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**George Floyd Protests Report: Findings  
and Recommendations from  
Investigations of Policing Complaints in  
City of Cincinnati**

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**Gabriel Davis  
Director**

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## I. EXECUTIVE SUMMARY

During May and June of 2020, the Citizen Complaint Authority (“CCA” or “The Authority”) received complaints from thirty-seven (37) different individuals alleging misconduct by Cincinnati Police Officers related to the management of protests and civil demonstrations that occurred in connection with George Floyd’s murder (“the protests”). These complaints represented eleven (11) separate incidents. In response, CCA opened eleven (11) separate investigations into those incidents.

Consistent with CCA’s duty under Article XXVIII of Cincinnati’s Administrative Code to publish its work, the Authority submits this comprehensive report, which summarizes evidence obtained during CCA’s investigations and conveys findings and recommendations reached by the Authority. We submit this report (and its sub-reports) as a consolidated record of all investigations in order to ensure that similarly situated matters are considered consistently, just as they were analyzed and treated during the investigations, and so that all findings, recommendations, and observations are placed in their proper context.

In total, 26% of all findings reached were “Sustained” due to sufficient evidence of a policy, procedure, or training violation; 50% of findings were “Not Sustained,” due to insufficient evidence to make a determination on the allegation; 11% of findings were “Exonerated,” and 13% of findings were “Unfounded.”

While CCA’s investigations were not so broad in scope as to probe every arrest, use-of-force incident, or police contact that occurred in Cincinnati—and while this consolidated report in no way purports to analyze all such incidents or data points—the eleven incidents investigated and covered by this consolidated report provide invaluable insight into Cincinnati’s response to the protests. These eleven case studies illuminate issues pertaining to Cincinnati’s preparedness to properly address civil demonstrations in the future, and to do so in a way that minimizes policing complaints and mistrust.

To that end, and consistent with Article XVIII’s mandate that CCA focus its investigations and other activities on complaint prevention, we make several policy and procedural recommendations related to the management of crowds and facilitation of protests, civil disturbances, limitations on mass arrests, expanded use of force reporting, duty to render aid, and a stronger anti-retaliation policy pertaining to policing complaints.

Finally, despite the findings and recommendations contained in this report, several of which point to areas of improvement in Cincinnati’s law enforcement response to protests, on those occasions where CCA possessed sufficient evidence to make determinations as to specific allegations made by citizens, the evidence showed that the majority of police officers subject to complaint on those allegations acted in accordance with existing police policy, procedure and training. All served during an incredibly challenging time for our City, our communities, and indeed our entire country. This report is offered in the spirit of strengthening the bonds of trust between police and community, promoting transparency, ensuring mutual accountability, and preventing (or reducing) future complaints against Cincinnati law enforcement.

## II. METHODOLOGY

In completing its investigations, the Authority interviewed more than fifty (50) Cincinnati Police Officers and nearly twenty (20) other witnesses.

CCA also obtained from the Cincinnati Police Department, and subsequently reviewed, several hours of Body Worn Camera (BWC) footage; MVR footage; all Use of Force Reports pertaining to the enforcement of the protests; Arrest Reports; Contact Cards; IIS reports (when available);<sup>1</sup> and other records.

CCA investigators obtained and reviewed other records, including video evidence (such as from cell phones or surveillance systems); medical records (when available); criminal case records from the Hamilton County Clerk of Courts website; relevant social media postings and activity.

CCA considered all evidence in light of applicable statutes, caselaw, and other legal authorities; City of Cincinnati regulations and policies; Cincinnati Police Department (“CPD”) policies, procedures, and available training materials.

The Authority also reviewed applicable reference materials, including but not limited to publications by the International Association of Chiefs of Police, Police Executive Research Forum, President’s Task Force on 21st Century Policing, United States Conference of Mayors, Ohio Justice and Policy Center, Southern Poverty Law Center, Anti-Defamation League, investigative reports from other jurisdictions addressing protest enforcement, and local media coverage of the protests from the Cincinnati media market.

## III. TIMELINE

The below timeline features key events that occurred during the protests of the summer of 2020, although it is not exhaustive of all such events. It was created using open-source material. A hyperlinked list of sources for the incidents described is maintained on file at the Citizen Complaint Authority.

### **May 25, 2020 — Death of George Floyd**

10:25AM EST – George Floyd is killed by police officer Derek Chauvin in Minneapolis, MN

- Derek Chauvin is later convicted of murder.

### **May 29, 2020 — First Day of Protests in Cincinnati (Friday)**

6:00PM – Protestors gather outside the Hamilton County Courthouse.

6:20PM – More than 36 people gathered outside Hamilton County Courthouse.

- Organizer stating: “We’re just tired of it. We’re tired of the police being above the law. We’re tired of the police using terrorist tactics to control our communities.”

6:39PM – Protesters begin moving to OTR.

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<sup>1</sup> CPD provided IIS Reports for Case No. 20188/Kimutis; Case No. 20112/King; Case No. 20120/Grice; and Case No. 20115/White-Gilley.

7:09PM – Group of protesters arrives outside Cincinnati Police District 1 and doubled in size. No violence reported.

8:45 PM – Protestors traveled through Washington Park and back to District 1 where at least 12 officers were standing behind a temporary barrier.

8:50PM – Protesters demonstrate in front of police barricade at District 1.

9:30PM – Protesters march on to northbound I-75.

9:45PM – Protestors have blocked the entrance to I-75 and police are asking Ohio DOT to warn motorists to avoid I-75 in both directions due to a “police action.”

10:30PM – FOX19 reports that traffic is moving again on I-75 and the protestors have exited onto Ezzard Charles Drive. Police in riot gear are in front of District 1. Officers are blocking Bank Street in the West End.

11:06PM – Cincinnati Police Chief Elliot Isaac spoke to protesters in front of District 1.

- "It was a peaceful demonstration, and that's what every American has the right to do. I understand the anger that's taken place. I share that anger. There is no defense of what occurred. It's a stain on the profession."

11:20PM – Protestors take down flag at Hamilton County Justice Center.

11:24PM – Protesters break glass at Justice Center.

11:29PM – Recordings of police making arrest.

11:58PM – Police begin to use “mace.”

12:00PM (approx) – Police are in full riot gear on central parkway.

### **May 30, 2020 — Second Day of Protests in Cincinnati (Saturday)**

12:30AM – Protesters in standoff with police on Race Street in OTR, Ohio State Highway Patrol arrive.

12:58AM – Police begin to forcibly disperse crowd using “mace.”

1:30AM – Protestors have broken windows at a number of downtown businesses and that police are making arrests, saying they are dealing with violent behavior in Downtown and OTR.

1:53AM – Police say a number of buildings in downtown and OTR have sustained property damage and theft of merchandise.

### **2:00AM – Incident Leading to Complaint No. 20097/Jacqueline Hough is Alleged to Have Occurred.**

- Ms. Hough alleged that during the protests, an officer pepper sprayed her, knocked her down, and broke her wrist.

2:06AM – Flashbangs used to break up crowd.

11:30AM – Mayor John Cranley announces a 10PM curfew for that evening in Downtown and OTR.

- Emergency Order 20200713 signed by Mayor Cranley
  - Order in effect from 1pm on the 30th until 6am on June 1st
  - Curfew, prohibiting being in public spaces between 10pm and 6am
    - in public spaces of the neighborhoods of Over-the-Rhine, the Central Business District/Downtown, the Banks, Pendleton, and the West End
  - The first version of this emergency order did not include Pendleton.

11:42AM – City of Cincinnati tweets about curfew.

11:48AM – Police Chief Eliot Isaac confirms police used canisters with OC gas to disperse crowds.

11:49AM – Chief Isaac says there were 11 arrests made last night.

12:01PM – City of Cincinnati tweets image of first version of emergency order.

12:06PM – Peaceful protest in Washington Park, march through OTR.

1:17PM – Peaceful protest march continues in OTR.

1:34PM – March reaches City Hall.

5:14PM – Flashbang heard by Washington Park.

6:12PM – Cincy PD arrests 2 women in OTR.

7:15PM – Protesters at the Banks.

7:30PM – Protesters begin forming outside of Hamilton County Courthouse.

8:29PM – Protesters march from courthouse to Cincinnati Police HQ.

8:30PM – Police Chief Isaac gives order to use “pepper spray” at CPD Headquarters.

8:40PM – Protesters form outside of Cincinnati Police HQ.

9:30PM – **Incident Leading to Complaint No. 20188/Bryan Kimutis is Alleged to Have Occurred.**

- Mr. Kimutis alleged that during the protests, he was struck in the eye by a 40mm marking round fired by a Cincinnati Police Officer.

10:27PM – Protesters moved onto the on-ramp to I-471 at Reading Rd before being turned away by police in riot gear.

10:33PM – Protesters are walking up Vine St towards University of Cincinnati Campus.

10:58PM – Police made at least 7 arrests at Vine and Liberty streets as protesters were walking towards UC campus.

11:00PM – **Incident Leading to Complaint No. 20112/Daulton King is Alleged to Have Occurred.**

- Mr. King alleged that during the protests, officers tackled him and tased him twice unnecessarily, then broke his glasses intentionally.

11:13PM – 10-20 arrests for curfew violations reported.

11:15PM – Police respond to small fire near CPD headquarters, no injuries reported.

11:45PM – Police verified that beanbag rounds had been used Saturday evening.

**May 31, 2020 — Third Day of Protests in Cincinnati (Sunday)**

2:05AM – Protesters crack police car window, according to CPD.

6:00AM – CPD reports officer struck by bullet in Clifton Heights.

10:00AM (approx) – Mayor Cranley and Police chief Isaac hold press conference.

- Mayor Cranley announces curfew.
  - Emergency Order 202000714 signed by Mayor Cranley
    - Order in effect from 1pm on the 31st of May until 6am on June 2nd
    - Curfew, prohibiting being in public spaces between 9pm and 6am
      - Now in the entirety of the city of Cincinnati

11:30AM – Mayor Cranley, Chief Isaac, and Manager Duhaney hold press conference.

11:45AM – Chief Isaac says majority of yesterday’s protests were peaceful at press conference.

11:48AM – City of Cincinnati tweets about curfew extension.

11:55AM – Chief Isaac announces 110 people were arrested from previous evening – 78 charged with misconduct in an emergency, 4 with arson.

- Additionally, 17 of the defendants identified were under age 20.

12:03PM – Chief Isaac speaks about the police officer struck by a bullet at the press conference, “I believe it was intentional.”

12:11PM – City of Cincinnati tweets about curfew and says CPD will first give warnings to anyone in violation of curfew.

12:31PM – City of Cincinnati Tweets to announce curfew.

2:52PM – Cincinnati Metro suspends service after 9pm these buses will be used to transport protesters later in the evening / overnight.

3:30PM – Protesters arrive at Inwood Park.

3:52PM – CPD tweets about curfew.

4:20PM – Protesters march through OTR.

4:44PM – Police prepare for protesters to arrive at City Hall.

5:04PM – Protesters begin to arrive at City Hall.

5:11PM – Police blare sirens at City Hall.

5:18PM – March slowly moves past City Hall.

5:33PM – Protesters march to Hamilton County Courthouse, met with blaring sirens from CPD.

5:44PM – **Incident Leading to Complaint No. 20090/Kate Harrow is Alleged to Have Occurred.**

- Ms. Harrow alleged that she observed an officer holding his baton between both hands and shoving an unidentified woman on her chest which knocked her to the ground and then using his baton against Mr. Harrow in the same way.

6:14PM – Police reportedly arrest protesters laying down in street.

9:00PM – Central Parkway shut down by police.

9:00PM – **Incident Leading to Complaint No. 20095/Jamison Walker, Jr. is Alleged to Have Occurred.**

- Mr. Walker alleged officers improperly arrested him at his place of business; pointed their CEWs at him; used excessive force in arresting him; mocked him and used profanity; and took pictures alongside him, treating him like a “trophy.”

9:05PM – **Incident Leading to Complaint No. 20089/Benjamin Erd is Alleged to Have Occurred.**

- Mr. Erd alleged that he was arrested without warning during a peaceful protest and restrained with flex-cuffs that were too tight, only to have the cuffs removed and tightened even more.

9:18PM – Arrests reported at courthouse as police scatter crowd.

9:42PM – Reporter barred from entering area around Elm and Green, said they could smell smoke.

9:59PM – Report of mass arrest at Green.

10:02PM – Tear gas deployed in OTR.

10:15PM – Reporters attempt to film arrest.

10:46PM – Mass arrests taking place in OTR.

10:50PM – More arrests, reported as catch and release.

10:55PM – Multiple buses used for mass arrests.

11:58PM – More arrests at Vine and McMicken and Vine and Liberty.

### **June 1, 2020 — Fourth Day of Protests in Cincinnati (Monday)**

11:14AM – Protesters held outdoors at Justice Center.

Emergency Order 202000716 signed by Mayor Cranley.

- Order in effect from 2pm on June 1st until 6am on June 2nd
- Curfew, prohibiting being in public spaces between 8pm and 6am
  - In the entirety of the city of Cincinnati

1:47PM – Curfew moved up to 8PM.

1:48PM – Mayor Cranley questioned about jail conditions.

1:54PM – Protesters reported outside Hamilton County Courthouse.

2:00PM – CPD announces 307 arrests were made the previous evening – 187 white, 112 black, 8 were other nationality.

5:43PM – Protesters head to District 1.

7:10PM – Protesters are outside the Hamilton County Courthouse.

7:54PM – Multiple arrests made around a car where a gun was found.

8:03PM – Police station a tactical vehicle on Main Street, protesters leave courthouse.

8:15PM – SWAT vehicles attempt to scatter protesters on McMicken.

8:15PM – **Incident Leading to Complaint No. 20093/Maira Arnaulda, Tyler Beringer, Robin Wilkins, Et al. is Alleged to Have Occurred.**

- Twenty-seven (27) persons contacted CCA via email to file a complaint about the treatment of a woman, who was believed to be diabetic, and her sister by CPD police during the protests.

8:21PM – Cincinnati Enquirer reporter detained.

8:30PM – **Incident Leading to Complaint No. 20099/Cassandra Thompson is Alleged to Have Occurred**

- Ms. Thompson alleged that after her arrest, an officer took Ms. Thompson's two bottles of pepper spray and threw them on the ground with disregard; her property was never returned to her.

8:31PM – More arrests near Central Parkway.

8:43PM – Multiple arrests outside Imperial Theater.

8:44PM – Enquirer reporter, identified as Patrick Brennan, removed from custody.

8:45PM – **Incident Leading to Complaint No. 20092/Pat Clifford is Alleged to Have Occurred**

- Mr. Pat Clifford alleged that he observed SWAT officers restrain three (3) individuals with flex-cuffs and then release them after several minutes.

9:10PM – Bus full of curfew violators arrives at Justice Center.

### **June 2, 2020 — Fifth Day of Protests in Cincinnati**

11:48AM – Curfew again announced for 8PM.

11:50AM – City of Cincinnati tweets about curfew being extended until Wednesday.

12:40PM – Metro again announces suspended service at 8PM.

2:07PM – Volunteers set up aid station across from Justice Center for protesters being released.

2:30PM – Protesters gather outside Hamilton County Courthouse.

3:00PM – Protesters march towards Washington Park.



7:57PM – Protesters dispersing at courthouse as curfew looms.

8:17PM – Crowd has fully dispersed.

8:25PM – One arrest reported.

### **June 3, 2020 — Sixth Day of Protests in Cincinnati**

2:08PM – City of Cincinnati tweets about extended curfew until June 8<sup>th</sup>.

University of Cincinnati Capt. Ronald Carter, left, and Lt. Col. Dudley Smith, assistant chief, walk with protesters around the perimeter of UC.

### **June 5, 2020 — Candlelit Vigil in Washington Park**

Protesters hold candlelight vigil for Breonna Taylor and other people killed by police in Washington Park.

### **June 6, 2020 — Protests organized by various organizations take place in Cincinnati**

Black Men in Suits and Women in Heels organize protest that take places in Fountain Square, Washington Park, and outside Hamilton County Courthouse.

- Cincinnati Police Chief Eliot Isaac, participated in the Black Men in Suits and Women in Heels protest.

Neighborhoods United also holds protest.

### **June 7, 2020 — Protests in Fountain Square**

Thousands of protesters gather at Fountain Square.

### **June 9, 2020 – City Council Law and Public Safety Committee Meeting**

Cincinnati Police Chief Eliot Isaac informs Council that CPD has arrested five hundred and thirteen (513) protesters for violating curfew.

### **June 10, 2020 — Cincinnati City Council Amended Motion**

City Council passes amended motion allowing for dismissal of charges of curfew violations during May 30<sup>th</sup> - June 8<sup>th</sup>.

### **June 21, 2020**

Online – **Incident Leading to Complaint No. 20120/Leah Grice is Alleged to Have Occurred**

- Grice alleged a Cincinnati Police Officer made racist comments on Facebook.

### **June 24, 2020 — Public Comment During City Council Budget Meeting**

City Council convenes at City Hall to vote on a budget for the next fiscal year. During public comment, several members of the public spoke in favor of defunding the Cincinnati Police Department.

- Some speakers were forcibly removed from Council Chambers by police after complaining that others were not permitted to speak.

3:00PM – **Incident Leading to Complaint No. 20115/Terhas White and Alissa Gilley is Alleged to Have Occurred**

- Ms. White and Ms. Gilley alleged that a police officer at City Hall displayed a white supremacy symbol resembling the OK sign.

## IV. COMPLAINT & FINDINGS SUMMARIES

The 11 protest-related investigations below are summarized in order of their date and time of occurrence.<sup>2</sup>

### 1. **Complaint No. 20097: Jacqueline Hough**

**Date:** May 30, 2020

**Time:** 2:00 a.m.

**Location:** Vine and Seventh Streets

**Allegation:** Excessive Force

Ms. Hough alleged that during the protests, an officer pepper sprayed her, knocked her down, and broke her wrist.

**Findings:** Excessive Force - Not Sustained

### 2. **Complaint No. 20188: Bryan Kimutis**

**Date:** May 30, 2020

**Location:** 1229 Elm Street

**Time:** 9:30 p.m.

**Location:** 1229 Elm Street

**Allegation:** Excessive Force

Mr. Kimutis alleged that during the protests, he was struck in the eye by a 40mm marking round fired by a Cincinnati Police Officer.

**Findings:** Excessive Force - Not Sustained

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<sup>2</sup> The findings in this section are not listed/tallied at the subject officer or involved citizen level. Each finding is listed one time per case, provided that CCA reached that finding at least one time in each case for the corresponding allegation. For instance, if there were four separate Sustained findings for an Excessive Force allegation in a single case involving one officer and four separate citizens, then in this section, the findings for that case would simply be listed as: "Excessive Force – Sustained." To see the total number of allegations for all investigations (tallied by subject officer and involved citizen) see the "Findings: Patterns & Trends" section. To see findings itemized at the subject officer level, identifying each officer and involved citizen, see the sub-reports for each individual investigation below.

**3. Complaint No. 20112: Daulton King**

**Date:** May 30, 2020

**Time:** 11:00 p.m.

**Location:** Calhoun St.

**Allegation:** Excessive Force; Improper Procedure; Improper Procedure (BWC) – Collateral; Discourtesy – Collateral

Mr. King alleged that during the protests, officers tackled him and tased him twice unnecessarily, then broke his glasses intentionally.

**Findings:** Excessive Force – Sustained and Exonerated; Improper Procedure – Unfounded; Improper Procedure (BWC) – Collateral – Sustained; Discourtesy – Collateral – Sustained

**4. Complaint No. 20090: Kate Harrow**

**Date:** May 31, 2020

**Time:** 5:44 pm

**Location:** Corner of 12<sup>th</sup> Street and Main Street

**Allegations:** Excessive Force; Improper Procedure (BWC) – Collateral; Improper Procedure (Reporting Use of Force) – Collateral

Ms. Harrow alleged that she observed an officer holding his baton between both hands and shoving an unidentified woman on her chest which knocked her to the ground and then using his baton against Mr. Harrow in the same way.

**Findings:** Excessive Force – Not Sustained; Improper Procedure (BWC) – Collateral – Not Sustained; Improper Procedure (Reporting Use of Force) – Collateral – Sustained

**5. Complaint No 20095: Jamison Walker, Jr.**

**Date:** May 31, 2020

**Time:** Approximately 9:00 p.m.

**Location:** 19 West Court Street

**Allegations:** Improper Seizure; Excessive Force; Discrimination; Improper Procedure (Use of Force) – Collateral; Improper Procedure (BWC) – Collateral

Mr. Walker alleged officers improperly arrested him at his place of business; pointed their CEWs at him; used excessive force in arresting him; mocked him and used profanity; and took pictures alongside him, treating him like a “trophy.”

**Findings:** Improper Seizure – Exonerated; Excessive Force – Unfounded; Discrimination – Unfounded; Discourtesy – Unfounded; Improper Procedure (Use of Force) – Collateral – Exonerated; Improper Procedure (BWC) – Collateral – Not Sustained

**6. Complaint No 20089: Benjamin Erd**

**Date:** May 31, 2020

**Time:** 9:05 p.m.

**Location:** Alley near Race Street

**Allegations:** Excessive Force; Improper Seizure

Mr. Erd alleged that he was arrested without warning during a peaceful protest, and restrained with flex-cuffs that were too tight, only to have the cuffs removed and tightened even more.

**Findings:** Excessive Force – Not Sustained; Improper Seizure – Not Sustained

**7. Complaint No. 20093: Maira Arnaulda, Tyler Beringer, Robin Wilkins, Et al.**

**Date:** June 1, 2020

**Time:** 8:15 p.m.

**Location:** 2000 Mohawk Place

**Allegations:** Improper Seizure; Improper Procedure; Discourtesy; Improper Procedure (BWC) – Collateral

Twenty-seven (27) persons contacted CCA via email to file a complaint about the treatment of a woman, who was believed to be diabetic, and her sister by CPD police during the protests.

**Findings:** Improper Seizure – Not Sustained; Improper Procedure – Unfounded; Discourtesy - Sustained; Improper Procedure (BWC) – Collateral – Sustained

**8. Complaint No. 20099: Cassandra Thompson**

**Date:** June 1, 2020

**Time:** 8:30 p.m.

**Location:** 2014 Mohawk Place

**Allegations:** Improper Search, Improper Procedure, Improper Seizure, Improper Procedure (BWC)

Ms. Thompson alleged that after her arrest, an officer took Ms. Thompson's two bottles of pepper spray and threw them on the ground with disregard; her property was never returned to her.

**Findings:** Improper Search – Not Sustained, Improper Procedure – Sustained, Improper Seizure – Collateral – Not Sustained, Improper Procedure (BWC) – Collateral – Sustained

**9. Complaint No. 20092: Pat Clifford**

**Date:** June 1, 2020

**Time:** 8:45pm

**Location:** 209 Hastings Street

**Allegations:** Improper Stop; Improper Pointing of a Firearm; Improper Procedure - Collateral

Mr. Pat Clifford alleged that he observed SWAT officers restrain three (3) individuals with flex-cuffs and then release them after several minutes.

**Findings:** Improper Stop – Exonerated; Improper Pointing of a Firearm – Not Sustained; Improper Procedure (Contact Card) – Collateral – Sustained

**10. Complaint No. 20120: Leah Grice**

**Date:** June 21, 2020

**Location:** Online (Facebook)

**CCA Receipt:** June 29, 2020

**Allegations:** Discrimination; Improper Procedure

Ms. Grice alleged a Cincinnati Police Officer made racist comments on Facebook.

**Findings:** Discrimination – Not Sustained; Improper Procedure – Not Sustained

**11. Complaint No. 20115: Terhas White and Alissa Gilley**

**Date:** June 24, 2020

**Time:** 3:00 PM

**Location:** 801 Plum Street-City Hall

**Allegations:** Discrimination; Improper Procedure; Improper Procedure (BWC) – Collateral; Interference with Administrative Investigation – Collateral

Ms. White and Ms. Gilley alleged that a police officer at City Hall displayed a white supremacy symbol resembling the OK sign.

**Findings: Allegations:** Discrimination – Not Sustained; Improper Procedure – Sustained; Improper Procedure (BWC) – Collateral – Sustained; Interference with Administrative Investigation – Collateral – Sustained

## V. FINDINGS: PATTERNS & TRENDS

### A. All Findings

54 Findings Total<sup>3</sup>

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**Sustained – (14) 26%**

**Not Sustained – (27) 50%**

**Exonerated – (6) 11%**

**Unfounded – (7) 13%**

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The definitions for CCA's findings are as follows:

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

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

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

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

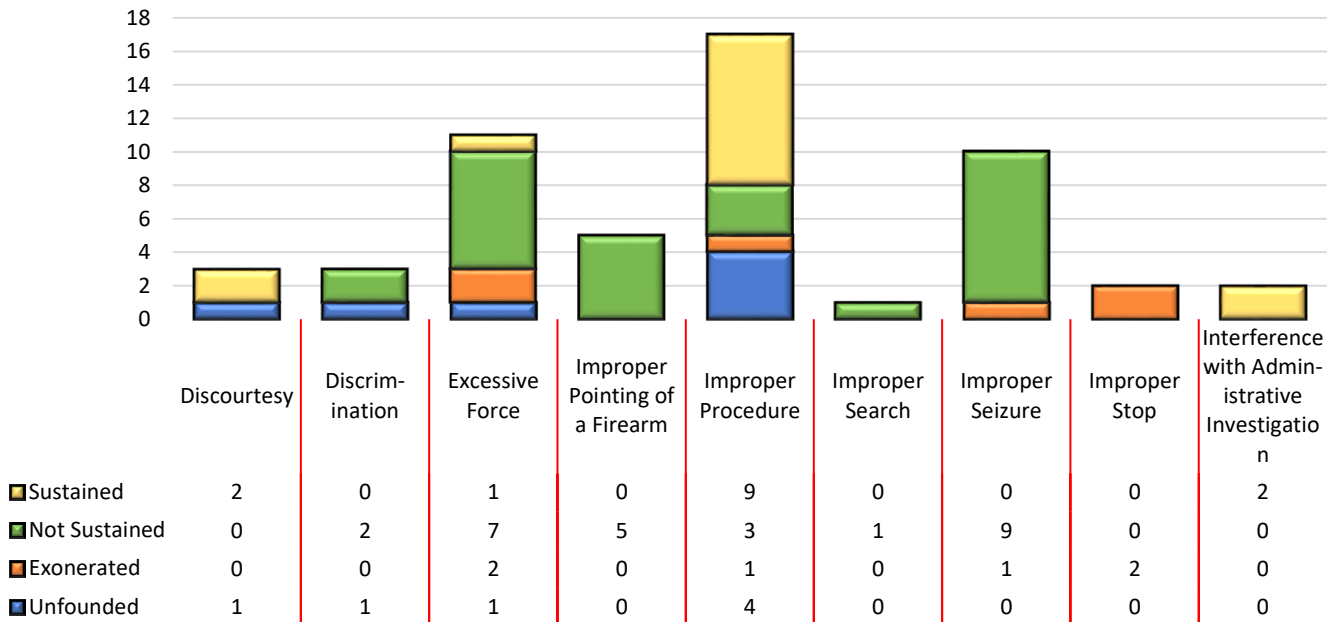
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<sup>3</sup> The total number of findings reached as a result of all investigations – tallied by allegation – are set forth in this section and the section below. Individual findings are counted according to the number of involved citizens who were either alleged to be affected, or found to have been affected, by each subject police officer. Simply put, the number of involved citizens for each allegation was multiplied by the number of subject officers for that allegation. For instance, if CCA “Sustained” Officers John Doe and Jane Doe for using Excessive Force against both Citizen A and Citizen B, and if each officer was also Exonerated on an allegation of Improper Stop against both Citizens A & B, then the allegations would be tallied below as follows: “Excessive Force – 4 Sustained, Improper Stop – 4 Exonerated

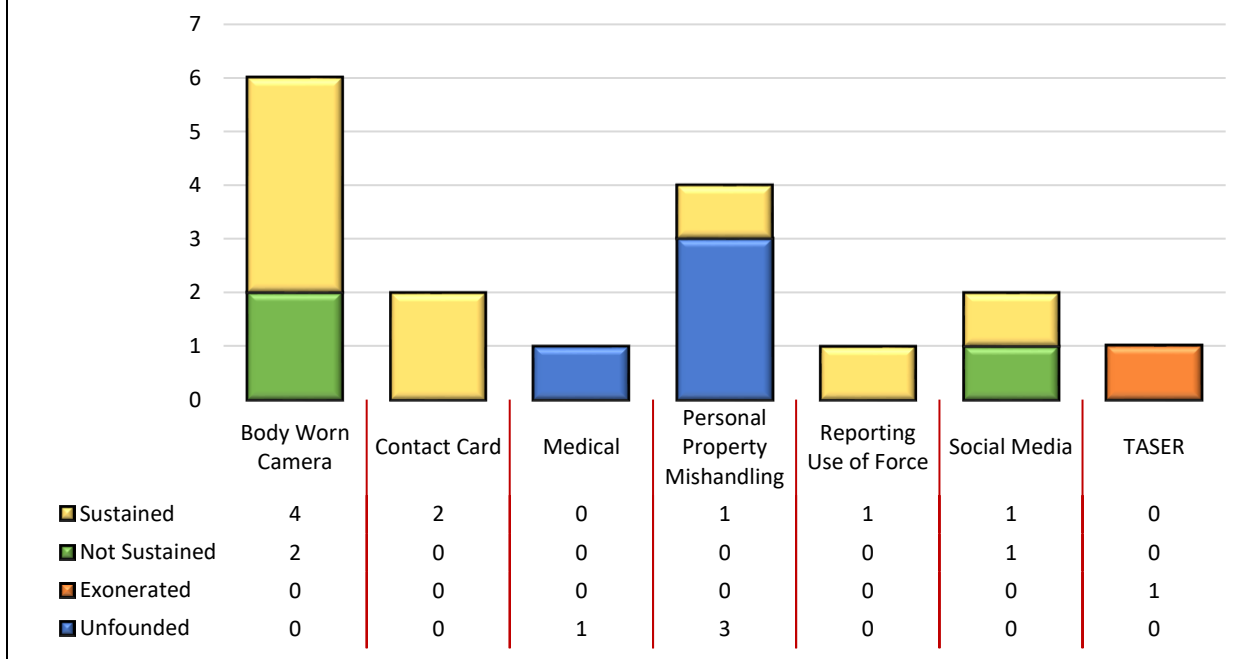
**B. Findings By Allegation**

<b>Allegation</b>	<b>Sustained</b>	<b>Not</b>		<b>Unfounded</b>	<b>Total</b>
		<b>Sustained</b>	<b>Exonerated</b>		
<b>Discourtesy</b>	2	0	0	1	<b>3</b>
<b>Discrimination</b>	0	2	0	1	<b>3</b>
<b>Excessive Force</b>	1	7	2	1	<b>11</b>
<b>Improper Pointing of a Firearm</b>	0	5	0	0	<b>5</b>
<b>Improper Procedure</b>					
Body Worn Camera	4	2	0	0	<b>6</b>
Contact Card	2	0	0	0	<b>2</b>
Medical	0	0	0	1	<b>1</b>
Personal Property Mishandling	1	0	0	3	<b>4</b>
Reporting Use of Force	1	0	0	0	<b>1</b>
Social Media	1	1	0	0	<b>2</b>
TASER	0	0	1	0	<b>1</b>
<b>Improper Search</b>	0	1	0	0	<b>1</b>
<b>Improper Seizure</b>	0	9	1	0	<b>10</b>
<b>Improper Stop</b>	0	0	2	0	<b>2</b>
<b>Interference with Administrative Investigation</b>	2	0	0	0	<b>2</b>
<b>Total</b>	<b>14</b>	<b>27</b>	<b>6</b>	<b>7</b>	<b>54</b>

### Protest Complaint Findings



### Improper Procedure Findings





### **C. Findings: Original Allegations Only**

“Original Allegations” are those allegations made directly by a complainant as opposed to other related violations (or potential violations) of policy that are discovered by CCA during the investigation, but that were not noted by a complainant. Those other violations are termed “Collateral Allegations;” corresponding findings are “Collateral Findings.”

40 Original Allegations Total

**Sustained – (4) 10%**

**Not Sustained – (23) – 57.5%**

**Exonerated – (6) – 15%**

**Unfounded – (7) – 17.5%**

14 Collateral Allegations Total

**Sustained – (10) – 71.4 %**

**Not Sustained – (4) – 28.6%**

## **VI. KEY OBSERVATIONS**

- 1. The Cincinnati Police Department’s use of mass arrests as a crowd control tactic was very likely a key contributor to the filing of complaints against police—including those alleging improper arrest, excessive force, property misplacement, and other allegations concerning conditions of confinement—and likely had a negative effect on the public perception of policing.**

From May 30, 2020 through June 9, 2020, Cincinnati Police Officers arrested over 500 people for violating curfew. According to a study by the Police Executive Research Forum (PERF), including POLICE MANAGEMENT OF MASS DEMONSTRATIONS,” the “mass detention of protestors not actively engaged in violence can create significant problems for law enforcement,” including by leading to complaints that “law-abiding protestors and passersby were rounded up and detained along with violators in overly broad sweeps.” Mass arrests also create negative media attention that damages the perception of law enforcement by “drawing into question the reasonableness and proportionality of the police response.”<sup>4</sup>

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<sup>4</sup> See Police Executive Research Forum, POLICE MANAGEMENT OF MASS DEMONSTRATIONS: IDENTIFYING ISSUES AND SUCCESSFUL APPROACHES (2006), 55-56, available at [https://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/police%20management%20of%20mass](https://www.policeforum.org/assets/docs/Critical_Issues_Series/police%20management%20of%20mass)

The complaint data here provides some support for this assertion. While the overwhelming majority of mass arrests did not result in CCA complaints, approximately 67% percent of the complaint-incidents involving physical contact between an officer and a citizen took place during a mass-arrest event. See Clifford, Erd, King, Thompson, Walker, Wilkins, et al.

The mass arrests also received significant media attention, much of which was either negative or reflected public criticism of those arrests.<sup>5</sup>

2. **In the majority of cases that CCA examined in which an arrest was made, there was insufficient evidence to support the criminal charges (generally Misconduct at Emergency in the 1st Degree) and insufficient evidence in most of those cases to establish probable cause for any other misdemeanor or felony offense.** See Erd, Thompson, Walker, Wilkins, et al.

Due to inadequate documentation by police and challenges inherent in processing mass arrests,<sup>6</sup> in a majority of all arrests examined, investigators had no way to identify (and thus question) officers who *first* took suspects into custody or directed arrests of specific persons. Thus, CCA was unable to determine whether those officers possessed sufficient information to establish probable cause for a criminal offense at the time of their arrests.

3. **Cincinnati Police Officers used force against protesters that was often perceived to be unjustified, a perception likely to be worsened by the fact that multiple allegations of Excessive Force—including those involving baton use and injuries to the face caused by a 40millimeter foam round—cannot be conclusively justified or exonerated based on available evidence.** See Harrow, Hough, Kimutis, King.<sup>7</sup>

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%20demonstrations%20-%20identifying%20issues%20and%20successful%20approaches%202006.pdf (hereinafter POLICE MANAGEMENT OF MASS DEMONSTRATIONS); see also Police Executive Research Forum, POLICE RESPONSE TO MASS DEMONSTRATIONS: PROMISING PRACTICES AND LESSONS LEARNED, Washington, D.C., Office of Community Oriented Policing Services (2018), 16-21, available at <https://www.policeforum.org/assets/PoliceResponseMassDemonstrations.pdf> (hereinafter POLICE RESPONSE TO MASS DEMONSTRATIONS).

<sup>5</sup> See e.g., WCPO Staff, *Cincinnati Mayor Moves Up Curfew*, WCPO, available at <https://www.wcpo.com/news/local-news/hamilton-county/cincinnati/live-cranley-talks-weekend-protests-mass-arrests>; Camri Nelson, *Cincinnati Residents 'Asking for Equity Across the Board' and Call on Police to Drop Charges Against Protesters*, Spectrum News 1, available at <https://spectrumnews1.com/oh/columbus/news/2020/07/08/cincinnati-residents-protest-to-drop-the-charges>; Dan Yount, *Protesters, Police Discuss Cincinnati Protests*, The Cincinnati Herald, available at <https://thecincinnatiherald.com/2020/08/protesters-police-discuss-cincinnati-protests>; Craig Cheatham, *I-Team analysis: Nearly All Protesters Arrested in Cincinnati Are from the Greater Cincinnati Area*, WCPO, available at <https://www.wcpo.com/news/local-news/i-team/i-team-analysis-nearly-all-protesters-arrested-in-cincinnati-are-from-the-greater-cincinnati-area>.

<sup>6</sup> POLICE MANAGEMENT OF MASS DEMONSTRATIONS at 55.

<sup>7</sup> See Deon J. Hampton, *Questions Grow About Police Actions, Tactics During Cincinnati Protests*, Cincinnati Enquirer, available at <https://www.cincinnati.com/story/news/2020/06/11/questions-grow-police-actions-tactics-during-cincinnati-protests/3138110001/>; see also New York City Department of Investigation, INVESTIGATION INTO NYPD RESPONSE TO THE GEORGE FLOYD PROTESTS, 39-43, available at <https://www1.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf> (hereinafter INVESTIGATION INTO NYPD RESPONSE TO THE GEORGE FLOYD PROTESTS) (commenting that perceptions of unjustified or disproportionate force alone can provoke violence and damage policing).

**4. The lack of adequate use of force reporting and BWC recording by officers contributed to great difficulty in investigating and resolving Excessive Force allegations.**

Many officers who used force during the protests (those assigned to SWAT or the Civil Disturbance Response Team) were not required to wear BWC. Moreover, while supervisors conducted investigations into uses of force, no officer appears to have submitted written first-hand narratives justifying their own conduct in a use of force report.<sup>8</sup> Due in part to the unavailability of BWC and inadequate use of force reporting, investigators experienced significant difficulty in identifying, and thus questioning, officers who used force and who were alleged to have used force, including force such as baton use and less lethal force such as 40 mm foam rounds. See Erd, Harrow, Hough, Kimutis.

**5. Officers who were required under police policy to activate BWC often did not activate BWC as obligated, deactivated prematurely, or reported that their BWCs ran out of power during their shifts and thus could not record key events.** See Harrow, King, Thompson, White, Wilkins, et al.

**6. Enforcement of the curfew appears to have been inconsistent, subject to bias, and subject to risk of abuse of First Amendment Constitutional rights.**

There are indicators that protesters, even non-violent protestors, were disproportionately targeted for enforcement as compared with other curfew violators in similar geographic spaces, with some officers who were involved in complaints telling investigators they were directed to arrest or cite “protestors” (not necessarily those engaged in violent conduct). There appears to be little explanation for why some violators were released without charge or permitted to go free, while others were taken into custody and charged criminally. See Clifford; Walker, Wilkins, et al.

**7. Some officers posted inflammatory content about racially-charged topics on their social media pages, demonstrating a failure to properly appreciate the potential that any pointed social media engagement regarding the topic of police shootings would damage the perception of policing in Cincinnati and further fray police-community relations.** See Grice, White.

**8. CCA noted a glaring example of interference by a police officer with the right of citizens to file formal complaints alleging discrimination in relation to protest-related enforcement activity, and by extension, interference with the investigation process for that complaint. Such interference suggests the need for, at a minimum, increased training and policy protections regarding the right to protest and the right to formally contest police conduct.** See White.

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<sup>8</sup> International Association of Chiefs of Police, REPORTING USE OF FORCE (2017), available at <https://www.theiacp.org/sites/default/files/2020-06/Reporting%20UoF%20June%202020.pdf> (discussing benefits of comprehensive use of force reporting when addressing complaints against police and compliance with policy).

## VII. RECOMMENDATIONS

### 1. Recommendation R2301: Protests, Demonstrations, Crowd Control or Civil Disturbances

**The City of Cincinnati and Cincinnati Police Department should significantly limit the use of mass arrests for non-violent offenders as a part of protest management—favoring citations over arrests—and strong limits on such arrests should be codified in police policies and procedure so as to discourage mass arrests, except as a last resort measure.** See Clifford (20092), Erd (20089), King (20112), Thompson (20099), Walker (20095), Wilkins, et al. (20093).

According to a study by PERF, given the logistical and legal problems associated with their use, “[m]ass arrests are generally advisable only when all alternative tactics have either been tried unsuccessfully or are unlikely to be effective under specific circumstances.”<sup>9</sup> A 2020 Report on Policing Reform by the U.S. Conference of Mayors also called for the use of citations over mass arrests for non-violent offenders.<sup>10</sup> The Ohio Justice and Policy Center—along with various local community leaders, clergy, civil rights groups, non-profit groups, and government leaders as signatories—also released a July 2020 report calling for a cite-and-release policy in lieu of mass arrests for low-level offenses during protests.<sup>11</sup>

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<sup>9</sup> According to PERF:

The areas where problems [with mass arrests] arise with sudden, but now predictable, regularity are: The quality of evidence available to pursue prosecution against each individual; The logistics of transporting and handling large numbers of prisoners; Allowing legal and medical access; An inordinate delay in arranging for release or bringing persons to court; Not enough police on duty to cope with the above—process centers are frequently overwhelmed at an early stage due to lack of resources; and In some cases, the courts have ruled that top police officials can be held personally liable for damages or actions.

POLICE MANAGEMENT OF MASS DEMONSTRATIONS at 55.

<sup>10</sup> See The United States Conference of Mayors, REPORT ON

POLICE REFORM AND RACIAL JUSTICE (2020), 26, available at [https://www.usmayors.org/wp-content/uploads/2020/08/20.55.USCM\\_.Police-Reform.Report.MEC\\_.pdf](https://www.usmayors.org/wp-content/uploads/2020/08/20.55.USCM_.Police-Reform.Report.MEC_.pdf) (hereinafter POLICE REFORM AND RACIAL JUSTICE) (“Before a protest, police departments should determine what the bar for making arrests will be and avoid mass arrests if possible. . . . During protests, departments should avoid making arrests for low-level civil disobedience, such as blocking traffic, opting instead to issue citations”); POLICE RESPONSE TO MASS DEMONSTRATIONS at 16 (police departments participating in forum “recommended that police agencies adopt a high bar for determining when protesters will be arrested during a mass demonstration”).

<sup>11</sup> Ohio Justice and Policy Center, PROTESTS AND THE PANDEMIC: RECOMMENDATIONS FOR A MORE EQUITABLE CINCINNATI (2020), available at <https://ohiojpc.org/2020/06/04/protests-pandemic-recommendations-equitable-cincinnati/>.

## 2. Recommendation R2302: Protests, Demonstrations, Crowd Control or Civil Disturbances

CPD should adopt a new written comprehensive Civil Demonstrations policy to (a) specifically address the role of police in facilitating First Amendment expression; (b) incorporate existing CPD's procedures and trainings regarding mass gatherings and crowd control; (c) regulate contact between CPD officers and citizens who are not committing offenses; (d) clarify any exceptions to regular CPD practice; (e) address the extent of CPD's responsibilities to care for prisoners during the intake process at the HCJC; (f) integrate guidance on both use of force and use of force reporting; (g) regulate munitions tracking; (h) specify standards for mass-arrest processing; and (i) address after-incident debriefing and reporting. CPD should consider as a model the International Association of Chiefs of Police (IACP) model policy for Crowd Management.<sup>12</sup> See Erd (20089), Clifford (20092), Harrow (20090), Hough (20097), King (20112), Kimutis (20188), Thompson (20099), Walker (20095), Wilkins, et al. (20093).

## 3. Recommendation R2303: Protests, Demonstrations, Crowd Control or Civil Disturbances

In its formulation of training and policy related to protests and civil demonstrations, CPD should emphasize and strengthen "protest facilitation" models and approaches,<sup>13</sup> and CPD should deemphasize approaches that are framed to address "disturbance control"<sup>14</sup> so as to ensure proper balance between safety and protecting the right to engage in lawful protest. Protest facilitation reduces the prospect that demonstrations will become violent and minimizes the risk of conflict between police and demonstrators.<sup>15</sup> See

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<sup>12</sup> International Association of Chiefs of Police, CROWD MANAGEMENT (2019), available at <https://www.theiacp.org/sites/default/files/2020-08/Crowd%20Management%20FULL%20-%2008062020.pdf>; President's Task Force on 21st Century Policing, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (2015), Washington, DC: Office of Community Oriented Policing Services, available at [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf) ("Policies should emphasize protection of the First Amendment rights of demonstrators").

<sup>13</sup> According to PERF, "The police should seek to facilitate any lawful and legitimate aims of groups who are present—especially when conflict breaks out. The aim should be to permit the pursuit of lawful actions while dealing with groups acting illegally." See PERF, POLICE MANAGEMENT OF MASS DEMONSTRATIONS at 54.

<sup>14</sup> See *also* INVESTIGATION INTO NYPD RESPONSE TO THE GEORGE FLOYD PROTESTS, 35-36 (contrasting "facilitation mindset" with "disorder control," and stating "[d]isorder control also relies on the use of mass arrests, bicycle squads, and other tactics to enforce crowd control. These deployments, tactics, and shows of force may have unnecessarily provoked confrontations between police and protesters, rather than de-escalating tensions.")

<sup>15</sup> The Harry Frank Guggenheim Foundation conducted an extensive study on protest management that interviewed over a dozen law enforcement agencies in cities around the country such as Cleveland, Milwaukee, Chicago, and New York; surveyed protestors; and concluded the following:

Police sometimes view protests and other public order events from the vantage point of how to control, regulate, or manage people. This is understandable to some extent given the role of the police in preserving public order and safety and the possibility that such events can turn destructive or violent. However, when people have legitimate aims such as observing their First Amendment rights of speech or assembly, the perception that police are overcontrolling or micromanaging them can give the impression that police are

Erd (20089), Clifford (20092), Harrow (20090), Hough (20097), King (20112), Kimutis (20188), Thompson (20099), Walker (20095), Wilkins, et al. (20093).

#### 4. Recommendation R2304: Use of Force Reporting Policy/Procedure

**CPD should require all officers using force to personally author and submit a separate use of force report that includes a narrative specifying the circumstances that preceded the use of force; the circumstances requiring the use of force; and the specific force and/or tactic used by the officer. Reports should be comprehensive and timely completed.** See Harrow (20090), Hough (20097), Kimutis (20188), King (20112).

This approach is endorsed by the International Association of Chiefs of Police, which issued guidance on Reporting Use of Force (March 2017), stating that “each officer who uses force or witnesses an incident involving force should submit a separate written use-of-force report by the end of the shift.” According to the IACP, there are numerous benefits associated with broad use of force reporting, including that such reports aid in “determining whether the use-of-force policy is being followed, the number of incidents, the types of force employed, or the circumstances surrounding those incidents, as well as protection of officers from complaints of excessive use of force.”<sup>16</sup>

#### 5. Recommendation R2305: Body Worn Camera Policy/Procedure

**CPD should formalize best practices emphasizing the important role of BWCs during police crowd control, ensuring sustainability of constant use during prolonged protest management activity, and ensuring that all officers use BWCs during such operations with the exception of any working in a covert capacity.** See Erd (20089), Clifford (20092), Harrow (20090), Hough (20097), King (20112), Kimutis (20188), Thompson (20099), White (20115), Walker (20095), Wilkins, et al. (20093).

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simply trying to limit or prohibit legitimate behavior. . . . [P]erceptions of police fairness have powerful implications for the relationships between police and the public. This is an especially sensitive issue in the context of protest events. As Her Majesty’s Chief Inspector of Constabulary in the UK has noted, protesters tend to have “a heightened sense of grievance” that can easily be turned toward the police. One way to minimize this transfer of grievance is to allow protesters “a fair and reasonable chance to make their point peacefully.” **When police operate from the vantage point of how to facilitate peaceful protests rather than how to control, regulate, or manage them, they can achieve a dramatic change in the relationships between police and protesters and minimize the likelihood of conflict and violence. This is especially the case when police are the object of protests, since efforts to block protests will inevitably strengthen the perception that police are unjust or illegitimate.**

Edward R. Maguire & Megan Oakley, Harry Frank Guggenheim Foundation, POLICING PROTESTS: LESSONS FROM THE OCCUPY MOVEMENT, FERGUSON & BEYOND: A GUIDE FOR POLICE (2020), 12-13, available at <https://www.hfg.org/Policing%20Protests.pdf>

<sup>16</sup> International Association of Chiefs of Police, REPORTING USE OF FORCE (2017), available at <https://www.theiacp.org/sites/default/files/2020-06/Reporting%20UoF%20June%202020.pdf>; see also The Denver Officer of the Independent Monitor, THE POLICE RESPONSE TO THE 2020 GEORGE FLOYD PROTESTS IN DENVER, AN INDEPENDENT REVIEW, 23-24, available at [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2020GFPRReport\\_OIM.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2020GFPRReport_OIM.pdf) (making similar recommendation).

BWCs provide an opportunity to record verbal and physical exchanges between demonstrators and the police-protecting all parties from false accusations. Utilization of BWCs improves transparency and accountability by providing video evidence that allows police agencies to exonerate officers who are falsely accused or to identify officers engaging in misconduct and take corrective action when force is used inappropriately.<sup>17</sup>

**6. Recommendation R2306: Protests, Demonstrations, Crowd Control or Civil Disturbances**

**CCA recommends CPD provide training to all officers regarding criminal offenses that are most likely to apply should arrests become necessary during protest activity (including but not limited to Ohio’s Misconduct at Emergency statute), and also provide specific instruction on the elements required for establishing probable cause for those offenses, in order to ensure Constitutional policing. See Erd (20089), Thompson (20099), Walker (20095), Wilkins, et al. (20093).**

**7. Recommendation R2307: Protests, Demonstrations, Crowd Control or Civil Disturbances**

**CPD should review its process for documenting the specific officers who arrest persons during mass arrest scenarios and ensure that those officers are accountable for having specific knowledge of facts necessary to prove probable cause to make an arrest. See Erd (20089), Thompson (20099), Wilkins, et al. (20093).**

**8. Recommendation R2308: Protests, Demonstrations, Crowd Control or Civil Disturbances**

**CPD should provide training on the First Amendment to officers and supervisors, including training addressing the scope of protected activity, scenario-based training, and instruction addressing implicit and explicit viewpoint bias or discrimination. See Clifford (20092); Wilkins, et al. (20093).<sup>18</sup>**

**9. Recommendation R2309: Duty to Render Aid**

**CCA recommends CPD review its policies and procedures, on the Duty to Render Aid—including CPD Procedure §12.600, Prisoners: Securing, Handling, and Transporting—and consider whether additional guidance is necessary instructing officers on how to respond to requests from arrestees for medications or for medical treatment in the absence of observable immediate emergency. CCA received over 25 complaints when an officer’s response to an arrested citizen’s request for access to her medication went viral on the internet and on national television. CPD policies pertaining to such requests should be reviewed so they conform with best practices and ensure public trust in the handling of citizens’ wellbeing. See Wilkins, et al. (20093).**

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<sup>17</sup> POLICE REFORM AND RACIAL JUSTICE at 26.

<sup>18</sup> POLICE REFORM AND RACIAL JUSTICE at 6.

## 10. Recommendation R2310 (Repeat 2216): Anti-Retaliation and Interference Policy

**CCA recommends that CPD extend greater protection and integrity to the complaint resolution process by strengthening language in Procedure Manual § 15.100 to state that officers “shall not discourage any person from making a complaint, engage in any act of reprisal or retaliation against any person who has made a complaint, participate in any attempts by any person or entity to persuade a person to withdraw a complaint, or otherwise interfere in the investigation of any complaint by a government agency.”** Such language would clarify that the protections provided in the Manual of Rules of Regulations for government investigations clearly apply to citizen complainants and to inquiries into those complaints. See White (20115).

### VIII. COMMENDATIONS

As this report references in the Executive Summary above, despite the findings and recommendations contained in this report, several of which point to areas of improvement in Cincinnati’s law enforcement response to protests, *on those occasions where CCA possessed sufficient evidence to make determinations as to specific allegations made by citizens*, the evidence showed that the majority of police officers subject to complaint and investigation acted in accordance with existing police policy, procedure and training. All served during an incredibly challenging time for our City, our communities, and indeed our entire country. Cincinnati’s Police Chief marched with protestors, validating the right to peaceful protest and making common cause with the community. The Cincinnati Police Department and its members are to be commended for their service.

### IX. INVESTIGATIONS

The 11 investigations covered below are reported in order of their date and time of occurrence. These reports do not purport to detail all evidence uncovered during their respective investigations, nor are they intended to summarize the entirety of CCA’s file on these matters.



**A. Complaint Summary**

**Complainant:** Jacqueline Hough

**Date:** May 30, 2020

**Time:** 2:00 a.m.

**Location:** Vine and Seventh Streets

**CCA Receipt:** June 9, 2020

**Allegation:** Excessive Force

Ms. Hough stated the following in her complaint:

I was caught between the looters and the police with riot gear. I originally was trying to get protesters to not take it out on the CPD because they didn't kill Mr. Floyd. A flash bang was thrown close to me and instructions were given by megaphone. I wasn't sure what was said because of the bang but I thought they said to disperse and go home. As I was doing that an officer ran up behind the ones with shields and reached over them to pepper spray me. Then he literally jumped over them to knock me down and they left me on the street with a broken wrist, a busted iPhone and pepper spray in my eyes. I'm 58 years old. I was not being violent or aggressive.

**B. Summary of Evidence**

**1. Involved Citizen Statements**

**Jacqueline Hough**

CCA interviewed Ms. Jacqueline Hough, F/W/58, on June 12, 2020. She provided the following additional information:

Ms. Hough heard a commotion, helicopters, sirens, horns, and saw lights flashing around 1:00 a.m. Ms. Hough left her residence to see what was occurring. She walked down the street and saw people "creating violence." Ms. Hough stated she got between the protestors and the police and spoke to the protestors stating, "Come on you guys, these guys didn't do it."

CPD threw a flash bang, which gave her “PTSD.” She stated “I kind of don’t really remember everything that happened from then. So I’m almost 100% sure that I didn’t do anything aggressive, because that’s not my way.” The officers were trying to force everyone down towards the river.

Ms. Hough stated when she looked behind her, she heard all the sirens and glass breaking. Ms. Hough did not want to move toward the river because she was close to her place which was across the street. That was when an unknown male white officer ran up from behind the officers that carried the shields and reached between them and sprayed her with mace. She did not fall, but stood back with her hands raised and said, “Don’t shoot.” The officer that sprayed the mace “jumped over” the other officers that held the shields and “pushed” her down “with his hands.” Ms. Hough fell and broke her right wrist and phone. The officers just walked past her as she lay in the street.

Ms. Hough stated she was trying to be peaceful. Ms. Hough went to the doctor and had her wrist cast. She might need to have surgery on her wrist and might need to sue the City. Ms. Hough advised the investigator she would provide the medical records but was unsure what the doctor actually put in her report on how she received her injury, but she told them it was from the officers.

## **2. Subject Officer Statements**

### **Lieutenant Colin Vaughn**

Lieutenant Colin Vaughn, #L0007, M/W/48, is currently assigned to the Intelligence Unit, and he has been a CPD member since 1999. Lieutenant Vaughn held the rank of Sergeant and was a part of the CDRT, in uniform carrying riot gear; no BWC.

CCA interviewed Lieutenant Vaughn on June 14, 2021, at 10:02 a.m. He provided the following information:

Lieutenant Vaughn stated CPD has been building the CDRT about six years ago, and in that time, they have trained very specifically on how we’re going to function during times of civil unrest, riots. On May the 30<sup>th</sup> of 2020, the CDRT was present at Seventh and Vine in the early morning hours in order to deal with the violent crowds that were protesting and assaulting officers and breaking into businesses. Members of CDRT were dressed in various forms of protective gear. CDRT-Grenadiers were equipped with non-lethal or less-lethal munitions.

It was nearing the end of a long number of hours of protests, many of which were violent. Lieutenant Vaughn stated he threw some OC blast balls but did not believe any were thrown at Seventh and Vine Streets. The OC is a crowd management device that encourages people to go away. During these protests, prior to any chemical munitions being deployed, there were multiple verbal warnings given, orders given to people to leave. Lieutenant Vaughn admitted at times he reached through the line of officers and spray people who were trying to assault officers, had assaulted officers, were pushing against the shields, trying to get through the line, not complying with orders, or trying to rob officers of equipment.

All of those munitions are either deployed by supervisors, or at times by the grenadiers, but at the order of a Captain or above.

Lieutenant Vaughn stated to CCA:

I can't tell you specifically did I spray her or did I not, other than I can tell you I absolutely do not remember and don't think I used any force at Seventh and Vine Street. I can assure you that I did not jump over any other officers to knock anyone down. I didn't see any other officers jump over anybody to knock anyone down. I don't know how one would go about doing that because I can't jump over people that are five and six feet tall. And we certainly didn't knock someone down and go past them and not address them.

When comparing the civil unrest during the protests of Summer 2020 with the unrest in years past, Lieutenant Vaughn stated the following:

So the difference in this -- between this and other protests that we've responded to . . . since 2001 more or less, we've had almost no violent protests. These protests were much more violent. You had officers getting assaulted. I got hit with stuff. Other officers got hit with things being thrown by the crowd. But in the manner in which we responded, we have very clear kind of understanding or rules about how we're going to respond to the crowd, assaults on us, etcetera, based on the crowds' behavior.

#### **Officer Robert Bohl**

Officer Robert Bohl, #PO875, M/W/39, is currently assigned to District 5, and he has been a CPD member since 2005. Officer Bohl was a part of the Civil Disturbance Response Team (CDRT), in uniform, with riot gear; no BWC.

CCA interviewed Officer Bohl on May 12, 2022, at 10:32 a.m. He provided the following information:

Officer Bohl stated that on May 30, 2020, he was on the line with the CDRT team holding a shield during the times of the protest. Officer Bohl did not recall anyone complaining of being maced, injured or having any contact with Ms. Hough.

### **Officer Richard Christoph**

Officer Richard Christoph, #PO620, M/W/39, is currently assigned to District 3, and he has been a CPD member since 2008. Officer Christoph was a part of the CDRT, in uniform, with riot gear; no BWC.

CCA interviewed Officer Christoph on May 5, 2022, at 3:08 p.m. He provided the following information:

Officer Christoph was a member of the CDRT squad during the protest and stated he had “no recollection of the specific event in question” and did not “recall specifically working that day.” He added the CDRT responds to any type of large gatherings, groups, protests, riots, anything of the sort to provide protection and security for the area and people. “If we are deployed in riot fashion, we will carry shields and pepper balls and 40-millimeter soft foam cannons but at the time again, there were times during the protests and riots that we were posted in the basement of City Hall.”

### **Officer Matthew Croswell**

Officer Matthew Croswell, #PO022, M/W/38, is currently assigned to District 5, and he has been a CPD member since 2014. Officer Croswell was a part of the CDRT, in uniform, carrying riot gear; no BWC.

CCA interviewed Officer Croswell on May 12, 2022, at 2:01 p.m. He provided the following information:

On May 30, 2020, Officer Croswell was with the CDRT platoon and on the line, holding shields. Officer Croswell did not observe any officer mace, jump over anyone’s shoulder, or knock anyone down.

### **Officer James Mathews**

Officer James Mathews, #PO668, M/W/42, is currently assigned to District 3, and he has been a CPD member since 2003. Officer Mathews was a part of the CDRT, in uniform carrying riot gear; no BWC.

CCA interviewed Officer Mathews on May 4, 2022, at 1:56 p.m. He provided the following information:

Officer Mathews stated it was a very chaotic scene, with the nationwide George Floyd protest, specifically around Cincinnati. On May 30, 2020, Officer Mathews was a part of the CDRT, one of the front-line officers assigned a shield. Officer Mathews stated he did not see anyone jump directly over the line. They were in different formations but primarily were in a straight line, a horizontal line trying to move the crowd back. At no time did he observe anybody jump over the line or randomly assault persons.

### **Officer Aubrey Pitts**

Officer Aubrey Pitts, #PO280, M/B/32, is currently assigned to the Homicide Unit, and he has been a CPD member since 2016. Officer Pitts was a part of the CDRT, in uniform carrying riot gear; no BWC.

CCA interviewed Officer Pitts on May 24, 2022, at 11:24 a.m. He provided the following information:

On May 30, 2020, Officer Pitts was platoon man with the Civil Disturbance Response Team wearing turtle gear a shield and carrying a PR 24 baton. We hold the line and try to prevent damage caused to people and property. Officer Pitts did not recall coming into contact with Ms. Hough.

### **Officer Jay Stephens**

Officer Jay Stephens, #PO726, M/W/41, is currently assigned to District 5, and he has been a CPD member since 2004. Officer Stephens was a part of the CDRT, in uniform carrying riot gear; no BWC.

CCA interviewed Officer Stephens on May 12, 2022, at 10:25 a.m. He provided the following information:

On May 30, 2020, Officer Stephens was deployed as part of a CDRT response team on the line, carrying a shield, wearing protective gear, and holding an intersection. Officer Stephens had no recollection of coming into contact with Ms. Hough.

### **Sergeant Stephanie Glueck (pronounced Glick)**

Sergeant Stephanie Glueck, #SO068, F/W/41, is currently assigned to Personal Crimes, and she has been a CPD member since 2006. Sergeant Glueck was a part of the CDRT, in uniform carrying riot gear; no BWC.

CCA interviewed Sergeant Glueck on June 14, 2021, at 10:43 a.m. She provided the following information:

Sergeant Glueck did not recall specifically coming into contact with Ms. Hough on May 30, 2020. Captain Adam Hennie was giving a disbursement order over the megaphone, which the crowd did not comply with.

### **Sergeant Brian Trotta**

Sergeant Brian Trotta, #SO420, M/W/50, is currently assigned to District 1, and he has been a CPD member since 1997. Sergeant Trotta was a part of the CDRT, in uniform carrying riot gear; no BWC.

CCA interviewed Sergeant Trotta on May 19, 2022, at 10:07 a.m. He provided the following information:

Sergeant Trotta was assigned as part of the CDRT as one of the arrest team supervisors responsible for line control during the riots. On May 30, 2020, Sergeant Trotta deployed his OC for the protection of the officers, advancement of hostile people towards the line, people refusing to abide the orders to move back. Sergeant Trotta did not recall Ms. Hough at all.

### **Sergeant Lucas Neville**

Sergeant Lucas Neville, #SO379, M/W/28, is currently assigned to District 3, and he has been a CPD member since 2016. Sergeant Neville was a part of the CDRT, in uniform carrying riot gear; no BWC.

CCA interviewed Sergeant Neville on May 5, 2022, at 2:01 p.m. He provided the following information:

Sergeant Neville stated he did not recall coming into contact with Ms. Hough on May 30, 2020. His role during the protest was the same each day. We were the team that responded to make sure everybody was safe. He would have carried a shield and been in a line that made sure everybody kept in order for the day.

### **Lieutenant Brian Bolte**

Lieutenant Brian Bolte, #L0031, M/W/40, is currently assigned to District 4, and he has been a CPD member since 2002. Lt. Bolte held the rank of Sergeant during this incident. Lt. Bolte was a part of the CDRT, in uniform carrying riot gear; no BWC.

CCA interviewed Lt. Bolte on May 25, 2022, at 3:03 p.m. He provided the following information:

Lt. Bolte stated he was a squad leader for the CDRT team, and his role is to “keep them in line and try to keep the city safe.” Lt. Bolte did not recall coming into contact with Ms. Hough on May 30, 2020.

### **Lieutenant John R. Hudson**

Lieutenant John R. Hudson, #L0022, M/W/49, is currently assigned to the Narcotics and Vice Unit, and he has been a CPD member since 1999. Lieutenant Hudson was a part of the CDRT, in uniform carrying riot gear; no BWC.

CCA interviewed Lieutenant Hudson on May 18, 2022, at 10:09 a.m. He provided the following information:

On May 30, 2020, Lieutenant Hudson was a squad leader assigned to CDRT that was called into areas that had destruction of property or things getting out of hand. Lieutenant Hudson had some Mark 9 spray which is a big canister but did not have any other CO<sup>2</sup> aerosol-flash bangs. Lieutenant Hudson denied coming into contact with Ms. Hough.

**3. Officer Witness Statements**

There were none.

**4. Witness Statements**

There were none.

**5. Documentary Evidence, Audio-Visual Evidence & Other Evidence**

**a. Police Documents**

CCA reviewed all CPD-related forms from the day and time in question, including but not limited to all available use of force reports.

**b. Body Worn Camera (BWC)**

On May 30, 2020, members of the CDRT team were not required to wear BWC's at the time. The policy changed April 15, 2021, stating that SWAT and Civil Disturbance Response Team (CDRT) personnel will utilize their BWCs in high risk activities (i.e. search warrants, arrest warrants, crowd control) in accordance with their documented SOPs.

**c. Medical Records**

CCA requested Ms. Hough's medical records from Ms. Hough but did not receive any documents.

**C. Significant Discrepancies & Clarifications**

There were none other than those discussed below in the Analysis section.

**D. Authorities**

See Appendix.

## **E. Analysis**

### **1. Allegation: Excessive Force**

On May 30, 2020, at about 1:00 a.m., Ms. Jacqueline Hough allegedly walked down Seventh and Vine Streets and positioned herself between the protestors and the police holding riot gear. A flash bang was thrown close to her. Ms. Hough reported to CCA that as she complied with the order to leave, “An officer ran up behind the officers with shields, reached over them and sprayed her with pepper spray. Then the white male officer literally jumped over them to knock me down and they left me on the street with a broken wrist, a busted iPhone and pepper spray in my eyes.” Ms. Hough stated she was not being violent or aggressive. Ms. Hough has also stated that because of the flash bang, she has Post Traumatic Stress Disorder (PTSD) and does not remember everything that happened.

CPD Policy § 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 policy cites to caselaw in stating that:

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. The ‘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.” CPD Policy 12.545 Use of Force.

Procedure § 12.545 also allows officers to the use reasonably necessary force “to protect themselves or others.”

Regarding the use of blast grenades, CPD Procedure § 12.545 Use of Force states “the OC blast grenade is a rubber ball type device that contains a non-lethal chemical irritant which is used in crowd control situations to aid in controlling and disseminating crowds. Only trained SWAT officers and grenadiers are permitted to deploy the OC aerosol or OC blast grenades in crowd control situations.”

Procedure 12.545 also states:

Officers encountering crowds will evaluate the situation and determine if there is a current or future need requiring crowd control or crowd management. Use of force including the OC blast grenade during periods of civil unrest or for crowd control is restricted. A command officer must be present and must authorize the deployment of these devices, absent exigent circumstances. Command officers must give verbal notice prior to deploying these devices into a crowd unless it would present a danger to the officer or others to give such a warning.



CCA interviewed several members of the CDRT team, none of whom could recall coming into contact with Ms. Hough or even an incident that involved Ms. Hough. While Lt. Colin Vaughn admitted that at times during the protests, he reached through the line of police officers to spray protesters with OC spray, and while he could not conclusively rule out that he might have sprayed Mr. Hough in the process, Lt. Vaughn did not specifically remember Ms. Hough, and he denied using any force at 7th Street and Vine Street.

The officers also were not required to wear BWC's during this time. Due to a lack of sufficient evidence, CCA was unable to identify whether the actions alleged by Ms. Hough occurred and, if so, which of the several potentially involved CDRT officers was at fault. As such, CCA cannot definitively determine whether a violation of policy occurred.

#### **F. Findings**

Unknown CPD Officer

**Excessive Force** - There are insufficient facts to decide whether the alleged misconduct occurred. **NOT SUSTAINED**

#### **G. Observations**

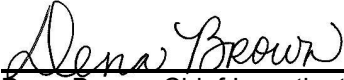
See "Section VI. Key Observations" in CCA's consolidated report on this investigation and ten other protest investigations, GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI.

#### **H. Recommendations**

See R2302, R2303, R2304, and R2305 in "Section VII. Recommendations" of CCA's consolidated report on this investigation and ten other protest investigations (GEORGE FLOYD PROTESTS

REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI).

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\_\_\_\_\_  
Dena Brown, Chief Investigator

1/31/2023  
Date

  
\_\_\_\_\_  
Davis, Director

1/31/2023  
Date

**A. Complaint Summary**

**Complainant:** Bryan Kimutis

**Date:** May 30, 2020

**Location:** 1229 Elm Street

**CCA Receipt:** September 9, 2020

**Allegation:** Excessive Force

On May 30, 2020, Mr. Bryan Kimutis was taking photographs of the protest in the S&P parking lot between Central Avenue and Elm Street by Music Hall. At approximately 9:30 p.m., without warning, while not engaged in any illegal activity, he was struck in the eye by a 40mm marking round fired by a Cincinnati Police Officer. Mr. Bryan Kimutis was taken to the Emergency Room at the University of Cincinnati Medical Center (UCMC) and has permanent impaired vision as a result of this incident.

**B. Summary of Evidence**

**1. Involved Citizen Statements**

**Bryan Kimutis**

*CCA interviewed Mr. Bryan Kimutis on September 11, 2020. He provided the following information:*

Mr. Kimutis, M/W/26, agreed to discuss the incident but wanted to speak to his lawyer before giving a recorded statement.

*CCA conducted two follow-up interviews on February 18, 2021. He provided the following information:*

Mr. Kimutis went downtown “around 7:00ish” to get some food. All the places downtown were closed probably in anticipation of what was going to happen that night and what happened the night before, everything was boarded up and closed. Mr. Kimutis walked back to his vehicle around 9:10/9:15p.m. and saw a group of protestors in the S&P parking lot between Central Parkway and Elm Street. There was a line of police officers on the sidewalk of Central Avenue facing into the S&P parking lot and he was about twenty yards away. Mr. Kimutis was taking pictures of what was going on and saw someone that he knew in the crowd. He approached him and had a conversation with him. Mr. Kimutis was struck in the eye around 9:25 or 9:30 p.m. by a 40-millimeter marking grenade or marking round. A kid that he was talking to picked it up, so

he has the actual round that hit him. There were first aid protestors who were there who administered first aid to him.

Mr. Kimutis had a friend that lived a half block down on Elm Street. Someone helped him walk there and then he went to Christ Hospital and was transferred to UCMC. Mr. Kimutis did not see any individual officer or any even cover officer fire it. Mr. Kimutis has permanent damage to his left eye (a macular hole in the retinal wall of his eye), his vision has decreased to about 20/50 in that eye. He has permanent sensitivity to light and dark and cannot see very well in bright environments or dark environments. Mr. Kimutis did not capture the actual round hitting him on camera but has pictures of his injury and footage of the night before he was injured and then right after. The doctor wrote a report on his injury.

## **2. Subject Officer Statements**

### **Officer Kurtis Latham**

Officer Kurtis Latham, #PO181, M/W/33, is currently assigned to District 5, and he has been a CPD member since 2015. Officer Latham was in uniform and a part of the Civil Disturbance Response Team (CDRT).

CCA interviewed Officer Latham on June 16, 2021, at 6:45 a.m. He provided the following information:

On May 30, 2020, Officer Latham was a part of the CDRT as grenadier, carrying a 40 millimeter less than lethal grenade launcher and was positioned in front of District 1 police headquarters staged for a protest. The crowd turned unruly. Lieutenant Colonel Paul Neudigate gave orders to have the crowd disburse. The crowd started throwing rocks, water bottles, fireworks, and other dangerous items at officers and headquarters. Lieutenant Colonel Neudigate gave the order to engage people that were actively throwing dangerous items at us.

Officer Latham deployed the 40-millimeter LMT Tactical Single Launcher four times. The first target was a male white attempting to throw one of their gas grenades back at them. Officer Latham struck that male twice, once in the left calf and once in the left buttocks area. The rounds hit and dropped and then he proceeded to stop trying to engage the officers. Officer Latham then engaged two other targets; both were male blacks that threw explosives, fireworks, pyrotechnics, and both of those individuals were struck in the left thigh and both rounds hit and dropped.

Officer Latham stated an after-action report was completed, but if they can make an arrest, they will make the arrest. However, in those situations they were able to retreat back into the crowd and we were not able to arrest them. The people that he engaged with fled into the crowd and were not able to be arrested. Officer Latham denied striking anyone in the eye, which is not a preferred area.

## **Officer Michael Roetting**

Officer Michael Roetting, #PO210, M/W/41, is currently assigned to District 3, and he has been a CPD member since 2002. Officer Roetting was in uniform and part of the CDRT team.

CCA interviewed Officer Roetting on June 16, 2021, at 6:30 a.m. He provided the following information:

On May 30, 2020, Officer Roetting was a part of the CDRT and was a grenadier assigned a 40-millimeter LMT Tactical Single Launcher. They carry a backpack, and they have different types of munitions, impact rounds, marking rounds. Officer Roetting stated some protestors were throwing firecrackers, frozen water bottles, bottles of urine, rocks at them, and broke windows near Music Hall. The CDRT was sent to stop them. Officer Roetting was given the command to fire two rounds by Sergeant Colin Vaughn. The first round fired was at an individual white male that picked up a gas canister and was attempting to throw it back at them as they were trying to disburse the crowd with gas. That person was struck in the lower leg and struck by a bean bag marking round by other members that were trying to prevent him from picking up and throwing a gas canister at them. Another white male had been throwing firecrackers balled up with nails and stuff in it. Officer Roetting deployed his second shot which struck the wall and garbage can and landed on the concrete.

Officer Roetting stated when looking at Mr. Kimutis's injury (speaking of the video that was reviewed prior to beginning this interview) that "if he was struck with a 40-millimeter impact round as he's saying the distance, he looks like he was standing at, there would have been a significant amount of more damage around his eye. The kinetic energy they said is equivalent to almost like Aroldis Chapman high speed fast ball and there would probably be bones breaking. When we deploy rounds, we deploy them and we're supposed to aim at the leg, the extremities and try to avoid the face, neck, and groin."

Officer Roetting stated fireworks were landing at his feet and a couple of rocks bounced off his helmet. He did not sustain any injuries.

## **Officer Molly Shust**

Officer Molly Shust, #PO120, F/W/34, is currently assigned to the Narcotics and Vice Unit and she has been a CPD member since 2002. Officer Shust was in uniform and part of the CDRT team.

CCA interviewed Officer Shust on March 29, 2022, at 10:04 a.m. She provided the following information:

On May 30, 2020, Officer Shust was assigned as a grenadier to the CDRT team. That day Officer Shust was assigned a 40-millimeter LMT Tactical Single Launcher and during one incident, just south of Music Hall next to District 1 she deployed five rounds of 40-millimeter foam rounds. There were two individuals that were specifically pointed out as threats. One individual was shooting

fireworks directly at them and the other individual was throwing hard objects. Officer Shust could not recall the race of the males. The two individuals that were struck were struck in their upper thighs, like meaty part of their legs. One retreated and the other one eventually retreated after he was hit with other rounds. They eventually retreated and they did not make any arrests. Officer Shust did not recall coming into contact with Mr. Kimutis.

### **Lieutenant Colin Vaughn**

Lieutenant Colin Vaughn #L0007, M/W/48, is currently assigned to the Intelligence Unit, and he has been a CPD member since 1999. Lieutenant Vaughn was in uniform and part of the CDRT team.

CCA interviewed Lieutenant Vaughn on June 14, 2021, at 10:19 a.m. He provided the following information:

Lieutenant Vaughn stated on May 30, 2020, he was the grenadier sergeant in charge of the people who were using those less lethal platforms. The CDRT team shot people with 40-millimeter foam rounds during the civil unrest. All of those people shot were specifically targeted because they were assaulting officers or committing other felony offenses of violence. Lieutenant Vaughn stated, "Every officer there, every round that I saw fired that struck someone struck them in their lower extremities, typically in the thigh because that's where we're trained and where we train to target." Lieutenant Vaughn did not see or did not recall anyone getting struck in the face with a 40-millimeter foam round. At the time there was a large group of violent protestors who were throwing bricks, rocks, water bottles full of urine and other unknown substances at us. The crowd had been given lawful orders to disburse and told to go away.

At the time they had already deployed some chemical munitions, CS or OC gas to try to get them to leave without having to use any more force against that large group of people.

Lieutenant Vaughn stated:

They continued to throw things at us, assault us, come up, run up and assault officers by Music Hall they started barricading themselves using garbage cans to try to thwart our efforts to disburse this large violent crowd a couple hundred people. Some of those individuals we specifically targeted who were throwing stuff and did shoot them again in the legs or the lower extremities with 40-millimeter foam rounds which is quite frankly what those rounds are designed for. To be a less lethal impact tool to cause somebody pain, to discourage them from continuing their felonious behavior, quite frankly.

The 40-millimeter foam launcher is a single shot top break launcher. It fires and holds one round at a time. Officers typically have twenty rounds on them. The grenadiers are the only ones that are armed with those platforms. Once the situation was under control, they completed a use of force report that was made sometime later, because of the dynamic situation and everything that was going on. Four or five officers completed a report but none of them stated they struck someone in the eye. Several people got hit with 40-millimeter rounds because they were trying to pick up the munitions, those canisters and throw them back at us. But we always target their legs.

After reviewing Mr. Kimutis's picture Lieutenant Vaughn stated, "I believe that what I see in that picture is consistent with him getting hit with a 40-millimeter foam round I do. But the only way that happens is if he bends down as that shot is being fired. And again, I don't know that to be true." Lieutenant Vaughn stated every person that they were specifically targeting or targeted was done so because they were throwing things at them. Lieutenant Vaughn did not see any of the subjects that were struck, and no one came and complained to them afterwards about being struck by one of these. The deployments occurred at the direction of Colonel Neudigate.

### **Officer Barnabas Blank**

Officer Barnabas Blank, #PO039, M/W/43, is currently assigned to District 5, and he has been a CPD member since 2002. Officer Blank was in uniform and part of the CDRT team.

CCA interviewed Officer Blank on March 29, 2022, at 12:05 p.m. He provided the following information:

On May 30, 2020, Officer Blank was assigned to a pepper ball gun and was conducting operations with the CDRT Team. The pepper ball gun is a paint ball gun that fires a hard-shell cased projectile that is filled with a powderized capsaicin, "Which is ground up jalapeños essentially." Officer Blank deployed the pepper ball gun. CPD uses that particular weapon system for area saturation mainly at people's feet just to get them to move. Officer Blank did not observe anyone struck by a 40-millimeter round.

### **Specialist Jeremy Howard**

Specialist Jeremy Howard, #PS081, M/W/44, is currently assigned to the Central Business District (CBD), and he has been a CPD member since 2002. Specialist Howard was in uniform and part of the CDRT team.

CCA interviewed Specialist Howard on March 31, 2022, at 06:21 a.m. He provided the following information:

On May 30, 2020, Specialist Howard was a grenadier with the CDRT Unit as a pepper ball launcher tasked with quelling the riots. The pepper ball was deployed at people throwing bottles and rocks. Specialist Howard was unsure how many pepper ball rounds he deployed this day. All the target areas are below the nipple line. The belly and the thighs unless it's area saturation which is the ground. Specialist Howard did not observe anyone that was struck in the face with a 40-millimeter round.

### **3. Officer Witness Statements**

There were none.

**4. Witness Statements**

CCA was not provided any witness names. Neither CCA, nor CPD has been able to identify the young person who, according to Mr. Kimutis, handed him the foam round after it struck his eye.

**5. Documentary Evidence, Audio-Visual Evidence & Other Evidence**

**a. Police Documents**

CCA reviewed all CPD-related forms, including but not limited to arrest forms and the Internal Investigation Section (IIS) Report.

**b. Body Worn Camera (BWC)**

CDRT officers were not equipped with BWC's during this incident. No other BWC exists.

**c. Other Video**

CCA reviewed three short video clips of Mr. Kimutis' injury. The videos contained no date or time stamps.

The first video was approximately six seconds long which showed someone holding the foam round.

The second video showed Mr. Kimutis sitting on the ground and someone rinsing his injured eye out. The green markings can be seen above his bloodied left eye.

The third video showed someone rinsing Mr. Kimutis's eye and advising him to seek medical attention. The unknown female stated no ambulance would respond. An unknown male who was out of camera view, stated he would take him to the hospital. Mr. Kimutis mentioned that if he could get to his friend's house, his friend could take him to the hospital.

**d. Photographs**

See description of medical records below.

**e. Medical Records**

Mr. Kimutis provided CCA with medical records from the University of Cincinnati (UC) College of Medicine documenting his injury. UC ultimately published those records in the form of a report entitled: "Ocular Foam Marking Round Injury: a case report and a literature review."

According to the records, "A 25-year-old male with no previous medical history presented to the emergency department (ED) with acute vision loss and pain in the left eye after being struck by projectile during a protest. Initially, he believed that he had been struck by a rubber bullet, but the projectile obtained by the patient was subsequently identified as a foam marking round (Fig 1a). A green powdery substance was dispersed around the site of injury."



Mr. Kimutis sustained “significant ocular trauma.” Specifically, his “[i]nitial exam showed significant periorbital ecchymosis, multiple eyelid lacerations, microhyphema, and vitreous hemorrhage.” The medical records include a picture of that injury.

The medical records also include a photograph of the aforementioned foam round.

### **C. Significant Discrepancies & Clarifications**

1. **Whether Mr. Kimutis Was Struck By 40-MM Foam Round:** Mr. Kimutis maintains that he was struck in the eye by a foam round fired by a Cincinnati Police Officer.

IIS’s report was inconclusive as to whether a foam round struck Mr. Kimutis, stating: “There is insufficient evidence to determine whether Mr. Kimutis was struck with a 40mm foam marking round . . .”

At least one officer who fired marking rounds at protestors on May 30, 2020 and who was interviewed during this investigation (Officer Michael Roetting) expressed doubt that Mr. Kimutis’s injury could have been caused by a foam round due to where Mr. Kimutis was standing at the time of his injury.

However, the medical evidence, Mr. Kimutis’s physical recovery of the foam round itself, and the green powdery substance observed by medical staff around Mr. Kimutis’s injury (all established by the medical records and corroborated by video), all support Mr. Kimutis’s assertion that he was struck by a foam round fired by a Cincinnati Police Officer. Additionally, the grenadier sergeant supervising officers assigned to CDRT who were firing foam rounds that day, Lieutenant Colin Vaughn, confirmed for CCA that the picture of Mr. Kimutis’s injury was “consistent with him getting hit with a 40-millimeter foam round.”

2. **BWC Usage and Policy:** At the time of the incident, CPD Body Worn Camera System §12.540 did not require CDRT or SWAT officers to wear BWCs. On April 15, 2021, the policy was revised to require non-uniformed assignments are required to wear and power on their BWC.

### **D. Authorities**

See Appendix.

## **E. Analysis**

### **1. Allegation: Excessive Force**

Mr. Kimutis has alleged that on May 30, 2020, during the George Floyd protests, while out in the downtown S&P parking lot between Central Parkway and Elm Street, he was struck in the eye with a 40mm foam round. Mr. Kimutis believes the force to be improper.

CPD Procedure §12.545 Use of Force provides guidelines for when officers are authorized to use force against citizens to maintain crowd control, specifically stating that “officers will not initiate the use of force... against crowds or a group of individuals except when reasonable and necessary to protect the officer.” This directive is consistent with the legal requirement for use of force, which permits officers to use force only when such force is objectively reasonable.

In addition, Procedure § 12.545 states the “40mm foam rounds are impact projectile devices that offer a less lethal alternative for subduing or incapacitating a subject and to prevent imminent physical harm, while maintaining officer safety. . . . [and] are restricted for use by SWAT personnel and grenadiers trained by TSU or CDRT.” Such rounds “are designed to leave a green powder substance on the subject(s) struck by these rounds.”

Procedure § 12.545 also states that in any deployment of 40mm foam rounds or the beanbag shotgun, officers are to “target a specific part of the body. Avoid the head, neck, throat, heart, and genitals, if possible.” In addition, the “officer must be reasonably sure the weapons will not strike other individuals in the crowd who pose no threat of violence.”

Medical evidence and physical evidence (specifically Mr. Kimutis’s physical recovery of the foam round itself onsite, and the green powdery substance observed by medical staff around Mr. Kimutis’s injury) supports Mr. Kimutis’s claim that he was struck by a foam round fired by a Cincinnati Police Officer. Additionally, the grenadier sergeant supervising officers assigned to CDRT who were firing foam rounds that day, Lieutenant Colin Vaughn, confirmed for CCA that the picture of Mr. Kimutis’s injury was “consistent with him getting hit with a 40-millimeter foam round.” Accordingly, the evidence establishes by a preponderance that the Mr. Kimutis was struck by a foam round fired by a Cincinnati Police Officers, causing injury to his left eye.

As to the issue of whether Mr. Kimutis’s injury was caused by a violation of policy, the results are less clear. CCA interviewed several members of the CDRT who would have been in the area at the time of Mr. Kimutis’s injury. Several officers stated that while standing in front of District Officers Police Headquarters staged for a protest, the crowd turned unruly, and began throwing rocks, water bottles, fireworks, and other dangerous items at officers and headquarters. At the time, Lieutenant Colonel Paul Neudigate gave orders for the crowd to disburse. According to the officers, when the crowd did not leave, some officers deployed their 40mm foam marking rounds striking several people in their lower extremities.

CCA interviewed all identifiable CDRT officers who deployed 40mm foam rounds at the time of Mr. Kimutis’s injury, but none of those officers recalled deploying the round that struck Mr. Kimutis. Lt. Vaughn did not dispute that Mr. Kimutis could have been struck by such a round, but Lt. Vaughn maintained that officers were only targeting lower extremities, and that he himself saw no one being struck by the rounds. While the evidence establishes that *some* officer fired a foam

round that struck Mr. Kimutis in the eye, in this case, CCA was unable to determine *which* officer fired the round, where that officer was aiming at the time of discharge, or if that officer was in compliance with CPD’s policies, procedures, and training when they deployed the 40mm foam round.

**F. Findings**

Officer Kurtis Latham  
Officer Michael Roetting  
Officer Molly Shust

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

**G. Observations**

See “Section VI. Key Observations” in CCA’s consolidated report on this investigation and ten other protest investigations, GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI.

**H. Recommendations**

See R2302, R2303, R2304, and R2305 in “Section VII. Recommendations” of CCA’s consolidated report on this investigation and ten other protest investigations (GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI).

**I. Previous Contacts & Commendations**

**Officer Latham**

*Previous Contacts with CCA*

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

*Previous Contacts for CCA Referrals*

Officer Latham had one allegation referred to CPD for investigation in the past three years.

<b>Case Number</b>	<b>Allegation</b>	<b>CPD Finding</b>
19177	Discourtesy	Exonerated
19177	Lack of Service	Exonerated

*Previous Contacts with IIS*

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

*Commendations*

Officer Latham received 2 commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
03/15/2019	CPD
07/02/2019	CPD

**Officer Roetting**

*Previous Contacts with CCA*

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

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
18080	Discrimination (Racial)	Not Sustained
18080	Lack of Service	Unfounded
18080	Discourtesy	Sustained

*Previous Contacts for CCA Referrals*

Officer Roetting had two allegations referred to CPD for investigation in the past three years.

<b>Case Number</b>	<b>Allegation</b>	<b>CPD Finding</b>
18099	Lack of Service	Sustained
19230	Lack of Service	Exonerated
19230	Discourtesy	Sustained

*Previous Contacts with IIS*

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

**Commendations**

Officer Roetting received one commendation in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
09/08/2018	Civilian

**Officer Shust**

*Previous Contacts with CCA*

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

*Previous Contacts for CCA Referrals*

Officer Shust had one allegation referred to CPD for investigation in the past three years.

<b>Case Number</b>	<b>Allegation</b>	<b>CPD Finding</b>
19218	Lack of Service	Not Sustained
19218	Discourtesy	Unfounded

*Previous Contacts with IIS*

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


*Commendations*

Officer Shust received three commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
09/11/2018	Civilian
08/31/2019	CPD
01/09/2020	Other Law Enforcement

  
\_\_\_\_\_  
Dena Brown, Chief Investigator

1/30/2023  
Date

  
\_\_\_\_\_  
Gabriel Davis, Director

1/30/2023  
Date

**A. Complaint Summary**

**Complainant:** Daulton King

**Date:** May 30, 2020

**Time:** 11:00 p.m.

**Location:** Calhoun St.

**CCA Receipt:** June 22, 2020

**Allegation:** Excessive Force; Improper Procedure; Improper Procedure (BWC) – Collateral; Discourtesy – Collateral

On May 30, 2020, Mr. Daulton King walked with protestors up Calhoun Street. Officers mistook him for someone throwing garbage cans in the road, tackled him and tased him twice unnecessarily. Tased once while being tackled and again after he was on the ground detained. An officer then stepped on and broke his glasses intentionally after he asked for them.

**B. Summary of Evidence**

**1. Involved Citizen Statements**

**Daulton King**

CCA interviewed Mr. Daulton King on June 24, 2020. He provided the following information:

On May 30, 2020, Mr. Daulton King, M/W/26, walked with protestors. As they walked several police vehicles followed behind them. Some protestors threw garbage cans into the road to try and stop the officers from following them so closely. Mr. King stated to CCA that he “didn’t touch any garbage cans or anything like that. I was just walking at the back of the group.” Police vans pulled up and tried to grab people, so everyone took off running. Mr. King ran and was tackled. He hit his head on a wall or concrete and was tased without a warning.

Mr. King stated once he was on the ground and was no longer moving, the officer who tased him tased him a second time causing him to almost lose control of his bowels. Mr. King observed three officers standing around him. Mr. King was handcuffed, searched, sat on the curb, his backpack searched, and his glasses had fallen off. Mr. King asked the officer to hand him his glasses. The officer replied, “I don’t give a [expletive] if you can’t see. I’m out of breath from chasing you all.” The officer walked over to where his glasses were and stepped on them. Mr. King stated when he got his glasses back, they were not wearable. Mr. King had a lump on his head above his left eye, “arm and shoulder pretty scratched up,” and TASER wounds on his back. The Cincinnati Fire Department (CFD) arrived to check his vitals, head, TASER wounds then left.

A supervisor also responded and scolded the officer for basically going off on his own and chasing. Mr. King denied throwing any garbage can. Mr. King did not seek any additional medical attention.

Mr. King was charged with throwing garbage cans in the road, interfering with official business and resisting arrest and detained for almost twenty hours between CPD and the Hamilton County Sheriffs.

## **2. Subject Officer Statements**

### **Officer Jesse Hooven**

Officer Jesse Hooven, #PO111, M/W/33, is currently assigned to District 5, and he has been a CPD member since 2014. Officer Hooven was in uniform; his BWC was activated.

CCA interviewed Officer Hooven on April 12, 2021, at 12:07 p.m. He provided the following information:<sup>19</sup>

Five police vehicles were patrolling the Clifton area, because of the protests and riots that were occurring. Officer Hooven was in the third or fourth vehicle in the convoy. During this, the officers observed individuals in the middle of the road dumping trash cans in the road. The officers exited their vehicles, removed the first set of trash cans, and drove approximately 20 feet. Most of the group had gone forward, but there were still two individuals who were putting trash cans in the middle of the road.

Lieutenant Michael Fern broadcast their description. Officer Hooven exited his vehicle and pursued Mr. King who immediately fled when he saw them exit their vehicles. Officer Hooven chased Mr. King for roughly a quarter of a mile, at one point, he fell while chasing him. Officer Hooven got to his feet and continued the foot pursuit and told Mr. King to stop. Officer Dewar warned Mr. King he would be tased if he did not stop. When he did not comply, still running and resisting arrest, he was tased, striking his butt or upper legs, once for the full five seconds, and “with all the excitement and everything, I accidentally hit it a second time for a second or two. I turned it off immediately cause it was an accident. I didn’t mean to do it the second time.”

After Mr. King was taken into custody he was sat on the ground. He was mostly compliant and polite after the fact. Officer Harold gave Mr. King his glasses and he replied, “Thank you.” At no time were his glasses broken.

### **Officer Eric Bley**

Officer Eric Bley, #PO114, M/W/23, is currently assigned to District 4, and he has been a CPD member since 2019. Officer Bley was partnered with Officers Neal, Stewart, and Tudor in a police vehicle. Officer Bley was in uniform; his BWC was activated.

CCA interviewed Officer Bley on April 13, 2021, at 11:32 a.m. He provided the following information:

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<sup>19</sup> Officer Hooven provided a statement to CPD’s Internal Investigation Section (IIS) on October 27, 2020. That statement was substantially similar to the statement he provided to CCA on April 12, 2021.

Officer Bley stated Mr. King was observed by other officers in the middle of the street dumping garbage cans. Officers chased him west on Calhoun St. Officer Tudor caught Mr. King, grabbed him by his backpack, and pulled him backwards, told him to get on the ground, but he would not listen. Officer Bley was behind Officer Tudor and assisted in taking Mr. King to the ground.

Mr. King fought with them and was tased. Officer Bley assisted in placing Mr. King into custody and sat him upright against the curb. Officer Bley could not recall if he issued any commands to Mr. King, but, "Most likely we were telling him to get on the ground, which he would not do and possibly stop resisting because he was resisting." Officer Bley did not observe any broken glasses.

### **Officer Nicholas Dewar**

Officer Nicholas Dewar, #PO361, M/W/33, is currently assigned to District 5, and he has been a CPD member since 2016. Officer Dewar was in uniform; his BWC was activated.

CCA interviewed Officer Dewar on April 19, 2021, at 3:31p.m. He provided the following information:

Officer Dewar and several officers were called for a large group in the street on Calhoun St. They were shifting over trash cans and being disorderly. Lieutenant Fern gave out the description of two individuals that were tipping garbage cans, and then he ordered the officers to go after those two individuals. The officers exited their vehicles and chased them down Calhoun, through a parking garage and Mr. King ran back out onto Calhoun. At that point, Officer Dewar lost sight of Mr. King with how many people were there. When Officer Dewar observed Mr. King next, he was being grabbed by other officers. Mr. King started struggling, attempted to take his backpack off, resisting. Another officer grabbed his other arm, and he still would not comply. Officer Dewar grabbed Mr. Kings legs and he was tased and went to the ground. Mr. King was handcuffed, and Officer Dewar moved down the street to help another officer that was arresting someone. Officer Dewar did not observe any broken glasses.

### **Officer John E. Neal**

Officer John E. Neal, #PO209, M/W/48, is currently assigned to District 5, and he has been a CPD member since 1999. Officer Neal was in uniform; his BWC was activated.

CCA interviewed Officer Neal on March 22, 2022, at 06:26a.m. He provided the following information:

Officer Neal was in a District 5 field force in a group of several police vehicles with four officers in each with Lieutenant Fern being the supervisor. On Calhoun Street there was a large crowd of protestors throwing garbage cans and other debris in the street in front of their group so they could not go down the street. Officer Neal stated to CCA he observed, "One of the individuals was Mr. King. He's throwing garbage cans in the middle of the street, the big city garbage cans." The officers stopped their vehicles and exited. They moved toward the crowd and removed the garbage cans from the street then went back to their vehicles.



The officers moved farther down the street, about another block, and Lieutenant Fern told them to get out of the vehicles and apprehend Mr. King who was in front of them. Officer Neal drove one of the vehicles and had three other younger officers in the vehicle with him who chased him down Calhoun. Mr. King ran behind buildings, popped back out on Calhoun and then they got him about 260 Calhoun on the ground. Mr. King proceeded to "fight" with the officers and was tased twice.<sup>20</sup>

Officer Neal pulled up in his vehicle, exited and assisted in holding Mr. King down until he was placed in custody. CFD responded, no injuries and his glasses were not stepped on or broken. A female officer found his glasses and placed them back on his face and he thanked her.

During his CCA interview, Officer Neal denied making a discourteous comment to Mr. King. He did make a comment to another officer, about which Officer Neal said the following:

Our Internal saw on the tape where I told him, after he had fought with cops, had to be tased twice. A large rock was recovered from his bag. So, I think I made a comment to another cop about put this -- put this piece of crap in a car. But I never made that comment to him. I made it to another cop just trying to secure him in a vehicle to make him safe. That was it. . . . So, in my opinion, he's not just a law-abiding peaceful protestor. He is an anarchist. And if you want this city to become Portland you let that -- that type of behavior, go.

#### **Officer Aidan Tudor**

Officer Aidan Tudor, #PO483, M/B/27, is currently assigned to District 4, and he has been a CPD member since 2019. Officer Tudor was in uniform; his BWC was activated.

CCA interviewed Officer Tudor on March 21, 2022, at 02:59p.m. He provided the following information:

Officer Tudor stated he was riding in a police vehicle with about four officers to a vehicle. They rode down Calhoun Street during the protests. There were a bunch of protestors in the street, and they were bringing trash cans out into the street and Officer Tudor and other officers observed Mr. King bringing trash cans in the street. The officers moved the trash cans out the street and continued to follow after them. A police vehicle pulled in front of Mr. King, and he ran, and a foot pursuit began. The supervisor broadcast Mr. King's description.

Officer Tudor did not give any commands because Mr. King "was so much far ahead when we hit the corner," called to Mr. King and tried to take him into custody, but he resisted and fought with them. At that point Officer Tudor grabbed Mr. King by his book bag, then grabbed his right arm, told him to put his hands behind his back and was taken to the ground, pulled his arms away and he heard "TASER, TASER, TASER" and was tased. Officer Tudor left Mr. King and assisted with another arrest on the street as well. Officer Tudor did not recall any issues with Mr. King's glasses.

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<sup>20</sup> In an IIS interview pertaining to this matter, Officer Neal stated that "Mr. King was flailing his arms and refused to put his hands behind his back."

## **Officer Trent Crutcher**

Officer Trent Crutcher, #PO241, M/W/29, is currently assigned to District 5, and he has been a CPD member since 2016. Officer Crutcher was in uniform; his BWC was activated.

CCA interviewed Officer Crutcher on March 29, 2022, at 06:25a.m. He provided the following information:

Officer Crutcher stated Mr. King was one of the two people that were arrested during the riots. Officer Crutcher was at the location of the arrest but did not have any direct involvement in his arrest. Officer Crutcher was involved in the arrest of the other person involved in putting the trash cans in the street.

## **Lieutenant Michael Fern**

Lieutenant Michael Fern retired from the Cincinnati Police Department sometime after the date of this incident. Post-retirement, CCA contacted Lieutenant Fern via correspondence seeking an interview. To date, Lieutenant Fern has not responded to CCA's request.

### **3. Officer Witness Statements**

There were none.

### **4. Witness Statements**

CCA contacted three (3) witnesses who were provided by Mr. King when he filed his complaint, but to date, they have not responded to our requests for an interview.

### **5. Documentary Evidence, Audio-Visual Evidence & Other Evidence**

#### **a. Police Documents**

CCA reviewed all CPD-related forms, including but not limited to arrest forms, IIS Report, BWCs, Hamilton County Court records and information from CPD's Records Management System (RMS).

#### **i. Supervisor's Use of Force Investigation Report**

CCA reviewed a supervisor's Use of Force report for this matter that included a narrative by Sergeant Jarrod Cotton who investigated the incident onsite. Of the tasings, Sergeant Cotton wrote:

Officer Hooven pursued Mr. King to 249 Calhoun Street, Mr. King continued actively resisted arrest by Officer Hooven, Officer John Neal and Officer Erik Bley by pulling away and resistive tension. Officer Hooven deployed his TASER from a distance of three feet, targeting and striking Mr. King in the back. The TASER took effect and Mr. King lay still. At the end of the cycle Mr. King began to struggle again and attempted to get to his feet, Officer Hooven charged the TASER for one

additional second. Mr. King was taken into custody without further incident. Cincinnati Fire Department Engine 3 responded and evaluated Mr. King. Mr. King was transported to the Hamilton County Justice Center by the prisoner van.

**b. Body Worn Camera (BWC)**

**Officer Tudor**

The events recorded by Officer Tudor's BWC occurred on May 30, 2020, starting at 22:59:12, according to the BWC's timestamp. A review of that recording reveals the following:

Officer Tudor exited the cruiser and told Mr. King to "come here." Mr. King fled, turned and looked at Officer Tudor then continued to flee. Officer Tudor pursued Mr. King. Officer Tudor caught up to Mr. King and grabbed his backpack. Mr. King slipped the backpack off and tried to keep running. Officer Tudor grabbed Mr. King's arm and ordered him to the ground. Officer Bley grabbed Mr. King's other arm. Officer Hooven gave a TASER warning then almost immediately thereafter tased Mr. King in the back. Mr. King was ordered to place his hands behind his back, but he refused. The officers placed Mr. King's arms behind his back and handcuffed him. Officer Tudor left Mr. King and assisted with another arrest. While escorting the other arrested suspect. An officer can be seen going through Mr. King's backpack, but the actual contents could not be determined.

**Officer Hooven**

The events recorded by Officer Hooven's BWC occurred on May 30, 2020, starting at 22:59:49, according to the BWC's timestamp. A review of that recording reveals the following:

Officer Hooven exited the cruiser and pursued after Mr. King along with other officers. Officer Hooven jumped over a ledge and fell to the ground. Officer Hooven approached as Officers Tudor and Bley were trying to detain Mr. King. Mr. King was ordered to the ground. Mr. King pulled away and did not put his hands behind his back. Officer Hooven warned of the impending TASER use then deployed his TASER striking Mr. King in the back near the 23:00:50 mark. Mr. King fell to the ground. After the TASER completed its cycle, officers can be heard ordering Mr. King to put his hands behind his back. More than 10 seconds later, Officer Hooven completed a one second hit of the TASER. An officer can be heard stating "shut up."

Officer Neal arrived on scene and assisted in handcuffing Mr. King. Officer Hooven advised Sergeant White of his TASER use. Officer Harrell told Mr. King "Here are your glasses." Mr. King thanked Officer Harrell. Officer Neal searched Mr. King's backpack. Officer Hooven left the area responding to another scene.

**Officer Bley**

The events recorded by Officer Bley's BWC occurred on May 30, 2020, starting at 21:49:00, according to the BWC's timestamp. A review of that recording reveals the following:

Officer Bley was the passenger riding in a cruiser patrolling the area. At 21:58:12 Officer Bley moved several overturned trash cans in the road to the side of the street. At 22:56:03 an officer can be heard asking is that him. Another officer replied yes that's him. At 22:57:31 A description is given of the suspect a green jacket, black backpack. At 22:58:04 Officer Bley exited the cruiser.

An officer can be heard yelling “stay together.” Approximately five trash cans were placed in the street. At 22:58:18 Officer Bley assisted another officer moving the trash cans out of the road. Officer Bley returned to the cruiser.

At 23:00:00 Officer Bley exited the cruiser and pursued after Mr. King. Officer Bley caught up to Mr. King as Officer Tudor attempted to detain him, which was described in detail in Officer Tudor’s BWC description. Officer Tudor ordered Mr. King to get on the ground several times as he resisted being taken into custody. Officers Tudor and Bley aided Mr. King into going to the ground. Officer Hooven arrived and yelled “TASER.”

An officer told Mr. King to get his expletive hands which were underneath his body as he lay on the ground and place them behind his back. At 23:00:58, Mr. King’s left wrist was secured into handcuffs by the officers, and the officers started to place his right wrist into handcuffs at 23:01:01. Seconds later, as Mr. King lay still with hands behind his back and in handcuffs, Mr. King yells “Ah, stop, stop, stop” as a faint sound that approximates a TASER discharge can be heard. An officer responds stating “shut up.”

An officer sat Mr. King on the curb along with another suspect. An officer searched a black backpack and a large rock was removed.

### **Officer Harrell**

The events recorded by Officer Harrell’s BWC occurred on May 30, 2020, starting at 25:00:00, according to the BWC’s timestamp. A review of that recording reveals the following:

Officer Harrell arrived on scene as Mr. King was being handcuffed and helped him stand. Officer Neal approached and stated, “Bring that piece of crap over and put him in my car.” Officer Harrell moved to the cruiser, then Officer Neal told Officer Harrell to sit Mr. King on the curb. Officer Harrell searched Mr. King then sat him on the curb. Mr. King asked Officer Harrell if she saw his glasses. Officer Harrell searched the area and found his glasses, picked them up and sat them down next to him. Mr. King thanked Officer Harrell. Officer Neal searched Mr. King’s backpack and set it down by Officer Harrell. Officer Harrell picked up Mr. King’s glasses and placed them inside his backpack. Officer Harrell remained with Mr. King until the transport vehicle arrived.

### **Officer Neal**

The events recorded by Officer Neal’s BWC occurred on May 30, 2020, starting at 21:22:37, according to the BWC’s timestamp. A review of that recording reveals the following:

Officer Neal arrived as Officer Hooven tased Mr. King. Officer Neal assisted in handcuffing Mr. King. Officer Neal walked away, came back, and told Officers Harrell and Bley, “Bring that piece of crap over and put him in my car.” Officer Neal completed some paperwork then deactivated his BWC.

### **Officer Dewar**

The events recorded by Officer Dewar’s BWC occurred on May 30, 2020, starting at 22:56:22 according to the BWC’s timestamp. A review of that recording reveals the following:

Officer Dewar was riding in a cruiser patrolling the area. Officer Dewar arrived on scene and assisted in pursuing Mr. King. Trash cans can be seen being thrown to the ground during the pursuit. Officer Dewar assisting in taking Mr. King into custody. Officer Dewar immediately left that scene and ran further down the street to address another situation.

#### **Officer Crutcher**

Officer Crutcher's BWC did not add any additional information.

#### **c. Clerk of Courts**

Mr. King was charged with Ohio Revised Code (ORC) §2921.31, Obstructing Official Business; ORC § 2921.33A, Resisting Arrest; and Cincinnati Municipal Code (CMC) §714-7, Upsetting Public or Private Receptacles. The charges of Resisting Arrest and Upsetting Public or Private Receptacles were dismissed. Mr. King ultimately pleaded guilty to Disorderly Conduct and was sentenced to 30 days confinement (suspended), 9 months Community Control, and a fine of \$110.

#### **d. TASER Download**

Officer Hooven deployed his TASER twice: the first time for a five second cycle at 23:00:51 hours, and the second time (more than ten seconds later) at 23:01:09 for a cycle of one second in duration.

#### **e. Photographs**

CCA reviewed three photographs of Mr. King. One showed Mr. King standing, no injuries could be seen. The second and third pictures showed the TASER barbs in the back of his shirt.

### **C. Significant Discrepancies & Clarifications**

**1. Trash Can Displacement:** Mr. King stated in his CCA complaint that he was mistaken by police for others who were throwing trash cans. Officer Tudor told CCA that he observed Mr. King displacing the trash cans. Officer Neal told IIS he observed Mr. King displacing trash cans. There does not appear to be any BWC footage clearly showing Mr. King displacing trash cans.

**2. Facts Surrounding Second Tasing:** In his use of force investigation, Sergeant Cotton wrote of the second tasing: "At the end of the cycle Mr. King began to struggle again and attempted to get to his feet, Officer Hooven charged the TASER for one additional second." This contention is directly rebutted by Officer Bley's BWC. Mr. King can be seen on camera lying still with his hands behind his back when he tased for the second time. No officer that CCA interviewed reported that they observed Mr. King attempting to rise from the ground.

### **D. Authorities**

See Appendix.

## **E. Analysis**

### **1. Allegation: Excessive Force**

According to the complaint filed by Mr. King and statement he provided to CCA, on May 30, 2020, at approximately 11:00pm, he walked with protestors and observed several police vehicles behind them. Some protestors threw garbage cans into the road to try and stop the officers from following them so closely. Police vans pulled up and tried to grab people, so everyone took off running. Mr. King alleged that as he ran, Officers tackled him which caused him to strike a wall or concrete which resulted in scrapes to his body. Mr. King also alleged he was tased unnecessarily and without warning.

CPD Procedure § 12.554 Investigatory Stops provides that officers may “forcibly stop and detain the citizen for a brief investigatory period” when an officer has “reasonable suspicion to believe the citizen is committing or has committed a crime.” In addition, 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 policy cites to the legal standard in clarifying that:

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. The ‘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.” CPD Policy 12.545 Use of Force.

Moreover, Procedure § 15.545 specifically provides that 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.” Procedure 12.545 defines active resistance to include running from the police and conduct that is physically evasive (“Actively Resisting Arrest – When the subject is making physically evasive movements to defeat the officer’s attempt at control, including fleeing an intention to avoid or prevent being taken into or retained in custody.”)

Significantly, Manual of Rules and Regulations § 1.23(B) provides: Members shall use force in accordance with *law and Department procedure* (emphasis added). Under §§ 1.01(A) and (B), negligent violations of policy are punishable under CPD policy, not just intentional violations, and even violations of policy that occur with something less than negligence are punishable.

#### **a. Force Used to Bring Daulton King to the Ground**

In this case, Officer Tudor advised CCA he observed Mr. King placing a garbage can in the street. Officer Neal also told CCA that Mr. King was one of multiple individuals “throwing” garbage cans in the street and that Lieutenant Fern directed the officers to arrest Mr. King. According to Officer Tudor, Officer Tudor ordered Mr. King to “come here,” and instead of complying, Mr. King fled

and a foot pursuit began. BWC footage corroborated the officers' assertions that Mr. King ran away from the officers when they tried to detain him.

At a minimum, the evidence establishes that officers had reasonable suspicion to forcibly stop Mr. King to investigate the displacement of garbage cans in light of the observations made by Officers Tudor and Neal. However, the evidence also, more likely than not, establishes probable cause to arrest for Obstructing Official Business, given Mr. King's flight from the officers. Significantly, Mr. King was ultimately charged with violating both Cincinnati Municipal Code, Section 714-7, Upsetting Public or Private Receptacles and Ohio Revised Code (ORC) §2921.31, Obstructing Official Business.

According to the BWC evidence, after Mr. King ran, Officer Tudor caught up with him and grabbed him by his book bag. Mr. King attempted to remove the book bag and keep running. Officer Bley arrived on scene and assisted in attempting to take Mr. King to the ground by hand. Under CPD policy, Mr. King's attempted flight and physical evasion plainly constituted active resistance to arrest, permitting the physical force used to attempt to bring him to the ground.

According to BWC evidence, when Mr. King continued pulling his arms away from the officers and declining to put his hands behind his back as ordered, Officer Hooven deployed his TASER for a five-second cycle. The TASER struck Mr. King in his back and brought him to the ground.

Video shows Officer Hooven giving a verbal warning to Mr. King before deploying the weapon. Although Officer Hooven deployed his TASER almost immediately after the warning, some warning was given, and CPD policy does not require a warning with a particular notice period.

Applying the aforementioned standards governing use of force, our investigation concluded that Officer Hooven's initial TASER deployment was objectively reasonable, given Mr. King's attempts to pull away from officers combined with his recent flight. The same factors justify the use of force by Officers Bley and Tudor in holding Mr. King and in attempting to force Mr. King to the ground, and in restraining him once he was on the ground.

#### **b. TASER Discharge While Daulton King Was on the Ground**

As per TASER records, and BWC footage from Officer Hooven and Officer Bley, at approximately 23:01:09 hours, well over ten seconds after the initial cycle, Officer Hooven discharged his TASER against Mr. King again, delivering electric current into Mr. King's body for an additional one-second cycle. In his CCA statement, Officer Hooven maintained that the additional one-second cycle was accidental. Officer Hooven stated: "With all the excitement and everything, I accidentally hit it a second time for a second or two." Nevertheless, a claim of accidental discharge alone cannot end an excessive force inquiry.

Uses of force that are alleged to be accidental rather than intentional may still be deemed objectively unreasonable, and thus excessive, when such force occurs "by the very instrumentality set in motion or put in place in order to" seize the person. *See Brower v. Cty. of Inyo*, 489 U.S. 593, 599 (1989); *Pleasant v. Zamieski*, 895 F.2d 272, 274-77 (6th Cir. 1990) (allegedly negligent discharge of firearm was a seizure subject to analysis under the objective reasonableness standard for excessive force).

Here, Officer Hooven tased Mr. King a second time, with the same TASER that he admitted to using to bring Mr. Brown to the ground. There is no question that the first tasing was intentional and was done for the purpose of arresting Mr. King. Accordingly, the second tasing, accomplished by the same instrumentality as the first, was a use of force (i.e. a “seizure”) that must be analyzed to determine whether it was objectively reasonable.

In addition, as a matter of policy (and not simply as a matter of legal compliance), the Cincinnati Police Department only permits the use of a taser on a suspect who is “actively resisting.” See Procedure Section 12.545 (“A CEW is designed for self-defense or to temporarily immobilize a subject who is *actively resisting arrest*. . . . A CEW 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. . . . *If a first shot is ineffective*, the officer may deploy a second shot by pulling the trigger a second time. (emphasis added)). As we have stated, under §§ 1.01(A) and (B), negligent violations of the Use of Force policy, and even violations of that policy that occur with something less than negligence, are punishable.

Officer Hooven’s and Officer Bley’s BWC footage shows that *after* Mr. King was brought to the ground by the initial TASER discharge, and *before* that additional one-second cycle, Mr. King lay unmoving on the ground for over 10 seconds. At the time he was tased for the second time, his hands were behind his back, with one handcuff having already been secured around his wrist and the other handcuff around his wrist with officers firmly in control of it. The evidence shows that any physical resistance by Mr. King had fully ceased over 10 seconds earlier, and Mr. King was engaged in no additional acts of resistance. Even Officer Hooven admitted to CCA that he perceived no resistance after Mr. King hit the ground, stating, “He [Mr. King] went down instantly. At that point is when he quit resisting. Like I said, that accidental one second time, which was like one second or two seconds or whatever, it was just an accident.” To be sure, Officer Neal told CCA that Mr. King was “fighting” while on the ground, but that claim is rebutted by Officer Bley’s BWC and by Officer Hooven’s testimony.

At a minimum, given the lack of active resistance or active aggression, Officer Hooven should have taken care to avoid the risk of a second discharge of his TASER once Mr. King’s resistance ended, especially given that the resistance had ceased more than 10 seconds earlier and Mr. King’s hands were visibly under control and handcuffs were on his wrists. CCA concluded Officer Hooven’s second TASER discharge was not in compliance with CPD’s policy, procedure, and training.

## **2. Allegation: Improper Procedure**

Mr. King alleged his glasses were broken and not returned to him during this incident.

CPD Procedure §12.715, Property and Evidence: Confiscation, Accountability, Processing, Storage, and Release, states “[a]ll property confiscated, seized, found, or coming into police custody will be properly marked, packaged, and submitted by the officer into the district/section/unit property room before terminating their tour of duty.”



According to the BWC, Officer Harrell can be seen showing Mr. King his glasses then placing them into Mr. King's backpack. CCA concluded Mr. King's glasses were not damaged and were returned to him. Therefore, the allegation is unfounded.

### **3. Collateral Allegation: Discourtesy**

The CPD Manual of Rules and Regulations: Code of Ethics, states that law enforcement officers must be, "respectful and courteous to all citizens. They serve their city with zeal, courage, dedication, and fidelity. They are faithful and loyal to their organization, constantly striving to cooperate with and to promote better relations with all regularly constituted law enforcement agencies in matters of mutual interest and obligation." Additionally, CPD Manual of Rules and Regulations Section 1.06 Failure of Good Behavior states under section (A), "Members of the Department shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors, and associates." And under section (B): "Members of the Department shall avoid the use of course, violent, or profane language."

While reviewing Officer Neal's BWC footage, CCA learned that Officer Neal, while speaking with Officers Harrell and Bley, told them, "Bring that piece of crap, over to my cruiser." When asked by CCA if he made a discourteous comment to Mr. King, Officer Neal denied he made a discourteous comment. Officer Neal stated the following:

I made a comment to another officer. . . . I believe that our Internal saw on the tape where I told him, after he had fought with cops, had to be tased twice. A large rock was recovered from his bag. So, I think I made a comment to another cop about put this -- put this piece of crap in a car. But I never made that comment to him. I made it to another cop just trying to secure him in a vehicle to make him safe. That was it. . . . So, in my opinion, he's not just a law-abiding peaceful protestor. He is an anarchist. And if you want this city to become Portland you let that -- that type of behavior, go.

Although Officer Neal stated he directed his comment to another officer it was in the presence of Mr. King. Irrespective of whether Officer Neal was speaking to the officers, and irrespective of Mr. King's behavior, the comment was discourteous, unprofessional, and not within CPD's policy, procedures, and training. CCA's investigation has determined that the comment did not meet CPD's standards for courteous and respectful dealing.

### **4. Collateral Allegation: Improper Procedure (BWC)**

CPD Manual of Rules and Regulations Section 2.18, Neglect of Duty, states that, "Members of the Department shall not fail to activate their BWC system except for a good cause." CPD Procedure Section 12.540 Body Worn Camera System states that, "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, during transports with an activated DVR, or with supervisor approval." More specifically under section (A)(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."

Officer Hooven deactivated his BWC before Mr. King was transported to jail, which was not in compliance with CPD's policy, procedures, and training.

**F. Findings**

*Original Allegations*

Officer Aiden Tudor  
Officer Eric Bley

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

Officer Jesse Hooven

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

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Officer Aiden Tudor  
Officer Eric Bley  
Officer Jesse Hooven

**Improper Procedure** - There are no facts to support the incident complained of actually occurred. **UNFOUNDED**

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*Collateral Allegations*

Officer John Neal

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

Officer Jesse Hooven

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

**G. Observations**

See “Section VI. Key Observations” in CCA’s consolidated report on this investigation and ten other protest investigations, GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI.

**H. Recommendations**

See R2301, R2302, R2303, R2304, and R2305 in “Section VII. Recommendations” of CCA’s consolidated report on this investigation and ten other protest investigations (GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI).

**I. Previous Contacts & Commendations**

**Officer Tudor**

*Previous Contacts with CCA*

Officer Tudor 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 Tudor with IIS.

*Commendations*

Officer Tudor received no commendation in the past three years.

**Officer Bley**

*Previous Contacts with CCA*

Officer Bley 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 Bley with IIS.

*Commendations*

Officer Bley received no commendation in the past three years.

**Officer Hooven**

*Previous Contacts with CCA*

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

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
20025	Discourtesy	Unfounded
20025	Improper Stop	Exonerated
20025	Discrimination	Unfounded

*Previous Contacts with IIS*

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

*Commendations*

Officer Hooven received one commendation in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
05/25/2021	CPD

**Officer Neal**

*Previous Contacts with CCA*

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

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
20075	Discourtesy	Not Sustained
19173	Law Violation	Pending
19157	Excessive Force	Sustained
19157	Stop (Person)	Not Sustained
19157	Improper Procedure (BWC-Turned on Late)	Sustained

*Previous Contacts with IIS*

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

*Commendations*

Officer Neal received no commendation in the past three years.

*Dena Brown*

Dena Brown, Chief Investigator

1/30/2023

Date

*GD*

Gabriel Davis, Director

1/30/2023

Date

**A. Complaint Summary**

**Complainant:** Kate Harrow

**Date:** May 31, 2020

**Time:** 5:44 pm

**Location:** Corner of 12<sup>th</sup> Street and Main Street

**CCA Receipt:** June 2, 2020

**Allegations:** Excessive Force; Improper Procedure (BWC) – Collateral; Improper Procedure (Reporting Use of Force) – Collateral

On May 31, 2020, Ms. Kate Harrow participated in a protest that began at Inwood Park and continued towards the Courthouse on Central Avenue. During the protest, Ms. Harrow observed an officer (later identified to CCA as Officer Thomas Haas) nearly struck an eight- or nine-year-old girl unintentionally while on his motorcycle. Later, another officer (later identified to CCA as Specialist Christopher Perry) struck a protestor with his motorcycle; the man was struck on the calf and fell to the ground. It is unknown whether the man was injured but he was detained with zip ties.

When protestors observed the incident, they walked towards the man. Officer Haas used his baton to prevent protestors from approaching. He held his baton between both hands and shoved an unidentified woman on her chest which knocked her to the ground. Ms. Harrow walked forward with her hands raised (to show they were empty) but Officer Haas used his baton against Ms. Harrow in the same way and shoved her back. Ms. Harrow sustained an inch-long oval bruise on her right forearm.

Ms. Harrow indicated that the protest began peacefully; however, CPD officers blared their sirens so the protestors could not hear the organizers or follow instructions. The officers' actions during the protest escalated their interactions with the public, causing people to feel intimidated and terrified.

## **B. Summary of Evidence**

### **1. Involved Citizen Statements**

#### **Kate Harrow**

CCA interviewed Ms. Harrow, F/W/40, in June 2020. She provided the following information:

On May 31, 2020, Ms. Harrow was engaged in a peaceful, organized protest which included community speakers and safety marshals. The protestors began at Inwood Park and marched down Vine Street towards City Hall. Once the protestors arrived at City Hall, CPD officers began “creeping up” in their cruisers and had their sirens on “full blast.” As a result, the protestors could not hear the organizers direct them where to go or what to do. They moved on towards the Courthouse, took their shoes off, and knelt in front.

As the protestors moved towards Central Ave, there were walkers who had been separated from earlier in the march and were trying to rejoin the group. An eight- or nine-year-old girl walked parallel to an officer (later identified to CCA as Officer Haas) and attempted to rejoin the group. He did not see her and almost hit her on his motorcycle; it was clearly an accident. A protestor intervened and put his hand near the motorcycle wheel to alert him about the girl, but Officer Haas “jumped off his motorcycle” and “started coming” at the man. A safety marshal intervened, and Officer Haas returned to his motorcycle.

The protest continued down Main Street and onto 12<sup>th</sup> Street. There were two officers on motorcycles and some marked cruises; the officers were “aggressive” at the end of the protest. Another officer on a motorcycle (later identified to CCA as Specialist Perry) “ran up on the back” of a man’s calf, and he “went down.” Ms. Harrow believed it may have been an accident but did not know Specialist Perry’s intention. It was unknown if the man was injured. Eventually, he was zip-tied and escorted away.

Several people, including Ms. Harrow and Witness B, walked towards the man to ensure he was okay. Officer Haas was present and “shoved” Witness B at her chest “hard” with his baton between both hands, causing Witness B to fall back and hit her head on the ground. Officer Haas then shoved Ms. Harrow very hard, resulting in a minor oval-shaped bruise to her right forearm, below her elbow. Another individual intervened to protect Ms. Harrow from Officer Haas.

Ms. Harrow is concerned that the officers’ overall “aggressive” approach escalated a peaceful protest into a “terrifying day.”

#### **Witness B (Attempt)**

There was no identifying or contact information for the woman who was pushed by Officer Haas. Therefore, CCA was unable to contact her or obtain her statement about the incident.

## **2. Subject Officer Statements**

### **Officer Thomas Haas**

Officer Thomas Haas, #P0413, M/W/52, was a CPD member since 1992. At the time of the incident, Officer Haas was assigned to the Traffic Bureau's Motorcycle Unit and provided assistance with the downtown protests. Officer Haas was in uniform; his BWC was not activated.

At the time of the complaint, CCA was unable to conduct interviews with CPD officers due to COVID-19 pandemic safety protocols. When CCA resumed officer interviews in late July 2020, Officer Haas was on extended leave. He remained on leave until he retired from the Department in October 2021.<sup>21</sup>

## **3. Officer Witness Statements**

### **Officer Christopher Thomas**

Officer Christopher Thomas, #P0372, M/B/55, is currently assigned to Patrol Bureau's Motorcycle Unit, and he has been a CPD member since 1993. At the time of the incident, Officer Thomas was assigned to provide assistance with the downtown protests. Officer Thomas was in uniform and operated a marked motorcycle; his BWC was activated.

CCA interviewed Officer Thomas on November 12, 2020 at 9:54am. He provided the following information:

On May 31, 2020, Officer Thomas was engaged to monitor the crowd. It was determined there were vehicles in the crowd, so the Motorcycle Unit was asked to remove the vehicles. Specialist Perry and Officer Thomas were on their motorcycles when a man on a motorcycle moved from the right to the left; an individual blocked Officer Thomas's motorcycle so he was unable to move towards Specialist Perry. While Officer Thomas handled that situation, he observed Specialist Perry step off his motorcycle, let it hit the ground, and approached a protestor. He did not know if Specialist Perry's motorcycle made contact with the protestor. Officer Thomas placed his motorcycle on a kickstand then ran to assist.

Specialist Perry "grabbed" the protestor by the arm, but someone from the crowd, Mr. Corey Wolfe, intervened; Specialist Perry arrested Mr. Wolfe. Officer Thomas stated that initially Specialist Perry and Mr. Wolfe "wrestled" for a moment, but clarified he was not resisting. Mr. Wolfe made several comments to the crowd like, "It's my fault...they're doing their job." He was not injured.

During the encounter, Officer Thomas stated the crowd circled the officers and were "rushing" the area. He stated the citizens were not throwing items but only seemed to want to know what was going on. Sergeant Mummert, Officer Haas, and himself attempted to keep the crowd back and gave verbal commands to do so. Officer Thomas kept his hands up, with his palms open and

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<sup>21</sup> Officer Haas passed away in January 2022.



outward to keep the crowd back. He did not have any physical contact with the crowd. Sergeant Mummert also used his hands and Officer Haas held his baton, but Officer Thomas did not recall if they made physical contact with anyone.

When shown *Harrow Video 1* (see: Evidence section), he confirmed it was Officer Haas. He clarified he was positioned further away and not near at the time.

Officer Thomas stated that during the protests, CPD command staff spoke with the protest organizers to ensure the safety of the protestors, and that the streets were blocked off, etc. He explained that if the protestors go down an unexpected route, the officers have to shift accordingly. Officer Thomas believed that then-Lieutenant Colonel Paul Neudigate instructed the officers to hit the sirens so the protestors were not able to hear to ensure the protestors would stick with the original route that was provided.

Officer Thomas stated while CPD handled many aspects of the protests well, he believed it was a mistake to send the Motorcycle Unit into the crowd. The Unit has since voiced their concerns because they believed it was the wrong decision, as it caused unnecessary confusion, intimidation, and frustration in the crowd. As a result, he stated that CPD no longer directs the Motorcycle Unit into crowds.

### **Specialist Christopher Perry**

Specialist Christopher Perry, #PS127, M/W/47, is currently assigned to Patrol Bureau's Motorcycle Unit, and he has been a CPD member since 1998. At the time of the incident, Specialist Perry was assigned to provide assistance with the downtown protests. Specialist Perry was in uniform and operated a marked motorcycle; his BWC was activated.

CCA interviewed Specialist Perry on October 27, 2020, at 8:59am. He provided the following information:

On May 31, 2020, people were engaged with protests in the downtown area. There were vehicles trailing the protestors; Lieutenant Colonel Neudigate directed the Motorcycle Unit to remove the vehicles out of the protest, as it was supposed to be only pedestrians. As they went northbound on Main Street, they turned onto 12<sup>th</sup> Street. Officer Haas had stopped two individuals on motorcycles. While Officer Haas spoke to one individual, the second motorcyclist fled.

Specialist Perry pursued the second motorcyclist with his lights and sirens activated at approximately 5-7 mph. He noted there were people walking and most moved to the side as he came through. He stated a man wearing a yellow vest "deliberately" stepped in front of Specialist Perry; he pretended as if he were hit by the motorcycle and fell "dramatically" into a seated position. Specialist Perry did not believe his motorcycle made physical contact with him, except if his hands touched the front of the motorcycle. He clarified that the man faced him and therefore was not struck in the calf; he did not appear to be injured. Specialist Perry dismounted his motorcycle and approached him, but another individual (Mr. Wolfe) blocked him from getting to the initial person. He performed a "standard takedown" and arrested him; the initial person disappeared.

During that time, the crowd “enveloped” to the scene. There was “turmoil” and people attempted to “kick [him] in the head.” He believed the crowd was screaming and shouting things like, “Fuck the police!” as though “they were going to kill me.” Specialist Perry watched Mr. Wolfe and the crowd for potential threats. Mr. Wolfe told the crowd it was okay to calm them and was no longer “problematic.” Ultimately, Mr. Wolfe was zip-tied and searched incident to arrest before being transported to the Hamilton County Justice Center (HCJC). He may have been charged with Disorderly Conduct and Resisting Arrest.

Additional officers arrived to push the crowd back, including Lieutenant Stephanie Fassnacht, Sergeants Michelle Longworth and Mummert, and Officers Thomas and Hass. Specialist Perry confirmed the officers attempted to separate the crowd from his arrest, but he clarified he was unable to determine if the other officers used any force on the crowd because he was focused on Mr. Wolfe.

When shown *Harrow Video 1* (see: Evidence section), he confirmed it was Officer Haas. Prior to the video, Specialist Perry did not observe Officer Haas’s action towards Witness B. Further, he stated he did not recall seeing any children during the protests.

### **Sergeant Jason Mummert**

Sergeant Jason Mummert, #S853, M/W/46, is currently assigned to District 1, and he has been a CPD member since 1999; at the time of the incident, he was assigned to the Patrol Bureau’s Motorcycle Unit and provided assistance with the downtown protests. Sergeant Mummert was in uniform and operated a marked motorcycle; his BWC was activated.

CCA interviewed Sergeant Mummert on October 27, 2020, at 9:27am. He provided the following information:

On May 31, 2020, the Motorcycle Unit was deployed to various civil disturbance activities; Sergeant Mummert, Officers Haas and Thomas were to intercept and remove vehicles that were part of the marching protests. They were advised of two motorcycles that were rolling in the crowd. When they arrived, both motorcycles initially stopped, but one took off into the crowd. Officer Haas’s motorcycle was blocked by a pedestrian, so Specialist Perry followed the motorcycle that fled at approximately 5 – 10 mph. As he followed, a member of the crowd stepped in front of Specialist Perry.

Sergeant Mummert clarified that he did not witness the initial contact between Specialist Perry and the individual, but initially, there “appeared to be a collision.” He explained that it was later determined from BWC footage that Specialist Perry diverted left to attempt to go around the subject, and the subject side-stepped in front of Specialist Perry. He stated that the videos offer different angles of the incident, but it is not clear whether contact occurred.

However, once the crowd became aware of the incident, they “swarmed in” towards Specialist Perry, while Specialist Perry attempted to put the man into custody. Mr. Wolfe intervened, allowing the original person to get away. Specialist Perry arrested Mr. Wolfe instead; Sergeant

Mummert noted that Mr. Wolfe was not “fully compliant” in putting his hands behind his back and Specialist Perry had to “struggle” to effect the arrest.

Meanwhile, Sergeant Mummert and Officer Haas tried to keep the crowd away from Specialist Perry. Sergeant Mummert described the crowd as “trying to get to us” and “trying to basically swarm in on top of us,” but confirmed that they were not throwing anything. He did not recall whether the crowd or Mr. Wolfe were saying anything at the time. He stated that he used his hands to “push” the crowd back, using an open palm and yelled for them to stay back. Sergeant Mummert clarified they were using the “minimum amount of force necessary.” Officer Haas held his baton between his hands to push people back. He was not aware of any injuries that resulted. They maintained the area until the arrest was completed, and the Civil Disturbance Response Team unit responded to assist.

When shown *Harrow Video 1* (see: Evidence section), he confirmed it was Officer Haas. Prior to the video, Sergeant Mummert did not observe Officer Haas’s action towards Witness B. He denied any knowledge of Officer Haas’s actions towards Ms. Harrow. Further, he stated he did not recall seeing any children during the protests and did not observe Officer Haas’s near-collision with a child.

#### **4. Witness Statements**

##### **Witness A**

CCA interviewed Witness A in June 2020. He provided the following information:

On May 31, 2020, Witness A participated in a protest that marched from Inwood Park to the Courthouse. During that time, the police presence was minimal. As the protestors approached the intersection of Main Street and Central Parkway, the police presence increased, and they “followed” behind the crowd. The protest remained peaceful and there were no problems. As they turned onto 12<sup>th</sup> Street, there were several officers on motorcycles who appeared to be in a formation. Witness A observed Specialist Perry seemed to break the line, “speed up and hit” a man on his left leg, causing the man to fall. The man was not doing anything at the time of the collision; he was later arrested.

An estimated 10 people rushed over there to see if the man was okay. Approximately six officers were present and pushed people away. During this time, Witness B also approached the area. Officer Haas shoved Witness B, causing her to fall to the ground. Witness B may have hit her head but did not appear to be injured. Witness A also observed Officer Haas “shove” Ms. Harrow. Witness A did not see Ms. Harrow or Witness B do anything to provoke Officer Haas’s actions.

Witness A reiterated that the crowd “was not doing anything,” did not have any weapons and nobody threw anything. The officers’ actions seemed “like they were trying to provoke the crowd,” possibly as a “tactic that they used to break up the crowd.” Witness A further explained that while most protests were peaceful, the times that situations escalated were due to police provocation, either by engaging the SWAT team or wearing riot gear.

## **5. Documentary Evidence, Audio-Visual Evidence & Other Evidence**

### **a. Police Documents**

CCA reviewed all CPD-related forms, including but not limited to three (3) CAD Reports, the Investigation Report (EVT-00003848-1) regarding Mr. Wolfe, arrest forms, and information from CPD's Records Management System (RMS).

### **b. BWC Footage**

*In addition to the BWC footage detailed below, CCA also reviewed BWC footage from Lieutenant Stephenie Fassnacht, Sergeant Michele Longworth, Sergeant Hannibal Mayhams, Specialist Daniel Taylor, and Officer Thomas Finley.*

#### **Specialist Perry**

The events recorded by Specialist Perry's BWC occurred on May 31, 2020, starting from 17:43:42 until 17:57:41, according to the BWC's timestamp. A review of that recording reveals the following:

While on a CPD motorcycle, Specialist Perry interacted with a man riding a motorcycle, who quickly left. The conversation is inaudible on the BWC. After a couple minutes, Specialist Perry moves away and into the crowd on his motorcycle. At 17:45:22, there is a man dressed in a red shirt and yellow vest; the man appears to step in front of Specialist Perry's motorcycle before he falls to the ground. Several people rushed to the area. Specialist Perry dismounted from his motorcycle and began to push people away. As he pushed people away, Mr. Wolfe was present. Mr. Wolfe appeared to intervene; Specialist Perry took him to the ground, causing Mr. Wolfe to land on his back. The crowd circled Specialist Perry and Mr. Wolfe as other officers pushed the crowd back. Mr. Wolfe repeatedly yelled, "It's okay! It's okay! They're just doing their jobs!" at the crowd. Specialist Perry issued several commands to Mr. Wolfe; Mr. Wolfe complied. Sergeant Michelle Longworth handcuffed Mr. Wolfe.

Specialist Perry escorted Mr. Wolfe away from the crowd to a nearby street. He asked Mr. Wolfe multiple times if he was okay and advised he wanted to make sure he was safe. Sergeant Longworth assisted in the escort. Sergeant Longworth and Officer Thomas assisted in the search of Mr. Wolfe. When discussing the reason for his arrest, Specialist Perry stated, "I was going after the guy that was standing in front of my bike, who jumped in front of my bike. As I was going after him, you jumped in front of him to shield him from me, to protect him, thereby interfering with my lawful arrest." Mr. Wolfe responded by saying that he jumped in because he saw several people around Specialist Perry; he apologized for interfering, but clarified he was trying to protect Specialist Perry.

The remainder of the footage is not relevant to the allegations.

#### **Sergeant Mummert**

The events recorded by Sergeant Mummert's BWC occurred on May 31, 2020, starting from 21:13:00 until 21:24:57, according to the BWC's timestamp. A review of that recording reveals the following:

Sergeant Mummert activated his BWC while he sat on his motorcycle. There are several people. There are several protestors standing in the road; protest officials motion for others to continue down the street. One protestor intentionally stood in front of an officer's motorcycle with a sign until other protestors moved him forward. At 17:45:20, an officer drove through the crowd ahead of Sergeant Mummert; an individual fell to the ground. Immediately, everyone in the surrounding area moved towards the collision, including Sergeant Mummert. The responding officers, including Sergeant Mummert, pushed people back as they crowded near Specialist Perry and Mr. Wolfe.

At 17:46:02, in the distance, Officer Haas pushed Witness B as she walked towards, but then backed away, from him. Witness B fell to the ground and multiple people went to her. Sergeant Mummert remained on scene and assisted. A large group of officers arrived on scene, established a boundary, and moved towards the protestors, which forced them down the street. The remainder of the footage was not relevant to the allegations.

### **c. Other Video Footage**

Ms. Harrow provided three videos of the encounter:

#### **Video 1**

*Duration: 4:16 minutes*

*Source: Witness A*

A large crowd of protestors walked along 12<sup>th</sup> Street. A CPD police officer slowly rode through the crowd on a motorcycle. At 0:55, the camera holder said, "Stop! Stop! Stop! Stop! Stop! They just ran the guy over!" He made continued exclamations about the incident as another officer on a motorcycle slowly rode into the crowd and disembarked. As the individuals moved closer to the incident with their cell phones, multiple officers positioned themselves between the protestors and the incident.

One officer pushed multiple individuals back. At 1:27, a Black woman in dark pants, a white shirt, and blonde hair, who is holding a phone towards the incident (Witness B), took two steps backwards as the officer took two steps towards her. Using a baton, the officer pushed forward, causing the woman to fall backward; initially she landed in a seated position but propelled backwards and hit her head on the pavement. Someone helped her stand, and she rejoined the protestors.

The remainder of the footage was not relevant to the allegations.

#### **Video 2:**

*Duration: 4:11 minutes*

*Source: Witness C*

Protestors walked along 12<sup>th</sup> street. At 0:26, a woman stated, "They ran over him." Several individuals walked towards the corner of Main Street and 12<sup>th</sup> Street. An officer on a motorcycle rode into the crowd. Multiple officers positioned themselves between the pedestrians and the incident. At 1:05, unidentified officers held batons and pushed into the crowd; some individuals fell over. At 1:16, an unidentified officer takes several steps before pushing back additional individuals.

The remainder of the footage was not relevant to the allegations.

**Video 3:**

*Duration: 0:52 minutes*

*Source: Kate Harrow*

Protestors walked along 12<sup>th</sup> Street. The remainder of the footage was not relevant to the allegations.

**Facebook Video**

*Duration: 1:03 minutes*

*Source: Kayla Pablo*

Mr. Wolfe encouraged protestors to move down the street as several CPD cruisers and motorcyclists arrived. Specialist Perry weaved through the pedestrians on the road. At 0:22, an unidentified individual in a red shirt and yellow vest stepped in front of Specialist Perry's motorcycle. Specialist Perry's motorcycle made contact with the individual and the individual fell to the ground. Specialist Perry dismounted his motorcycle and immediately pushed people away from the area. Other officers responded to the area and pushed people back with their hands and batons. The remainder of the video is not relevant to the allegations.

**C. Significant Discrepancies & Clarifications**

1. The officers' identities were not available at the time of the complaint or provided by Ms. Harrow or Witness A. Later, during interviews with CCA, multiple CPD officers were shown relevant video capturing the officers at issue, and those interviewed officers identified the officers at issue to be Officer Haas and Specialist Perry. The names of the involved officers are included in the above-summarized statements made by Ms. Harrow and Witness A for clarification.

2. CPD conducted a supervisory investigation into Specialist Perry's encounter; the arrested man was identified as Mr. Corey Wolfe. This information is included in provided statements for clarification.

3. Per CPD's Arrest and Investigation Report, Mr. Wolfe had three charges: Ohio Revised Code (ORC) §2921.31 Obstructing Official Business, ORC §2921-33 Resisting Arrest, and ORC §2917.11 Disorderly Conduct. However, per Clerk of Courts, only the latter two charges were filed. Both charges were dismissed.

4. Officer Haas's BWC was not activated at the time of the incident.

**D. Authorities**

See Appendix.

## **E. Analysis**

### **1. Allegation: Excessive Force**

During the protests on May 31, 2020, Ms. Harrow alleged Officer Haas pushed Witness B, causing her to fall to the ground. After Witness B was pushed, Ms. Harrow alleged Officer Haas pushed her as well. CPD Procedure Section 12.545 (Use of Force) defines force to be any physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person. Officer Thomas, Specialist Perry, and Sergeant Mummert confirmed Officer Haas was the officer in the video footage provided by Ms. Harrow. Further, it is evident in the video footage that Officer Haas used his monadnock baton to forcefully push Witness B in the torso, causing her to fall to the ground; it did not capture Officer Haas's subsequent actions or encounter with Ms. Harrow.

CPD Procedure provides guidelines for when officers are authorized to use force against citizens to maintain crowd control, specifically stating that "officers will not initiate the use of force... against crowds or a group of individuals except when reasonable and necessary to protect the officer." See CPD Procedure § 12.545 (Use of Force).

Officer Haas's BWC was not activated and did not show his perception of that encounter. Further, CCA was unable to interview Officer Haas to determine his assessment of the individuals' actions and whether he viewed the bystanders as an imminent threat to him or the other officers present. Without knowing Officer Haas's perception, we lack critical information needed to determine whether his actions were reasonable. Per the other officers' statements, there was incongruity as to the perceived threat level of the crowd. Ms. Harrow reported that she sustained a bruise on her right forearm; she declined to provide a picture because it was minor. Therefore, CCA is unable to determine whether the actions of the officer were improper.

### **2. Collateral Allegations:**

#### **a. Allegation: Improper Procedure (BWC)**

Officer Haas's BWC was not activated during the encounter. CPD Procedure § 12.540 (Body Worn Camera System) states officers are required to activate their BWC system during law enforcement-related encounters and self-initiated activities; it clarifies that "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)." BWC footage from other officers showed that the situation unfolded quickly and required an immediate police response. As CCA was unable to interview Officer Haas, CCA was unable to discern Officer Haas's perspective of the encounter and establish the reasoning for his actions. CCA was unable to determine if Officer Haas's failure to activate his BWC was in violation of CPD's policy, procedure, and training.

#### **b. Allegation: Improper Procedure (Reporting Use of Force)**

During the course of CCA's investigation, the agency became aware of a use of force against Mr. Corey Wolfe that occurred in the vicinity of where force was used against Witness B and Ms. Harrow, and that may have contributed to the formation of a crowd of protestors that Officer Haas

sought to disperse by pushing protesters with his baton. The agency considered whether the force used against Mr. Wolfe, specifically a takedown executed by Specialist Perry, was properly reported and documented by Specialist Perry.

At the time of the incident, CPD Procedure § 12.545 (Use of Force) required an officer using force against an arrestee to document the force in a specific manner when the force consisted of “Hard hands’ use of force by means of leverage displacement, joint manipulation, pain compliance, or pressure point control tactics without injury or complaint.” In such situations, Procedure 12.545 mandated the following:

*The arresting officer(s) are required to notify a supervisor and document a narrative account of the subject’s form(s) of resistance and the officer’s specific defensive tactic used to overcome that resistance in the narrative of the arrest report and complete Form 18NC, Noncompliant Suspect/Arrestee Report, to be reviewed and approved by a supervisor. The use of force report will require the officer to identify the events leading up to the use of force and the supervisor will be required to evaluate the tactics used by the officer.*

Specialist Perry admitted to CCA that he performed a “standard takedown” in order to arrest Mr. Wolfe. Specifically, BWC shows that Specialist Perry used his hands to bring Mr. Wolfe to the ground and that Mr. Wolfe landed on his back. At a minimum, such force constitutes hard hands via leverage displacement. Therefore, given that there was no injury, under the aforementioned provisions of Procedure § 12.545, Specialist Perry was required to document the use of force in the manner described.

CCA reviewed the Arrest Report for Mr. Wolfe and all use of force reports pertaining to the protests that occurred on May 31, 2020, and it is apparent that Specialist Perry did not personally submit any report explaining his use of force by providing a “narrative account of the subject’s form(s) of resistance and the officer’s specific defensive tactic used to overcome that resistance.” To be sure, a CPD supervisor investigating uses of force that occurred in connection with Mr. Wolfe’s arrest submitted a use of force report mentioning the arrest of Mr. Wolfe and related uses of force, but that report contains no narrative authored by Specialist Perry justifying his actions, and it contains no account authored by Specialist Perry that describes the specific type of force that he used to restrain Mr. Wolfe. Specialist Perry’s failure to provide such firsthand written accounts is inconsistent with CPD policy and procedure.

*Note: CCA is mindful of the fact that other officers who policed Cincinnati during CPD’s protest response may have similarly failed to submit use of force reports (or arrest reports) with firsthand accounts justifying the force that they used. However, CCA is aware of no other “arresting officer” who used hard hands against an arrestee without causing injury (the criteria for submitting a narrative report), and whose failure to record such force was discovered by CCA during the course of investigating a complaint pertaining to another use of force that occurred close in time and in proximity. Consistent with CCA’s investigative protocols, CCA reviews all police activity relevant to its complaints, including all uses of force occurring during an incident about which a complaint is filed, and the agency makes all appropriate findings.*



## F. Findings

### *Original Allegations*

Officer Thomas Haas | Kate Harrow

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

Officer Thomas Haas | Witness B

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

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### *Collateral Allegations*

Officer Thomas Haas

**Improper Procedure (BWC)** – There are insufficient facts to decide whether the alleged misconduct occurred. **NOT SUSTAINED**

Specialist Christopher Perry | Corey Wolfe

**Improper Procedure (Reporting Use of Force)** - The allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper. **SUSTAINED**

## G. Observations

See “Section VI. Key Observations” in CCA’s consolidated report on this investigation and ten other protest investigations, GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI.

## H. Recommendations

See R2302, R2303, R2304, and R2305 in “Section VII. Recommendations” of CCA’s consolidated report on this investigation and ten other protest investigations (GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI).

**I. Previous Contacts & Commendations**

**Officer Thomas Haas**

*Previous Contacts with CCA*

Officer Haas had no previous contact with CCA in the past 3 years.

*Previous Contacts for CCA Referrals*

Officer Haas had no allegations that CCA referred to CPD for investigation in the past 3 years.

*Previous Contacts with IIS*

CCA is unaware of any additional previous contact by Officer Haas with IIS in the past 3 years.

*Commendations*

Officer Haas received 2 commendations in the past 3 years.

<b>Date</b>	<b>Source of Commendation Received</b>
08/19/2018	Civilian
02/04/2019	OLE (Other Law Enforcement)

**Specialist Christopher Perry**

*Previous Contacts with CCA*

Specialist Perry had no previous contact with CCA in the past 3 years.

*Previous Contacts for CCA Referrals*

Specialist Perry had 1 allegation referred to CPD for investigation in the past 3 years.

<b>Case Number</b>	<b>Allegation</b>	<b>CPD Finding</b>
18175	Procedure Violation	No Finding Reported

*Previous Contacts with IIS*

CCA is unaware of any additional previous contact by Specialist Perry with IIS in the past 3 years.

*Commendations*

Specialist Perry received 3 commendations in the past 3 years.

<b>Date</b>	<b>Source of Commendation Received</b>
02/14/2019	OLE (Other Law Enforcement)

Date	Source of Commendation Received
07/12/2019	CPD
09/18/2019	Civilian

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\_\_\_\_\_  
Dena Brown, Chief Investigator

1/30/2023  
Date

  
\_\_\_\_\_  
Gabriel Davis, Director

1/30/2023  
Date

**A. Complaint Summary**

**Complainant:** Jamison Walker, Jr.

**Date:** May 31, 2020

**Time:** Approximately 9:00 p.m.

**Location:** 19 West Court Street

**CCA Receipt:** June 8, 2020

**Allegations:** Improper Seizure; Excessive Force; Discrimination; Improper Procedure (Use of Force) – Collateral; Improper Procedure (BWC) – Collateral

On May 31, 2020, Mr. Jamison Walker, Jr was at his place of business, Black Fern Tattoo. An officer approached and asked what he was doing; Mr. Walker explained that he worked at the building and was working on window art. The officer stated he could continue.

Within 5-10 minutes, a different group of officers arrived. They “yelled” at Mr. Walker and his co-workers to go inside. When Mr. Walker attempted to explain that he was working and that the initial officer advised him he was able to continue, 10-12 officers “surrounded” him and directed him to go inside, even though one officer blocked the entry. Two officers “held [his] hands down” as one officer told him, “to put [his] hands up.” Two officers drew their CEWs (otherwise commonly referred to as TASERs) and pointed them at Mr. Walker. Mr. Walker attempted to explain that he was at work and complying, but the officers continued to point their CEWs and used “excessive force.” He was arrested.

Additionally, Mr. Walker described the officers’ behavior as “inappropriate” as they used profanity and “mocked” him. He noted that the officers pulled out their cell phones to take pictures alongside him, “as if [he] was a trophy.” Therefore, Mr. Walker believed the officers “acted on their own biases and opinions.”

**B. Summary of Evidence**

**1. Involved Citizen Statements**

**Jamison Walker, Jr.**

CCA interviewed Mr. Walker. He provided the following information:

On May 31, 2020, there were protests at City Hall and the crowd began to disperse. Mr. Walker was working and finishing a mural on the window of the business. A group of people came from around the corner and walked to their vehicles as several officers exited a “caravan of unmarked SUVs.” The individuals stated they were headed to their vehicles but the officers “didn’t care” and arrested them.

At around 8:58pm, an officer approached Mr. Walker and asked what he was doing. Mr. Walker explained he was finishing up the mural. The officer recognized he was not part of the protesters and said, “Yeah, yeah. That’s fine.” Soon afterward, Specialist Nathaniel Young approached him and asked what he was doing. Mr. Walker explained that he was working and that another officer told him he was fine to continue, but Specialist Young said, “Get the fuck back inside.”

As Specialist Young raised his voice, seven or eight other cops came closer. Mr. Walker tried to “peacefully” explain the situation when Specialist Young “rushed and grabbed [his] left arm and pushed [him] back against the wall of the glass door.” Officer Sean O’Connor grabbed his right arm. The officers directed Mr. Walker to put his hands up, but the officers had both of his arms down.

Mr. Walker estimated that approximately four CEWs were drawn; he put up his hands and told them not to tase him. Witnesses told him he was tased, but he could not confirm that as he did not feel anything. Mr. Walker dropped to the ground and pleaded with the officers that this was his employment. The officers pulled him back up, pulled him to the side, and placed him in zip-ties. Mr. Walker sustained some bruising on his wrist from being grabbed and tight zip-ties. He advised an officer that they were too tight and eventually one officer cut off the original zip-ties and placed on a new set.

The officers took him across the street. One officer asked, “How are we logging the prisoners?” and mentioned that the previous night, the officers took pictures with them. The officer took a ‘selfie’ with Mr. Walker. Eventually, he was searched, charged with breaking curfew and misconduct, and taken to Hamilton County Justice Center (HCJC).

Mr. Walker stated he had video of the incident and would provide it to CCA.

## **2. Subject Officer Statements**

### **Specialist Nathaniel Young**

Specialist Nathaniel Young, #PO124, M/W/52, is currently assigned to the Vice Squad, and he has been a CPD member since 1992. On the day of the incident, Specialist Young was in uniform and assigned to assist with the protests; his BWC was not activated.

CCA interviewed Specialist Young on March 1, 2022, at 2:30pm. He provided the following information:

On May 31, 2020, Specialist Young and the other officers had been present during the protest at the Courthouse. When the individuals dispersed, Specialist Young walked with other officers to ensure the individuals left the area before the curfew was in effect. Earlier, he had been involved with a group of people that were protesting and observed a group of people coming from the same

direction while on West Court Street. The officers advised the individuals that they were still out past curfew, so they were under arrest. The officers continued to give warnings to individuals on the street. The time was after 9:00pm.

According to Specialist Young, Sergeant Joshua Bricker engaged with Mr. Walker and gave him a verbal warning that he needed to go inside. Mr. Walker responded but did not move to go inside. Specialist Young approached, introduced himself, and reiterated to Mr. Walker that he was in violation of curfew. Mr. Walker was recording on his phone and stated he worked at the business, which has a large glass storefront. Specialist Young told him to go back inside and video through the glass. Mr. Walker attempted to give an additional explanation, including that another officer said he was allowed to be outside after curfew. Specialist Young stated that even if someone (an officer) told him that, the person was wrong, and he is now directed to go back inside. Mr. Walker refused.

Specialist Young advised Mr. Walker he was under arrest and placed his hands on Mr. Walker's left wrist to put his hands behind his back. Another officer attempted to control Mr. Walker's right side. Two officers displayed their CEWs, but Specialist Young did not recall whether a warning was given. The CEWs were not deployed. Mr. Walker "collapsed" onto himself into the corner of the building. When Mr. Walker collapsed, Specialist Young backed away. Specialist Young denied that any officer pushed Mr. Walker against the glass window; Mr. Walker's back went against the window and then he sat down. He did not observe any injuries to Mr. Walker and Mr. Walker did not report any injuries.

With the help of other officers, Specialist Young raised Mr. Walker up, applied flex-cuffs, and escorted him to a designated area for arrested individuals where there was a prisoner processing team and transportation team. Specialist Young searched him incident to arrest. Additionally, the officers took cell phone pictures with the arrested individuals in order to identify which officer arrested which individual; a photograph of Mr. Walker and Specialist Young was taken for that purpose. Mr. Walker was charged with Misconduct in an Emergency.

Specialist Young denied that anyone was discourteous or discriminatory against Mr. Walker. He acknowledged there were many individuals using profanity at the time of the arrest but was unsure which individual and/or officer used the profanity. Specialist Young confirmed his BWC was not activated during the encounter. He believed that the BWC had died because it had not kept a charge.

### **Lieutenant David Schofield**

Lieutenant David Schofield, #L0187, M/W/39, is currently assigned to District 1, and he has been a CPD member since 2006. On the day of the incident, Lieutenant Schofield was in uniform and assigned to assist with the protests; his BWC was activated.

CCA interviewed Lieutenant Schofield on May 3, 2022 at 10:56am. He provided the following information:

On May 31, 2020, CPD command staff directed officers to initiate arrests for trespassing and curfew. Lieutenant Schofield conducted crowd control management on Court Street. Specialist Young identified a crowd of people and gave multiple requests for them to go inside to avoid arrest. One individual, Mr. Walker, debated with Specialist Young and Specialist Young determined he would make an arrest for curfew. Specialist Young advised Mr. Walker he was under arrest, but Mr. Walker actively resisted arrest by pulling away, backing up, and verbally

signaling his intent not to submit to an arrest. When asked if the officers gave conflicting directives, Lieutenant Schofield stated that the officers were not giving directives that would have interfered with Mr. Walker's ability to submit to the arrest.

Lieutenant Schofield approached as a cover officer. To gain compliance, Lieutenant Schofield displayed his CEW and pointed it in Mr. Walker's direction. He warned Mr. Walker about the imminent deployment and Mr. Walker sat on the ground. Lieutenant Schofield did not deploy the CEW. The surrounding officers arrested Mr. Walker. Lieutenant Schofield was not aware of any force used during the encounter.

At that time, there were approximately four individuals to Mr. Walker's left who attempted to interfere with the arrest. They were "approaching" and "yelling," so Lieutenant Schofield gave multiple orders for them to get back. One female individual was very close to Lieutenant Schofield and screaming. Lieutenant Schofield directed for them to "get back"; he did not recall using profanity, but stated if he did, it was because they were not listening. He displayed his chemical irritant as an "indicator" for her to move back and she complied.

Lieutenant Schofield denied any knowledge that the officers were discourteous or discriminatory to Mr. Walker.

### **3. Officer Witness Statements**

#### **Specialist Kevin Newman**

Specialist Kevin Newman, #PS074, M/W/50, is currently assigned to District 5, and he has been a CPD member since 2004. On the day of the incident, Specialist Newman was in uniform and assigned to assist with the protests; his BWC was activated.

CCA interviewed Specialist Newman on May 10, 2022 at 1:26pm. He provided the following information:

On May 31, 2020, Specialist Newman walked down the street and heard a few officers yelling at Mr. Walker in a doorway because Mr. Walker did not want to go in; Mr. Walker was very "passionate" that he was in front of his business and another officer had told him he could stay outside. As Specialist Newman approached, the officers repeatedly told him he needed to go inside due to the mayor's orders and eventually placed Mr. Walker in flex-cuffs. Specialist Newman read him the Miranda Warning and escorted Mr. Walker to another area where other people stood, waiting for the transport van.

Specialist Newman did not believe any officers used force against Mr. Walker. He did not recall whether any officers displayed or threatened to use a CEW. Specialist Newman denied that anyone was discourteous towards Mr. Walker or discriminated against him in any way.

#### **Sergeant Joshua Bricker**

Sergeant Joshua Bricker, #S0164, M/W/38, is currently assigned to the Narcotics Unit, and he has been a CPD member since 2004. On the day of the incident, Sergeant Bricker was in uniform and assigned to assist with the protests; his BWC was activated.

CCA interviewed Sergeant Bricker on April 27, 2022 at 10:02am. He provided the following information:

On May 31, 2020, due to civil unrest, Sergeant Bricker was separated into squads with other officers. A city-wide curfew was in effect, and he gave orders for people to go inside or leave the area. Sergeant Bricker did not have any direct contact with Mr. Walker and did not recall the reason for his arrest. He did not remember any uses of force related to Mr. Walker's arrest. He was not aware of anyone being discourteous or discriminatory to Mr. Walker.

Sergeant Bricker confirmed that in mass arrests situations it is not uncommon to photograph the officer and individual together so that later, the individual can be identified with the officer that arrested him; it is necessary for court.

#### **Officer Cole Dunahay**

Officer Cole Dunahay, #P0263, M/W/26, is currently assigned to District 4, and he has been a CPD member since 2017. On the day of the incident, Officer Dunahay was in uniform and assigned to assist with the protests; his BWC was not activated.

CCA interviewed Officer Dunahay on April 26, 2022 at 1:06pm. He provided the following information:

After reviewing BWC footage of another officer, Officer Dunahay recalled that he was walking on Court Street with other officers to enforce the curfew. Officer Dunahay did not know the reason for the other officers' involvement with Mr. Walker. He mentioned there was a lot of screaming, yelling, and commotion at the time. When Officer Dunahay arrived, the other officers were trying to place him under arrest: Mr. Walker was seated against the glass and an officer tried to pull him up on his left side. They placed Mr. Walker's arms around his back; Officer Dunahay assisted by holding Mr. Walker's left arm as they applied flex-cuffs. He did not know where Mr. Walker was escorted after his arrest.

Officer Dunahay denied any knowledge of force being used at the time of the incident or CEWs. He denied any knowledge that the officers were discourteous or discriminatory to Mr. Walker.

#### **4. Witness Statements**

##### **Witness A (Attempt)**

Witness A was unable to be interviewed. Mr. Walker provided Witness A's name and stated he would provide contact information to CCA at a later date. CCA has not received contact information. CCA attempted to contact Witness A at their employment and locate Witness A through multiple databases (including the Ohio Residents Database, Hamilton County Inmate Search, RMS, and Ohio Offender Search) but was unsuccessful.

##### **Witness B (Attempt)**

Witness B was unable to be interviewed. Mr. Walker provided Witness B's name and stated he would provide contact information to CCA at a later date. CCA has not received contact information. CCA attempted to locate Witness B through multiple databases (including the Ohio



Residents Database, Hamilton County Inmate Search, RMS, and Ohio Offender Search) but was unsuccessful.

**5. Documentary Evidence, Audio-Visual Evidence & Other Evidence**

**a. Police Documents**

CCA reviewed all CPD-related forms, including but not limited to the arrest form and information reviewed from CPD's Records Management System (RMS).

**b. Emergency Order**

On May 31, 2020, then-Cincinnati Mayor John Cranley issued an Emergency Order which implemented a curfew from 9pm – 6am in Cincinnati. The order states that the curfew is “based upon the emergency declaration currently existing in the City of Cincinnati” and that “[i]ndividuals are prohibited from appearing in the public spaces of the City of Cincinnati during the period of the curfew.”

**c. Body Worn Camera (BWC)**

**Lieutenant Schofield**

The events recorded by Lieutenant Schofield's BWC occurred on May 31, 2020, starting at 21:13:06 to 21:14:44, according to the BWC's timestamp. A review of that recording reveals the following:

At approximately 21:13:30, Lieutenant Schofield walked towards Black Fern Tattoo. Mr. Walker stood outside on the sidewalk, and four individuals stood in the doorway. Multiple officers said, “Go inside,” and one officer added, “Or you will be subject to arrest.” Mr. Walker had his hands raised with his palms open. Specialist Young walked to Mr. Walker and placed his hands on Mr. Walker's left arm. Mr. Walker raised his right arm higher and backed away and Specialist Young attempted to turn him towards the building glass by turning his upper left arm.

Lieutenant Schofield drew his TASER and pointed it at Mr. Walker. He yelled, “TASER! TASER!” Specialist Young held Mr. Walker's left wrist with his left hand, while Officer O'Connor brought down Mr. Walker's right arm and held it with both hands. Lieutenant Schofield added, “Put your hands behind your fucking back!” Specialist Young held Mr. Walker's left wrist with both hands. Mr. Walker began to yell but when the light of the TASER shone on his face, Mr. Walker closed his eyes, fell back against the building, and slid down. Specialist Young backed away and let go of Mr. Walker; Officer O'Connor held onto Mr. Walker's right wrist.

Once seated on the ground, Mr. Walker raised both of his hands in the air. Mr. Walker and the bystanders continued to shout about his actions. Lieutenant Schofield directed him to put both of his hands behind his back. One bystander, who stood in the doorway and within a couple feet of Lieutenant Schofield, screamed repeatedly, “He was working!” Lieutenant Schofield yelled, “Get the fuck back!” She continued to scream. Lieutenant Schofield, whose TASER remained in his right hand, removed the chemical irritant from his belt, pointed it at the bystander, and yelled, “Get back!” three times. The bystander moved further into the store but continued to scream at

Lieutenant Schofield. Lieutenant Schofield returned the TASER and chemical irritant to his belt. He said, "Just stay inside," and walked away.

### **Officer Sean O'Conner**

The events recorded by Officer O'Connor's BWC occurred on May 31, 2020, starting from 21:13:51 until 21:14:42, according to the BWC's timestamp. A review of that recording reveals the following:

Mr. Walker stood with his back to Black Fern Tattoo. Officer O'Connor held onto Mr. Walker's right wrist and upper arm and Specialist Young held onto Mr. Walker's left wrist. When the light from Lieutenant Schofield's TASER turned on, Mr. Walker began to slide down the walker. Specialist Young backed away, with both of his hands in front of him. Officer O'Connor held onto Mr. Walker's upper arm. Mr. Walker put both of his arms above his head and Officer O'Connor held onto Mr. Walker's right wrist.

Mr. Walker sat on the ground. Specialist Young pulled on the left sleeve of Mr. Walker's shirt and then took Mr. Walker's arm. Officer O'Connor and Specialist Young pulled Mr. Walker to his feet. Officers O'Connor and Dunahay held onto Mr. Walker as Specialist Young applied the flex cuffs. Mr. Walker appeared upset and made several comments to the officers about his actions. Officer O'Connor told Mr. Walker to stop. Specialists Young and Newman escorted Mr. Walker away. Officer O'Connor deactivated his BWC.

### **Sergeant Bricker**

The events recorded by Sergeant Bricker's BWC occurred on May 31, 2020, starting from 21:13:00 until 21:24:57, according to the BWC's timestamp. A review of that recording reveals the following:

Specialist Young led two officers across Court Street towards Black Fern Tattoo. When Sergeant Bricker's audio began, multiple people were speaking, but officers can be heard stating, "Go inside." Sergeant Bricker stated, "You are being advised you need to return inside, or you'll be subject to arrest." As Specialist Young approached Mr. Walker, Sergeant Bricker repeated, "Go inside or you'll be subject to arrest." Sergeant Bricker walked away from the interaction and began to move around a white FOX19 van.

Several more officers arrived, and voices elevated. Sergeant Bricker returned but due to the presence of several officers between him and Mr. Walker, the encounter could not be viewed clearly from his vantage point. Bystanders stood in the doorway of the business and yelled that Mr. Walker was working. Other officers directed the bystanders to leave. Sergeant Bricker pointed and said, "Go inside." He walked over to where officers placed flex-cuffs on him. Mr. Walker reiterated his explanation. Sergeant Bricker left the area to assist with arrested individuals by Queen City Exchange. The remainder of Sergeant Bricker's BWC was not relevant to the allegations.

## **Specialist Newman**

### Video 1:

The events recorded by Specialist Newman's BWC occurred on May 31, 2020, starting from 21:13:16 until 21:14:54, according to the BWC's timestamp. A review of that recording reveals the following:

Specialist Newman crossed Court Street towards Black Fern Tattoo. Several other officers walked there in front of him. As he approached, Specialist Young stepped towards Mr. Walker and grabbed left forearm. At 21:13:46, Mr. Walker moved his left arm across his body and away from Specialist Young. Mr. Walker moved again and raised his right arm above his head. Second Officer reached for Mr. Walker's hand as Specialist Young held onto his left forearm. Lieutenant Schofield warned of impending TASER use.

Meanwhile, multiple bystanders stoop in the doorway of Black Fern Tattoo; they used their phones to record the encounter and repeatedly yelled that Mr. Walker was working. In front of Specialist Newman, a second officer drew his TASER and pointed it at Mr. Walker. Specialist Newman remained behind the officer for a few seconds, blocking the view of Mr. Walker. When Specialist Newman moved to the right, Mr. Walker sat on the ground, against the building, with his hands in the air. In the commotion, the officers gave the bystanders by the store repeated commands to go inside; they did not comply. Specialist Newman moved towards Mr. Walker, as he was pulled to a standing position by Specialist Young and Second Officer. Mr. Walker argued against his arrest, stating that he was working and not involved in the protest. Second Officer placed Mr. Walker in flex cuffs as Specialist Newman gave Mr. Walker the Miranda warning. Specialist Newman escorted Mr. Walker towards the other arrested individuals by Queen City Exchange and deactivated his BWC.

### Video 2:

The video was captured on May 31, 2020 from 21:15:36 until 21:16:27.

Specialist Newman stood by Specialist Young as he searched and spoke to Mr. Walker. It captured the conversation as detailed in Officer Brown's BWC until Specialist Newman deactivated his BWC.

## **Officer Jawanda Brown**

The events recorded by Officer Brown's BWC occurred on May 31, 2020 starting from 21:07:58 until 21:25:30, according to the BWC's timestamp. A review of that recording reveals the following:

Officer Brown supported other officers during the protests. She assisted with an arrested individual, and they remained as directed near the Queen City Exchange. At 21:15:03, Specialist Young placed Mr. Walker by Officer Brown. Specialist Young stated, "Let me do my business first, and I will answer all of your questions. I can give you that much." Mr. Walker agreed. Specialist Young searched Mr. Walker. Officer Brown stepped further away, so Specialist Young's and Mr. Walker's conversation was not entirely audible. At 21:15:56, Specialist Young placed his hands on Mr. Walker's shoulders and stated, "When we tell you to go inside, you have to listen." Mr. Walker started to speak. Specialist Young stated, "Hey, look, look, look. Let's do

something. Let's do something here. I'm not going to interrupt you. You don't interrupt me. You go first." Mr. Walker explained that prior to Specialist Young's arrival, a different officer advised he could remain outside – he followed the officer's order and wanted to know why Specialist Young contradicted that officer. Specialist Young replied, "When I told you to go inside, that's a new order and you know better than that. You know you should be inside."

Specialist Young moved Mr. Walker next to the arrested individual by Officer Brown. At 21:16:36, Specialist Young added, "The last thing I'm going to say is you got to be self-aware of what's going on downtown right now. When a cop walks up to you and looks you right in the eyes and says, 'You got to go inside,' that's what you got to do." Mr. Walker replied, "I had to finish my painting." They repeated these comments. Mr. Walker asked, "What was harm in what I was doing?" Specialist Young replied, "Everyone's got to be inside." Their conversation continued.

At 21:17:39, Specialist Young asked other officers whether the officers were taking photographs with the people the officers arrested. Specialist Roderick Malone took a photograph of Specialist Young and Mr. Walker. Specialist Young escorted Mr. Walker towards a HCJC transport van. The remainder of Officer Brown's BWC was not relevant to the allegations.

#### **Officer Daniel Brockmann**

The events recorded by Officer Brockmann's BWC occurred on May 31, 2020 starting from 21:07:44 until 21:26:41, according to the BWC's timestamp. A review of that recording reveals the following:

Officer Brockmann supported other officers during the protests. He assisted with an arrested individual, and they remained as directed near the Queen City Exchange. At 21:17:37, Officer Brockmann asked Specialist Malone to take a photograph with him and the arrested individual. The man asked, "So you can post it or tag it on my page?" Officer Brockmann explained it was for court purposes due to the number of individuals arrested. He escorted the arrested individual to the HCJC transport van.

At 21:18:24, Officer Brockmann spoke to an officer to provide the arrested individual's information. As he did, Specialist Young and Mr. Walker approached the HCJC transport van. They spoke briefly before Specialist Young placed Mr. Walker into the van. From 21:19:20 until 21:19:45, Officer Brockmann's audio is out, which includes a period he spoke to Specialist Young. Officer Brockmann remained by the transport van. The remainder of Officer Brockmann's BWC was not relevant to the allegations.

#### **d. Media Footage**

Multiple news outlets reported Mr. Walker's encounter with CPD and produced footage provided to them.

#### **WCPO (video credit: Mariah Johnston)**

The angle of the video is from behind Mr. Walker's left arm. Specialist Young held onto Mr. Walker's left wrist with both hands, while Officer O'Connor held onto Mr. Walker's right wrist with his right hand before Mr. Walker leaned back against the wall and sank to the ground. A woman yelled, "He's working! He's working!" Lieutenant Schofield held his TASER in his right hand,

pointed at Mr. Walker, and chemical irritant in his left hand, pointed towards the store; he yelled, "Get back!"

FOX19 (video credit: unattributed)

Video 1:

The angle of the video is taken from a second-floor building. Mr. Walker stood on the sidewalk outside of a shop with other individuals. Specialist Young and four other officers walk towards him. They communicated briefly and then Specialist Young moved towards Mr. Walker; Specialist Young moved to his right and placed his hands on Mr. Walker's arms. Mr. Walker put his arms forward as he backed into the glass wall behind him as he raised his right arm above his head. Specialist Young moved forward and held onto Mr. Walker's left arm as Officer O'Connor reached for Mr. Walker's right arm.

Video 2:

The angle of the video is from behind Mr. Walker's left arm. Specialist Young approached Mr. Walker. Mr. Walker stated, "I'm working." Specialist Young walked towards Mr. Walker with his hands open and replied, "No. Nope. Nope. Inside." *(Their conversation continues for a few seconds but is inaudible as the news staff muted it for a voiceover.)*

**e. Clerk of Courts**

Mr. Walker was charged with Ohio Revised Code (ORC) §2917.13 Misconduct at an Emergency in the 1st Degree. He was charged via a Criminal Complaint signed by Officer Julie O'Brien. The charge was ultimately dismissed.

**C. Significant Discrepancies & Clarifications**

1. Mr. Walker did not have the name of the involved officers at the time of the complaint. CCA identified Specialist Young as the officer who initiated Mr. Walker's arrest. This has been updated where necessary for clarification.

2. CCA identified Officer O'Connor as the second officer who assisted Specialist Young at the time of Mr. Walker's arrest. Officer O'Connor resigned from CPD before CCA was able to interview him regarding his involvement.

3. As this case received media footage, CPD released a statement regarding the incident to FOX19:

"Tough to tell what exactly transpired there. Mr. Walker will have his opportunity to explain his actions in court as will our arresting officers. We have too many arrests that have occurred over the past four days to attempt to analyze the merits. Court is the appropriate place & time to do just that."

4. Mr. Walker stated he had video of the incident and would provide it to CCA. To date, CCA does not have footage of the incident from Mr. Walker.

#### D. Authorities

See Appendix.

#### E. Analysis

##### 1. **Allegation: Improper Seizure**

In Ohio a person may be arrested for the offense of Misconduct at Emergency in the 4<sup>th</sup> Degree, a misdemeanor criminal offense, if that person “[fails] to obey the lawful order of any law enforcement officer engaged in the law enforcement officer’s duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind.” ORC §2917.13.

On May 31, 2020, then-Cincinnati Mayor John Cranley issued an Emergency Order which implemented a curfew from 9pm – 6am in Cincinnati. The Order was based on an “emergency declaration” and stated that “[i]ndividuals are prohibited from appearing in the public spaces of the City of Cincinnati during the period of the curfew.”

At approximately 9:13pm on that day, Specialist Young arrested Mr. Walker outside of his place of business. In their individual statements, Mr. Walker and Specialist Young stated that Specialist Young directed Mr. Walker to go inside, but Mr. Walker refused because a previous officer advised Mr. Walker could remain outside. BWC footage showed multiple officers directed Mr. Walker to go inside, but he did not. Specialist Young told CCA that Mr. Walker was arrested after he refused to follow the officer’s orders and that he was charged with “Misconduct at Emergency.”

CPD Procedure states §12.554 Investigatory Stops that officers may arrest individuals if they are “supported by probable cause to believe the citizen is committing or has committed a criminal offense.” Under the law, “Whether probable cause exists depends on the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest . . . . It does not depend on the officer’s subjective motivation or his stated reason for making the arrest.” *Hastings v. Hubbard*, 151 F. App’x 357, 362 (6th Cir. 2005) (internal citations omitted).

Given the state of emergency that existed in Cincinnati on May 31, 2020, and Specialist Young’s knowledge of the emergency declaration; and due to Mr. Walker’s failure to comply with Specialist Young’s specific directive to return inside (for which there is ample evidence); our investigation determined that Mr. Walker was lawfully subject to arrest for ORC §2917.13 Misconduct at Emergency in the 4<sup>th</sup> Degree.

We note that Mr. Walker was charged with Misconduct at an Emergency as a 1<sup>st</sup> Degree misdemeanor, which requires some proof that an offender has created “a risk of physical harm to persons or property.” Our investigation has uncovered no evidence that Mr. Walker engaged in any conduct creating “a risk of physical harm to persons or property.” Accordingly, there was no probable cause to arrest for Misconduct at Emergency in the 1<sup>st</sup> Degree, and the reliance on that

charge by Cincinnati Police Officers in advancing a prosecution of Mr. Walker is concerning. Nonetheless, on the question of probable cause to arrest, the evidence indicates that specific facts known to Specialist Young at the time he took Mr. Walker into custody provided a reasonable basis to believe that Mr. Walker had violated Ohio's Misconduct at Emergency law (albeit only at the 4<sup>th</sup> Degree level). In addition, Specialist Young confirmed that Mr. Walker was charged with "Misconduct at Emergency," suggesting that Specialist Young understood that "Misconduct at Emergency" was the basis for the arrest. Therefore, CCA determined that the allegation of Improper Seizure by Specialist Young is exonerated.

## **2. Allegation: Excessive Force**

CPD Procedure § 12.545 Use of Force defines "force" to include "any strike, instrumental contact with a person, or any significant physical contact that restricts the movement of a person... the term does not include escorting or handcuffing a person with no or minimal resistance." BWC footage showed that during the encounter, the officers placed their hands on Mr. Walker's wrists and arms to effect the arrest and to raise him from his seated position; no apparent force was used. Therefore, CCA determined the allegation of Excessive Force to be unfounded.

## **3. Allegations: Discrimination & Discourtesy**

Mr. Walker alleged the officers "acted on their personal biases" and were inappropriate and discriminatory to him. He stated they "mocked" him and took photographs of themselves alongside him, "as if [he] was a trophy." CPD Manual of Rules and Regulations states officers must "perform the functions of their office without fear, favor, or prejudice" and "shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors, and associates." BWC footage confirmed multiple officers took photographs of officers next to arrested individuals. CPD Procedure 12.515 Nonviolent Demonstration Arrest: Mass Arrest Procedure states that during anticipated mass arrests, "identification photos of the participants arrested, if any, will be taken with the arresting officer," although it specifies the photographs would be taken at Central Intake. Although Specialist Young's BWC was not activated, other BWC footage captured Specialist Young's interaction with Mr. Walker following his arrest. There was no indication that Specialist Young was discourteous to Mr. Walker, that any officer "mocked" him during that process, or that any individual officer acted out of prejudice or personal bias. Therefore, CCA determined that the allegations were unfounded.

## **4. Allegation: Improper Procedure (Use of Force)**

CPD Procedure § 12.545 Use of Force states that an officer's right to make an arrest...necessarily carries with it the right to some degree of physical coercion, or threat thereof, to effect it." The procedure further defines active resistance to be "physically evasive movements to defeat the officer's attempt at control, to include fleeing, bracing, tensing, pushing, or verbally signally an intention to avoid or prevent being taken into or retained in custody." BWC footage showed Mr. Walker demonstrated active resistance when, after the officers attempted to put him in custody, Mr. Walker pulled his hands and backed away from the officers. CPD's Tactical Patrol Guide states CEWs may be used as a tactic to gain compliance in circumstances involving active resistance. During the encounter, two officers displayed their CEWs at Mr. Walker and issued a warning about imminent TASER use. No CEWs were deployed and Mr. Walker's immediate and

subsequent descent to a seated position was not the consequence of police action. Therefore, CCA determined the display of the CEW was permissible.

*Collateral Allegations*

**5. Allegation: Improper Procedure (BWC)**

CCA was not able to view the entirety of the contact that led to the allegations. CPD Procedure §12.540 Body Worn Camera System states officers are required to activate their BWC system during law enforcement-related encounters and self-initiated activities. Specialist Young stated his BWC was not activated during the encounter because the battery had died after not retaining a charge due to the long shifts of the protests. CCA was unable to confirm that the dead battery was the cause of the lack of footage. Therefore, CCA was unable to determine whether Specialist Young was in violation of CPD's policy, procedure, and training.

**F. Findings**

*Original Allegations*

Specialist Nathaniel Young

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

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

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

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

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Lieutenant David Schofield

**Improper Procedure (Use of Force)** – The evidence shows that the alleged conduct did occur but did not violate CPD policies, procedures, or training. **EXONERATED**

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## *Collateral Allegations*

Specialist Nathaniel Young

**Improper Procedure (BWC)** – There are insufficient facts to decide whether the alleged misconduct occurred. **NOT SUSTAINED**

### **G. Observations**

See “Section VI. Key Observations” in CCA’s consolidated report on this investigation and ten other protest investigations, GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI.

### **H. Recommendations**

See R2301, R2302, R2303, R2305, and R2306 in “Section VII. Recommendations” of CCA’s consolidated report on this investigation and ten other protest investigations (GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI).

### **I. Previous Contacts & Commendations**

#### **Specialist Young**

##### *Previous Contacts with CCA*

Specialist Young had one previous contact with CCA in the past three years.

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
18124	Excessive Force	Exonerated

##### *Previous Contacts with IIS*

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

##### *Commendations*

Specialist Young received three commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
06/07/2017	CPD
06/19/2017	CPD
01/31/2020	CPD

## **Sergeant Bricker**

### *Previous Contacts with CCA*

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

### *Previous Contacts with IIS*

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

### *Commendations*

Sergeant Bricker received one commendation in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
12/19/2019	CPD

## **Lieutenant Schofield**

### *Previous Contacts with CCA*

Schofield had seven previous contacts with CCA in the past three years.

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
18211	Discourtesy	Not Sustained
19002	Harassment	Unfounded
19002	Discrimination	Unfounded
19002	Improper Search	Exonerated
19022	Improper Stop	Exonerated
19022	Improper Procedure (Contact Card)	Sustained
20070	Improper Procedure	Unfounded
20070	Improper Search	Exonerated
20070	Improper Stop	Exonerated
20072	Discrimination	Unfounded
21027	Improper Stop	Pending
21027	Search	Pending
21027	Discourtesy	Pending
21027	Pointing of a Firearm	Pending
21027	Harassment	Pending
22064	Discourtesy	Referred
22064	Lack of Service	Referred

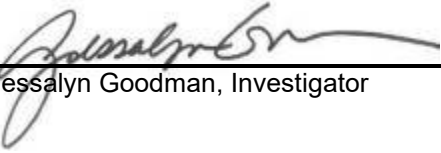
### *Previous Contacts with IIS*

CCA is unaware of any additional previous contact by Lieutenant Schofield with IIS.


### *Commendations*

Lieutenant Schofield received one commendation in the past three years.

Date	Source of Commendation Received
01/05/2020	CPD

  
\_\_\_\_\_  
Jessalyn Goodman, Investigator

1/30/2023  
Date

  
\_\_\_\_\_  
Gabriel Davis, Director

1/30/2023  
Date

**A. Complaint Summary**

**Complainant:** Benjamin Erd

**Date:** May 31, 2020

**Time:** 9:05 p.m.

**Location:** Alley near Race Street

**CCA Receipt:** June 2, 2020

**Allegations:** Excessive Force; Improper Seizure

On May 31, 2020, at 9:05 p.m., Mr. Benjamin Erd participated in a peaceful protest on Vine Street. Several CPD officers and SWAT members, armed with shotguns and assault rifles, told the protestors they were violating curfew, and then released tear gas. The officers moved the protestors towards an alley off Race Street; trapped in a circle, they were detained and arrested. The officers did not explain if they were arresting or detaining individuals until the individuals asked. A SWAT officer told Mr. Erd to get on the ground and his wrists were zip-tied.

Before Mr. Erd entered a Metro bus to be transported to the Hamilton County Justice Center (HCJC), he complained to Officer Phillip Herrmann that the flex-cuffs were too tight and cutting off his circulation. Officer Herrmann removed the initial flex-cuffs and applied new ones; however, the new flex-cuffs were tighter and uncomfortable to the point he believed he was “going to die” if they were on too long. It was approximately five minutes before they were removed by another officer. Mr. Erd sustained lacerations and bruising to his wrists. Mr. Erd believed Officer Herrmann’s actions were excessive.

**B. Summary of Evidence**

**1. Involved Citizen Statements**

**Benjamin Erd**

CCA interviewed Mr. Benjamin Erd on June 2, 2020. He provided the following additional information:

On May 31, 2020, at 9:05 p.m., Mr. Benjamin Erd, M/W/22, participated in a peaceful protest on Vine Street. Several CPD officers and SWAT members, armed with shotguns and assault rifles,

told the protestors they were violating curfew, and then released tear gas. Some protestors threw back water bottles. The officers moved the protestors towards an alley off Race Street; trapped in a circle, where they were detained and arrested. The officers did not explain if they were arresting or detaining individuals unless the individuals asked; no Miranda warnings were given. A SWAT officer told Mr. Erd to get on the ground and his wrists were zip-tied. Mr. Erd stated at that time, the zip-ties were not tight. The SWAT officer observed Mr. Erd holding spray paint and asked him if he were a "tagger." Mr. Erd was advised he was under arrest for "breaking curfew."

Before Mr. Erd entered a Metro bus to be transported to the Hamilton County Justice Center (HCJC) he complained to Officer Herrmann that because he had been pulling on them, the flex-cuffs were too tight and now were cutting off his circulation. Officer Herrmann removed the initial flex-cuffs and applied new ones. However, the new flex-cuffs were tighter and uncomfortable to the point he believed he was "going to die" if they were on too long. Mr. Erd advised officers immediately, although it was approximately five minutes before they were removed by another officer. Mr. Erd sustained lacerations and bruising to his wrists. Mr. Erd believed Officer Herrmann's actions were excessive.

While on the bus, Officer Carrie Hollyfield was helpful and explained the process to the individuals on the bus. Once at the HCJC, CPD officers and Hamilton County deputies remained with the individuals, who were forced to remain in the courtyard for 10 hours without food, water, or protection from the weather. Some individuals needed to urinate but were not able to use the restroom and urinated on themselves. The officers did not allow people to stand and if people tried, the officers "forcibly" made the individuals sit. Mr. Erd stated, "Officer Hollyfield got something done to the point where I was able to use the bathroom."

## **2. Subject Officer Statements**

### **Officer Phillip Herrmann**

Officer Herrmann #P0109, M/W/42, is currently assigned to the Narcotics Unit. He has been a CPD member since 1997. Officer Herrmann was in uniform, attached to the CDRT team, and did not wear a BWC.

CCA interviewed Officer Herrmann on November 4, 2020, at 9:56 a.m. Officer Herrmann provided the following information:

Officer Herrmann's specific job that day was to escort the CDRT team and remain with the van to ensure it was not damaged. Members from the CDRT and SWAT team arrested several people for curfew violations. Officer Herrmann watched the people that were arrested line up on Race Street waiting for the Metro bus to arrive to transport them to the HCJC. Officer Herrmann did not recall specifically coming into contact with Mr. Erd, but he recalled approximately six people who complained the flex-cuffs were too tight. Officer Herrmann cut those flex-cuffs off and placed new ones on them. Most people were appreciative of the flex-cuff readjustments.

### **3. Officer Witness Statements**

#### **Officer Carrie Hollyfield**

Officer Hollyfield #P0159, F/W/47, is currently assigned to Youth Services-School Resource Officer. She has been a CPD member since 2014. Officer Hollyfield was in uniform; her BWC was activated.

CCA interviewed Officer Hollyfield on November 4, 2020, at 10:28 a.m. Officer Hollyfield provided the following information:

Officer Hollyfield stated she was instructed by Captain Aaron Jones to stand with the protestors who were already restrained with flex-cuffs and instructed them to get on the Metro Bus. While on the bus, some of the arrested individuals complained the flex-cuffs were too tight, but Officer Hollyfield could not specifically recall Mr. Erd as one of the complainants. Officer Hollyfield relayed she did not know how to loosen the zip ties once they were on but advised they would get them off as soon as possible.

Officer Hollyfield's bus was the second bus to arrive at the HCJC. Her bus had to wait until the passengers left the first bus. Officer Hollyfield exited the bus and spoke with a deputy sheriff who told Officer Hollyfield that the arrested would be able to exit the bus and use the restroom escorted by a deputy. A couple of people requested to use the restroom and they were allowed to go.

### **4. Witness Statements**

Mr. Erd indicated he would provide the names of those nearby at the time of his arrest. CCA also sent a letter to Mr. Erd. To date, Mr. Erd has not provided identifying or contact information for those individuals.

### **5. Documentary Evidence, Audio-Visual Evidence & Other Evidence**

#### **a. Police Documents**

CCA reviewed all CPD-related forms, including arrest forms, and BWC.

#### **b. Body Worn Camera (BWC)**

#### **Officer Hollyfield**

The events recorded by Officer Hollyfield's BWC occurred on May 31, 2020, according to the BWC's timestamp at 9:41 p.m. A review of that recording reveals the following:

Upon arrival at 9:41pm, a group of protestors yelled, "Let us go home." Officer Hollyfield remained behind a line of officers on the sidewalk. An officer on the mega horn gave inaudible commands. Several protestors were placed in flex-cuffs and arrested. Officer Hollyfield maintained control of a female protestor until the officer entered the metro bus at 10:37 p.m.

At 11:19 p.m., while on the Metro bus, an unknown seated male yelled at Officer Hollyfield. As Mr. Erd stood in the middle of the bus, Officer Hollyfield attempted to explain that there was another bus in front of their bus and that he would be first in line so that he could use the bathroom. Officer Hollyfield asked Mr. Erd if he could sit down, Mr. Erd stated if he sat, he would “pee.” Officer Hollyfield exited the bus and spoke to a HCJC deputy sheriff, who allowed her to remove the male off the bus to use the restroom. Several others also requested to use the restroom. The deputy agreed to have her get Mr. Erd off the bus to use the bathroom and she turned him over to the deputy, then she returned to the bus.

**c. Clerk of Courts**

Mr. Erd was charged with Misconduct at Emergency in the 1st Degree § 2917-13 Ohio Revised Code (ORC). He was charged via a Criminal Complaint signed by Officer Robin White. The charge was dismissed on June 7, 2021.

**C. Significant Discrepancies & Clarifications**

At the time of the incident, CPD Body Worn Camera System §12.540 did not require CDRT or SWAT officers to wear BWCs. On April 15, 2021, the policy was revised to require non-uniformed assignments are required to wear and power on their BWC.

**D. Authorities**

See Appendix.

**E. Analysis**

**1. Allegation: Excessive Force**

Mr. Erd participated in a protest on Vine Street. During the protest, Mr. Erd was taken into custody by an unknown SWAT officer in an alley off of Race Street and arrested for Misconduct at Emergency (ORC § 2917-13). His hands were “zip-tied.” During his arrest, Mr. Erd complained the flex-cuffs were too tight. He reported that Officer Herrmann removed his flex-cuffs and placed new ones on, but the new restraints were tighter than before.

CPD Procedure §12.600 Prisoners: Securing, Handling, and Transporting (A) Handcuffing states “flex-cuffs are permitted” during “[m]ass arrests at demonstrations or civil disturbances.” Under that policy, all handcuffs “should be *reasonably* snug . . . .” (emphasis added).

In addition, courts have held that under certain circumstances, “unduly tight or excessively forceful handcuffing” may constitute excessive force, and that the following three-part test, in addition to the standard *Graham v. Connor* factors, are relevant to the analysis: 1) whether the complainant “complained the handcuffs were too tight;” 2) whether “the officer ignored those complaints;” and 3) whether the complainant “experienced ‘some physical injury’ resulting from the handcuffing.” *Hughey v. Easlick*, 3 F.4th 283, 289 (6th Cir. 2021).

According to Mr. Erd, approximately five minutes after Officer Herrmann readjusted the flex-cuffs that had been initially placed on Mr. Erd, making them tighter than before, the flex-cuffs placed by Officer Herrmann were in turn adjusted by another officer. Although Mr. Erd reported he sustained lacerations and bruising to his wrists, CCA did not receive any documentation of his injury to determine its severity. Officer Herrmann did not recall the incident in detail, and CCA has identified no witnesses to provide an independent account of the encounter. Nor is there BWC footage showing Officer Herrmann readjusting the flex-cuffs. Therefore, there is not enough information or footage to determine by a preponderance whether Officer Herrmann's actions were within CPD's policy, procedure, and training.

## **2. Allegation: Improper Seizure**

In Ohio, a person may be arrested for the offense of Misconduct at Emergency, a misdemeanor criminal offense, if that person “[fails] to obey the lawful order of any law enforcement officer engaged in the law enforcement officer's duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind.” ORC §2917.13.

CPD Procedure states §12.554 Investigatory Stops that officers may arrest individuals if they are “supported by probable cause to believe the citizen is committing or has committed a criminal offense.” Under the law, “Whether probable cause exists depends on the reasonable conclusion to be drawn from the facts *known to the arresting officer at the time of the arrest* . . . . It does not depend on the officer's subjective motivation or his stated reason for making the arrest.” *Hastings v. Hubbard*, 151 F. App'x 357, 362 (6th Cir. 2005) (internal citations omitted) (emphasis added).

On May 31, 2020, then-Cincinnati Mayor John Cranley issued an Emergency Order which implemented a curfew from 9pm – 6am in Cincinnati. The Order was based on an “emergency declaration” and stated that “[i]ndividuals are prohibited from appearing in the public spaces of the City of Cincinnati during the period of the curfew.”

At approximately 9:05pm on that day, Mr. Erd was arrested by an unknown SWAT officer in an alley off Race Street while protesting. Mr. Erd was charged with Misconduct at Emergency in the 1st Degree. BWC footage from that day and time does not clarify who arrested Mr. Erd or placed flex-cuffs on his wrists. Officer Herrmann did not recall the incident in detail, and there were no identifiable witnesses to provide an independent account of the encounter.

Mr. Erd's arresting officer has not been identified and appears to be unknown to the Cincinnati Police Department. After an extensive review of BWC evidence, interviews with officers alleged to have been present, and review of available police records, CCA is aware of no officer who can attest to having knowledge of the specific facts surrounding Mr. Erd's arrest, or the basis for charging him with Misconduct of Emergency in the 1st Degree. CCA is aware of no officer who can attest to whether Mr. Erd failed to comply with a specific order on May 31, 2020. Nor does the evidence prove the identity of the officer who took Mr. Erd into custody that day.

We note that Mr. Erd was charged with Misconduct at an Emergency as a 1st Degree misdemeanor, which requires some proof that an offender has created “a risk of physical harm to persons or property.” The reliance on that charge by Cincinnati Police Officers in advancing a prosecution of Mr. Erd is concerning, particularly given that there appears to be no officer with first-hand knowledge who can attest to the necessary facts to establish probable cause for Mr.



Erd's arrest. Given the lack of evidence, we conclude that there is an insufficient factual basis to make a determination as to whether probable cause existed and whether the arrest was proper under CPD policy, training, and procedure.

**F. Findings**

Officer Philip Herrmann

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

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

**G. Observations**

See “Section VI. Key Observations” in CCA’s consolidated report on this investigation and ten other protest investigations, GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI.

**H. Recommendations**

See R2301, R2303, R2305, R2306, and R2307 in “Section VII. Recommendations” of CCA’s consolidated report on this investigation and ten other protest investigations (GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI).

**I. Previous Contacts & Commendations**

**Officer Herrmann**

*Previous Contacts with CCA*

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

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
18036	Procedure Violation-Referred	Info File

*Previous Contacts with IIS*

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


*Commendations*

Officer Herrmann received three commendations in the past three years.

Date	Source of Commendation Received
06/14/2018	Civilian
05/16/2019	Civilian
02/17/2020	CPD

  
\_\_\_\_\_  
Dena Brown, Chief Investigator

1/30/2023  
Date

  
\_\_\_\_\_  
Gabriel Davis, Director

1/30/2023  
Date

**A. Complaint Summary**

**Complainant:** Maira Arnaulda, Tyler Beringer, Robin Wilkins, Et al.

**Date:** June 1, 2020

**Time:** 8:15 p.m.

**Location:** 2000 Mohawk Place

**CCA Receipt:** June 3-5, 2020

**Allegations:** Improper Seizure; Improper Procedure; Discourtesy; Improper Procedure (BWC) – Collateral

*Twenty-seven (27) persons contacted CCA via email to file a complaint about the treatment of a woman, who was believed to be diabetic, and her sister by CPD police on June 1, 2020. Those emails were consolidated into a single complaint and are synthesized as follows:*

On June 1, 2020, a woman and her sister (referred to in this report as Witness A and Witness B) participated in a protest in Over-the-Rhine. It is believed they were there to pick up protestors at curfew. However, the woman was detained. During her detainment, her bag was seized from her. She and her sister advised the officer she was diabetic, and her blood sugar was dropping; she repeatedly asked a white, male officer to keep the bag near her or in her sight line in case she needed insulin. The officer acknowledged her request but refused to retrieve the bag or insulin. The officer claimed to be aware of diabetic needs but appeared to be “dismissive” of the seriousness of her request and laughed at her. There are concerns that the officer’s actions could have resulted in a medical emergency. It is unknown when she was able to obtain her insulin. It is unknown if she suffered any ill health effects. She was detained until 12am or 2am. At midnight, the officers allowed her to reposition her insulin pump as needed.

**B. Summary of Evidence**

**1. Involved Citizen Statements**

**Witness A and B**

Neither Witness A nor B filed a complaint regarding this incident. CCA attempted to contact them but received no response to date.

## **Witnesses C, D and E**

CCA made contact with Witness C, a Black female who (according to BWC (summarized below)) was driving a car carrying Witnesses A and B that was stopped by police. Witness C informed CCA that she did not want to provide a statement in connection with the investigation.

Others who were detained along with Witnesses A and B, including Witness D and E (described below) could not be identified and were not interviewed.

## **2. Subject Officer Statements**

### **Officer Raymond Marsh**

Officer Raymond Marsh, #PO092, M/W/39, is currently assigned to District 4, and he has been a CPD member since 2014. Officer Marsh was in uniform; his BWC was activated.

CCA interviewed Officer Marsh on January 25, 2021, at 06:22 a.m. He provided the following information:

Officer Marsh was assigned to District 4, riot platoon. On June 1, 2020, an 8:00 p.m. curfew was in place and the large crowd was told to disburse; many did not. The people specifically on Mohawk Place had been given multiple orders by SWAT over a PA system to disburse and move on. Officer Marsh's unit was told to help assist with the arrests and detentions which included 6-7 people including Witness A and Witness B, who were originally in a vehicle that was stopped.

A supervisor (Officer Marsh did not know the supervisor's name) ordered them out of the vehicle. Officer Marsh approached the driver's side of the vehicle. While the occupants exited, a female occupant fled. Officer Marsh briefly pursued her but realized she was running toward other officers, so he stopped and remained with the occupants who were seated on the sidewalk. Officer Marsh stated he activated his BWC late, which did not catch his brief pursuit.

Witness A Witness A left her bookbag inside of the vehicle. She yelled that she was a diabetic; having a "low" and needed insulin while holding a Cliff Bar. Officer Marsh stated to CCA "his training and experience, when you're having a low, you don't take insulin. Beyond that, I wouldn't administer medications to her or allow her, while she's in custody, to administer medications to herself."

There were multiple people seated on the ground, not searched, or handcuffed, just detained. Officer Marsh stated, "I'm not going to turn my back on that group to go fetch a bag right away. So ultimately, I tell her, "I'm not getting your bag yet. Your property will go with you, but I'm not getting it right now." This is where the video ensued. Unbeknownst to him, there were people seated on the ground that were recording the whole thing. After everyone was properly handcuffed and restrained for approximately 5-10 minutes, Officer Marsh had another officer retrieve the bookbag. The bookbag was placed on the ground in front of her and it went on the bus to the detention center with her.

Witness A Witness A had an insulin pump app installed that synced Bluetooth wirelessly to her cellphone, which she asked Officer Marsh to check for her. Officer Marsh knelt down got Witness A's Witness A phone out for her and she instructed him how to check the app to see what her blood sugar was, which was 205. Witness B Witness B began having a panic attack, she never lost consciousness, breathing heavily, and weak on her feet. Officer Marsh attempted to calm her. Officer Marsh stated he "deal with people that we arrest that commonly act that way and, I mean. I'm kinda used to it." Officer Marsh continued to try to calm and reassure her then placed his hand on her shoulder as she sat on the ground to "keep her from flopping over on the ground." Witness B Witness B was conscious and responded to his prompts but kept throwing herself on the ground as if she were disabled.

The transport bus arrived on scene approximately 50 feet away and the officers escorted their people over to a wall where they were officially searched by a female. And their bags were double checked and then they were put on the bus. Officer Marsh later learned that, ultimately, Witness A wanted to take her insulin with her, did not need it right then, but she was upset. Officer Marsh denied being discourteous at any time.

### **Officer Nicholas Clark**

Officer Nicholas Clark, #PO377, M/W/36, is currently assigned to the Gang Enforcement Squad (GES), and he has been a CPD member since 2016. Officer Clark was in uniform; his BWC was activated.

CCA interviewed Officer Clark on January 25, 2021, at 12:58 p.m. He provided the following information:

On June 1, 2020, Officer Clark was assigned to the District 4 squad that dealt with the crowds. It was a little after 8 o'clock when the curfew became in effect, and we were ordered to arrest the curfew violators. A vehicle was stopped by a Black female Sergeant, and she ordered the officers nearby to get everyone out of the vehicle and detain them. Officer Clark detained multiple 5 to 7 people in that vehicle. One person fled on foot.

Officer Clark did not know the name of the Sergeant who ordered the detention. Officer Clark believed that the Sergeant wanted the vehicle stopped because the Sergeant had observed someone get into the vehicle in order to avoid arrest.

The remaining vehicle occupants, other than the one who fled, were detained and officers sat them on the curb. Officer Clark stood behind the group, as they waited for the transport bus to arrive. When initially detained, Witness A said, "I need my bag. I need my bag." Officer Clark said, "Don't worry, we'll get your bag for you before you, you know. You're not, like. You're just being detained. We'll get your property and your bag for you." Ms. Wilkins advised another officer that her insulin was in her bag. Officer Clark stated to CCA that he was not paying attention to the conversation they were having because "there was a lot going on. There was a lot of people around us, a lot of people running, the bike squad was going into the woods, trying to detain people. SWAT was there. It was a pretty dynamic situation."

Witness A was given her bag eventually and asked if she could grab a snack out of it and she was allowed to eat a candy bar. Witness A also checked her sugar level on her phone. Officer Marsh said, "It's, ok? We're good, right?" and she said, "Ya, we're good." Witness A was verbal and loud about the situation, but he believed she was more worried about getting to her bag than if she was going to be taken to the justice center or not. Witness A was escorted to the bus; her bag was with her.

### **3. Officer Witness Statements**

There were none.

### **4. Witness Statements**

#### **Robin Wilkins**

CCA interviewed Robin Wilkins and she provided the following information:

Ms. Wilkins was not present for this incident; she observed it posted on Twitter. It was originally posted on TikTok. Witness Ms. Wilkins observed a young woman who appeared to be 19 or 20 years old, at the protest, and she was helping to pick some people up after curfew. This was her account of the events. "She posted a video in which she and her sister were being detained by an officer. Her sister was clearly very distressed, started to panic and started to pass out. The girls are shown sitting and kneeling on the pavement, while the officers are standing in front of them having a conversation. One of them identified themselves as a diabetic and asked to have her bag or to at least have it in her line of sight several times because it had her insulin in it. She says, "I need my insulin. I need my insulin. It's in my bag. Can I please get it out of my bag? I am diabetic. My blood sugar is going to drop. I at least need to have it in my line of sight." Three officers were visible in the video footage.

Due to the panic attack, she had taken a glucose tab to manage her blood sugar, but then she needed her insulin to manage the spike. The responding officers listened, said they understood but did not give her access to the bag and they were detained for several hours. They were told that they were going to have access to a medic during this detention period, but that turned out not to pan out.

Ms. Wilkins was very concerned and realizes that it is a stressful situation for everyone involved, but it is important to keep an eye on that kind of thing and wanted to bring it to CCA's attention.

#### **Maira Arnaulda**

CCA interviewed Maira Arnaulda, and she provided the following information:

Ms. Arnaulda stated she was not present for this incident, but observed it posted on Twitter. There were a number of officers, but their badges were not clear. Ms. Arnaulda stated she just wanted to file a complaint and provided no further information.

## **Tyler Beringer**

CCA interviewed Tyler. Beringer and he provided the following information:

Mr. Beringer stated he was not present for this incident but was shown several videos. From his understanding, a young woman was detained at the protest. She identified herself as a diabetic several times, in addition to her sister said that as well. They mentioned that her blood sugar was either falling or rising, and that she really needed to access her insulin in her medication bag. The officer standing in front of her said several times, or at least made several acknowledgements that he heard her, understood that she's diabetic, and understood that she needed her supplies. At one point, he literally said, "I understand. I know how diabetics works." But he still insisted that she would not be allowed to go and get her medication.

Mr. Beringer found this incident troubling. "Insulin for a diabetic is literally like oxygen. Even a short amount of time without it can be really traumatic." Mr. Beringer briefly spoke to @lexiejewels (Witness A) through Twitter.

Mr. Beringer got the impression from Witness A's messages that she was not "super keen to go on about it." Mr. Beringer believed:

[T]he really offensive part was just the attitude of the officer. The fact that he was very calm, he wasn't aggressive. . . [But he was] almost a little bit just blasé about it. She was in extreme distress, and he just said like, 'Ya, I know you're diabetic.' And ya, at one point he is laughing, and just like. It really, really, deeply made me uncomfortable, how just. Just how much he did not seem to care, I guess.

The officer did not seem like a supporter of community in that moment.

### **5. Documentary Evidence, Audio-Visual Evidence & Other Evidence**

#### **a. Police Documents**

CCA reviewed all CPD-related forms, including but not limited to arrest forms, BWC footage, and the IIS Report.

#### **b. Body Worn Camera (BWC)**

### **Officer Nicholas Clark**

The events recorded by Officer Clark's BWC occurred starting at 20:15:43 hours on June 1, 2020, according to the BWC's timestamp. A review of that recording reveals the following:

As Officer Clark stood in the street at 20:26:12 hours, he observed a Black female officer standing in front a stopped vehicle. Officer Clark responded to assist. Other officers also responded and ordered the occupants out of the vehicle. Witness A was sitting on an unknown male's (Witness D's) lap who was seated on the passenger side of the vehicle. A Black female (Witness C) was

sitting in the driver's seat. Witness B also appeared to exit the vehicle along with two other white female occupants. Witness E (a white female) can then be seen running away from another officer who runs after her; it is unclear if Witness E exited the car with the other occupants or if she came from elsewhere.

At 20:26:25 hours, as soon as Witness A exited the vehicle, she yelled, "I was trying to get my insulin!" Witness A was ordered to kneel down on the ground, and she complied. Witness A asked Officer Clark if she could eat her snack because her blood sugar was low and asked for her bookbag because it had her insulin in it. Officer Clark ordered the occupants to sit down on the sidewalk, and they complied with that order. Witness A advised the officers her insulin was in the red bookbag in the vehicle. Multiple conversations occurred at the officers used flex-cuffs and handcuffed the arrested suspects.

At 20:27:37 Witness C stated she lived down the street and observed several people who needed help and she was taking them home. Witness D stated the officers were scaring people with a tank. CPD officers stated they did not have a tank. Witness C stated again she observed a tank.

Witness A stated at 20:27:56 to Officer Marsh "you can search the bag but can I have my insulin near me. You can search it all you want, you won't find anything in it." At approximately 20:28:10, Witness A stated that she needed to have her insulin "sitting in front of me" and "in my sight; I can't go without it." Witness A further asserted, "my blood sugar is dropping." Witness B told Officer Marsh, "If she doesn't have her insulin she will die." Officer Marsh replied, "I understand what diabetic [inaudible]." Witnesses A and B both continued to plead that Witness A needed her bag.

A male Black officer approached with a white female suspect (Witness E) and yelled out "[inaudible]...should have done that...8:00 clock is curfew in violation of city law." Witness E sat with the arrested group.

Officer Marsh laughed at 20:28:37 and Witness B questioned him why he was laughing. Officer Marsh pointed in the direction of the unknown Black male officer when he responded but his response could not be heard due to Officer Clark's radio speaking at the same time.

At 20:32:50 hours, an officer retrieved Witness A's bookbag and placed it beside her. Officer Clark handcuffed Witness A as she advised the officers she wanted her insulin to remain with her. Witness B kept leaning forward and the officers positioned her so she was sitting upright. Members of the arrested group tried to calm Witness B from slumping over. The officers escorted the arrested group over to the bus. Officer Clark picked up Witness A's face mask and placed it in her bookbag as requested and placed the bookbag in front of her feet.

### **Officer Raymond Marsh**

The events recorded by Officer Marsh's BWC occurred starting at 20:31:35 hours on June 1, 2020, according to the BWC's timestamp. A review of that recording reveals the following:



Officer Marsh's BWC was not activated until after the suspects were placed in flex-cuffs. Officer Marsh placed his hand on Witness B shoulder attempting to raise her body up from the slumped bent over seated position. Officer Marsh placed Witness B phone in her bookbag. Witness A yelled, "I told you she was having a panic attack and would pass out." Witness B slumped over again. Witness A yelled, "you need to get her a medic or something." Officer Marsh replied, "she's fine, she's upset, I get that" as he raised Witness B shoulder again. Witness A told Officer Marsh not to touch her. Officer Marsh told Witness A he did not want her to fall over.

Officer Marsh told Officer Orkies to get Witness A bookbag out from the vehicle. Officer Marsh searched Witness B bookbag. Officer Marsh advised Officer Orkies he was going to park the owner's vehicle to get it out of the middle of the street. Officer Marsh moved the vehicle and parked it legally on the street. Officer Marsh returned the keys to the vehicle's owner. Ms. Hannah Wilkens stated she could not feel her feet as she sat on her knees. Officer Marsh assisted Witness B moving to her bottom to sit down. Witness A phone rang, and she asked to answer it. Officer Marsh told her she could not answer it. Witness B continued to fall over. Officer Marsh continued to keep her upright. Witness B stated she could not feel her hands. Witness A told her they were still there. Witness A requested she and her sister stay together once at the Hamilton County Justice Center (HCJC or Justice Center). Officer Marsh advised they would stay together along with her bookbag. See BWC time stamp at 20:43:04 hours.

Witness A asked, "if one of you could take out my phone and look at my blood sugar for me? the beeping you here is my pump, I need to know what my blood sugar is" Witness B yelled, "she's going low." Officer Marsh complied and was guided by Witness A as to where to look on her phone. Witness A's glucose level read 205. Officer Marsh read the number out loud and said she was doing alright. Witness A stated, "I'm okay for now, if it keeps dropping, I will let them know by seizing." Officer Marsh escorted the sisters over to the sidewalk near the transport bus. The remaining interaction was captured on Lt. Pearson's BWC.

### **Officer William Orkies**

The events recorded by Officer Orkies BWC occurred starting at 20:26:29 hours on June 1, 2020, according to the BWC's timestamp. A review of that recording reveals the following:

Officer Orkies assisted in removing Witness A from the front passenger side of the vehicle and had her kneel on the ground. Officer Orkies then had Witness D exit the front passenger seat and had him kneel on the ground. Officer Orkies stood with other officers and watched the arrested suspects.

At approximately 20:27:40, Witness A began to eat a snack and was permitted to do so by the officers present. At 20:28:28, in response to repeated requests from Witnesses A and B for access to Witness A's insulin, and in response to a comment from Witness B that Witness A would die without insulin, Officer Marsh stated: "I understand what diabetics is." At 20:28:23, Witness B continued to tell Officer Marsh to get Witness A's insulin.

An unknown Black male officer approached with a white female suspect, Witness E, and placed her with the group. At 20:28:39 Officer Marsh laughed, and the Black female, Witness C,

questioned Officer Marsh why he was laughing. Officer Marsh pointed to Witness E, the suspect that the unknown Black male officer brought over to the group and said, "that's the one that ran from me." Witness C again questioned Officer Marsh why he laughed, and he repeated his comment, "because she ran from me." Witness A commented that she ran because they were trying to leave.

Officer Orkies engaged in a conversation with an arrested male. Officer Orkies began placing the arrested in flex-cuffs. Witness B began having a panic attack. See BWC time stamp at 20:32:50 hours. Officer Orkies retrieved Witness A bookbag which was on the front passenger seat floorboard and placed it beside her. Officer Orkies searched Witness A bag to verify no weapons were inside. Officer Marsh walked away to move the vehicle from the middle of the street. A female complained that her flex-cuffs were too tight. Officer Orkies placed a finger in between the flex-cuffs and said they were looser than the metal cuffs they usually use. Officer Orkies turned his BWC off and immediately turned it back on.

Officer Orkies assisted Officer Marsh in helping Witness B not fall to the ground. Officer Orkies mostly engaged with the unknown male during this incident. Witness A asked Officer Marsh if he could take her phone out so she could check her glucose level. Officer Marsh retrieved the phone from Witness A pocket and checked her level which was 205. Witness A stated, "I'm okay for now, if it keeps dropping, I will let them know by seizing." The group was escorted to the awaiting bus. A female stated she had PTSD and did not want Officer Orkies to touch to assist her in standing. Officer Orkies searched the male before placing him on the bus.

### **Officer Naomi Stewart**

The events recorded by Officer Stewart's BWC occurred starting at 20:32:48 pm on June 1, 2020, according to the BWC's timestamp. A review of that recording reveals the following:

Officer Stewart responded down the hill with a female suspect and placed her on the sidewalk along with the group that was already sitting on the sidewalk. Officer Stewart briefly searched her suspect's bookbag, then placed everything back inside. Officer Stewart spoke to another officer then asked her suspect if she had any identification on her person, which she did not. Officer Stewart advised another suspect they were getting charged with curfew and would be transported to the jail.

Officer Stewart advised an officer they needed to write in their paperwork that Witness A was diabetic. Officer Stewart advised Ms. Wilkins "a nurse would be at the jail; they will check it and they will give you juice." The officers moved the group to where the bus was going to be positioned. Officer Stewart spoke to two suspects and advised them of what was going to occur once at the Justice Center. Officer Stewart walked behind Officer Marsh and the Wilkins sisters and once they reached the bus, Officer Stewart advised Officer Marsh mace was on the stoop where the Wilkins sisters were about to sit. Officer Stewart obtained her suspect's information, then searched a male officer's female suspect.

## **Lt. Chantia Pearson**

The events recorded by Lt. Pearson's BWC occurred starting at 20:35:03 pm on June 1, 2020, according to the BWC's timestamp. A review of that recording reveals the following:

20:51:26, Lt. Pearson asked Witness B if she had anything on her person. Ms. Wilkins replied she did not. Lt. Pearson searched Witness B's person, once checked she escorted her over to the bus where she entered. Lt. Pearson then searched Witness A's person. Witness A asked Lt. Pearson if her bookbag can go with her, to which she replied, "yes." Witness A advised Lt. Pearson that her phone and pump needed to stay on her. Lt. Pearson replied, "I'm not taking anything away from you." Witness A asked to hold her bag in her hand. Lt. Pearson replied, "Yes ma'am I give them to everybody." Lt. Pearson searched Witness A's bookbag as she explained to the officer everything that was inside of it. Lt. Pearson advised Witness A to let "them" know she needed her juice and water once she got there. Lt. Pearson completed her search of the bookbag, placed it in her hands and escorted Witness A to the bus. While on the bus Witness A had Lt. Pearson place her bandana over her mouth. Witness A asked Lt. Pearson if she could help "her" take "her" medicine. Lt. Pearson advised the sisters to make sure they tell the HCJC that she held the prescription bottle that was prescribed to the other sister, because they could get in trouble for carrying that bottle. Lt. Pearson then exited the bus.

### **c. Other Video**

CCA reviewed an online video showing portions of the arrest that appears to have been originally posted on TikTok, and was thereafter covered by the national media, including *The Late Show with Stephen Colbert*, available at <https://youtu.be/aLWKG6O3VFc> (last accessed November 1, 2022). The video, recorded on a cellphone by one of the persons arrested with Witness A and Witness B, is consistent with Officer Clark's and Officer Orkies's BWC footage summarized above.

### **d. Emergency Order**

On May 31, 2020, then-Cincinnati Mayor John Cranley issued an Emergency Order which implemented a curfew from 9:00pm – 6:00am in Cincinnati through June 2, 2020. The Order states that the curfew is "based upon the emergency declaration currently existing in the City of Cincinnati" and that "[i]ndividuals are prohibited from appearing in the public spaces of the City of Cincinnati during the period of the curfew."

CCA has also viewed various Tweets from the City of Cincinnati's Twitter account announcing the curfew and its operative dates and times. According to one of those Tweets, sent on June 1, 2022, starting on that day, Mayor Cranley expanded the curfew hours to 8:00pm – 6:00am.

### **e. Clerk of Courts**

Officers charged Witness A with Misconduct at Emergency, Ohio Revised Code (ORC) § 2917-13. Witness B was also charged with Misconduct at Emergency ORC § 2917-13.

Those charges are believed to have been ultimately dismissed, and neither the charges, nor the corresponding court docket, are still available on the online database for the Clerk of Courts. CCA obtained copies of the Criminal Complaints showing both sets of charges before they were removed from the database.

**f. Twitter Posts**

@lexiejewels posted on June 3, 2020 at 1:13p.m., “I guess I’ll address it, yes I was arrested. Yes I’m diabetic. I got my bag. I wanted my insulin because my pump was going to expire at midnight, and I knew I would be doing a site change in custody. I’m okay now.”

“My blood sugar was dropping, and I was eating a granola bar and knew I would go high later, which I did. That’s why I needed the insulin, and also because I knew my insulin pump was going to expire that night and I would need to do a site change. Which I did.”

@celebrateequal posted on June 3, 2020 at 1:31 a.m., “I was arrested for peacefully protesting for the BLM movement in Cincinnati. Cops forced me to stand (while hyperventilating and actively passing out) and then laughed at me while I was having a panic attack. They withheld my sisters’ meds and mocked her intelligence while she begged.”

“My sister Lexie was begging for her insulin NOT because she needed it in the moment, but because she knew if she got separated from her bag, the consequences could be deadly. My sisters blood sugar was high. She misspoke in the video because she was so worried.”

**C. Significant Discrepancies & Clarifications**

This incident received national attention due to brief clip of the interaction between Officer Marsh and Witness A and B, specifically the aforementioned clip aired on *The Late Show with Stephen Colbert*. A more comprehensive account of the interaction between Officer Marsh and Witness A and B is detailed in the BWC summaries above.

**D. Authorities**

See Appendix.

**E. Analysis**

**1. Allegation: Improper Seizure**

Complainants who witnessed this incident on Twitter alleged CPD improperly seized Witness A and B’s persons.

In Ohio, a person may be arrested for the offense of Misconduct at Emergency, a misdemeanor criminal offense, if that person “[fails] to obey the lawful order of any law enforcement officer engaged in the law enforcement officer’s duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind.” ORC §2917.13.

CPD Procedure §12.554 Investigatory Stops states that officers may arrest individuals if they are “supported by probable cause to believe the citizen is committing or has committed a criminal offense.” Under the law, “Whether probable cause exists depends on the reasonable conclusion to be drawn from the *facts known to the arresting officer at the time of the arrest* . . . . It does not depend on the officer’s subjective motivation or his stated reason for making the arrest.” *Hastings v. Hubbard*, 151 F. App’x 357, 362 (6th Cir. 2005) (internal citations omitted) (emphasis added).

On May 31, 2020, during the period of protests related to the killing of George Floyd, then-Cincinnati Mayor John Cranley issued an Emergency Order which implemented a curfew from 9pm – 6am in Cincinnati. The Order was based on an “emergency declaration” and stated that “[i]ndividuals are prohibited from appearing in the public spaces of the City of Cincinnati during the period of the curfew.” According to Tweets from the City of Cincinnati’s Twitter account sent on June 1, 2022, starting that day, Mayor Cranley expanded the curfew hours to 8:00pm – 6:00am.

On June 1, 2020, at approximately 8:26 p.m., a vehicle with six occupants was stopped for violating the aforementioned curfew order. Both Witness A and B Witness A were inside the vehicle. The BWC footage corroborated the officer’s statements that the sisters were present in a vehicle that was in operation on Cincinnati streets during the curfew. Both sisters were swiftly arrested and thereafter charged with Misconduct at Emergency in the 1st Degree.

According to statements from Officers Clark and Marsh, they arrested the sisters and other vehicle occupants after an unknown Black female Sergeant who had stopped the vehicle ordered the officers to detain the vehicle’s occupants. BWC footage from that day corroborated those officers’ assertions that a Black female officer had stopped the vehicle at the time the officers began detaining the occupants; video shows her standing in front of the vehicle and denying it passage.

However, to date, the Sergeant who allegedly ordered that the vehicle’s occupants be detained has not been identified by any officer or civilian witness. Indeed, her identity appears to be unknown to the Cincinnati Police Department. After an extensive review of BWC evidence, interviews with officers alleged to have been present, and review of available police records, CCA is aware of no officer who can attest to having direct knowledge of the specific facts surrounding the initial holding of the vehicle by the Sergeant, the basis for ordering its occupants detained, or the basis for charging them with Misconduct at Emergency. For instance, CCA is aware of no officer who can attest to whether the occupants failed to comply with a specific order given by an officer. A failure to follow such an order is an element of Misconduct at Emergency, and if not present, there can be no probable cause to arrest for that offense.

Such testimony from an officer with first-hand knowledge of facts supporting probable cause to arrest the vehicle’s occupants is especially important in this case because the BWC footage appears to show other cars that were permitted to pass without arrest or detention, prompting questions as to why the occupants in this particular vehicle were stopped for arrest when others

were free to pass. To be sure, Officer Clark told CCA that he *believed* that the Sergeant wanted the vehicle stopped because the Sergeant had observed someone get into the vehicle in order to avoid arrest, but without knowing the identity of the Sergeant, CCA is unable to question the Sergeant, verify this assertion, or assess whether there was probable cause to arrest the vehicle occupants for committing a crime.

We also note that the vehicle occupants were charged with Misconduct at Emergency as a 1st Degree misdemeanor, which requires some proof that an offender has created “a risk of physical harm to persons or property.” The reliance on that charge by Cincinnati Police Officers in advancing a prosecution of the sisters is concerning, particularly given that there appears to be no known officer with first-hand knowledge who can attest to the necessary facts to establish probable cause for those specific arrests. Given the lack of evidence, we conclude that there is an insufficient factual basis to make a determination as to whether probable cause existed and whether the arrest directed by the unknown Sergeant—and aided by Officers Marsh, Orkies, and Clark—was proper under CPD policy, training, and procedure.

## **2. Allegation: Improper Procedure**

Several complainants expressed concern at Officer Marsh’s response to Witness A’s request for access to insulin in her bookbag.

CPD Procedure §12.600, Prisoners: Securing, Handling, and Transporting provides, “If a prisoner becomes sick or injured subsequent to arrest, officers will immediately seek medical attention.” There appears to be no CPD policy requiring officers to provide medical attention, or access to medication, in anticipation of a *potential future* illness or potential future health emergency.

The evidence is clear that Officer Marsh did not immediately retrieve Witness A’s insulin-bearing bookbag for her upon her request; however, CPD policy did not require him to immediately do so, or to otherwise seek medical attention for Witness A if she was not ill or in medical distress at the time of her request. As Officer Marsh attested to CCA, retrieving the bookbag immediately would have required him to walk away from persons who were under arrest but not yet restrained. He attested that based on “his training and experience,” his knowledge of diabetes, and Witness A’s description of her condition at that moment, he did not believe the immediate application of insulin was necessary from a health perspective. Significantly, when Witness A requested her insulin, she stated that she wanted it “in my sight” and “near me” in case she found herself in need of it, not that she needed to take insulin at that moment. The evidence does not establish that she was ill or undergoing a medical emergency, and thus CPD policy did not require the officer to seek medical attention or provide insulin. We should also note that less than 7 minutes after she was arrested and placed on the curb, Officer Marsh placed Witness A’s bookbag beside her, as she had requested. Furthermore, officers present, including Officer Marsh, permitted Witness A to eat a snack while she sat on the curb in response to her request to do so. Under the circumstances, the officers’ refusal to provide Witness A with access to her insulin immediately upon request was not a violation of CPD policy, training, or procedure.

### 3. Allegation: Discourtesy

A complainant who witnessed this incident on Twitter alleged Officer Marsh laughed at Witness A and B. Witness A CPD's Manual of Rules and Regulations states officers shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors, and associates.

A review of the officers' BWCs provided evidence Officer Marsh did not specifically laugh at Witness A or B. According to Officer Orkies BWC, it showed Officer Marsh laugh at Witness E, the unknown female suspect who originally fled from him after she was caught and placed with the group that was inside the stopped vehicle. When questioned by CCA about the allegations made against him, Officer Marsh denied he had been discourteous to Witness A and B that day. Ultimately, although Officer Marsh was not discourteous toward Witnesses A and B, his laughing at the suspect that was caught after fleeing and doing so in the presence of other arrested suspects, was not professional and only served to escalate tensions. CCA determined Officer Marsh was not in compliance with CPD's policy, procedure, and training.

### 4. Collateral Allegation: Improper Procedure (BWC)

Officer Marsh admittedly failed to activate his BWC prior to coming into contact with Witness A and Witness B. Officer Marsh activated his BWC once Witness A and Witness B were placed in flex-cuffs and seated on the sidewalk awaiting the transport bus.

CPD Procedure § 12.540, "Equipment is the responsibly of the officer assigned" and "Officers who fail to use the equipment as required or fail to report damage to the equipment are in violation of the Manual of Rules and Regulations and are subject to the disciplinary process for the CPD."

CCA found that Officer Marsh violated CPD policy procedure of training when he failed to activate his BWC.

## F. Findings

### *Original Allegations*

Witnesses A and B

Officer Raymond Marsh  
Officer William Orkies  
Officer Nicholas Clark

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

Witness E

Officer Raymond Marsh

**Discourtesy** - The allegation is supported by sufficient evidence to determine that the incident occurred, and the actions of the officer were improper. **SUSTAINED**

Witness A

**Improper Procedure** - There are no facts to support the incident complained of actually occurred. **UNFOUNDED**

*Collateral Allegation*

Witnesses A

Officer Raymond Marsh

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

**G. Observations**

See “Section VI. Key Observations” in CCA’s consolidated report on this investigation and ten other protest investigations, GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI.

**H. Recommendations**

See R2301, R2302, R2303, R2305, R2306, R2307, R2308, and R2309 in “Section VII. Recommendations” of CCA’s consolidated report on this investigation and ten other protest investigations (GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI).

**I. Previous Contacts & Commendations**

**Officer Raymond Marsh**

*Previous Contacts with CCA*

Officer Marsh 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 Marsh with IIS.

*Commendations*

Officer Marsh received no commendations in the past three years.

**Officer William Orkies**

*Previous Contacts with CCA*

Officer Orkies 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 Orkies with IIS.

*Commendations*

Officer Orkies received no commendations in the past three years.

**Officer Nicholas Clark**

*Previous Contacts with CCA*

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

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
20065	Lack of Service	Pending

*Previous Contacts with IIS*

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

*Commendations*

Officer Clark received no commendations in the past three years.

*Dena Brown*

Dena Brown, Chief Investigator

1/30/2023

Date

*G. Davis*

Gabriel Davis, Director

1/30/2023

Date

**A. Complaint Summary**

**Complainant:** Cassandra Thompson

**Date:** June 1, 2020

**Time:** 8:30 p.m.

**Location:** 2014 Mohawk Place

**CCA Receipt:** June 11, 2020

**Allegations:** Improper Search, Improper Procedure, Improper Seizure – Collateral, Improper Procedure (BWC) – Collateral

Ms. Cassandra Thompson initially emailed her complaint which stated:

On 6/1/2020 assuming sometime after 8 pm I was arrested for curfew. During the process an officer (F/B, middle aged) went through my belongings and took 2 bottles of my own pepper spray and threw them on the ground with disregard for my property and stated, "they won't let you have these." Regardless of that statement I am entitled to my property. and should have been processed in the property room with my name associated with that so that I can retrieve my property. I have contacted the property room who as of 6/11/30 does not have anything for me.

**B. Summary of Evidence**

**1. Involved Citizen Statements**

**Cassandra Thompson**

CCA interviewed Ms. Cassandra Thompson, F/W/29, on July 2, 2020, at 12:55 p.m. She provided the following information:

On June 1, 2020, approximately 8:30 p.m. at 2014 Mohawk Place, Ms. Thompson, participated in the George Floyd protest. It was after curfew and she was arrested with a "group of people" for Ohio Revised Code (ORC) § 2917.13, Misconduct at an Emergency.

Ms. Thompson was situated down against one of the stores on Mohawk Place and kinda sat there for a minute with the group and was told they were all. An unknown Black female officer

handcuffed Ms. Thompson with flex-cuffs then searched her bookbag without her consent and removed two bottles of mace. The officer told Ms. Thompson “They won’t let you have those,” and left the mace on the sidewalk. The officer returned the bookbag to Ms. Thompson as she was placed on a Metro Bus to be transported to the Hamilton County Justice Center (HCJC).

When Ms. Thompson was released from the HCJC, she called CPD’s Property Room, and was told they did not have her two bottles of mace.

## **2. Subject Officer Statements**

### **Officer Adrienne Brown**

Officer Adrienne Brown, #PO165, F/B/39, is currently assigned to District 1, and he has been a CPD member since 1999. Officer Brown was in uniform; her BWC was activated.

CCA interviewed Officer Brown on October 6, 2020, at 06:19 a.m. and October 20, 2020 at 6:19 a.m. She provided the following information:

Officer Brown was unsure of where she was positioned on June 1, 2020; she was either on a Metro bus as an arrest officer or in a Squad as an arrest officer. She recalled there were four Metro buses picking up people. One day, she rode the bus and filled out hundreds of arrest slips. The days that she was on a squad, she was responsible for wherever they dispatched her to if there were ten people or more.

Officer Brown confirmed she searched a lot of females who were arrested because she was one of the few female officers on the arrest teams. Arrested individuals were placed in flex-cuffs until a transport officer came. Officer Brown did not specifically remember Ms. Thompson, but stated every single person was searched. She stated people were advised certain items would not be allowed at the HCJC and their bags were given back to them as they entered the bus. She indicated officers set hundreds of things off to the side.

### **Officer Raymond Marsh**

Officer Raymond Marsh, #PO092, M/W/39, is currently assigned to District 4, and he has been a CPD member since 2014. Officer Marsh was in uniform; his BWC was activated.

CCA interviewed Officer Marsh on September 16, 2020, at 6:29 a.m. He provided the following information:

Officer Marsh did not recall specifically coming into contact with Ms. Thompson. There was a large group of people moving up Mohawk and they were out past curfew. They had been warned and were detained with flex-cuffs. They were searched and then placed on a Metro bus for transport to a processing center.

Officer Marsh recalled being approached by Captain Douglas Snider, who asked, “What’s that behind you (on the sidewalk)?” Officer Marsh turned and picked up two cans of mace and handed them to Captain Snider, who walked away.

### **3. Officer Witness Statements**

#### **Officer Robert Pope**

Officer Robert Pope, #PO175, M/B/50, is currently assigned to the Community Relations Unit-School Resource Officer, and he has been a CPD member since 2002. Officer Pope was in uniform and operated a Metro bus on the day of this incident; his BWC was activated.

CCA interviewed Officer Pope on September 30, 2020, at 10:53 a.m. He provided the following information:

Officer Pope drove the Metro bus to transport the protestors to the HCJC. Officer Pope did not recall coming into contact with Ms. Thompson. He dealt with approximately 30 – 40 people who had been arrested, searched, and then were placed on his bus.

#### **Officer Sabreen Robinson**

Officer Sabreen Robinson, #PO196, F/B/42, is currently assigned to the Community Relations Unit- School Resource Officer, and she has been a CPD member since 2002. Officer Robinson was in uniform; her BWC was activated.

CCA interviewed Officer Robinson on September 30, 2020, at 11:29 a.m. She provided the following information:

When Officer Robinson arrived on scene approximately 50 people were already detained for violating the curfew. The arrested had their persons and property searched before entering the bus. Officer Robinson searched a few people but did not recall searching Ms. Thompson, nor did she search anyone who had pepper spray or mace.

#### **Sergeant Cassandra Tucker**

Sergeant Cassandra Tucker, #S0055, F/B/55, was assigned to the Youth Services Unit, and she had been a CPD member since 2000. Sergeant Tucker was in uniform; her BWC was activated. Sergeant Tucker retired 2021.

CCA interviewed Sergeant Tucker on September 23, 2020, at 10:59 a.m. She provided the following information:

Sergeant Tucker did not recall coming into contact with Ms. Thompson. CPD was tasked with making sure that the people who violated the curfew were detained, placed in flex-cuffs (which were used for the large number (30) of people involved at that location), and properly placed under arrest, searched (person & property), and placed on the bus.

**4. Witness Statements**

Ms. Thompson did not provide any witness information.

**5. Documentary Evidence, Audio-Visual Evidence & Other Evidence**

**a. Police Documents**

CCA reviewed all CPD-related forms, including but not limited to arrest forms and BWCs.

**b. Body Worn Camera (BWC)**

**Officer Adrienne Brown**

Officer Brown's BWC was not turned on during this incident.

**Officer Robert Pope**

The events recorded by Officer Pope's BWC occurred on June 1, 2020, according to the BWC's timestamp at 8:40 p.m. A review of that recording reveals the following:

Officer Pope's initial BWC footage was unrelated to the incident. At 20:41:25, Officer Brown walked towards the barbershop and Ms. Thompson, who sat on the sidewalk. It appeared that Ms. Thompson was already detained when Officer Brown approached her, given that as Ms. Thompson sat on the sidewalk, she was sitting in a line with her back to a building next to several other individuals, many of whom were in the process of being restrained by police officers. Ms. Thompson stood up. Other officers on scene searched unknown individuals while Officer Pope assisted with escorting detainees onto the bus.

Officer Brown placed flex cuffs on Ms. Thompson and searched her bookbag. Officer Brown placed unknown items on the sidewalk. Due to Officer Pope assisting with detainees, obstructions from the bus, and various people standing between the bus and the barbershop, the full search of the bag was not captured on his BWC. Officer Brown escorted Ms. Thompson to the bus. Ms. Thompson identified herself and entered the bus with a strap of her bag around her neck. Officer Pope later transported the detainees in the bus to HCJC. The remaining portion of his BWC was not relevant to the incident.

### **Officer Sabreen Robinson**

The events recorded by Officer Robinson's BWC occurred on June 1, 2020, according to the BWC's timestamp at 20:31:02. A review of that recording reveals the following:

Officer Robinson's initial BWC footage was unrelated to the incident. Ms. Thompson stood in front of the barbershop entrance. Officer Robinson searched an individual on the sidewalk while Officer Brown, in the background, searched Ms. Thompson's bag. Officer Brown pulled out contents from the bag and placed them on the sidewalk in front of the barbershop entrance. Due to the distance between Officer Brown and Officer Robinson, the contents of Ms. Thompson's bag were unidentifiable.

Officer Robinson searched the individual's property and found pepper spray. Officer Robinson noted she would have to take the pepper spray from the individual. Officer Robinson escorted the individual to a nearby Metro bus; Ms. Thompson stood in the background, restrained with Flex-cuffs, and the strap of her bag around her neck. Officer Brown escorted Ms. Thompson to the same bus. Several unidentified items were left on the sidewalk where Ms. Thompson's bag was searched. Officer Robinson asked Officer Brown, "What happens with their property?" Officer Brown replied, "They take it with them." Ms. Thompson entered the bus with her bag. Officer Brown walked away. Officer Robinson's remaining BWC footage was not relevant to the incident.

### **Officer Raymond Marsh**

The events recorded by Officer Marsh's BWC occurred on June 1, 2020, according to the BWC's timestamp at 20:31:39. A review of that recording reveals the following:

Officer Marsh's initial BWC footage was unrelated to the incident. Officer Marsh escorted detainees to the front of the barbershop where Ms. Thompson and her property were previously searched by Officer Brown. Captain Snider pointed behind Officer Marsh and asked what was on the ground. Officer Marsh responded, "Mace." He reached down, collected two canisters on the sidewalk in front of the barbershop entrance, and handed them to Captain Snider. Captain Snider left the area with the canisters. Officer Marsh's remaining BWC footage was not relevant to the incident.

#### **c. Clerk of Courts**

Ms. Thompson was charged with Ohio Revised Code (ORC) §2917.13 Misconduct at Emergency. The charge was dismissed.

### **C. Significant Discrepancies & Clarifications**

1. After reviewing Officer Pope's BWC, CCA determined the involved officer was Officer Adrienne Brown.
2. Officer Brown's BWC was not activated during this incident.

### **D. Authorities**

See Appendix.

### **E. Analysis**

#### **1. Allegation: Improper Search**

Ms. Thompson alleged that on June 1, 2020, her backpack was searched without her consent after her arrest during George Floyd protests.

A review of Officer Pope's BWC showed Officer Brown aiding in the arrest of Ms. Thompson by placing her in flex-cuffs, and then searching Ms. Thompson's bookbag. (Although the actual items inside of the bookbag could not be determined due to Officer Pope's distance from Officer Brown and Ms. Thompson, BWC footage from other officers indicated two of the items were chemical irritants.) In her statement to CCA, Officer Brown explained that as one of the female officers on the arrest teams, she searched several females who were arrested. Officer Brown did not specifically remember Ms. Thompson but stated every person was searched. She stated people were advised certain items would not be allowed at the HCJC and their bags were given back to them as they entered the bus; officers set hundreds of things off to the side.

CPD Investigations Manual § 12.1.3, Search Incident to Lawful Arrest, instructs officers taking suspects into custody to search the person who is being arrested as well as the area within their immediate control, even when taking suspects from another officer. The instruction is consistent with Ohio law, which permits searches incident to lawful arrest. The preliminary issue that must be satisfied when analyzing such searches, is whether the arrest that is being used to justify the search is a lawful one.

As this investigative report explains below, there is uncertainty pertaining to whether there was probable cause to arrest Ms. Thompson for Misconduct at Emergency, given the inability to identify the officer who decided that she should be arrested and directed that arrest. Given that there is a lack of sufficient evidence to determine whether her arrest was lawful, CCA concluded there is a lack of sufficient evidence to conclude that Officer Brown's actions were consistent with a search incident to arrest and therefore within policy, procedure, and training.

#### **2. Allegation: Improper Procedure (Property and Evidence)**

After her arrest, Ms. Thompson alleged Officer Brown removed two cannisters of pepper spray from her bag and threw them to the ground; Ms. Thompson stated she never received them after her release from the HCJC.



CPD Procedure §12.715, Property and Evidence: Confiscation, Accountability, Processing, Storage, and Release, states “[a]ll property confiscated, seized, found, or coming into police custody will be properly marked, packaged, and submitted by the officer into the district/section/unit property room before terminating their tour of duty.”

Officer Pope’s BWC captured Officer Brown search Ms. Thompson and her bookbag. Officer Brown removed the two cans of pepper spray and placed them on the sidewalk near Ms. Thompson Before escorting her to the Metro bus for transport to HCJC. Subsequently, Officer Marsh escorted his prisoner to where Ms. Thompson had been standing; as Captain Snider walked past, he observed the pepper spray and gestured for Officer Marsh to hand him the cannisters. Officer Marsh complied, and Captain Snider walked out of view.

CCA reviewed the HCJC’s website which listed items such as pocketknives, scissors, mace, and any other weapon which are not permitted inside. CCA determined Ms. Thompson would not have been permitted to take the chemical irritant with her into the HCJC. However, CCA determined Officer Brown should have tagged Ms. Thompson’s property per CPD Procedure §12.715. CCA concluded that Officer Brown did not comply with CPD’s policy, procedures, and training.

### **3. Collateral Allegation: Improper Procedure (BWC)**

CPD Procedure §12.540 Body Worn Camera states officers must have their BWC activated 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, during transport with an activated DVR, or with supervisor approval. The BWC may be deactivated after clearing the call for service/self-initiated activity. Officer Brown deactivated her BWC after she placed an unknown male into custody. Her late activation prevented her interaction with Ms. Thompson from being captured on her BWC.

### **4. Collateral Allegation: Improper Seizure**

In Ohio, a person may be arrested for the offense of Misconduct at Emergency, a misdemeanor criminal offense, if that person “[fails] to obey the lawful order of any law enforcement officer engaged in the law enforcement officer’s duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind.” ORC §2917.13.

CPD Procedure §12.554 Investigatory Stops states that officers may arrest individuals if they are “supported by probable cause to believe the citizen is committing or has committed a criminal offense.” Under the law, “Whether probable cause exists depends on the reasonable conclusion to be drawn from the *facts known to the arresting officer at the time of the arrest* . . . . It does not depend on the officer’s subjective motivation or his stated reason for making the arrest.” *Hastings v. Hubbard*, 151 F. App’x 357, 362 (6th Cir. 2005) (internal citations omitted) (emphasis added). In determining whether there was probable cause to arrest, we must analyze the facts known to officer who directed the specific arrest, and not limit the analysis to the facts known to officers who merely respond to aid in the arrest. See *McCallum v. Geelhood*, 742 F. App’x 985, 993-94 (6th Cir. 2018).

On May 31, 2020, during the period of protests related to the killing of George Floyd, then-Cincinnati Mayor John Cranley issued an Emergency Order which implemented a curfew from 9pm – 6am in Cincinnati. The Order was based on an “emergency declaration” and stated that “[i]ndividuals are prohibited from appearing in the public spaces of the City of Cincinnati during the period of the curfew.” According to Tweets from the City of Cincinnati’s Twitter account sent on June 1, 2022, starting that day, Mayor Cranley expanded the curfew hours to 8:00pm – 6:00am.

On June 1, 2020, at approximately 8:30 p.m., Ms. Thompson was arrested. She admitted in her CCA interview that she was arrested with “a group of people,” while she was protesting “after curfew.” Of her arrest, she stated, “We were kinda all sat down up against I guess one of the stores on Mohawk Place and kinda sat there for a minute and *they* told us we were all under arrest.” Ms. Thompson described Officer Brown as an officer who subsequently searched her and placed her into restraints, but when describing their interaction, she did not identify Officer Brown as an officer who initially detained her, sat her down, or told her she was under arrest.

Officer Brown told CCA she did not specifically recall Ms. Thompson; however, BWC from Officer Pope establishes that Officer Brown walked up to Ms. Thompson while she sat against the store front and then placed Ms. Thompson into flex cuffs. As summarized in this report, the BWC appears to show that Ms. Thompson was already detained when Officer Brown approached her, given that as Ms. Thompson sat on the sidewalk, and before Officer Brown approached, Ms. Thompson was sitting in a line with her back to a building next to several other individuals, many of whom were in the process of being restrained by police officers. This is consistent with Ms. Thompson’s statement that “we were kinda sat down” against a storefront prior to being searched by Officer Brown and then restrained with flex cuffs by Officer Brown.

Given these facts, it is far from clear that Officer Brown was the officer who initially detained Ms. Thompson and decided that she should be arrested. Indeed, the identity of the officer who decided that Ms. Thompson should be detained and arrested is unknown to CCA and appears to be unknown to the Cincinnati Police Department. After a review of available BWC evidence, interviews with officers alleged to have been present, and review of available police records, CCA is aware of no officer who attests to having direct knowledge of the specific facts surrounding the arrest of Ms. Thompson, the basis for ordering her detention, or the basis for charging her with Misconduct at Emergency. For instance, CCA is aware of no officer who can attest to whether Ms. Thompson failed to comply with a specific order given by an officer. A failure to follow such an order is an element of Misconduct at Emergency, and if not present, there can be no probable cause to arrest for that offense.

The identity of the arresting officer is important, for if the officer who specifically directed that Ms. Thompson be arrested had probable cause to do so—which in this case would require a reasonable basis to believe that she had disobeyed an order from a police officer during a time of emergency—then Officer Brown would likely be entitled under the law to rely on that probable cause in aiding the arrest of Ms. Thompson. However, without knowing the identity of the officer who directed the arrest, CCA is unable to question that person, or assess whether there was probable cause to arrest Ms. Thompson for committing a criminal offense.

We also note that Ms. Thompson was charged with Misconduct at Emergency as a 1st Degree misdemeanor, which requires some proof that an offender has created “a risk of physical harm to

persons or property.” The reliance on that charge by Cincinnati Police Officers in advancing a prosecution here is concerning, particularly given that there appears to be no officer with first-hand knowledge who can attest that Ms. Thompson disobeyed the lawful order of a police officer, let alone that she created a risk of physical harm while doing so.

Given the lack of evidence, we conclude that there is an insufficient factual basis to make a determination as to whether probable cause existed and whether the arrest directed by an unknown officer—and aided by Officer Brown—was proper under CPD policy, training, and procedure.

## F. Findings

### *Original Allegations*

Officer Adrienne Brown

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

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

### *Collateral Allegations*

Officer Adrienne Brown

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

Unknown Officer  
Officer Adrienne Brown

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

## G. Observations

See “Section VI. Key Observations” in CCA’s consolidated report on this investigation and ten other protest investigations, GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI.

## H. Recommendations

See R2301, R2302, R2303, R2305, R2306, and R2307 in “Section VII. Recommendations” of CCA’s consolidated report on this investigation and ten other protest investigations (GEORGE

FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI).

**I. Previous Contacts & Commendations**

**Officer Adrienne Brown**

*Previous Contacts with CCA*

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

*Previous Contacts with IIS*

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


*Commendations*

Officer Brown received three commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
09/27/2018	CPD
12/20/2018	CPD
12/30/2018	CPD

  
\_\_\_\_\_  
Dena Brown, Chief Investigator

**1/30/2023**  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Gabriel Davis, Director

**1/30/2023**  
\_\_\_\_\_  
Date

**A. Complaint Summary**

**Complainant:** Pat Clifford

**Date:** June 1, 2020

**Time:** 8:45pm

**Location:** 209 Hastings Street

**CCA Receipt:** June 3, 2020

**Allegations:** Improper Stop; Improper Pointing of a Firearm; Improper Procedure (Contact Card)  
- Collateral

On June 1, 2020, Mr. Pat Clifford and his wife stood outside on the roof deck of their residence and observed three young adults on a private lot nearby. At approximately 8:45pm, CPD SWAT officers arrived, displayed their firearms, and restrained the individuals with flex-cuffs. After several minutes, they were released.

**B. Summary of Evidence**

**1. Involved Citizen Statements**

No identifying or contact information was available for the men listed in the initial complaint. As a result, CCA was unable to attempt contact with those individuals.

**2. Subject Officer Statements**

**Officer Ronald Johnson**

Officer Johnson, #P0843, M/B/44, is currently assigned to District One, and he has been a CPD member since 1999. At the time of the incident, Officer Johnson was engaged as a member of SWAT.

CCA interviewed Officer Johnson on March 11, 2021, at 6:32am. He provided the following information:

On June 1, 2020, there was civil unrest and protestors were going down McMicken Avenue after the City-imposed mandated curfew. SWAT was ordered to “break the whole thing up” by dispersing the protestors. The protestors ran and/or exited vehicles and “bolted” into the woods,

which led into yards in Clifton. Several people “popped up” in the area and ran up the hill. The officers were supposed to locate the protestors, detain them, and then issue citations. Sergeant Shannon Heine had detained individuals and requested assistance from SWAT.

After his arrival, Officer Johnson indicated to his team that he needed to use a nearby Port-a-John. Officer Johnson and Specialist Michael Harper left and approached the Port-a-John, but when Officer Johnson went to open the door, he observed a young adult jumping onto a seven-foot wall. There were two other male individuals with him.

Officer Johnson and Specialist Harper approached them. Officer Johnson ordered them to show their hands, and they complied. Officer Johnson and Specialist Harper radioed for additional officers to assist. The individuals were placed in flex-cuffs, though he could not recall which officers flex-cuffed the individuals. He stated that the individuals were likely patted down “for safety.” He did not recall positioning the individuals on their knees. Officer Johnson clarified they were never under arrest. They said they lived there and attended the University of Cincinnati. Officer Johnson observed they wore flip-flops, had food on a plate, and a toy car nearby. The officers determined the individuals were not the ones the officers were looking for or chasing. The officers removed the flex-cuffs and apologized for the inconvenience before leaving. The individuals were polite, compliant, and seemed to understand the situation. Further, the individuals did not seem upset, and said, “No problem.” The encounter lasted approximately 10 minutes.

Officer Johnson stated that on his SWAT uniform, his rifle is visible and positioned on his chest. He did not recall if they displayed firearms during the encounter.

### **Officer Jacob Wloszek**

Officer Wloszek, #P0757, M/W/43, is currently assigned to District One, and he has been a CPD member since 2004. At the time of the incident, Officer Wloszek was a member of SWAT.

CCA interviewed Officer Wloszek on March 11, 2021, at 10:25am. He provided the following information:

On June 1, 2020, SWAT was assigned to support the Civil Disturbance Response Team (CDRT). His specific group included Sergeant Michael Hudepohl, Specialist Harper and Officers Winslow, Mercado, and Johnson. At the time, the city had implemented a curfew, and the crowd was “testing to see how long” they could stay past curfew. CPD directed the crowd, using vehicles and gave announcements over loudspeakers, to disperse and head home. Suddenly, the crowd “scattered,” going in different directions and into the woods. Command staff directed the officers “to make arrests for anybody that was left in this group.” The officers made arrests as necessary and waited for the transport van to take them to the processing center.

Approximately 100 feet away, there was a construction site and a Port-a-John. The officers decided to take turns using the restroom. Either Specialist Harper or Officer Johnson went towards the Port-a-John but yelled that there were more individuals near the Port-a-John. The remaining officers observed approximately three individuals: three males, two of whom appeared

Caucasian. When he arrived, the individuals were sitting on slabs of concrete; and were “extremely cooperative.” Officer Wloszek did not flex-cuff anyone; he did not recall if the other officers applied flex-cuffs, but if so, the individuals were not detained for long – possibly a couple minutes. He did not believe they were frisked or searched.

In that period, another individual came out of a nearby house, dressed similarly to the detained individuals (e.g., button-down shirts and khakis) and claimed they were his roommates. The individuals explained they lived nearby and were driving a remote-control monster truck (approximately three to four feet long) on the construction site; they were private property, but it was not on their own property. One of the individuals had climbed through an unfinished window on the construction site, placing the truck on the building, when the officers noticed him.

The officers determined the individuals were not involved. They continued to talk to the individuals, “joking with us and asking us how to be police officers.” Officer Wloszek stated there was “nothing adversarial” in the entire encounter, which lasted approximately seven minutes. The officers returned to wait for the transport van.

Officer Wloszek explained that his SWAT uniform had tactical gear, which included a firearm on his side and on a drop holster. He stated some officers had rifles; he did not know whether he or any of the other officers present had rifles slung. He denied that he drew his firearms at any time and did not observe any other officer draw or point his firearm at these individuals.

### **Officer John Mercado**

Officer Mercado, #LEI01, M/H/53, is currently a Law Enforcement Instructor at the CPD Target Range and Firearms Training. He was a CPD member since 1990 and retired from CPD in 2021. At the time of the incident, Officer Mercado was engaged as a member of SWAT.

CCA interviewed Officer Mercado on March 15, 2021 at 11:24am. He provided the following information:

On June 1, 2020, Officer Mercado was assigned to a team under Sergeant Hudepohl, which involved Officers Johnson, Jacob Volcheck, Michael Winslow, and Steven Caponis, and Specialist Harper. From 8:00pm – 8:45pm, CPD had been announcing on PA systems that the curfew was in effect. “Large crowds of riotous people” ran throughout neighborhoods and through backyards, committing criminal trespass and “defying the curfew.” Officers had stopped and apprehended individuals in front of a building.

During this time, an officer called out on the SWAT radio that there were three subjects running away through another yard, climbing in a window of a building that was under repair. Officer Mercado described it as a potential “B&E in progress.” The officers encountered three individuals who appeared to be “young college kids”; all three were male, one was white, and one may have been of a different ethnic background. Officer Mercado arrived as the officers placed the individuals into flex-cuffs temporarily; he did not know whether all individuals were placed in flex-cuffs, or if he applied the flex-cuffs. He believed they were patted down for weapons “to ensure that they did not have any weapons, as many of the other rioters did.”

The individuals were cooperative and explained they lived nearby; they had been playing with a remote-control vehicle and had gone through the property as a shortcut to get home because they knew it was past curfew. After the officers' investigation, in which they observed the remote-controlled vehicle, the flex-cuffs were removed. The officers spoke with the individuals for a few minutes. They voiced "concerns...not the arrest, but the fact that the way that other people were acting." Officer Mercado described it as a "good encounter" and stated they "joked" with the individuals. The individuals were not cited. He did not recall if the individuals' identifying information was obtained but stated that a contact card was not completed.

According to Officer Mercado, SWAT officers had their firearms holstered on their side and M4 rifles on a sling; the firearms were "displayed" by being visible. He stated that he did not recall whether the officers pointed their firearms at the individuals but stated there was "potential...because they were curfew violators, criminal trespassers, and a possible B&E in progress at the same time" – he clarified the firearms may be pointed in the person's direction or held "in the ready."

### **Specialist Michael Harper**

Specialist Harper, #PS597, M/W/45, is currently assigned to the Canine Squad, and he has been a CPD member since 2001. At the time of the incident, Specialist Harper was engaged as a member of SWAT.

CCA interviewed Specialist Harper on March 18, 2021 at 9:02am. He provided the following information:

On June 1, 2020, there were protestors gathered in several areas of Cincinnati. The mayor mandated a curfew for 8:00pm. At 8:00pm, over loudspeakers and in person CPD announced to the protestors that the curfew was in effect, and they needed to go home or else be arrested. The protestors were notified via the news and social media and given "multiple" warnings. SWAT officers were assigned to an area on McMicken Avenue. When the officers began to arrest citizens for curfew violations, many ran to Ravine area towards Clifton through the woods, yards, and side streets.

Specialist Harper, Officer Mercado, and other SWAT members observed three male individuals "fast walking" through a vacant lot coming from the same direction as the protestors and one individual went over a retaining wall by a lot that appeared to be under construction. Specialist Harper ordered them to stop, and the officers detained them for potential curfew violation. Each individual was placed into flex-cuffs, but Specialist Harper did not know by which officer. He believed they were pat down for weapons "because of the nature of what was going on with protestors who had assaulted police, had thrown box bottles and rocks, and one of our officers was actually shot," but he did not know by which officer.

The individuals informed them that they lived in the area and had been playing with a remote-controlled car in one of the backyards, but they saw people running so they ran also. They pointed out the remote-controlled car on a nearby concrete ledge. Specialist Harper noted that the



individuals did not appear to be dressed in typical “protest garb,” either. The officers determined the individuals were “genuine” and did not appear to be involved in the protests. The individuals were released and not cited. Specialist Harper estimated the detainment to have been “brief,” possibly for a “few minutes.” He mentioned the individuals were cooperative and asked questions related to SWAT operations. Specialist Harper described the interaction as “good” and “very positive.”

Specialist Harper did not know if a Contact Card was completed or who would have been responsible for completing it.

### **Officer Carroll Todd**

Officer Todd, #P0312, M/B/49, is currently assigned to District One – Neighborhood Liaison Unit, and he has been a CPD member since 2001. At the time of the incident, Officer Todd was engaged as a member of SWAT.

CCA interviewed Officer Todd on March 18, 2021 at 9:35am. He provided the following information:

On June 1, 2020, Officer Todd assisted other SWAT officers in a response team to provide protection and assistance to other officers. Announcements were made to a large group in the Central Parkway area at the time of curfew, so several individuals ran into the woods towards the Clifton area. His team went to assist a sergeant, who had four or five individuals stopped in an area near a construction site. As they waited, Officer Todd observed a nearby Port-a-John and advised his team, including Sergeant Hudepohl and Officers Johnson and Harper, he needed to use the restroom; some officers indicated likewise.

Officer Todd heard an officer say, “Hands, hands!” which indicated to him that an individual was in the area. He noted that there was a small hill near the construction site, and he believed the individuals present likely were “hiding out.” When Officer Todd approached, he observed at least three teenagers; an officer assisted one teenager off of his knees and removed the flex-cuffs from his hands. He did not observe which officers applied the flex-cuffs but based on the time it took to respond to the scene, he estimated the individuals were only in flex-cuffs for “seconds.” Officer Todd did not observe the individuals being pat-down or searched during the encounter.

The individuals explained they had been “playing with a car on the hill” which appeared plausible to the officers, as they observed a toy car and its remote control. When the officers determined that the individuals were not involved in the incident, they were released. The individuals were not cited. Officer Todd described the individuals were in “shock” initially, but prior to their departure, the officers had a conversation with the individuals to explain the situation.

Officer Todd explained that his SWAT uniform had tactical gear, which included a holstered firearm on a thigh rib and an AR-15 rifle slung across his vest. He denied that he drew his firearms at any time and did not observe any other officer draw his firearm.

Officer Todd stated that all of the officers would have been responsible for completing a contact card since everyone was in contact with the individuals; however, he did not believe any were completed.

### **3. Officer Witness Statements**

#### **Officer Michael Winslow**

Officer Winslow, #P0728, M/B/40, is currently assigned to the Firearms Training Unit, and he has been a CPD member since 2002. At the time of the incident, Officer Winslow was engaged as a member of the SWAT team.

CCA interviewed Officer Winslow on March 15, 2021, at 11:00am. He provided the following information:

On June 1, 2020, Officer Winslow worked with the SWAT team under Sergeant Hudepohl. He stated that while he worked that day and was with Sergeant Hudepohl's team, he was not involved in the incident listed in the complaint and did not observe the interaction.

### **4. Witness Statements**

#### **Pat Clifford**

CCA interviewed Mr. Clifford on October 28, 2020. He provided the following information:

On June 1, 2020, Mr. Clifford, M/W, and his wife stood outside on the roof deck of their residence and observed three young adults on a private lot nearby, playing with a motorized truck. At approximately 8:45pm, CPD SWAT Team officers arrived, had their firearms drawn, and restrained the individuals with flex-cuffs. After several minutes, they were released.

Mr. Clifford was concerned the SWAT officers were unnecessarily involved; although the City of Cincinnati had a curfew mandate in effect, the young adults were not in a public space and had not been involved with the recent protests. Mr. Clifford is concerned they may have been "traumatized" by the encounter.

### **5. Documentary Evidence, Audio-Visual Evidence & Other Evidence**

#### **a. Police Documents**

CCA reviewed all CPD-related forms, including but not limited to arrest forms and use of force forms related to the 2020 protests.

#### **b. Emergency Order**

On May 31, 2020, then-Cincinnati Mayor John Cranley issued an Emergency Order which implemented a curfew from 9pm – 6am in Cincinnati through June 2, 2020. The Order states that the curfew is "based upon the emergency declaration currently existing in the City of Cincinnati"

and that “[i]ndividuals are prohibited from appearing in the public spaces of the City of Cincinnati during the period of the curfew.”

CCA has also viewed various Tweets from the City of Cincinnati’s Twitter account announcing the curfew and its operative dates and times.

**c. CAD Report (Computer-Aided Dispatch)**

CAD Report #CPD200601001451 showed that on June 1, 2020, at 8:40pm, a caller reported that “[p]rotestors are jumping fences onto people’s property...others spread throughout the area” of 322 Emming Street.

*Note: Emming Street is located two streets away from Hastings Street.*

**d. Recorded Footage - Provided by: Pat Clifford**

Duration: 0:45 seconds

The camera recorded part of the incident from several yards away on a second-floor balcony. Three individuals were kneeling or seated in an empty lot, near a foundational wall. One officer lowered and appeared to be applying or adjusting the restraints.

The audio recording captured commentary about the incident, including, “Are they arresting those kids?” and “I guess. Yep [inaudible]. They’re in their own backyard. ...They were just playing with a little toy truck in their backyard.”

**C. Significant Discrepancies & Clarifications**

The SWAT officers involved in the interaction were in SWAT uniform; they did not wear BWCs. At the time of the incident, CPD Procedure § 12.540 Body Worn Camera System did not require SWAT officers to carry and activate BWCs. As of April 2021, the procedure has been updated to require those officers to “utilize BWCs in high-risk activities (i.e., search warrants, arrest warrants, crowd control).”

**D. Authorities**

See Appendix.

**E. Analysis**

**1. Allegation: Improper Stop**

Mr. Clifford alleged that during the evening of June 1, 2020, at approximately 8:45 p.m., he and his wife observed CPD officers improperly detain three young adults with flex-cuffs while those persons were on private property.

CPD Procedure § 12.554, Investigatory Stops, maintains that when an officer has reasonable suspicion to believe a citizen is committing a crime, the officer may forcibly stop and detain the citizen briefly.

On May 31, 2020, then-Cincinnati Mayor John Cranley issued an Emergency Order which implemented a curfew from 9pm – 6am in Cincinnati. The order states that the curfew is “based upon the emergency declaration currently existing in the City of Cincinnati” and that “[i]ndividuals are prohibited from appearing in the public spaces of the City of Cincinnati during the period of the curfew.” According to Tweets from the City of Cincinnati’s Twitter account sent on June 1, 2022, on that day, Mayor Cranley expanded the curfew hours to 8:00pm – 6:00am.

In addition, in Ohio, a person may be arrested for the offense of Misconduct at Emergency, a misdemeanor criminal offense, if that person “[fails] to obey the lawful order of any law enforcement officer engaged in the law enforcement officer’s duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind.” ORC §2917.13.

On June 1, Specialist Harper and Officer Johnson were engaged with the SWAT team to assist with civil unrest in Cincinnati. Statements from multiple officers involved in policing the unrest have indicated that CPD command staff directed CPD to detain and cite or arrest protestors who were in violation of curfew.

Per their statements, Officer Johnson and Specialist Harper observed three individuals running in the same area as the protestors who were “fleeing” from the officers’ pursuit. Those three individuals were outdoors in the City of Cincinnati at the time they were observed by officers, with Specialist Harper describing the three individuals as having been observed walking through a “vacant lot.” At least one of the officers who participated in the stop of the three individuals told CCA that he responded to the area after receiving a transmission reporting that individuals were trespassing through the property of others, a fact which is corroborated by CAD reports. Therefore, the stop of the unnamed individuals by Specialist Harper and Officer Johnson was made with reasonable suspicion to believe that one or more criminal offenses was being committed, and in compliance with CPD’s policy, procedure, and training.

## **2. Allegation: Improper Pointing of a Firearm**

Mr. Clifford alleged the officers pointed their firearms at the individuals during the detainment.

CPD Procedure §12.550 Discharging of Firearms by Police Personnel states officers who perceive what they interpret to be a threat of loss of life or serious physical harm to himself or others at the hands of another, have the authority to display a firearm, with finger outside the trigger guard and have it ready for self-defense.

Per their statements, the officers confirmed they carried firearms; however, their recollections were inconsistent: Officers Johnson and Mercado were unsure whether they pointed their firearms at the individuals, and Officers Todd and Wloszek stated they did not. The officers were not required to wear BWCs at the time of the incident, and therefore there is no footage of the incident from their perspective. The officers do not appear to be pointing their firearms in the recording provided by Mr. Clifford; however, it is not a complete recording and does not show the beginning or conclusion of the encounter. Therefore, CCA could not determine whether the actions of

Specialist Harper and Officers Johnson and Mercado were within CPD's policy, procedure, and training.

### 3. Allegation: Improper Procedure (Contact Card) – Collateral

CPD Procedure §12.554 Investigatory Stops stipulates that a Contact Card must be completed for any vehicle passenger or pedestrian detention that does not result in a citation or arrest. Per their statements, the officers present at the encounter confirmed that the individuals were not cited and released. They either did not recall or denied that a contact card was completed for their detention of the unnamed individuals. Specialist Harper and Officer Johnson initiated the detention and were therefore responsible for the contact card. Therefore, their failure to complete a contact card was not in compliance with CPD policies, procedures and training.

## F. Findings

### *Original Allegations*

Specialist Michael Harper  
Officer Ronald Johnson

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

---

Officer Ronald Johnson  
Officer John Mercado  
Officer Carroll Todd  
Officer Jacob Wloszek  
Specialist Michael Harper

**Improper Pointing of a Firearm** – There are insufficient facts to decide whether the alleged misconduct occurred. **NOT SUSTAINED**

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### *Collateral Allegations*

Specialist Michael Harper  
Officer Ronald Johnson

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

## **G. Observations**

See “Section VI. Key Observations” in CCA’s consolidated report on this investigation and ten other protest investigations, GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI.

## **H. Recommendations**

See R2301, R2302, R2303, R2305 and R2308 in “Section VII. Recommendations” of CCA’s consolidated report on this investigation and ten other protest investigations (GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI).

## **I. Previous Contacts & Commendations**

### **Specialist Harper**

#### *Previous Contacts with CCA*

Specialist Harper had one previous contact with CCA in the past three years.

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
18038	Off Duty Conduct	Referred (Unfounded

#### *Previous Contacts with IIS*

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

#### *Commendations*

Specialist Harper received three commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
09/06/2018	CPD
08/19/2019	CPD
08/19/2019	CPD

### **Officer Johnson**

#### *Previous Contacts with CCA*

Officer Johnson 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 Johnson with IIS.

### *Commendations*

Officer Johnson received five commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
08/04/2017	CPD
07/11/2018	CPD
09/06/2018	CPD
02/04/2019	OLE
07/11/2020	CPD

### **Officer Mercado**

#### *Previous Contacts with CCA*

Officer Mercado 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 Mercado with IIS.

### *Commendations*

Officer Mercado received three commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
08/04/2017	CPD
08/15/2017	CPD
05/13/2019	CPD

### **Officer Todd**

#### *Previous Contacts with CCA*

Officer Todd 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 Todd with IIS.

### *Commendations*

Officer Todd received one commendation in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
02/04/2019	OLE

**Officer Wloszek**

*Previous Contacts with CCA*

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

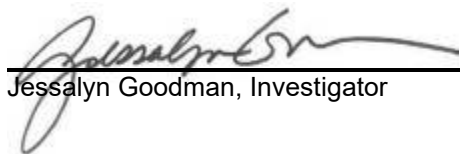
*Previous Contacts with IIS*

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


*Commendations*

Officer Wloszek received four commendations in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
08/04/2017	CPD
09/20/2017	Civilian
09/06/2018	CPD
03/07/2019	CPD

  
\_\_\_\_\_  
Jessalyn Goodman, Investigator

1/30/2023  
Date

  
\_\_\_\_\_  
Gabriel Davis, Director

1/30/2023  
Date



**A. Complaint Summary**

**Complainant:** Leah Grice

**Date:** June 21, 2020

**Location:** Online (Facebook)

**CCA Receipt:** June 29, 2020

**Allegations:** Discrimination; Improper Procedure

On June 25, 2020, while on social media, Ms. Leah Grice observed a viral post that originated from a Facebook group called The Mason and Deerfield Township Neighborhood Group. The thread included screenshots of a conversation between users made on June 21, 2020. One of the commenters (hereinafter referred to in this report as “Facebook User #1”) made several comments expressing “racist ideas and beliefs.” Facebook User #1 spoke against Black Lives Matter, stating “Must be close to 50 Black lives that Don’t Matter all that much, dead in the city..But hey!! Let’s plan another BLM march! And talk about defunding the police!” with emoticons. She noted Facebook User #1 was appropriating the use of “axing” in another comment: “Because if the word ghetto is used... then that means... uh, why you axing?”

**B. Summary of Evidence**

**1. Involved Citizen Statements**

**Leah Grice**

CCA interviewed Ms. Grice, W/F/28 on June 29, 2020. She provided the following information:

On June 25, 2020, while on social media, Ms. Grice observed a viral post that originated from a Facebook group called The Mason and Deerfield Township Neighborhood Group. The thread included screenshots of a conversation between users made on June 21, 2020. One of the commenters, Facebook User #1, made several comments against Black Lives Matter, including, “Black Lives Matter is a...political business. It is painfully clear that most black lives don’t matter for that fake group,” and “Black Lives Matter is taking in money hand over fist, stealing in the name of black. I’ll bet the leaders are sitting in a nice hotel suite right this moment, enjoying room service, planning their next ‘protest.’” Ms. Grice stated Facebook User #1 appeared to be white and was appropriating the use of ‘axing’ in another comment, “Because if the word ghetto is

used... then that means... uh, why you axing?" In the group, Facebook User #1 mentioned he was a police officer.

Ms. Grice has seen the same set of screenshots posted in multiple places online. Commentors of the thread, including several people of color, commented that they were "scared" and believed they should make a collective complaint. The commentors looked through other social media sites and identified him on the Great Oaks Career Campus page and via Linked In as a Cincinnati Police Department officer. In the photographs, his badge number was visible, and Facebook User #1 was ultimately identified as Sergeant Kenneth Kilgore.

## **2. Subject Officer Statements**

### **Sergeant Kenneth Kilgore**

Sergeant Kilgore, #S0128, M/B/59, was assigned to the Support Bureau, and joined CPD in 1997. Since this incident, he has retired from CPD. Sergeant Kilgore was reportedly off-duty at the time of the social media posts.

CCA interviewed Sergeant Kilgore on March 15, 2021, at 2:55pm. He provided the following information:

Sergeant Kilgore confirmed he had a Facebook account, and that its handle was the handle designated as "Facebook User #1" in this report. He acknowledged that he and his wife have access to the account. Sergeant Kilgore stated that he used to be a member of the Mason and Deerfield Township Neighborhood group, although he had not been a member for approximately one year.

On June 21, 2020, Sergeant Kilgore initiated and responded to posts within the group related to "politics that were a hot button during that time," including Black Lives Matter. Sergeant Kilgore stated that some of the posts were his and some were his wife's, but he "was not sure which." He believed he "probably" posted the comment which stated, "Must be close to 50 black lives that don't matter all that much dead in the City. But hey, let's plan another Black Lives Matter march and talk about defunding the police." Sergeant Kilgore stated that the post expressed his opinion and concern for the record number of homicides of black lives due to violence within the City which was not addressed by Black Lives Matter, a movement he considered an effort to defund the police department, who "take an enormous risk to save some of the same people," and "taking money away...from an organization that really is trying very, very hard to do good things in the community." Sergeant Kilgore did not recall what the responses were to his post and did not remember if he responded to those responses.

Another post stated, "I'm a taxpayer who's sick of the lies and exploitation of black people and my community. Black Lives Matter is a business, a political business, and it is painfully clear that most black lives don't matter to that fake group." Sergeant Kilgore stated this was also his opinion expressed after doing research into the group; he stated that he did not know if he or his wife posted the comment but stated he would "take credit for it." In another post, Facebook User #1 commented, "Black Lives Matter is taking in money hand over fist, stealing in the name of 'black.' I'll bet the leaders are sitting in a nice hotel suite right this minute, enjoying the room service and planning the next protest." Sergeant Kilgore confirmed it was his opinion, but he did not have independent knowledge of that.

In a separate post, Facebook User #1 commented, "Boy, is that ever important. Boy, because if the word ghetto is used then that means why you axing?" Sergeant Kilgore stated that his use of 'axing' was personal slang. He stated that he did not appropriate the language because he is a member of the of the African American community. Sergeant Kilgore denied that any of his posts could be perceived as discriminatory.

Sergeant Kilgore stated that the people involved in the interaction were strangers. He denied that he ever identified himself as a police officer or as a Cincinnati Police Department officer.

### 3. Officer Witness Statements

There were none.

### 4. Witness Statements

#### Facebook Users #2, #3, #4, #5 and #6

Facebook Users #2, #3, and #4 were involved in the original posts with Facebook User #1; Facebook Users #5 and #6 are monitors of *Mason and Deerfield Township Neighborhood Group*.

These witnesses were unable to be interviewed. CCA attempted to contact each through Facebook and by phone and/or mail, but there was no response. To date, none of the witnesses has contacted CCA.

### 5. Documentary Evidence, Audio-Visual Evidence & Other Evidence

#### a. Facebook

Several screenshots were taken of Facebook User #1's comments within the *Mason and Deerfield Township Neighborhood Group*.

[Please note: the grammar and spelling are reflective of the original posts. The bold print indicates the person who posted the comment; the italics identifies who was tagged in the post.]

1. **Facebook User #1** posted an article headlined, "Police: 1 dead after shooting in the West End."  
**Facebook User #1** commented: "Must be close to 50 Black lives that Don't Matter all that much, dead in the city. But hey!! Let's plan another BLM march! And talk about defunding the police!! [emojis]"
2. **Facebook User #7:** *Facebook #8* of course she is.....the mother of all hood rats. [emoji]  
Those ghetto people disgust me.  
**Facebook User #9:** *Facebook User #10* it was a son & his mother that they are looking for not 5 black kids.  
**Facebook User #3:** *Facebook User #7* who reported they came from the ghetto??? Or are you just assuming that?

**Facebook User #1:** *Facebook User #3* Boy is that ever important..Because if the word ghetto is used..Then that means..uh, why you axing?

3. **Facebook User #4:** Aren't you a cop?

**Facebook User #1:** *Facebook User #4* I'm a Tax payer..Who's sick of the lies and exploitation of black people..

**Facebook User #4:** *Facebook User #1* and a cop who's on a community page saying most black lives don't matter. You have to think about the optics of that. Even if you're joking around and just being an [expletive] you have to think about what you're doing.

**Facebook User #1:** *Facebook User #4* MY COMMUNITY.. BLM is a business.. A political Business.. and it is painfully clear THAT MOST BLACK LIVES DON'T MATTER to that fake group.. how's THAT FOR OPTICS?

4. **Facebook User #1:** *Facebook User #7* Ask for ME.. BLM is taking in money hand over fist, stealing in the name of "black" I'll bet the leaders are sitting in a nice hotel suite right this moment enjoying room service and planning the next "protest"

5. **Facebook User #2:** *Facebook User #1* what are the police doing to stop all this crime?<sup>22</sup>

**Facebook User #2:** *Facebook User #1* sweet. So then you can stop commenting then. If your point is that criminals are killing people and the cops can't or won't stop it because we told cops they should not kill people, then cool step aside. I guess is was never about protecting people and was always about being "a soldier/warrior".

**Facebook User #2:** *Facebook User #1* as I thought another redirect. "I am wrong I better change the subject to save face, no one will ever find out" Come on man, cops are supposed to protect people and a lot of them aren't cause they think their job is to punish criminals. You know that's not your job. It has never been your job. And now that some have called some cops out on their BS you feel like you have to defend them. If you are for police then change them so that the people feel protected.

**Facebook User #2:** *Facebook User #1* I don't like to argue with memes that don't have the source of the info stamped on them but in the interest that someone might learn something so are you pointing out that police can't stop all regular murders and they add another 4% on top of that? To get the correct numbers I will provide for you [lists racial make-up statistics of murder victims and officer involvement].

**Facebook User #2:** *Facebook User #1* so police reported that they killed 410 "felons"

**Facebook User #2:** *Facebook User #1* all of those lives matter. The problem is that police should stop people from killing other people and people should stop cops from killing people.

**Facebook User #2:** *Facebook User #1* how about we start with police don't get paid to kill people.

**Facebook User #2:** *Facebook User #1* plenty of civilized societies don't have military armed police forces so yeah that would be great.

**Facebook User #2:** *Facebook User #1* once again this proves that you don't want to protect you want to fight and shoot and some times kill. Instead of finding a way to protect people without killing and brutalizing you want things to stay the same so that you can personally feel like a badass.

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<sup>22</sup> Based on the context of the conversation, Facebook User #1's responses to Facebook User #2 appear to have been removed or deleted.

**Facebook User #2:** *Facebook User #1* your right the only thing stopping people from killing each other is the fact that cops have guns [emoji]

**Facebook User #2:** *Facebook User #1* hahaha so one way or the other with you. No middle ground. No fixing problems. Just we get to kill people or [expletive] off.

**Facebook User #2:** *Facebook User #1* hahahaha you are the worst [emoji] enjoy your socialist murder kid as long as you get to keep it I guess.

**Facebook User #2:** *Facebook User #1* looks like you are doomed. Good, kind, protectors will keep their jobs

**Facebook User #2:** *Facebook User #1* no it isn't

**Facebook User #2:** *Facebook User #1* you are a delusional warrior cop that just can't wait to have an excuse to shoot someone. I really do hope that not only do you get defunded but that most of the people on your force are rational people that will change with the times.

**Facebook User #2:** *Facebook User #1* yeah for you. When you are jobless. Sorry you picked a socialist job and now the people don't want you no more.

**Facebook User #2:** *Facebook User #1* [emojis]

**Facebook User #2:** *Facebook User #1* I am watching you make a fool of yourself. That's all I am doing right now. By the way you argue on the internet I am sure you won't be able to find another job if the police get rid of you. If I were you and my job relied on the will of the people then it would be better if you left your opinions on your own person page. Because they are not factual and they show extreme bias.

### **C. Significant Discrepancies & Clarifications**

There were none other than those discussed below in the Analysis section.

### **D. Authorities**

See Appendix.

### **E. Analysis**

#### **1. Allegation: Discrimination**

Ms. Grice reported that, while posting as "Facebook User #1," in the Mason and Deerfield Township Neighborhood Group on Facebook, Sergeant Kilgore made comments that were against Black Lives Matter; additionally, Ms. Grice stated Facebook User #1 appeared to be white and used appropriated speech through use of 'axing' in another comment: "Because if the word ghetto is used... then that means... uh, why you axing?" In his statement, Sergeant Kilgore acknowledged that he made the alleged comments but stated that, as he is African American, he was not inappropriately using another culture's phrase. Further, he clarified that his use of "axing" was slang he uses and did not perceive it as discriminatory.

CPD's Manual of Rules and Regulations § 1.23 C. provides that members "shall not express, verbally or in writing, any prejudice or offensive comments concerning... race, color, and ethnicity

... or similar personal characteristics.” The City of Cincinnati’s Administrative Regulation 25 has defined discriminatory harassment as “conduct toward an individual because of his or her...race, color, ethnicity...when the conduct is severe or pervasive enough to create an intimidating, hostile, or offensive...environment” and will not be tolerated.

When viewed in its full context, including the comments by other posters, Sergeant Kilgore’s comment and use of “axing” could be interpreted as perpetuating a racial or socio-economic stigma, regardless of whether it was his intention or not. However, it is unclear whether he was merely using slang, referring to race (which is a protected class), referring to socio-economic status, or referring to some other personal characteristic that might (or might not) be covered by CPD’s or the City’s antidiscrimination policies. As Sergeant Kilgore’s meaning at the time of the post cannot be verified, CCA is unable to determine whether his comments were discriminatory.

## **2. Allegation: Improper Procedure**

Aside from whether Sergeant Kilgore’s online speech was discriminatory, CCA considered whether it violated CPD’s social media policies.

CPD Procedure §14.205 Social Media policy states that “Department personnel are free to express themselves as private citizens on social media sites to the degree that their speech does not impair working relationships in the Department for which confidentiality is important; does not impede the performance of duties, impair discipline and harmony among coworkers, *or negatively affect the public perception of the Department*” (emphasis added).

Sergeant Kilgore’s comments were made in June 2020, during a time of heightened tension and strain between the police and the community, in which several groups (including Black Lives Matter) organized public demonstrations against police misconduct. A review of the Mason and Deerfield Township Neighborhood Group and captured Facebook screenshots showed Sergeant Kilgore made comments about and against the Black Lives Matter organization, including, “Must be close to 50 Black lives that Don’t Matter all that much, dead in the city. But hey!! Let’s plan another BLM march! And talk about defunding the police!!” and “[BLM is a] political Business.. and it is painfully clear THAT MOST BLACK LIVES DON’T MATTER to that fake group.” He continued to make incendiary comments after members of the group identified him as a police officer and had responded negatively to his statements, including, “BLM is taking in money hand over fist, stealing in the name of ‘black’ I’ll bet the leaders are sitting in a nice hotel suite right this moment enjoying room service and planning the next ‘protest.’” Additionally, Sergeant Kilgore and another poster (Facebook User #2) appeared to have continued their conversation; although Facebook User #1’s posts appear to have been deleted and their content is unknown, the remaining responses are indicative of continued disagreement about problems within policing – a topic associated with Sergeant Kilgore’s employment.

While it is concerning that Sergeant Kilgore posted the comment “Must be close to 50 Black lives that Don’t Matter all that much, dead in the city,” the evidence is inconclusive as to whether Sergeant Kilgore had ever identified himself to members of the Mason and Deerfield Township Neighborhood Group as either a police officer or a Cincinnati Police Officer at the time he posted it. Although community members were able to ascertain Facebook User #1’s identity by searching other sites, and thus associate that user’s comments with the Cincinnati Police Department, Sergeant Kilgore maintained that he did not identify himself as an officer with the Cincinnati Police

Department, and CCA is in possession of no evidence that disproves his claim. There is contextual evidence from the Facebook conversation thread that Officer Kilgore might have implicitly acknowledged that he was a police officer through his silence when accused of being an officer, but his failure to dispute that he was an officer is not strong enough evidence that he, on his own, identified himself as an officer so as to “affect the public perception of the Department.”

The evidence, however, does not rule out that Sergeant Kilgore explicitly revealed himself to be a CPD officer while participating in the Mason and Deerfield Township Neighborhood Group as Facebook User #1 during the time period preceding the incendiary posts that are the subject of Ms. Grice’s complaint. CCA was unable to obtain Facebook posts from that prior period. Members of the Group, other than Ms. Grice, did not respond to CCA’s attempts to interview them about their interactions with (or knowledge of) Facebook User #1 at the time of the incendiary comments. Moreover, as described above, it appears that someone deleted Facebook User #1’s responses to Facebook User #2 during an incendiary conversation on the Group page where Facebook User #2 made comments suggesting that Facebook User #1 was a “warrior cop.” Our inability to review the full body of Facebook User #1’s posting history on the Group page, combined with the refusal of online users to speak with CCA, leaves us unable to determine whether Sergeant Kilgore publicly associated his comments as Facebook User #1 with his profession or with the Cincinnati Police Department. Thus, the evidence is inconclusive as to whether Sergeant Kilgore’s comments violated CPD’s Social Media policy.

## **F. Findings**

### *Original Allegation*

Sergeant Kenneth Kilgore

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

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

## **G. Observations**

See “Section VI. Key Observations” in CCA’s consolidated report on this investigation and ten other protest investigations, GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI.

**H. Previous Contacts & Commendations**

**Sergeant Kilgore**

*Previous Contacts with CCA*

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

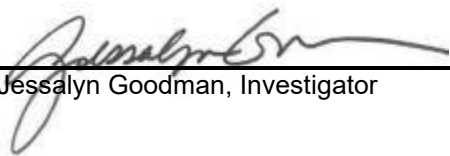
*Previous Contacts with IIS*

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

*Commendations*

Sergeant Kilgore received one commendation in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
07/20/2017	CPD

  
\_\_\_\_\_  
Jessalyn Goodman, Investigator

1/30/2023  
Date

  
\_\_\_\_\_  
Gabriel Davis, Director

1/30/2023  
Date



**A. Complaint Summary**

**Complainants:** Terhas White and Alissa Gilley

**Date:** June 24, 2020

**Time:** 3:00 PM

**Location:** 801 Plum Street-City Hall

**CCA Receipt:** June 25, 2020

**Allegations:** Discrimination; Improper Procedure; Improper Procedure (BWC) – Collateral; Interference with Administrative Investigation – Collateral

Per Terhas White's emailed complaint:

Ryan Olthaus was brought in to fill in for James Donaldson who was told to go downstairs via Goodrum because he had put his hands on 2 citizens waiting to speak in from on the city council. He came in smug and smiling which only served to display his dismissal of those he is supposed to protect and serve, his dismissal of the seriousness of our reason for being there as citizen speakers and his dismissal of the seriousness of why he was asked to come fill in for Donaldson. I asked [why] he was smiling as this was no laughing matter and Donaldson had been taken away for putting his hands on people. He replied, still smirking and removed from the seriousness of the situation, that Donaldson was "ok" first and that he "was gone" second then he put his hand by the front of his belt and did the adopted white power symbol that resembles the "ok". This very thing happened to me early protest when I was arrested for breaking curfew. I happen to be arrested with white supremacist who were dressed as a protester who taunted me with the same white power hand symbol from behind locked doors in the same way Olthaus did. Only difference is Olthaus is paid to protect and serve people like me and this taunting happened in my own cities city hall.

Allowing these incidents to go unchecked is how officers, like Olthaus, are able to be in positions to abuse the power given to them by us, the people. I would guess that this is not the first incident he has reported on him. I'm sure he knew exactly what he was doing though. As an officer of the law he is informed and aware of hate symbols and gestures. He chose to disregard that to taunt me.

Per Alissa Gilley's emailed complaint:

Yesterday, myself and many others witnessed eye witness accounts on record of officer Ryan Olthaus throwing up a white supremacy hand signal towards citizens

of color at city hall as we waited to share our concerns regarding the divestment from CPD during the budget meeting for this exact behavior/mentality.

Ryan's behavior is the living representation of what is corrupting the force. After further research it appears this is not the first time he has been reprimanded for such acts. Please, consider the state of affairs and do what is in your power to remove him from the force. Ryan Olthaus is a threat to me, my children and so many others. He does not represent this city. Please, please, please do what you can to remove him.

## **B. Summary of Evidence**

### **1. Involved Citizen Statements**

#### **Terhas White**

CCA interviewed Ms. Terhas White on July 23, 2020. She provided the following information:

On June 24, 2020, Ms. Terhas White, F/B/37, stated she was at City Hall waiting to speak and heard a commotion going on upstairs. CPD led someone out in handcuffs. "City Council members and Mayor Cranley had already done numerous things to 'slub' up the process of them being there to speak so they had a different flow going." One of which they implemented in the midst of people speaking. They made people leave after they spoke. But they did not know who had spoken and who had not, so they were trying to kick out people who hadn't spoken and that was the commotion that was going on upstairs.

Ms. White questioned what was occurring after seeing a speaker taken out in handcuffs. Mr. James Donaldson, who was the security guard at City Hall, ended up putting his palm to the speaker's chest to push him. When this happened, everything became a little more heated. The people in line told Mr. Donaldson he could not put his hands on people. Mr. Donaldson knocked on a door to get more people to come out.

A female Black security officer came down and the remaining speakers ("thirty [30] of us") told her what occurred. Some CPD officers came and stood on the steps. Some people interacted with the officers, because the officers asked Mr. Donaldson if he wanted them arrested. The speakers questioned the officers why they would be arrested because they were down there trying to ask questions and get answers.

One of the speakers had their back to Mr. Donaldson. Mr. Donaldson attempted to put his hands on that person. This was the second person that he had put his hands on. The Black female security officer stepped in and told Mr. Donaldson he could not put his hands on this person and motioned for him to back away and put herself in between him and male speaker.

Security Guard Manager Goodrum at City Hall arrived, and they told him what occurred. Mr. Goodrum made Mr. Donaldson leave. Officer Olthaus arrived "smiling, being very dismissive about what's going on, and laughing like it's no big deal." Everyone was still "heated" now looking at Officer Olthaus wondering why he was laughing. This was not a laughing matter.

Ms. White told Officer Olthaus that Mr. Donaldson's behavior was not okay. Officer Olthaus responded, "[W]ell that guy's gone now. He's okay. He's gone." Ms. White responded, "[Y]eah but, like this is why we're upset." Officer Olthaus responded, "[O]kay." Ms. White and Officer Olthaus "stopped talking for a second. . . [H]e turned his head to the side and then threw -- threw up the symbol at his like belt buckle."

Ms. White told Officer Olthaus, "[T]hat symbol that you threw up . . . that's a white supremacist symbol. Like that's the white power symbol. . . . And like for that -- for that to happen here at City Hall like it doesn't make me -- it doesn't make us feel okay. And he's like -- he threw up two thumbs. He's like oh is this better?" People began yelling and telling the officer he was trained better. The security guard manager responded again, and Ms. White attempted to explain to him what occurred. The Security Guard Manager had Officer Olthaus leave as well. Ms. White left the waiting area as it was her turn to speak in council chambers.

Ms. White tried to talk to the Mayor about what happened, which she regretted afterwards ("I should have just used my time and say what I initially intended to say"). Other people had already tried to talk to the Mayor about what occurred.

After she spoke for two minutes she was led out of the building by a Black and a white officer. As soon as they walked around the corner, Officer Olthaus was standing there smiling. It felt like "harassment." Ms. White advised the Black officer this was the officer she attempted to speak about in chambers. Ms. White pleaded with the officers to make Officer Olthaus leave. Eventually he left even though the Black officer stayed with her.

### **Alissa Gilley**

CCA interviewed Ms. Alissa Gilley on July 21, 2020. She provided the following information:

On June 24, 2020, Ms. Gilley, F/Unknown/Unknown, "was not there physically," but was "waiting for the new group to come in" to City Hall and watched the hearing online.<sup>23</sup> Ms. Gilley heard several people mention that Officer Olthaus had thrown up a white supremacist symbol. This action "bothered me and I just had hoped --That someone was looking into that after that had happened."

There were witnesses but they do not wish to come forward. Ms. Gilley sent the CPD Investigator assigned to this complaint an email of Officer Olthaus's Facebook page. Officer Olthaus has since logged off of Facebook. "I'm sure FOP contacted him immediately. But his Facebook was indicative of like white violence and obviously blue lives matter but in a very extreme way."

## **2. Subject Officer Statements**

### **Officer Ryan Olthaus**

Officer Ryan Olthaus, #PO961, M/W/40, is currently assigned to District 3, and he has been a CPD member since 2008. Officer Olthaus was in uniform; his BWC was not activated.

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<sup>23</sup> Ms. Gilley told IIS she was present at City Hall at the time of the incident, and that while she did not see Officer Olthaus display a "white supremacist hand gesture," she heard others there state that he had done so.

## Interview with CCA:

CCA interviewed Officer Olthaus on July 12, 2021, at 9:56 a.m. He provided the following information:

On June 24, 2020, Officer Olthaus was on duty, in uniform at City Hall for the protests to make sure everything was orderly that day. There was an issue on the floor of Council Chambers. Officers Olthaus and Merlin Murrell escorted a female down through a crowd of people there in the lobby of City Hall.

An "officer needs assistance" was broadcast, so Officer Olthaus had Officer Murrell take their prisoner. Officer Olthaus responded to the lobby to make sure that the officer was okay. When he arrived, it was actually a security guard that needed assistance. Approximately twenty to twenty-five (20-25) people yelled at him, saying the guard put his hands on somebody. Officer Olthaus did not witness any of that.

Officer Olthaus remained on scene and told other officers they could disregard anybody else coming and he would sit there while the security guards figured out what they were doing. Officer Olthaus was standing approximately 10-12 feet away from Ms. White when the two of them had the following exchange:

. . . I was sitting there and she started, she started yelling "How is so and so" whoever this little white security guard's name was. "How's he doing?" And I was like "He's OK." She's like "What? I can't hear you." I'm like "He's OK." And she goes "What?" I work on the SWAT team. We do a lot of things with our hands. I mean if you can't hear we've got a lot of signals to do things. I gave her the "OK" sign. He's OK. And I think I might have done it, cuz I had, there was a big crowd. I keep my forearms on both of my weapons. I think I was like OK. Everything's OK. And then, apparently she went crazy. Four other people went crazy. They thought I was a racist for throwing up the "OK" sign that meant "OK" for the last hundred years.

After his response, Ms. White called him a white supremacist. Officer Olthaus thought her allegation was "so ludicrous, I think I even gave her the OK sign or the thumbs up sign after a while. Is this, OK? Does this make me a racist? And I shrugged it off."

Other people jumped on the band wagon and asked for his name, which he spelled out and gave his badge number. The speakers then went upstairs and told Council that he was a racist. Officer Olthaus was moved to another area and when Ms. White was done speaking, she came out, saw him and said, "There he is! The racist blah, blah, blah white supremacist. He's scaring me!" Officer Olthaus walked back into the room.

Officer Olthaus initially stated he could not recall if his BWC was activated. He later advised CCA that he did not believe he had his BWC on "because I was actually not talking to anyone. I was by myself, just watching the whole crowd. And at that point if I am not actually engaged with anybody per our procedure, I don't have to have it on."

Officer Olthaus confirmed during this CCA interview that when he made the "OK" gesture, he had his right hand out with the palm toward Ms. Gilley and three fingers straight up. He stated that he likely made the gesture "right at my stomach" because "I always keep contact on my gun belt

because my right forearm sits on my gun and then my left forearm sits on my TASER because my TASER is up towards my . . . stomach.”

#### Interview with IIS:

IIS interviewed Officer Olthaus on July 16, 2020. He provided the following information as excerpted from IIS’s report summarizing his statement:

Officer Olthaus has used the gesture since he was a child to convey approval and well-being. There was no white supremacist connotation when he used the “okay” hand gesture. Officer Olthaus has never used the symbol to convey any other message than everything is fine, and his use of the hand gesture was misinterpreted.

Officer Olthaus is a proud member of the Department’s Special Weapons and Tactics team (SWAT) and had a team photo as his Facebook profile picture. After Ms. White’s allegation, Officer Olthaus posted an image of LeBron James using the “okay” hand gesture to show it is universally accepted, and Officer Olthaus’s use of it was misrepresented. Officer Olthaus also shared several articles relating to protests around the country but did not comment on any of them. Officer Olthaus posted a picture of an unknown person with a knife to a police officer’s neck being shot in the head by a third party. The picture of an officer’s throat being cut by an unknown person was widely circulated on Facebook and the post was not removed. Officer Olthaus was demonstrating Facebook’s unfair censorship policy because it has universally removed any post of the unknown person being shot in the head after cutting the officer’s neck, but not the other.

### **3. Officer Witness Statements**

There were none.

### **4. Witness Statements**

#### **Witness A**

CCA interviewed Witness A. on August 17, 2020. They provided the following information:

On June 24, 2020, Witness A was with a group of people waiting to be taken upstairs so they could speak to Council. There was a woman who was brought downstairs in handcuffs. They asked why this person was being arrested and were told by the security officer to stop talking and step back. They replied they had a right to know why they were being arrested because you can’t be arrested for speaking. Then Mr. Donaldson, the security guard, escalated things by pushing someone. The crowd wanted the security officer arrested for assaulting someone. There were CPD officers on the stairwell and they were told what occurred. A person started chanting “Who do you protect? Who do you serve?” Mr. Donaldson grabbed Witness A from behind, trying to grab their wrists. A Black female security officer approached Witness A, stopped Mr. Donaldson, and removed Mr. Donaldson from the room.

Officer Olthaus took the place of the security officer. Officer Olthaus looked at someone and flashed the “white power” symbol (put your pointer finger and your thumb together and then you hold up like your three fingers so it’s like, it kind of looks like the OK symbol) from his beltline and then was asked why he flashed the white power symbol at them and if he knew what that was. Officer Olthaus acted like he didn’t really know and shrugged it off. Then smirked and laughed while this person explained to him and then he gave the thumbs up hand gesture asking if that was better. The person said “No don’t flash any hand gestures at me...” Then he laughed again and acted like it wasn’t a big deal.

Witness A stated from their perspective and some of the other people that were there, they took as if he clearly knew what he was doing, especially when he flashed the white power symbol at someone who was Black. Witness A could not hear if Officer Olthaus said anything when he gestured the symbol.

**5. Documentary Evidence, Audio-Visual Evidence & Other Evidence**

**a. Police Documents**

CCA reviewed all CPD-related forms, including but not limited to the Internal Investigation Section (IIS) Report, and information from CPD’s Records Management System (RMS).

**b. Body Worn Camera (BWC)**

Officer Olthaus did not have his BWC activated and told CCA that per CPD policy, because he had not initiated any contact, he did not have to turn on his BWC.

**c. City Hall Footage**

Events recorded by Cincinnati City Hall’s cameras (front entrance) that are relevant to this investigation occurred on June 24, 2020 starting at 14:59:23. That footage does not have audio. A review of that recording reveals the following:

The footage begins with Mr. Donaldson standing at the front entrance to City Hall and several people in line to speak. Officers Olthaus, Merrell, and another officer in front escorted a handcuffed citizen out of the building. Mr. Donaldson spoke to one citizen on several different occasions. Council Member Kearney walked down the steps and greeted the awaiting speakers. Four CPD officers slowly followed behind and remained on the steps. Sgt. Jerry Kinebrew responded to the steps and spoke to the officers, then walked upstairs. A Black female security officer spoke with the crowd and the CPD officers on the stairwell. The officers walked up the stairs and remained on the landing. A Black male security officer walked down the steps and spoke to the crowd. Mr. Donaldson left the area. The officers on the landing left and walked upstairs. Officer Olthaus arrived on scene and stood across from the waiting speakers. The female security officer left. Officer Olthaus can be seen speaking to Ms. White. Officer Olthaus had his left hand at his waist area and raised the “OK” sign. Three of his fingers can be seen being raised. Officer Olthaus then raised his arms and gave the “thumbs up.” Ms. White attempted to speak to the Black male security guard. The Black male security guard spoke to Officer Olthaus and the officer left the area.

**d. Other Video**

CCA reviewed Ms. White's video footage, which was consistent with City Hall footage.

**e. Officer Olthaus's Facebook Posts**

CCA reviewed several screenshots of Officer Olthaus' Facebook page which were provided by Ms. Gilley (who took the screenshots) including the following:

**i. LeBron James Photo**

The photograph shows LeBron James displaying an OK sign with his right hand (thumb and index finger touching in the shape of a circle and three other fingers pointed up) near his cheek. See *Photo A below*.

**ii. SWAT Team Photo**

Ms. Gilley provided CCA and IIS with a Facebook "cover photo" she copied from Officer Olthaus's Facebook page that showed Officer Olthaus and CPD's SWAT Team in uniform. Officer Olthaus authenticated that photo during his IIS interview and admitted that he posted the photo. *Photo not shown*.

**iii. Image of Attempted Execution of Officer and Execution of Figure in Black**

CCA also obtained an image from Ms. Gilley that Officer Olthaus shared on this Facebook page, dated "June 22," that featured a graphic depiction of violence against both a male officer and against a masked figure of unknown race and unknown gender clad in all black with an American flag over their shoulders. Specifically, the image shows a figure wearing all black who appears to be attempting the execution of a white police officer by standing over the officer from behind, holding a bloody knife to the officer's throat with one hand and covering the officer's mouth with the other hand. Simultaneously, the image shows a third person, who is white, holding a gun with both hands, aiming the gun at the head of the figure in black, and shooting a bullet into the head of that person causing blood to splatter in an apparent execution of the figure in black. It is unclear from the photo if the shooter is a police officer or a civilian. See *Photo B below*.

Photo A

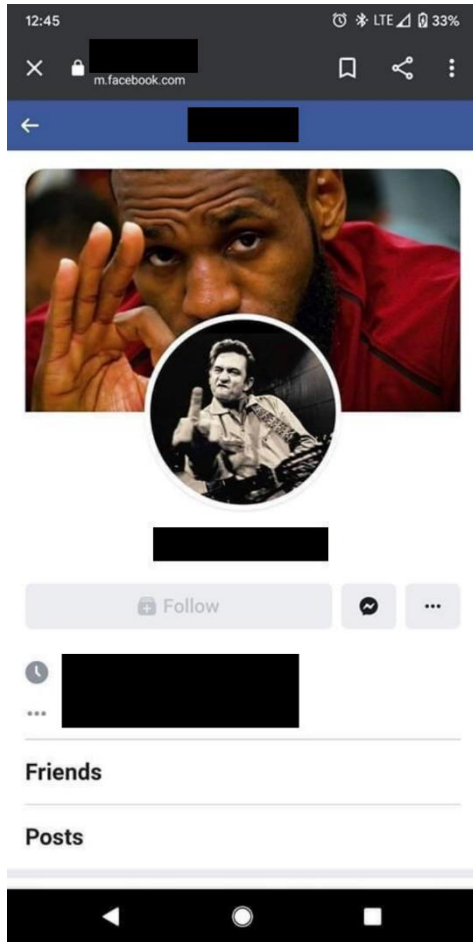


Photo B



f. **Resources on White Supremacist Gestures**

i. **Southern Poverty Law Center**

*Is that an OK sign? A white power symbol? Or just a right-wing troll?* David Neiwert, 9/19/2018, <https://www.splcenter.org/hatewatch/2018/09/18/ok-sign-white-power-symbol-or-just-right-wing-troll> (last accessed 11/22/2022)

The above Southern Poverty Law Center (SPLC) publication contains the following provision:

So, what does it mean when someone flashes the OK sign? In the end, it can mean almost anything, but primarily it's one of three things:

- It can be a harmless use of its traditional meaning that all's well.
- It can be an ironic attempt to troll liberals with a symbol chosen to "trigger" their inner "SJWs."
- It can be a surreptitious way of signaling your presence to other white supremacists.



The first of these (and its most common, but also most declining, use) is harmless. But it can't credibly be claimed by anyone who has a record of involvement with the many far-right elements that swirl both around the Trump White House and outside it as well. Nor can it be claimed by street-protesting Proud Boys chanting far-right slogans.

The second is less directly harmful, but hardly innocent of wreaking havoc. The normalization of the radical right under the rhetorical protection of self-proclaimed "centrists" and "libertarians," particularly those who spread conspiracy theories and are often labeled the "alt-lite," is a legacy that could last a generation or longer.

The third is, of course, reflective of a toxic worldview and authoritarian politics, bent primarily on the destruction of liberal democracy. At the moment, it remains the smallest bloc of the three.

Yet trolling culture, the ethos that fuels the second motivation, has proven a direct gateway not just to the alt-right, but also to even more poisonous cultures such as that of woman-hating "incels". It's one thing to shrug off misbehavior by embracing the "troll" label, but it still means you're a participant in a toxic subculture. It's easy for the second motivation to morph into the third.

## ii. **Anti-Defamation League**

*Okay Hand Gesture*, <https://www.adl.org/resources/hate-symbol/okay-hand-gesture> (last accessed 11/11/2022)

According to the Anti-Defamation League (ADL), one of the foremost "anti-hate organization[s] in the world:"

The "okay" hand gesture—in which the thumb and index finger touch while the other fingers of the hand are held outstretched—is an obvious and ancient gesture that has arisen in many cultures over the years with different meanings. . . . [I]t most commonly signals understanding, consent, approval, or well-being. . . . The "okay" hand gesture also forms part of the basis for a number of words or concepts in American Sign Language. It appears in many other contexts as well. Use of the okay symbol in most contexts is entirely innocuous and harmless.

In 2017, the "okay" hand gesture acquired a new and different significance thanks to a hoax by members of the website 4chan to falsely promote the gesture as a hate symbol, claiming that the gesture represented the letters "wp," for "white power." The "okay" gesture hoax was merely the latest in a series of similar 4chan hoaxes using various innocuous symbols; in each case, the hoaxers hoped that the media and liberals would overreact by condemning a common image as white supremacist.

. . . [T]he hoax was so successful the symbol became a popular trolling tactic on the part of right-leaning individuals, who would often post photos to social media of themselves posing while making the "okay" gesture.

Ironically, some white supremacists themselves soon also participated in such trolling tactics, lending an actual credence to those who labeled the trolling gesture as racist in nature. By 2019, at least some white supremacists seem to have abandoned the ironic or satiric intent behind the original trolling campaign and used the symbol as a sincere expression of white supremacy

The overwhelming usage of the “okay” hand gesture today is still its traditional purpose as a gesture signifying assent or approval. As a result, someone who uses the symbol cannot be assumed to be using the symbol in either a trolling or, especially, white supremacist context unless other contextual evidence exists to support the contention. Since 2017, many people have been falsely accused of being racist or white supremacist for using the “okay” gesture in its traditional and innocuous sense. Because of the traditional meaning of the “okay” hand gesture, as well as other usages unrelated to white supremacy, particular care must be taken not to jump to conclusions about the intent behind someone who has used the gesture.

**g. Litigation Documents**

CCA obtained litigation documents (including a Complaint submitted by counsel for Ryan Olthaus and affidavit executed by Ryan Olthaus) from the Hamilton County Clerk of Court’s website for the following matter: *Ryan Olthaus v. Julie Niesen, et al.*, Case No. A2002596. All documents reviewed were unsealed.

**C. Significant Discrepancies & Clarifications**

While statements from the subject officer and complainants are largely consistent on the point that Officer Olthaus displayed an OK sign in Ms. White’s presence on June 25, 2020, they disagree as to Officer Olthaus’s intent in displaying the sign and the meaning of that symbol.

**D. Authorities**

See Appendix.

**E. Analysis**

**1. Allegation: Discrimination**

Ms. White and Ms. Gilley alleged Officer Olthaus gestured a discriminatory symbol when speaking with Ms. White during her wait at City Hall for the public comment session on June 24, 2020. A review of City Hall footage showed Officer Olthaus gesturing the OK symbol as alleged. In his interview with CCA, Officer Olthaus denied his actions were discriminatory.

CPD’s Manual of Rules and Regulations § 1.23 C. provides that members “shall not express, verbally or in writing, any prejudice or offensive comments concerning... race, color, and ethnicity ... or similar personal characteristics” Furthermore, the City of Cincinnati’s Administrative Regulation 25 has defined discriminatory harassment as “conduct toward an individual because

of his or her...race, color, ethnicity...when the conduct is severe or pervasive enough to create an intimidating, hostile, or offensive...environment.” Examples of discriminatory harassment that violate this policy and may violate the law include discriminatory gestures.

#### a. The OK Sign’s Meaning

The Southern Poverty Law Center (SPLC)—a well-known anti-white-supremacy organization recognized for its expertise concerning racist symbols and groups—says the following regarding three potential meanings expressed by the “OK sign”:

[W]hat does it mean when someone flashes the OK sign? In the end, it can mean almost anything, but primarily it’s one of three things:

- It can be a harmless use of its traditional meaning that all’s well.
- It can be an ironic attempt to troll. . .
- It can be a surreptitious way of signaling your presence to other white supremacists.

SPLC at <https://www.splcenter.org/hatewatch/2018/09/18/ok-sign-white-power-symbol-or-just-right-wing-troll>

While SPLC does not define “trolling,” Merriam-Webster’s Dictionary has defined it to mean: “antagoniz[ing] (others) online by deliberately posting inflammatory, irrelevant, or offensive comments or other disruptive content.” See “Troll.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/troll>. Accessed 7 Dec. 2022.

Any display of the OK sign for the purpose of trolling is problematic because trolling is inherently done with the knowledge that one’s use of the sign is perceived by others to have some connection to white supremacy; thus any use of the OK to sign to troll others cannot be neatly separated from white supremacy. On this point, the SPLC says the following:

Yet trolling culture, the ethos that fuels the second motivation, has proven a direct gateway not just to the alt-right<sup>24</sup>, but also to even more poisonous cultures . . . . It’s one thing to shrug off misbehavior by embracing the “troll” label, but it still means you’re a participant in a toxic subculture. It’s easy for the second motivation to morph into the third.

This linkage between trolling and white supremacy is echoed by The Anti-Defamation League (ADL), another authoritative anti-hate organization, which states on its website:

[The historic use of the sign to trigger concern about white supremacy] was so successful the symbol became a popular trolling tactic on the part of right-leaning individuals, who would often post photos to social media of themselves posing while making the “okay” gesture. Ironically, some white supremacists themselves

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<sup>24</sup> According to the SPLC, “[t]he Alternative Right, commonly known as the ‘alt-right,’ is a set of far-right ideologies, groups and individuals whose core belief is that ‘white identity’ is under attack by multicultural forces using ‘political correctness’ and ‘social justice’ to undermine white people and ‘their’ civilization.” See SPLC, <https://www.splcenter.org/fighting-hate/extremist-files/ideology/alt-right> (last accessed 1/12/2023).

soon also participated in such trolling tactics, lending an actual credence to those who labeled the trolling gesture as racist in nature.

ADL at <https://www.adl.org/resources/hate-symbol/okay-hand-gesture>.

Accordingly, any use of the OK sign by a Cincinnati Police Officer *that is proven to have occurred for the purpose of trolling or for the purpose of white supremacist expression*, would likely qualify as offensive expression concerning race under Manual of Rules and Regulations § 1.23 C or as discriminatory harassment under AR 25.

If displayed, the extent to which an OK sign is used with either the intent or knowledge as to its offensive meaning is key when evaluating any charge of wrongdoing, because the sign is traditionally not an offensive one. The ADL expresses this point well:

The overwhelming usage of the “okay” hand gesture today is still its traditional purpose as a gesture signifying assent or approval. As a result, someone who uses the symbol cannot be assumed to be using the symbol in either a trolling or, especially, white supremacist context unless other contextual evidence exists to support the contention. ADL at <https://www.adl.org/resources/hate-symbol/okay-hand-gesture>.

#### **b. Officer Olthaus’s Use of the OK Sign in This Case**

The issue, then, is whether there is evidence establishing by a preponderance that Officer Olthaus either intended to use the OK sign in a manner to troll a hearing attendee in Council Chambers or used it with the intent to display white supremacist affinity or expression. As is the case in all CCA investigations, when answering this question we look to any direct evidence, but also to any circumstantial evidence or contextual information.

After careful review, we have concluded that there is insufficient evidence that either proves or disproves, by a preponderance, that Officer Olthaus intended to use the OK sign in a manner to troll or used it with the intent to display white supremacist affinity or expression. For one, video footage from Council Chamber lacks audio that might prove Ms. White’s account of the conversation that occurred just before the use of the sign. Similarly, the absence of video means we cannot corroborate Officer Olthaus’s account for what was spoken. This gap in evidence is heightened by the lack of BWC from that encounter.

Moreover, even if the conversation unfolded as Ms. White has maintained that it did, there is insufficient evidence that the intent behind the officer’s displaying of the OK sign as a response to her comment “this is why we’re upset” was done for the purpose of mocking her with a racist symbol, trolling her, or expressing white supremacy. Indeed, there is insufficient evidence proving by a preponderance that Officer Olthaus was even aware that the OK sign had any connection with white supremacy.

To be sure, the evidence establishes that following the incident, after he had been publicly accused of racism, Officer Olthaus posted a cover photograph of LeBron James displaying the OK sign on his Facebook page. However, when questioned by investigators about the post, Officer Olthaus maintained that he posted the photo for the purpose of demonstrating that the OK sign was not a white supremacist symbol, and he maintained that he was using LeBron James, a

Black athlete, as a validator for his position that the symbol was innocent. CCA is aware of no evidence that disproves Officer Olthaus' claim as to his intent in posting the photograph.

While we are troubled by Officer Olthaus's failure to activate his BWC during his interactions with speakers and protesters at the Council Chambers that day, and while his placement of the OK sign near his waistline may seem unusual, those two facts alone do not prove wrongful intent or motivation by a preponderance. We note that none of the leading sources on white supremacy that CCA consulted have identified the display of the sign near the waistline as a specific indicator of racist or trolling intent. We also note that Officer Olthaus's failure to activate his BWC at City Hall that day began before his interaction with Ms. White, and there is no direct evidence that he failed to activate his BWC for the purpose of hiding misconduct that day.

Under these circumstances, and in light of leading authorities advising caution with respect to interpretations of the OK sign, which can be varied, CCA was unable to determine by a preponderance whether Officer Olthaus violated the applicable non-discrimination policies by displaying the sign.

## **2. Allegation: Improper Procedure**

Complainant Alissa Gilley raised concerns about the content that Officer Olthaus posted on his Facebook page, alleging that it was indicative of "white violence" and was "extreme." CCA considered that social media content in its investigation of Ms. Gilley's and Ms. White's Discrimination allegations (addressed above), and also reviewed the content for any potential violations of CPD's social media policies.

CPD Procedure §14.205 (E)(1)(a) Social Media policy states that "Department personnel are free to express themselves as private citizens on social media sites to the degree that their speech does not impair working relationships in the Department for which confidentiality is important; does not impede the performance of duties, impair discipline and harmony among coworkers, or *negatively affect the public perception of the Department*" (emphasis added).

Procedure §§ 14.205 (E)(1)(b) and (e) also provides: "Department personnel should assume that their speech and related activity on social media sites will reflect upon their office and [the] Department," and that officers "should be mindful of the standards imposed by the Department's code of conduct prior to engaging in any social media, which could be construed as reflecting poorly on Department personnel or the Department;" this conduct includes "[s]peech containing *obscene* or sexually explicit language, *images*, or acts and statements or other forms of speech that ridicule, malign, disparage, or otherwise express bias against any race, any religion, or any protected class of individuals" (emphasis added).

Finally, for purpose of this investigation, Procedure § 14.205 (E)(1)(d) instructs officers not to post information or images revealing their employment with CPD on personal social media sites. Specifically, the policy instructs officers "not to do the following: 1) Display Department logos, uniforms, or similar identifying items on personal web pages. 2) Post personal photographs or provide similar means of personal recognition that may cause them to be identified as a police officer of this Department."

**a. SWAT Photo on Facebook**

Applying these principles, CCA obtained and reviewed a photo that Officer Olthaus posted on his Facebook page of CPD's SWAT team. The photos featured the SWAT team in uniform with CPD's logo and wearing police badges.

When discussing the Facebook photo with investigators, Officer Olthaus admitted: "This I SWAT Team. . . . Just to show who the members were. . . . When this was happening, we had been together for two weeks straight for 16-hour days. It was just us taking a picture to remember. . . . This is my personal cell phone." Officer Olthaus admitted that he did not have permission from CPD's Public Information Officer to post the photo and that he did not have permission from other officers in the photo.

Under the plain terms of Procedure § 14.205 (E)(1)(d), Officer Olthaus's posting of the SWAT photo was forbidden, given its display of logos, badges, and uniforms. It also clearly identified Officer Olthaus as a member of the Cincinnati Police Department and risked linking every other image or post on his Facebook page to CPD.

**b. Facebook Image of Attempted Execution of Officer and Execution of Figure in Black**

CCA also obtained and reviewed an image that Officer Olthaus shared on this Facebook page, dated "June 22" that featured a graphic depiction of violence against both a male officer and against a masked figure of unknown race and gender clad in all black with an American flag over his shoulders who was threatening that officer.

Specifically, the image shows a figure wearing all black (termed "Antifa guy" by Officer Olthaus in his IIS interview) who appeared to be attempting the execution of a white police officer by standing over the officer from behind, holding a bloody knife to the officer's throat with one hand and covering the officer's mouth with the other hand. Simultaneously, the image showed a third person, who is white, holding a gun with both hands, aiming the gun at the head of the figure in black, and shooting a bullet into the head of that person causing blood to splatter in an apparent execution of the figure in black. Only the shooter's hands are shown; the rest of the shooter's body was not visible. It is unclear from the photo if the shooter was a police officer or a civilian.

Given the graphically violent nature of the image, there is no doubt that it falls under the definition of an "obscene" image under Procedure § 14.205 (E)(1)(e) and CPD's code of conduct. By posting this photo on the same Facebook page where he openly identified himself as a member of CPD via the posting of a CPD SWAT photo, Officer Olthaus also "negatively affect[ed] the public perception of the Department." The negative perception that this image engendered amongst the public is underscored by the citizen complaint filed by Ms. Gilley, her forwarding of the image to CPD and CCA, and her allegation that Officer Olthaus's Facebook page was improperly "extreme."

For all of these reasons, the evidence has shown that Officer Olthaus violated CPD's Social Media policy.

### **3. Allegation (Collateral): Improper Procedure (BWC)**

CPD Procedure § 15.540 Body Worn Camera System states officers are required to activate their BWC system during law enforcement-related encounters and self-initiated activities and when assisting other officers on any call for service or self-initiated activity.

At the time of this incident on June 24, 2024, Officer Olthaus had responded to City Hall to maintain order and conduct crowd control. By his own admission, when he encountered Ms. White in the lobby to City Hall, it was shortly after responding to City Council Chambers, escorting a suspect at City Hall with Officer Murrell, and then receiving a call for officer assistance in the lobby to City Hall.

Officer Olthaus appears to have failed to activate his BWC during any of that enforcement activity, which immediately preceded his interaction with Ms. White. If his BWC had been activated, it would have shed light on the events at issue in the case and would have increased the opportunity for his interaction with Ms. White to have been recorded. As this report describes above, the absence of BWC capturing Officer Olthaus's exchange with Ms. White and events preceding that exchange deprived investigators of highly relevant evidence.

CCA concluded Officer Olthaus was in violation of CPD's policy, procedure, and training.

### **4. Allegation (Collateral): Interference with Administrative Investigation**

During CCA's investigation of this matter, the Authority became aware of an effort by Officer Olthaus to use legal process, specifically a civil lawsuit, to penalize Ms. White and Ms. Gilley specifically because they had filed a complaint with CCA pertaining to the incident at City Hall on June 24, 2020. CCA considered whether Officer Olthaus's response to the complaint was permissible under the applicable policies, procedures, and standards governing police behavior with respect to citizen complaints.

The Collaborative Agreement created the Citizen Complaint Authority (established under Article 28 of Cincinnati's Administrative Code) specifically so that citizens would have the right under municipal law to submit complaints alleging police misconduct to an independent government agency with investigative authority. For almost 20 years, during any investigation based on such a complaint, it has been understood that such investigations must be independently conducted, free from outside interference or obstruction. In order for an investigation to proceed without interference, it necessarily must be free of outside attempts to influence the behavior or cooperation of complaining witnesses and free from attempts to punish those witnesses for filing CCA complaints.

All Cincinnati Police Officers are on notice, pursuant to CPD's Manual of Rules and Regulations § 1.16(A), that "Members shall not interfere with cases being handled by other members of the Department *or other governmental agency*. Interference with a case includes, but is not limited to, actions taken which *may affect*" any "facet of an investigation" (emphasis added). Administrative Regulations for the City of Cincinnati also impose a duty to avoid interference with CCA's investigations by requiring all City employees "to conduct themselves in a professional manner at all times. Examples of unprofessional behavior include . . . deliberately impeding or sabotaging a person's work." See Administrative Regulation 55.

Finally, CPD Procedure Manual § 15.100 explicitly protects a citizen's "*right to make a complaint*" and states, "*Officers will not discourage any person from making a complaint*" (emphasis added). Section 15.100 lists several steps that an officer must take if an officer becomes aware that a citizen "objects to an officer's conduct," and each of those steps is designed to affirm the right of a citizen to file a complaint. See Section 15.100 ("If a citizen objects to an officer's conduct, that officer will inform the citizen of their right to make a complaint. The officer will provide the citizen a Form 648CCI, Citizen Complaint Information, brochure and a Form 648, Citizen Complaint. Officers will not discourage any person from making a complaint.")

Here, there is no doubt that Officer Olthaus filed a lawsuit against Ms. White and Ms. Gilley in significant part because they filed complaints against him with CCA. For one, in multiple places, Officer Olthaus's civil complaint references Ms. White's and Ms. Gilley's decision to file CCA complaints as a reason for legal claims he filed against them. See Olthaus Complaint at ¶¶ 42-46 and 48-53. In fact, Officer Olthaus' civil complaint states that his "Third Cause of Action" against Ms. Gilley and Ms. White is that "Gilley and White, have knowingly filed false reports with the CCA alleging that [Ryan Olthaus] has engaged in misconduct . . . and/or that [Ryan Olthaus] has used "white power" and/or "white supremacist" hand gestures." See Olthaus Complaint at ¶ 66. There is also no doubt that Officer Olthaus personally approved the filing of the lawsuit, as the litigation is accompanied by supporting affidavits executed and submitted by him supporting the causes of action against Ms. Gilley and Ms. White.

Given that Officer Olthaus sought "punitive damages" in connection with his "Third Cause of Action" against Ms. Gilley and Ms. White, there is no doubt that he filed the lawsuits for the purpose of punishing the two CCA complainants.

Finally, the date that Officer Olthaus filed the lawsuit—on July 22, 2020, less than one month after the CCA complaints were filed and opened for investigation—is also significant. The fact that CCA's investigation was ongoing at the time the lawsuit was filed, and also that IIS's parallel investigation was ongoing, are also significant. Ultimately, by seeking to penalize the complainants for filing CCA complaints alleging discriminatory conduct, particularly in the middle of CCA's investigation, Officer Olthaus both discouraged participation in the complaint process and interfered with an administrative investigation in violation of police policy and procedure.

To be sure, Officer Olthaus's lawsuit involves off-duty conduct. However, neither Manual of Rules and Regulations § 1.16, nor Procedure 15.100 states that interfering with an administrative investigation into a citizen's complaint, or discouragement of a citizen's complaint, is permissible provided that the interference occurs when an officer is off-duty. On the contrary, the Manual of Rules and Regulations requires officers who learn of complaints of misconduct while off-duty to report those complaints to supervisors, a requirement that would make no sense if officers were permitted to hinder the filing of complaints while off-duty. See Manual of Rules and Regulations § 2.13. Moreover, Officer Olthaus's lawsuit against the complainants owes its entire existence to Officer Olthaus's professional contact with the complainants and his alleged on-duty conduct. His lawsuit does not concern a private matter unrelated to his duties.

It is also irrelevant that Officer Olthaus believed the complaint filed against him to be false. Procedure 15.100 contains a specific process that CPD must follow if a complaint is believed to have been falsely filed, and if the criminal prosecution of a complainant for Falsification is desired. Nowhere does Procedure 15.100 contemplate or allow for an officer who has been accused of misconduct to file a civil lawsuit in response to a complainant that is believed to be false.



We need not prove that Officer Olthaus's complaint actually impeded CCA's investigation, nor must we prove that it prevented complaining witnesses from cooperating with CCA's investigation or even filing the complaint in the first place. Manual of Rules and Regulations § 1.16(A) is clear that "[i]nterference with a case includes, but is not limited to, actions taken which *may affect* . . . any . . . facet of an investigation." Punitive action taken against a witness, or an attempt at such action, qualifies.

Finally, CCA expresses no opinion in this report as to whether Officer Olthaus possesses (or lacks) a right under Ohio law to pursue civil litigation against the complainants in this case. Our conclusion addresses solely whether Officer Olthaus acted consistent with *the policies and procedures of the City of Cincinnati and Cincinnati Police Department* when he took action to punish these two members of the public for filing formal complaints against him for actions alleged to have been taken while he was on duty in his capacity as a Cincinnati Police Officer. We conclude that as a matter of policy and procedure, Officer Olthaus was wrong to respond to these citizen complaints and their associated investigation in the manner he chose.

For all of these reasons, the evidence has shown by a preponderance that Officer Olthaus violated CPD's policy and procedure.

## **F. Findings**

### *Original Allegations*

Officer Ryan Olthaus | Terhas White

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

Officer Ryan Olthaus | Alissa Gilley

**Improper Procedure** - The allegation is supported by sufficient evidence to determine that the incident did occur, and the actions of the officer were improper. **SUSTAINED**

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### *Collateral Allegations*

Officer Ryan Olthaus | Terhas White

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

Officer Ryan Olthaus | Terhas White and Alissa Gilley

**Interference with Administrative Investigation**- The allegation is supported by sufficient evidence to determine that the incident did occur, and the actions of the officer were improper. **SUSTAINED**

**G. Observations**

See “Section VI. Key Observations” in CCA’s consolidated report on this investigation and ten other protest investigations, GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI.

**H. Recommendations**

See R2305 and R2310 in “Section VII. Recommendations” of CCA’s consolidated report on this investigation and ten other protest investigations (GEORGE FLOYD PROTESTS REPORT: FINDINGS AND RECOMMENDATIONS FROM INVESTIGATIONS OF POLICING COMPLAINTS IN CITY OF CINCINNATI).

**I. Previous Contacts & Commendations**

**Officer Olthaus**

*Previous Contacts with CCA*

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

<b>Case Number</b>	<b>Allegation</b>	<b>Finding</b>
18211	Search (Vehicle)	Exonerated
18211	Pointing of a Firearm	Exonerated
18241	Improper Search	Exonerated
18241	Harassment	Not Sustained
18241	Harassment	Not Sustained
19002	Improper Search	Exonerated
19002	Harassment	Unfounded
19002	Discrimination	Unfounded


*Previous Contacts with IIS*

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

*Commendations*

Officer Olthaus received one commendation in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
06/14/2018	Civilian

  
\_\_\_\_\_  
Gabriel Davis, Director

**1/30/2023**  
\_\_\_\_\_  
Date

## XI. APPENDICES

### MAP



- |   |                                       |
|---|---------------------------------------|
| 1) 20089: Baldwin Alley                             | 7) 20099: Mohawk Place                |
| 2) 20090: 12 <sup>th</sup> Street and Walnut Street | 8) 20012: Calhoun Street              |
| 3) 20092: 209 Hastings                              | 9) 20115: 801 Plum Street (City Hall) |
| 4) 20093: 2000 Mohawk Street                        | 10) 20120: Online (Facebook)          |
| 5) 20095: 19 W Court Street                         | 11) 20188: 1229 Elm Street            |
| 6) 20097: 7 <sup>th</sup> Street and Vine Street    |                                       |

## AUTHORITIES

### List of Authorities:

Below is a list of key authorities CCA relied upon in conducting its investigation. This list is not exhaustive. Versions of these authorities are maintained on file at CCA. The majority of CPD policies and procedures listed below can be found online, in their current form, at <https://www.cincinnati-oh.gov/police/department-references/>.

### Statutes

- Ohio Revised Code (ORC) §2917.13 – Misconduct at Emergency
- City of Cincinnati Administrative Code Article XVIII
- Cincinnati Municipal Code 714-7

### Caselaw

- *Graham v. Connor*, 490 U.S. 386 (1989)
- *Brower v. Cty. of Inyo*, 489 U.S. 593 (1989)
- *Hughey v. Easlick*, 3 F.4th 283 (6th Cir. 2021)
- *McCallum v. Geelhood*, 742 F. App'x 985, 993-94 (6th Cir. 2018)
- *United States v. Griffith*, 193 F. App'x 538, 540-41 (6th Cir. 2006)
- *Hastings v. Hubbard*, 151 F. App'x 357 (6th Cir. 2005)
- *Pleasant v. Zamieski*, 895 F.2d 272, 274-77 (6th Cir. 1990)
- *State v. Reed*, 2022-Ohio-3986, (1st Dist.)

### City of Cincinnati Regulations

- City of Cincinnati Administrative Regulation 25
- City of Cincinnati Administrative Regulation 55

### Cincinnati Police Department Policies & Procedures

- Cincinnati Police Department Procedure Manual § 12.160 – Rumors/Potential Civil Disturbances
- Cincinnati Police Department Procedure Manual § 12.515 – Nonviolent Demonstration Arrest: Mass Arrest Procedure
- Cincinnati Police Department Procedure Manual § 12.540 – Body Worn Camera
- Cincinnati Police Department Procedure Manual § 12.545 – Use of Force
- Cincinnati Police Department Procedure Manual § 12.550 – Discharging of Firearms by Police Personnel
- Cincinnati Police Department Procedure Manual §12.554 – Investigatory Stops
- Cincinnati Police Department Procedure Manual § 12.555 – Arrest/Citation: Processing of Adult Misdemeanor & Felony Offenders
- Cincinnati Police Department Procedure Manual § 12.600 – Prisoners: Securing, Handling, and Transporting

- Cincinnati Police Department Procedure Manual § 12.715 – Property and Evidence: Confiscation, Accountability, Processing, Storage, and Release
- Cincinnati Police Department Procedure Manual § 14.205 – Social Media
- Cincinnati Police Department Procedure Manual § 15.100 – Citizen Complaints and Reports of Favorable Police Conduct
- Cincinnati Police Department Investigations Manual § 12.1.3
- Cincinnati Police Department Manual of Rules and Regulations § 1.06
- Cincinnati Police Department Manual of Rules and Regulations § 1.01
- Cincinnati Police Department Manual of Rules and Regulations § 1.16
- Cincinnati Police Department Manual of Rules and Regulations § 1.23
- Cincinnati Police Department Manual of Rules and Regulations § 2.13
- Cincinnati Police Department Manual of Rules and Regulations § 2.18
- Cincinnati Police Department Tactical Patrol Guide

#### **Other Authorities**

- Emergency Declarations/Curfew Orders – May and June of 2020

## **ACKNOWLEDGEMENTS**

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