Analysis:**

#### **Allegations: Improper Stop & Improper Seizure**

According to both Mr. Ezeh and Officer Kilgore's statements to CCA, Mr. Ezeh had a disagreement with the streetcar conductor. Officer Kilgore received a call on the radio

stating there was an individual (later identified as Mr. Ezeh), blocking the streetcar and running into traffic. While driving south on Walnut St. Officer Kilgore observed an individual that fit the description provided. Officer Kilgore stated that Mr. Ezeh was carrying a 2-foot-long stick, chasing and screaming at pedestrians, causing them to flee, and swinging the stick while yelling. This was not captured on the BWC, however the BWC does record Mr. Ezeh making several loud outbursts. Officer Kilgore's BWC showed Mr. Ezeh crossing the street three times in the officer's presence alone. Officer Kilgore still driving his cruiser, asked Mr. Ezeh to stay out of the street. During the third crossing, it required Officer Kilgore to apply his brakes before hitting Mr. Ezeh. At this point, Officer Kilgore stated that he intended to arrest Mr. Ezeh for disorderly conduct.

CPD Procedure Manual § 12.554 Investigatory Stops states that when an officer has reasonable suspicion to believe the citizen is committing or has committed a crime, the officer may forcibly stop and detain the citizen. Section 12.554 also provides that an officer may make an arrest when the officer has "probable cause to believe the citizen is committing or has committed a criminal offense." The BWC affirms portions of Officer Kilgore's statements. Officer Kilgore observed the behavior of Mr. Ezeh to be in violation of Ohio Revised Code (ORC) § 2917.11 Disorderly Conduct. Officer Kilgore was within CPD's policy, procedure, and training in detaining Mr. Ezeh.

### **Allegation: Excessive Force**

#### **A. Initial TASER Discharge**

Officer Kilgore exited his cruiser, drew his TASER, and ordered Mr. Ezeh to drop the stick, twice. Then ordered Mr. Ezeh to get on the ground twice as well. The stick is not seen on the BWC prior to the arrest. Mr. Ezeh did not have the stick on him at the time of the tasing. Officer Kilgore attempted to grab Mr. Ezeh's left arm; however, he was unable to take hold. Mr. Ezeh stated, "leave me alone," twice. Mr. Ezeh then lunged further away from Officer Kilgore. Officer Kilgore then deployed his TASER without warning into the back of Mr. Ezeh. Mr. Ezeh fell to the ground after being tased.

CPD Procedure Manual § 12.545 Use of Force states that a Conducted Energy Weapon (CEW)<sup>1</sup> is designed for self-defense or to temporarily immobilize a subject who is "actively resisting" arrest. Section 12.545 also defines "Active Resistance" as when a subject "is making physically evasive movements to defeat the officer's attempt at control, including, bracing, tensing, pushing, fleeing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody."

Mr. Ezeh did not follow the commands of Officer Kilgore to get on the ground, pulled away from Officer Kilgore when the officer attempted to grab Mr. Ezeh's left arm, and also lunged away from the officer. For those reasons, Mr. Ezeh was actively resisting, resulting in the justification of the first CEW deployment. CCA concludes that Officer Kilgore's first CEW deployment was consistent with CPD policy, training, and procedure.

The fact that Officer Kilgore provided no warning of the TASER prior to its deployment, however, invites further scrutiny. CPD Procedure Manual § 12.545 Use of Force provides that when possible, officers must give the subject a verbal warning before a CEW is deployed, unless exigent circumstances exist that would make it imprudent to do so.

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<sup>1</sup> A TASER is a type of CEW.

Officer Kilgore explained in his CCA interview that due to his fear of Mr. Ezeh running into traffic, there was no time for Officer Kilgore to provide a warning. The evidence does not disprove his assertion that he perceived exigent circumstances sufficient to make the provision of a TASER warning impractical.

## **B. Second TASER Discharge**

Mr. Ezeh is not seen in Officer Kilgore's BWC after the first CEW deployment, due to the positioning of Officer Kilgore. Officer Price arrived on the scene with his BWC activated, and a review of Officer Price's BWC provides insight into Officer Kilgore's subsequent TASER deployment.

According to Officer Price's BWC recording, after the initial tasing, Officer Kilgore stood over Mr. Ezeh with the TASER probes still attached, while Mr. Ezeh was on the ground. (From Officer Price's BWC, it appears that Officer Kilgore was standing nearly erect, and was not bent over Mr. Ezeh, which is consistent with the fact that Officer Kilgore's BWC did not capture Mr. Ezeh on the ground.) Officer Kilgore gave the command to "turn around, place your hands behind your back." Officer Kilgore gave this command several times as Mr. Ezeh lay on his stomach below Officer Kilgore. Officer Price's BWC also shows that while Officer Kilgore gave these commands, Mr. Ezeh had his hands positioned to his side, and his hands were not moving. BWC also shows that his legs were together and were not moving. In short, Mr. Ezeh was not moving and was not attempting to flee. At that moment, Officer Kilgore, without warning, administered a second cycle of the CEW to Mr. Ezeh.

CPD Procedure § 12.545, citing *Graham v Connor*, details that, [t]he 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 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..." Section 12.545 details several factors to be taken into consideration to evaluate whether an officer has objectively used reasonable force. Among these factors are:

- The conduct of the person being confronted as reasonably perceived by the officer at the time...;
- The proximity of weapons;
- The distance between the officer and the subject;
- Time and circumstances permitting, the availability of other options (resources that are reasonably available to the officer under the circumstances);
- The seriousness of the suspected offense or reason for the contact with the individual; and
- Whether the conduct of the individual being confronted reasonably appears to pose an imminent threat to the officers or others.

Additionally, Section 12.545 (Procedure Section A), limits the use of a TASER situations where an officer is apprehending a subject who is "actively resisting arrest when there is probable cause to arrest the suspect" or to situations where an officer needs "to defend one's self or another from active aggression."

Several facts cause CCA to doubt that Officer Kilgore's use of a TASER was objectively reasonable and in compliance with CPD policy.

For one, in reviewing the BWC of Officer Price, it is apparent that while Mr. Ezeh's hands were not behind his back, they were at his side. No one has ever reported observing a weapon near Mr. Ezeh at the time of the second tasing, or seeing him reach for anything with his hands. While one witness (Witness C) stated to CPD that Mr. Ezeh's hands were underneath his body at the time of that tasing, no witness repeated that observation, and Officer Kilgore did not report observing Mr. Ezeh's hands underneath his body.

Second, Mr. Ezeh was under arrest for Disorderly Conduct, a misdemeanor in the fourth degree. Accordingly, the offense for which he was being detained was relatively minimal.

Third, Mr. Ezeh's conduct at the time of the second tasing cannot be reasonably perceived as threatening or confrontational. Officer Kilgore gave several commands for Mr. Ezeh to "turn around" which he failed to do; Mr. Ezeh continued to lay on his stomach. It is notable, however, that if Mr. Ezeh had turned around and rolled over onto his back while on the ground, and then placed those hands behind his back as commanded, he would have been concealing his hands, increasing the risks to all. Such action also would have been counter to the imperative that officers must generally handcuff suspects from the rear. CPD Procedure § 12.600 Prisoners: Securing, Handling, and Transporting states "When possible, handcuff all prisoners with their hands behind their back." Hence, Officer Kilgore's commands to "turn around" and "place your hands behind your back" were contradictory and call into question the objective reasonableness of Officer Kilgore's perceptions at that time.

Moreover, while Mr. Ezeh did not follow verbal commands to turn around or place his hands behind his back, BWC evidence confirms that Mr. Ezeh was not attempting to flee, and indeed was not moving at the time he was tased. Mr. Ezeh did not move his hands from his side to his back or to anywhere else. It does not appear that he made any "physically evasive movements to defeat the officer's attempt at control, including, bracing, tensing, [or] pushing" as resistance is defined. He did not verbally "signal an intention to avoid or prevent being taken into or retained in custody." His behavior was not threatening. Mr. Ezeh simply failed to follow the verbal commands of Officer Kilgore.

Officer Kilgore maintained in his CCA interview that when he tased Mr. Ezeh a second time, it was because Mr. Ezeh did not comply with the officer's commands when Mr. Ezeh, while on the ground, "continued to try to get up in an aggressive manner," and was "trying to push off the ground." However, several pieces of evidence cast doubt on the assertion that Mr. Ezeh attempted to rise from the ground. Officer Price's BWC refutes the accuracy of Sgt. Kilgore's account; the video indicates that Mr. Ezeh was lying still. Officer Kilgore's BWC does not corroborate his account (one would reasonably expect to see Officer Kilgore move his own body in an attempt to control a physically resistant Mr. Ezeh, but Officer Kilgore's BWC shows no such movement on Officer Kilgore's part). No witness recounted any observations that corroborated Officer Kilgore's statement that Mr. Ezeh was trying to get up from the ground before being tased a second time. Indeed, multiple witnesses have stated that Mr. Ezeh was lying on his stomach and was not moving. In addition, the Use of Force Report documenting CPD's interview with Officer Kilgore on the night of the incident fails to make any mention of any observation by Officer Kilgore that Mr. Ezeh was attempting to rise from the ground, calling into the question the reliability of

that assertion after-the-fact. Given all these facts, Officer Kilgore's purported perception that Mr. Ezeh was attempting to rise from the ground is not a reasonable one.

At most, the BWC and corroborated witness accounts prove that Mr. Ezeh was being "Uncooperative." CPD Procedure § 12.545 defines "Uncooperative" as a subject who fails to respond to verbal commands or other directions. It is not the same as "active resistance."

The use of a CEW is not authorized under policy when a subject is not actively resisting and when there is no self-defense purpose. Mr. Ezeh was not actively resisting when the second cycle of CEW was used. He was not imminently threatening to any officer.

Therefore, for all of the above reasons, Officer Kilgore was neither objectively reasonable nor consistent with CPD's policy, procedure, and training when he discharged his TASER against Mr. Ezeh for a second time.

### **Allegation: Harassment**

Mr. Ezeh alleged he has been harassed by CPD. CPD does not define "harassment" in its policies, but the 2020 CCA Annual Report defined "harassment" to include "Persistent aggressive pressure or intimidation." CCA reviewed the last three years of Hamilton County court records, CPD incident reports, and contact cards available, finding no pattern of stops by a particular officer to be discernable. Notably Mr. Ezeh does have an extensive history with CPD, however at a minimum, under the harassment definition, there must be proof of a pattern of wrongful conduct. Without evidence of the persistent occurrence of this behavior, harassment was not found.

### **Note:**

Mr. Ezeh made no mention of his medical conditions prior to either CEW cycles and Cincinnati Fire Department was called for medical assistance.

On September 15, 2021 Mr. Ezeh was charged with disorderly conduct. The charge was dismissed due to "mental incompetence;" the case is currently under appeal.

In CPD's supervisory investigation into Officer Kilgore's use of force, commanders concluded that Officer Kilgore acted in accordance with policy and law. According to the corresponding investigation report, the second tasing was justified because of Mr. Ezeh's "inaction to place hands behind back after Officer Kilgore gave multiple commands." IIS's investigation into Mr. Ezeh's complaint is still pending.

### **Findings:**

Officer Charles Kilgore

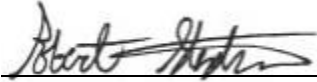
**Improper Stop** – The evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training. **EXONERATED**

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

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

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

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Robert Stephens, Investigator



Gabriel Davis, Director

July 15, 2022

Date

## Previous Contacts and Commendations:

### Officer Charles Kilgore

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

Officer Kilgore had 3 previous contacts with CCA in the past three years.

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
20058	Improper Procedure	Sustained
20058	Improper Stop	Exonerated
20058	Excessive Force	Sustained
21130	Discourtesy	Referred
21130	Lack of Service	Referred
21216	Lack of Service	Referred

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

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

#### **Commendations**

Officer Kilgore received 5 commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
02/17/2019	CPD
02/17/2019	CPD
05/16/2019	Civilian
02/14/2020	Civilian
05/10/2021	CPD