

January 6, 2021

TO: Kamran Afzal
Director and Chief of Police

FROM: Lieutenant Eric R. Sheldon
Professional Standards Bureau

**SUBJECT: Findings on Professional Standards Bureau Investigation
Case #IA2021-0587
Officer Wayne M. Hammock Jr.
Officer Vincent J. Carter**

Sir:

On October 1, 2021, the Professional Standards Bureau (PSB) was assigned to investigate a citizen complaint filed by Clifford Devaughn Owensby. Mr. Owensby provided a typed statement attached to a signed Professional Standards Bureau Complaint Form. Mr. Owensby's complaint states:

“On Thursday September 30, 2021 at around 12:32 I Clifford Owensby was driving down Grand Ave with my 3-year-old son in the car, when a police car flashed the lights to pull me over. I pulled over to comply with the traffic stop. The officers then approached my vehicle and stated that he pulled me over because of the dark tint on the vehicle, I explained to him that the vehicle was not my car and that It was loaned to me. He asked for my driver's license, I handed him my driver's license they then went back to their vehicle. He came back with a tint reader and placed it on my window and stated that it read 20%. Then he went back to his cruiser and he talked to his partner for a couple of minutes. He then approached my vehicle again and asked me to turn my vehicle off, I did as he asked and turned the car off. He said he needed me to step out the car to search the vehicle due to my background. I told him that I was a paraplegic and was unable to step out of the car, and that I received help getting in and out the vehicle from my children. He then got to looking around the vehicle and questioned me on where my wheelchair was, I told him the chair was in the driveway. He then demanded me to step out of the vehicle again, and I explained to him that I was physically unable to get out. He then stated that I had two options which was to step out of the vehicle or to be drug out. I then told him that I would like to speak to a white shirt because his tone of voice was aggressive. He said that it doesn't work like that and then started to reach in and undo my safety belt. At this time, I was at fear of my life and I held on to the steering wheel with the tightest grip that I could because I know that being pulled out of a vehicle while being paraplegic could cause injuries. I continued

to ask for a white shirt while holding the steering wheel they both started grabbing me one was pulling my hair and the other was prying my hands of the steering wheel. They then proceeded to pulling me out of the car and drug me half way into the middle of the street and slammed me onto the ground while my son watched from the back seat crying and scared, one of the officers then knelt on my back and forced my arms behind me while pushing my face towards the ground yelling to stop resisting.

I started yelling for help and for someone to call the real police because I feel that the police is supposed to serve and protect, I am a tax paying citizen and a father of 7, I don't pay them to be treated that way. There was witnesses at the scene. They handcuffed me without reading me my rights and told me that I was going to jail for resisting arrest. They then dragged me to the back of the cruiser with my hands behind my back and tossed me into the back of the cruiser, while my hands were cuffed behind my back and I had no balance. Then another office came to talk to me stated that he was a white shirt, and I asked him why they would do something like that. I stated to him that I told them that I was a paraplegic and that I wanted to talk to a white shirt to ensure my safety when getting out of the vehicle, due to me not having my wheel chair at hand. The officer then proceeded to search the vehicle where they found my savings in a black bag on the floor of the driver seat where I was sitting and proceeded to count it. All while making joking with each other talking about it was drug money. A couple more officers showed up and they started high fiving and mocking the fact that I was yelling out for help while I watched from the back seat of the cruiser. I then started yelling for the white shirt because I started to sense pain in my legs and in my back, and my left side. I told them that I would like to seek medical attention, and they confirmed that that was what I wanted. Once they completed their count with the money, I was taken to Grandview Hospital, where I was treated and released. Upon arrival to the hospital to the hospital and leaving the hospital the officers did not want to assist me with getting in and out of the cruiser. Once we left the hospital were on our way to the county jail, when we arrived at the county jail during the intake, I was asked three questions by the intake officer. After responding to his questions, he decided they couldn't accept me into their facility.

I would like for this case to be investigated thoroughly and for the result I would like for all the officers involved with my stop to lose their badges and or guns and tasers. I would also like for them to have necessary mandatory training to be more aware on how to deal with people with disabilities. I would like to be compensated for my pain and suffering and would like a public apology. This is saddening that this happened even after telling them multiple times that I was a paraplegic and was unable to get out of the car. If nothing is done this may continue to happen to others, and we need to bring awareness to this type of behavior.”

Sergeant Matt Locke was the assigned PSB detective. Sergeant Locke’s investigation included a thorough review of cruiser and Body Worn Camera (BWC) videos, Regional Dispatch Center (RDC) radio traffic recordings, Dayton Incident Based Reporting System (DIBRS) reports, Field Interview Cards (FICs), traffic citations, Grandview Medical Center discharge paperwork, Mr. Owensby’s PSB complaint form, Mr. Owensby’s criminal history, photographs, involved officer special reports, Dayton Police Department property room records, and administrative interviews.

Those documents are explained, detailed, and referenced in Sergeant Locke's investigative summary.

The following findings are based on the facts of this incident, the information known to Officer Wayne Hammock Jr. and Officer Vincent Carter at the time, relevant Dayton Police Department policies, training, and case law.

Traffic Stop

On September 30, 2021, Officer Wayne Hammock and Officer Vincent Carter were notified by Narcotics Bureau Detective Cody Hartings that a white Audi A8, Ohio license number JHU6000, had been parked at a drug complaint residence for a "long period of time." Detective Hartings also told the officers the vehicle was equipped with "extremely dark window tint."

On September 30, 2021, at 1227 hours, Officer Wayne Hammock and Officer Vincent Carter, operating as a two-person crew, initiated a traffic stop on the white Audi, Ohio license number JHU6000, near the intersection of West Grand Avenue and Ferguson Avenue. The initial probable cause for the traffic stop was a violation of Ohio Revised Code 4513.241 which states in part:

- (A) The director of public safety, in accordance with Chapter 119. of the Revised Code, shall adopt rules governing the use of tinted glass, and the use of transparent, nontransparent, translucent, and reflectorized materials in or on motor vehicle windshields, side windows, sidewings, and rear windows that prevent a person of normal vision looking into the motor vehicle from seeing or identifying persons or objects inside the motor vehicle.
- (C) No person shall operate, on any highway or other public or private property open to the public for vehicular travel or parking, lease, or rent any motor vehicle that is registered in this state unless the motor vehicle conforms to the requirements of this section and of any applicable rule adopted under this section.

The legal Visible Light Transmission (VLT) for front side window vehicle tint in Ohio is 50%. The window tint must allow at least 50% of visible light to pass through. Any window tint on the front side windows below the 50% legal limit is a violation of the statute.

Officers Carter and Hammock were legally justified in stopping the white Audi for a suspected window tint violation. During the traffic stop, Officer Hammock tested the vehicle's window tint by using a Laser Labs Enforcer II tint meter on the front passenger side window. The window tested at 20% VLT, 30% below the legal limit.

Initial Approach

Officer Vincent Carter, the driver of he and Officer Hammock's cruiser, approached the driver's side window of the vehicle and contacted the driver, identified as Clifford Devaughn Owensby. Officer Hammock approached the front passenger side window of Mr. Owensby's vehicle. As he approached, he slid a portable tire deflation device in front of the right rear tire. This was to prevent the driver from successfully fleeing from the traffic stop. During Officer Carter's brief initial

encounter with Mr. Owensby at the driver's door, Officer Carter pointed to Mr. Owensby's hand controls and asked, "What's up with the little thing? Is that how you drive?" Mr. Owensby replied, "I'm a paraplegic sir." Officer Carter answered, "Okay, just askin'. Alright man, just hang tight okay?"

License Check

Officer Carter obtained Mr. Owensby's driver's license and ran his identifiers through their in-car computer to verify his driving status, check for relevant Field Interview Cards (FICs), and check to see if he had any warrants for his arrest. This is standard operating procedure for a traffic stop. When Officer Carter ran Mr. Owensby's information, he saw on their in-car computer that Mr. Owensby was classified as being weapons under disability. He told Officer Hammock this and that he was also a paraplegic. Officer Hammock replied, "Got in the car somehow." Officer Carter replied, "It's just funny, it's two times in less than like twelve hours."

Officer Carter's comment was in reference to their assistance on a traffic stop made by Sergeant Kyle Thomas on September 29, 2021 involving paraplegic James Jones. Sergeant Thomas, Officer Carter, and Officer Hammock arrested Mr. Jones for multiple charges including Receiving Stolen Property, Carrying Concealed Weapons, and Having Weapons While Under Disability (See DIBRS 210930-0004). In that incident, a loaded stolen handgun was recovered near Mr. Jones.

Being "weapons under disability" is based on Ohio Revised Code 2923.13 Having Weapons While Under Disability which states in part:

- (A) Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:
- (1) The person is a fugitive from justice.
 - (2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.
 - (3) The person is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.
 - (4) The person is drug dependent, in danger of drug dependence, or a chronic alcoholic.

- (5) The person is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a mentally ill person subject to court order, or is an involuntary patient other than one who is a patient only for purposes of observation. As used in this division, "mentally ill person subject to court order" and "patient" have the same meanings as in section 5122.01 of the Revised Code.

Mr. Owensby's weapons under disability classification is based in part on his 2008 conviction for Possession of Drugs (F5), case number 07CR3029. He also had previous criminal convictions which would classify him as weapons under disability.

Second Approach

Officer Hammock approached Mr. Owensby's passenger door to test the window tint. Officer Hammock had Mr. Owensby roll the passenger window down so he could place the tint meter on the glass.

Officer Hammock asked Mr. Owensby the age of the child in the back seat. Mr. Owensby said, "Not my kid, it's my girl's kid." Mr. Owensby told Officer Hammock the child was three and explained the child was not in a car seat because, "Just pullin' out from down the street sir." Mr. Owensby and Officer Hammock had a brief verbal exchange about Officer Hammock's name and Officer Hammock walked back to their cruiser.

After giving Officer Carter the tint percentage and notifying him about the unsecured child, Officer Hammock approached Mr. Owensby at the driver's door. This occurred at the seven-minute mark of Officer Hammock's BWC video. The following verbal exchange occurred:

Hammock: (To Mr. Owensby) What's your name again?

Owensby: Clifford Owensby

Hammock: Owensby?

Owensby: Yes, sir.

Hammock: Alright, Mr. Owensby, turn the car off for me please. Alright, undo your seatbelt for me.

Owensby: Uh, to step out of the car?

Hammock: Yeah, I'm gonna have you step out of the car.

Owensby: I can't step out the car sir. I'm a paraplegic.

Hammock: How'd you get in the car?

Owensby: I got help gettin' in.

Hammock: Well, I'll help you gettin' out.

- Owensby:** Excuse me?
- Hammock:** I'm gonna help you get out.
- Owensby:** (Shakes head) Well, I don't think that's gonna happen sir.
- Hammock:** Well, I do. Because, I'm asking you, but I'm telling you. So, it's not an option.
- Owensby:** Can I ask you what's the problem?
- Hammock:** The problem is, is that because of your history, I'm gonna have a dog do a free air around the car. You have to be out of the car to do that.

Canine Free-Air Sniff Explained

A canine free-air sniff occurs when a narcotics-detecting canine is walked around the outer perimeter of a vehicle to sniff the air emanating from the vehicle. The narcotics-detecting canine can detect the presence of illegal narcotics within the vehicle based on this free-air sniff. A canine free-air sniff does not constitute a vehicle search but is guided by both legal case law and departmental policy.

Dayton Police Department **General Order 2.04-2 Police Canines (03/21)** describes the procedures officers must follow when conducting a free-air sniff. Section III. C. states:

C. Free Air Sniffs

1. A drug detection canine may be utilized to sniff the free air around a vehicle on a traffic stop as long as it does not extend the duration of the stop.
2. The vehicle must be turned off during the free air sniff.
3. For the safety of the Canine Officer and the occupants, all occupants must be removed from the vehicle prior to the free air sniff.

Section III. D. states:

Personnel throughout the department are encouraged to request the services of these canines when an appropriate investigative need arises.

Section C. 1. is a reference to case law (Rodriguez v. United States, 135 S. Ct. 1609 (2015)) which prohibits the lengthening of a traffic stop's duration solely in order to facilitate a free-air sniff.

Rodriguez v. United States Conclusion Summary

The Supreme Court of the United States held that absent reasonable suspicion, police extension of a traffic stop in order to conduct a canine free-air sniff violated the Constitution's shield against unreasonable seizures. A police stop exceeding the time needed to handle the matter for which the

stop was made violated the United States Constitution's shield against unreasonable seizures. It explained that a seizure justified only by a police-observed traffic violation became unlawful if it was prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.

The *Rodriguez v. United States* decision was well publicized as its ramifications were relevant to patrol officers and daily traffic stops. It was recently published in an October 2020 departmental K9 Roll Call Training, November 2020 Academy Training Bulletin, and March 2021 Montgomery County Prosecutor's Office Newsletter.

Officer Hammock was justified in requesting a narcotics-detecting canine respond to conduct a free-air sniff of Mr. Owensby's vehicle. No probable cause or reasonable suspicion was necessary for him to request a police canine to conduct a free-air sniff around Mr. Owensby's vehicle, if this action did not prolong the time reasonably required to complete the mission of issuing a ticket for the violation.

Officers Carter and Hammock initiated the traffic stop of Mr. Owensby at 12:27:46. Canine Officer Jeremy Stewart arrived on scene to conduct the free-air sniff at 12:34:55, just over seven minutes after Officers Carter and Hammock initiated their traffic stop. This can be observed on Officer Carter and Officer Hammock's cruiser camera.

As evidenced by Officer Carter's BWC, Officer Carter was still in the process of actively writing Mr. Owensby's traffic citations when he exited his cruiser to assist Officer Hammock. Therefore, the request for a narcotics detecting canine did not prolong the time reasonably required to complete the mission of issuing citations for the violations.

In addition to the departmental policy requiring Mr. Owensby to be out of his vehicle during the canine free-air sniff, case law allows for an officer to get a driver out of their vehicle during a lawful traffic stop.

The U.S. Supreme Court ruled in ***Pennsylvania v. Mimms - 434 U.S. 106, 98 S. Ct. 330 (1977)*** that once a motor vehicle has been lawfully detained for a traffic violation, the police officer may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures. In *Pennsylvania v. Mimms* the Court ruled the State's proffered justification for such order -- the officer's safety -- is both legitimate and weighty, and the intrusion into respondent's personal liberty occasioned by the order, being, at most, a mere inconvenience, cannot prevail when balanced against legitimate concerns for the officer's safety.

Mr. Owensby was lawfully detained for a violation of Ohio Revised Code 4513.241. Based on Officer Hammock and Officer Carter's lawful traffic stop, and paired with Mr. Owensby's history of weapons, Officer Hammock's order for him to exit his vehicle was lawful, reasonable, and proper.

Physical Encounter

Following Officer Hammock's explanation concerning the requirement that Mr. Owensby exit his vehicle for the free-air sniff, the following verbal exchange occurred:

Owensby: I can't get out of the vehicle sir.

Hammock: Sir, I'm going to assist you getting out of the vehicle as someone else assisted you getting in the vehicle.

Owensby: No, you're not, no you're not. You're not gon' touch me. You definitely not about to touch me and I'm bout' to go ahead and get somebody on the line cause I will, it will be a lawsuit if you put your hands on me for no reason bro.

Hammock: Well, the reason is that I'm asking you to get out of the car

At this point in the encounter, Officer Hammock had offered to help Mr. Owensby three separate times. Officer Hammock told Mr. Owensby:

- Well, I'll help you gettin' out.
- I'm gonna help you get out.
- Sir, I'm going to assist you getting out of the vehicle as someone else assisted you getting in the vehicle.

Each of these offers of help or assistance by Officer Hammock was met with refusal from Mr. Owensby. Mr. Owensby did not offer any guidance or suggestions pertaining to how he would like to be removed from the vehicle, only refusal. Mr. Owensby exhibited no efforts to comply with Officer Hammock's lawful orders.

Ohio Revised Code 2921.31 Obstructing Official Business states:

- (A) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

Mr. Owensby's refusal of help in exiting his vehicle served to prevent, obstruct, or delay the performance by a public official (Officer Hammock) of any authorized act (canine free-air sniff) within the public official's (Officer Hammock's) official capacity.

As Mr. Owensby refused to exit his vehicle, he contacted someone on his cell phone while the following verbal exchange occurred:

Owensby: No, no, no, no. We ain't gon' go there. We bout' to get some people here that's bout' to witness what's goin' on.

Hammock: That's right.

Carter: You gotta step out bud.

Owensby: I cannot step out. I'm a paraplegic.

Carter: Well, you got in the car. You're gonna have to step out.

Hammock: C'mon. (Reaches hand in to assist) Step out of the car.

Owensby: I cannot step out. I'm a paraplegic.

Hammock: It's fine. (Unbuckles seatbelt) Step out of the car.

Owensby: I'm a paraplegic sir! C'mon bro!

Hammock: Step out of the car. I've asked you several times to step out of the car.

Owensby: I cannot step out of the car! I cannot step out of the vehicle!

Carter: We had this situation last night. You can get out of the car.

Hammock: You can get out of the car. You got in the car; you can get out of the car.

Owensby: (Answers phone) Hello? Hey bro! Can you come down the street to um Ferguson and Grand? The police just pulled me over and they tryin' to make me get out the car and I'm tellin' em I'm a paraplegic and I can't get out the car without no help and shit and these motherfuckers tryin' to fuckin'. They on some bullshit. Just come down the street. Bring some people with cameras. Come down the street! Bring cameras! Just bring somebody so they can witness what's goin' on.

It is apparent from this phone call that Mr. Owensby did not call someone to help or assist the officers with getting him out of the vehicle. He called so they could videotape the incident.

Officer Hammock mentioned this fact during his administrative interview on November 18, 2021. He stated:

“From my belief when he's making the phone call which is the only reason I allowed him to make the phone call, I was going to allow him to call someone to come down and assist getting him out of the car. But, in actuality he was calling his friend down the street to come film the interaction between officers and him. So, at that point I realized that he was not going to be of any assistance or comply with anything that we were trying to do.”

The verbal exchange between Officer Hammock, Officer Carter, and Mr. Owensby continued:

- Hammock:** Alright, c'mon. Time to get out of the car.
- Owensby:** I'm not getting out! I just told you I'm a paraplegic. I cannot get out.
- Hammock:** Sir, I do not, I do not wanna have to pull you out.
- Carter:** We're gonna help you out then.
- Owensby:** Can you call your white shirt please?
- Hammock:** I will once
- Owensby:** If you pull me outta here, you better expect, you better
- Hammock:** So, here's the thing I'm gonna pull you out and then I'll call a white shirt because you're getting out of the car.
- Owensby:** I can't
- Hammock:** That's not an option. You're getting out of this car. So, you can cooperate and get out of the car or I will drag you out of the car. Do you see your two options here?
- Owensby:** I know I got rights.
- Hammock:** Now which would you like to do sir?
- Owensby:** I would like for you to call your white shirt.
- Hammock:** I will when I'm done. Get out of the car.

By this point in the encounter, Officer Hammock had offered to help Mr. Owensby out of the car three times and told him, "Sir, I do not, I do not want have to pull you out." Officer Carter had also told Mr. Owensby, "We're gonna help you out then."

Mr. Owensby asked Officer Hammock, "Can you call your white shirt please?" A white shirt is a reference to the uniform color of a Dayton Police Department supervisor. Until 2005, all Dayton Police Department supervisors wore white uniform shirts. Since 2005, only Dayton Police Department personnel with the rank of lieutenant and above wear white uniform shirts.

Dayton Police Department **General Order 2.04-9 (09/21) Handling Citizen Complaints** describes the procedures officers must follow when handling a request for a supervisor. **Section I. C.** states:

- C. Any employee, either receiving a request for a supervisor, or a complaint of misconduct involving any member of the Department, will immediately notify their supervisor or another on-duty supervisor when their supervisor is not available.

After being asked twice to contact his supervisor, Officer Hammock told Mr. Owensby, “I will when I’m done. Get out of the car.” Officer Hammock then grabbed Mr. Owensby’s left arm and began pulling on it. The following verbal exchange occurred during this time:

Owensby: C’mon bro.

Hammock: Get out of the car.

Owensby: C’mon bro.

Hammock: Get out of the car. Get out of the car.

Owensby: Listen.

Hammock: Get out of the car.

Owensby: I’m a paraplegic bro! You can fuckin’ hurt me!

Officer Carter began assisting in trying to pull Mr. Owensby out of the vehicle.

Hammock: Get out of the car. Get out of the car.

Owensby: You can hurt me bro!

Mr. Owensby grabbed onto the steering wheel with his right hand as Officers Hammock and Carter continued to pull on his left arm.

Hammock: Get out of the car. Get out of the car

Owensby: What are ya’ll doin’ bro?

Carter: Dude, you’re makin’ this worse.

Owensby: I’m a paraplegic bro!

Hammock: Get out of the car.

Owensby: I’m tryin’ to tell you that I got help gettin’ in the car ya’ll can fuckin’ hurt me! They can hurt me!

Officer Stewart leaned in the passenger side door and pulled Mr. Owensby’s hand off the steering wheel.

Mr. Owensby admitted in his written complaint that he was gripping the steering wheel to prevent the officers from removing him from the vehicle. He stated, “At this time, I was at fear of my life and I held on to the steering wheel with the tightest grip that I could because I know that being pulled out of a vehicle while being paraplegic could cause injuries.”

Hammock: Get out! Get out of the car!

Officer Hammock grabbed hold of Mr. Owensby’s dreadlocks and pulled him out of the vehicle.

Owensby: God damn bro! I’m a paraplegic! Ow! Ow!

Hammock: You have got to get out of the car! (Unintelligible) when you do that! Get out of the car!

Mr. Owensby fell to the ground on his back while Officer Hammock still had hold of Mr. Owensby’s dreadlocks with his left hand.

Owensby: Ow! Ow! Somebody help! Somebody help!

While Mr. Owensby laid on his back on the ground, Officer Hammock crossed Mr. Owensby’s arms over his chest while he placed his left knee on Mr. Owensby’s right shoulder. The following is the verbal exchange while Officers Hammock and Carter controlled Mr. Owensby’s arms.

Hammock: He’s got somethin’ right here. Stop.

Owensby: Somebody help!

Hammock: Stop.

Carter: Stop.

Hammock: Stop.

Carter: Stop.

Owensby: Someone help! Are ya’ll recordin’ this?

Hammock: Stop.

Carter: Stop.

Owensby: Somebody help! I’m a paraplegic!

Carter: Stop.

Owensby: They are doing unjust things to me!

Officer Carter attempted to roll Mr. Owensby over to his chest while Mr. Owensby braced himself on his left elbow.

Hammock: Stop.

Owensby: Somebody please help me!

Hammock: Stop! Stop!

Owensby: You're hurting me!

Hammock: Stop!

Carter: Stop!

Hammock: You're

Owensby: What are you talking about? I'm a fucking paraplegic!

Officer Hammock gripped the back of Mr. Owensby's sweatshirt while placing his right knee on his right side. Officer Carter had a grip on Mr. Owensby's right arm with his right hand.

Hammock: Stop! Stop!

Owensby: I'm a paraplegic! I'm a paraplegic!

Hammock: Then stop!

Carter: You're making this worse than it needs to be.

Owensby: I'm a paraplegic. I gave ya'll my I.D.

Hammock: Stop! That's fine.

Owensby: I gave ya'll everything asked for!

Hammock: Stop! Cooperate!

Owensby: Can ya'll call a white shirt?

Hammock: You're not cooperating.

Carter: We'll call whoever you want.

At this point Mr. Owensby was lying on his left side with his left arm extended. His right arm was bent, his right hand was opened and flat on the ground. Officer Carter was gripping Mr. Owensby's right triceps area with his left hand and Mr. Owensby's right wrist with his right hand.

Owensby: Can ya'll call the real police please?

Carter: You're about to get TASED dude. I ain't playin' with you anymore.

Officer Hammock grabbed Mr. Owensby's left arm with his left hand and his dreadlocks with his right hand. Using his dreadlocks, Officer Hammock moved Mr. Owensby's head to the ground. Placing his right knee in Mr. Owensby's left shoulder, he brought Mr. Owensby's left arm up and behind his back. Officer Carter was kneeling on his right knee next to Mr. Owensby with his left knee on Mr. Owensby's lower back.

Owensby: Ow! What the fuck?

Carter: You're making it so much harder than what it has to be.

Officer Hammock brought Mr. Owensby's left hand behind his back toward his right hand which had been handcuffed by Officer Carter. Officer Carter finished handcuffing his hands and Officer Hammock got up.

As Officer Hammock closed Mr. Owensby's car door, picked up his shoes from the ground, and threw them into the front seat of his car, Officer Carter and Officer Darryl Letlow carried Mr. Owensby to the rear of Officer Carter and Officer Hammock's cruiser.

Owensby: I'm a paraplegic! These motherfuckers is doin' me wrong! Man! How the fuck am I? I can't do nothin! You got my arms behind my back! I'm a fuckin' paraplegic!

Officer Carter lifted Mr. Owensby up into the cruiser and Officer Hammock helped pull him in.

Carter: Okay, well you made this worse than it is.

Owensby: I didn't make shit worse! I tried to talk to you (Unintelligible).

Carter: You did not try to talk to us.

Owensby: You a fuckin' lie!

Hammock: Man, it's all on camera.

Owensby: I'm sure it is!

Hammock: We explained it to you several times, that you're gettin' out of the car.

Owensby: Ow! Ow! Ow!

Hammock: I told you it's not an option. It's not an option.

Use of Force

Dayton Police Department **General Order 3.03-2 (05/21) Use of Force** directs the proper use and documentation of force by officers. It states in part:

“It is the policy of this department that any response to resistance/aggression/non-compliance will only be used to overcome resistance or stop aggression, and then only that amount of force which is necessary to overcome that resistance. Officers will respond to resistance or aggression in accordance with the objective reasonableness standard outlined in the Supreme Court case of *Graham v. Conner* 490 U.S. 386, 109 S. Ct. 1865.

Officers may be required due to rapidly evolving situations and exigent circumstances to use non-traditional tools or means as force response options. This response will be in accordance with the objective reasonableness standard outlined in the Supreme Court case of *Graham v. Conner* 490 U.S. 386, 109 S. Ct. 1865 and the guidelines set forth in the Supreme Court case of *Tennessee v. Garner*, 471 U.S. 1 (1985).

In *Graham v. Connor*, the U.S. Supreme Court ruled in part:

Determining whether the force used to affect a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The test of reasonableness is not capable of precise definition or mechanical application; however, its proper application 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 officers or others
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 the 20/20 vision of hindsight. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: “Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments- in circumstances that are tense, uncertain, and rapidly evolving- about the amount of force that is necessary in a particular situation.”

In the context of General Order 3.03-2, the simplest definition for force is, “Anytime an officer knowingly strikes or injures a subject.” In this incident, no officer struck Mr. Owensby. The officers’ physical actions consisted of the following:

- Officer Stewart pulled Mr. Owensby's right hand away as it gripped the steering wheel.
- Officers Hammock and Carter pulled on Mr. Owensby's left arm to pull him out of the vehicle.
- Officer Hammock pulled Mr. Owensby by his dreadlocks out of the vehicle.
- Officer Hammock crossed Mr. Owensby's arms over his chest while he laid on his back.
- Officer Hammock gripped Mr. Owensby's sweatshirt hood and dreadlocks while placing his right knee on his right side.
- Officer Carter gripped Mr. Owensby's right arm.
- Officer Carter gripped Mr. Owensby's right triceps area with his left hand and Mr. Owensby's right wrist with his right hand.
- Officer Hammock grabbed Mr. Owensby's left arm with his left hand and his dreadlocks with his right hand.
- Using his dreadlocks, Officer Hammock moved Mr. Owensby's head to the ground.
- Placing his right knee in Mr. Owensby's left shoulder, Officer Hammock brought Mr. Owensby's left arm up and behind his back.
- Officer Hammock brought Mr. Owensby's left hand behind his back toward his right hand, which had been handcuffed by Officer Carter.
- Officer Carter finished handcuffing his hands behind his back.

The purpose of the officers' actions were two-fold; to remove Mr. Owensby from his vehicle and to handcuff him. To this end, the officer's actions were successful. Minimal force, in the form of wrestling and pulling, was used to remove Mr. Owensby from his vehicle and to facilitate the handcuffing. Once Mr. Owensby was handcuffed, the physical encounter stopped. The three-prong reasonableness test applied to this situation follows:

1. The severity of the crime at issue:

The known crime(s) at issue at the time force was applied was Obstructing Official Business, a second-degree misdemeanor. Mr. Owensby had just left a reported drug house so there was additional suspicion that a drug-related crime may have occurred.

2. Whether the suspect poses an immediate threat to the safety of the officers or others:

Based on Mr. Owensby's criminal history involving weapons and narcotics, it was reasonable to believe he was armed with a weapon. Officers had not had the opportunity yet to verify Mr. Owensby was not armed. Eventually it was discovered he was not armed, but this was unknown at the time of the physical encounter.

During his administrative interview on November 28, 2021, Officer Carter explained his concern that Mr. Owensby might be armed with a weapon. He confirmed it was in part because Mr. Owensby was weapons under disability and stated, "Because one, he's a paraplegic. We've dealt with people who use firearms, he's obviously at a disadvantage not being able to use his legs, that

way we know people to sit on firearms or hide firearms close to them to use as a way to protect themselves at all times.”

Officer Hammock confirmed in his administrative interview on November 28, 2021 they had not had the opportunity to confirm Mr. Owensby was not armed when they pulled him from the vehicle. He stated, “He was tryin’ to push himself off the ground and roll over to his back to face us. That poses as an officer safety issue. We still don’t know if he’s armed.” He added later in the interview, “Yes, until someone’s controlled and placed in cuffs they are, they still pose a threat whether it be a deadly weapon or even their personal weapons.”

During his administrative interview on November 18, 2021, Officer Hammock referenced the incident on September 29th during which they recovered a handgun from a paraplegic individual. He stated,

“Yes, like I said the night before we ran into a paraplegic guy who was armed with a handgun within his reach. Me and another officer or detective helped that gentleman from the vehicle and placed him in a grassy area. I have no doubt that Officer Carter and I could’ve done the same thing with Owensby if he would’ve just complied.”

During his administrative interview on November 18, 2021, Officer Carter elaborated on the urgency of getting Mr. Owensby out of the vehicle quickly. He stated,

“Because the urgency was, he was already starting to become passive aggressive sitting in the car. He we’ve offered him multiple ways to get out of the car. He obviously got in the car somehow, but he did not bring any kind of devices to get out of the car. Both officers were in the doorframe already, which is a danger zone to begin with. So, at that time and also the night before the individual did have a firearm so officers did believe that he, a firearm was probably somewhere in the car at that time.”

The Dayton Police Department Patrol Officer Training (PTO) program provides in-the-field training for patrol officers after they graduate from the police academy. As they progress through the PTO program, the officer-in-training is taught specific tasks by their training officer. PTO Training Task 5 deals with the special-needs population, including subjects with physical limitations. Section 3. C. reminds officers:

- C) Regardless of handicap, do not discount a potential threat
 - 1. Always handcuff if arrested prior to transport

Officer Carter signed off on this PTO training task on May 13, 2016. Officer Hammock signed off on the training task on May 27, 2016.

3. Whether the suspect is actively resisting or attempting to evade arrest by flight:

Mr. Owensby actively resisted by gripping the steering wheel, bracing and locking his right arm to prevent officers from placing him on the ground, and briefly locking his hands together on his stomach to prevent officers from handcuffing him. The force used was in direct response to this resistance. Mr. Owensby did not attempt to evade arrest by flight.

Officer Hammock's pulling of Mr. Owensby's dreadlocks was non-traditional but effective. During his administrative interview on November 18, 2021, Sergeant Locke asked Officer Hammock to explain why he pulled Mr. Owensby out of the vehicle by his dreadlocks. Officer Hammock stated,

“Well prior to grabbing his hair I grabbed his right arm and hand in which he slapped my hand off in a way and pulled away from me. So, his passive resistance then turned to active resistance at this point and then he grabbed the steering wheel. At this point, I thought it was better, I didn't wanna use pepper spray cause the kid in the back seat, TASER, at this point a use of force was gonna happen. I thought it was better for a pain compliance instead of delivering strikes, I grabbed his hair to cause pain and it's an old martial arts technique. If you cause pain in the hair, he's gonna comply and wherever the head goes, the body goes. So, I pulled his hair to cause pain and then also to direct his head out of the car and pull him away from the car.”

Sergeant Locke asked Officer Hammock “Once Mr. Owensby is on the ground and he's not putting his hands behind his back you also grab him by the hair again and then at some point you push his head down towards the pavement. What was your reasoning for doing that?” Officer Hammock answered, “He was tryin' to push himself off the ground and roll over to his back to face us. That poses as an officer safety issue. We still don't know if he's armed.” Sergeant Locke confirmed that Officer Hammock had not patted Mr. Owensby down for weapons yet. Officer Hammock answered, “No, we were not able to pat him down or for any weapons. So, again the same technique of grabbing the hair to cause pain and directing the head which will also the body will follow to the ground and keep him on his stomach, I did it again until his left arm could be controlled and then him placed in handcuffs.”

During my review of this incident, I spoke to training personnel at the Dayton Police Academy regarding officers pulling a subject's hair. Training personnel advised that the Ohio Police Officer Training Academy (OPOTA) curriculum outline or Student Performance Objectives (SPO's) do not specifically address, or prohibit, hair pulling as a means of subject control. The topic is covered by the Dayton Police Academy training staff during the defensive tactics section of training. Hair pulling is considered a viable subject control tactic and should not be discounted when necessary. Police recruits are instructed that if you control a subject's hair, you can control where their body goes and quickly gain compliance.

Several times throughout this lengthy incident, Officer Carter, and Montgomery County Jail personnel, can be seen on BWC video assisting Mr. Owensby get in and out of a vehicle without difficulty. This included Mr. Owensby getting in and out of the cruiser at Grandview Medical Center, getting in and out of the cruiser at the Montgomery County Jail, and finally Officer Carter carrying Mr. Owensby to his girlfriend's vehicle at the Safety Building. A significant difference in these situations was that Mr. Owensby complied and allowed others to help him. This is an important point which should not be overlooked. If Mr. Owensby had complied with Officer Hammock's lawful order from the beginning and allowed Officer Hammock to help him out of his vehicle, as he stated he would do, Officer Hammock would not have needed to pull him out of the vehicle. Mr. Owensby made the conscientious choice to resist Officer Hammock's requests to help

him out of the vehicle thereby requiring force to be used. Mr. Owensby unnecessarily escalated the situation.

Based on these factors, Officer Hammock's and Officer Carter's minimal force, in the form of pulling Mr. Owensby from the vehicle and wrestling him to get him in handcuffs, was justified, proper, and in compliance with General Order 3.03-2. Officer Hammock articulated that his pulling of Mr. Owensby's hair eliminated the need for physical strikes, pepper spray, or the TASER, which potentially could have caused Mr. Owensby injury. Officer Hammock's pulling of Mr. Owensby's hair may have been visually offensive to some people, but in reality the hair pulling was on the low end of the force spectrum and did not cause injury. Mr. Owensby was removed to Grandview Medical Center where it was confirmed he was not injured during the incident. Therefore, Officer Hammock and Officer Carter are **EXONERATED** concerning their use of force against Mr. Owensby.

While speaking with Sergeant Magill, Mr. Owensby made the allegation the officers beat him. He stated,

Owensby: They helped snatched me out that motherfucker, face down on the ground, and was fuckin' beatin' me and tellin' me they was gonna fuckin' TASE me if I didn't, they told me they was gonna TASE me if I didn't let them smash my head into the fuckin' concrete.

Magill: Sir, sir, you're saying, you're describing beat up, describe what happened as far as that.

Owensby: Man, just review the footage man. Just review the footage.

Magill: Well Sir, if you're alleging that the officers used force against you, I need to know.

Owensby: They definitely did.

Magill: Alright, well simply removing you from the vehicle (unintelligible)

Owensby: It wasn't a simple remove.

Magill: Well, I get that because of your current medical situation but if you're...

Owensby: I'm done talking Sir. I'm done.

As detailed previously, Mr. Owensby's description that the officers were "fucking beatin' me" and "they told me they was gonna tase me if I didn't let them smash my head into the fuckin' concrete" is not consistent with BWC video. Officers never "beat" or struck Mr. Owensby and did not tell him, "They would tase me if he didn't let them smash my head into the fuckin' concrete." Officer Carter did make the statement, "Stop! You're about to get TASED dude. I ain't playin' with you anymore." Therefore, this allegation made by Mr. Owensby to Sergeant Magill is **UNFOUNDED**.

Transport of Mr. Owensby to Cruiser

After Mr. Owensby was successfully handcuffed and officers were able to confirm he was not armed, Officer Carter and Officer Letlow picked up Mr. Owensby and carried him approximately fifteen feet to the rear of Officer Carter's and Officer Hammock's cruiser. Officer Carter had a hold of Mr. Owensby's left arm with his right hand. Officer Letlow had a hold of Mr. Owensby's right arm with his left hand. As the officer's carried him to the cruiser, Mr. Owensby's feet dragged the ground. Mr. Owensby's loose pants had fallen down around his ankles and trailed the ground exposing his shorts. Mr. Owensby was not injured by Officer Carter and Officer Letlow carrying him to the cruiser.

In his administrative interview on December 10, 2021, Officer Carter confirmed he had not received departmental training on how to move a paraplegic subject from the ground to a cruiser. Officer Carter confirmed he was not aware of any departmental policy or training that addresses how to carry a paraplegic subject.

Sergeant Locke explained to Officer Carter the public allegations that Mr. Owensby was "drug to the cruiser like a dog" or "treated like a dog." Sergeant Locke asked Officer Carter to explain his justification in carrying Mr. Owensby to the cruiser in the manner in which he and Officer Letlow did. Officer Carter answered, "Mr. Owensby was carried by Officer Letlow and myself to the cruiser after he resisted arrest, refused multiple commands, never gave us an option how to properly escort him to the cruiser or even get him out of the, or out of his vehicle. We picked him up as high as we could but at the same time him not having full functionality of his legs, they were dragging or scooting across the street so, but at no time did we meant to cause any physical harm at that point. We was just tryin' to secure him in back of the cruiser."

At the time of this incident, there was no departmental policy dealing with how to best transport a disabled subject who did not have mobility equipment. Since Mr. Owensby did not have a wheelchair in his vehicle, carrying Mr. Owensby was the only way to get him quickly secured in the cruiser. The carry was only for a short distance and Mr. Owensby was not injured during the carry. Therefore, Officer Carter and Officer Letlow are **EXONERATED** concerning their carrying of Mr. Owensby to the cruiser.

Following this incident, **General Order 3.03-1 Prisoners (11/21)** was amended with additional language addressing physical disability considerations. The following language was added:

F. PHYSICAL DISABILITY CONSIDERATION

1. Consideration should be given to the special needs of some people with disabilities in an arrest situation. Response in these situations requires discretion and will be based, in great part, on the officer's knowledge of characteristics and severity of the disability, the level of resistance exhibited by the suspect, and immediacy of the situation. In arrest and incarceration situations, employees may encounter the following:

- a. A person whose disability affects the muscular and/or skeletal system may not be able to be restrained using handcuffs or other standard techniques. Alternative methods (transport vans, seat belts) should be sought.
 - b. Officers should use care when assisting a prisoner into and out of any vehicle.
 - c. Non-ambulatory prisoners require at least two (2) officers to assist the prisoner.
2. Any wheelchair, crutches, and medication should be transported with, but not in the possession of, the prisoner.
 3. Prosthetic devices should be searched prior to transportation but should remain with the prisoner.
 4. Transporting Individuals with Physical Disabilities:
 - a. Officers will make all reasonable efforts to accommodate the needs of individuals with physical disabilities to include assistive devices.
 - b. Officers shall not handcuff an individual to a wheelchair.
 - c. If the individual requires medical treatment, officers shall contact dispatch and request a medic for treatment then transport to a medical facility.
 - d. If the individual is in a collapsible wheelchair and is able to get into the police vehicle with minimal assistance, the officer may transport the individual(s) with the wheelchair.
 - e. If the individual is immobile without the assistance of the wheelchair, the arresting officer will contact a supervisor.
 - 1) The supervisor will contact the Montgomery County Jail to ensure the booking process can be completed and if assistive devices will be accepted.
 - 2) If determined the individual cannot be transported and/or booked for the arrest, the individual will be released on their own recognizance (OR). An explanation as to why the arrest could not be made shall be documented in the DIBRS report.
 - 3) If physical arrest is possible and the jail will accept the prisoner, officers will call for a vehicle capable of retrieving the motorized or manual wheelchair that does not fit in the officer's unit. (i.e. NAO truck, squadrol) so that it can be dispositioned (Taken to the prisoner's home, tagged into the Property Room, etc.). Supervisors can also utilize medics from the Dayton Fire Department, or from mutual aid medics.

Vehicle Inventory and Canine Sniff of Money

Once Mr. Owensby was arrested for Obstructing Official Business, the free-air sniff was no longer necessary. Officers Hammock and Carter towed the vehicle for driver arrest and inventoried the vehicle prior to the tow.

During the pre-tow vehicular inventory, Officer Carter located a black plastic grocery-style bag on the floor board near where Mr. Owensby's right foot had been. Inside the black plastic bag was \$22,450 in U.S. currency. Detective Stewart and his canine partner Weston conducted a free-air sniff of the money for the presence of illegal narcotics odors. Weston alerted on the money and it was seized.

During the PSB interview with Mr. Owensby on October 1, 2021, Detective Locke asked Mr. Owensby why he had \$22,000 in cash with him that day. Mr. Owensby replied, "Um, actually I was about to make a purchase on another property. I'm a home, I'm a real estate investor. So, I own a lot of properties." Detective Locke asked Mr. Owensby where the property was at. Mr. Owensby replied, "I was gonna be lookin' at one, where was them couple, the last couple spots that we was supposed to been go? To look at them houses." Mr. Owensby's girlfriend, Chaneice Laney, added, "It was in the Westwood area. We weren't sure which home we was tryin' to get yet."

Miranda Rights

Mr. Owensby complained that his rights were not read to him after he was handcuffed. The rights he was undoubtedly referring to were his Miranda rights. These rights stem from **Miranda v. Arizona, 384 U.S. 436 (1966)**. In that case, the Court held that if police do not inform people they arrest about certain constitutional rights, including their Fifth Amendment right against self-incrimination, then their confessions may not be used as evidence at trial. The Court referenced *Mapp v. Ohio* (1961) as the basis for excluding the confessions. The ruling was also based on the assertions that the Fifth Amendment privilege is "fundamental to our system of constitutional rule" and that to inform the accused of their rights is "expedient [and] simple."

It is a common misconception by the public that your Miranda rights must be read to you every time you are arrested. The Miranda ruling affirmed protections against self-incrimination during a custodial interrogation and governed the admissibility of these statements. If the officers did not intend to question or interrogate Mr. Owensby, there was no obligation to read him his Miranda rights.

The remedy for a Miranda violation is simple: if the police do not provide Miranda warnings prior to a custodial interrogation, then any statements made by the defendant during that interrogation may not be used in court against the defendant. In this case, if Officers Hammock and Carter had not mirandized Mr. Owensby and then used his statements against him in court, those statements would be suppressed.

The criminal report completed by Officer Hammock does not include any questions made to Mr. Owensby which would be used against him as evidence at trial. Mr. Owensby's complaint that he

was not read his Miranda rights after being handcuffed is irrelevant to this incident. Therefore, Officer Hammock and Officer Carter are **EXONERATED** concerning them not reading Mr. Owensby his Miranda rights.

Allegation of Mockery

Mr. Owensby made a specific allegation against the involved officers related to mockery of his situation. In his written complaint he stated, "...A couple more officers showed up and they started high fiving and mocking the fact that I was yelling out for help while I watched from the back seat of the cruiser."

This incident occurred while Officer Hammock, Officer Carter, Detective Hartings, and Sergeant Magill counted Mr. Owensby's money on the hood of Officer Hammock's and Carter's cruiser. As they were counting the money, Sergeant Thomas arrived on scene and walked up to the cruiser hood. Sergeant Thomas is Officer Hammock's and Carter's regular supervisor and was off duty and at home when Mr. Owensby was stopped. Officer Hammock initially contacted Sergeant Thomas to respond to the scene but found out he was off duty. Officer Hammock then contacted Sergeant Magill, who was on duty, and requested he respond to the scene. As Sergeant Thomas walked up, the following verbal exchange can be heard on Sergeant Magill's body camera:

Sergeant Thomas: "Help me! Help me!" "No Kyle don't eat your breakfast." "Help me! Where you at, you going to work."

Sergeant Magill: "Hey, there is a 340 spot open, and a 330 spot."

Sergeant Thomas: "After the shit I dealt with at home, I'm considering it."

This exchange was not officers mocking Mr. Owensby or his circumstances but Sergeant Thomas expressing his mild frustration at being called while at home. The officers were also not high fiving each other as Mr. Owensby alleged. This is allegation is clearly disproved by Sergeant Magill's BWC. Therefore, Mr. Owensby's allegation that officers were high fiving and mocking the fact he was crying for help is **UNFOUNDED**.

Request for Supervisor

While Officer Hammock did not immediately contact a supervisor after Mr. Owensby's request, he did contact one immediately after Mr. Owensby was secured and no longer a potential threat. Sergeant Magill explained this to Mr. Owensby when he arrived on scene. He stated,

"Listen, you can request a white shirt and that's what I am. But we ain't gonna, we ain't gonna just snap a finger and get here okay? They're in the middle of doin' an investigation and that'll happen whenever the investigation gets to a point that it can happen okay? A traffic stop is an investigation. Okay? And if the person that we're doin' an investigation with doesn't go along with the program then they become, they're resisting us. That's a crime. We don't make those laws. We didn't write them; we just enforce them. Okay?..."

During his administrative interview on November 18, 2021, Officer Hammock also explained the slight delay in contacting a supervisor. He stated,

“Due to the circumstances of him leaving the drug house, the unknown weapons, the fact that we discovered a firearm on a paraplegic guy not even twelve hours before, officer safety trumps that part of the policy in my opinion. Once the scene is safe and we know that Owensby’s not armed and not gonna be any threat to any of the officers or us conducting this investigation as I told him, I will call a supervisor then, at that time it is my belief that we do not stop an investigation whether it be a traffic stop or domestic violence or anything to call a supervisor.”

The slight delay in Officer Hammock contacting his supervisor was reasonable based on Mr. Owensby’s obstructive behavior. Therefore, Officer Hammock is **EXONERATED** concerning him not immediately contacting a supervisor at Mr. Owensby’s request.

Officer Hammock’s Comment

During Sergeant Locke’s review of incident BWC footage, Officer Hammock was heard making the following comment on Sergeant Magill’s BWC, “Carter, why’d you beat that poor man up?” During his administrative interview on November 18, 2021, Sergeant Locke asked Officer Hammock to explain this comment. Officer Hammock stated, “You said it right. It was a sarcastic, sure, insensitive joke that I said to Carter during a private conversation. Owensby was not around. Owensby would not have heard it. Should I have said it? No. But I said it, in a joking manner under the understanding that it’s a private conversation. Sure, a little insensitive. Inappropriate maybe. I mean, but I didn’t say it to Owensby in his face.”

Rules of Conduct 4.1 states:

In accordance with the provisions of the ROC, City of Dayton Personnel Policies and Procedures, Civil Service Rules and Regulations, Departmental Policy Statements, regulations, Labor Contracts, and all other pertinent rules and regulations, dereliction of duty, detrimental to the proper performance of the functions of the Department, on the part of any officer, is cause for disciplinary action. The officer will be disciplined according to the degree of severity of the violation, and the effect it has upon the discipline, good order, and best interest of the Department. The following subsections constitute dereliction of duty:

J. Conduct of an unprofessional manner at any time

While Officer Hammock may have intended his comment to be a private joke made out of earshot of Mr. Owensby or the public, it was recorded on a BWC available to the public. His comment was insensitive and unprofessional.

Therefore, a violation of **Rules of Conduct 4.1, Section J** is **SUSTAINED**.

BWC Muting

During Sergeant Locke's review of incident BWC footage, he discovered Officer Carter momentarily muted his BWC after Officer Hammock made the comment "Carter, why'd you beat that poor man up?" During his administrative interview on November 18, 2021, Sergeant Locke asked him why he muted his BWC at this point. Officer Carter stated, "Well at that time the incident was over, Clifford Owensby was secured in our back seat, the investigation was done at that time and at that time I paused it because private conversations are no longer needed, or prudent to our investigation, our at the traffic stop at that time of countin' money."

Sergeant Locke also discovered that approximately twenty-five minutes into the incident, right after Officer Stewart conducted the free-air sniff of the money, Officer Hammock silenced his BWC. Officer Hammock's BWC remained silent for approximately an hour. It was not unsilenced until he was enroute to the hospital.

During his administrative interview on November 18, 2021, Sergeant Locke asked him to explain why his BWC was silenced for that extended period of time. Officer Hammock stated, "Yeah, at that time I realized that any interaction with Owensby was done. The investigation was done. We found what we needed to find. Therefore, as policy the video has to continue but, the sound for the purpose of private conversations and conversations that aren't related to this incident or this investigation were allowed to silence our camera. I unsilenced it because at that time I was in the, back in the cruiser in which statements or dealings with Owensby could happen. There are, is cruiser cam that would catch it so that's why I unsilenced it just to have another camera that's recording audio and video."

At the time of this incident, the proper usage of BWC's was governed by **Executive Order 10-2021 Body Worn Cameras (04/21)**. Section F. outlines when personnel may stop or mute a recording. It states:

- F. Personnel shall not stop or mute a recording during a public encounter or assigned CFS, except for the following:
 1. Personnel may stop and/or mute:
 - a. While conferring with undercover personnel from investigative units, confidential informants, or federal personnel/agents. However, personnel shall un-mute prior to continuing or taking any law enforcement action;
 - b. Personal relief or break.
 2. Personnel may momentarily mute only:
 - a. Conversations that involve police and/or case tactics or strategy;
 - b. Personal emergency matters of a sensitive nature (i.e. family emergency, medical emergency, catastrophic event).
 3. With supervisors' approval, personnel may mute when officers' duties are unlikely to lead to information relevant to a case, (i.e. directing traffic,

preserving a crime scene). The BWC audio shall be reactivated immediately if the circumstances change, or any police action is to be taken.

Based on Executive Order 10-2021, Officer Carter's and Officer Hammock's muting of his BWC during this incident was not justified. Therefore, a violation of **Executive Order 10-2021** is **SUSTAINED**.

Recommendations:

After consulting with the department advocate, I recommend a **Training Memorandum** be issued to Officer Wayne Hammock Jr. for a violation of Rules of Conduct 4.1, Section J.

After consulting with the department advocate, I recommend a **Training Memorandum** be issued to Officer Vincent Carter and Officer Wayne Hammock Jr. for a violation of Executive Order 10-2021, Section F.

Currently, departmental training does not specifically address what unique tactics an officer might need, or find helpful, in removing an uncooperative disabled person from a motor vehicle. I recommend the training bureau review this incident, and similar incidents, to determine if additional training, concerning the removal of an uncooperative disabled person from a motor vehicle, can be incorporated into the traffic stop block of training.

I request the City of Dayton Law Department, Dayton Police Department General Counsel, and the Training Bureau review current departmental policies and training related to this incident to determine if there is a need for changes or improvements.

Respectfully submitted,

Lieutenant Eric R. Sheldon

Approval:

Lieutenant Colonel Eric A. Henderson
Deputy Director and Assistant Chief of Police

Kamran Afzal
Director and Chief of Police