



CITIZEN POLICE REVIEW BOARD

816 Fifth Avenue, Suite 400
Pittsburgh PA 15219
412-765-8023 Telephone – 412-765-8059 Facsimile
cprb@city.pittsburgh.pa.us

Approved
3/24/15

Notes of CPRB Meeting Held on February 24, 2015 (Mtg. No. 173)
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:	
		Absent:	Mr. Thomas C. Waters, Vice Chair Mr. Elwin Green 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 6:25 p.m.

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.

Dr. Darby announced the release of the Findings and Recommendations deriving from the Public Hearing into Case #208-13 (Scalese v Henson & Love); the findings will be sent to the Mayor and Police Chief who have 30 days to respond. Dr. Darby thanked the Hearing Panel for their time and astute listening skills during the course of this hearing.

Dr. Darby released a statement about a recent incident that involved the circulation of misinformation regarding the Board's Findings and Recommendations from the Public Hearing into CPRB Case #208-13, as well as, the importance of preserving the integrity, role, and function of the Independent Citizen Police Review Board. *(The full text of Dr. Darby's statement is attached).*

CPRB Solicitor Collura offered clarification with respect to the confidentiality that unequivocally protects the integrity of the Board and discussed the two relevant CPRB procedures; both the investigative process and hearing panel deliberations. Solicitor Collura also referred to the City Ordinance and the CPRB Rules and Operating Procedures as publicly available resources that further define the purpose of CPRB confidentiality.

Ms. Pittinger further noted that all personally identifiable information is withheld from the case summaries that Board Members review, in an effort to ensure confidentiality and impartiality. Ms. Pittinger also reminded the Board that as a matter of practice, they are duty bound to conceal certain information at all times, such as juvenile records and PBP procedural orders.

Executive Director's Report

- Ms. Pittinger reported that there has been no recent update on the Board appointment process; City Council Seat #4 remains vacant and expires on 10/31/17; four impending terms will expire on 10/31/15. Ms. Pittinger noted that, in accordance with the City Code, a timely notice of the expiring terms will be provided to the appropriate parties.
- Ms. Pittinger mentioned that CPRB Member, Mr. Elwin Green, is enrolled in the current Citizen Police Academy [CPA]; which is a 15 week program that meets once a week for three hours. CPA offers community members an opportunity to explore the various functions, operations, and training of law enforcement.
- Ms. Pittinger reported that the 2015 CPRB Solicitor Agreement was reviewed by City Council on 1/28/15; the authorizing resolution will ensure continued legal representation of CPRB by Attorney Elizabeth F. Collura, Esq. & Tania Wang, Esq., and will specify a contractual time period of 3 years (2015-2017), contingent upon annual allocation of funds and discretion of the Board.
- Ms. Pittinger mentioned that the 10/09/14 public hearing into CPRB Case #208-13(Scalese v. Love & Henson) has concluded and that the Hearing Panel will publicly release the Findings and Recommendations on 2/25/15. The Findings will be conveyed to the Mayor and Chief McLay; a response is due on 4/8/15.
- Ms. Pittinger mentioned that a response from the Chief was received on 1/30/15, in regards to the Findings & Recommendations deriving from the 9/11/14 public hearing into CPRB Case #286-13 (Kelly v. Fallert & Emery). Ms. Pittinger noted that a full copy of Chief McLay's response is attached to the 2/24/15 Executive Director's Report.
- Ms. Pittinger mentioned that the public hearing into CPRB Case #282-14 (Brown; Brown v. Vitalbo) held on 12/18/14, was directed by the hearing panel to remain open pending the effort to obtain any possible video/audio recording capturing the encounter, as testified to by the Subject Officer. Ms. Pittinger further noted that a subpoena was issued on 1/30/15, with a return date of 2/13/15, to PBP Assistant Chief Thomas Stangrecki to produce any relevant audio/video. Ms. Pittinger also mentioned that Investigator Bridgett prepared a conclusive summary; which will be submitted to the hearing officer for distribution among the involved hearing panel and legal representatives; the record into this matter will remain open until the Hearing Panel agrees to close it.

- Ms. Pittinger announced that the 2015 Rude & Discourteous Public Hearing has been scheduled for 6 PM, Wednesday, 03/04/15 at City Council Chambers. Ms. Pittinger noted that approximately 350 invitational letters were sent to people who alleged experiencing rude & discourteous conduct by Pittsburgh police. Ms. Pittinger also mentioned that the hearing notice has been posted on social media, distributed to community interests, and published in local papers.
- Ms. Pittinger mentioned the “You & the Police” brochure; which is an informative pamphlet that communicates advice to youth on safety in regards to citizen/police encounters and was established and revised through a collaborative effort involving several individuals and organizations, including ACLU, APA, B-PEP, B & W Reunion, CPRB, PBP, and NAACP. Ms. Pittinger noted that CPRB has committed to producing 1,000 copies of the brochure for public distribution.
- Ms. Pittinger reported that she has been invited to participate as a resource person, in a 2/28/15 Black History Month Youth Program, sponsored by the Mon Valley NAACP. The event is a continued effort to foster improved relationships between the regional communities and law enforcement. Ms. Pittinger stated that she will customize the current “You & the Police” brochure to include current Mon Valley/Donora, PA law enforcement resources.
- Ms. Pittinger stated that the Board has been provided with an investigative case summary regarding the Executive Director’s Inquiry into an 8/26/14 citizen/police encounter involving PBP officers and an individual named Lonnie Jenkins; which was captured on video and released via the media. Ms. Pittinger stated that the case will remain in summary form until the CPRB Staff offers a recommendation to be considered for disposition.
- On 1/30/15, Ms. Pittinger met with Solicitor Collura, Rick Rogow, and Jerome Jackson for the purpose of discussing the possibility of developing a community/police collaborative focused on conflict management and town hall meetings. Ms. Pittinger also mentioned the “Safer Together Community Partnership,” a similar initiative sponsored by Councilman Ricky Burgess and is evaluating the compatibility of these two efforts.
- Ms. Pittinger discussed a 2012 East Carnegie incident where an innocent bystander was shot and killed, and whereby family members were forcibly removed and denied access. Ms. Pittinger stated that this and similar incidents have raised concerns about protecting the familial bond when a person in police custody is seriously injured or near death; a 2/10/15 letter was sent to Chief McLay requesting him to consider amending the PBP order that addresses hospital visitation of persons in police custody.
- Ms. Pittinger offered the Board a draft of the 2014 Summary Report. The report includes a comprehensive description of the allegations of complaints filed in 2014, an accumulative summary of actions since 1999, Findings & Recommendations and the Chief’s responses

released in 2014, as well as, the Board's roster of membership. Ms. Pittinger noted that any additional information provided by the Board will be included in the final report.

Public Comment

Dr. Darby invited public comment. Ms. Stormie Miramontez offered public comment.

Next Meeting

Dr. Darby announced that the next regular board meeting is scheduled for 6:00 p.m., Tuesday, March 24, 2015 @ Allegheny Center Alliance Church, 250 East Ohio Street, Pittsburgh, PA 15212.

The meeting was adjourned at 7:00pm.

Respectfully submitted,

Carolyn L. Gaskin
Assistant Executive Director

Attachments (2):

1. 2/24/15 Dr. Darby, Chair Statement
2. 2/24/15 Executive Director's Report

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.

CPRB 2/24/15
C. LaDuke

The Board is prepared to release the Findings and Recommendations of Case #208-13, Scalese vs Henson and Love, tonight. The findings will be sent to the Mayor and Police Chief who have 30 days to respond.

I thank panel members Mr. Waters and Ms. McLellan for their time and astute listening skills that result in this comprehensive document. Because of this task, which is taken very seriously, citizens can feel that they are being represented By an Independent entity and due process is observed.

Unfortunately, within recent weeks, misinformation regarding these findings and recommendations and the role and function of this Independent Board have surfaced. The boundaries under which this Board functions are clear defined in the Charter. We are aware that local advocates and interested activists have expressed interest in the CPRB. However, we encourage them to operate from a solid foundation which includes a concrete understanding of the powers, functions and expectations of the Board. Executive Director Pittinger has always been and remains willing to meet with all groups at their convenience. Recent actions including meetings with elected officials and others local citizens with knowledge of the CPRB have been fraught with the conveyance of damaging and disturbing misinformation. In addition information which is closely aligned with confidential internal workings of the Board appear to have been voiced. We must uphold the integrity of this Board and acknowledge all the hard work of those who serve and are employed with it. As Board chair, I encourage all who want to know more about the functions of the Board and to explore ways to expand current Board operations, functions and powers to communicate with Ms. Pittinger who is open to such interactions. We must protect all citizens who seek representation from the Board, as well as dedicated law enforcement officers. Since being involved with this Board, I have observed it doing exactly what it is empowered to do.

At this time Ms. Collura will review the confidential nature, expectations and requirements of all Board work and panel deliberations.

MEMORANDUM

To: Dr. Emma Lucas-Darby, Chair
Honorable Members of the Board
From: Elizabeth C. Pittinger
Executive Director
Date: February 24, 2015

Suite 400
816 Fifth Avenue
Pittsburgh PA 15219

412-765-8023 (Voice)
412-765-8059 (Fax)
cprb@pittsburghpa.gov



Re: Executive Director's Report: 02/24/2015

Intake Summary through 02/24/2015: total cases

Citizen Complaints: 07 Pending Citizen Action: 28 EDI: 01 Total Intake: 40
Out of Jurisdiction: 03 Statute of Limitation: 01

(Actual Totals for 2014:	CC: 61; PCA: 219; OJ: 12; SL: 02	EDI: 05	Total: 299)
(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).
- b. Four terms will expire on 10/31/15:
 1. Seat #1 (Council): Mr. waters
 2. Seat #3 (Council): Mr. Green
 3. Seat #6 (Mayoral): Dr. Lucas-Darby
 4. Seat #7 (Mayoral – LEP): Mr. Williams
- c. Notice is due to the public, Mayor, Council and others in April.
- d. Mr. Elwin Green is enrolled in the current Citizen Police academy.
- e. CPRB Solicitors' Contract: City Council authorized the contract between the Board & ClarkHill ensuring the continued services of Atty. Collura and Atty. Wang. The authorization spans three years contingent on annual allocation of funds and discretion of the Board.

2. Public Hearings

- a. **9/11/14: Held Public Hearing CPRB #286-13, Kelly v. Fallert & Emery.**
 1. Panel: Ms. McLellan, Chair, Dr. Lucas-Darby, Mr. Thomas Waters
 2. F&R: Released 12/9/14. Response due: 1/22/15. Response received from Chief McLay on 1/30/15. Copy Attached.
- b. **10/9/14: Held Public Hearing: CPRB #208-13: Scalese v. Love, Henson**
 1. Panel: Dr. Lucas-Darby, Chair, Ms. McLellan, Mr. Waters.
 2. F&R: pending deliberations
- c. **12/18/14 Scheduled: #282-14 Brown, Brown v. Vitalbo**
 1. Panel: Mr. Waters, Chair, Ms. McLellan, Mr. Green
 2. Public hearing was opened on 12/18/14. The record was held open pending effort to obtain possible patrol unit video/audio of encounter as testified to by the Subject Officer.
 3. Report to panel at 2/24/15 meeting.

3. Rude & Discourteous Hearing:

- a. A Public Hearing is scheduled to open at 6:00 p.m., Wednesday, 3/4/15, in City Council Chambers to receive testimony and comment related to Pittsburgh police officers' conduct toward the public.
- b. Approximately 350 letters of invitation were sent to people alleging rude & discourteous conduct by Pittsburgh police. In addition to those individuals directly referred through disposition, the list was derived from those filing such allegations since the last hearing in January 2012.
- c. Pre-registration was offered and reserves 3 minutes. Attendees not pre-registered were advised that they may have 1 minute to address the Board after pre-registered speakers do so.
- d. Public information: Posting on social media, distribution to community interests, letters and public notice published in local papers.

4. Miscellaneous

Executive Director's Report: 1/27/15

- a. "You & The Police" brochure: assisted a community/police collaborative with development, revision and production of the brochure intended for public distribution.
- b. Lonnie Jenkins incident at Renewal Inc.: an Executive Director's Inquiry was opened following exposure of a video in which Pittsburgh police used force to subdue Mr. Jenkins in a residential setting. A confidential case summary was provided for the Board's consideration.
- c. 1/30/15: met with CPRB Solicitor Elizabeth Collura, Rick Rogow of the Pittsburgh Mediation group and Jerome Jackson of Operation better Block. We discussed the possibility of developing a community/police collaborative focused on conflict management and town hall meetings. The gentlemen offered an outline of their ideas. Pittinger is evaluating the proposal to determine compatibility with the "Safer Together Community Partnership".
- d. Safer Together Community Partnership: An initiative sponsored by Councilman Ricky Burgess and supported by the Mayor. Steering committee members and community partners will include representatives from the business community, faith community, public safety councils, legal profession, academia, the Housing Authority of the City of Pittsburgh, Pittsburgh Public Schools, Citizens Police Review Board, Urban League, Black Political Empowerment Project, Alliance for Police Accountability and the NAACP.
- e. 2/10/15: Letter to Chief McLay regarding hospital visitation of persons in police custody.
- f. Draft Summary report of Board activity in 2014 offered to the Board.

Respectfully submitted,



2/24/15

Attachments (2)



**CITY OF PITTSBURGH
BUREAU OF POLICE**

Office of the Chief

"...accountability, integrity, and respect."

January 30, 2015

Elizabeth Pittinger, Director
Citizen Police Review Board
816 Fifth Avenue, Suite 400
Pittsburgh, PA 15219

Dear Director Pittinger:

I have reviewed the Findings and Recommendations of the Independent Citizen Police Review Board, Case Number: CPRB# 286-13. In response to the findings and recommendations therein, I concur in part, and disagree in part.

I disagree with the finding that Officer Fallert violated General Rules and Regulations 16-1, 3.7.2; Conduct toward the Public with his statement he knew Mr. Lee was a drug dealer. The record reveals that, in fact, the officers were reacting to a complaint Mr. Lee was using his vehicle and selling drugs on a nearby street. The officers were patrolling areas in response to violence and street level drug activity. They come into contact with Mr. Lee who our officers had arrested in the past for Possession with Intent to Deliver, charges on which Mr. Lee was convicted. The officers had probable cause to affect a vehicle stop for a traffic violation, creating a lawful platform upon which to discuss Mr. Lee's activities in the area. When an officer reasonably believes a person to be engaged in unlawful conduct, promising they will receive higher levels of police focus is neither unreasonable nor inappropriate.

I concur with the over-arching finding that the conduct of Officer Emery was inappropriate and inconsistent with the highest standards of police ethical conduct, as instituted within the Pittsburgh Bureau of Police under General Rules and Regulations 10-1. The statement "Obama makes you sell heroin" is inappropriate. In the context of the comments from bystanders to the effect "George Bush made the economy bad, and that's why they are selling drugs", it is easy to understand how one might be drawn into such inappropriate banter. The Law Enforcement Code of Ethics states, however, "I will never act officiously, or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions." However, I do not believe this conduct violates General Rules and Regulations 11-3, 4.1.5 Unbiased Policing, as I do not see evidence racial bias was factor in the enforcement decision.

I am sympathetic with the assertion Officer Emery's decision to issue a citation based upon the behavior of Mr. Lee for taping the interaction, and in so doing violated this same provision of the Code of Ethics, but disagree in part. Mr. Lee's actions of calling others to the scene, and shining a light in the officers' eyes created a potentially dangerous situation that escalated the situation for all involved. The

overarching goal of police presence is to seek voluntary compliance to the laws. When voluntary compliance is not forthcoming, to cite the individual and activate the justice system is not a violation. However, the situation devolving into Officer Emery and Mr. Lee shining lights in one another's eyes does not reflect the high standards of professional conduct contemplated in our Code of Ethics.

I likewise disagree the decision to issue a citation based upon the totality of Mr. Lee's behavior constitutes a violation of Regulation 16-1, 3.12.2; Incompetency. Mr. Lee's behavior was escalating a situation. If Mr. Lee's only conduct were to respectfully record the interaction, without shining light in the officers eyes and calling others to the scene, I would concur such an arrest decision might be capricious and reflect poor judgment. I must review the officers' conduct contemplating the totality of the circumstances. Faced with an actor who has been known to be armed and engaged in drug activity in the past, who is calling others to the scene who are now yelling at the distracting the officers, and who is shining a light from the cellphone camera in the officer's eyes, thereby damaging the officer's night vision creates a tense situation. In this context, to use the only tools the law provided to assert their authority for the underlying contact, the traffic stop, is an appropriate discretionary decision.

I concur with the overall finding the allegations are acts of deminimus misconduct where misconduct is stated herein. I will direct both officers receive counseling on maintaining highest standards of ethical conduct, even during trying citizen interactions like these.

The use of a traffic violation to create an opportunity for an investigative stop, often referred to as a pretextual, is a legally supported investigative tool. Pretext stops can undermine community trust. Poorly performed, such stops can badly undermine the legitimacy of police conduct in the eyes of the public. It is my intention to review Police Bureau policies relative to this practice.

We will also review the use of unmarked cars with officers in plainclothes for our street level enforcement efforts. There are very valid reasons for officers seeking to reduce street level crime to gain a modicum of advantage by driving vehicles less obviously police vehicles when seeking to deal with violent street crime. The use of traffic stops is a necessary strategy in these efforts; however, I recognize the --need to reexamine our efforts in this area to preserve legitimacy and public trust and will conduct that reexamination.

I am firmly committed to moving forward with the recommendations to conduct training related to respectful interactions with the public and on understanding bias and how it affects our judgments and discretionary decisions.

Please do not hesitate to contact me if you have questions or concerns.

Sincerely,



Cameron S. McLay
Chief of Police

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 ☐ Fegregious)

Panelists	Agree with finding	Disagree with finding	Initials
Ms. McLellan	<input checked="" type="checkbox"/>		
Dr. Lucas-Darby	<input checked="" type="checkbox"/>		
Mr. Waters	<input checked="" type="checkbox"/>		