



# CITY OF TOPEKA

## INDEPENDENT POLICE AUDITOR

*THIS REPORT OUTLINES THE CIRCUMSTANCES REGARDING  
CASE # 2020-00077724*

*OFFICE OF THE  
INDEPENDENT POLICE  
AUDITOR*

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## Office of the Independent Police Auditor

### INCIDENT

*This incident was recorded by the officer's body worn camera (BWC). In keeping with Supreme Court precedent which states that uses of force must be judged based on what the officers knew (or reasonably believed) at the time force was used, and not with the benefit of 20/20 hindsight<sup>1</sup>, I have described the incident based on the officer's narratives and BWC videos as well as interviews of witnesses conducted following the incident. I have reviewed the camera footage and will refer to it where appropriate.*

#### **Summary of facts as noted by the IPA:**

**IT SHOULD BE NOTED THAT THERE ARE FOUR SEPARATE VIDEOS RELATING TO THE OFFICER AND CONTACT WITH THE JUVENILE.**

On September 19, 2020, at approximately 4:07 p.m., a Topeka Police Department Officer (hereinafter Officer) was dispatched to the area of the 400 block of SE Market St. regarding a juvenile (hereinafter Juvenile) riding a bike and with an unleashed dog.

[Video 1 @ 4:14 P.M. – 4 minutes and 29 seconds in length] Officer made contact with the complainant and was shown a cell phone video of Juvenile on his bike and the dog on complainant's property. With this information, Officer began driving around the area to locate Juvenile and have him take his dog home. There is no contact shown with Juvenile in this video.

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<sup>1</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

[Video 2 @ 4:20 P.M. – 1 minute and 34 seconds in length] Shows the first contact with the Juvenile at approximately the 32 second mark. The Officer exits his vehicle at 4<sup>th</sup> and Swygart St. and has a conversation with the Juvenile regarding the complaint about his dog. The Juvenile is on his bike, has good eye contact with the Officer and understands that the issue is with the dog not being on a leash. As they were talking, the dog can be seen in the video roaming in between the Officer and the Juvenile. The Juvenile swivels his bike to the east and begins to depart the area, whistles to the dog and stops in the middle of the street about a half block away waiting for the dog.

[Video 3 @ 4:22 P.M. – 1 minute and 5 seconds in length] The Officer is driving, the Juvenile and the dog can be seen through the windshield. The Officer rolls down the window and has a brief conversation with Juvenile, telling Juvenile to take the “god damn dog home”. The Juvenile departs on his bike with the dog following. The Officer is driving slowly watching the Juvenile to see where he goes.

[Video 4 @ 4:24 P.M. – 34 minutes and 58 seconds in length] Officer spots the dog roaming in a private yard and tries to get the dog to come to him but the dog runs off. At 1:38 into this video, the Officer makes contact with the Juvenile and begins speaking to him from inside his patrol vehicle. The Officer then exits his vehicle and tells the Juvenile to “come here.” The Juvenile is walking in a grassy area on the inside part of the sidewalk with his dog next to him. The Juvenile looks at the Officer, inserts his ear buds and begins to evade contact with the Officer by running into an opening in trees. As the Juvenile begins to run, he can be heard saying, “I’m running.” As the Officer turns to get back in his vehicle, he can be heard muttering “fucking kid”, (1:51 mark in the video) then he continues to drive in the area. At approximately 2:33 into the video, as the Officer turns the corner, the Juvenile can be seen walking on the street in the 400 block of Liberty St. As the Officer drives up to the Juvenile, the Officer turns on the lights and siren on the patrol vehicle and the Juvenile can be seen walking towards the sidewalk. The Officer tells the Juvenile to “stop walking”, and to “come here”, the Juvenile complies. The Officer tells the Juvenile that he stopped him for walking on the street where a sidewalk is provided and asks for his first name. The Juvenile asks “for what?” The Officer again explains why he stopped him and asks for his first name. The Juvenile explains that he was looking for his dog. The Officer explains again why the Juvenile was stopped. The Juvenile takes a few steps back and begins to lean on a wire mesh fence, he has his left hand tucked into the front of his pants and his right arm leaning on the fence. The Officer asks for his first name a third time. The Juvenile once again asks why, at which time the Officer tells the Juvenile that either he gives his name or he will be going to Intake. Once again, the Juvenile asked, for what?

The Officer then orders the Juvenile to turn around. The Officer repeats this command 5 times. After the Juvenile fails to comply, the Officer grabs the Juvenile’s left hand with his left hand and his right hand is on the Juvenile’s right shoulder. As the Officer begins to turn the Juvenile around and place his hands behind his back, the Juvenile pulls his left arm back and holds it in front of his chest. The Juvenile’s muscle definition on his left arm can be seen as he resists the Officer’s attempts to put his arms behind his back for handcuffing. The Officer then pulls out his OC spray. The Juvenile sees the spray and turns his head away, looking over his right shoulder. The Officer still has ahold of the Juvenile’s left wrist with his left hand. The Officer tells the Juvenile twice to turn around and place his hands behind his back. Finally, the Officer gives the Juvenile an ultimatum to place his hands behind his back or be sprayed. The Juvenile begins to comply but then complains about discomfort or pain. As the Officer begins maneuvering to place the Juvenile in handcuffs, two dogs approach the Officer and the Juvenile; barking is heard. The Officer disengages from the detention process to sprays the first dog

which is approximately three feet from the Officer (the OC spray does not appear to have any effect on the dog). The second dog is approximately fifteen feet away. The Juvenile is seen taking approximately three “shuffle” steps away from the Officer who is spraying the first dog. The Juvenile still has his left hand behind his back and his right hand in his hip area. Approximately four seconds elapse from the time that the Officer disengaged from the Juvenile until he reengages after spraying the dog. As the Officer is approaching the Juvenile to handcuff him, the Juvenile’s hands are both behind his back with his left hand grasping the index, middle and ring finger from his right hand while facing away from the Officer. The Officer orders the Juvenile to place his hands behind his back, even though they are already there. The Officer brings his left hand between the Juvenile’s left arm and his body at the elbow area. With the OC spray in hand, the Officer places his right hand slightly above the Juvenile’s right elbow. The Officer pulls the Juvenile’s right elbow back and shifts his body slightly to the right so that the Juvenile’s left elbow is centered with the Officer’s body. The Officer then appears to release the Juvenile’s right arm (at this point in the video two persons are by the Juvenile’s house approximately 50 feet away). The Officer orders the Juvenile to “STOP” then brings his right arm across the Juvenile’s chest, placing his right hand on the Juvenile’s left shoulder and takes the Juvenile to the ground in the inner grassy area of the sidewalk. The Juvenile is facing up and grasps his left elbow with his right hand. The Juvenile appears to be suffering from pain in his left elbow. The Officer turns the Juvenile onto his stomach with little resistance, then places his left knee in the Juvenile’s back as he handcuffs him (the Officer has his back to the two persons previously seen in the video).

In response to an inaudible third person, the Officer says “I’ll tell you in a second”. The dog is seen in close proximity. The Officer tells a bystander to get the dog as he points the OC spray at the dog. The bystander (male) is heard saying “she’s not going to do anything,” and then says, “Bella come here.” The dog is out of the video briefly but shown after returning to the area quickly. A female wearing a red shirt tries to get the dog by pulling the dog back with her left hand while she is recording the incident with her right hand. At the time of the arrest, at least two unidentified persons and the dog are in close. As the Officer walks the Juvenile to his patrol car, the first backup unit arrives.

#### **Juvenile’s description of the encounter:**

[THERE ARE TWO SEPARATE DESCRIPTIONS OF EVENTS FROM THE JUVENILE, ONE IS THE ADMINISTRATIVE INTERVIEW CONDUCTED ON SCENE BY THE SUPERVISOR (HEREINAFTER SERGEANT) AND ONE IS A TELEPHONE ACCOUNT OF THE INCIDENT WITH THE IPA]

The Sergeant introduces himself to the Juvenile and explains the administrative interview for use of force. [Prior to speaking with the Juvenile, the Sergeant had a conversation with the Juvenile’s mother (hereinafter Mother) where he asked if he could speak with the Juvenile. The Mother agrees so long as she is present and the interview occurs in the Mother’s presence] It is unclear to the Sergeant whether the Juvenile understood the purpose of the administrative hearing, thus the Mother explains it and advises the Juvenile to answer the Sergeant’s questions. The Juvenile begins by stating the he was walking and that the Officer got mad because he didn’t hear the Juvenile when he said his name and threw him on the ground. In response to the Sergeant’s questions seeking clarification, the Juvenile says he was on the road trying to get his neighbor’s dog off the street, which is when the Officer said he was

detaining him for walking in the street. As the Officer turned his lights on, he walked onto the sidewalk. The Officer then asked his name and the Juvenile told him. Then the Officer was trying to spray the Juvenile in his eyes when the Juvenile turned his head away. Then the Officer threw him on the ground. The Juvenile said that he wasn't resisting; he just didn't want to get sprayed in his eyes. In response to the Sergeant's questions about the dog, the Juvenile said that when he got "snatched-up" his dog came out to protect him. The dog ran out of the yard and started barking at the Officer, who then he sprayed the dog. The dog got sprayed because he came out to protect me. In response to the Sergeant's question regarding what the Officer told him, the Juvenile responded that if the Officer was going to hurt him because he didn't hear the Juvenile say his name, he said he didn't care what the Officer had to say and stopped listening. The Officer then told the Juvenile, after arrest, that if he didn't walk to the car he was going to drag him. This, after the Juvenile told him he had just fallen off a bike the day prior and needed to sit down for a minute; but the Officer wouldn't let him. The Juvenile explained to the Sergeant that when he fell from his bike the day prior to this incident, he hurt his left shoulder, elbow and wrist. The Sergeant confirmed that the injuries were from the day prior, the Juvenile acknowledged in the affirmative. The Sergeant then took photos of the Juvenile.

On September 23, 2020, at approximately 4:30 p.m., IPA spoke to the Juvenile on the phone. The mother was present with the Juvenile during the call. The IPA did not record the conversation. The IPA tried to write as much of the information as he possibly could while the Juvenile was describing the incident. Following is an account of the incident per the contemporaneous notes taken while speaking to the Juvenile:

The Juvenile was riding his bike with dog behind him. The dog ran and chased after the Juvenile. The Juvenile went to get the dog and try to take him home. The Officer asked if it was his dog and the Juvenile said yes. The Juvenile rode off to take dog home and the Officer parked by his house. The Juvenile stated that he ended up in the back of his house while the Officer was following him the entire time. The Juvenile ran to get the dog into the home. The Juvenile got on the sidewalk when the Officer asked him his name. The Juvenile asked the Officer why he was detained. The Officer then pulled something off waist. The officer sprayed the dog before taking the Juvenile to the ground. The Officer had his knee on him while cuffing him. While he was on the ground, his arm hurt., The Juvenile then got up and sat in police car. The Juvenile indicates that his wrist was fractured and that he now has a cast. The Mother had taken him to the hospital (KU Med-Topeka).

The Juvenile stated that the Officer first put his knee on the Juvenile's head; then on his back. When the Officer reached for his waist, the Juvenile thought he was going to be shot, then realized that it was pepper spray when the Officer sprayed the dog.

During this same telephone conversation, IPA also spoke with the Mother and the Juvenile's brother (hereinafter Brother).

Upon the Mother's arrival at her home, the Juvenile was already handcuffed in the patrol car. The Mother indicates that no one was clear as to why the Juvenile was there. She saw the Juvenile stand up and then searched. It appeared to her that they were struggling and the Mother yelled for the Juvenile to sit down. The Mother states that it appeared that the Juvenile was being pushed into the patrol car, but she wasn't sure, saying "I don't know." It looked to her as if "cops were being rough" when they were trying to get the Juvenile to sit in the car. The Mother also feels that the Officer was harassing the Juvenile because the dog was in the yard and the Juvenile was getting the neighbor's dog.

That the dog did not leave the yard until the Officer grabbed the Juvenile. That the Officer's slamming of the Juvenile to the ground was excessive.

The Mother also offered additional information regarding the Juvenile that IPA believes to be privileged and will not be include in this report.

The Brother states that he observed the Juvenile turn away from the Officer with the pepper spray. He then observed the Officer spray the dogs. The Brother then got closer and saw the Officer with his knee on the Juvenile's back. Then the Brother saw the Officer adjust his position after the Juvenile had been handcuffed. The Officer was too busy to tell the Brother what was happening. The Officer then called for backup but did not tell the Brother why the Juvenile was being detained until after the Juvenile was in patrol car.

During this conversation, the Mother and Brother acknowledged that there were recordings, which were taken by family members. IPA requested copies of any media available to get a more global perspective of the incident. The Mother indicated that they would check with their attorney first. IPA provided contact information and as of the writing of this report, IPA has not received any media.

#### **Officer's description of the encounter:**

*On 9/19/2020, I, Officer, conducted a pedestrian stopped on Juvenile in the 400 block of SE Liberty ST for walking in the roadway where a sidewalk is available. During the stop I told Juvenile that he was detained for walking in the street where a side walk was available and asked for his name. I asked Juvenile for his name 4 times after each time he asked "Why" and "what for?". When Juvenile continued to refuse to cooperate with me I told him to turn around and put his hands behind his back. Juvenile did not turn around or put his hands behind his back. I told Juvenile to turn around at least 5 times before grabbing his wrist in an attempt to guide it behind his back. Juvenile continued to not follow my commands. When I attempted to place his hand behind his back, Juvenile physically resisted and pulled his hand to his chest, and turned to face me. I continued to tell Juvenile to turn around and put his hands behind his back. Juvenile did not cooperate until I threatened to spray him in the face with OC. While finally taking control of Juvenile's hands his dog ran at me causing me to let Juvenile go to spray his dog with OC. After spraying Juvenile's dog, I regained control of Juvenile's hands behind his back. Juvenile then pulled his right hand from behind his back to in front of him and tried to walk away. I then force Juvenile to the ground to better control his movements and to affect the arrest. After placing Juvenile in handcuffs, Mother arrived on scene. Juvenile was released to the custody of Mother and was issued a Juvenile citation.*

#### **THE OFFICER PROVIDES ADDITIONAL DETAILS IN HIS REPORT**

##### **Applicable Policies:**

Recording Devices and Imaging Equipment – 2.4

Use of Force – 4.2

Use of Force Reporting – 4.3

Arrest Procedures – 4.6

Rules of Conduct – 4.9

First Aid and Medical Attention – 4.23

The IPA will “cut and paste” the pertinent parts of the policy in this report. The policy is available in its entirety on-line.

## **Recording Devices and Imaging Equipment – 2.4**

### 2.4.3 PROCEDURE

A. General guidelines and authority for the use of audio and video equipment.

1. Department authorized digital recording devices and recordings are the exclusive property of the Topeka Police Department.
2. The use of privately-owned BWC systems is not authorized and shall not be permitted.
3. Officers shall not edit, alter, erase, duplicate, copy, share, or otherwise distribute in any manner recordings without prior written authorization and approval of the Chief of Police or his or her designee.
4. Officers shall adhere to the operational objectives outlined in this policy in order to maximize effectiveness and protect the integrity of video and audio evidence and documentation.

The IPA did not note any discrepancy in the videos or audio associated therein. There was no evidence of alteration or editing of the four videos.

E. Recording protocol

1. Officers shall activate the BWC to record all calls for service and during all law enforcement related encounters and activities that occur while the officer is on duty or during the course of extra duty except where doing so would be unsafe, impossible, or impractical.
2. Examples of “law enforcement related encounters and activities that occur while the officer is on duty or during the course of extra duty” include:
  - a. Traffic stops;
  - b. Investigative detentions;
  - c. Arrests;
  - d. Searches;

The IPA notes that Officer activated his BWC per policy upon having contact with the Juvenile and Complainant. IPA notes that the BWC goes back 30 seconds prior to its activation. The first 30 seconds does not include audio.

There were no issues noted with Officer's video or audio.

## **Use of Force – 4.2**

### **4.2.1 PURPOSE**

This policy outlines the Department's core principles and rules relating to the use of force. The Department recognizes that officers will at times face unique and challenging circumstances not specifically addressed in this policy. Officers are expected to apply these core principles and act reasonably in all situations.

Every Officer of the Department is sworn to uphold the Constitution and Laws of the United States and the State of Kansas. The Department respects the value of human life and recognizes the civil rights and dignity of all individuals while protecting the public welfare and maintaining civil order.

It is the policy of the Department to accomplish the police mission with the cooperation of the public and as effectively as possible, and with as little reliance upon the use of physical force as possible.

Each sworn employee is expected to treat others with respect and professionalism even when force is necessary.

Officers who violate these values by using unreasonable force degrade the confidence of the community, violate the rights of individuals upon whom unreasonable force is used, and may expose the Department and fellow officers to legal and physical hazards.

Conversely, officers who fail to use force, in both timeliness and amount, when it is necessary may endanger themselves, fellow officers, and the community.

### **4.2.2 POLICY**

It is the policy of the Topeka Police Department that officers use only the force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others. The components of this policy serve to guide the officer's decision making when confronted with resistance.

Members of the Department are authorized to use only the amount of force reasonably necessary to accomplish lawful objectives. This authorization to use physical force ends when the resistance encountered from the subject ceases and/or the officer has accomplished the purpose necessitating the use of force.



All members of the Department shall abide by the following general requirements:

- A. Officers shall use advisements, warnings, and verbal persuasion, when possible, before resorting to physical force;
- B. Physical force shall be de-escalated as resistance from the subject decreases;
- C. Officer shall allow subjects time to submit to arrest or comply with orders before physical force is used wherever possible.

In this case, there were two distinct and separate uses of force. The first occurring during the initial contact when Officer exits his vehicle and advises Juvenile that he is stopping him for walking on the street, an infraction. Officer proceeds to ask the Juvenile for his first name multiple times and Juvenile cannot be heard providing his name in the video and Officer indicates that Juvenile did not offer his first name. It is this refusal to provide a name that leads to the Officer advising Juvenile that he would be detained for interference with a law enforcement officer (a misdemeanor) and approaches Juvenile to place handcuffs on him. Juvenile resists and refuses to turn around to be handcuffed. IPA notes that Juvenile brings his left hand, which Officer has a hold of, in front of him across his chest. The muscle definition in Juvenile's left forearm is clearly visible as he resists Officer's attempt at bringing his hands behind his back. Officer, who is alone, pulls out his OC spray aiming it at Juvenile's facial area and advises Juvenile that he would be sprayed if he does not comply [4.2.3 (B) the presentation or display of the means of force]. Juvenile initially turns his face away from the OC spray however; he begins to comply and is not sprayed. As officer began to place Juvenile in the handcuffing position, placing Juvenile's hands behind his back, Officer disengages from the handcuffing to spray Juvenile's dog who had approached their position and was barking. Officer felt threatened and directed a burst of OC spray at the dog. There is a second dog, but it maintains its distance (approximately 15 feet).

Approximately 4 seconds elapse from the time the Officer disengages from the Juvenile's detention to spray the dog and re-engages. During those 4 seconds, the Juvenile (with his hands still behind his back, his left hand grasping the index, middle and ring finger from his right hand) takes approximately 3-4 steps forward (away from the officer). The Juvenile remains in the handcuffing position and facing away from the Officer). In lieu of applying handcuffs on the Juvenile, the Officer proceeds as described in the Summary of Facts above. The Officer tells Juvenile to put his hands behind his back, (which they already are) inserts his left arm in between Juvenile's left arm and body grasps Juvenile's right arm (above the elbow) with his right hand. The Officer is still holding the OC spray in his right hand. The Officer then appears to release the Juvenile's right arm (Juvenile's right arm appears to drop to his side) yells "STOP" and proceeds to initiate a takedown of the Juvenile by bringing his right arm across the Juvenile's chest and onto his right shoulder area and pulling him down. Once on the ground, the Juvenile grasps his left elbow and appears to be in pain. The Officer rolls the Juvenile onto his stomach and handcuffs the Juvenile (Please see summary of facts for additional details). In regard to this use of force, officer states as follows:

*When I let go of Juvenile to address the dogs he took a few steps away from me but kept his hands behind his back. After spraying his dog, I returned to Juvenile and grabbed his hands once again. I told Juvenile to put his hands behind his back although they were already there. When I grabbed*

*Juvenile's left hand with my left hand, I attempted to take control of his right arm with my right hand while still holding the canister of OC. When I attempted to take control of Juvenile's right arm, he moved it from behind his back to the front of his body. Juvenile also began to try to walk away from me and I told him to stop. I then grabbed Juvenile over his right shoulder with my right arm, twisted to my left and forced Isaiah to the ground to better control his movements to affect the arrest. In that moment it was essential that I take custody of Juvenile as quickly as possible due to my inability to call for assistance earlier, the presence of his dog that had acted aggressively towards me, and that now two unknown people, who appeared to know Isaiah, had exited XXX SE Liberty ST and were approaching us on foot. Forcing Juvenile to the ground at that moment was the fastest way to place him in handcuffs so I could address the other potential threats on scene and call for assistance.*

#### 4.2.4 GRAHAM V. CONNOR SUPREME COURT CASE

A. Graham v. Connor, 490 U.S. 386 (1989) and the Objectively Reasonable Standard.

1. All officers shall use only the degree of force that is objectively reasonable under the totality of circumstances as established by Graham v. Connor, 490 U.S. 386 (1989). Factors when determining reasonableness must include at a minimum:

a. The severity of the crime at issue;

Juvenile was initially stopped for improper use of roadway by pedestrian (walking on roadway when there is a sidewalk available) which is an infraction. When Juvenile refused to give Officer his name, he was then detained and ultimately handcuffed for interference with a law enforcement officer, a misdemeanor.

b. Whether the suspect poses an immediate threat to the safety of officers or others; and

IPA notes that Juvenile had a steel rod hidden in one of his socks, under his jeans. However, there was never an attempt to extract or utilize it against Officer. Juvenile advised Officer of its existence during pat down after detention.

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

During the initial encounter, Juvenile does resist handcuffing. In the second encounter, on the AXON video the Juvenile does not appear to resist and is still in the handcuffing position waiting to be cuffed, having moved a few steps from Officer. However, as noted above, Officer states that Juvenile pulled his right arm forward and began walking away from him.

2. The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer and the governmental interests involved against the rights of the individual, in light of the circumstances surrounding the event. For further guidance, see section 4.2.6.

3. The calculus of reasonableness must allow for the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic and rapidly evolving—about the amount of force that is necessary in a particular situation.

4. The reasonableness inquiry in a use of force case is an objective one: whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

5. It must also be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

6. The level of force applied must reflect the totality of circumstances surrounding the situation, including the presence of imminent danger to officers or others. Reasonable force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it.

The totality of the circumstances surrounding the initial use of force include Officer's prior contact with Juvenile where Juvenile ran away through the trees. Juvenile's refusal to provide his name after several requests and his active resistance. The second use of force incident includes all the factors noted above. In addition; Officer's statements in his narrative that the compilation of Juvenile pulling his right arm forward and trying to walk away from Officer, the dogs, and two unknown subjects approaching his position compiled with his inability to call for back-up were contributing factors in his decision to taking juvenile to the ground.

#### 4.2.6 USE OF FORCE - IN GENERAL

##### A. General Considerations

1. When and to the extent reasonably possible, officers shall attempt to use communication skills in a genuine attempt at verbal persuasion before resorting to physical control methods

B. Officers may use reasonable force to:

1. Protect themselves from injury;
2. Protect others from injury;
3. Effect a lawful detention or arrest; or

The force used in this case was to effect an arrest. Officer lawfully detained Juvenile for walking on the street and subsequently for interference with a law enforcement officer for failure to give his name.

4. Conduct a lawful search.

C. Additional factors to be considered in determining the objective reasonableness of force include, but are not limited to:

1. Immediacy and severity of the threat to officers or others;
2. The conduct of the individual being confronted, as reasonably perceived by the officer at the time;
3. Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects);
4. The effects of drugs or alcohol;

5. Individual's mental state or capacity;
6. Proximity of weapons or dangerous improvised devices;
7. The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained;
8. The availability of other options and their possible effectiveness;
9. Seriousness of the suspected offense or reason for contact with the individual;
10. Training and experience of the officer;
11. Potential for injury to officers, suspects and others;
12. Whether the individual appears to be resisting, attempting to evade arrest by flight or is attacking the officer;
13. The risk and reasonably foreseeable consequences of escape;
14. The apparent need for immediate control of the individual or a prompt resolution of the situation;
15. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others;
16. Prior contacts with the individual or awareness of any propensity for violence; and
17. Any other exigent circumstances

B. Emergency medical services shall be contacted if a subject is reasonably perceived to:

1. Exhibit signs of medical distress;
2. Lose consciousness or become unresponsive;
3. Suffer an obvious injury;
4. Complain of pain;
5. Not appear to recover properly and promptly after force-involved incident; or
6. Exhibit signs of extreme uncontrolled agitation or hyperactivity prior to the use of force.

D. Subjects shall be transported to a medical facility by officer or ambulance when:

- 1 The individual has suffered potentially serious injuries prior to the arrival of law enforcement personnel;

2 The application of force by an officer causes more than a superficial injury which cannot be treated at the scene by AMR personnel;

Medical attention was not summonsed for the Juvenile. The Juvenile is cited and released to his Mother at the scene. Mother is heard telling the Juvenile that she will take him to the hospital after release. The Juvenile did complain of pain. [B(4)]

### **Use of Force Reporting – 4.3**

#### **4.3.1 PURPOSE**

The purpose of this Order is to set forth the requirements for reporting and investigating an incident in which an officer used a reportable level of force and to ensure that such incidents are thoroughly investigated and reviewed in a fair and impartial manner.

#### **4.3.2 POLICY**

It is the policy of this Department that every reportable use of force by an officer be reported accurately, completely and promptly. Every reportable use of force shall be investigated thoroughly and with professionalism and impartiality to determine if the officer actions conforms to the law, complies with Departmental policies and is consistent with Departmental training standards.

#### **4.3.3 PROCEDURE**

- A. A Supervisor will complete a Use of Force Report in Blue Team when it is determined that officer(s) have:

3. Used of the following techniques:

- a. Single cross face;
- b. Double cross face;
- c. Dynamic take downs;
- d. Ground control tactics;
- e. Palm mastoid;
- f. Shin pin; or
- g. Thigh lock.

4. Taken any other intentional use of force that results in:

- a. Any bodily injury
- b. Complaint of injury by the subject
- c. Likelihood of injury (based on circumstances) to the subject

#### D. Immediate Supervisor Investigation

1. In each incident in which a Use of Force Report is required an on-duty supervisor shall be immediately notified and called to the scene. Regardless of the number of officers involved, the supervisor will complete the Blue Team Report.

#### 4.3.4 SUSPECT'S ACTIONS

##### C. The Active Resistant Subject exhibits any of the following:

##### 2. Physical resistance such as:

- a. Resistive tension such as locked joints, flexed muscles, or rigid body resistance

This case qualified for Use of Force Reporting under 4.3.3 A3, A4 and 4.3.4. Sergeant responded, did an administrative interview with Juvenile (in Mother's presence) and completed all required documentation on the case.

#### **Arrest Procedures – 4.6**

##### E. Arrest Procedures

1. When a notice of warrant from NCIC occurs, officers may request that SCECC personnel contact the agency indicated in the notice of want to confirm the existence of a valid warrant for the person in question. When confirmation is received that a warrant is in existence then the person may be taken into custody. This shall be made part of the arrest report.

#### **Rules of Conduct – 4.9**

##### 4.9.1 PURPOSE

This policy identifies the high expectations of performance and professionalism the Department requires of its employees in their professional and personal lives.

##### 4.9.2 POLICY

All employees shall conduct themselves in accordance with the Department's standards of conduct as prescribed in this policy and other Departmental guidance and shall act reasonably and appropriately in everything they do on and off-duty that may reflect professionally on them or the Department.

## J. Attitude and Demeanor

1. Employees shall exhibit and maintain a fair and impartial attitude toward complainants, violators, witnesses, suspects and any other persons

## T. Courtesy

1. Employees shall be patient, courteous, and respectful when dealing with the public and each other.  
2. Employees will be tactful in the performance of their duties, control their tempers, and exercise the utmost patience and discretion.

Officer did not use the outmost courtesy and seemed to be getting irritated by the situation when he told the Juvenile, "take your god damn dog home", and when he muttered "fucking kid".

### **First Aid and Medical Attention – 4.23**

#### 4.23.1 PURPOSE

To provide the rules and guidelines for summoning or providing first aid and medical assistance to those in need appropriately reporting such incidents, and gathering relevant evidence.

#### 4.23.2 POLICY

Officers shall take all reasonable actions to ensure that persons in need of medical services receive these services promptly. After the use of force on any person, officers shall provide or seek medical attention for the person as required by this Order.

#### 4.23.3 PROCEDURE

##### A. In General

1. Officers shall immediately request emergency medical services (AMR) for any person contacted by the officer who exhibits an indication of significant injury or medical crisis. The same request shall be made for any contacted person complaining of potentially serious pain or injury. Officers should use available personal safety equipment such as nitrile or latex gloves during medical interactions and dispose of such appropriately

Medical attention was not summoned for Juvenile

## CONCLUSIONS

Topeka Police Department General Order 4.2 on USE OF FORCE states, in part:

It is the policy of the Topeka Police Department that officers use only the force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others. The components of this policy serve to guide the officer's decision making when confronted with resistance. Members of the Department are authorized to use only the amount of force reasonably necessary to accomplish lawful objectives. **This authorization to use physical force ends when the resistance encountered from the subject ceases and/or the officer has accomplished the purpose necessitating the use of force.** Officers may use reasonable force to: protect themselves from injury; protect others from injury, effect a lawful detention or arrest; or conduct a lawful search. (Emphasis added)

Force shall not be used unless it is reasonably necessary in view of the circumstances confronting the officer. The level of force that is appropriate when analyzed from the perspective of a reasonable officer processing the same information and faced with the same set of circumstances. Objective reasonableness is not analyzed with the benefit of hindsight, but rather takes into account the fact that officers must make rapid and necessary decisions regarding the amount of force to use in a tense, uncertain, and rapidly evolving situation. (General Order 4.2.4; *Graham v. Connor*.)

Laws, regulations and policies governing law enforcement's use of force gives police officers great latitude. It does so because on day-to-day basis an officer does not know what they may confront. Every situation is different and can escalate very quickly. Thus, in addition to use of force policies, there are a number of other factors that must be taken into account when encountering a citizen. It is up to the individual officer to use good judgement, assess the situation and apply their police powers in a fair and equitable way. That is to say, an officer may be within the bounds of the policies and yet not have used good judgement in their application. Particular deference must be given to the most vulnerable citizens in our society, specifically: juveniles, elderly, individuals with mental health issues, etc. Officers should determine how to treat a citizen based on the totality of the circumstances and not simply follow the same pattern for every case. IPA would question the necessity for the handcuffing, and consequently, the force utilized therein; albeit, in giving deference to the officer's judgement, the "reasonable officer standard" must be applied.

The IPA sees the encounter with the Juvenile and the judgment used by the Officer as concerning. During the second contact for handcuffing, the Juvenile still had his hands behind his back and only took a few steps forward. He had four seconds where he could have run away from the officer, before being re-engaged by the officer and taken to the ground. As highlighted above, authorization to use force ends when resistance ceases. Here, it is difficult to justify the legal necessity for the take down of an individual with his hands behind his back who is facing away from the officer (as observed in the AXON video). However, this IPA recognizes that the video does not show the entirety of any encounter



or the officer's perception of events. It is an excellent tool overall, however, it is not the only tool. Consideration must also be given to all other evidence, including the Officer's report.

Therein, the Officer enumerates three different contributing factors to his decision in taking Juvenile to the ground. He provides: "In that moment it was essential to take custody of [Juvenile] as quickly as possible due to my inability to call for assistance earlier, the presence of his dog that had acted aggressively towards me, and that now two unknown people, who appear to know to [Juvenile], had exited [XXX] SE Liberty St and were approaching us on foot." The Officer also provides that the Juvenile pulled his arm away and tried to walk away when he tried to handcuff him. The IPA is required by Supreme Court case law to take the totality of the circumstances into account from the officer's perspective using the "reasonable officer" standard including; Officer's perception of the encounter, the perceived threats enumerated by Officer and his decision to detain and handcuff Juvenile. In doing so, the force utilized by the Officer was within the policy parameters outlined in Topeka Police Department General Order 4.2, et al.

### **RECOMMENDATIONS**

TPD policy thoroughly addresses the use of force in line with constitutional standards on the use of force. It provides officers extensive guidance on the types of force that are typically considered objectively reasonable in different situations. The IPA analyzed the actions of the Officer during this incident in consideration of the policies in place. The IPA believes the conclusions are sound. Notwithstanding, IPA recommends the Officer complete a refresher in de-escalation training and use of verbal communication when interacting with citizens. Not every encounter requires handcuffing. The IPA further recommends that the decision to detain, in this particular case, receive a closer review and analysis by command staff.

Respectfully Submitted,

*Edward M. Collazo*