



Officer Involved Firearm Discharge Report (2018-2019)

DIRECTOR'S MESSAGE

Nearly 20 years ago, the Citizen Complaint Authority (CCA) was created. Since then, its mission has been to investigate serious interventions by police officers, including, but not limited to discharging of firearms, deaths in custody, and major uses of force, and to review and resolve citizen complaints of misconduct in a fair and efficient manner. At a minimum, CCA has jurisdiction over complaints alleging excessive use of force; improper pointing of firearms; improper stops; improper entries, searches and seizures; and discrimination, including racial profiling.

We are committed to transparency and to the principle that improving mutual trust and respect between citizens and police is foundational to ensuring justice and public safety. This report furthers that commitment by educating the public about the circumstances under which deadly force has been used by Cincinnati Police Officers in recent history.

Specifically, this report examines all eight (8) officer-involved shootings that occurred in 2018 and 2019, investigations of which CCA completed in early 2021. The report provides details regarding CCA's investigations into these discharge of firearm (DFA) incidents, and provides notable data for such uses of force. The DFAs examined represent approximately 73% of the last eleven officer-involved shootings to have either occurred in Cincinnati or been carried out by a Cincinnati Police Officer (three shootings total occurred in 2020, and none to date have occurred in 2021). The three shootings that occurred in 2020 are still pending CCA investigation and are not reviewed here. Nevertheless, this report reviews a critical mass of relatively recent and fully investigated shootings, and it provides important insights into those incidents. Some of the key takeaways are as follows:

- CCA's investigations exonerated all officers involved in the 8 shootings.
- As a result of the 8 shootings, 2 citizens were fatally wounded and 3 suffered non-fatal injuries. One police officer suffered a non-fatal injury.
- 6 out of the 8 citizens (75%) subject to a firearms discharge were armed with either a knife or a firearm at the time of the shooting, and one of those 8 individuals was carrying out a mass shooting. 2 out of the 8 citizens were hit unintentionally when officers fired at canines.
- 5 of the 8 persons subject to a firearm discharge were African American, 1 was Hispanic, and 2 were Caucasian.
- Approximately 67% of the persons who were subject to an intentional firearm discharge either appear to have been suffering from mental health issues at the time of the shooting, or reportedly were suffering from such issues.

We issue this report consistent with CCA's responsibility under the law to inform the community about "significant cases" we have investigated. There are fewer cases with stakes more significant than those concerning officer-involved shootings.

Finally, this report also contains recommendations for the consideration of CCA's Board, the City Manager, Chief of Police, and community, consistent with one of CCA's key purposes and responsibilities under Article 28 of Cincinnati's Administrative Code. The recommendations address issues such as mental health and medical aid to wounded subjects, among other things. Those recommendations are derived from and supported by our review of the eight shootings CCA investigated. They are intended to highlight fresh opportunities for strengthening police policies, training, and practices. They are also intended to engage stakeholders in a constructive dialogue

about building on Cincinnati's progress over the past several years as it relates to policing, public safety, and the protection of life.



Gabriel Davis, Executive Director

Table of Contents

Discharge of Firearm Incidents Detail Report.....	1.5
Discharge of Firearm Incidents & Fatalities.....	1.6
Discharge of Firearm Incidents by Districts.....	1.7
Map of 2018-2019 Incidents.....	1.8
Map of 2015-2020 Incidents.....	1.9
18097 Investigation Report - Final.....	1.10
18135 Investigation Report - Final.....	1.28
18167 Investigation Report - Final.....	1.40
18169 Investigation Report - Final.....	1.49
18178 Investigation Report - Final.....	1.66
19151 Investigation Report - Final.....	1.80
19163 Investigation Report - Final.....	1.94
19206 Investigation Report - Final.....	1.111
Shooting Report Recommendations_2021.....	1.126

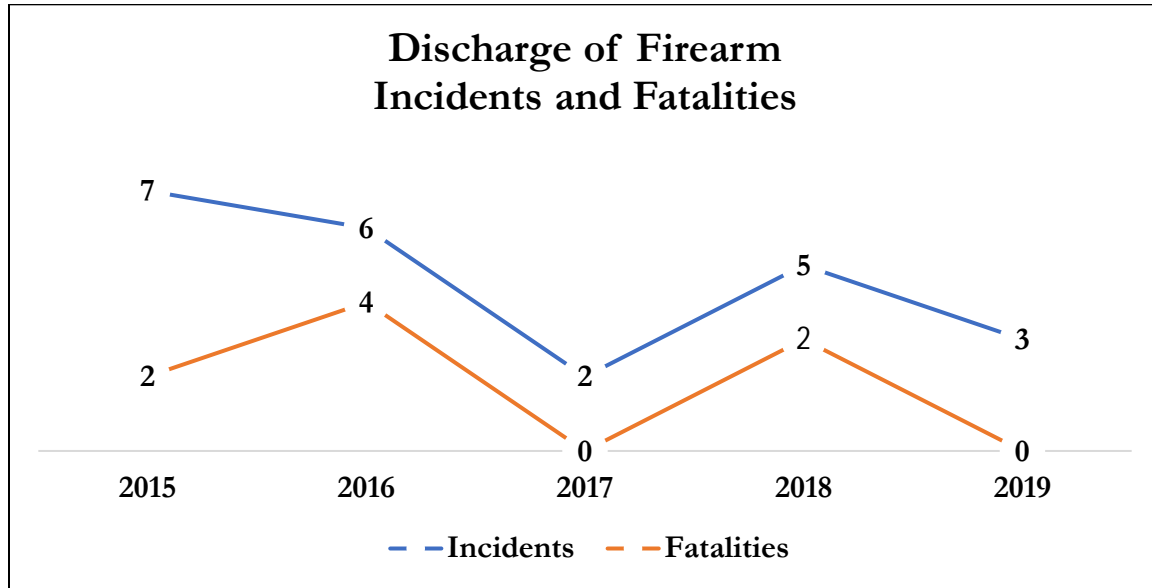
Discharge of Firearm Incidents 2018-2019

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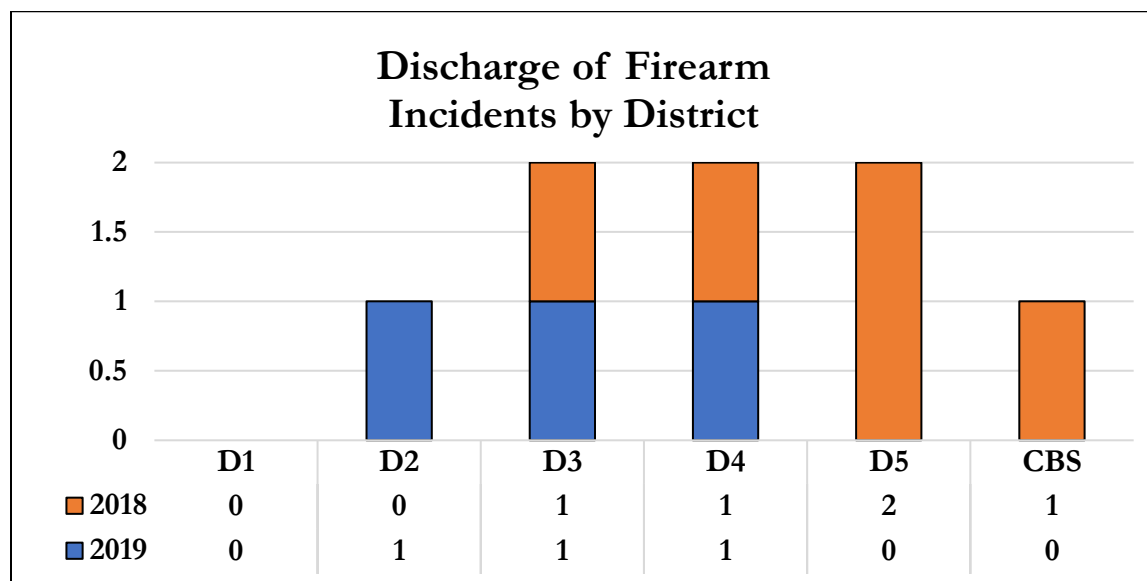
CCA#	Incident Date	Weekday	Time	District	Rounds ¹	Officer				Complainant		Reported Suspect Threat/Motive ¹	Hit Target
						Race	Gender	Age ¹	YOS ¹	Race	Gender		
19206	9/11/2019	Wed	10:02	4	1	Caucasian	M	52	23	African American	M	Pulled firearm from waistband	Yes
19163	7/16/2019	Tues	15:47	3	1	Caucasian	M	39	5	African American	F	Charged another citizen with knife in hand	Yes
19151	7/4/2019	Thurs	10:31	2	3	African American	M	57	26	African American	M	Approached officer with knife in hand	Yes
18178	9/6/2018	Thurs	9:10	CBS	11	African American	M	53	16	Hispanic	M	Armed and shot/killed several people	Yes - Fatal
						Caucasian	M	50	21				
						Caucasian	F	42	10				
						Caucasian	M	52	28				
18169	8/24/2018	Fri	14:43	4	16	Caucasian	M	43	17	African American	M	Pointed firearm at an officer	Yes - Fatal
						Caucasian	M	48	15				
						Caucasian	M	55	23				
18167	8/22/2018	Wed	12:59	3	4	Caucasian	F	25	1	Caucasian	F	Violent dog jumped at officer	Citizen inadvertently hit
						Caucasian	M	33	10				
18135	7/6/2018	Fri	20:46	5	1	African American	M	27	4	Caucasian	F	Violent dog ran toward officer	Citizen inadvertently hit
18097	5/3/2018	Thurs	0:32	5	11	Caucasian	M	47	16	African American	M	Suspect shot at officers	No
						African American	M	42	14				

¹ All information taken from CCA and IIS Investigative Reports.

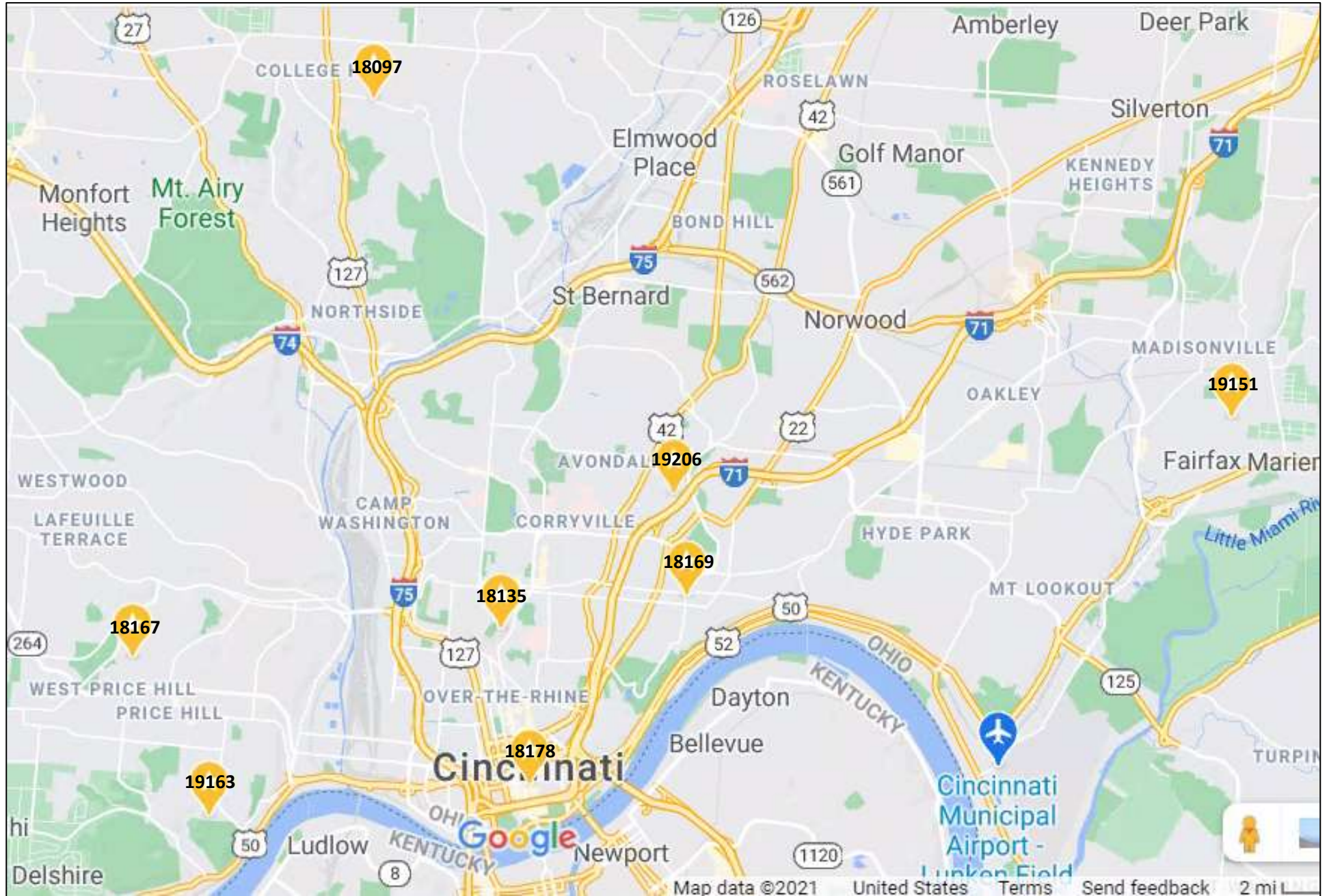
DISCHARGE OF FIREARM INCIDENTS



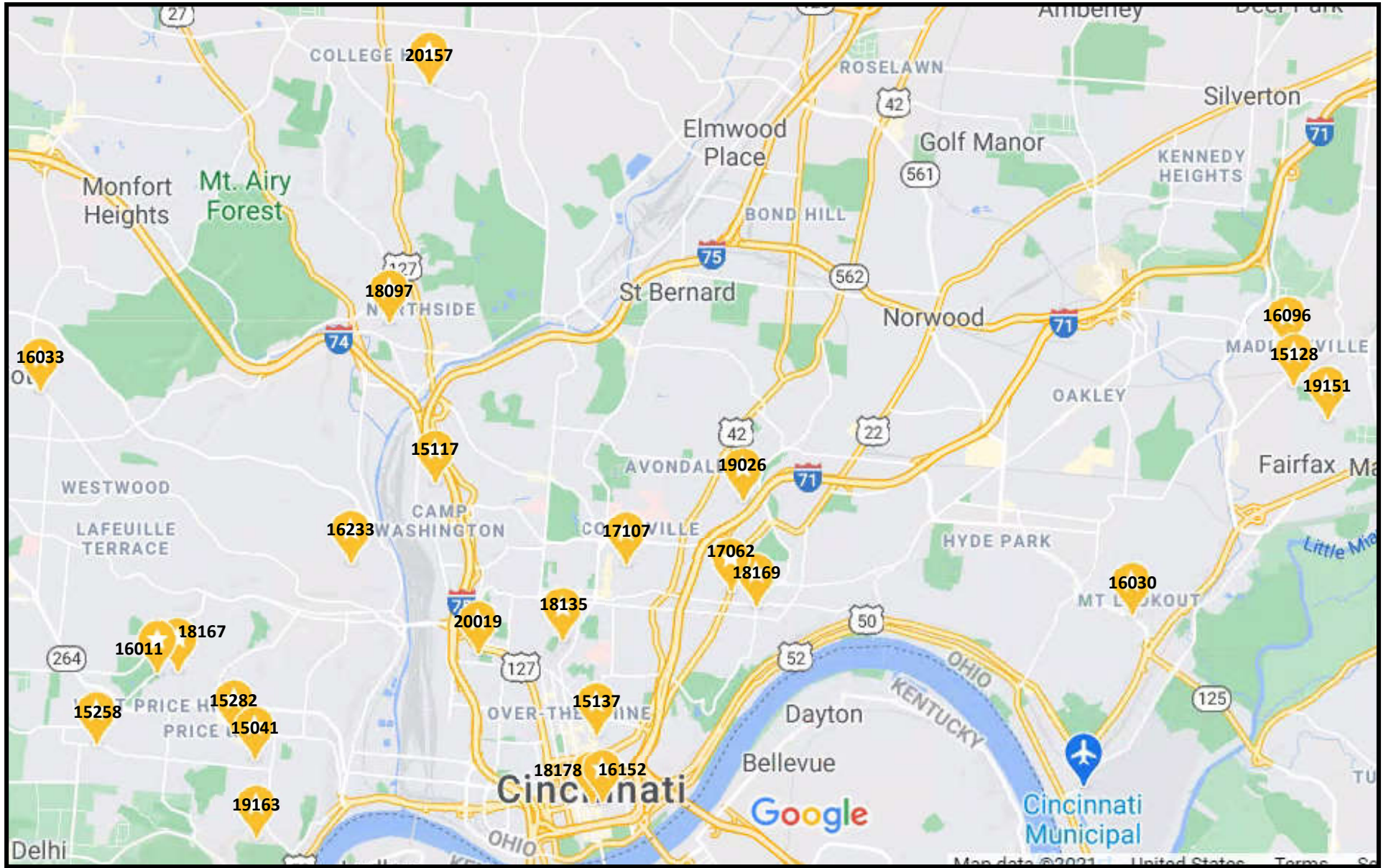
DISCHARGE OF FIREARM INCIDENTS



Map 1: Discharge of Firearm Incidents 2018-2019



Map 2: Discharge of Firearm Incidents 2015-2020



Incidents not on map:
 20157 – Outside City Limits
 20135 – Unknown address on I-275

**CCA Case No. 18097 –
Discharge of a Firearm involving Khayree Waller
Investigation Report and Finding**



Dena Brown
Division Manager (Chief Investigator)

Gabriel Davis
Executive Director

Table of Contents

Complaint Summary

Involved Subject Statements

Involved Officer Statements

Officer Witness Statements

Witness Statements

Evidence

Significant Discrepancies and Clarifications

Authorities

Analysis

Findings

Previous Contacts and Commendations

COMPLAINT SUMMARY

Date: May 3, 2018

Time: 12:32 a.m.

Location: 1202 East Way

CCA Receipt: May 3, 2018 (Discharge of a Firearm)

Complainant: Khayree Waller

On May 2, 2018, the Emergency Communications Center (ECC) received several phone calls in reference to gunshots being fired in the area of East Way and Cedar Avenue. District 5 Officers Duanyel Taylor and Adrian Miller responded and found nothing to report.

On May 3, 2018, ECC received a phone call from Witness A stating Mr. Khayree Waller made threats to her and told her he “shot up” the residence at 1202 East Way where her current boyfriend’s parents, Witness B and Witness C, resided. ECC dispatched Specialist Kenneth Byrne and Officer Adarryl Birch to conduct a welfare check.

Specialist Byrne and Officer Birch arrived at the residence, inspected the area, and observed bullet holes in the side of the house. The officers rang the doorbell. As Witness B opened the door, gunshots rang out from a vehicle traveling on Groesbeck Road. Specialist Byrne and Officer Birch believed the gunshots were aimed at them and returned fire, discharging several rounds at Mr. Waller’s vehicle.

Mr. Waller continued on Groesbeck Road. Officer Birch broadcast shots were fired to ECC and gave a description of Mr. Waller’s vehicle. Specialist Byrne and Officer Birch returned to their cruiser and initiated a vehicle pursuit. Sergeant Jarrod Cotton also entered the pursuit.

Mr. Waller ended the 20-minute pursuit when he reached his residence at 1179 Atwood Avenue and exited his vehicle. Specialist Byrne ordered Mr. Waller to the ground at gunpoint. Officer Birch handcuffed Mr. Waller without further incident. Officer Raymond Marsh transported Mr. Waller to Criminal Investigation Section (CIS) then to the Hamilton County Justice Center (HCJC).

INVOLVED SUBJECT STATEMENTS

The statement below was taken from the initial interview conducted by CPD Homicide Investigators William Hilbert and Robert Randolph on the day of the incident. CCA observed the interview.

Khayree Waller

Mr. Waller, M/B/32, was involved in an on-going dispute with his ex-wife’s current boyfriend who had “kicked her [expletive]”. Mr. Waller denied going to the residence where he believed his wife’s boyfriend lived at 1202 East Way. Mr. Waller borrowed a friend’s vehicle and went to 1202 East

Way to fight the boyfriend. Mr. Waller spoke to a neighbor and left after he could not locate the boyfriend.

Mr. Waller returned to the residence later that evening and when he drove past, he fired four to five shots into the air. Mr. Waller returned home and began drinking. Mr. Waller returned a third time to the residence and fired four gunshots into the air as he drove past. Mr. Waller denied that he tried to hurt anyone and did not see the officers on the porch of the residence.

Mr. Waller continued driving down Groesbeck with his windows shot out. Mr. Waller was unaware of how all of his windows were shot out. Mr. Waller did not realize he was being chased by the police for twenty minutes until he reached Gray Road. Mr. Waller refused to stop because he was afraid of the police.

Mr. Waller threw his firearm out of his passenger window (shattering it) into Mill Creek during the pursuit. Mr. Waller surrendered to the police in his driveway.

INVOLVED OFFICER STATEMENTS

Officer Adarryl Birch

Officer Birch, #P0108, M/B/42, is currently assigned to District 5, and he has been a CPD member since 2004. Officer Birch was on routine patrol, in uniform, in a marked cruiser, and partnered with Specialist Byrne; his BWC was activated.

Officer Birch and Specialist Byrne were dispatched for a wellness check. Mr. Waller allegedly had shot at Witness B's residence earlier. When Officer Birch and Specialist Byrne arrived on scene, they inspected the area and observed bullet holes in the side of the house that faced Groesbeck Avenue. Officer Birch and Specialist Byrne knocked on the door. While knocking, Mr. Waller pulled up in a small red vehicle; he shot at Officer Birch and Specialist Byrne just as Witness B opened the door.

Officer Birch and Specialist Byrne returned fire. Officer Birch believed he fired three or four shots. They made sure no one was hurt and pursued after Mr. Waller in their cruiser. The pursuit traveled from Groesbeck Avenue to Gray Road, Winton Road, to Interstate 75, and to Interstate 74. Mr. Waller exited onto Virginia Avenue, to Ashtree Drive, back up Hamilton Avenue, and, ultimately, to Mr. Waller's residence in College Hill. Officer Birch exited the cruiser. Specialist Byrne held Mr. Waller at gunpoint. Mr. Waller, who was about to flee, said, "Don't kill me," as he surrendered. Officer Birch handcuffed Mr. Waller without further incident.

Officer Birch stated the reason for discharging his firearm at Mr. Waller's vehicle was because he "perceived a threat and that's where he thought the threat was coming from."

Specialist Kenneth Byrne

Specialist Byrne, #PS195, M/W/47, is currently assigned to District 5, and he has been a CPD member since 2002. Specialist Byrne was on routine patrol, in uniform, in a marked cruiser, and partnered with Officer Birch; his BWC was activated.

Specialist Byrne's initial comments corroborated Officer Birch's statement. Specialist Byrne added he and Officer Birch took cover and returned fire at the vehicle. Specialist Byrne discharged his firearm four times. Specialist Byrne and Officer Birch initiated a vehicle pursuit to catch Mr. Waller. Mr. Waller stopped at his residence. Specialist Byrne and Officer Birch exited their vehicle

Specialist Byrne drew his firearm, with his finger outside the trigger guard, and pointed it at Mr. Waller. Specialist Byrne ordered Mr. Waller to show his hands and get down on the ground. Mr. Waller asked the officers several times not to kill him as he complied and got down on the ground. Officer Birch handcuffed him. Sergeant Cotton was also on scene and backed them up.

Specialist Byrne stated the reason for discharging his firearm was because “the subject was shooting...I believe it was at us, and I was in fear for my life so I was returning fire to keep myself from being killed.”

OFFICER WITNESS STATEMENTS

Sergeant Jarrod Cotton

Sergeant Cotton, #S0573, M/B/40, is currently assigned to the Internal Investigations Section, and he has been a CPD member since 2006. At the time of this incident, Sergeant Cotton was assigned to District 5 and was on routine patrol, in uniform, and operated a marked cruiser; his BWC was activated.

Sergeant Cotton responded to an officer needs assistance radio run after Specialist Byrne and Officer Birch broadcast they had been fired upon and were pursuing Mr. Waller’s vehicle. Sergeant Cotton became a secondary officer in the vehicle pursuit. When Sergeant Cotton arrived on scene, Specialist Byrne and Officer Birch were issuing commands to Mr. Waller, who was running. Mr. Waller stopped running and knelt to the ground. Officer Birch placed Mr. Waller into custody. Sergeant Cotton took custody of Mr. Waller from Officer Birch and escorted him to Officer Thomas Stanton’s cruiser.

WITNESS STATEMENTS

The statements below were taken from the initial interview conducted by CPD Homicide Investigators on the day of the incident. CCA observed the interviews.

Witness B

On May 2, 2018, between the hours of 2200 -2300, Witness B was awakened by three or four popping sounds that sounded like something was hitting his residence. He was not sure if they were gunshots. Witness B went downstairs to check; he did not observe anything and returned to bed. Sometime after midnight, Specialist Byrne and Officer Birch knocked on his front door. Before he could open the screen door; he heard a vehicle driving on Groesbeck Road, firing four shots at the officers, who were standing on his front porch.

Specialist Byrne and Officer Birch dropped down and fired four or five shots at the vehicle. The officers got up, got on their radio and gave a description of the vehicle and stated, “shots fired, red hatchback west on Groesbeck Road,” then went to their cruiser and followed the vehicle.

EVIDENCE

CCA responded to the scene of the shooting and monitored the investigation being conducted by the Homicide Unit as well as the processing of the scene by the Criminal Investigations Section (CIS).

Police Documents

CCA reviewed all CPD-related forms, including but not limited to the arrest report, information from CPD's Records Management System (RMS), Homicide Investigation Report, Criminal Investigations Section (CIS) documents, and IIS report.

Computer Aided Dispatch (CAD)

Date	Time	Call Notes
05/02/2018	20:36:26	RP states children's father is threatening to harm her and her boyfriend; stated he was going to meet her at location. Khyree Waller, M/B/33, unknown clothing, known to carry weapons-gun.
05/02/2018	22:45:59	4 shots heard, came from south of this location, possibly on Lantana
	22:47:29	5-6 shots heard, nothing seen
	22:52:04	Nothing found, was in area when calls came in and didn't hear shots
05/03/2018	00:09:58	Welfare check, [Witness C], mother of complainant's boyfriend, resides at above location. Father of complainant's child texted complainant advised he just shot up complainant's boyfriend's mother's house at above location. Red, possible Chevy, hatchback with KY tags.
	00:33:24	Down Gray Rd.
	00:33:33	Red hatchback
	00:33:54	Check on subject on East way
	00:34:42	Got him at Gray and Winton
	00:36:16	Mitchell towards 75
	00:36:35	South I-75 from Mitchell
	00:38:04	74 West from South I-75
	00:39:11	Eastbound Virginia from Colerain
	00:39:23	Virginia towards Kirby
	00:42:14	East on Atwood
	00:42:34	At gunpoint
	00:42:45	Getting into custody

911 Call Recordings

Witness A

I just called District 5 and they told me to call this number. I had made a police report about the situation that was going on with me and my son's father and my boyfriend. He just texts my phone and told me that they were down there shooting, and I told my boyfriend. They were on Groesbeck by East Way. He told me I needed to go check on my boyfriend and then told me to go look at his mama house, like they shot his mama house up. His name is Khayree Waller.

Witness D

I live on East Way and they're shooting outside and it's the second time they've been out there shooting. It was about four or five shots. I don't know if it's on my street or if it's on Groesbeck.

Evidence Submission

- Bullet hole & impact in garage door
- Bullet hole – entry door frame 1191 Groesbeck
- Bullet hole in LR window 1191 Groesbeck
- Bullet hole in basement glass block window
- Bullet hole LR wall 1191 Groesbeck

Three out of four windows in the vehicle Mr. Waller was operating were broken out. The driver's window was rolled down and intact.

CIS recovered ten (10) .45 automatic caliber cartridge cases from the scene of the shooting and another six (6) .45 automatic caliber cartridge cases from inside the vehicle that Mr. Waller had been operating at the time of the shooting. The Hamilton County Crime Laboratory determined that they were all fired from the same weapon.

A gunshot residue analysis conducted by the crime lab found traces of residue from a detonated primer of a discharged firearm on Mr. Waller's hands.

Body Worn Camera (BWC)

Officer Birch

Officer Birch and Specialist Byrne approached the residence. The officers looked at the house and a vehicle for any signs of damage from gunshots. Officer Birch pressed the doorbell. A vehicle can be heard approaching and multiple shots rang out. Both officers returned fire with multiple shots. Officer Birch broadcast, "Shots fired at us, subject in a Red Hatchback!" The officers pursued Mr. Waller in their cruiser, broadcasting their location during the vehicle pursuit. Officer Birch also requested someone check on the occupants at the residence via his radio.

After approximately 20 minutes, Mr. Waller stopped his vehicle at his residence on Atwood. Officer Birch exited the cruiser and he and Sergeant Cotton placed Mr. Waller into custody while he was on the ground. Sergeant Cotton said, "Calm down," several times. Mr. Waller stated, "Cuff me and please don't kill me," several times. Officer Birch searched Mr. Waller and stood him up. As Officer Birch walked back to his cruiser, a female approached; he ordered her back to "wherever she came from." Officer Birch and Specialist Byrne searched Mr. Waller's vehicle. A female can be heard saying, "They shot at our house." Sergeant Cotton asked if shots were fired. Officer Birch responded, "Yes, we both did."

Specialist Byrne

Specialist Byrne's BWC corroborated Officer Birch's footage. At Mr. Waller's residence, Specialist Byrne exited the cruiser as Mr. Waller attempted to flee. Specialist Byrne drew his firearm. At gunpoint, he ordered Mr. Waller to the ground. Mr. Waller complied. Officer Birch placed Mr. Waller into custody. Specialist Byrne searched Mr. Waller's vehicle.

Sergeant Cotton

Sergeant Cotton joined the vehicle pursuit, advising his direction and his speed. Waller stopped on Atwood. Sergeant Cotton exited the cruiser and told Mr. Waller to calm down several times. Sergeant Cotton ordered Specialist Byrne and Officer Birch to handcuff Mr. Waller. Mr. Waller begged the officers, "Please don't kill me," several times. Officer Birch handcuffed Mr. Waller. Sergeant Cotton retained custody of Mr. Waller from Officer Birch and placed him inside a cruiser.

Firearm Qualifications and Discharges

Officer Birch's firearm qualifications occurred on 06/15/17 and again on 11/07/18. Officer Birch discharged his firearm seven times during the incident.

Specialist Byrne's firearm qualifications occurred on 11/27/17 and again on 05/15/18. Specialist Byrne discharged his firearm four times during the incident.

Prosecutor's Letter of Declination

The Hamilton County Prosecutor's Office issued a letter of declination on January 15, 2018; it stated Specialist Kenneth Byrne and Officer Adarryl Birch were justified in their actions and did not violate any criminal statutes.

Clerk of Courts Review

Mr. Waller pled guilty to two counts of Attempted Murder 2923.161 (A)(1), Ohio Revised Code (ORC), and one count of Trafficking in Cocaine 2923.02 (A) ORC. Mr. Waller was sentenced to 25 years in the Ohio Department of Corrections.

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

There has been no suggestion by any participant to this incident or by any witness that Mr. Waller was injured during the shooting. Nonetheless, we note that there is no evidence that Mr. Waller was struck by the officers' gunfire or was otherwise injured as a result of police action in this case.

AUTHORITIES

I. CPD Procedure Manual

§ 12.545 Use of Force (Revised 07/27/17)

Definitions:

Deadly Force – Force likely to cause, or capable of causing, death.

Serious Use of Force – Any action that involves: a critical firearm discharge; the use of deadly force; a baton strike to the head; or a use of force in which the person is seriously injured or requires hospital admission, with the exception of individuals admitted for psychiatric evaluation not suffering a serious injury.

Self-Defense – The act of protecting oneself or another from physical harm or serious physical harm.

Serious Injury/Serious Physical Harm to Persons – Any of the following:

- Any physical harm that carries a substantial risk of death.
- Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity.
-

Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement.

Information:

Use of Force Review Board: The Use of Force Review Board will conduct comprehensive reviews of the following use of force incidents:

- A use of force resulting in hospitalization or serious injury to a subject or police officer involved in a use of force incident;
- A use of force that includes a citizen's complaint of unnecessary or excessive force by an officer;
- Any use of force incident recommended for review by a district/section/unit commander and approved by the Police Chief. Use of force incidents involving the discharge of firearms by police are not included in this process and are addressed by the Firearms Discharge Board (Procedure 12.550). Uses of force involving beanbag, OC aerosol canister, OC blast grenades, and 40mm foam round discharges are reviewable by the Use of Force Review Board.

The Use of Force Review Board consists of:

- The affected district/section commander;
- One captain from Investigations Bureau or Patrol Bureau (rotating assignment);
- Training Section Commander;
- Inspections Section Commander;
- An Assistant Police Chief (rotating assignment).

Internal Investigations Section (IIS) will coordinate Use of Force Review Board action and will schedule Review Board meetings and provide all documentation to board members on cases assigned by the Police Chief.

An Assistant Police Chief will chair the Review Board meetings. The Review Board will prepare a final report to the Police Chief containing a description of the incident including all uses of force, a summary and analysis of all relevant evidence, proposed findings, and analysis to support those findings.

The Review Board will determine whether all uses of force during the encounter were consistent with Department policy and training, whether the involved officers employed proper tactics, and whether lesser force alternatives were reasonably available.

Policy:

A police officer's right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to affect it. Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake (*Graham v. Conner*, 1989).

Before any use of force option is employed by an officer to affect an arrest, its proper application requires careful attention to the facts and circumstances of each particular case, including:

- 1) The severity of the crime at issue.
- 2) Whether the suspect poses an immediate threat to the safety of the officers or others.
- 3) Whether the suspect is **actively resisting arrest** or attempting to evade arrest by flight.

When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or affect the arrest and no more. Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.

Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others but extends to that amount reasonably necessary to enable them to affect the arrest of an **actively resistant** subject.

Force situations often do not allow for an ordinal progression up a continuum of force and officers must be ready to escalate or de-escalate as the situation evolves.

Use of Force Continuum

Examples of Subject Resistance

- Uncooperative: Subject fails to respond to verbal commands or other directions.
- Active resistance: 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.
- Assault or threat of assault: Subject assumes fighting stance, charges, strikes or kicks an officer or verbally or physically indicates an intention to commit an assault combined with the subject's capability to assault.
- Life threatening assault or assault likely to cause serious physical harm: Subject commits an attack using an object, a weapon, or an empty hand assault, wherein the officer reasonably believes the assault will result in serious physical harm and/or death.

§ 12.550 Discharging of Firearms by Police Personnel (06/22/17)

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.

Police officers may not use deadly force merely to prevent escape in misdemeanor cases. The use of deadly force to prevent escape of felony suspects is constitutionally unreasonable except where the escape presents an immediate risk of death or serious physical harm to another.

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.**

Self-Defense: A police officer is authorized to use that force reasonably necessary to protect him/herself or others from death or serious physical harm at the hands of another.

- There must be an apprehension of real or immediate danger based on an overt and/or constructive act by another.

Moving Vehicles: Officers shall not discharge their firearms at a moving vehicle or its occupants unless the occupants are using deadly physical force against the officer or another person present, by means other than the vehicle.

Firearm Discharge Board

1. The Police Chief will review and forward to PSS the CIS investigation report, letter from the Hamilton County Prosecutor, and any other material deemed relevant to the Firearm Discharge Board (FDB). The PSS Commander will notify and arrange a meeting between the FDB, CIS Commander, and investigators within 30 days of receipt of the material.
2. Recommendations made by the FDB should be unanimous or by consensus. If a consensus cannot be reached, a majority/minority opinion will be prepared at the direction of the chairperson.

3. The FDB will issue its final report to the Police Chief within 90 days of receipt of the material. The report will identify training issues and corrective measures, tactical response issues and corrective measures, and outline any recommended policy and/or procedure.

§ 12.535 Emergency Operation of Police Vehicles and Pursuit Driving (Revised 04/05/18)

Definitions:

Pursuit Driving – an attempt by a law enforcement officer operating an emergency vehicle and simultaneously utilizing lights and siren to apprehend an occupant(s) of another moving vehicle, when the driver of the fleeing vehicle is aware of the attempt and is resisting apprehension by maintaining or increasing speed, disobeying traffic laws, ignoring or attempting to elude the officer.

Policy:

Officers must terminate their involvement in motor vehicle pursuits whenever the risks to their safety, the safety of innocent bystanders, or the safety of the suspect(s) outweigh the consequences of the suspect's escape.

While operating a police vehicle in emergency mode, entry into an intersection against a stop sign or signal poses a heightened level of risk to both sworn personnel and the public, and thus requires an increased level of caution to meet the due regard to safety standard. In order to show due regard when approaching intersections against a stop sign or red traffic signal, sworn personnel shall slow down as necessary for the safety of traffic and shall only proceed into the intersection at a speed which would allow for themselves and/or other drivers and pedestrians a reasonably sufficient opportunity to avoid a traffic crash.

During the emergency operation of police vehicles, and prior to and during a pursuit, officers must weigh the following factors:

- Degree of risk created by pursuit to others, officer and suspect.
- Location where pursuit will take place.
- Traffic conditions and amount of pedestrian traffic.
- Road conditions.
- Time of day.
- Weather.
- Volume, type, speed and direction of vehicular traffic and direction of pursuit.
- Nature/seriousness of suspected crime.
- Condition of police vehicle and suspect's vehicle.
- Any circumstance that could lead to a situation in which the pursuing officer(s) will not be able to maintain control of the police vehicle.
- Type of vehicle being pursued.

- Likelihood of successful apprehension.
- Whether the identity of the suspect is known to the point that later apprehension is possible.

Officers will not pursue vehicles the wrong way on the interstate or other controlled access highway, divided roadways, or one-way streets unless specifically authorized by the pursuit officer in charge (OIC).

Officers must ensure video equipment (DVR and BWC) is activated when operating in emergency mode and when participating in traffic stops and pursuits. Police motorcycle units may become involved in a pursuit as primary units when they initiate the pursuit. The motorcycle unit will turn the pursuit over to a marked police car as soon as possible and discontinue emergency operation.

Procedure:

- A. Emergency Operation of Police Vehicles
 1. Emergency operation (lights and siren) of a police vehicle is authorized in the following emergency cases (call to duty) and under the following conditions:
 - a. Officer needs assistance.
 - b. Person calling for help.
 - c. Report of an explosion.
 - d. Trouble with a prisoner.
 - e. Crimes in progress requiring the immediate presence of a police officer.
 - f. Auto accident with reported injury.
 - g. Emergency medical runs when Fire Department personnel are not immediately available.
 - h. Pursuit driving.
 2. When operating a police vehicle in the emergency mode, officers:
 - a. Will not operate with reckless disregard for the safety of other citizens.
 - b. Will use the emergency lights (red/blue) and siren.
 - 1) Do not use four-way flashers because they interfere with brake lights and turn signals.
 - c. Will ensure their DVR and BWC is activated.
 - d. Will not have complainants, witnesses, suspects, prisoners, or other nonpolice personnel as passengers. This restriction does not apply to:

- 1) Civilian observers
 - 2) Units transporting sick or injured persons to the hospital.
3. When driving in emergency mode, the operator will conform to all applicable traffic laws and regulations.
- a. When driving in emergency mode and approaching a red traffic signal or stop sign, the operator must only enter the intersection with a due regard to safety. In order to show due regard when approaching and entering intersections against a stop sign or red traffic signal, the operator shall slow down as necessary for the safety of traffic and shall proceed into these intersections at a speed which would allow for themselves and/or other drivers and pedestrians a reasonable opportunity to avoid a traffic crash.
 - b. When driving in emergency mode, the operator must maintain a vehicle speed which is reasonable for the conditions, including but not limited to: time of day, road conditions, pedestrian and vehicle traffic, and weather; the operator will not exceed the posted speed limit by more than 20 miles per hour.

D. Pursuit Driving

1. A motor vehicle pursuit is permitted in the following instances:
 - a. On-sight pursuit of a known or suspected felon.
 - b. On-sight pursuit of criminal misdemeanor violations.
 - c. There is reasonable suspicion the occupants of a suspect vehicle have committed a criminal misdemeanor offense.

Example: The broadcast of a suspect vehicle and/or suspect vehicle wanted for theft.

ANALYSIS

On May 2, 2018, ECC received several phone calls in reference to gunshots being fired in the area of East Way and Cedar Avenue. On May 3, 2018, ECC received a phone call from Witness A stating Mr. Waller made threats that he had just “shot up” Witness B’s and Witness C’s residence. Specialist Byrne and Officer Birch were dispatched to that residence to conduct the welfare check. The evidence establishes that after the officers knocked on the door of the residence, Witness B opened the door, and gunshots rang out from Mr. Waller’s vehicle as the vehicle drove down Groesbeck Road.

CPD Procedure § 12.550 Discharging of Firearms by Police Personnel maintains that when an officer perceives what the officer interprets to be a threat of loss of life or serious physical harm to the officer or to others at the hands of another, the officer has the authority to display a firearm and to use force reasonably necessary to protect himself or others from death or serious physical harm. The policy specifically provides that after all other reasonable means have been exhausted, an officer may “resort[] to the use of firearms . . . when an officer reasonably believes that such use of firearms is necessary to protect the officer or another from risk of serious physical harm or loss of life.”

During interviews with CCA, Specialist Byrne and Officer Birch stated they believed that the gunshots coming from Mr. Waller's vehicle were aimed at them and, being in fear for their lives, returned fire, discharging several rounds at Mr. Waller's vehicle. Their accounts are corroborated by the officers' BWC recordings, which indicate that shots were fired from Mr. Waller's vehicle as Mr. Waller approached the officers in that vehicle; by Witness B's account of the incident; by the physical evidence recovered; and by Mr. Waller's guilty plea to charges of attempted murder in connection with the incident. In light of the threat presented and perceived, CCA concluded that Specialist Byrne and Officer Birch complied with CPD's policy, procedure, and training when they discharged their firearms.

With respect to the officers' conduct following the shots they fired, the officers' BWCs establish that Specialist Byrne and Officer Birch initiated a vehicle pursuit, joined by Sergeant Cotton after Mr. Waller continued driving on Groesbeck Road. CPD Procedure § 12.535 Emergency Operation of Police Vehicles and Pursuit Driving states that "emergency operation (lights and siren) of a police vehicle is authorized in emergency cases," including cases when there are "crimes in progress requiring the immediate presence of a police officer," and in cases involving "pursuit driving." In such cases, officers must ensure their DVR and BWC is activated. Here, Mr. Waller ended the twenty-minute pursuit when he reached his residence and exited his vehicle. After examining the pursuit, CCA uncovered no evidence establishing that Specialist Byrne and Officer Birch failed to comply with CPD's policy, procedure, and training when they pursued after Mr. Waller.

With respect to the officers' conduct following the termination of the vehicle pursuit, the BWC footage showed that Specialist Byrne ordered Mr. Waller to the ground at gunpoint. Mr. Waller complied. Officer Birch then handcuffed Mr. Waller and placed him into custody. Specialist Byrne's display of a firearm while ordering Mr. Waller to the ground is governed by the same policy governing the discharge of firearms, CPD Procedure § 12.550 Discharging of Firearms. Under Section 12.550 (which is cited above), Mr. Waller's use of deadly force directed towards Specialist Byrne just before the pursuit made it reasonable to believe that Mr. Waller presented a risk of substantial harm to the officers. Accordingly, CCA concluded that Specialist Byrne was in compliance with CPD's policies, procedures, and training when he had his firearm pointed at Mr. Waller upon apprehension.

FINDINGS

Officer Adarryl Birch
Specialist Kenneth Byrne


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

Specialist Kenneth Byrne

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

A handwritten signature in cursive script, reading "Dena Brown".

Dena Brown, Division Manager (Chief Investigator)

A handwritten signature in cursive script, reading "G. Davis".

Gabriel Davis, Executive Director

PREVIOUS CONTACTS AND COMMENDATIONS

Officer Birch

Previous Contacts with CCA

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

Case Number	Allegation	Finding
16054	Discourtesy	Unfounded
16054	Pointing of a Firearm	Exonerated
16097	Lack of Service	Exonerated
16155	Procedure Violation	Not Sustained
16155	Lack of Service	Not Sustained
17138	Use of Force (Handcuffing)	Exonerated
17202	Discrimination (Ethnicity)	Unfounded
17202	Stop (Person)	Exonerated
17202	Discourtesy	Unfounded

Previous Contacts with IIS

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

Commendations

Officer Birch received one commendation in the past three years.

Date	Source of Commendation Received
05/18/2016	CPD

Specialist Byrne

Previous Contacts with CCA

Specialist Byrne had three previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
16097	Lack of Service	Exonerated
16155	Lack of Service	Not Sustained
16155	Procedure Violation	Not Sustained
17202	Stop (Person)	Exonerated
17202	Discourtesy	Unfounded
17202	Discrimination (Ethnicity)	Unfounded

Previous Contacts with IIS

CCA is unaware of any additional previous contact by Specialist Byrne with IIS.

Commendations

Specialist Byrne received one commendation in the past three years.

Date	Source of Commendation Received
08/04/2017	CPD

**CCA Case No. 18135 – Discharge of a Firearm -
Heather Gibson
Investigation Report and Finding**



Dena Brown
Division Manager (Chief Investigator)

Gabriel Davis
Executive Director

Table of Contents

Complaint Summary

Involved Subject Statements

Involved Officer Statements

Officer Witness Statements

Witness Statements

Significant Discrepancies and Clarifications

Evidence

Authorities

Analysis

Findings

Previous Contacts and Commendations

COMPLAINT SUMMARY

Date: July 6, 2018

Time: 8:46 p.m.

Location: 54 Graham Street

CCA Receipt: July 6, 2018 (Discharge of a Firearm)

Complainant: Heather Gibson

On July 6, 2018, Ms. Heather Gibson and Witness A had a verbal dispute. Ms. Gibson's canine "went wild" and attacked Witness A. Witness A stepped outside and Witness B, a neighbor, called the Emergency Communications Center (ECC) regarding Witness A's injuries.

Officer Sean Farris responded to the dispatched radio run, carrying his shotgun. Officer Farris entered Ms. Gibson's yard. Ms. Gibson was inside of her residence when Officer Farris shot her canine. Ms. Gibson stated Officer Farris fired one shot at the canine and one shot at her. Officer Farris entered her residence and assisted her. Ms. Gibson was transported to the University of Cincinnati Medical Center (UCMC) with two pellet wounds to both of her legs. Witness A was also transported to UCMC.

INVOLVED SUBJECT STATEMENTS

The statement below was given to CPD Homicide Detective Marcus McNeil while at UCMC. CCA reviewed Ms. Gibson's taped statement made to CPD. CCA made later attempts to contact Ms. Gibson in order to take a statement, but CCA was unsuccessful in reaching Ms. Gibson.

Heather Gibson

Ms. Gibson, F/W/50, stated she and her canine were sick most of the day. Witness A came home, and they argued about the rent. Witness A had a hammer in his hand. Ms. Gibson was able to disarm Witness A. The canine "went wild" and attacked Witness A. Witness A tried to get the canine outside. Witness A was bleeding. Ms. Gibson called 911. She was informed someone else had already called. Officer Farris entered Ms. Gibson's yard. Ms. Gibson was inside of her residence when Officer Farris shot her canine. Ms. Gibson stated Officer Farris fired one shot at the canine and one shot at her. Officer Farris entered her residence and assisted her after she had been shot.

INVOLVED OFFICER STATEMENTS

Officer Sean Farris

Officer Farris, #P0101, M/B/27, is currently assigned to District 5, and he has been a CPD member since 2014. Officer Farris was on routine patrol, in uniform and in a marked cruiser; his BWC was activated.

Officer Farris responded to a radio dispatch of a canine that mauled someone. When he arrived on scene, Officer Farris grabbed his shotgun “because [he] did not know the size of the canine or if it was more than one canine.” Officer Farris observed Witness A covered in blood after being bitten by Ms. Gibson’s pit bull.

Officer Farris responded to Ms. Gibson’s residence to check on her. Officer Farris stood on the porch on the side of the residence. Ms. Gibson responded to the door with her canine. Officer Farris asked Ms. Gibson to put her canine up; she complied. Officer Farris turned away from the door to advise his supervisor via radio of the injuries to Witness A. When Officer Farris turned back, Ms. Gibson opened the door, and her pit bull ran outside, toward him. Officer Farris discharged his shotgun once at the approaching pit bull. The canine was struck in the face and fled to the backyard.

Ms. Gibson advised Officer Farris she was struck in her leg. Officer Farris believed Ms. Gibson was “struck by pellets from the shotgun, which could have been a ricochet.” Officer Farris applied a tourniquet on Ms. Gibson’s leg and called for CFD to respond. He advised ECC “a shot” had been fired. CFD also transported Witness A for medical treatment.

Officer Farris discharged his shotgun because he perceived the canine had “just attacked two people and was coming to attack” him.

OFFICER WITNESS STATEMENTS

There were none.

WITNESS STATEMENTS

Witness A

The statement below was given to CPD Homicide Detective Marcus McNeil while at UCMC. CCA reviewed Witness A’s taped statement made to CPD.

Witness A and Ms. Gibson were arguing about the rent. Ms. Gibson waved a hammer as she yelled at Witness A, which upset her canine. The canine came after Witness A and began biting him. Witness A attempted to leave the residence, but the canine kept attacking him. Witness A fled outside where he was met by his neighbor, Ms. Witness B. Witness B called the police. Officer Farris arrived on scene carrying a shotgun. Officer Farris approached the residence and Witness A heard one shot and then saw the canine limping.

Witness B

The statements below were given to CPD Homicide Detectives Gregory Gehring and Robert Randolph.

Witness B was home watching television when she heard her neighbor Witness A yelling, "Help, help, get the dog!" Witness B looked out her window and observed Witness A's injuries. Witness B went outside to see if she could help. Witness A asked Witness B to call 911. Witness B returned to her residence and called 911. Officer Farris arrived carrying his shotgun. Witness B remained with Witness A on the driveway. Witness B heard the gunshot and she observed the canine exit the residence and run to the backyard.

Witness C

Witness C was outside and observed Officer Farris knocking on Ms. Gibson's side door. Officer Farris told Ms. Gibson several times to secure her canine. The side door opened, and the canine ran out. Officer Farris immediately shot the canine. Ms. Gibson asked Officer Farris why he shot. Officer Farris replied he was shooting the canine. Ms. Gibson advised Officer Farris she was shot.

EVIDENCE

CCA responded to the scene of the shooting and monitored the investigation being conducted by the Homicide Unit as well as the processing of the scene by the Criminal Investigations Section (CIS).

Police Documents

CCA reviewed all CPD-related forms, including but not limited to information from CPD's Records Management System (RMS), Homicide Investigation Report, Criminal Investigations Section (CIS) documents, and IIS report.

Computer Aided Dispatch (CAD)

Date	Time	Call Notes
07/06/2018	20:46:00	Neighbor being attacked by dog
	20:46:41	60-year-old male conscious, breathing
	20:47:13	White pit bull
	20:47:29	Dog still on scene in rear of location
	20:52:03	Heather states [Witness A] attempted to hit her overhead with a hammer and pit bull attacked him.
	20:52:29	Dog shot
	20:53:12	Female shot to leg
	20:54:17	In backyard – Fire expedite

911 Call Recording Transcriptions

First call – Witness B

The emergency is at 34 Graham Street. A man, our neighbor, is being attacked by a vicious dog and he asked me to call 911.

Second call – Ms. Gibson

My friend/roommate was trying to beat me up. And I do have a pit bull, and he was trying to protect me, and he attacked him. My dog went wild and he's really cut up.

Body Worn Camera (BWC)

Officer Farris

Officer Farris arrived on scene, retrieved his shotgun, and then exited his cruiser. Witness A stood in the driveway with injuries to his right arm. Officer Farris asked Witness A where the canine was. Witness A advised the canine was in the residence with Ms. Gibson. Officer Farris walked to the rear of the residence and observed blood on the storm door. Officer Farris opened the storm door; the canine ran to the door and barked.

Officer Farris knocked on the glass of the entry door. Ms. Gibson approached the door and Officer Farris asked her to secure the canine in another room. Ms. Gibson placed a leash on the canine and walked away. Ms. Gibson returned, opened the door, and the canine lunged toward Officer Farris. Officer Farris stepped away from the door, lowered the shotgun, and discharged one round at the canine, striking it. The canine fled to the backyard.

Officer Farris notified ECC. Ms. Gibson advised Officer Farris she had been shot. Officer Farris advised ECC that Ms. Gibson had also been shot. Officer Farris entered Ms. Gibson's residence and placed a tourniquet on her right leg. CFD arrived on scene and transported Ms. Gibson to the hospital.

Photographs

CCA reviewed numerous photographs of the scene.

Firearm Qualifications and Discharges

Officer Farris's firearm qualification occurred on 03/21/2018. Officer Farris discharged his Remington 12-gauge shotgun one time during the incident.

Prosecutor's Letter of Declination

The Hamilton County Prosecutor's Office issued a letter of declination on January 29, 2019; it stated Officer Sean Farris was justified in his actions and did not violate any criminal statutes.

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

Ms. Gibson stated Officer Farris fired one shot at the canine and one shot at her. The Firearm Report showed Officer Farris's firearm was discharged only once. CIS concluded that Ms. Gibson sustained injuries to her legs from the shotgun pellets separating from the main projectile. The evidence does not establish that she was hit by a separate shotgun discharge.

AUTHORITIES

I. CPD Procedure Manual

§ 12.545 Use of Force (Revised 07/27/17)

Definitions:

Deadly Force – Force likely to cause, or capable of causing, death.

Serious Use of Force – Any action that involves: a critical firearm discharge; the use of deadly force; a baton strike to the head; or a use of force in which the person is seriously injured or requires hospital admission, with the exception of individuals admitted for psychiatric evaluation not suffering a serious injury.

Self-Defense – The act of protecting oneself or another from physical harm or serious physical harm.

Serious Injury/Serious Physical Harm to Persons – Any of the following:

- Any physical harm that carries a substantial risk of death.
- Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity.
- Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement.

Information:

Use of Force Review Board: The Use of Force Review Board will conduct comprehensive reviews of the following use of force incidents:

- A use of force resulting in hospitalization or serious injury to a subject or police officer involved in a use of force incident;
- A use of force that includes a citizen's complaint of unnecessary or excessive force by an officer;
- Any use of force incident recommended for review by a district/section/unit commander and approved by the Police Chief. Use of force incidents involving the discharge of firearms by police are not included in this process and are addressed by the Firearms Discharge Board (Procedure 12.550). Uses of force involving beanbag, OC aerosol canister, OC blast grenades, and 40mm foam round discharges are reviewable by the Use of Force Review Board.

The Use of Force Review Board consists of:

- The affected district/section commander;
- One captain from Investigations Bureau or Patrol Bureau (rotating assignment);

- Training Section Commander;
- Inspections Section Commander;
- An Assistant Police Chief (rotating assignment).

Internal Investigations Section (IIS) will coordinate Use of Force Review Board action and will schedule Review Board meetings and provide all documentation to board members on cases assigned by the Police Chief.

An Assistant Police Chief will chair the Review Board meetings. The Review Board will prepare a final report to the Police Chief containing a description of the incident including all uses of force, a summary and analysis of all relevant evidence, proposed findings, and analysis to support those findings.

The Review Board will determine whether all uses of force during the encounter were consistent with Department policy and training, whether the involved officers employed proper tactics, and whether lesser force alternatives were reasonably available.

Policy:

A police officer's right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to affect it. Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake (*Graham v. Conner*, 1989).

Before any use of force option is employed by an officer to affect an arrest, its proper application requires careful attention to the facts and circumstances of each particular case, including:

- 1) The severity of the crime at issue.
- 2) Whether the suspect poses an immediate threat to the safety of the officers or others.
- 3) Whether the suspect is **actively resisting arrest** or attempting to evade arrest by flight.

When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or affect the arrest and no more. Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.

Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others but extends to that amount reasonably necessary to enable them to affect the arrest of an **actively resistant** subject.

Force situations often do not allow for an ordinal progression up a continuum of force and officers must be ready to escalate or de-escalate as the situation evolves.

Use of Force Continuum

Examples of Subject Resistance

- Uncooperative: Subject fails to respond to verbal commands or other directions.
- Active resistance: 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.
- Assault or threat of assault: Subject assumes fighting stance, charges, strikes or kicks an officer or verbally or physically indicates an intention to commit an assault combined with the subject's capability to assault.
- Life threatening assault or assault likely to cause serious physical harm: Subject commits an attack using an object, a weapon, or an empty hand assault, wherein the officer reasonably believes the assault will result in serious physical harm and/or death.

§ 12.550 Discharging of Firearms by Police Personnel (06/22/17)

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.**

Self-Defense: A police officer is authorized to use that force reasonably necessary to protect him/herself or others from death or serious physical harm at the hands of another.

- There must be an apprehension of real or immediate danger based on an overt and/or constructive act by another.

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 other from a dangerous animal.

Procedure:**C. Shots fired at Animals**

1. Notify ECS
 - a. ECS will notify the appropriate personnel on the Situational Occurrences Notification List.
2. 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.

ANALYSIS

Witness A and Ms. Gibson had a dispute; her canine became agitated and bit Witness A several times. Witness B and Ms. Gibson contacted ECC for Witness A's injuries. Officer Farris was dispatched to the residence. BWC footage showed that on arrival, he walked to the rear of Ms. Gibson's residence, carrying his shotgun, and observed blood on the storm door. Ms. Gibson came to the door and Officer Farris requested that she place her canine in another room. Ms. Gibson complied and responded back to the storm door. As soon as she opened the door, the canine ran toward Officer Farris. Officer Farris discharged his shotgun once at the canine, striking it. CPD Procedure § 12.550 Discharging of Firearms by Police Personnel maintains that an officer may, when reasonable, use their firearm to protect themselves and others from a dangerous animal. In his statement, Officer Farris articulated that, due to the canine's reported behavior, he perceived the canine as a threat of harm and fired his weapon on that basis. The BWC footage corroborates that claim. While Gibson was struck by pellets from Officer Farris's shotgun, the evidence does not establish that Officer Farris discharged his weapon with the intent to strike Ms. Gibson. Given the threat presented by the aforementioned canine, CCA concluded that Officer Farris complied with CPD's policy, procedure, and training when he discharged his shotgun and used deadly force.

FINDINGS

Officer Sean Farris

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

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



Dena Brown, Division Manager (Chief Investigator)



Gabriel Davis, Executive Director

PREVIOUS CONTACTS AND COMMENDATIONS

Officer Farris

Previous Contact with CCA

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

Case Number	Allegation	Finding
17222	Criminal	Not Sustained
17056	Search (Vehicle)	Unfounded
17056	Stop (Vehicle)	Exonerated
17056	Improper Procedure (MVR/DVR Microphone)	Sustained
15235	Lack of Service	Exonerated
15138	Lack of Service	Not Sustained
15138	Discourtesy	Not Sustained

Previous Contact with IIS

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

Commendations

Officer Farris has received no commendations in the past three years.

**CCA Case No. 18167 – Discharge of a Firearm -
Della Riley
Investigation Report and Finding**



Dena Brown
Division Manager (Chief Investigator)

Gabriel Davis
Executive Director

Table of Contents

Complaint Summary

Involved Subject Statements

Involved Officer Statements

Officer Witness Statements

Witness Statements

Significant Discrepancies and Clarifications

Evidence

Authorities

Analysis

Findings

Previous Contacts and Commendations

COMPLAINT SUMMARY

Date: August 22, 2018

Time: 12:59 p.m.

Location: 1635 Dewey Avenue

Complainant/Decedent: Della Riley

On August 22, 2018, Ms. Della Riley's 4-year-old son, AB, ran to the residence of his neighbor and told her that his mother was having a seizure. The neighbor called the Emergency Communications Center (ECC). CFD Engine 24 and Medic 24 responded to the call. CFD was unable to gain entrance due to a vicious canine inside attacking Ms. Riley. CFD requested CPD expedite to the residence.

Officers Andrew Snape and Morgan St. John responded to the scene. CFD advised the officers they could see the canine attacking Ms. Riley but were unable to enter the residence; they were unaware if anyone else was inside. Officers Snape and St. John entered the residence and observed Ms. Riley lying on the floor; one canine stood over her head. A second canine was also in the room and sitting on a couch. The initial canine noticed the officers and lunged toward them. Officers Snape and St. John discharged their firearms, killing the canine. The second canine fled to a back room and was later removed by the Hamilton County Society for the Prevention of Cruelty to Animals (HCSPCA).

Officer Snape notified ECC of their shots to the canine and requested a supervisor respond. CFD entered the residence and pronounced Ms. Riley as deceased.

INVOLVED SUBJECT STATEMENTS

Della Riley

Ms. Riley, F/W/42, succumbed to her injuries sustained by her canine.

INVOLVED OFFICER STATEMENTS

Officer Andrew Snape

Officer Snape, #P970, M/W/33, is currently assigned to District 3, and he has been a CPD member since 2008. Officer Snape was on routine patrol, in uniform, in a marked cruiser, and partnered with Officer St. John; Officer Snape was in the role of a Field Training Officer (FTO) partnered with Probationary Police Officer (PPO) St. John. His BWC was activated.

Ms. Riley's son advised a neighbor she was having a seizure. The neighbor called for CFD. CFD called for CPD to assist them with a person who was being attacked by a canine. When they

arrived on scene, CFD advised they could see the canine attacking Ms. Riley but were not able to enter the residence; they were unaware if anyone else was inside.

Officer Snape cracked the front door open. He observed Ms. Riley lying behind a box spring on the floor in the front room. Officer Snape could hear the canine biting her. He could not tell if Ms. Riley was alive or deceased. Officer Snape drew his firearm, with his finger outside the trigger guard, and announced, "Cincinnati Police!" to determine if anyone else was inside the residence that needed medical attention. He observed was a second canine inside the residence. As Officer Snape moved closer to Ms. Riley, the first canine came at him. Officer Snape was approximately 5-10 feet away when he discharged his firearm three times. Officer St. John was positioned behind him and to the right; she also discharged her firearm. Officer Snape shots struck the canine and it fell on top of Ms. Riley. The second canine fled to another room in the residence.

Officer Snape did not approach Ms. Riley because "it was obvious she was deceased." Officer Snape asked CFD to verify her condition. Officer Snape radioed his supervisor of the discharges. CFD advised they had been to Ms. Riley's residence before for the canine attacking the owners. Later, Officer Snape learned that one of the rounds ricocheted and struck Ms. Riley.

Officer Morgan St. John

Officer St. John, #P216, F/W/25, is currently assigned to District 4, and she has been a CPD member since 2017. At the time of the incident Officer St. John was assigned to District 3. Officer St. John was on routine patrol, in uniform, in a marked cruiser, partnered with Officer Snape; her BWC was activated.

Officer St. John's initial comments corroborated Officer Snape's statement. Officer St. John added that on arrival, they had CFD members step away from the door. The officers drew their firearms, with their finger off the trigger, as a safety measure. They opened the door and entered. Ms. Riley's feet could be seen lying on the ground with the canine over top of her "ripping her neck apart." Ms. Riley was not screaming, moaning, or making any movement; she appeared discolored. Officer Snape was positioned to the left of the room and Officer St. John was positioned to the right of the room. Within 5 seconds, the canine lifted his head, looked at the officers and "viciously" lunged over the bed at them. Officers St. John and Snape both discharged their firearms. The canine was struck and landed next to Ms. Riley. Officer St. John discharged her firearm one time, "out of fear for our own lives after what we witnessed it do to this woman." The second canine fled to another room.

OFFICER WITNESS STATEMENTS

There were none.

WITNESS STATEMENTS

The statement below was given CPD Homicide Detectives William Hilbert and Dewayne McMenama on the day of the incident. CCA witnessed this interview.

Witness A

Witness A, M/B/40, was not present when the incident occurred. Witness A resided with Ms. Riley. Ms. Riley had a seizure disorder, had not seen a doctor, and was not taking medication for it. Whenever Ms. Riley would have a seizure, Witness A would put the canines in another room because they would become excited. Witness A also confirmed the male canine had previously attacked both of them, usually when they were arguing.

EVIDENCE

CCA responded to the scene of the shooting and monitored the investigation being conducted by the Homicide Unit as well as the processing of the scene by the Criminal Investigations Section (CIS).

Police Documents

CCA reviewed all CPD-related forms, including but not limited to information from CPD's Records Management System (RMS), Homicide Investigation Report, Criminal Investigations Section (CIS) documents, and IIS report.

Computer Aided Dispatch (CAD)

Date	Time	Call Notes
08/22/2018	12:59:54	Caller [neighbor]
	13:02:12	Age unknown, female, consciousness unknown, breathing status unknown. Problem – seizure
	13:02:35	4 year old just came to Comp's house and stated his mom was having a seizure
	13:09:51	Need police for dogs on scene
	13:10:28	Need police to expediate
	13:14:58	Hamilton County notified to have SPCA expediate
	13:16:41	Per E24, believes dog may be attacking patient who had a seizure
	13:20:39	PO has had to shoot the dog
	13:23:50	Have SPCA continue for another dog still on scene
	13:24:05	PO request 241-KIDS be notified and respond

Body Worn Camera (BWC)

Officer Snape

Officers Snape and St. John arrived on scene and was advised by CFD that Ms. Riley's body, who was deceased, was being mauled by a canine. Officer Snape asked CFD members if anyone else was inside the residence. CFD advised Ms. Riley's son was across the street. Officer Snape cracked the door open and yelled, "Cincinnati Police" and then entered the residence. Officer Snape observed a canine sitting on a couch. As Officer Snape moved further into the residence, a different canine lunged toward the officers. Officers Snape and St. John discharged their firearms, killing the canine. Officer Snape advised ECC of the shots being fired.

Officer St. John

Officer St. John's BWC corroborated Officer Snape's footage. Officer St. John discharged her firearm as the canine lunged toward them.

Photographs

CCA reviewed numerous photographs of the scene.

Hamilton County Coroner's Report

The Coroner concluded the manner in which Ms. Riley died was an accident; that was caused by "exsanguination due to injuries from a dog attack," with a contributing factor of a "seizure disorder." The gunshot wound was postmortem. The projectile was removed from Ms. Riley and was consistent with the two rounds removed from the canine.

Firearm Qualifications and Discharges

Officer Snape's firearm qualification occurred on March 1, 2018. Officer Snape discharged his firearm three times during the incident.

Officer St. John's firearm qualification occurred on March 7, 2018. Officer St. John discharged her firearm once during the incident.

Prosecutor's Letter of Declination

The Hamilton County Prosecutor's Office issued a letter of declination on February 4, 2019. It stated Officers Andrew Snape and Morgan St. John were justified in their actions and did not violate any criminal statutes.

Criminal Investigation Sections (CIS)

Ms. Riley sustained a gunshot wound to her left abdomen. CIS determined a discharged round passed through the mattress, box spring and ricocheted off the floor before striking Ms. Riley.

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

There were none.

AUTHORITIES

I. CPD Procedure Manual

§ 12.550 Discharging of Firearms by Police Personnel (06/22/17)

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.**

Self-Defense: A police officer is authorized to use that force reasonably necessary to protect him/herself or others from death or serious physical harm at the hands of another.

- There must be an apprehension of real or immediate danger based on an overt and/or constructive act by another.

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 other from a dangerous animal.

Procedure:

C. Shots fired at Animals

1. Notify ECS
 - a. ECS will notify the appropriate personnel on the Situational Occurrences Notification List.
2. 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.

ANALYSIS

CFD responded to an ECC call for Ms. Riley having a seizure. CFD responded and observed a canine attacking Ms. Riley. BWC footage showed Officers Snape and St. John responded to the residence and entered with their firearms drawn; they observed a canine attacking Ms. Riley's body. Subsequently, the canine lunged toward the officers, who discharged their firearms, killing the canine.

CPD Procedure § 12.550, Discharging of Firearms by Police Personnel, maintains that when an officer perceives what the officer interprets to be a threat of loss of life or serious physical harm to the officer or to others at the hands of another, the officer has the authority to display a firearm and to use force reasonably necessary to protect himself or others from death or serious physical harm. The policy specifically provides that after all other reasonable means have been exhausted, an officer may “resort[] to the use of firearms . . . when an officer reasonably believes that such use of firearms is necessary to protect the officer or another from risk of serious physical harm or loss of life.” Section 12.550 also specifically permits an officer to discharge the officer’s firearm to protect themselves and others from a dangerous animal.

In this case, the officers reported that they discharged their firearms for their personal safety, which is consistent with what the relevant BWC footage shows. CIS determined that a discharged round passed through the mattress, box spring and ricocheted off the floor before striking Ms. Riley postmortem. The evidence does not establish that the officers discharged their weapons with the intent to strike Ms. Riley. Given the threat presented by the aforementioned canine, CCA concluded that Officers Snape and St. John complied with CPD’s policy, procedure, and training when they discharged their firearms.

FINDINGS

Officer Andrew Snape
Officer Morgan St. John

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



Dena Brown, Division Manager (Chief Investigator)



Gabriel Davis, Executive Director

PREVIOUS CONTACTS AND COMMENDATIONS

Officer Snape

Previous Contacts with CCA

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

Case Number	Allegation	Finding
18076	Stop (Person)	Exonerated
18076	Pointing of a Firearm	Exonerated
18076	Death in Custody	Unfounded

Previous Contact with IIS

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

Commendations

Officer Snape received two commendations in the past three years.

Date	Source of Commendation
06/22/2017	CPD
06/22/2017	CPD

Officer St. John

Previous Contacts with CCA

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

Previous Contacts with IIS

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

Commendations

Officer St. John received no commendation in the past three years.

**CCA Case No. 18169 – Discharge of a Firearm -
James Clay Investigation Report and Finding**



Dena Brown
Division Manager (Chief Investigator)

Gabriel Davis
Executive Director

Table of Contents

Complaint Summary

Involved Subject Statements

Involved Officer Statements

Officer Witness Statements

Witness Statements

Evidence

Significant Discrepancies and Clarifications

Authorities

Analysis

Findings

Previous Contacts and Commendations

COMPLAINT SUMMARY

Date: August 24, 2018

Time: 2:43 p.m.

Location: 2630 Victory Parkway #16

CCA Receipt: August 24, 2018 (Discharge of a Firearm)

Complainant/Decedent: James Clay

On August 22, 2018, District 4 Officers Robert Wilsman and Justin Gottmann responded to Boost Mobile (2536 Kemper Lane) to investigate a report of a robbery, and assault, as the store clerk, Mr. Mohammed Garber, was inflicted with serious physical harm and sustained visible injuries. The suspect also took \$153.00 dollars from the cash register without permission. Officer Stephen Bender was the investigative officer assigned to the case. Officer Bender developed probable cause to arrest Mr. James Clay for the robbery.

On August 24, 2018, Officer Bender obtained an arrest warrant for Mr. Clay. Officers Bender, Thomas Wells and Specialist Ronald Schultz responded to Mr. Clay's address at Talbert House. Mr. Clay would not open his door. Officer Bender contacted Talbert House staff member, Witness A, who unlocked the door and advised Mr. Clay the police wanted to speak to him. Officers Bender, Wells and Specialist Schultz entered Mr. Clay's apartment behind Witness A. Officer Bender advised Mr. Clay he was under arrest and reached to grab Mr. Clay's arms. Mr. Clay backed further into the apartment.

Specialist Schultz stood in front of Mr. Clay with his taser drawn and warned of the impending taser deployment. Mr. Clay swung at Specialist Schultz's taser, reached in his rear waistband with his right hand and produced a firearm. Specialist Schultz deployed his taser, which had no effect. Officers Bender and Wells thought Mr. Clay was going to shoot someone, so they discharged their firearms, striking Mr. Clay, and Specialist Schultz. Mr. Clay succumbed to his injuries.

INVOLVED SUBJECT STATEMENTS

James Clay

Mr. James Clay, M/B/20, was fatally wounded on August 24, 2018.

INVOLVED OFFICER STATEMENTS

Officer Stephen Bender

Officer Bender, #P0012, M/W/42, is currently assigned to District 4, and he has been a CPD member since 2001. Officer Bender was in plainclothes and operated an unmarked vehicle; he did not wear a BWC due to his plainclothes assignment.

Officer Bender provided two statements to CCA, one interview on September 19, 2019, and a written statement on March 4, 2021.

Officer Bender was assigned to investigate a robbery offense that occurred at Boost Mobile, located at 2536 Kemper Lane. During the course of the investigation, Officer Bender developed probable cause to arrest Mr. James Clay for the robbery.

Officers Bender, Wells, and Specialist Schultz responded to Mr. Clay's apartment to arrest him. Officer Bender knocked on the door and heard someone inside the apartment. When Mr. Clay did not respond, Officer Bender contacted Witness A, the apartment landlord. Witness A responded and advised Mr. Clay through the closed door that the police were present before he unlocked and opened the door. Mr. Clay stood just inside the apartment.

Witness A stood inside the apartment by the door and told Mr. Clay, "You need to give yourself up. The police are here to talk to you." Officer Bender entered the apartment with Specialist Schultz and Officer Wells behind him. Officer Bender did not see Witness A exit the apartment. Officer Bender advised Mr. Clay he had a warrant and needed to submit to the arrest. Officer Bender moved behind Mr. Clay and attempted to place him into custody. Mr. Clay tensed, braced, and physically struggled being handcuffed. Officer Bender again advised Mr. Clay to submit to arrest. Mr. Clay did not comply; instead, he grabbed Officer Bender's hand and backed further into the apartment.

Officer Bender noticed the red dot on Mr. Clay's body from Specialist Schultz's taser. Officer Bender let go of Mr. Clay's hands, backed away, and moved to the side of Mr. Clay believing he was going to be tased. Officer Bender heard Specialist Schultz warn Mr. Clay of the impending taser deployment. Officer Bender was positioned on Mr. Clay's left side and observed a firearm in Mr. Clay's waistband. Officer Wells yelled, "Gun!" Mr. Clay grabbed the firearm and pointed it at Specialist Schultz, who stood in front of him. Officer Bender discharged his firearm approximately five times because he feared that Mr. Clay was going to shoot and seriously injure or kill Specialist Schultz and Officer Wells. Mr. Clay fell to the ground. Specialist Schultz advised he had been shot. Officer Bender immediately left the apartment to get a tourniquet for Specialist Schultz. Officer Ronald Geisler arrived on scene and transported Specialist Schultz to the hospital.

In his second statement, Officer Bender told CCA that he could not recall whether, prior to entering Mr. Clay's apartment, Officer Bender was aware of any mental health issues, diagnoses, disorders, or illnesses involving Mr. Clay. Officer Bender could not recall whether Officer Bender had any reason to believe Mr. Clay had a mental illness prior to entering Mr. Clay's apartment. Officer Bender could not recall whether he performed a background check on Mr. Clay prior to entering his apartment. Officer Bender could not recall whether he researched; investigated; or inquired into whether Mr. Clay struggled with mental health issues; nor could he recall whether he spoke to any relatives, friends, or acquaintances of Mr. Clay about any such issues.

Officer Bender confirmed that he has received Mental Health Response Team (MHRT) training from CPD. As of the date of the shooting, his last MHRT training occurred in November of 2009.

Officer Bender stated that prior to the shooting, he tracked Mr. Clay to Mr. Clay's apartment by using images generated from video surveillance of the robbery in order to identify Mr. Clay as the offender. The images were shown to staff at the Shakely Shelter, who recognized Mr. Clay and provided information that led police to a Talbert House apartment where Mr. Clay was residing. When asked by CCA if Officer Bender knew or had any reason to believe that the Talbert House provided housing for persons with mental health issues, Officer Bender stated that he thought the Talbert House was a "halfway house for those in need of social services."

Officer Thomas Wells

Officer Wells provided two statements to CCA, one interview on September 19, 2019, and a written statement on March 4, 2021.

Officer Wells, #P0054, M/W/55, is currently assigned to District 4, and he has been a CPD member since 1995. Officer Wells was in uniform, in a marked vehicle, and partnered with Specialist Schultz; his BWC was activated.

Officer Wells initial comments corroborated Officer Bender's statement. Officer Wells added he did not see Mr. Clay when the door was opened. Officer Bender told Mr. Clay he was under arrest. Officers Wells and Bender grabbed Mr. Clay's arms; however, he pulled and backed away. Specialist Schultz advised he was going to tase Mr. Clay. As Mr. Clay reached his right hand behind his back, Officer Wells yelled, "He's reaching," and observed Mr. Clay's firearm in his waistband area. Mr. Clay raised his firearm, and then moved toward Specialist Schultz.

Officer Wells stood approximately five to six feet away from Mr. Clay to his right. Because he feared for his life and the lives of the other officers, he discharged his firearm approximately eight times to "stop the aggression." Officer Wells had "no idea" where the other officers were positioned. Mr. Clay fell at the doorway and Specialist Schultz advised he had been shot. Officer Wells advised the Emergency Communications Center (ECC) that shots had been fired and Specialist Schultz had been shot. Officer Wells remained with Mr. Clay until responding officers arrived on scene.

In his second statement, Officer Wells told CCA that he could not recall whether, prior to entering Mr. Clay's apartment, Officer Wells was aware of any mental health issues, diagnoses, disorders, or illnesses involving Mr. Clay. Officer Wells could not recall whether the officers discussed Mr. Clay's mental health in advance.

Officer Wells also stated that he did not provide medical aid to Mr. Clay following the shooting. Officer Wells could not recall why he did not provide such aid.

Specialist Ronald Schultz

Specialist Schultz provided a statement to CCA on September 19, 2019.

Specialist Schultz, #PS053, M/W/48, is currently assigned to District 4, and he has been a CPD member since 2003. Specialist Schultz was in uniform, in a marked vehicle, and partnered with Officer Wells; his BWC was activated.

Specialist Schultz's initial comments corroborated Officer Wells's statement. Specialist Schultz clarified he was the non-lethal officer since no weapons were involved in the robbery and Mr. Clay did not have prior charges involving a firearm. When the officers arrived at the apartment, they entered behind Witness A, who spoke to Mr. Clay "as if he knew him." Mr. Clay immediately backed up and "put his hands up, indicating he was going to resist arrest." Specialist Schultz told Mr. Clay to put his hands behind his back. Instead, Mr. Clay backed up. Specialist Schultz relayed that, due to his position in front of Mr. Clay, he could not tase him. Officer Bender grabbed Mr. Clay's wrist and he flailed his arms.

Mr. Clay reached his right arm behind his back, "clearly in a motion of pulling a weapon out." Specialist Schultz could not recall what specific commands he issued to Mr. Clay. Officer Wells said, "He's reaching. Tase him." Specialist Schultz saw Mr. Clay's firearm coming from around his body. Specialist Schultz deployed his taser; however, it did not take effect. Specialist Schultz dropped the taser but could not get his firearm out of the holster. He realized he had been shot. Mr. Clay fell at the doorway and Specialist Schultz advised Officers Bender and Wells he was

shot. Officer Bender grabbed the tourniquet out of the cruiser and placed it on him. Officer Geisler arrived and instead of waiting for the ambulance drove him to the hospital.

OFFICER WITNESS STATEMENTS

There were none.

WITNESS STATEMENTS

The statements below were taken from the initial interviews conducted by CPD Homicide Investigators Marcus McNeil and Gregory Gehring on the day of the incident. CCA witnessed this interview.

Witness A – Talbert House Caretaker

Officer Bender called to see if Witness A was willing to come to Mr. Clay's apartment and see if he was home. Witness A knocked on the door. Witness A heard a noise inside and stated, "Talbert House coming in," unlocked and opened the door. Witness A entered the apartment and observed Mr. Clay with his hands in his rear waistband, causing Witness A to think Mr. Clay was pulling up his pants.

The officers entered the apartment; one reached for Mr. Clay. Mr. Clay pulled his arm back from the officer and stepped backwards. One of the officers stated, "Stop walking or I'm going to tase you." Mr. Clay reached to his rear waistband. Witness A thought Mr. Clay was reaching for a firearm. Witness A heard one of the officers say, "He's got a gun!" Witness A did not see the firearm but heard multiple gunshots and exited the apartment. Witness A heard one of the officers say he was shot and needed a tourniquet.

EVIDENCE

CCA responded to the scene of the shooting and monitored the investigation being conducted by the Homicide Unit as well as the processing of the scene by the Criminal Investigations Section (CIS).

Police Documents

CCA reviewed all CPD-related forms, including but not limited to the supervisor's use of force report (Form 18F), information from CPD's Records Management System (RMS), Homicide Investigation Report, Criminal Investigations Section (CIS) documents, and IIS report.

Computer Aided Dispatch (CAD)

Date	Time	Call Notes
08/22/2018	18:40:53	Store Robbery, Unknown male assaulted employee, took off with money
	18:41:21	Name of Store?
	18:41:27	Weapon?
	18:41:38	Unknown 3 rd party from manager
	18:42:16	On call back to employee, no weapons, now requires

Date	Time	Call Notes
	18:43:39	Employee having trouble breathing, subject Male/Black/25/blue shirt, Last seen on foot leaving on right side of store.
	18:45:22	Possible ran towards Alms Apts.
	18:45:58	Possible \$500 in cash, possible cell phones, manager has video attempting to get info of subject.
	18:47:56	M/B 25YO, 6'1 ,160#
	18:48:21	Per video footage M/B/20-25/short black hair, blue polo shirt, red underwear, black belt, tan pants
08/24/2018	15:37:15	Apt. 16
	15:53:59	Subject shot
	15:54:45	Subject down
	15:55:20	Schultz being transported

Photographs

CCA reviewed numerous photographs of the scene.

Body Worn Camera (BWC)

Officer Wells

Officer Wells and Specialist Schultz arrived on scene, and Officer Wells advised ECC. Officer Bender knocked on Mr. Clay's apartment door. Officer Bender advised the officers Mr. Clay was inside the apartment. Officer Bender called out Mr. Clay's first name several times and continued knocking on his door. Officer Bender yelled, "Hey, James, this is the police! I need you to open the door for me. I can hear you in there." There was no response. Officer Schultz had his taser pointed down by his side while he and Officer Wells waited for Officer Bender to get assistance.

Officer Wells knocked on the apartment door and called Mr. Clay's first name but there was no response. Mr. Clay's neighbors opened their door and Officer Wells told them to remain inside. Officer Wells knocked on the door and called Mr. Clay's first name again. Officer Bender returned and advised Witness A had the key to the apartment. Officer Wells knocked on the door again and stated, "James, we gotta talk to you." Officer Bender and Witness A walked to Mr. Clay's apartment. Witness A knocked on the door and stated, "Talbert House, coming in," and then unlocked the door. Witness A commented to Mr. Clay who could not be seen, "Come on man, they got you."

Officer Bender entered the apartment and grabbed Mr. Clay's left arm. Witness A stood by Mr. Clay's right side. Officer Wells was behind Officer Bender. Mr. Clay pulled his hand away from Officer Bender's grasp and partially raised his hands in an outward motion as he stepped backwards. Specialist Schultz ordered Mr. Clay to put his hands behind his back. Officer Bender grabbed Mr. Clay's left arm again. Mr. Clay grabbed Officer Bender's left arm with his right hand. Mr. Clay backed further into his apartment. Specialist Schultz attempted to grab Mr. Clay's arm, but he swatted Specialist Schultz's hands away from him. Officer Wells ordered Mr. Clay to comply. Specialist Schultz said, "I'm going to tase you. I'm going to tase you, guy!" Officer Bender stood to the left side of Mr. Clay near a closet door. As Mr. Clay reached behind his back, Officer Wells yelled, "He's got something behind his back!" Specialist Schultz deployed his taser, striking Mr. Clay in the stomach. Mr. Clay pulled the firearm from behind his back with his right hand and pointed it at Specialist Schultz, while grabbing Specialist Schultz's right arm with his left hand.

As Specialist Schultz and Mr. Clay struggled and turned toward the door, Witness A exited the apartment. Mr. Clay and Specialist Schultz continued to turn, still holding onto each other, and moved closer to the door. Officers Wells and Bender discharged their firearms several times.

Specialist Schultz immediately advised the officers he was shot. Mr. Clay fell at the doorway. Officer Wells advised ECC of the shots being fired and advised an officer was also shot. Officer Bender followed Specialist Schultz down the steps. Officer Wells advised ECC the “subject was down and needed assistance,” and remained with Mr. Clay. Officer Wells kept his firearm pointed at Mr. Clay who moaned and rolled slightly on the ground. Witness A remained in the hallway telling Mr. Clay, “Stay with me, James.” Responding Officers Kenneth Dotson, Brandon Dean and Stephanie Greene arrived on scene. Officer Wells stated, “I don’t even know if it’s real,” as Officer Dotson remained with Mr. Clay’s firearm.

Specialist Schultz

Specialist Schultz’s BWC corroborated Officer Wells’s BWC as transcribed as above.

Taser Download

Specialist Schultz deployed his taser once for the five second cycle.

Firearm Qualifications and Discharges

Officer Bender qualified with his firearm on May 1, 2018. Officer Bender discharged his firearm six times.

Officer Wells qualified with his firearm on May 1, 2018. Officer Wells discharged his firearm 10 times.

Hamilton County Coroner’s Report

Mr. Clay suffered gunshot wounds to his torso and extremities. Those wounds were the immediate cause of death.

Media Reports & Statements

According to reports published by Cincinnati media (specifically WLWT), members of Mr. Clay’s family confirmed (and stated on the record) that Mr. Clay suffered from mental illness, including bipolar disorder and schizophrenia. CPD confirmed in a press conference in August of 2018 that when CPD met with family members following the fatal shooting of Mr. Clay, relatives informed CPD that Mr. Clay suffered from mental health issues.

Prosecutor’s Letter of Declination

The Hamilton County Prosecutor’s Office issued a letter of declination on March 7, 2019, stating that Officers Stephen Bender, Thomas Wells, and Specialist Ronald Schultz were justified in their actions and did not violate any criminal statutes.

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

Per CPD: An inspection of Mr. Clay’s firearm determined it was an inoperable Marksman Repeater pellet gun which was a full-sized metal replica of a .45 caliber semi-automatic pistol.

AUTHORITIES

I. Caselaw

Payton v. New York, 445 U.S. 573 (1980)

State v. Justice, 2011-Ohio-4004 (Ohio Ct. App. 5th Dist. Fairfield County 2011)

II. CPD Procedure Manual (in part)

§ 12.555 Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders (Revised 08/13/2015)

Procedure:

A. 1. Felony Arrest

Officers will make a physical arrest on all original felony arrests, felony warrants, and felony capias.

§ 12.554 Investigatory Stops (Revised 01/19/17)

Information:

There are three levels of police/citizen contact.

The first level is a consensual encounter. A police officer may approach any person in a public place and request to talk to him. So long as the person is free to leave whenever he wants, no Fourth Amendment seizure has occurred and no reasonable suspicion or probable cause is required.

The next level is the "Terry" type encounter. Here the officer has reasonable suspicion to believe the citizen is committing or has committed a crime. Based on this reasonable suspicion, the officer may forcibly stop and detain the citizen for a brief investigatory period. Failure to answer the questions asked by the officer or to properly identify oneself cannot provide the justification for detaining a person past the period necessary to complete the brief "Terry" type investigation. Once the reasonable suspicion is determined to be unfounded, the citizen must be released.

The third level of police/citizen contact is the arrest. The arrest occurs when the citizen is no longer free to leave and the officer has the intent to arrest. The arrest must be supported by probable cause to believe the citizen is committing or has committed a criminal offense.

§ 12.545 Use of Force (Revised 07/27/17)

Definitions:

Actively Resisting Arrest – When the subject is making physically evasive movements to defeat the officer's attempt at control, including fleeing, bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

Deadly Force – Force likely to cause, or capable of causing, death.

De-escalation – Using non-confrontational verbal skills, empathy and active listening to stabilize a person in crisis. De-escalation may also incorporate the use of additional time, distance and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force.

Force – Any physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person. The term includes, but is not limited to, the use of: firearms, TASERS, chemical irritant, choke holds or hard hands, the taking of a subject to the ground, or the deployment of a canine. The term does not include escorting or handcuffing a person with no or minimal resistance.

Serious Use of Force – Any action that involves: a critical firearm discharge; the use of deadly force; a baton strike to the head; or a use of force in which the person is seriously injured or requires hospital admission, with the exception of individuals admitted for psychiatric evaluation not suffering a serious injury.

Self-Defense – the act of protecting oneself or another from physical harm or serious physical harm.

Information:

TASER: The TASER is an electronic control device that is a non-lethal force alternative used to assist officers in the performance of their duties. The TASER is designed for self-defense or to temporarily immobilize a subject who **is actively resisting arrest**. It generates electricity in a small, hand-held, battery operated unit about the size of a handgun.

When properly used, the TASER generates an electrical current that dominates the existing neuromuscular and sensory nervous system. Subjects become physically incapacitated and unable to control muscle movement, allowing officers to gain control.

The TASER may be used in situations where time and conditions permit. It can be an extremely effective control device for close range incapacitation.

When deploying a cartridge from the Taser, frontal shots are prohibited except in situations of self-defense or defense of another.

Policy:

When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.

Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others but extends to that amount reasonably necessary to enable them to effect the arrest of an **actively resistant** subject. Force situations often do not allow for an ordinal progression up a continuum of force and officers must be ready to escalate or de-escalate as the situation evolves.

USE OF FORCE CONTINUUM

Examples of Subject Resistance

- **Uncooperative:** Subject fails to respond to verbal commands or other directions.
- **Active resistance:** 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.
- **Assault or threat of assault:** Subject assumes fighting stance, charges, strikes, or kicks an officer or verbally or physically indicates an intention to commit an assault combined with the subject's capability to assault.
- **Life threatening assault or assault likely to cause serious physical harm:** Subject commits an attack using an object, a weapon, or an empty hand assault, wherein the officer reasonably believes the assault will result in serious physical harm and/or death.

Each force situation is unique and this continuum is intended only as an illustration of the various force options available to an officer facing a given level of subject resistance. This continuum is not intended to preclude a force option when that option would not exceed the amount of force reasonably necessary to effect a lawful arrest (Graham v. Connor, 1989). Good judgment and the circumstances of each situation will dictate the level on the continuum of force at which an officer will start. Depending on the circumstances, officers may find it necessary to escalate and de-escalate the use of force by progressing up and down the force continuum. It is not the intent of this continuum to require officers to try each of the options before moving to the next, as long as the level of force used is reasonable under the circumstances.

Procedure:

A. Use of the TASER

1. The TASER may be deployed on a suspect **actively resisting arrest** when there is probable cause to arrest the suspect, or to defend one's self or another from active aggression.
2. Use the TASER for self-defense or to control subjects that are **actively resisting arrest**. When possible, give the subject a verbal warning the TASER will be deployed unless exigent circumstances exist that would make it imprudent to do so.

§ 12.550 Discharging of Firearms by Police Personnel (06/22/17)

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.**

Self-Defense: A police officer is authorized to use that force reasonably necessary to protect himself or others from death or serious physical harm at the hands of another.

- There must be an apprehension of real or immediate danger based on an overt and/or constructive act by another.

F. Firearm Discharge Board

1. The Police Chief will review and forward to IIU the CIS investigation report, letter from the Hamilton County Prosecutor, and any other material deemed relevant to the Firearm Discharge Board (FDB). The IIU Commander will notify and arrange a meeting between the FDB, CIS Commander, and investigators within 30 days of receipt of the material.
2. Recommendations made by the FDB should be unanimous or by consensus. If a consensus cannot be reached, a majority/minority opinion will be prepared at the direction of the chairperson.
3. The FDB will issue its final report to the Police Chief within 90 days of receipt of the material. The report will identify training issues and corrective measures, tactical response issues and corrective measures, and outline any recommended policy and/or procedure changes. References to specific policies, procedures, or training will be included in all recommendations.

§ 12.540 Body Worn Camera System (Revised 05/03/18)

Policy:

The Department will preserve video for at least 90 days after the last recorded event. After the 90-day retention period, recordings not categorized for retention will be deleted consistent with the approved retention schedule. It is the responsibility of any investigator to categorize recordings beyond the 90-day retention period, if necessary. Recorded events necessary to the investigation and prosecution of criminal offenses will be uploaded and redacted by Police Records.

Officers are required to activate their BWC system during all law enforcement-related encounters and activities as defined in this procedure. Officers will deactivate the BWC system only at the conclusion of the event or with supervisor approval. When an officer is involved in a police intervention shooting, their BWC will be subject to the process outlined in Procedure 12.550, Discharging of Firearms by Police Personnel.

Officers have the right to use the BWC system (e.g., inside a private home/facility, public/private school) **as long as** they have a legal right to be there (e.g., call for service, valid search warrant, consent of owner). Officer safety and public safety take precedence over recording events. Under extenuating circumstances, utilization of the BWC system may not be possible (e.g., ambush/assault on a police officer, compromising the tactical advantage of

police). When this occurs, officers will report the incident to their supervisor. The supervisor will investigate and document the incident on a Form 17BWC.

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. Uniformed officers below the rank of captain, trained in the use of BWC systems, are required to operate the equipment.

Information:

Officers are not required to inform citizens they are being recorded with the BWC.

The AXON BWC will record 30 seconds of buffered video when activated.

Procedure:

A. Operating and Utilizing BWC systems

1. Equipment is the responsibility of the officer assigned and will be operated according to the manufacturer's recommendations.
 - b) Officers will keep their BWC turned on during their tour of duty and will intermittently inspect their BWC to ensure it is functioning properly (i.e. flashing green LED).
2. Officers will use BWC equipment to record **all** calls for service and self-initiated activities listed below. The BWC must be activated when the officer arrives on-scene or announces he/she is on-scene in the area and must be recorded in its entirety. This includes:
 - a. While responding for calls for service in emergency mode.
 - d. When assisting other officers on any call for service or self-initiated activity.
 - g. Recordings of all persons physically arrested and being transported in any Department vehicle to any location.
4. The BWC may be deactivated after:
 - a. Clearing the call for service/self-initiated activity.
 - 1) Officers are not required to keep the BWC activated while completing paperwork, e.g. case report, **as long as** they are not interacting with the public.
 - d. A supervisor directs the officer to deactivate the BWC.

ANALYSIS

On August 22, 2018, ECC received a phone call from the manager of Boost Mobile who stated his employee, Mr. Garber, had been robbed. Officer Bender developed probable cause to arrest Mr. Clay for the robbery based on his review of video images capturing the robbery, and the confirmations of those at the Shakely Shelter who recognized Mr. Clay. On the basis of that probable cause, Officer Bender obtained a felony arrest warrant for Mr. Clay.

On August 24, 2018, Officers Bender, Wells, and Specialist Schultz responded to Mr. Clay's address to arrest him for the robbery. Mr. Clay would not open his door. Talbert House staff member, Witness A, unlocked the door and advised Mr. Clay the police wanted to speak to him.

Officers Bender, Wells, and Specialist Schultz entered Mr. Clay's apartment. Officer Bender advised Mr. Clay he was under arrest and attempted to place him into custody.

CPD Procedure 12.555, Arrest/Citation, instructs officers to "make a physical arrest on all original felony arrests and felony warrants." CPD Procedure 12.554, Investigatory Stops, maintains that a valid arrest occurs when the citizen is not free to leave, and the officer has the intent to arrest. The arrest must be supported by probable cause to believe the citizen is committing or has committed a criminal offense. Finally, under the law in Ohio, police officers in possession of an arrest warrant are permitted to enter the residence of the person for whom the warrant was obtained without needing to also obtain a search warrant. Given that the officers in this case had an arrest warrant supported by probable cause, the officers' seizure of Mr. Clay and entry into his apartment were both proper.

When Officer Bender attempted to place Mr. Clay into custody, Mr. Clay did not comply with the handcuffing process. CPD Procedure § 12.545 Use of Force states when officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. The procedure also defines the taser as a non-lethal force alternative designed to temporarily immobilize a subject who is actively resisting arrest. Here, BWC footage showed Specialist Schultz stood in front of Mr. Clay with his taser drawn and warned of the impending taser deployment before Mr. Clay grabbed Specialist Schultz's arm and produced an imitation firearm from his rear waistband. Specialist Schultz deployed his taser to Mr. Clay's chest; which had no effect. Section 12.545 authorizes such force under the circumstances, and notes that when deploying a cartridge from the Taser, frontal shots are prohibited except in situations of self-defense or defense of another. Accordingly, CCA concluded Specialist Schultz's use of a taser against Mr. Clay was not a violation and in compliance with CPD's policy, procedure, and training.

CPD Procedure § 12.550, Discharging of Firearms by Police Personnel, maintains that when an officer perceives what the officer interprets to be a threat of loss of life or serious physical harm to the officer or to others at the hands of another, the officer has the authority to display a firearm and to use force reasonably necessary to protect himself or others from death or serious physical harm. The policy specifically provides that after all other reasonable means have been exhausted, an officer may "resort[] to the use of firearms . . . when an officer reasonably believes that such use of firearms is necessary to protect the officer or another from risk of serious physical harm or loss of life."

Officers Bender and Wells stated they believed Mr. Clay was going to shoot Specialist Schultz, so they discharged their firearms, striking and fatally wounding Mr. Clay. The statements that Officers Bender and Wells gave to CCA were corroborated by their BWC recordings, which revealed that Mr. Clay produced a weapon approximating a firearm and aimed it at Specialist Schultz. Those accounts were also corroborated by a first-hand account from Witness A, who observed Mr. Clay reach for his waistband before being shot by police, and who believed that Mr. Clay did so in order to retrieve a weapon. Accordingly, CCA concluded that Officers Bender and Wells complied with CPD's policy, procedure, and training when they discharged their firearms and used deadly force.

Observation:

This tragic incident arose from a law enforcement operation to serve a warrant at an apartment, and resistance encountered during that operation. It resulted in the death of a citizen and a shooting injury to a police officer. While CCA in no way minimizes the threat that the officers confronted when Mr. Clay produced an apparent firearm and resisted arrest, and while we acknowledge the unpredictable nature of police work, we note that the encounter between Mr. Clay and police was not the result of an emergency call for service with limited time for preparation. Instead, it was a planned police action to serve an arrest warrant, one that afforded

time for a preliminary investigation into Mr. Clay's mental health. CCA is not aware of any documentation to suggest that the officer leading the operation conducted any background check or research into Mr. Clay's mental health status, or other risk factors, before serving the arrest warrant. According to that officer's statement, he could not recall having ever considered such mental health risk factors, nor could he recall whether he had made any inquiry into whether Mr. Clay, a suspect in a violent robbery who resided at the Talbert House, also suffered from mental illness. To be sure, we will never know whether any part of the shooting would have turned out differently had research into Mr. Clay's mental health been performed. Likewise, it may not be possible to know with certainty whether the operation would have been carried out differently if police had been in possession of such information. Nonetheless, we believe it is prudent for officers to make demonstrable and documented efforts to obtain such information in future similar situations in order to minimize the risk of injury and loss of life to both officers and citizens alike.

FINDINGS

Specialist Ronald Schultz
Officer Stephen Bender
Officer Thomas Wells

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

Officer Stephen Bender
Officer Thomas Wells

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



Dena Brown, Division Manager (Chief Investigator)



Gabriel Davis, Director

PREVIOUS CONTACTS AND COMMENDATIONS

Officer Stephen Bender

Previous Contacts with CCA

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

Previous Contacts with IIS

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

Commendations

Officer Bender has received two commendations in the past three years.

Date	Source of Commendation Received
06/12/2018	Civilian
10/11/2016	CPD

Officer Thomas Wells

Previous Contacts with CCA

Officer Wells has had four contacts with CCA in the past three years.

Case Number	Allegation	Finding
16076	Excessive Force (Physical)	Unfounded
15166	Lack of Service	Exonerated
15040	Lack of Service	Exonerated
15009	Lack of Service	Not Sustained

Previous Contacts with IIS

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

Commendations

Officer Wells has received seven commendations in the past three years.

Date	Source of Commendation Received
04/06/2018	CPD
09/08/2018	Civilian
07/05/2018	CPD
03/13/2018	Civilian
10/07/2017	CPD
09/01/2017	CPD
03/06/2017	CPD

Specialist Ronald Schultz

Previous Contacts with CCA

Specialist Schultz has had five contacts with CCA in the past three years.

Case Number	Allegation	Finding
17218	Entry (Residence)	Exonerated
17218	Discourtesy	Not Sustained
17131	Discourtesy	Unfounded
16162	Discourtesy	Not Sustained
16162	Search (Vehicle)	Exonerated
16162	Stop (Vehicle)	Exonerated
16160	Discourtesy	Unfounded
16160	Discrimination (Ethnicity)	Not Sustained
16160	Stop (Vehicle)	Exonerated
15179	Discourtesy	Not Sustained

Previous Contacts with IIS

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

Commendations

Specialist Schultz has received five commendations in the past three years.

Date	Source of Commendation Received
04/16/2018	CPD
07/05/2018	CPD
03/06/2017	CPD
01/22/2016	CPD
01/09/2016	CPD

**CCA Case No. 18178 – Discharge of a Firearm
involving Omar Enrique Santa Perez
Investigation Report and Finding**



Dena Brown
Division Manager (Chief Investigator)

Gabriel Davis
Executive Director

Table of Contents

Complaint Summary

Involved Subject Statements

Involved Officer Statements

Officer Witness Statements

Witness Statements

Evidence

Significant Discrepancies and Clarifications

Authorities

Analysis

Findings

Previous Contacts and Commendations

COMPLAINT SUMMARY

Date: September 6, 2018

Time: 9:10 a.m.

Location: 38 Fountain Square Plaza - Fifth Third Center (FTC)

CCA Receipt: September 6, 2018 (Discharge of a Firearm)

Complainant/Decedent: Omar Enrique Santa Perez

On September 6, 2018, Mr. Omar Enrique Santa Perez exited Potbelly's Sandwich Shop and entered the lobby of the FTC from an elevated staircase on the Fountain Square side. Mr. Santa Perez, armed with a semi-automatic pistol and carrying a shoulder bag containing ammunition, began shooting at citizens as he moved down the stairs into the FTC lobby.

The Emergency Communications Center (ECC) received several 911 phone calls regarding an "active shooter" at the FTC. ECC broadcast this radio run. Officers Antonio Etter, Jennifer Chilton, Robert Boyce, Specialist Gregory Toyegas, and Sergeant Eric Kaminsky responded to the scene. Officers Etter, Chilton, Specialist Toyegas and Sergeant Eric Kaminsky observed Mr. Santa Perez actively shooting; all discharged their firearms fatally wounding Mr. Santa Perez. Mr. Santa Perez ultimately killed three citizens before CPD arrived on scene.

INVOLVED SUBJECT STATEMENTS

Omar Enrique Santa Perez

Mr. Santa Perez, M/H/29, was fatally wounded on September 6, 2018.

INVOLVED OFFICER STATEMENTS

The statements below were taken from the initial interviews conducted by CPD Homicide Investigators on the day of the incident. CCA witnessed the interviews.

Officer Antonio Etter

Officer Etter, #P0281, M/B/53, is currently assigned to District 5, and he has been a CPD member since 2002. Officer Etter was working an off-duty detail, in uniform; his BWC was activated.

Officer Etter was interviewed by Detectives Greg Gehring and Robert Randolph.

Officer Etter was working an off-duty detail and was attempting to locate a construction crew when he observed people running from the area. Officer Etter turned onto East Sixth Street and pulled behind a construction arrow board. A citizen approached Officer Etter and stated there was an individual shooting in the FTC. Officer Etter notified ECC of a possible active shooter at the FTC.

Officer Etter retrieved the shotgun from his cruiser and responded to the Walnut Street side of the FTC near the stairs leading to Fountain Square. Officer Etter attempted to obtain more information on the shooter's location as other officers arrived. Officer Etter heard three or four gunshots, which gave the officers an idea of the shooter's location, and the responded to the Fountain Square side of the building.

As the officers approached to enter the building, Officer Etter observed Specialist Toyegas at the door. Officer Etter heard more gunshots and observed Mr. Santa Perez through the glass. Mr. Santa Perez appeared to be shooting in the direction of Specialist Toyegas at the door. Mr. Santa Perez began moving and Officer Etter discharged his shotgun at Mr. Santa Perez through the glass. Mr. Santa Perez fell to the floor. Officer Etter then discharged a second round at Mr. Santa Perez.

Officer Etter observed a female and male gunshot victim at the revolving door as he entered the lobby. Officer Etter assisted in clearing the area to ensure there were no other suspects.

Officer Jennifer Chilton

Officer Chilton, #P0201, F/W/42, is currently assigned to the Support Bureau-Recruiting Unit, and she has been a CPD member since 2008. On the date of this incident, Officer Chilton was in uniform, operating a marked cruiser and assigned to District 1. Officer Chilton's BWC was activated.

Officer Chilton was interviewed by Detectives Greg Gehring and Robert Randolph.

Officer Chilton was traveling on Sycamore Street near the courthouse when she heard a radio broadcast for "shots fired," possibly in the FTC at Fountain Square. While en route, there was another radio broadcast for an active shooter in the building. Officer Chilton parked her cruiser and Specialist Toyegas and Officer Boyce arrived behind her.

Officer Chilton and the other officers moved toward Fountain Square using the steps from Walnut Street. A citizen near Rock Bottom Brewery stated the shooter was in the building and he had shot a male and a female. The officers heard more gunshots and they moved toward the entrance of the FTC. Through the glass, Officer Chilton observed Mr. Santa Perez and beyond him was a victim laying on the floor. Officer Chilton also observed a victim to her right.

Mr. Santa Perez turned around with a handgun and pointed it in the direction of the officers. Officer Chilton discharged her firearm several times. Mr. Santa Perez returned fire and Officer Chilton took cover behind the building. Either Sergeant Kaminsky or Officer Etter returned fire and Officer Chilton heard Sergeant Kaminsky state Mr. Santa Perez was down. Sergeant Kaminsky entered and handcuffed Mr. Santa Perez.

Specialist Gregory Toyegas

Specialist Toyegas, #PS0700, M/W/52, is currently assigned to the Central Business District (CBD), and he has been a CPD member since 1990. Specialist Toyegas was in uniform, marked cruiser partnered with Officer Boyce. Specialist Toyegas's BWC was activated.

Specialist Toyegas was interviewed by Detectives Greg Gehring and Robert Randolph.

Specialist Toyegas and his partner Officer Robert Boyce were at Eighth and Main Street when Specialist Toyegas heard a radio broadcast for an active shooter at the FTC at Fountain Square. Specialist Toyegas and Officer Boyce responded. A retired CPD officer who worked at the Federal Courthouse notified Specialist Toyegas he heard at least three gunshots. Specialist Toyegas communicated the information to the officers on scene.

Specialist Toyeas, Officers Boyce, Etter, and Chilton moved toward Potbelly's on Fountain Square. The officers moved toward the lobby of the FTC. Through the glass, Specialist Toyeas observed Mr. Santa Perez in the lobby shooting at the elevators and then turned toward the officers.

Specialist Toyeas moved to a pillar near the entry doors to the lobby. Specialist Toyeas heard gunshots and observed Mr. Santa Perez come into sight with a firearm in his hand. Specialist Toyeas discharged his firearm one time at Mr. Santa Perez through the glass door. Mr. Santa Perez turned and moved in the opposite direction and Specialist Toyeas went into the doorway and discharged a second round at Mr. Santa Perez.

Specialist Toyeas observed Mr. Santa Perez fall to the ground. Specialist Toyeas provided cover from the doorway as Sergeant Kaminsky entered to secure Mr. Santa Perez. Sergeant Kaminsky secured Mr. Santa Perez's firearm and handcuffed him.

Sergeant Eric Kaminsky

Sergeant Kaminsky, #S0628, M/W/50, is currently assigned to District 4, and he has been a CPD member since 1997. On the date of this incident, Sergeant Kaminsky was an officer and assigned to District 1. Sergeant Kaminsky was in uniform and operated a marked cruiser. Sergeant Kaminsky's BWC was activated.

Sergeant Kaminsky was interviewed by Detectives Greg Gehring and Robert Randolph.

Sergeant Kaminsky heard a radio broadcast for "shots fired" at Fountain Square. Sergeant Kaminsky responded to the scene. Sergeant Kaminsky retrieved the patrol rifle from his cruiser and met up with other officers already on scene. Sergeant Kaminsky and the other officers proceeded through the breezeway toward Potbelly's Sandwich Shop. As they rounded the corner of Potbelly's, they heard gunshots. The officers moved southbound, using the wall for cover. Sergeant Kaminsky observed Mr. Santa Perez inside the lobby of the FTC shooting at people. Sergeant Kaminsky discharged his patrol rifle one time through the glass at Mr. Santa Perez. The magazine fell out of the patrol rifle at which time Sergeant Kaminsky dropped the rifle and transitioned to his pistol. As Sergeant Kaminsky came back on target, Mr. Santa Perez was on the ground.

Sergeant Kaminsky and Officer Chilton held Mr. Santa Perez at gunpoint through the glass. Sergeant Kaminsky made the decision to enter the lobby and secure Mr. Santa Perez with handcuffs. While attending to Mr. Santa Perez, Sergeant Kaminsky observed a victim near the elevator, a victim by the lobby doors, and blood leading downstairs.

OFFICER WITNESS STATEMENTS

Officer Robert Boyce

Officer Boyce, #P0187, M/W/59, was assigned to CBD, and he had been a CPD member since 1987. Officer Boyce was in uniform and partnered with Officer Boyce. Officer Boyce's BWC was activated. Officer Boyce has since retired from the Department.

Officer Boyce was interviewed by Detectives Marcus McNeil and William Hilbert.

Officer Boyce's initial comments corroborated Specialist Toyeas's statement. Officer Boyce advised CPD Detectives McNeil and Hilbert this was going to be his last day working. They

responded to the ECC broadcast of an active shooter at the FTC. They responded to the scene and Officer Boyce observed people running away from the FTC. Officer Boyce on the top level of Potbelly's breezeway. Officer Boyce observed Mr. Santa Perez in the lobby and heard a lot of shooting. Officer Boyce did not observe any officer discharging their firearms due to his position of cover on the stairwell.

WITNESS STATEMENTS

The statements below were taken from the initial interviews conducted by CPD Homicide Investigators on the day of the incident. CCA observed the interviews.

Witness A

Witness A was interviewed by Detective Terry McGuffey.

Witness A was an employee of Potbelly's Sandwich Shop. She was completing paperwork as she sat at a bench table in the dining area near the doors leading into the Fifth Third Center. Witness A initially observed Mr. Santa Perez pacing in the restaurant before he sat down two seats away from Witness A. A short time later, Mr. Santa Perez stood up, leaving his drink on the table, and entered the Fifth Third Center. Witness A then heard a loud noise and saw smoke as she observed Mr. Santa Perez walk down the steps into the Fifth Third Center. Mr. Santa Perez continued shooting as he walked down the step. Witness A ran behind the counter in the Potbelly's Sandwich Shop.

Witness B

Witness B was interviewed by Detectives Sandy Sieving and David Gregory.

Witness B and Decedent A were discussing a work project in the lobby of the Fifth Third Center on the Fountain Square side. Witness B was facing away from the Potbelly's Sandwich Shop when he heard gunshots. Witness B realized he had been shot and fled down the stairs to the basement hallway which leads to the loading docks. Witness B was unable to gain access to the hallway and broke out a window in the hallway door. Decedent A arrived at the hallway door and stated he had also been shot. Decedent A used his access key to gain entry into the hallway, and both made their way to the loading dock. Witness B lay on the floor, where he was treated by fire personnel and others, and then transported to the University of Cincinnati Medical Center (UCMC). Witness B did not see the shooter.

Witness C

Witness C was interviewed by Detectives Sandy Sieving and David Gregory.

Witness C was an employee of Fifth Third Bank and was on a conference call as she entered the Fifth Third Center through the revolving doors from Fountain Square, near Graeter's Ice Cream. As Witness C entered the revolving door, she observed holes in the glass. Witness C then felt gunshots hit her and she fell to the ground inside the revolving doors. Witness C felt blood rising in her throat and knew she needed to move to another location but decided against it, fearing she would be shot again if the shooter saw her moving. Witness C did not see the shooter.

Witness D

Witness D was interviewed by Detectives Kim Kelley and Kurt Ballman.

Witness D was an employee of Fifth Third Bank. Witness D was walking down the stairs leading into the Fifth Third Center from the Potbelly's Sandwich Shop when she heard two or three gunshots. Witness D heard someone yell they had been hit and observed a person with a gunshot wound on the stairs leading down to the loading docks. Witness D ran and hid under the security desk on the Fountain Square side of the Fifth Third Center lobby. Witness D observed Mr. Santa Perez facing the security guards, firing shots. Witness D then heard Mr. Santa Perez place a bag on the security desk she was hiding under. Mr. Santa Perez reloaded four or five times at the security desk during the incident. Mr. Santa Perez moved toward the elevators every time they "dinged" and shot at them. Mr. Santa Perez did not say a word during the incident. Witness D remained under the desk until she heard police officers state the shooter was down.

Witness E

Witness E was interviewed by Detectives Kim Kelley and Kurt Ballman.

Witness E was an employee of Fifth Third Bank. Witness E and Decedent C took the elevator to the ground floor to get coffee. Witness E and Mr. Decedent C were approximately three steps off the elevator when Witness E heard gunshots. Witness E looked to his right and observed Mr. Santa Perez approximately fifteen feet away and moving toward them. Witness E immediately fled toward the Walnut Street exit as Mr. Santa Perez shot at him.

Witness F

Witness F was interviewed by Detectives Christopher Wharton and Seth Hageman.

Witness F was an employee of Fifth Third Bank. Witness F was getting out of the elevator on the ground floor of the Fifth Third Center when he heard two gunshots coming from the Fountain Square side of the lobby. Witness F observed Mr. Santa Perez with a gun. Mr. Santa Perez observed Witness F and he pointed the gun at Witness F. Witness F fled back into the elevator where he fell to his knees as Mr. Santa Perez fired a shot at him. Witness F was not struck.

Witness G

Witness G was interviewed by Detective Andrea Taylor.

Witness G was an employee of Fifth Third Bank. Witness G exited an elevator on the ground floor and observed shattered glass and a person down. Mr. Santa Perez came into Witness G's view to his right and they made eye contact. From about ten yards, Mr. Santa Perez fired two shots at Witness G, as he escaped back onto the elevator. Witness G was not struck.

EVIDENCE

CCA responded to the scene of the shooting and monitored the investigation being conducted by the Homicide Unit as well as the processing of the scene by the Criminal Investigations Section (CIS).

Police Documents

CCA reviewed all CPD-related forms, including but not limited to information from CPD's Records Management System (RMS), Homicide Investigation Report, Criminal Investigations Section (CIS) documents, and IIS report.

911 calls

CCA reviewed numerous ECC calls regarding shots being fired at the Fifth Third Center.

Photographs

CCA reviewed numerous photographs of the scene.

Fifth Third Center Footage

Time Stamp	Description
09:06:09	From the stairs leading from Potbelly's Sandwich Shop into the Fifth Third Center lobby, Mr. Santa Perez shot Decedent A and Witness B, who stood near the north stairwell.
09:06:30	Mr. Santa Perez moved south through the lobby toward the revolving door to Fountain Square.
09:06:36	Mr. Santa Perez shot Decedent B as he entered the revolving door from Fountain Square.
09:06:40	Mr. Santa Perez moved to the security desk, placed his shoulder bag on the desk, and reloaded his firearm.
09:07:03	Mr. Santa Perez moved from the security desk and shot Decedent B multiple times.
09:07:10	Mr. Santa Perez returned to the security desk and reloaded his firearm.
09:07:49	Mr. Santa Perez moved around the middle and southern parts of the lobby, observing elevators.
09:08:00	Mr. Santa Perez fired shots toward the middle bank of elevators.
09:08:03	Mr. Santa Perez fired one shot through the lobby window toward Fountain Square.
09:08:05	Mr. Santa Perez returned to the security desk and reloaded his firearm.
09:08:50	Mr. Santa Perez moved to the middle bank of elevators and fired shots.
09:08:54	Mr. Santa Perez returned to the security desk and reloaded his firearm.
09:09:29	Mr. Santa Perez moved to the revolving door and shot Witness C multiple times as she entered from Fountain Square.
09:09:34	Mr. Santa Perez returned to the security desk and reloaded his firearm.
09:10:05	Mr. Santa Perez moved to the middle bank of elevators.
09:10:10	Mr. Santa Perez returned to the security desk.
09:10:25	Decedent C and Witness E exited a north elevator and walked toward the Walnut Street side of the lobby. Mr. Santa Perez moved toward Messer's. Decedent C and Witness E and shot at them from behind, striking Decedent C.
09:10:30	CPD officers arrived outside the Fountain Square side lobby windows. Specialist Toyeas moved to the lobby door. Mr. Santa Perez moved back to the security desk while pointing his firearm at Specialist Toyeas.
09:10:33	Officers Chilton and Kaminsky discharged their firearms at Mr. Santa Perez through the lobby window.
09:10:37	Specialist Toyeas discharged his firearm one time through the door at Mr. Santa Perez. Mr. Santa Perez moved north through the lobby.
09:10:39	Specialist Toyeas fired a second shot at Mr. Santa Perez. Officer Etter discharged his shotgun through the lobby window, striking Mr. Santa Perez, who fell to the floor.
09:10:41	Officer Etter discharged his shotgun a second time.
09:11:28	Officers entered the lobby and secured Mr. Santa Perez

Body Worn Camera (BWC)

The Fifth Third Center video recordings corroborated the provided BWC footage.

Firearm Qualifications and Discharges

Officer Etter qualified with his patrol rifle on August 7, 2018. Officer Etter discharged his patrol rifle two times.

Sergeant Kaminsky qualified with his firearm on July 19, 2018. Sergeant Kaminsky discharged his patrol rifle one time.

Officer Chilton qualified with her firearm on May 16, 2018. Officer Chilton discharged her firearm six times.

Specialist Toyas qualified with his firearm on September 5, 2018. Specialist Toyas discharged his firearm two times.

Hamilton County Coroner's Report

Mr. Santa Perez suffered gunshot wounds to his head, torso, and left lower extremity. His death was ruled a Homicide.

Decedent A, M/W/64, sustained a single gunshot wound to his upper left back and died from his injury. His death was ruled a Homicide.

Decedent B, M/A/25, sustained multiple gunshot wounds to the head, torso, and upper extremities; he died from his injuries. His death was ruled a Homicide.

Decedent C, M/W/48, sustained gunshot wounds to his chest, back, and right hand; he died from his injuries. His death was ruled a Homicide.

Witness B, M/W/45, sustained a gunshot wound to his left side.

Witness C, F/W/37, sustained gunshot wounds to the left side of her neck, right breast, both feet and both arms.

Criminal Investigation Section (CIS)

Mr. Santa Perez fired a minimum of 33 rounds during the incident. Investigators recovered 233 rounds of ammunition from Mr. Santa Perez's shoulder bag located on the security desk.

CIS Investigators later learned the following:

1. Mr. Santa Perez filed a lawsuit against NBC Universal and TD Ameritrade in December 2017. The lawsuit was transferred to Judge Susan J. Dlott and dismissed on June 6, 2018.
2. On September 5, 2018, Mr. Santa Perez contacted the attorney representing NBC Universal and inquired about the lawsuit. Mr. Santa Perez was informed the lawsuit had been dismissed by a Federal Magistrate on June 25, 2018.
3. After the shooting, members of CPD's Homicide Unit met with Mr. Santa Perez's family. They informed the officers Mr. Santa Perez was diagnosed with a mental health disorder.

Prosecutor's Letter of Declination

The Hamilton County Prosecutor's Office issued a letter of declination on September 14, 2018, stating that Officers Etter, Chilton, Specialist Toneyas and Sergeant Kaminsky were justified in their actions and did not violate any criminal statutes.

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

There were none.

AUTHORITIES

I. CPD Procedure Manual (in part)

§ 12.550 Discharging of Firearms by Police Personnel (06/22/17)

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.**

Self-Defense: A police officer is authorized to use that force reasonably necessary to protect himself or others from death or serious physical harm at the hands of another.

- There must be an apprehension of real or immediate danger based on an overt and/or constructive act by another.

F. Firearm Discharge Board

1. The Police Chief will review and forward to IIU the CIS investigation report, letter from the Hamilton County Prosecutor, and any other material deemed relevant to the Firearm Discharge Board (FDB). The IIU Commander will notify and arrange a meeting

between the FDB, CIS Commander, and investigators within 30 days of receipt of the material.

2. Recommendations made by the FDB should be unanimous or by consensus. If a consensus cannot be reached, a majority/minority opinion will be prepared at the direction of the chairperson.
3. The FDB will issue its final report to the Police Chief within 90 days of receipt of the material. The report will identify training issues and corrective measures, tactical response issues and corrective measures, and outline any recommended policy and/or procedure changes. References to specific policies, procedures, or training will be included in all recommendations.

ANALYSIS

On September 6, 2018, Mr. Santa Perez entered the lobby of the FTC, armed with a semi-automatic pistol, and began shooting at citizens. ECC received several 911 phone calls in reference to an “active shooter” at the FTC.

CPD Procedure § 12.550 Discharging of Firearms by Police Personnel maintains that when an officer perceives what the officer interprets to be a threat of loss of life or serious physical harm to the officer or to others at the hands of another, the officer has the authority to display a firearm and to use force reasonably necessary to protect himself or others from death or serious physical harm. The policy specifically provides that after all other reasonable means have been exhausted, an officer may “resort[] to the use of firearms . . . when an officer reasonably believes that such use of firearms is necessary to protect the officer or another from risk of serious physical harm or loss of life.”

Officers Etter, Chilton, Specialist Toyegas, and Sergeant Kaminsky responded to the scene. During their interviews with CIS the officers provided statements they observed Mr. Santa Perez with a firearm and was actively shooting at civilians. Officers Etter, Chilton, Specialist Toyegas and Sergeant Kaminsky discharged their firearms, fatally wounding Mr. Santa Perez. BWC and security camera footage confirmed the officers’ observations of Mr. Santa Perez’s actions. Due to Mr. Santa Perez actively shooting at civilians, it was reasonable for the officers to conclude Mr. Santa Perez was a threat to the public, as well as themselves. CCA concluded that Officers Etter, Chilton, Specialist Toyegas and Sergeant Kaminsky complied with CPD’s policy, procedure, and training.

Commendation

CCA commends Officers Etter, Chilton, Specialist Toyegas, and Sergeant Kaminsky for their bravery and courage when immediately reacting and stopping an active shooter, saving numerous citizens lives who were in harm’s way.

FINDINGS

Officer Antonio Etter
Officer Jennifer Chilton
Specialist Gregory Toyegas
Sergeant Eric Kaminsky

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

Officer Antonio Etter
Officer Jennifer Chilton
Specialist Gregory Toyas
Sergeant Eric Kaminsky

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



Dena Brown, Division Manager (Chief Investigator)



Gabriel Davis, Executive Director

PREVIOUS CONTACTS AND COMMENDATIONS

Officer Etter

Previous Contacts with CCA

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

Previous Contacts with IIS

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

Commendations

Officer Etter has received one commendation in the past three years.

Date	Source of Commendation Received
12/13/2016	CPD

Officer Chilton

Previous Contacts with CCA

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

Previous Contacts with IIS

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

Commendations

Officer Chilton has received two commendations in the past three years.

Date	Source of Commendation Received
06/22/2016	CPD
06/22/2016	CPD

Specialist Toyegas

Previous Contacts with CCA

Specialist Toyegas has had no previous contact with CCA in the past three years.

Previous Contacts with IIS

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

Commendations

Specialist Toyeas has received two commendations in the past three years.

Date	Source of Commendation Received
04/22/2018	Civilian
12/10/2016	Civilian

Sergeant Kaminsky

Previous Contacts with CCA

Sergeant Kaminsky has had one previous contact with CCA in the past three years.

Case Number	Allegation	Finding
16190	Lack of Service	Unfounded
16190	Discourtesy	Exonerated

Previous Contacts with IIS

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

Commendations

Sergeant Kaminsky has received three commendations in the past three years.

Date	Source of Commendation Received
01/23/2018	Civilian
06/23/2017	Civilian
01/01/2017	CPD

**CCA Case No. 19151 – Discharge of a Firearm -
Devin Johnson Investigation Report and Finding**



Jessalyn Goodman
Investigator

Gabriel Davis
Executive Director

Table of Contents

Complaint Summary

Involved Subject Statements

Involved Officer Statements

Officer Witness Statements

Witness Statements

Evidence

Significant Discrepancies and Clarifications

Authorities

Analysis

Findings

Previous Contacts and Commendations

COMPLAINT SUMMARY

Date: July 4, 2019

Time: 10:28am

Location: 6395 Bramble Avenue

CCA Receipt Date: July 4, 2019 (Discharge of a Firearm)

Complainant: Devin Johnson

On July 4, 2019, Mr. Devin Johnson contacted the Emergency Communications Center (ECC) to report that an African American man at Bramble Park, in an orange shirt and khaki pants, was carrying a knife and "going crazy." ECC dispatched Officers Kevin Brown and Eric Dunn; Officer Albert Brown was in the park at the time and responded to the run. Officer Kevin Brown arrived at Bramble Park before Officer Dunn and attempted to locate the individual with Officer Albert Brown. Eventually, they observed a man matching the caller's description; later, this man was identified as Mr. Johnson.

Wielding a knife, Mr. Johnson descended a paved staircase towards Officers Albert Brown and Kevin Brown. Once completed, Mr. Johnson walked towards Officer Albert Brown. Officer Albert Brown distanced himself from Mr. Johnson, drew his firearm, and repeatedly directed Mr. Johnson to drop the weapon. Mr. Johnson continued to walk steadily towards Officer Albert Brown. Officer Albert Brown discharged his firearm three times, striking Mr. Johnson in the torso and leg. Officer Kevin Brown removed the knife from Mr. Johnson's possession and radioed for emergency assistance; he rendered medical assistance until CFD arrived. Mr. Johnson was transported to the University of Cincinnati Medical Center (UCMC) and then transferred to the Hamilton County Justice Center (HCJC).

CCA received notification that there was an officer involved shooting and responded to the scene.

INVOLVED SUBJECT STATEMENTS

Devin Johnson

Mr. Devin Johnson, M/B/23, is currently incarcerated at Lebanon Correctional Institution. CCA was unable to interview Mr. Johnson. Mr. Johnson provided the following statement to CPD Homicide Investigators Gregory Gehring and Sandy Sieving on July 11, 2019:

Mr. Johnson did not recall too much from the incident on July 4, 2019. He recalled he was very angry, and he "snapped" while at Bramble Park. Mr. Johnson did not recall how he came to be in possession of a knife; however, he did recall seeing Officers Albert Brown and Kevin Brown. Mr. Johnson recalled the officers exit the police cars as he looked at them. Mr. Johnson concluded his interview by saying he had a knife and was not acting as his "normal self" that day.

**INVOLVED
OFFICER
STATEMENTS****Albert Brown**

Officer Albert Brown, #P0484, M/B/56, is currently assigned to District 2, and he has been a CPD member since 1993. Officer Albert Brown was on routine patrol, in uniform and in a marked cruiser; his BWC was activated.

Officers Kevin Brown and Dunn were dispatched to Bramble Park. Officer Albert Brown was in the park at the time and accepted the run. The dispatch described an African American male with an orange shirt and tan pants, who had a knife and was “waving it aggressively.” Officer Albert Brown noted that the park is situated at two elevations; he was on the lower elevation, and when he looked around the park, he did not observe anyone matching the person’s description. Initially, he believed the call may be a “prank” due to the holiday.

When Officer Kevin Brown arrived, they discussed the situation and Officer Kevin Brown drove further into the park. Officer Albert Brown exited the park briefly to turn around; when he re-entered the park, he observed Officer Kevin Brown backing into a parking spot. Officer Kevin Brown gestured at the park’s upper elevation towards Mr. Johnson, who matched the description provided in the run. Officer Albert Brown parked his cruiser to the right and perpendicular to Officer Kevin Brown’s cruiser.

Officer Albert Brown exited his cruiser as Mr. Johnson came down the steps. As Mr. Johnson moved closer, Officer Albert Brown observed a knife in his hands. Mr. Johnson descended the stairs and was on even ground with Officer Albert Brown. Mr. Johnson passed in front of Officer Kevin Brown and went towards Officer Albert Brown. Officer Albert Brown drew his firearm, with his finger on the trigger guard. Throughout the interaction, Officers Albert Brown and Kevin Brown told Mr. Johnson several times to drop the knife; Mr. Johnson did not respond or comply with the commands. Officer Albert Brown backed away from Mr. Johnson, but Mr. Johnson continued towards him.

Officer Albert Brown felt “scared” and that he was at risk of harm. He discharged his weapon three times and struck Mr. Johnson each time. At the time he fired, the backdrop was the grass hill; there were people in the park, but none were in close proximity. Afterwards, Officer Albert Brown backed away and holstered his firearm. Officer Kevin Brown radioed for immediate response and provided first aid to Mr. Johnson.

**OFFICER
WITNESS
STATEMENTS****Kevin Brown**

Officer Kevin Brown, #P0614, M/B/56, is currently assigned to District 2, and he has been a CPD member since 1994. Officer Kevin Brown was on routine patrol, in uniform and in a marked cruiser; his BWC was activated.

Officer Kevin Brown was dispatched to Bramble Park regarding an African American man with a weapon. Officer Albert Brown was in the park at the time of the run. Officer Kevin Brown communicated with him regarding the dispatch, but Officer Albert Brown indicated he had not observed anyone matching the provided description at the southern end of the park. Officer Kevin Brown did not observe anyone in the northern part of the park. Officer Kevin Brown drove further into the park and observed an individual, Mr. Johnson, near a covered area on the top of the hill. He gestured to Officer Albert Brown; Officer Albert Brown responded to the area.

As Officer Kevin Brown backed into a parking space, Mr. Johnson descended the steps down the hill. When Mr. Johnson reached the bottom step, he drew a knife from behind his back and veered towards Officer Kevin Brown. Officer Kevin Brown drew his firearm, with his finger outside the trigger guard, and pointed it at Mr. Johnson. Mr. Johnson did not say anything, but he appeared “distressed.” He held the knife by his head and “charged” towards the officers. Based on his MHRT training and previous experience, Officer Kevin Brown suspected Mr. Johnson was having a mental health crisis.

Officer Kevin Brown directed Mr. Johnson to put down the knife three times. After the third command, Mr. Johnson turned towards Officer Albert Brown. Officer Albert Brown directed Mr. Johnson to put the knife down multiple times. Mr. Johnson did not comply with either officers’ commands. Officer Albert Brown discharged his firearm three times and struck Mr. Johnson each time.

Officer Kevin Brown displayed his firearm and approached Mr. Johnson. He removed the knife from Mr. Johnson and holstered his firearm. Officer Kevin Brown advised dispatch of the situation, requested medical assistance, and administered CPR.

WITNESS STATEMENTS

CCA witnessed the statement below that was conducted by CPD Homicide Detectives William Hilbert and Gregory Gehring.

Witness A

Witness A was out for a jog when he first noticed two police cars at the entrance of Bramble Park. Witness A jogged past the police cars and continued to the rear of Bramble Park. Once Witness A had made his turn around point and was headed up the hill on the east side of the park, he heard, “Put the knife down,” over his left shoulder. Witness A turned to his left and noticed the two officers had driven down into the park and were out of their police cars. It was at this point that Witness A first observed Mr. Johnson (“the man in an orange shirt”).

As Witness A continued up the hill, he observed Mr. Johnson walking towards an officer. He also heard the officer yelling, “Drop the knife,” as Mr. Johnson kept advancing towards the officers. Witness A observed Officer Albert Brown shoot Mr. Johnson three times and Mr. Johnson fall to the ground. Witness A ran away from the area on foot to avoid any danger to himself.

Witness A was able to provide a full description of Mr. Johnson: black male, orange shirt, khaki colored pants. Mr. Johnson’s back was to Witness A and he was unable to see anything in his hands.

CCA witnessed the statement below that was conducted by CPD Homicide Detectives Robert Randolph and Jacob Wloszek.

Witness B

Witness B and her friend, Witness E, entered Bramble Park at approximately 0945 hours to play on a two-person swing. While on the swing, she noticed two police cars driving slowly inside the park, then come to a stop.

At this point, she observed a male in an orange shirt walking down the steps aggressively. Witness B observed both officers exit their police cars and overheard a voice say, "Put the gun down," or something to that effect. She witnessed an officer shoot Mr. Johnson three times before she and Witness E ran to the west side of the park, away from the scene.

CCA witnessed the statements below that were conducted by CPD Homicide Detectives Andrea Taylor and Dewayne McMenama.

Witness C

Witness C and the rest of her family, apart from her father, were at Bramble Park while repairs were being made on their house. While in the park, Witness C observed a male in an orange shirt walk past them and a police car in the rear of the park near the softball field. At some point, Witness C noticed the police car leave and meet with a second police car.

Witness C observed the police officer out of the police car and the man in an orange shirt walking down the hill towards the officer. He wouldn't stop and the police officer pulled out his gun. She overheard the police officer saying, "Stop! Stop! Stop!" repeatedly. Witness C was told to run by her mother, but she did not.

Witness C witnessed an officer discharge his firearm and Mr. Johnson fall to the ground. Witness C stated the officer pulled the trigger twice. She did not have her glasses on, but she stated she believed Mr. Johnson had a gun in his hand as he advanced towards the officer.

Witness D

Witness D and the rest of her family, with the exception of her husband, were at Bramble Park while repairs were being made to their house. She and the family arrived at Bramble Park at approximately 1030 hours. While seated with her children in the park on the square benches near the big playground, Witness D observed a male in an orange shirt walk past them, causing one of their dogs to bark. She also noticed a police car in the rear lot of Bramble Park.

At some point, Witness D noticed the police car leave. Approximately five minutes later, two police cars returned to Bramble Park. She was unsure if one of the officers was the same officer she noticed in the rear lot when she arrived. Witness D stated both police cars parked, and she observed one officer exit his police car. Witness D overheard the officer saying, "Stop! Stop!" so she turned around and saw the male in an orange shirt walking down the hill towards the police officer. The police officers were telling him to stop but he just kept walking towards the officers.

After Witness D observed the officer draw his duty weapon, she ordered her children to run and hide behind the slide as she ran with them. While running, Witness D was looking back and observed an officer discharge his duty weapon two times at Mr. Johnson.

Witness E

Witness E and her friend, Witness B, were at Bramble Park to play on the two-person swing. Witness E stated when she and Witness B arrived at the park, she saw a police car parked in the rear of the park. Approximately 10 minutes later, she noticed the police car leave; a short time later, she observed two police cars inside the park. At this point, she observed a male in a red or orange shirt walking down the hill at a fast pace towards the police officers. Witness E observed Mr. Johnson be short three times by an officer. After or as the shots were being fired, she and Witness B ran to the west side of the park away from the scene.

EVIDENCE

CCA responded to the scene of the shooting and monitored the investigation being conducted by the Homicide Unit as well as the processing of the scene by the Criminal Investigations Section (CIS).

Police Documents

CCA reviewed all CPD-related forms, including but not limited to arrest report, information from CPD's Records Management System (RMS), Homicide Investigation Report, Criminal Investigations Section (CIS) documents, and IIS report.

Computer Aided Dispatch (CAD)

<u>Date</u>	<u>Time</u>	<u>Call Notes</u>
07/04/2019	10:23:19	Caller reported male subj armed with knife acting crazy; M/B/23yo, ORG shirt, khaki pants - - Subject currently has knife in hand - - No one else around - - They are North End of Park
	10:23:20	COMP Will show police to location if need be
	10:27:52	Callback Call Comp Get his LOC PO can't find him
	10:31:10	Shots fired inside park
	10:31:21	CB 2x, went to Vmail for Devin Johnson, not Doug
	10:32:07	Multi-agency CFD Incident #CFD190704000082
	10:32:29	Shots fired by officer. They took effect.

911 Call Recording

"Devin" contacted dispatch and reported a man "with a knife, acting wild right now" and "going crazy." He provided a physical description of the individual.

Evidence Submission Form

Submitted as evidence were one S&W M&P 9mm pistol S/N: HBF9699, three compatible magazines for S&W M&P pistol, 49 WIN 9mm Luger cartridges, and three discharged WIN 9mm casings from the scene. Additional evidence reviewed included blood (photographs only), Mr. Johnson's shirt in CFD biohazard bag, a butcher knife, and Mr. Johnson's remaining possessions.

Body Worn Camera (BWC)**Officer Albert Brown**

As Officer Albert Brown exited his cruiser, Mr. Johnson was on the top of an incline near a park pavilion. Mr. Johnson walked away from the pavilion and towards Officer Albert Brown's cruiser. Mr. Johnson held a knife in his right hand as he walked down the hill on a paved staircase.

Officer Albert Brown stated, "Hey, put that knife down, man." Mr. Johnson held onto the knife, descended the staircase, and he walked towards Officer Albert Brown. Officer Albert Brown backed away from Mr. Johnson and directed, "Put that knife down." Mr. Johnson walked towards Officer Albert Brown. Officer Albert Brown continued to back away, drew his firearm, and pointed it directly at Mr. Johnson. He directed, "Put the knife down, man!" Mr. Johnson continued to advance towards Officer Albert Brown. As Officer Albert Brown walked behind his cruiser and maintained distance from Mr. Johnson, he repeated, "Dude, put that knife down!" Mr. Johnson sustained his pace towards Officer Albert Brown. Officer Albert Brown discharged his firearm three times and Mr. Johnson fell to the pavement.

Officer Kevin Brown approached Mr. Johnson with his firearm drawn and pointed at him. He kicked the knife away from Mr. Johnson's reach. Officer Kevin Brown holstered his weapon and advised dispatch of the situation.

Officer Kevin Brown

As Officer Kevin Brown exited his cruiser, Mr. Johnson walked down the staircase from a park pavilion. Mr. Johnson held a knife in his right hand. After he descended the staircase, Mr. Johnson turned right and walked towards Officer Albert Brown's cruiser. Officer Albert Brown issued directives to Mr. Johnson to put the knife down. Officer Kevin Brown followed behind Mr. Johnson and said, "Drop the knife, dude." Mr. Johnson continued to walk around Officer Albert Brown's cruiser.

Officer Kevin Brown drew his firearm as Officer Albert Brown discharged three shots at Mr. Johnson. Mr. Johnson fell to the pavement. Officer Kevin Brown radioed for emergency assistance as he kicked the knife away from Mr. Johnson. Officer Albert Brown remained on the other side of the lot from Mr. Johnson as Officer Kevin Brown communicated with dispatch.

Firearm Qualification and Discharges

Officer Albert Brown's most recent firearm qualification occurred on May 22, 2018. Officer Albert Brown discharged his firearm three times during the incident.

Photographs

CCA reviewed numerous photographs of the scene.

Prosecutor's Letter of Declination

The Hamilton County Prosecutor's Office issued a letter of declination on February 4, 2020; it stated Officers Albert Brown and Kevin Brown were justified in their actions and did not violate any criminal statutes.

Clerk of Courts

Mr. Johnson was charged with §2903.11 Ohio Revised Code (ORC) Felonious Assault. In July 2020, Mr. Johnson was found guilty and sentenced to the Department of Corrections.

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

There were none.

AUTHORITIES

I. CPD Procedure Manual (in part)

§12.554 Investigatory Stops Information: (revised 01/19/2017)

There are three levels of police/citizen contact.

The first level is a consensual encounter. A police officer may approach any person in a public place and request to talk to him. So long as the person is free to leave whenever he wants, no Fourth Amendment seizure has occurred and no reasonable suspicion or probable cause is required.

The next level is the "Terry" type encounter. Here the officer has reasonable suspicion to believe the citizen is committing or has committed a crime. Based on this reasonable suspicion, the officer may forcibly stop and detain the citizen for a brief investigatory period. Although a citizen is required to properly identify oneself during the stop, failure to answer investigatory questions asked by the officer cannot provide the justification for detaining a person past the period necessary to complete the brief "Terry" type investigation. Once the reasonable suspicion is determined to be unfounded, the citizen must be released.

The third level of police/citizen contact is the arrest. The arrest occurs when the citizen is no longer free to leave and the officer has the intent to arrest. The arrest must be supported by probable cause to believe the citizen is committing or has committed a criminal offense.

§ 12.545 Use of Force (revised 06/13/2019)

Self-Defense – The act of protecting oneself or another from physical harm or serious physical harm.

Serious Use of Force – Any action that involves: a critical firearm discharge; the use of deadly force; a baton strike to the head; or a use of force in which the person is seriously injured or requires hospital admission, with the exception of individuals admitted for psychiatric evaluation not suffering a serious injury.

Serious Injury/Serious Physical Harm to Persons – Any physical harm that carries a substantial risk of death, permanent incapacity, temporary, substantial incapacity, permanent disfigurement, temporary, serious disfigurement.

Policy:

A police officer's right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to affect it.

Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The 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 the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. ... (T)he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them" (Graham v. Conner, 1989).

When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.

Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others, but extends to that amount reasonably necessary to enable them to affect the arrest of an **actively resistant** subject.

Information:

Use of Force Continuum: Force situations often do not allow for an ordinal progression up a continuum of force and officers must be ready to escalate or de-escalate as the situation evolves.

Examples of Subject Resistance

- Uncooperative: Subject fails to respond to verbal commands or other directions.
- Active resistance: 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.
- Assault or threat of assault: Subject assumes fighting stance, charges, strikes or kicks an officer or verbally or physically indicates an intention to commit an assault combined with the subject's capability to assault.
- Life threatening assault or assault likely to cause serious physical harm: Subject commits an attack using an object, a weapon, or an empty hand assault, wherein the officer reasonably believes the assault will result in serious physical harm and/or death.

§ 12.550 Discharging of Firearms by Police Personnel (revised 06/22/2017)

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.

Police officers may not use deadly force merely to prevent escape in misdemeanor cases. The use of deadly force to prevent escape of felony suspects is constitutionally unreasonable except where the escape presents an immediate risk of death or serious physical harm to another.

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.**

Self-Defense: A police officer is authorized to use that force reasonably necessary to protect him/her self or others from death or serious physical harm at the hands of another.

- There must be an apprehension of real or immediate danger based on an overt and/or constructive act by another.

Firearm Discharge Board

1. The Police Chief will review and forward to PSS the CIS investigation report, letter from the Hamilton County Prosecutor, and any other material deemed relevant to the Firearm Discharge Board (FDB). The PSS Commander will notify and arrange a meeting between the FDB, CIS Commander, and investigators within 30 days of receipt of the material.
2. Recommendations made by the FDB should be unanimous or by consensus. If a consensus cannot be reached, a majority/minority opinion will be prepared at the direction of the chairperson.
3. The FDB will issue its final report to the Police Chief within 90 days of receipt of the material. The report will identify training issues and corrective measures, tactical response issues and corrective measures, and outline any recommended policy and/or procedure.

§ 12.110 Handling Suspected Mentally Ill Individuals and Potential Suicides (06/13/2019)

Policy:

Mental Health Response Team (MHRT) officers will be the first responders, when available, on all runs involving suspected mentally ill individuals. If two MHRT officers are available, they will be dispatched as a team. When necessary a cover car will be dispatched. If the run is an emergency and no MHRT officer is available, beat cars will be dispatched immediately and an MHRT officer from another district will be notified to respond. If the run is not an emergency and no MHRT officer is available, the nearest available MHRT officer from an adjoining district will be dispatched as the primary car.

An MHRT officer on the scene of a suspected mentally ill individual will be the primary officer handling the situation. They will also be responsible for transporting the individual, if necessary, to the hospital.

Officers should attempt to use non-confrontational verbal skills, empathy and/or active listening to stabilize a person in crisis or when confronted with a situation where control is required to effect an arrest or protect the public's safety. The suspect should be allowed to comply before force is used unless this causes unnecessary danger to the officer or others. De-escalation may also incorporate the use of additional time, distance and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force.

A supervisor will respond on all radio runs involving violent or potentially violent mentally ill individuals and, when possible, will consult the MHRT officer on scene to decide on a course of action.

Document all encounters with suspected mentally ill individuals on a RMS Minor Aided Case Report. This will be in addition to any other reports made.

Any suspected mentally ill person reported as missing with a mental hold or who voluntarily agrees, when found, will be returned to the facility that reported them missing. If the facility is unknown, the subject is violent, or from outside the Hamilton County boundaries, the suspected mentally ill person will be taken to UC Health Psychiatric Emergency Services (PES) at the Ridgeway Pavilion.

Procedure:

3. A subject having a mental health crisis should not be charged criminally, even if force is used against them. Officers should follow normal protocol if there are charges unrelated to the mental health crisis.

ANALYSIS

Officers Albert Brown and Kevin Brown responded to a dispatched radio run for an individual "going crazy" with a knife at Bramble Park. CPD Procedure §12.554 Investigatory Stops states that in a "Terry" type encounter, an officer has reasonable suspicion to believe the citizen is committing or has committed a crime. Based on this reasonable suspicion, the officer may forcibly stop and detain the citizen for a brief investigatory period. The physical description of the individual provided in the ECC call matched the appearance of Mr. Johnson. Officers Albert Brown and Kevin Brown had reason to believe Mr. Johnson was involved in the related radio run.

BWC footage showed Mr. Johnson advance towards Officer Albert Brown with a knife. Officers Albert Brown and Kevin Brown issued several commands for Mr. Johnson to drop the knife; Mr. Johnson failed to respond to these verbal commands. Instead, Mr. Johnson continued towards Officer Albert Brown in a threatening manner with a weapon. As a result of the life-threatening resistance, Officer Albert Brown discharged his weapon three times and struck Mr. Johnson. CPD Procedure § 12.550 Discharging of Firearms by Police Personnel maintains that when an 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 use that force reasonably necessary to protect himself or others from death or serious physical harm at the hands of another. In his statement, Officer Albert Brown believed Mr. Johnson's behavior indicated a threat of serious physical harm to himself. CCA concluded that Officer Albert Brown complied with CPD's policy, procedure, and training when he discharged his firearm.

Observation

Per CPD Procedure § 12.110 Handling Suspected Mentally Ill Individuals and Potential Suicides, a subject having a mental health crisis should not be charged criminally, even if force is used against them. However, Mr. Johnson was charged with Aggravated Menacing and Felonious Assault, despite indications that Mr. Johnson was suffering from a mental health crisis at the time of the incident. CCA recognizes that CPD has discretion on when and how individuals are charged with criminal actions; however, CCA encourages CPD to remember their procedure does allow for some flexibility for individuals who commit criminal acts while under mental duress.

FINDINGS

Officer Albert Brown

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

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



Jessalyn Goodman, Investigator



Gabriel Davis, Executive Director

**PREVIOUS
CONTACTS AND
COMMENDATIONS**

Officer Albert Brown

Previous Contacts with CCA

Officer Albert Brown had two previous contacts with CCA in the past three years.

Case Number	Allegation	Finding
19049	Discourtesy	Not Sustained
19049	Other – CPD Code	Sustained
17150	Discourtesy	Not Sustained

Previous Contacts with IIS

CCA is unaware of any additional previous contacts by Officer Albert Brown with IIS.

Commendations

Officer Albert Brown received two commendations in the past three years.

Date	Source of Commendation Received
12/31/2016	CPD
12/31/2016	CPD

**CCA Case No. 19163 – Ebony Singley
Investigation Report and Finding**



**Jessalyn Goodman
Investigator**

**Gabriel Davis
Executive Director**

Table of Contents

Complaint Summary

Involved Subject Statements

Involved Officer Statements

Officer Witness Statements

Witness Statements

Evidence

Significant Discrepancies and Clarifications

Authorities

Analysis

Findings

Previous Contacts and Commendations

COMPLAINT SUMMARY

Date: July 16, 2019

Time: 3:30pm

Location: 327 Crestline Avenue #2

CCA Receipt: July 16, 2019

Complainant: Ebony Singley (Discharge of Firearm)

Officers Joshua Wallet and Andrew Snape responded to a dispatched radio run for Ms. Ebony Singley, who self-reported suicidal ideations; subsequently, Witness A contacted the Emergency Communications Center (ECC) to report Ms. Singley was “on the porch, armed with a knife” and had threatened to harm Witness A’s family.

On arrival, Officers Wallet and Snape observed Ms. Singley holding a knife while on the front porch of Witness A’s residence. Both officers issued commands for Ms. Singley to drop the weapon, but she did not comply. Officer Snape warned Ms. Singley she would be tased. Ms. Singley responded by positioning the blade at her throat. At that time, Witness A opened the door of her residence; Ms. Singley lunged towards the door with the knife and attempted to enter.

Officers Wallet and Snape advanced towards Ms. Singley and directed her to stop, but she did not comply. Officer Snape deployed his taser twice, which did not take effect. Officer Wallet commanded Ms. Singley several times to stop. When she failed to respond, Officer Wallet discharged his firearm once, striking Ms. Singley in the left leg. At the officers’ instruction, Ms. Singley dropped the knife, exited the residence, and laid down on the porch. Officer Snape handcuffed her. Officers Wallet and Snape provided medical assistance until CFD arrived.

INVOLVED SUBJECT STATEMENTS

Ebony Singley

At the time of the report, Ms. Singley was a patient at Summit Behavioral Healthcare. CCA attempted to meet with and obtain a statement from Ms. Singley without success.

CPD Homicide Investigators Robert Randolph and Greg Gehring interviewed Ms. Singley, F/B/26. CCA reviewed the interview and summarized the transcript detailed below:

Ms. Singley, and her friend, Ms. Doris Curtis, were at Ms. Curtis’s residence. They argued about Ms. Singley’s new apartment and whose name was on the lease. Ms. Singley called the police to report there was “about to be a fight.” Ms. Curtis left the residence to speak to the new landlord. Ms. Singley “flipped out” and became upset. From Ms. Curtis’s bedroom, Ms. Singley obtained a butcher knife to harm herself. She broke the knife’s handle, so it was easier to handle. Ms. Curtis’s mother, Witness A, told Ms. Singley to leave because she was “scaring the kids.” As she walked outside, she told Witness A that she would “kill everybody that’s in the house.”

Ms. Singley went outside, dropped the blade handle on the porch, and began to cut herself. The police arrived and told Ms. Singley to put the knife down. Ms. Singley said no and attempted to push the door open. Witness A opened the door and pushed Ms. Singley out. Ms. Singley attempted to enter the house in order to gain access to the roof; she did not intend to hurt anyone except herself.

INVOLVED OFFICER STATEMENTS

Officer Joshua Wallet

Officer Wallet, #P0005, M/W/37, is currently assigned to the Canine Unit, and he has been a CPD member since 2014. On the date of the incident, Officer Wallet was assigned to District 3. Officer Wallet was on routine patrol, in uniform, and in a marked cruiser with Officer Snape; his BWC was activated.

Officers Wallet and Snape were dispatched to a radio run involving multiple callers reporting a suicidal individual and someone trying to break in; the call was “confusing” because it was unclear which caller reported what information. When they arrived, they observed Ms. Singley on the porch with a butcher knife, although it did not have a handle. She switched the knife between her hands. Officer Wallet drew his firearm in the low ready position and remained closer to the street.

Officer Snape approached the driveway with his taser drawn and attempted to speak with Ms. Singley. She paced back and forth on the porch and stabbed the wall with the knife a few times. Officer Wallet could not hear their conversation well but knew Officer Snape tried to convince her to put the knife down and speak with the officers. He observed Ms. Singley put the knife to her throat. Officer Wallet told her, “Don’t do it.”

During this interaction, the front door opened. Officers Wallet and Snape yelled for them to close the door. It did not close in time. Ms. Singley ran to the front door, tried to push her way in, and attempted to stab the person behind the door with the knife. Officer Snape deployed his taser, but it did not take effect. Officers Wallet and Snape ran up the porch, ordering Ms. Singley to stop multiple times. Ms. Singley did not comply.

Officer Wallet feared for the person behind the door, as he did not know if they had been stabbed or not; Ms. Singley continued to push against the door, reach in, and swing the knife. Officer Wallet discharged his firearm once and struck Ms. Singley in the leg. Ms. Singley stopped her actions and complied with the officers’ directives to drop the knife, come outside, and laid down. Officer Wallet handcuffed Ms. Singley and applied a tourniquet. They advised dispatch of their situation and called CFD for medical assistance.

Officer Andrew Snape

Officer Snape, #P0970, M/W/34, is currently assigned to District 3, and he has been a CPD member since 2008. Officer Snape was on routine patrol, in uniform and in a marked cruiser with Officer Wallet; his BWC was activated.

Officer Snape’s initial comments corroborated Officer Wallet’s. When Officers Snape and Wallet arrived, they observed Ms. Singley pacing on the front porch of the residence. She held a large butcher knife in her hand and appeared to be “stabbing at the wall” and “swinging the knife around.” Ms. Singley seemed to be talking to herself and may have been suffering from a mental crisis.

Officer Wallet approached the residence with his firearm drawn but remained at a distance of approximately 30 feet. Officer Snape approached by the driveway, which was to the right of the porch. There was a vehicle in the driveway; he kept the vehicle between himself and the porch railing. Officers Wallet and Snape attempted to speak to Ms. Singley and directed her to drop the knife. Officer Snape warned her that if she did not drop it, she would be tased. Ms. Singley responded, "If you tase me, I die," and pointed the knife to her neck. He observed that if he tased her she could fall on the knife and harm herself further.

Officer Snape continued to attempt to speak to Ms. Singley. Initially, he walked closer to the front of the vehicle, but realized it jeopardized his safety; he retreated behind the vehicle and transitioned to his firearm. When Ms. Singley began to pace again, Officer Snape transitioned back to his taser. The door on the porch opened; Ms. Singley turned and tried to charge through the door with the knife out. Officer Snape attempted to tell the person to close the door, but it was "too late." Ms. Singley swung the knife forward, as though to stab someone. Officer Snape deployed his taser but missed; he was unsure where the barbs struck, as she was at an approximately foot incline above him. He "inadvertently" turned his taser off after one second; he turned it back on and cycled again for five seconds; it did not appear to have an effect, so he dropped it.

Officer Snape moved to the front of the porch steps and transitioned to his firearm. Meanwhile, Officer Wallet gave commands for Ms. Singley to "stop, stop." Officer Wallet discharged his firearm once, which struck Ms. Singley in the leg. Ms. Singley stopped trying to enter the residence and complied with commands to drop the knife, exit the residence, and lie on the ground. Officer Snape handcuffed her. At that time, they noticed Ms. Singley was bleeding and applied a tourniquet. Witness A appeared to have a panic attack or heart attack, so CFD provided medical assistance for both.

OFFICER WITNESS STATEMENTS

There were none.

WITNESS STATEMENTS

CCA witnessed the statement below that was conducted by CPD Homicide Detectives William Hilbert and Andrea Taylor.

Witness A

Ms. Singley went into Ms. Curtis's room and retrieved a knife. She made several statements to Witness A, including, "Get away from me. I'm going to stab all of you guys, I'm gonna kill you all." Witness A was concerned for the welfare of the individuals inside the home, as there are no interior locks in the house. She persuaded Ms. Singley to exit the residence through the front door; once Ms. Singley was far enough outside, Witness A returned inside. Ms. Singley attempted to follow her, but Witness A closed the door and locked her out.

Witness A contacted ECC and advised them of the situation. She stated that the dispatcher advised her the police were on scene; she observed the cruiser through the window and heard them speak to Ms. Singley. Witness A believed that meant she could open the door. Witness A went downstairs to unlock the door and Ms. Singley pushed her upper torso through the door. The officers instructed her "No, don't open the door," but it was too late. As Ms. Singley continued

to push her way inside, Witness A backed up the stairs. She heard the officers telling Ms. Singley, "no" repeatedly. Witness A estimated a few seconds passed before she heard one gunshot. Witness A did not witness the shooting. Medical assistance arrived for Ms. Singley and Witness A.

Witness A mentioned that Ms. Singley had previous self-harm attempts. She noted the police had been called before to the address for Ms. Singley before, and she had pulled a knife on them.

EVIDENCE

CCA responded to the scene of the shooting and monitored the investigation being conducted by the Homicide Unit as well as the processing of the scene by the Criminal Investigations Section (CIS).

Police Documents

CCA reviewed all CPD-related forms, including but not limited to the supervisor's use of force report (Form 18F), information from CPD's Records Management System (RMS), Homicide Investigation Report, Criminal Investigations Section (CIS) documents, and IIS report.

Computer Aided Dispatch (CAD)

<u>Date</u>	<u>Time</u>	<u>Call Notes</u>
07/16/2019	15:31:54	Caller Ebony Singley reported wanting to fight a friend of hers who is on-scene at this time (Victoria Curtis, F/Biracial/30s). Ms. Curtis left the location. Ms. Singley advised Ms. Curtis is vowing to get rid of the apartment, which is the only place Ms. Singley has to stay. Ms. Singley just advised Ms. Curtis left the location and she is now going to kill herself. She is diagnosed with ADHD/bipolar disorder/schizophrenia.
	15:33:09	Officers Snape and Wallet assigned.
	15:35:58	She said she would jump in the river, cut her throat – said she doesn't care. Ms. Singley did not want to stay on the line and her friend's mother was still on-scene at the time.
	15:36:05	Problem change from "DISORD" to "MHRTV" by CPD.
	15:38:58	Caller Wanda Davis reported Ms. Singley was on the porch, armed with a knife.
	15:39:45	Witness A locked herself and her children in a bedroom.
	15:40:27	Witness A reported Ms. Singley used to live at the location.
	15:41:17	Witness A could no longer see the knife in Ms. Singley's hand.
	15:42:42	Ms. Singley is still banging on the door.
	15:43:01	Witness A reported Ms. Singley had "almost busted through the door."
	15:44:05	Witness A reported a senior, four babies, and two toddlers in a bedroom but no place to safely lock themselves.
	15:45:03	Witness A believes Ms. Singley is inside the house. Witness A is armed with a knife for her safety.
	15:45:38	Officers Snape and Wallet arrived on scene.
	15:46:23	Witness A observed a police cruiser but not Ms. Singley.
	15:46:44	Witness A observed Ms. Singley with CPD officers.
	15:47:56	Ms. Singley is shot in the leg, heavy bleeding.

15:47:56 Multi-agency CFD incident # CFD109716000159.
 16:05:00 M17 to University of Cincinnati Medical Center.

Body Worn Camera (BWC)

Officer Wallet

Officer Wallet walked towards the residence. Ms. Singley stood on the porch. Officer Snape spoke to Ms. Singley as Officer Wallet walked up the front sidewalk towards the residence. Officer Wallet said, "Put the knife down." He stopped approximately midway on the lawn. Ms. Singley paced on the porch with the knife. Officer Snape walked up the adjoining driveway and spoke to Ms. Singley. Ms. Singley's comments were inaudible, but she held a blade to her throat. Officer Wallet said, "Don't do it. Don't do it. Put it down."

Officer Wallet said, "Stay inside!" However, one of the doors on the porch opened. Officer Wallet repeated, "Stay inside! Stay inside!" and Ms. Singley lurched towards the open door. Officer Snape deployed his taser from over the side of the porch. Officer Wallet ran towards the door as Ms. Singley attempted to gain entrance into the residence. Officer Wallet pointed his firearm at Ms. Singley. He said, "Stop! Right now!" Ms. Singley pushed against the door. Officer Wallet yelled, "Stop!" Ms. Singley continued to go further into the residence. Officer Wallet discharged his firearm.

Ms. Singley was inside the residence. Officer Wallet said, "Stop!" Officers Wallet and Snape directed Ms. Singley to exit the residence. Officer Wallet advised ECC that shots had been fired and requested medical assistance. Ms. Singley turned to exit the residence and dropped the knife. Officer Snape directed Ms. Singley to crawl out of the residence, lie down on the porch and place her hands behind her back; Ms. Singley complied. Officers Wallet and Snape rendered medical assistance.

Officer Snape

Officer Snape walked towards the residence. Ms. Singley stood on the porch, outside of the residence. Officer Snape walked up the adjoining driveway and said, "Go ahead and put that down for us, please." Officer Wallet said, "Put the knife down." Officer Snape continued to walk up the driveway that was to the right side of the residence. He passed a parked vehicle, so the vehicle was between Officer Snape and the residence. Officer Snape directed Ms. Singley to "put it down" twice. He remained on the side of the vehicle as Ms. Singley stood on the porch, wielding a knife. Ms. Singley paced on the porch. Officer Snape repeated, "Put it down."

Ms. Singley did not respond and continued to pace. Officer Snape said, "If you don't put it down, you're going to get tased. Do you understand me? You are going to get tased if you don't put it down." Ms. Singley stopped pacing and placed the blade of the knife against her neck. Her comments were inaudible. Officer Snape said, "I can't hear you." Ms. Singley repeated herself. Officer Snape replied, "Let's start over. Young lady, what's your name?" One door of the building opened; Officers Snape and Wallet yelled, "Stay in the house!" and "Stay inside!" Ms. Singley lurched towards the open door.

Officer Snape deployed his taser. Officers Snape and Wallet pe advanced towards the porch as Ms. Singley attempted to enter the residence. Officer Wallet ran from the front lawn directly and yelled, "Stop! Right now!" Officer Snape approached the side of the porch as he deployed his taser. Ms. Singley went inside the residence; the door remained open. Officer Wallet ascended the porch stairs, yelled, "Stop!" and discharged his firearm.

Officer Snape dropped his taser onto the ground. Officer Wallet remained on the front porch with his firearm pointed towards the doorway. He repeated, "Stop!" Officer Snape ascended the steps, drew his firearm, and pointed it towards the residence. Officers Snape and Wallet ordered Ms. Singley to exit the residence. Ms. Singley turned towards the officers as they kept their firearms pointed at her. She dropped the knife. Officer Snape ordered Ms. Singley to crawl out of the residence and lay down on the ground; Ms. Singley complied. Officer Snape handcuffed Ms. Singley. Officers Snape and Wallet rendered medical attention.

Taser Download

Officer Snape used his taser twice; the first deployment was for a one second cycle and the second deployment was for a five second cycle.

Firearm Qualification/Discharge

Officer Wallet's most recent firearm qualification occurred on February 21, 2018. Officer Wallet discharged his firearm one time during the incident.

Photographs

CCA reviewed numerous photographs of the scene.

Prosecutor's Letter of Declination

The Hamilton County Prosecutor's Office issued a letter of declination on November 15, 2019; it stated Officer Joshua Wallet was justified in his actions and did not violate any criminal statutes.

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

Ms. Singley was charged with §2903.11 Ohio Revised Code (ORC) Felonious Assault due to Ms. Singley's threatening actions towards Witness A. The criminal case concluded with Ms. Singley being adjudicated as "incompetent to stand trial."

AUTHORITIES

I. CPD Procedure Manual (in part)

§ 12.554 Investigatory Stops

(Revised 01/19/2017, Replaces 08/25/2016)

Information:

There are three levels of police/citizen contact.

The first level is a consensual encounter. A police officer may approach any person in a public place and request to talk to him. So long as the person is free to leave whenever he wants, no Fourth Amendment seizure has occurred and no reasonable suspicion or probable cause is required.

The next level is the "Terry" type encounter. Here the officer has reasonable suspicion to believe the citizen is committing or has committed a crime. Based on this reasonable suspicion, the officer may forcibly stop and detain the citizen for a brief investigatory period. Failure to answer the questions asked by the officer or to properly identify oneself cannot provide the justification for detaining a person past the period necessary to complete the brief "Terry" type investigation. Once the reasonable suspicion is determined to be unfounded, the citizen must be released.

The third level of police/citizen contact is the arrest. The arrest occurs when the citizen is no longer free to leave and the officer has the intent to arrest. The arrest must be supported by probable cause to believe the citizen is committing or has committed a criminal offense.

Policy:

No law enforcement agency should condone or promote the use of any illegal profiling system in its enforcement program. Criminal elements exist in every segment of our society. An officer whose enforcement stops are based on race or ethnicity is engaged in a practice which undermines legitimate law enforcement and may face claims in Federal courts of civil rights violations. To focus on a single segment of society is to limit enforcement efforts.

Awareness is the key to success in criminal interdiction. Observations must be evaluated in the aggregate - not isolation. An officer must use all senses while avoiding the development of tunnel vision. An important factor to remember when conducting an enforcement stop is to take the time to do it right. Do not rush through the stop or an important indicator of illegal activity may be missed.

Procedure

A. Completing a Form 534, Contact Card

2. A Contact Card **must** be completed for any vehicle passenger or pedestrian detention which meets the definition of a "Terry" stop unless the stop results in an arrest or citation.
 - a. An officer **may** complete a Contact Card for any consensual citizen contact when the officer believes completing the card will provide intelligence information **and** the information is provided voluntarily by a citizen.

§ 12.545 Use of Force

Definitions:

Deadly Force – Force likely to cause, or capable of causing, death.

De-escalation – Using non-confrontational verbal skills, empathy and active listening to stabilize a person in crisis. De-escalation may also incorporate the use of additional time, distance and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force.

Force – Any physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person. The term includes, but is not limited to, the use of: firearms, TASERs, chemical irritant, choke holds or hard hands, the taking of a subject to the ground, or the deployment of a canine. The term does not include escorting or handcuffing a person with no or minimal resistance.

Serious Use of Force – Any action that involves: a critical firearm discharge; the use of deadly force; a baton strike to the head; or a use of force in which the person is seriously injured or requires hospital admission, with the exception of individuals admitted for psychiatric evaluation not suffering a serious injury.

Self-Defense – The act of protecting oneself or another from physical harm or serious physical harm.

Serious Injury/Serious Physical Harm to Persons – Any physical harm that carries a substantial risk of death, permanent incapacity, temporary substantial incapacity, permanent disfigurement, or temporary serious disfigurement.

Information:

Use of Force Continuum: Force situations do not allow for an ordinal progression up a continuum of force and officers but be ready to escalate or de-escalate as the situation evolves.

TASER: The TASER is an electronic control device that is a non-lethal force alternative used to assist officers in the performance of their duties. The TASER is designed for self-defense or to temporarily immobilize a subject who **is actively resisting arrest**. It generates electricity in a small, hand-held, battery operated unit about the size of a handgun.

Policy:

The Cincinnati Police Department recognizes the value of all human life and is committed to respecting the Constitutional rights and dignity of every individual. Officers shall act within the boundaries of the United States Constitution, the laws, and constitution of the state of Ohio, the charter and ordinances of the city of Cincinnati, this use of force procedure, and all other relevant CPD procedures, policies, practices and training.

A police officer's right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to effect it. Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake (Graham v. Connor, 1989). The 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 the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. ... (T)he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them" (Graham v. Connor, 1989).

A number of factors may be taken into consideration to evaluate whether an officer has used objectively reasonable force. These factors include, but are not limited to:

- The conduct of the person being confronted as reasonably perceived by the officer at the time, including the level of threat or resistance presented by the subject.
- The officer's and subject's factors, including but not limited to: size, age, relative strength, skill level, injuries sustained, level of exhaustion or fatigue and the number of officers versus subjects.

- The influence of drugs or alcohol and the subject's mental capacity, if known.
- The proximity of weapons.
- The distance between the officer and subject.
- The degree to which the subject has been effectively restrained and his / her ability to resist despite being restrained.
- 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.
- The training and experience of the officer.
- The potential for injury to citizens, officers and suspects.
- Whether the conduct of the individual being confronted reasonably appears to pose an imminent threat to the officers or others.
- The prior knowledge of the subject's propensity for violence.
- Any other exigent circumstance or special knowledge

Courtesy in all public contacts encourages understanding and cooperation. The most desirable method for effecting an arrest is where a suspect complies with clear and concise directions given by an officer.

Whenever possible, de-escalation techniques shall be employed to gain voluntary compliance by a subject. Officers shall use only the level of force that is objectively reasonable to effect an arrest or while protecting the safety of the officer and others.

Officers should attempt to achieve control through advice, delay, warnings, and/or persuasion when confronted with a situation where control is required to effect an arrest or protect the public's safety. The suspect should be allowed to submit to arrest before force is used, unless this causes unnecessary danger to the officer or others.

When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.

Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others, but extends to that amount reasonably necessary to enable them to effect the arrest of an **actively resistant** subject.

An officer has a duty to stop, prevent and report the use of excessive force by another officer. Officers who use excessive force will be subject to discipline, possible criminal prosecution, and/or civil liability.

All members have a duty to ensure all use of force incidents and any citizen allegation of excessive force are reported to the Police Department. Whenever employees use any type of force; or confront resistance that results in an injury or complaint of injury to a citizen; or have knowledge of any of the above; or are aware of a citizen complaint of excessive force, they will promptly notify a supervisor. The supervisor or command officer investigating the incident must be of at least the next higher rank than the officer(s) who used force. The only exception is when a lieutenant uses force and there is no captain or above working, but an acting Night Chief is available. In this case, the acting Night Chief can conduct the investigation.

The Criminal Investigation Section (CIS) will respond for all shots fired and death investigations involving police, and for other incidents at the direction of the bureau

commander. IIS will respond and investigate all deadly and serious uses of force and canine bites that cause serious injury or hospital admission. This includes, but may not be limited to:

- Action that directly or indirectly results in a person being seriously injured, admitted to a hospital, or killed (including injuries that are self-inflicted).
- All head strikes with an impact weapon.
- All uses of a carotid/choke hold.

Following any use of force resulting in a citizen's injury, officers will summon Cincinnati Fire Department (CFD) personnel to provide emergency medical treatment. Once the scene is stabilized and it is safe to do so, officers may administer CPR or basic first aid, if appropriate.

Officers will receive annual training specifically pertaining to Use of Force. Officers will acknowledge and be tested on their understanding of the procedure.

USE OF FORCE CONTINUUM

Examples of Subject Resistance

- Uncooperative: Subject fails to respond to verbal commands or other directions.
- Active resistance: 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.
- Assault or threat of assault: Subject assumes fighting stance, charges, strikes, or kicks an officer or verbally or physically indicates an intention to commit an assault combined with the subject's capability to assault.
- Life threatening assault or assault likely to cause serious physical harm: Subject commits an attack using an object, a weapon, or an empty hand assault, wherein the officer reasonably believes the assault will result in serious physical harm and/or death.

Depending on the circumstances, officers may find it necessary to escalate or de-escalate the use of force by progressing up and down the force continuum. It is not the intent of this continuum to require officers to try each of the options before moving to the next, as long as the level of force used is reasonable under the circumstances.

Disengagement is a reasonable option in consideration of officer safety and the necessity to apprehend promptly. Disengagement, area containment, surveillance, waiting-out a subject, summoning reinforcements, or calling in specialized units may be an appropriate response to a situation and should be considered.

Force options may be used simultaneously, for instance, combining verbal commands with use of chemical irritant. An officer must choose the necessary response based on law, department policy, training, and experience. An officer must exercise proper use of force decision making, which means the use of reasonable force, including proper tactics, and de-escalation techniques.

§ 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.

Police officers may not use deadly force merely to prevent escape in misdemeanor cases. The use of deadly force to prevent escape of felony suspects is constitutionally unreasonable except where the escape presents an immediate risk of death or serious physical harm to another.

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.**

Self-Defense: A police officer is authorized to use that force reasonably necessary to protect him/her self or others from death or serious physical harm at the hands of another.

- There must be an apprehension of real or immediate danger based on an overt and/or constructive act by another.

Firearm Discharge Board

1. The Police Chief will review and forward to PSS the CIS investigation report, letter from the Hamilton County Prosecutor, and any other material deemed relevant to the Firearm Discharge Board (FDB). The PSS Commander will notify and arrange a meeting between the FDB, CIS Commander, and investigators within 30 days of receipt of the material.
2. Recommendations made by the FDB should be unanimous or by consensus. If a consensus cannot be reached, a majority/minority opinion will be prepared at the direction of the chairperson.
3. The FDB will issue its final report to the Police Chief within 90 days of receipt of the material. The report will identify training issues and corrective measures, tactical response issues and corrective measures, and outline any recommended policy and/or procedure.

§ 12.110 Handling Suspected Mentally Ill Individuals and Potential Suicides

Policy:

Mental Health Response Team (MHRT) officers will be the first responders, when available, on all runs involving suspected mentally ill individuals. If two MHRT officers are available, they will be dispatched as a team. When necessary a cover car will be dispatched. If the run is an emergency and no MHRT officer is available, beat cars will be dispatched immediately and an MHRT officer from another district will be notified to respond. If the run is not an emergency

and no MHRT officer is available, the nearest available MHRT officer from an adjoining district will be dispatched as the primary car.

An MHRT officer on the scene of a suspected mentally ill individual will be the primary officer handling the situation. They will also be responsible for transporting the individual, if necessary, to the hospital.

Officers should attempt to use non-confrontational verbal skills, empathy and/or active listening to stabilize a person in crisis or when confronted with a situation where control is required to effect an arrest or protect the public's safety. The suspect should be allowed to comply before force is used unless this causes unnecessary danger to the officer or others. De-escalation may also incorporate the use of additional time, distance and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force.

A supervisor will respond on all radio runs involving violent or potentially violent mentally ill individuals and, when possible, will consult the MHRT officer on scene to decide on a course of action.

Document all encounters with suspected mentally ill individuals on a RMS Minor Aided Case Report. This will be in addition to any other reports made.

Procedure:

3. A subject having a mental health crisis should not be charged criminally, even if force is used against them. Officers should follow normal protocol if there are charges unrelated to the mental health crisis.

ANALYSIS

Officers Wallet and Snape responded to a dispatched radio run for Ms. Singley, who self-reported suicidal ideations; subsequently, Witness A contacted ECC to report Ms. Singley was "on her porch with a knife." CPD Procedure §12.554 Investigatory Stops states that if an officer has reasonable suspicion to believe the citizen is committing or has committed a crime, then based on this reasonable suspicion, the officer may forcibly stop and detain the citizen for a brief investigatory period. The physical description of the individual provided in the ECC call matched the appearance and actions of Ms. Singley. Officers Wallet and Snape had reason to believe Ms. Singley was the person of interest in the related radio run.

BWC footage showed Ms. Singley on the front porch of a residence, holding a knife in her hand. Officers Wallet and Snape issued multiple commands for Ms. Singley to drop the knife; Ms. Singley failed to respond to these verbal commands. Officer Snape warned Ms. Singley she would be tased if her behavior did not desist. CPD Procedure § 12.545 Use of Forces states the privilege for officers to use force, including a taser, includes force necessary to protect themselves or others. BWC footage showed Officer Snape deployed his taser twice after Ms. Singley advanced towards a bystander with a lethal weapon. Therefore, Officer Snape's use of a taser against Ms. Singley was not a violation.

BWC footage showed the taser did not take effect on Ms. Singley; instead, she continued to pursue Witness A into her home. CPD Procedure § 12.550 Discharging of Firearms by Police Personnel maintains that when an 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 use

that force reasonably necessary to protect himself or others from death or serious physical harm at the hands of another. As a result of Ms. Singley's life-threatening behavior, Officer Wallet discharged his firearm once and struck Ms. Singley in the left leg. In his statement, Officer Wallet believed Ms. Singley's behavior indicated a threat of serious physical harm to the occupants of the residence. The evidence, including BWC footage, and Officer Singley's statement corroborated Officer Wallet's account. CCA concluded that Officer Wallet complied with CPD's policy, procedure, and training when he discharged his firearm.

Commendation:

CCA commends Officer Wallet for immediately offering first aid to Ms. Singley following the use of force (i.e. the shooting) that resulted in injury to Ms. Singley, particularly given that current policy provides officers with the discretion to offer such aid but does not require them to do so.

Observation:

Per CPD Procedure § 12.110 Handling Suspected Mentally Ill Individuals and Potential Suicides, a subject having a mental health crisis should not be charged criminally, even if force is used against them. However, Ms. Singley was charged with Felonious Assault, despite indications that she was suffering from a mental health crisis at the time of the incident. Per Clerk of Courts, Ms. Singley was found unable to stand trial due to her mental health. CCA recognizes that CPD has discretion on when and how individuals are charged with criminal actions; however, CCA encourages officers to remember that CPD's procedure does allow for some flexibility for individuals who commit criminal acts while under mental duress.

FINDINGS

Officer Andrew Snape
Officer Joshua Wallet

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

Officer Joshua Wallet

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



Jessalyn Goodman, Investigator



Gabriel Davis, Director

PREVIOUS CONTACTS AND COMMENDATIONS

Officer Joshua Wallet

Previous Contacts with CCA

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

Case Number	Allegation	Finding
18069	Lack of Service	CPD Info File
18076	Death in Custody	Unfounded
18076	Stop (Person)	Exonerated
19160	Excessive Force (Taser)	Pending
19160	Excessive Force (Physical)	Pending

Previous Contacts with IIS

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

Case Number	Allegation	Finding
19154	Improper Procedure	Sustained (Other)

Commendations

Officer Wallet received two commendations in the past three years.

Date	Source of Commendation Received
10/25/2018	CPD
07/05/2019	CPD

Officer Andrew Snape

Previous Contacts with CCA

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

Case Number	Allegation	Finding
18076	Pointing of a Firearm	Exonerated
18076	Death in Custody	Unfounded
18076	Stop (Person)	Exonerated
18167	Discharge of Firearm	Pending
19160	Excessive Force (Physical)	Pending
19160	Excessive Force (Taser)	Pending

Previous Contacts with IIS

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

Case Number	Allegation	Finding
18144	Excessive Force	Unfounded

Commendations

Officer Snape received two commendations in the past three years.

Date	Source of Commendation Received
10/25/2018	CPD
07/05/2019	CPD

**CCA Case No. 19206 –
Discharge of a Firearm involving Vernell Jackson
Investigation Report and Finding**



**Jessalyn Goodman
Investigator**

**Gabriel Davis
Executive Director**

Table of Contents

Complaint Summary

Involved Subject Statements

Involved Officer Statements

Officer Witness Statements

Witness Statements

Evidence

Significant Discrepancies and Clarifications

Authorities

Analysis

Findings

Previous Contacts and Commendations

COMPLAINT SUMMARY

Date: September 11, 2019

Time: 12:05pm

Location: 901 Blair Ave

CCA Receipt: September 11, 2019

Complainant: Vernell Jackson (Discharge of a Firearm)

Sergeant James Davis was on patrol in plainclothes and in an unmarked vehicle. Sergeant Davis observed Mr. Vernell Jackson walk past his vehicle and transferred an apparent firearm from either his pocket or his waistband to the small of his back. Sergeant Davis broadcast to CPD's Emergency Communication Center (ECC) what he observed and requested a uniformed officer respond. Uniformed Officer Marc Schildmeyer responded and initiated a pedestrian stop of Mr. Jackson and [Witness C]. Officer Schildmeyer ordered Mr. Jackson to show his hands. Mr. Jackson reached his left hand behind his back and produced a firearm in front of his torso, pointing towards Officer Schildmeyer. Officer Schildmeyer discharged his firearm once, striking Mr. Jackson in the torso.

Officer Schildmeyer rendered medical assistance until CFD arrived on scene. Mr. Jackson was transported to University of Cincinnati Medical Center (UCMC).

INVOLVED SUBJECT STATEMENTS

Vernell Jackson

Mr. Jackson, M/B/20, was unable to be interviewed. CCA did not have a phone number to reach Mr. Jackson and a letter sent to his residence has returned no response. To date, Mr. Jackson has not contacted CCA.

The statement below was taken from the initial interview conducted by CPD Homicide Investigators Marcus McNeil and Christopher Wharton on the September 22, 2019.

Mr. Jackson obtained a firearm from his friend for protection; at the time, he did not believe it was loaded. He went to the store with the firearm in his waistband. Mr. Jackson waited for his friend, Witness A, to retrieve something from his house. He was walking with another female and had a drink in his right hand when he saw an undercover officer arrive. A uniformed police officer arrived and pulled him over.

Mr. Jackson was "nervous" because he had a firearm on his person. He did not know what to do but wanted to "get rid of it." The uniformed officer instructed Mr. Jackson, "Put your hands in the air!" twice. Mr. Jackson "panicked" and reached for his firearm with his left hand to "set it down." He intended to put his hands up and was not going to harm anyone. However, Mr. Jackson thought, "He thought I was going to reach for it and attack," and that was when the officer shot Mr. Jackson.

Mr. Jackson and the gun fell to the ground. The uniformed officer performed CPR and placed pressure on his wound. When the ambulance arrived, Mr. Jackson was transported to UC Hospital.

INVOLVED OFFICER STATEMENTS

Officer Marc Schildmeyer

Officer Schildmeyer, #P0575, M/W/52, is currently assigned to the Gang Unit (GU) and has been a CPD member since 1996. Officer Schildmeyer was on routine patrol, in uniform, and operated a marked cruiser with a citizen ride-along, Witness B; his BWC was activated.

Officer Schildmeyer was with Witness B when Sergeant Davis requested a uniformed officer respond to conduct a pedestrian stop of Mr. Jackson on Blair Avenue. Sergeant Davis radioed Mr. Jackson's description and believed Mr. Jackson had a firearm. Officer Schildmeyer could not recall specifics but stated that Sergeant Davis's description matched Mr. Jackson's clothing at the time.

Officer Schildmeyer responded to Mr. Jackson's location within one or two minutes; he believed Witness B remained in the cruiser throughout the incident. Officer Schildmeyer parked his cruiser by Mr. Jackson, who stood near Witness C on the sidewalk.

When Officer Schildmeyer exited the cruiser, his firearm was drawn and pointed at the ground. He instructed Mr. Jackson to show his hands twice; instead, Mr. Jackson "bladed" away from him, to his left. Mr. Jackson used his left hand to retrieve a firearm from his "waistband area" and pointed it at Officer Schildmeyer. Officer Schildmeyer felt threatened that Mr. Jackson would shoot him and that "[his] life was in jeopardy." Officer Schildmeyer discharged his firearm once, striking Mr. Jackson in the chest. A hill and a fence were his backdrop; Witness C stood away from and to the right of Mr. Jackson at the time. Officer Schildmeyer was focused on Mr. Jackson and not aware of Sergeant Davis's actions during the encounter.

Afterwards, they radioed for CPD and medical assistance. Officer Schildmeyer confirmed Mr. Jackson no longer had access to the firearm. He approached Mr. Jackson, patted him down, and handcuffed him. Mr. Jackson had difficulty breathing and Officer Schildmeyer rendered medical aid until CFD arrived. He recalled asking Mr. Jackson about his actions, but Mr. Jackson did not respond.

OFFICER WITNESS STATEMENTS

Sergeant James Davis

Sergeant Davis, #S0300, M/W/45, is currently assigned to the GU and has been a CPD member since 1998. Sergeant Davis was on routine patrol, in plainclothes, and operated an unmarked vehicle; due to his plainclothes assignment, he did not wear a BWC.

Due to a recent increase in gun crimes in Avondale, Sergeant Davis monitored activity in the area. He parked on Blair Avenue and saw Mr. Jackson across the street approximately 30-40 feet away walk by his vehicle; he had an unobstructed view of Mr. Jackson. Shortly after Mr. Jackson passed, Sergeant Davis observed Mr. Jackson remove a black handgun from his waistband or pocket and replace it to the small of his back. Sergeant Davis believed Mr. Jackson may have

been a juvenile. He communicated with Officer Schildmeyer on the 4C channel to determine if anyone was in the area to assist. Sergeant Davis advised Officer Schildmeyer that Mr. Jackson was armed and gave a description of him; he did not recall what description he gave. Sergeant Davis noted there was "light foot traffic" in the area at the time. Officer Schildmeyer acknowledged Sergeant Davis's request and advised that he would conduct a pedestrian stop of Mr. Jackson the armed suspect.

Prior to Officer Schildmeyer's arrival, Mr. Jackson had contact with Witness C. Sergeant Davis remained in his vehicle and did not engage Mr. Jackson. Within a minute, Officer Schildmeyer arrived and initiated the pedestrian stop of Mr. Jackson; his civilian rider remained in the cruiser throughout the encounter. When Officer Schildmeyer parked his cruiser, Sergeant Davis triangulated his vehicle between Mr. Jackson and Officer Schildmeyer to prevent any attempts to flee. Officer Schildmeyer displayed his firearm, pointed it at Mr. Jackson, and ordered him to show his hands. Mr. Jackson put one hand behind his back, removed the handgun, and pointed it at Officer Schildmeyer. Officer Schildmeyer discharged his firearm once, striking Mr. Jackson in the chest. Mr. Jackson and the firearm fell to the ground.

Sergeant Davis exited his vehicle at the time the shot was fired. He returned to his vehicle to grab his radio. As he exited his vehicle, he displayed his firearm (finger off trigger) and pointed it at Mr. Jackson. He issued commands to Mr. Jackson and told Witness C to get back. Officer Schildmeyer and Sergeant Davis requested additional assistance and for CFD. Officer Schildmeyer immediately rendered first aid. Mr. Jackson repeatedly stated he could not breathe; he was moved to his side and back as Officer Schildmeyer placed pressure on the wound. Officer Schildmeyer asked Mr. Jackson, "Why did you point the gun at me?"

Sergeant Davis ensured the firearm was no longer within Mr. Jackson's reach but did not confiscate it so as to not contaminate the crime scene. Mr. Jackson was handcuffed, although Sergeant Davis could not recall who applied the handcuffs. CFD arrived, rendered medical assistance, and transferred Mr. Jackson to UCMC.

WITNESS STATEMENTS

The statements below were taken from the initial interviews conducted by CPD Homicide Investigators on the day of the incident. CCA witnessed the interviews.

Witness A

Witness A was interviewed by Detectives McNeil and Wharton.

On September 11, 2019, Witness A was notified that her friend, Mr. Jackson, had been released from Hamilton County Justice Center (HCJC) the previous day. Witness A walked to Blair Avenue and observed Mr. Jackson with his friend, "Tre," outside the last building of the Blair Apartments. She advised Mr. Jackson not to be around him since Tre was the reason Mr. Jackson was sent to HCJC. They spoke for a while and Witness A left briefly to get a drink from a nearby store.

Mr. Jackson's mother had not seen Mr. Jackson since his release; she stopped by in her vehicle and said she would be home in 30 minutes. Mr. Jackson and Witness A left to walk to Mr. Jackson's mother's house through the park. Witness A told him to wait so Witness A could retrieve her bookbag, but he continued to walk. Mr. Jackson had to hurry because he had his mother's house key. When Witness A grabbed Witness A's bookbag and started to return, she observed two officers. One officer sat in a marked police cruiser and then exited. Witness A did not hear the interaction between the officer and Mr. Jackson but saw the officer who drove the

cruiser shoot Mr. Jackson. Mr. Jackson fell to the ground, said her name, but was unresponsive to her.

Another girl was near Mr. Jackson at the time but ran to Witness A after the shooting. Witness A attempted to approach Mr. Jackson but officers would not let her. Witness A denied any knowledge that Mr. Jackson had a firearm.

Witness B

Witness B was interviewed by Detectives McNeil and Wharton.

Witness B participated in a ride-along with Officer Schildmeyer. At the time of the incident, Officer Schildmeyer and Witness B were in Avondale when dispatch advised that someone observed a tall, black male in a black shirt place a firearm in his pocket. Witness B heard the word “gang” but did not know if it applied to the suspected individual or CPD. An officer added to the broadcast that he was in an unmarked car.

Officer Schildmeyer responded to the broadcast that they were nearby and drove towards Blair Avenue. Witness B observed a black male, Mr. Jackson, walking east. As they pulled up, a female approached Mr. Jackson and gave him a hug. Officer Schildmeyer exited the cruiser, drew his firearm, and said, “Raise your hands!” or “Show your hands!” He also asked, “Do you have a weapon?” Mr. Jackson pulled out a black firearm with orange on the side. Officer Schildmeyer shot Mr. Jackson and he fell to the ground.

The female backed away and seconds later, a second officer arrived on scene from the right. The officers handcuffed Mr. Jackson. The second officer searched Mr. Jackson as Officer Schildmeyer applied pressure to Mr. Jackson’s wounds. Mr. Jackson said he could not breathe, so the officers rolled him onto his side until EMS arrived.

Witness C

Witness C was interviewed by Detectives McNeil and Wharton.

Witness C walked across the Blair Bridge, observed her acquaintance, Mr. Jackson, by the park, and he spoke to her. He held a drink in his left hand, and she did not observe his right hand. Witness C crossed the street, showed him her diploma from Life Skills, and hugged him.

Witness C observed two officers: a uniformed officer in a marked cruiser and another in an unmarked car. After she hugged Mr. Jackson, a uniformed officer told Mr. Jackson, “Freeze!” and “Put up your hands!” They both held up their hands; Witness C did not know to whom the officer spoke until she saw the officer’s firearm was pointed at Mr. Jackson. Neither she nor Mr. Jackson said anything. Witness C heard a gunshot and Mr. Jackson was on the ground. The officer in the unmarked car arrived on scene.

Afterwards, Witness C panicked and tried to walk away. She did not recall what happened subsequently. Witness C denied any knowledge that Mr. Jackson had a firearm.

EVIDENCE

CCA responded to the scene of the shooting and monitored the investigation being conducted by the Homicide Unit as well as the processing of the scene by the Criminal Investigations Section (CIS).

Police Documents

CCA reviewed all CPD-related forms, including but not limited to the supervisor's use of force report (Form 18F), information from CPD's Records Management System (RMS), Homicide Investigation Report, Criminal Investigations Section (CIS) documents, and IIS report.

CPD Radio Transmission

The radio recorded an officer asking for assistance regarding a possible armed suspect on Blair Ave near Ridgeway. Subsequently, Officer Schildmeyer reported shots were fired with a suspect down and to send fire. Sergeant Davis radioed that the suspect had been shot in the chest and to send an ambulance. The remainder of the radio transmission focused on subsequent traffic and crime scene control by CPD officers.

Computer Aided Dispatch (CAD)

<u>Date</u>	<u>Time</u>	<u>Call Notes</u>
09/11/2019	12:07:01	Officer Marc Schildmeyer arrived on scene; was out with possible armed suspect.
	12:08:28	FIRE NEEDED AT BLAIR/DREXEL – EXPEDITE PLEASE – SHOT IN CHEST Patient IS MALE
	12:08:31	Backed up Officer Schildmeyer with Sergeant Timothy Lanter.
	12:08:48	Multiple officers dispatched to assist.

Body Worn Camera (BWC)

Officer Schildmeyer

Officer Schildmeyer drove his cruiser and commented aloud, "He's got a gun, I think." Officer Schildmeyer parked parallel to Sergeant Davis's unmarked vehicle. As he exited the cruiser, he said, "Let me see your hands," twice, then drew his firearm. Officer Schildmeyer stepped away from his cruiser; he stood a few yards away from Mr. Jackson and Witness C. Witness C stood to his right, with her hands in the air. Mr. Jackson stood to his left; his right hand was by his waist and held a bottle. His left hand was bent behind his torso. He repeated, "Let me see 'em!" and pointed his firearm at Mr. Jackson. Mr. Jackson had a firearm in his left hand and brought it forward.

Officer Schildmeyer yelled, "Put it down!" and discharged his firearm once. The firearm and Mr. Jackson fell to the ground. Sergeant Davis exited his vehicle with his firearm drawn and pointed at Mr. Jackson. Witness C moved closer to Sergeant Davis's vehicle and he yelled, "Back up!"; which she complied. Officer Schildmeyer radioed that shots were fired. Sergeant Davis holstered his firearm and approached Mr. Jackson. He directed him to put his hands behind his back. Mr. Jackson repeatedly stated, "I can't breathe."

Officer Schildmeyer approached and handcuffed Mr. Jackson; he kept Mr. Jackson on his side. He put on latex gloves and placed pressure against Mr. Jackson's chest. Officer Schildmeyer said, "Okay. Okay. I thought you were gonna – dude, I thought you were going to try to shoot me, all right? I'm going to try to stop it, all right?" Officer Schildmeyer made reassuring comments to Mr. Jackson and also asked, "Why did you pull the gun out, man? Why did you pull it out?" multiple times. Mr. Jackson's responses were indistinct. Officer Schildmeyer advised Mr. Jackson to control his breathing.

Officer Schildmeyer asked Sergeant Davis to remove Mr. Jackson's handcuffs and then repositioned him. He asked Sergeant Davis to pat down Mr. Jackson and later asked for the status of CFD. Sergeant Davis and Officer Schildmeyer discussed the situation. Approximately five and a half minutes after Mr. Jackson was shot, CFD arrived. Officer Schildmeyer sanitized his hands and deactivated his BWC as he was led away from the scene.

Mobile Video Recording

Equipment #18314; Time: 12:19:30 – 12:40:39

No audio was recorded.

At 12:20:35, Witness C crossed the street and approached Mr. Jackson on the sidewalk. As they hugged, Officer Schildmeyer parked his cruiser within a few feet of them. Mr. Jackson and Witness C looked at the cruiser; Mr. Jackson held a bottle in his right hand and his left hand was behind his back.

At 12:20:43, Witness C held up her hands; Mr. Jackson's right hand held his water bottle; his left hand pulled out a firearm from his pants' rear waistband and brought it to the front of his torso. At 12:20:44, Mr. Jackson's upper torso caved inwards, and he fell to the ground. Sergeant Davis exited his vehicle, with his firearm displayed and pointed at Mr. Jackson. Witness C moved away from Mr. Jackson towards Sergeant Davis. Witness C continued to back away as Sergeant Davis briefly re-entered his vehicle.

At 12:20:56, Sergeant Davis holstered his weapon and approached Mr. Jackson. Sergeant Davis moved Mr. Jackson's left arm behind his back. Officer Schildmeyer approached and handcuffed Mr. Jackson. Mr. Jackson remained on his side as Officer Schildmeyer put on latex gloves and pressed them to Mr. Jackson's chest. Sergeant Davis returned to his vehicle, used the radio, put on a latex glove, and went out of the MVR frame. Officer Schildmeyer remained with Mr. Jackson and continued to provide medical assistance.

At 12:23:23, Sergeant Davis removed the handcuffs. At 12:23:53, Sergeant Lanter arrived on scene and Sergeant Davis gave Mr. Jackson a pat down. At 12:26:18, CFD arrived to render medical aid. The remainder of the footage was not relevant to the allegations.

Firearm Qualifications and Discharges

Officer Schildmeyer qualified with his firearm on July 13, 2018. Officer Schildmeyer discharged his firearm one time.

Prosecutor's Letter of Declination

The Hamilton County Prosecutor's Office issued a letter of declination on January 9, 2020 stating that Officer Schildmeyer was justified in his actions and did not violate any criminal statutes.

Photographs

CCA reviewed numerous photographs of the scene.

Clerk of Courts

Mr. Jackson was initially charged with Ohio Revised Code (ORC) § 2903.21 Aggravated Menacing and Ohio Revised Code (ORC) § 2923.12A Carrying Concealed Weapons. On

December 17, 2019, Mr. Jackson entered a plea of no contest to and was found guilty of Carrying Concealed Weapons. He was placed on Community Control for five years.

SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS

There were none.

AUTHORITIES

I. Ohio Revised Code

§ 2923.12 Carry concealed weapons

(A) No person shall knowingly carry or have, concealed on the person's person or concealed ready at hand, any of the following:

- (1) A deadly weapon other than a handgun;
- (2) A handgun other than a dangerous ordnance
- (3) A dangerous ordnance.

(B) No person who has been issued a concealed handgun license shall do any of the following:

- (1) If the person is stopped for a law enforcement purpose and is carrying a concealed handgun, fail to promptly inform any law enforcement officer who approaches the person after the person has been stopped that the person has been issued a concealed handgun license and that the person then is carrying a concealed handgun;
- (2) If the person is stopped for a law enforcement purpose and is carrying a concealed handgun, knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer;
- (3) If the person is stopped for a law enforcement purpose, if the person is carrying a concealed handgun, and if the person is approached by any law enforcement officer while stopped, knowingly remove or attempt to remove the loaded handgun from the holster, pocket, or other place in which the person is carrying it, knowingly grasp or hold the loaded handgun, or knowingly have contact with the loaded handgun by touching it with the person's hands or fingers at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless the person removes, attempts to remove, grasps, holds, or has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer;
- (4) If the person is stopped for a law enforcement purpose and is carrying a concealed handgun, knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the person is stopped, including, but not limited to, a specific order to the person to keep the person's hands in plain sight.

II. CPD Procedure Manual (in part)

§ 12.554 Investigatory Stops (revised 08/01/2019)

Information:

There are three levels of police/citizen contact.

The first level is a consensual encounter. A police officer may approach any person in a public place and request to talk to him. So long as the person is free to leave whenever he wants, no Fourth Amendment seizure has occurred and no reasonable suspicion or probable cause is required.

The next level is the "Terry" type encounter. Here the officer has reasonable suspicion to believe the citizen is committing or has committed a crime. Based on this reasonable suspicion, the officer may forcibly stop and detain the citizen for a brief investigatory period. Although a citizen is required to properly identify oneself during the stop, failure to answer investigatory questions asked by the officer cannot provide the justification for detaining a person past the period necessary to complete the brief "Terry" type investigation. Once the reasonable suspicion is determined to be unfounded, the citizen must be released.

The third level of police/citizen contact is the arrest. The arrest occurs when the citizen is no longer free to leave and the officer has the intent to arrest. The arrest must be supported by probable cause to believe the citizen is committing or has committed a criminal offense.

§ 12.545 Use of Force (revised 06/13/2019)

Deadly Force – Force likely to cause, or capable of causing, death.

Self-Defense – The act of protecting oneself or another from physical harm or serious physical harm.

Serious Use of Force – Any action that involves: a critical firearm discharge; the use of deadly force; a baton strike to the head; or a use of force in which the person is seriously injured or requires hospital admission, with the exception of individuals admitted for psychiatric evaluation not suffering a serious injury.

Serious Injury/Serious Physical Harm to Persons – Any physical harm that carries a substantial risk of death, permanent incapacity, temporary, substantial incapacity, permanent disfigurement, temporary, serious disfigurement.

Policy:

A police officer's right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to affect it.

Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The 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 the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. ... (T)he 'reasonableness' of a particular use of

force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them" (Graham v. Conner, 1989).

When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.

Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others, but extends to that amount reasonably necessary to enable them to affect the arrest of an **actively resistant** subject.

Information:

Use of Force Continuum: Force situations often do not allow for an ordinal progression up a continuum of force and officers must be ready to escalate or de-escalate as the situation evolves.

Examples of Subject Resistance

- Uncooperative: Subject fails to respond to verbal commands or other directions.
- Active resistance: 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.
- Assault or threat of assault: Subject assumes fighting stance, charges, strikes or kicks an officer or verbally or physically indicates an intention to commit an assault combined with the subject's capability to assault.
- Life threatening assault or assault likely to cause serious physical harm: Subject commits an attack using an object, a weapon, or an empty hand assault, wherein the officer reasonably believes the assault will result in serious physical harm and/or death.

§ 12.550 Discharging of Firearms by Police Personnel (revised 06/22/2017)

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.

Police officers may not use deadly force merely to prevent escape in misdemeanor cases. The use of deadly force to prevent escape of felony suspects is constitutionally unreasonable except where the escape presents an immediate risk of death or serious physical harm to another.

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.**

Self-Defense: A police officer is authorized to use that force reasonably necessary to protect him/herself or others from death or serious physical harm at the hands of another.

- There must be an apprehension of real or immediate danger based on an overt and/or constructive act by another.

Firearm Discharge Board

1. The Police Chief will review and forward to PSS the CIS investigation report, letter from the Hamilton County Prosecutor, and any other material deemed relevant to the Firearm Discharge Board (FDB). The PSS Commander will notify and arrange a meeting between the FDB, CIS Commander, and investigators within 30 days of receipt of the material.
2. Recommendations made by the FDB should be unanimous or by consensus. If a consensus cannot be reached, a majority/minority opinion will be prepared at the direction of the chairperson.
3. The FDB will issue its final report to the Police Chief within 90 days of receipt of the material. The report will identify training issues and corrective measures, tactical response issues and corrective measures, and outline any recommended policy and/or procedure.

ANALYSIS

On September 11, 2019, while on routine patrol in a neighborhood that had experienced a recent increase in gun crime, Sergeant Davis observed Mr. Jackson with a concealed handgun. ORC § 2923.12A Carrying Concealed Weapons makes carrying a concealed handgun a criminal offense, absent limited circumstances. Sgt. Davis radioed for assistance and communicated that a person matching Mr. Jackson's description was armed. In response, Officer Schildmeyer drove to the area to assist and conducted a pedestrian stop of Mr. Jackson. CPD Procedure § 12.554 Investigatory Stops enables an officer to stop a pedestrian if the officer has reasonable suspicion to believe the citizen is committing or has committed a crime.

When Officer Schildmeyer approached Mr. Jackson, the officer displayed his firearm and directed Mr. Jackson to show his hands twice. During CCA's interview with Officer Schildmeyer, he stated Mr. Jackson did not comply with his directives but instead produced a firearm from behind his back and pointed it at him. Being in fear for his life, Officer Schildmeyer discharged one round at Mr. Jackson. CPD Procedure § 12.550 Discharging of Firearms by Police Personnel maintains that when an officer perceives what the officer interprets to be a threat of loss of life or serious

physical harm to the officer or to others at the hands of another, the officer has the authority to display a firearm and to use force reasonably necessary to protect himself or others from death or serious physical harm. The policy specifically provides that after all other reasonable means have been exhausted, an officer may “resort to the use of firearms . . . when an officer reasonably believes that such use of firearms is necessary to protect the officer or another from risk of serious physical harm or loss of life.” Officer Schildmeyer’s account was corroborated by his BWC/MVR recording. CCA concluded that Officer Schildmeyer complied with CPD’s policy, procedure, and training when he discharged his firearm.

The BWC footage showed that Sergeant Davis placed Mr. Jackson at gunpoint after he observed Mr. Jackson’s firearm. Sergeant Davis’s display of a firearm while after observing Mr. Jackson retrieve and move a firearm towards Officer Schildmeyer is governed by the same policy governing the discharge of firearms, CPD Procedure § 12.550 Discharging of Firearms. Under Section 12.550 (which is cited above), Mr. Jackson’s possession of a concealed handgun and failure to follow Officer Schildmeyer’s commands made it reasonable to believe that Mr. Jackson presented a risk of substantial harm to the officers. Accordingly, CCA concluded that Sergeant Davis was in compliance with CPD’s policies, procedures, and training when he had his firearm pointed at Mr. Jackson prior to his apprehension.

Commendation:

CCA commends Officer Schildmeyer for immediately offering first aid to Mr. Jackson following the use of force (i.e. the shooting) that resulted in injury to Mr. Jackson, particularly given that current policy provides officers with the discretion to offer such aid but does not require them to do so.

FINDINGS

Officer Marc Schildmeyer

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

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

Sergeant James Davis

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



Jessalyn Goodman, Investigator



Gabriel Davis, Director

PREVIOUS CONTACTS AND COMMENDATIONS

Officer Schildmeyer

Previous Contacts with CCA

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

Case Number	Allegation	Finding
16222	Discrimination (Ethnicity)	Unfounded
16222	Discourtesy	Unfounded
17165	Harassment	Unfounded
17165	Search (Vehicle)	Exonerated
17165	Stop (Vehicle)	Exonerated
17165	Improper Pointing of a Firearm	Not Sustained
17215	Procedure (Vehicle Pursuit)	Exonerated
17215	Death in Custody	Unfounded
18137	Law Violation	Referred
18185	Improper Search (Residence)	Sustained
18185	Procedure (BWC – Turned Off Early)	Sustained
18185	Procedure Violation (Consent to Search Form)	Sustained
19002	Search (Person)	Pending
19002	Harassment	Pending
19002	Discrimination	Pending
19022	Improper Search (Residence)	Pending
19022	Improper Search (Vehicle)	Pending
19022	Harassment	Pending
19022	Improper Stop (Vehicle)	Pending
19040	Excessive Force (Physical)	Pending
19076	Harassment	Unfounded
19076	Improper Stop	Exonerated
19076	Improper Search	Exonerated

Previous Contact/s with IIS

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

Case Number	Allegation	Finding
18074	Law Violation	Not Sustained
00000	Allegation	Finding

Commendations

Officer Schildmeyer received six commendations in the past three years.

Date	Source of Commendation Received
09/11/2016	CPD
07/07/2017	CPD
07/07/2017	CPD

06/14/2018	Civilian
08/09/2018	CPD
05/16/2019	Citizen

RECOMMENDATIONS

Consistent with CCA's responsibilities under Article 28 of Cincinnati's Administrative Code, we submit the following five (5) unique recommendations in connection with completed investigations into discharges of firearms by officers of the Cincinnati Police Department (CPD).

The recommendations address opportunities that CCA has identified for strengthening CPD's policies, procedures, and training with respect to scenarios involving the use of deadly force. They are intended to highlight areas of community concern and interest, and advance constructive dialogue about those matters. They are also intended to build on Cincinnati's and CPD's progress over the past several years as it relates to policing in our community. CCA looks forward to partnering with CPD and the community in enhancing the delivery of safe police services for citizens and officers alike.

Mental Health

1. Recommendation No. R2105

CCA Case No: 18169 (James Clay)

CCA recommends that CPD create a mental health risk assessment tool for use in planning all executions of search or residential arrest warrants that specifically requires an officer to conduct a preliminary investigation into the mental health status of the person who is the subject of the warrant, where such an inquiry is feasible. Among other things, this kind of a preliminary investigation or background check could involve the following: efforts to obtain mental health information from databases accessible to police; efforts to seek such information from court dockets or other records; consulting with colleagues in law enforcement who may have prior knowledge of the suspect; or outreach to family, friends, and acquaintances (assuming efforts to locate the subject are overt and not confidential). The risk assessment tool could take the form of a checklist, tactical plan, or threat matrix, but it should be a written tool that requires due diligence as it relates to a subject's potential mental health, documents that due diligence, and then documents known or learned information about the subject's mental health. It should also include planning to address any mental health risks identified.

If there are barriers to an officer's ability to obtain information pertaining to a subject's mental health in preparation for the execution of a warrant that would weaken the effectiveness of such a risk assessment tool, CPD is encouraged to identify them for potential problem-solving, and for purposes of community education.

2. Recommendation Nos. R2106 & R2107¹

CCA Case Nos: 19163 (Ebony Singley) & 19151 (Devin Johnson)

CCA recommends that CPD (i) amend its policies and make corresponding adjustments to its training in order to clarify the circumstances under which a person who is suffering from a mental health crisis may be charged criminally when the charges are related to the crisis, and (ii) strengthen its presumption against such charges.

CPD Procedure § 12.110 Handling Suspected Mentally Ill Individuals and Potential Suicides, states that a “subject having a mental health crisis should not be charged criminally, even if force is used against them.” However, multiple persons shot by police in discharge cases in 2019 were charged with crimes, despite indications that they were suffering from a mental health crisis at the time of the shooting and the events that gave rise to the charge. At least one of those persons was found unable to stand trial due to that person’s mental health.

Medical Aid to Subjects Wounded by Use of Force

3. Recommendation Nos. R2108, R2109, R2110 & R2111²

CCA Case Nos: 18169 (James Clay); 19151 (Devin Johnson); 19163 (Ebony Singley); and 19206 (Vernell Jackson).

CCA recommends that CPD include a provision in its Use of Force policy (Procedure 12.545) that requires officers, where feasible, to provide first aid following uses of force that result in a citizen’s injury.

Current policy, as articulated in Procedure 12.545, states, “Once the scene is stabilized and it is safe to do so, officers *may* administer CPR or basic first aid, if appropriate.” (Emphasis added.) CPD should revise this language to state that officers “shall” or “must” administer such aid “if appropriate,” making such assistance mandatory unless it is not feasible to provide it. This revision would be consistent with guidance from the United States Conference of Mayors, which recommended in its Report on Police Reform and Racial Justice (August 2020) that police departments “provide first aid training to their officers and *require* officers to provide first aid following uses of force, commensurate with their training and protecting the safety of the subject and their own safety” (Emphasis added).

While CCA commends the officers who chose to render first aid in some of the cases covered by this Report (including the Singley and Jackson cases), in the absence of a stronger policy requirement, future persons who are injured due to a use of force may not receive the same level of care, even where it is feasible to provide it.

¹ While this is one (1) unique recommendation, a separate recommendation number is being issued to track each submission of the recommendation, since it is being submitted in connection with multiple cases.

² While this is one (1) unique recommendation, a separate recommendation number is being issued to track each submission of the recommendation, since it is being submitted in connection with multiple cases.

CPD Review Boards

4. Recommendation Nos: R2112, R2113, R2114, R2115, R2116 & R2117 ³

CCA Case Nos: 18097 (Khayree Waller); 18169 (James Clay); 18178 (Omar Enrique Santa Perez); 19151 (Devin Johnson); 19163 (Ebony Singley); and 19206 (Vernell Jackson).

CCA recommends that CPD convene the Firearms Discharge Board (FDB) or Critical Incident Review Board (CIRB) for all critical firearm discharges, and that it do so upon the conclusion of any criminal investigation into those shootings. CCA requested a copy of CPD's FDB report for all officer-involved shootings that occurred in 2018 and 2019, but CCA has not yet received such reports, and our understanding is that neither review board has yet to be convened for those shootings.

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 limited exceptions. Procedure 12.550 provides that the FDB is to conduct this review, and is tasked with issuing 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."

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."

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. CCA believes such a review should be required in every DFA case that qualifies, for the benefit of both officer and citizen safety.

5. Recommendation No: R2118, R2119, R2120 & R2121

CCA Case Nos: 18169 (James Clay); 19151 (Devin Johnson); 19163 (Ebony Singley); and 19206 (Vernell Jackson).

CCA recommends that at the next opportunity, CPD amend its policy regarding the Critical Incident Review Board (CIRB), found in CPD Procedure § 12.545 Use of Force (Revised 01/28/21), to include in its "Investigative Format and Report" section the explicit requirement that CIRB will determine (i) whether the use of additional de-escalation techniques was possible, and (ii) whether the officer(s) involved properly considered and followed CPD's policies, training, and protocols for addressing

³ While this is one (1) unique recommendation, a separate recommendation number is being issued to track each submission of the recommendation, since it is being submitted in connection with multiple cases.

persons with mental illness. Similar changes should be made to CPD's policy governing its Firearms Discharge Board (FDB).