



CITIZEN POLICE REVIEW BOARD

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Pittsburgh PA 15219
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cprb@city.pittsburgh.pa.us

Approved
1/27/15

Meeting Notes of CPRB Meeting Held on December 2, 2014 (Mtg. No. 171)
City Council Chambers
414 Grant Street
Pittsburgh, PA 15219
Neighborhood: Citywide

Members Present:	Dr. Emma Lucas-Darby, Chair Ms. Karen McLellan Mr. Sheldon Williams	Excused:	Mr. Thomas Waters, Vice Chair Mr. Elwin Green
		Absent:	Ms. Leshonda Roberts
		Vacancies:	City Council Seat #4
Solicitors:	Ms. Elizabeth F. Collura, Esq. Ms. Tania Wang, Esq.		
Staff Present:	Ms. Elizabeth C. Pittinger, Executive Director Ms. Carolyn L. Gaskin, Assistant Executive Director Ms. Sherri Bridgett, Investigator Mrs. Kathy Carson, Investigator Ms. Michelle Gamble, Investigator	Excused:	Mr. Michael Ayoob, Intake Coordinator

Administrative Matters:

Dr. Darby, Chair, called the meeting to order at 6:20 p.m.

Dr. Darby issued a statement regarding the racial tensions emerging between communities and law enforcement across the country following national citizen/police encounters, including the Michael Brown/Ferguson incident. *(The full text of Dr. Darby's statement is attached).*

Dr. Darby acknowledged the Members present and noted the absence of a quorum required to conduct a regular business meeting. Dr. Darby offered an abbreviated meeting, where cases were entered into the record to be ratified at the next board meeting.

Executive Director's Report

- Ms. Pittinger expressed an appreciation for the former and current Board Members and commended them all for their fair and impartial service in fulfilling the expectations of the citizens of Pittsburgh as well as the mission of CPRB. Ms. Pittinger also acknowledged the continuing efforts of the CPRB Staff.
- Ms. Pittinger announced that the Public Hearing into CPRB Case #27-14-P (El, El v. Kacsuta & Warnock) scheduled to be heard on Thursday, 12/4/14 has been postponed due to Lt. Reyne Kacsuta's medical leave; a continuance will be scheduled upon her return.

- Ms. Pittinger stated that the Board will conduct a Public Hearing into CPRB Case #282-13 (Brown, Brown v. Vitalbo) on Thursday, 12/18/14 @ 5:30pm in City Council Chambers. The Hearing Panel is comprised of Mr. Waters, Chair, Mr. Green, & Ms. McLellan.
- Ms. Pittinger inquired of the Board as to whether they intended to authorize continued engagement of Ms. Elizabeth Collura, Esq. and Ms. Tania Wang, Esq. as the CPRB solicitors for the 2015 calendar year. The Board responded favorably; Ms. Pittinger stated that the contract will be prepared promptly.
- Ms. Pittinger asked the Board to authorize and schedule a Rude and Discourteous Hearing; which extends an opportunity to previous complainants and the public at large to address the Board with experiences and concerns regarding the Pittsburgh Bureau of Police. The Board responded favorably and Ms. Pittinger offered to poll the Board electronically for their availability for early February 2015.
- On 11/17/14, Ms. Pittinger and Dr. Darby attended a community meeting sponsored jointly by the Black Political Empowerment Project, the Alliance for Police Accountability, the Black & White Reunion, the Urban League of Greater Pittsburgh, and the Western Pennsylvania Black Political Assembly. Ms. Pittinger stated PBP Chief McLay was in attendance and conveyed his expectations and plans for enhancing organizational management and community/police relationships.
- On 11/24/14 & 11/25/14, Ms. Pittinger observed rallies; which were being held in solidarity with several other demonstrations across the country in the anticipated and final grand jury decision to not indict P.O. Darren Wilson in the 8/9/14 death of Michael Brown in Ferguson, MO. Ms. Pittinger stated that the demonstrations were peaceful and she publicly commended the officers for their protective and outstanding service despite the mounting tensions.
- Ms. Pittinger mentioned an 11/12/14 article in the Pittsburgh City Paper, written by Alex Zimmerman, entitled, "City officials mum on police policy change calling for third-party review of excessive-force complaints." Ms. Pittinger stated that the article referenced the 6/15/14 PrideFest incident and the controversy surrounding PBP Officer Chatterji's use of force to gain control of a citizen, as well as the City administration's selection of an external expert opinion; which facilitated in exonerating the officer. Ms. Pittinger mentioned that there was community feedback questioning the external review and opined that this approach should be complimented rather than criticized because the new administration is endeavoring to establish organizational transparency and credibility.
- Ms. Pittinger reported that the 2015 Mayoral proposal and CPRB budget has been submitted and approved with a 1.9% decrease. Ms. Pittinger stated that she does not anticipate any difficulties with this minor budgetary change.

- Ms. Pittinger mentioned that she was interviewed by WPXI today, regarding the deployment of police officer body cameras. Ms. Pittinger also mentioned that President Obama very recently proposed spending \$75,000,000 to supply municipal police departments with body cameras. Ms. Pittinger noted that the cameras will be a useful tool in that it provides evidentiary documentation of transpired encounters; however, public policy concerns remain, such as the potentiality of violating privacy issues and the PA Wiretap Law.
- Ms. Pittinger announced that the iPADS purchased for CPRB Members and Staff will be distributed at the next board meeting; the equipment will enable CPRB to conduct majority of their business electronically.
- Ms. Pittinger extended an appreciation to CPRB Solicitors, Elizabeth Collura and Tania Wang for protecting the Board's integrity while promptly and thoroughly managing pertinent legal issues throughout 2014. Ms. Pittinger stated that she anticipates continuing this working relationship in the New Year.
- Ms. Pittinger announced that the Hearing Panel that presided over CPRB Case #286-13 (Kelly v. Fallert & Emery) on 9/11/14 have concluded deliberations and prepared the Findings & Recommendations to be released immediately to the Mayor and Chief of Police; a response is required within 30 Days indicating whether the recommendations will be accepted, modified, or rejected. Ms. Pittinger read the corresponding recommendations into the record (*attached*).

Public Comment

Dr. Darby invited public comment. Mr. Mark Ozark and Mrs. Tris Ozark offered comment.

Next Meeting

Dr. Darby announced that the next regular board meeting is scheduled for 6:00 p.m., Tuesday, January 27, 2015 @ City Council Chambers, 414 Grant Street, Pittsburgh, PA 15219.

The meeting was adjourned at 7:05pm.

Respectfully submitted,

Carolyn L. Gaskin
Assistant Executive Director

Attachment (1):

1. 12/2/14 Chair's statement
2. 12/2/14 Executive Director's Report
3. 12/9/14 Chief McLay Letter referencing: F & R of CPRB Case #286-13

A video recording of this meeting will be made available at www.CPRBpgh.org

Minutes/Notes of the Independent CPRB meetings and public documents are available at the website cited above.

Many of us have experienced a range of emotions since the August shooting of Michael Brown by a uniformed officer. And, more recently, the Grand Jury decision caused additional emotions through negative and positive reactions as the decision surfaced. Reactions to these incidents have crossed racial, gender, religious and cultural borders. At the heart of many reactions is race relations. I reflected on the many cases we have considered here on the CPRB and on the basic variable that makes our existence necessary – police relations. What happens during the initial interaction of an officer and citizen determine whether all involved feel the situation has been handled by the book or if additional human behaviors have pushed the line of fairness to a point where due process is the last resort.

Pittsburgh has not been immune to high-profit police/citizen cases, and several are very fresh for us. Pittsburghers have organized and protested in support of these victims. However, I am heartened by comments from Acting Chief McLay at a recent community conversations forum. He stated that Pittsburgh could be another Ferguson, but he is working hard to make sure that does not happen. One solution is to work to build better relationships and trust between officers and the community. I fully support this; however, the approach has to be one that is meaningful and continuous to all. Chief McLay acknowledged too many situations escalate because of discourtesy on the part of officers. He also noted that his approach includes additional training for officers – something that this Board has advocated on many occasions. Another vital comment included the Chief's intent to increase diversity among officers through enhanced and focused recruitment efforts. This is a critical area that must be addressed immediately.

Racial bias exists, and it taints police interactions and public opinions. But, with dedicated attention to improve police/citizen relations in Pittsburgh, we can become a model city. Most importantly, this Board stands ready to support efforts from both sides to improve these relations.

I commend this Board and the staff for their working relationship with the PBP. I further acknowledge the staff and Board for the fairness that they exercise from initial intake through investigations and final dispositions. At this time I acknowledge the staff and the hard work of the Board. Thank you.

MEMORANDUM

To: Dr. Emma Lucas-Darby, Chair
Honorable Members of the Board
From: Elizabeth C. Pittinger
Executive Director
Date: December 2, 2014
Re: Executive Director's Report: 12/02/2014

Suite 400
816 Fifth Avenue
Pittsburgh PA 15219

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Intake Summary through 12/01/14: 271 total cases

Citizen Complaints: 55	Pending Citizen Action: 198	EDI: 5	Total Intake: 271
Out of Jurisdiction: 11	Statute of Limitation: 02		
(Actual Totals for 2013:	CC: 73; PCA: 224; OJ: 32; SL: 07	EDI: 05	Total: 341)
(Actual Totals for 2012:	CC: 49; PCA: 194; OJ: 23; SL: 06	EDI: 01	Total: 273)
(Actual Totals for 2011:	CC: 38; PCA: 215; OJ: 18; SL: 09	EDI: 02	Total: 282)
(Actual Totals for 2010:	CC: 79; PCA: 221; OJ: 30; SL: 05	EDI: 01	Total: 336)
(Actual Totals for 2009:	CC: 80; PCA: 380; OJ: 18; SL: 09	EDI: 05	Total: 490)
(Actual Totals for 2008:	CC: 66; PCA: 288; OJ: 45; SL: 05	EDI: 03	Total: 412)
(Actual Totals for 2007:	CC: 71; PCA: 227; OJ: 65; SL: 08	EDI: 10	Total: 425)
(Actual Totals for 2006:	CC: 76; PCA: 280; OJ: 85; SL: 09		Total: 450)
(Actual Totals for 2005:	CC: 59; PCA: 284; OJ: 70; SL: 18		Total: 431)
(Actual Totals for 2004:	CC: 61; PCA: 352; OJ: 62; SL: 14		Total: 489)
(Actual Totals for 2003:	CC: 61; PCA: 380; OJ: 66; SL: 20		Total: 527)
(Actual Totals for 2002:	CC: 75; PCA: 330; OJ: 83; SL: 26		Total: 514)
(Actual Totals for 2001:	CC: 77; PCA: 362; OJ: 87; SL: 11		Total: 537)
(Actual Totals for 2000:	CC: 75; PCA: 394; OJ: 92; SL: 30		Total: 590)
(Actual Totals for 1999:	CC: 80; PCA: 383; OJ: 27; SL: 11		Total: 501)

1. Board Membership

- a. No update. Vacancy: City Council Seat #4 (term exp. 10/31/2017; successor to Mr. Paul Homick, Esq., resigned/relocation). Details of notifications are published in the minutes of the 7/22/14 meeting.

2. Public Hearings

- a. 9/11/14: Held Public Hearing CPRB #286-13, Kelly v. Fallert & Emery.
 - i. Panel: Ms. McLellan, Chair, Dr. Lucas-Darby, Mr. Thomas Waters
 - ii. F&R: pending release.
- b. 10/9/14: Held Public Hearing: CPRB #208-13: Scalese v. Love, Burgunder, Kail, Henson
 - i. Panel: Dr. Lucas-Darby, Chair, Ms. McLellan, Mr. Waters.
 - ii. F&R: pending deliberations
- c. 12/18/14 Scheduled: #282-14 Brown, Brown v. Vitalbo
 - i. Panel: Mr. Waters, Chair, Ms. McLellan, Mr. Green

- d. UBA #27-14-P El, El v. Kacsuta, Warnock
 - i. Panel: Ms. McLellan, Chair, Dr. Lucas-Darby, Mr. Williams
 - ii. Pre-hearing Conference conducted 10/28/14. PH Scheduled for 12/4/14.
- e. The Public Hearing is postponed due to Lt. Kacsuta's medical leave.

3. Board action items

- a. 2015 Solicitor contract. Recommendation: retain the services of Atty. Elizabeth F. Collura and Atty. Tania Wang.
- b. Schedule an informational hearing on Rude & Discourteous Police Conduct. Recommendation: First part of February 2015.

4. Miscellaneous

- a. Our submitted budget and the Mayor's proposal for 2015 is \$498,950. This is approximately 1.9% less (-\$9897) than our 2014 budget of \$ 508,847.
- b. Article: Alex Zimmerman, "City officials mum on police policy change calling for third-party review of excessive-force complaints." Pittsburgh City paper November 12, 2014. A discussion about the City's investigation into the 6/15/14 Pride incident involving a controversial use of force and their consultation with an external use of force expert.
- c. 11/17/14: Community Conversation with Chief Cameron McLay conducted at the Pentecostal Temple in E. Liberty. This was the second of two community events sponsored by The Black Political Empowerment Project (B-PEP), in partnership with the Alliance for Police Accountability (APA), The Black & White Reunion (BWR), the Urban League of Greater Pittsburgh and the W. PA. Black Political Assembly.
- d. 11/24/14 & 11/25/14: Observed community demonstrations in solidarity with Ferguson Missouri in anticipation, and in the wake, of the Missouri grand jury's decision not to indict P.O. Darren Wilson in the 8/9/14 death of Michael Brown.

Respectfully submitted,



12/02/2014



Members of the Board:

Dr. Emma Lucas-Darby
Chair

Mr. Thomas C. Waters
Vice Chair

Mr. Elwin Green

Ms. Karen McLellan

Ms. Leshonda Roberts

Mr. Sheldon Williams

Solicitors:

Ms. Elizabeth F. Collura, Esq.

Ms. Tania Wang, Esq.

Executive Director:

Ms. Elizabeth C. Pittinger

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Independent CITIZEN POLICE REVIEW BOARD

City of Pittsburgh
816 Fifth Avenue, Suite 400
Pittsburgh PA 15219
USA

December 9, 2014

Cameron S. McLay, Chief
Pittsburgh Bureau of Police
1203 Western Avenue
Pittsburgh PA 15233

Re: Findings & Recommendations, CPRB Case # 286-13
(Kelly v. Emery and Fallert)

Dear Chief McLay:

Having deliberated on the testimony and evidence taken at a public hearing conducted pursuant to § 662.06 of the City Code and in accordance with its Rules and Operating Procedures, the Citizen Police Review Board has issued findings and recommendations on the above captioned Citizen Complaint.

Enclosed is a copy of those Findings and Recommendations. I am available to support any action initiated by you that is consistent with the recommendations of the Board.

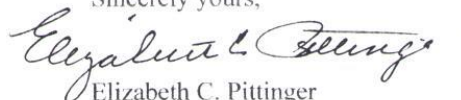
The City Code, § 662.09 Response to Board Recommendations, states:

"Within thirty (30) working days of submission of a recommendation for action by the Board to the Mayor and the Chief of Police, they shall respond in writing regarding which recommendations are accepted, rejected, or will be implemented with modifications. If the Board's recommendations are rejected or modified, the Mayor and/or Chief of Police shall include a written explanation for their decision."

Accordingly, the Board anticipates a response from you and/or the Mayor by January 22, 2015 indicating which of the recommendations are accepted, rejected, or will be implemented with modification.

Thank you for your attention to this matter.

Sincerely yours,


Elizabeth C. Pittinger
Executive Director

Enclosure

Response due: 01/22/2015

Promoting responsible citizenship and professional law enforcement since 1997.

INDEPENDENT CITIZEN POLICE REVIEW BOARD

City of Pittsburgh

CITIZEN COMPLAINT OF MISCONDUCT

Findings & Recommendations

Executive Director, Independent Citizen Police
Review Board, on behalf of:

Case No.: CPRB # 286-13

Kimberly Kelly,
vs.
Det. Edward Fallert, #3465
Det. Judd Emery, #3885
Subject Officers

Charges:

- 1 Count:** Conduct toward the public, 16-1,
3.7.2
1 Count: Incompetency, 16-1, 3.12.2
1 Count: Unbiased Policing, 11-3, 4.1.5
1 Count: Law Enforcement Code of ethics,
10-1, 2.3

Having conducted a public hearing pursuant to Article 2, §228 – 230 of the Home Rule Charter and Article VI of the Pittsburgh City Code and the Rules and Operating Procedures of the Citizen Police Review Board, as amended, the Citizen Police Review Board issues the following findings and recommendations related to the conduct alleged in the captioned Citizen Complaint alleging the following acts of misconduct:

1. **Violation of PBP General Rules and Regulations #16-1, 3.7.2; Conduct Toward the Public:** On or about October 16th 2013, Subject Officer Fallert, violated regulation 16-1, 3.7.2 which states "A member or employee in the performance of his /her duties will not use ethnic designations, insults or other derogatory terms at any time when addressing any person, or in any communication," when he told the Victim that he knew that the Victim is a drug dealer and that "they" are going to get him.
2. **Violation of PBP General Rules and Regulations #16-1, 3.12.2; Incompetency:** On or about October 16th 2013, Subject Officer Emery stated to the Victim, "Since you are going to record me I am going to ticket you." showing a lack of sound judgment and the inability to get along with people. This violates regulation 16-1, 3.12.2 which states; "The lack of any of the following qualities will constitute evidence of incompetence: courage, honesty sound judgment, emotional stability, industry, alertness, decisiveness, power to observe, initiative, intelligence, technical skills, and the ability to get along with people. This list should not be considered as "all inclusive."
3. **Violation of PBP General Rules and Regulation 11-3, 4.1.5 Unbiased Policing:** When Subject Officer Emery made the statement, "Obama makes you sell Heroin," showed that he" could not make an objective judgment uninfluenced by prejudicial views or attitudes, intolerance to or preference for certain individuals that are unrelated to the situation at hand." This is a violation of this regulation.
4. **Violation of PBP General Rules and Regulation 10-1, 2.3 Law Enforcement Code of Ethics:** When Subject Officer Emery stated that "Obama makes you sell heroin" and, "if you are going to record me then I am going to give you a ticket", violated regulation 10-1, 2.3 which states; I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities, or friendships to influence my decisions.

The panel received testimony and evidence related to a traffic stop involving James Lee, III, and Pittsburgh police officers Edward Fallert and Judd Emery. The complaint was brought to the CPRB by Ms. Kim Kelly, the mother of James Lee, III, an adult.

The Complaint

The complaint alleges that on 10/16/2013 Mr. Lee was the subject of a traffic stop because, according to police, he failed to use a turn signal. The officers who conducted the traffic stop were in plainclothes and using an unmarked police vehicle. In the course of that traffic stop Mr. Lee initiated a video recording on his smartphone. The video documents the dialogue and conduct that are the foundation of this complaint.

The complaint alleges that during this encounter that Subject Officer Fallert violated the General Rules and Regulations of the Pittsburgh Bureau of Police, #16-1, 3.7.2: Conduct Toward the Public and Subject Officer Emery violated #16-1,3.12.2: Incompetency, #11-3, 4.1.5: Unbiased Policing and #10-1, 2.3 The Law Enforcement Code of Ethics.

Testimony

Testimony was received from Ms. Kelly, Mr. Lee, Det. Edward Fallert and Det. Judd Emery. A video of the encounter was recorded by Mr. Lee and was received into evidence.

Ms. Kelly

Complainant, Ms. Kelly, testified that her son has been stopped by police "well over two dozen times within a one-year period". Ms. Kelly expressed grave concern about her son's safety and her personal fear that something "bad" could happen to him when stopped by police. Ms. Kelly testified that because her son, Mr. Lee, is stopped by police so often, he tries to call her when a police stop is imminent. On this occasion Mr. Lee phoned Ms. Kelly and she told Mr. Lee she was on her way (with her fiancé and adult daughter). Upon arrival at the scene of the traffic stop Ms. Kelly attempted to learn why her son was stopped and was told by a Subject Officer that he was grown and could take care of himself.

Mr. Lee

Mr. Lee testified that he was on his way home from work as supervisor at a local bakery and immediately after calling his mother he activated the recording function of his cellphone. According to Mr. Lee, Subject Officer Fallert approached Mr. Lee and in the course of casual conversation told Mr. Lee that he knew he was a drug dealer and must be clean because of the way he (Lee) was acting. Mr. Lee admitted having a bottle of liquor in a bag positioned in the passenger seat of his vehicle. According to Mr. Lee, S.O. Emery arrived and told Mr. Lee that since he (Lee) wanted to record, he (Emery) would give him a citation. Mr. Lee testified that S.O. Emery shined his flashlight into his (Lee) eyes after commenting about Mr. Lee shining a light into S.O. Emery's eyes. The video depicts the encounter in which the two were shining lights at each other. Mr. Lee received two citations, one for an open container and one

for failure to use a turn signal. Mr. Lee testified that he moved out of the City because he doesn't feel safe on the North Side. He stated that this incident left him uncomfortable, not feeling safe at all, stressed and terrified. Mr. Lee acknowledged that at the time of this incident he was charged and subsequently convicted by a jury of possession with intent to deliver. Mr. Lee admitted that S.O. Fallert was involved in his arrest on the charges of which he was convicted. Mr. Lee denied that he was a drug dealer.

Mr. Lee testified that he called his mother when he saw a car perform a U-turn behind him and pulled over when he noticed police lights behind him. It was at that time Mr. Lee testified that he activated the video and light on his cellphone and waited for an officer to approach.

Subject Officer Fallert

Subject Officer Fallert testified that he had arrested Mr. Lee previously and the charges from that arrest were pending trial at the time of the stop. S.O. Fallert testified that he and his partner were working with S.O. Emery and his partners as an impact unit patrolling areas of high crime, shootings, gang activity and street level drug sales. S.O. Fallert testified that he had a complaint about Mr. Lee using his vehicle and selling drugs on a nearby street. S.O. Fallert stated that he approached Mr. Lee as S.O. Emery had finished speaking to him (Lee) and engaged Mr. Lee in conversation during which he explained to Mr. Lee that he (Fallert) knew he was a drug dealer. S.O. Fallert also acknowledged that he said something to the effect of "if you keep dealing drugs we will get you" in a matter-of-fact manner.

Subject Officer Emery

S.O. Emery testified "Initially, the traffic stop was fine and once Mr. Lee was shining his light in my face, calling people to the scene, calling people to come down and distract me from what I was doing, I was going to use my discretion and write him citations". The citations were prepared later through e-citations and forwarded through traffic court to Mr. Lee.

Det. Emery's testimony described an interesting and a commonly occurring scenario in which a person stopped by police summons others by phone or text to come to the scene of the police encounter. The arrival of additional parties to the location can create a distraction from the original police encounter. This scenario can escalate tension and create an unsafe environment for civilians and police officers on location. From Det. Emery's perspective, the arrival of Ms. Kelly, Ms. Kelly's daughter and Ms. Kelly's fiancé presented the possibility that such a scenario was evolving.

S.O. Emery explained that Mr. Lee's mother, another female and a male were present and there was "heated yelling back and forth". He said one of the females was "yelling over about harassing her son and they are selling drugs because -- one of them, George Bush made this economy bad and that's why they are selling drugs". Such was the context described by S.O. Emery and he deferred to what was reflected in the video evidence as to the validity of the allegation that he said to the female "Obama makes you (or him) sell heroin".

S.O. Emery confirmed that there was no probable cause to search Mr. Lee's vehicle so it was not searched. S.O. Emery indicated prior knowledge of Mr. Lee's possession of a permit for a firearm and his previous arrest with a firearm. He described the effect of a light shining in his eyes as an officer safety issue and the presence of bystanders as a distraction.

Discussion

The complaint presents several areas of interest that testimony clarified and illustrated many aspects of police and civilian conduct that contribute to the current status of community/police relations in the City. In this case we also have the benefit of video documentation.

Regulation #16-1, 3.7.2; Conduct Toward the Public

First the allegation that S.O. Fallert engaged in unbecoming conduct toward the public when he told Mr. Lee that he knew he was a drug dealer and they are going to get him. Officers are expected to refrain from using insults or derogatory terms when addressing any person or in any form of communication. Testimony confirmed that the Subject Officer did say to Mr. Lee that he was "a drug dealer" and that "if you keep dealing drugs we will get you". S.O. Fallert testified that he did arrest Mr. Lee and charged him with possession with intent to deliver prior to this incident. Ultimately Mr. Lee was convicted of the charge but at the time of the traffic stop and this encounter with S.O. Fallert, the case had not been adjudicated. Notwithstanding the truth of S.O. Fallert's comment, the context of the traffic stop in this incident and the incidental role of S.O. Fallert in the stop, it was imprudent to convey the message to Mr. Lee as it had no relevance to the traffic stop.

Testimony from Ms. Kelly that her son (Mr. Lee) had been stopped "well over two dozen times within a one-year period, and I mean, he got so many bogus tickets, and it's very stressful and I just wanted to know why, because I always feared that y'all going to keep going and I don't want y'all to hurt my son. He's stopped too much." The cumulative effect of the numerous police stops of her son seems to have left Ms. Kelly exasperated and in fear for her son's safety when encountering Pittsburgh Police officers. In turn, Mr. Lee's practice of calling his mother when a traffic stop is imminent seems to arise from his, and her, concerns for his safety.

In this context the comment from S.O. Fallert, "if you keep dealing drugs we will get you", appears to have been a message intended to intimidate Mr. Lee by warning him that he (Lee), will be targeted in the future as a "drug dealer", a designation Mr. Lee denied. The comment was irrelevant to this traffic stop as both S.O. Fallert and Emery acknowledged there was no reasonable suspicion or probable cause to investigate Mr. Lee during this traffic stop for any drug related activity.

Regulation #16-1, 3.12.2; Incompetency

Mr. Lee testified that S.O. Emery said to him "since you want to record, I'm giving you a ticket". S.O. Emery explained that the light shining in his eyes from Mr. Lee's phone camera was making it difficult to see into the vehicle and he asked Mr. Lee to lower the light but Mr. Lee refused. S.O. Emery acknowledged Mr. Lee's right to record the encounter but was concerned about his own safety which was why he said he shined his flashlight into Mr. Lee's face. According to his testimony, at no time did S.O. Emery consider taking Mr. Lee's camera.

S.O. Emery testified that he exercised his discretion to issue the citations upon his assessment of the totality of the situation including Mr. Lee's shining the light in his eyes even after S.O. Emery directed him to lower it and Mr. Lee calling people to come to the scene and the distraction caused by the people that came to the scene. The problem observed by the panel is the statement "since you want to record, I'm giving you a ticket". The citations had nothing to do with Mr. Lee's act of recording the encounter yet S.O. Emery conveyed a message intimating the citations were in retaliation of Mr. Lee's recording. The exercise of discretion by S.O. Emery carries little accountability beyond the resolution arrived at by traffic court but imposes a burden for Mr. Lee. The citations may well be appropriate but the rationale should rest on the facts generating the citations not on a threat or retaliation.

Regulation 11-3, 4.1.5 Unbiased Policing

Regulation 10-1, 2.3 Law Enforcement Code of Ethics

Testimony from S.O. Emery introduced new information alleging that a female at the scene commented "...George Bush made the economy bad and that's why they are selling drugs". There was no other testimony confirming that the alleged comment was heard by any of the other witnesses at the scene and it was not heard on the video. When asked under cross-examination about the context of the statement "Obama makes you sell heroin", S.O. Emery replied "I may have said something in that context. I don't remember exactly what was said." He went on to say "If it is on the video exactly what I said, it would be there. But I have not seen the video." It was heard on the video by the Panel.

S.O. Emery described a scene that was fraught with distraction and heated verbal interactions. The panel was impressed that under such conditions an officer's patience could be drained and focus easily diverted. Effective strategic and tactical training develops within officers the stamina and professional finesse to overcome the temptation to lose his/her temper or engage in petty arguments with individuals involved in a police encounter. In this incident it is apparent that S.O. Emery communicated the message "Obama makes you sell heroin" which served only to escalate an already volatile situation. The comment also had no relationship to the facts initiating the traffic stop.

Finding

The nature of the conduct demonstrated in this incident is consistent with the most common examples of police conduct reviewed by the CPRB. Civilians and police officers alike identify the absence of respect as the most significant impediment to improved relations between the community and the police. Professional police officers are expected to demonstrate competence when assessing the context of people's reactions when engaged by police. Mere awareness, adaptation of tactics and judicious exercise of discretion would go a long way to demonstrate professional respect toward civilians engaged by police.

Here we have a young adult man fearful of the police, for whatever reason, reaching out to his Mother who shares that fear in an entirely different way. The act of reaching out to his mother became a subject of ridicule by a Subject Officer. The practice of calling people to the scene to create a distraction for the police is not acceptable or condoned; however, the Subject Officer should have refrained from judging or having any personal opinion about Mr. Lee calling his Mother.

The complaint is sustained in its entirety as de minimis acts of misconduct in violation of the cited orders.

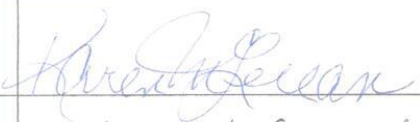

Recommendations

1. Review and revise the policy affecting the use of unmarked vehicles to make traffic stops for minor moving violations such as failure to use a turn signal or expired stickers or a broken taillight. Routine traffic stops for moving violations of a minor nature should be limited to marked police vehicles, preferably assigned to traffic division. In no way does this recommendation suggest that any police vehicle, properly equipped, should refrain from stopping a vehicle demonstrating imminent danger to the public.
2. Enhanced value-based training for Pittsburgh Police Officers regarding professional communication with civilians and respectful interaction.
3. Enhanced competency-based training related to the formulation of unbiased and soundly based rationale when exercising discretion.

Notice to the Chief of Police and the Mayor:

The Pittsburgh City Code, Title Six, Article VI, § 662.09 Response To Board Recommendations, requires that within thirty (30) working days of the Board's submission of recommendations to you, you must respond in writing to the Board regarding which recommendations are accepted, rejected, or will be implemented with modification(s). If the Board's recommendations are rejected or modified, the Mayor and/or Chief of Police shall include a written explanation for their decision.

By the Presiding Hearing Panel:

<input type="checkbox"/> Concur <input type="checkbox"/> Dissent	 Ms. McLellan, Chair	Date
<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Dissent	 Dr. Lucas-Darby	12/2/14 Date
<input type="checkbox"/> Concur <input type="checkbox"/> Dissent	Mr. Waters	Date

Public Hearing Conducted by the Board: 9/11/2014

Presiding CPRB Hearing Panel:

Dr. Emma Lucas-Darby, Chair
 Ms. Karen McLellan
 Mr. Thomas Waters

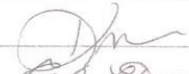
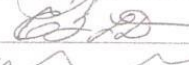
Hearing Officer: Ms. Elizabeth F. Collura, Esq.

Special Prosecutor: Mr. Jeffrey J. Ruder, Esq.

Counsel for the Subject Officer(s): Mr. Bryan Campbell, Esq.

Investigator: Ms. Kathleen Carson

☒ Sustained (
 ☒ De Minimus
 ☐ Serious
 ☐ Very Serious
 ☐ Egregious)

Panelists	Agree with finding	Disagree with finding	Initials
Ms. McLellan	✓		
Dr. Lucas-Darby	✓		
Mr. Waters	✓		