



CITY OF TOPEKA

INDEPENDENT POLICE AUDITOR

*THIS REPORT OUTLINES THE CIRCUMSTANCES REGARDING
CASE # 2020-00069641*

*OFFICE OF THE
INDEPENDENT POLICE
AUDITOR*

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INCIDENT

This incident was recorded by the officer's body worn camera (BWC) and witnesses using their vehicle dash cameras. 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 hindsight¹, I have described the incident based on interviews of the officers 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 undisputed facts as noted by the IPA:

On August 23, 2020, at approximately 10:00 P.M., a Topeka Police Department Sergeant (hereinafter Sergeant) stopped a white Scion for running a red light at 10th and Gage. Footage from the BWC shows the Scion facing north on Gage in the left turn lane to turn west. It is observed in the video that the light for all northbound traffic was red. The Scion makes the left turn while the traffic light was red.

Sergeant made contact with the driver and only occupant of the Scion (hereinafter Driver). Initial contact was made via the passenger side door. Sergeant opened the door and advised Driver why she was being stopped. Sergeant then asked Driver for a driver's license. Driver indicated she did not have one. Sergeant inquired as to Driver's name and if the vehicle was registered in her name. Driver acknowledged that it was registered in her name. With that information, Sergeant closed the door and

¹ *Graham v. Connor*, 490 U.S. 386 (1989).

returned to his patrol unit. Sergeant ran Driver's name and began working on the citation. Sergeant then learned that Driver had two active warrants through Topeka Municipal Court. Sergeant contacted an officer in the area to respond as back up (hereinafter Officer).

Sergeant briefed Officer on the situation and forthcoming arrest related to active warrants. Sergeant and Officer approached the vehicle. Sergeant opened the driver's side door and initiated a conversation with Driver, asking her to shut the vehicle off and requesting her to exit the vehicle. Driver acknowledged that she had city warrants and was going to jail. Sergeant asked Driver to exit the vehicle multiple times. There was also conversation relating to the keys of the vehicle and about Sergeant contacting Driver's daughter to pick up the vehicle.

Driver removed her seat belt and began exiting the vehicle when Sergeant grabbed Driver's left wrist/forearm area. Driver seemed to take offense to this and quickly objected to Sergeant's grasping her left arm. Driver brought her arms in front of her, with her fists clenched up to chest area facing Sergeant. During this time, Sergeant and Driver are having a verbal back and forth, Driver stating that Sergeant did not give her a chance to comply and Sergeant ordering Driver to turn around and put her hands behind her back.

Sergeant summons the assistance of Officer, asking Officer to grab Driver's left arm. The verbal back and forth between Driver and Sergeant continues throughout the entirety of this apprehension process. As they continue attempting to arrest Driver, Driver continues to avoid handcuffing and exclaiming that Sergeant did not give her an opportunity to comply. The trio moves from being next to the driver's side door to the rear of Driver's vehicle. Here, officers continue trying to gain control and compliance from Driver.

Officer was able to get Driver's left hand in cuffs; however, Driver slipped out of the officers' control leading to her left arm being loose with the handcuff attached to her left wrist. Sergeant informed Officer to hold off. Sergeant then placed his arms through Driver's armpits and up to the back of Driver's head where both of Sergeant's hands were behind Driver's head, effectively locking Driver's arms in an upward position. At this point, the parties are facing toward the west. Sergeant turned Driver in a counter clockwise direction until they were facing east, they moved to their left (north) until they reached the edge of the sidewalk where Sergeant then spun Driver around and down onto the grassy area between the sidewalk and the street. Driver went down (face down) with Sergeant's upper torso going down on top of Driver's torso area.

While on the ground, Sergeant and Officer were still trying to cuff Driver, with Driver continuing to indicate the Sergeant did not give her the opportunity to comply. The officers were finally able to handcuff Driver, stand her up and place her in a patrol vehicle. AMR was summonsed for an injury to Driver's right eye. Ultimately, Driver was transported to the hospital by a 3rd officer (hereinafter Officer 2) that was summoned by the watch commander (hereinafter Lieutenant), who also responded to the scene and did the administrative use of force interview with Driver.

Driver's description of the encounter:

Driver states that she was going to pick her daughter up because she did not have a ride. Driver was near 10th and Gage, there was a car in front of her waiting to turn left and she was stuck behind that car in the middle of the intersection. The police was right behind her and she was in the middle of the intersection. The officer (Sergeant) turned on his lights as soon as she made her turn. He asked where she was headed, and Driver explained that she was going to pick up her daughter a block and a half away from where they were. Officer told her she ran a red light and she explained that she was in the middle of the intersection. He then advised her that the other vehicle ran the light as well. He asked for ID and Driver explained that she didn't bring it with her. He then asked her for her name and she gave it to him. She then waited in the car while he went back to his vehicle. He then returned and opened her driver's side door and asked her to turn off the vehicle twice. Driver complied and turned vehicle off. Driver knew that her driver's license was suspended so she asked the officer if her daughter could pick up the car. Driver and the officer had a conversation about possibly calling her daughter to pick up car. The officer asked Driver to exit the vehicle twice; she advised him that she did not have a problem getting out. She began to get out of the vehicle. She indicates that she was getting out slowly due to medical reasons. As soon as she exited the vehicle, the officer twisted her arm. Driver advised the officer that she would turn around, that it wasn't necessary for him to grab her that she would do it. Officer stated that she should have done it and that she replied that he had not given her a chance to comply. Driver was then placed in a "full nelson" where she couldn't move. Officer then swung the Driver around and slammed her to the ground with the officer landing on top of her. Driver described herself as being mad and the officer not caring. Driver told officer to go to hell. Driver was then taken to the patrol car and knew she could not see out of her right eye. Driver indicates she said, "you fucked my eye up", and that the officer replied, "yeah". Driver stated that the entire right side of her body was in pain, that she had been diagnosed with a mass on her kidney and that her arm was slipping out of place and that's why she wanted to turn around herself and was then dislocated during this incident. Driver then saw the ambulance and that both the male and female medics spoke to her. The male medic indicated that she needed to go to the hospital. That the officer then opened the door and watched the Driver the entire time while she was being diagnosed. That the EMT would look at her then look at the officer. When Driver began explaining to the EMT what had happened that the officer screamed that she (Driver) didn't have to tell them (EMT's) her story. That Driver then told the officer that he knew that what you did was wrong. That officer stated, "she looks fine to me" and slammed the door. Driver wanted to go to the hospital, even if she went to jail later. Driver does not understand why she was not allowed to go in the ambulance. Driver yelled that she wanted a supervisor and the officer told her that one was coming. Driver explained to the supervisor (Lieutenant) that she was not against the police and felt that if you "do the crime then you do the time". She stated that the officer did not have to do that to her, that she was hurt and wanted to turn around herself but the officer didn't give her the chance. The supervisor got her out of the patrol vehicle, introduced her to another officer (Officer 2), her handcuffs were loosened and she was taken to the hospital. At the hospital, she was wheel chaired in and was there for 2-3 hours. That she was diagnosed with a fractured nose and bleeding behind her right eye. That a specialist was called and the doctor arranged for Driver to be seen at KU Med in Kansas City. The officer then gave her the ticket from the arresting officer and placed it in her pocket. The officer removed the handcuffs and told Driver she was free to go. Driver was wheeled out to her family and was told to go to KU due to the bleeding behind her eye. Driver went to KU and was treated, she was told that the bleeding was caused by the fractured nose and that so long as the nostrils are open that she would not

require surgery and she should get her eye sight back. Driver reiterated that there was no reason for the officer to think that she was not going to cooperate, that the officer hurt her permanently and should have let her get help. That she heard the officer talk to someone over the radio and said that she just had a "little goose egg". That the officer told EMTs that she did not have life threatening injuries and they just drove away. That the officer didn't care that she was just sitting there bleeding. That she was in pain and was not trying to fight, that all she had on was a sundress and flip-flops, that it was not necessary.

****Driver gave her statement in IPA's office with her attorneys being present****

Sergeant description of the encounter:

On 8-23-2020, Sergeant was driving westbound on 21st Street, when he saw a white 2006 Scion run a red light at SW Gage (northbound). Sergeant got behind the vehicle and ran the tag as the vehicle was approaching 17th and Gage. Sergeant began to check the owner of the vehicle and during this time the vehicle suddenly turned west on SW 15th Street. Sergeant turned west on Huntoon and drove behind the old Bullfrog's bar, then returned back to Gage, at which time he saw the same vehicle northbound on SW Gage from 15th Street. By this time, Sergeant had received information that the registered owner of the vehicle had a suspended driver's license. Sergeant also retrieved a photo of the registered owner. Sergeant followed the vehicle to SW 10th Street where he observed the vehicle run a red light at 10th and Gage, turning west on 10th Street. Sergeant stopped the vehicle and the driver identified herself as the registered owner of the vehicle. Sergeant also noted that the driver matched the photo on his computer. Sergeant then found that Driver had two City of Topeka warrants for her arrest. He contacted Officer to assist with the arrest and wrote out a citation for red light violation and suspended license. Sergeant asked Driver to turn off the car and exit the vehicle, but he felt she was stalling. Sergeant asked Driver to exit the vehicle several times then reached in to assist her by grabbing onto her left arm to guide Driver into the cuffing position. Sergeant noted in his narrative that this is a tactic that he was trained to use and one that he uses while getting everyone out of a car. Sergeant indicates that as soon as Driver felt him grab her arm she immediately began pulling away and providing muscle tension; resisting the arrest procedure. Officer stepped in and attempted to help with the detention. Driver was very upset and kept pulling away and providing muscle tension; resisting the arrest procedure. Driver was taken to the ground and tactics were used to restrain her. Driver sustained an injury during the process to her right eye and was taken to the hospital by Officer 2. Photos of the injury were taken, per policy.

****This is a summary of Sergeant's narrative, he goes into specific details in his report****

Officer's description of encounter

Upon Officers approach, Officer noticed the driver's side window was replaced by a type of plastic and tape. Sergeant opened the driver's side door where Driver was seated, and asked her to please turn her vehicle off. Sergeant told Driver a second time to turn the vehicle off and eventually Driver turned the vehicle off. Driver stayed seated and Sergeant asked Driver for the fifth time to get out of the vehicle, Driver waited a couple seconds and finally stepped out of the

vehicle and mentioned she had city warrants. By this point, Officer noticed Driver was slurring her words, talking slowly and was stumbling over her words.

For the sixth time Sergeant told Driver to step out. Sergeant reached in the vehicle and placed his hand on her left arm to guide her into one of the tactical cuffing position we are taught during defensive tactics. Driver raised her voice and stated "you don't have to grab me". Sergeant asked Driver to turn around. Driver began resisting and refused to turn around. I saw Sergeant reach for her other hand as Driver began tensing up her arms. Driver repeated herself again and stated "you don't have to grab me, why are you grabbing me" Driver stumbled over her words and stated she will turn around willfully and Sergeant told her "than do it, do what I'm asking you to do". Driver continued asking why Sergeant was grabbing her. During this time Driver had both her arms in front of her refusing to place them behind her back. Sergeant asked Officer to grab her left hand, Officer placed one of her hands above Driver's elbow, and the other hand on her wrist in attempts to maneuver her arm behind her back so they could safely place Driver in handcuffs. Up to now, Sergeant asked Driver multiple times to turn around and put her hands behind her back. Driver continued stating she would willfully do it on her own, but she was not cooperating with Officers. Officers once again attempted to place her hands behind her back. At this point Officer was unable to successfully get Driver's hand behind her back, due to the resistance she was giving Officers. Driver was tensing her muscles, attempting to pull away from Officers and making movements in ways to try and get Officers to lose grip. By this time during the struggle, Officers were at the back window of Driver's vehicle.

Officers could not gain control of Driver's movements. Driver continued stating Officers were not allowing her to place her hands behind her back on her own. Sergeant stated to Driver "then put your hands behind your back, do it now!, do you understand?" and used the back window of the vehicle to push Driver forward against the car in attempts to gain control. Driver began getting verbally aggressive towards officers. Driver called Officer a "stupid bitch" and pulled her arm away from Officer. Driver told Sergeant "you aren't right cause I can do it myself, there's no need for violence" Sergeant told her "than you should have done it" Driver replied by saying she was never given the chance to cooperate with Officers. Driver began yelling that officers were liars. During that conversation, Driver was pushing back away from the vehicle and attempting to turn her body facing Sergeant. Officer was attempting to get a good grip on Driver's left arm so Officer could let one of her hands free in order to retract her handcuffs that were located on her duty belt. Officer was able to hold her arm in a cuffing position and Officer reached for her handcuffs, Officer successfully placed Driver's left hand in one cuff. Officer looked over and witnessed Driver being resistant with Sergeant and was yelling stating she could do it on her own, she was not given a chance to do it on her own, and Calling Officers Liars and "bitches". Driver pulled away and extended her left arm that was cuffed causing Sergeant to lose grip and re adjust his arm positioning. When Driver pulled her arm away Officer lost grip of the handcuff but was able to catch it by the chain. By holding onto the chain of the handcuffs Officer was able to pull Driver's left arm back into handcuffing position and move it up closer to the right hand that Officers were attempting to cuff. Driver continued pulling her arms away and resisting arrest. At this point Officer was trying to move Sergeant's arm that was directly above Driver's right hand behind her back. Driver continued pulling away causing Officer to re adjust her grip on the handcuff. Officer was unable to cuff Driver's right arm. Sergeant told Driver to quit resisting. I let go of Driver with my left arm and was attempting to extract my pepper spray that is located on the left side of my exterior duty vest. I saw Driver manipulate her arm away from Sergeant's grip. Sergeant told me to hold on. Sergeant turned grabbed hold of both Driver's

arms. It looked as if Sergeant stepped into the sidewalk and lost balance causing Driver and him to fall on the grass on the North side of SW 10th St. before going down to the ground I heard Driver yell "you want to do it? Go ahead"

Once on the ground Sergeant and Officer attempted to take Driver into custody. Sergeant told Driver to put her hands behind her back and to do it now!. Driver was being resistant. Officer yelled for Driver to quit resisting. Officer placed my shin on Driver's mastoid like officers are taught in defensive tactics to gain control. Moments later Officer removed her shin and placed her palm on the side of Driver's mastoid. Officers were finally able to place Driver in custody.

****This is a summary of Officer's narrative, she goes into more detail in her report****

Summary of Witness Statements:

Two witnesses, (hereinafter W1 and W2) who were parked directly across the street, gave their account of events. Following is a summary of their statements to Lieutenant Jones. The IPA has reviewed the audio recording of these interviews:

W1 – They were on their way home from Dillon's when they observed the traffic stop and parked in the parking lot facing north to observe. W1 saw Sergeant exit his patrol vehicle and approach the white vehicle along with Officer. W1 observed Sergeant having a discussion with the Driver. W1 described Driver as "staggering" out of the vehicle and pulling away from officers. W1 saw Driver continue to pull away as she had one hand in handcuffs. W1 saw officers pushing Driver into the back of her car trying to handcuff her. Then she observed Sergeant take down Driver and screaming by Driver. W1 describes the sequence of additional arrivals as; TFD, AMR, Watch Commander (Lieutenant), another patrol officer (Officer 2) and tow truck. W1 does not believe that any police actions were racially motivated, she thought Driver was drunk. W1 described Driver as "yelling and belligerent".

W2 – Officers approached the vehicle, noticed Driver pulling back when officers were trying to arrest her. They walked to the back of Driver's vehicle. W2 observed that the officers were struggling to handcuff Driver as she turned facing the officers. When trying to arrest Driver by the car didn't work, they moved to the rear of the car. W-2 described the interaction at the back of the car as being able to see the car moving because they were pushing her violently against the car and she was pushing violently back. He heard Officer state "stop resisting", then saw Sergeant do a controlled take down. W2 describes hearing a "cracking noise" which he believes may have been Driver's face hitting the ground. He believes Driver was taken down in the grassy area. After this, he heard Sergeant tell Driver to "stop resisting." W2 observed that officers were finally able to handcuff Driver, and Driver was still yelling at officers. W2 also heard a thumping noise from inside the patrol car where Driver was placed. He indicates, "I don't know if she was hitting her head or something." He indicates that Driver did not appear intoxicated, just someone who didn't want to go to jail. W2 described the encounter as a "textbook arrest," and that officers gave her every opportunity to stop resisting. W2 does not believe that Driver was treated differently because of race or that any actions were racially motivated.

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

Vehicle Seizures, Towing and Inventory – 5.4

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 video or audio associated therein. There was no evidence of alteration or editing of the video.

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 Sergeant activated his BWC per policy upon commencing the traffic stop. The BWC goes back 30 seconds prior to its activation. The first 30 seconds does not include audio. Here, the first 30 seconds show Driver making a left turn from northbound Gage onto 10th Street while the light is red. The audio begins as Sergeant activates his emergency lights to initiate the stop. The initial contact between Sergeant and Driver has audio, as does the remainder of the video.

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.

IPA observed in the BWC video that upon approaching the vehicle to arrest Driver, Sergeant began in a cordial tone to ask Driver to shut her vehicle off and exit the vehicle. Driver acknowledged having City warrants. Driver and Sergeant also had a conversation as to Driver's daughter being contacted regarding the vehicle. This conversation was conducted in a cordial manner from both parties.

Sergeant asked Driver to shut the vehicle off twice before she complied. During this conversation, Sergeant also asked Driver to exit her vehicle 6 times before she complied. Driver took off her seat belt and began to exit when Sergeant grabbed her left hand to acquire control of Driver and direct her into a safe handcuffing position. In his narratives, Sergeant states that this is a tactic that he was trained to use and one that he uses while getting everyone out of a car. IPA contacted the Topeka Police Training Academy and inquired about this point in particular (no case information was discussed, the inquiry was generic in nature). The information received by the academy does corroborate the statement in Sergeant's narrative. IPA will discuss this further under 4.6 – Arrest Procedures.

The verbal persuasion, advisements and warnings did not seem to affect Driver's level of cooperation to handcuffing. Her hands were still in front of her body and she was still facing the officers and appears to be actively resisting placing her hands behind her back. Driver had sufficient time to turn and allow herself to be handcuffed. She did not avail herself of this opportunity.

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;
Driver was initially stopped for running a red traffic light. It was later determined that her driver's license was suspended and that she had two active warrants for her arrest.

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

NA

- c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.
Driver's behavior as shown on the video appears to meet the criteria for resisting arrest by not allowing herself to be placed in handcuffs.

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 use of force include what Sergeant knew at the time of the contact, including that Driver had two active warrants, her driver's license was suspended and she ran a red traffic light. Sergeant had given Driver verbal advisements to exit her vehicle, to stop resisting and to place her hands behind her back. Although Driver insisted that she would do it, she continued to actively resist.

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. Sergeant had probable cause to arrest based upon two confirmed warrants and two traffic misdemeanors that he witnessed.

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;

Driver was checked by AMR at the scene and then taken to Stormont Vail Regional Medical Hospital by law enforcement.

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. Lieutenant responded, did an administrative interview with Driver and completed all required documentation in 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.

IPA contacted the Topeka Police Training Academy to make an inquiry regarding Sergeant's statement regarding handcuffing techniques. IPA was advised that during Defensive Tactics and Arrest Procedures, officers would learn to take immediate control of an individual they intend to arrest. This need for immediacy is primarily for officer safety, the sooner that an individual is in custody (handcuffs) the sooner the risk of injury to the individual and the officer is diminished.

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.

The IPA notes that Sergeant did not use the utmost patience and discretion. While Driver was being seen by the Medics in his patrol car and she was explaining herself to them, he stated, "Just stick to the medical, they're not here to investigate your case ...they don't care about your case ...well, she sounds fine in my opinion." These comments agitated Driver and were not conducive to the process.

EE. Language

Employees shall avoid using insulting, profane, or unnecessarily antagonistic language to any citizen or fellow employee.

IPA notes that Officer used profanity when she stated, "Don't fucking reach for my belt".

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

After securing Driver in his vehicle, Sergeant immediately contacted dispatch and requested medical assistance for Driver. TFD medics arrived, as did AMR. Driver was checked at the scene then transported to Stormont Vail Medical Hospital by Officer 2.

Vehicle Seizures, Towing and Inventory – 5.4

5.4.1 PURPOSE

To provide the procedure when towing vehicles. It shall ensure that all vehicles are legally towed and the proper paperwork is completed. This will allow personnel to determine quickly where a vehicle is, the reason it was towed, and if it may be released

- d. A vehicle driven by operators who have been arrested or taken into custody, and the unattended vehicle would create a traffic hazard or obstruct safe movement of traffic

Driver's vehicle was towed by her towing service of preference. The vehicle was on the roadway and would be a hindrance to traffic on 10th Street.

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.

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*.)

Sergeant was engaged in a lawful traffic stop, then developed probable cause to arrest by virtue of the warrants. Verbal commands at the driver's door were not heeded by Driver. Attempts to get Driver's hands behind her back and handcuff her were thwarted by resistance from Driver. Attempts of using the rear of Driver's vehicle to control Driver and arrest her were also unsuccessful. Throughout this time, the officers gave verbal commands to Driver to place her hands behind her back. The situation was escalated after Officer placed a handcuff on Driver's left hand and Driver was able to get that hand loose. This, in essence, gave Driver a potential weapon to use against the officers, Sergeant's narrative states: "Driver ripped her hand out of my grasp and towards the front and up from her body. I didn't know if she was about to strike me or shove off the car..." This is when Sergeant made the decision, based on the totality of the circumstances, to take Driver to the ground while controlling her left arms so as to not allow her to swing the handcuff around. Sergeant made a conscious decision not to take Driver down on the pavement and swung her around to the grassy area near the sidewalk. Upon landing face first, with Sergeant landing over her, this appears to have created the force that culminated with the injury to Driver's eye and nose. The IPA concludes that it was not Sergeant's intent to injure Driver. The injury was a collateral effect of the take down. It appears, based on the involved officer's narratives, that the curb may have been a contributing factor in the accelerated inertia of the fall. It appears that either Sergeant, Driver or both may have lost their footing because of the curb. Officer, in her narrative, states: "It looked as if Sergeant stepped into the sidewalk and lost balance causing Driver and him to fall on the grass on the North side of SW 10th St." Sergeant's narrative states: "As I turned, I don't know if our momentum carried us to the ground or if she tripped on the curb (which is a good 4-6 inch high curb)." Applying these provisions to the incident under review makes it clear that Sergeant's use of force was reasonable, permitted by department policy, State statute and federal case law.

RECOMMENDATIONS

TPD policy thoroughly addresses the use of force, aligns with constitutional standards on the use of force, and provides its officers extensive guidance on the types of force that are typically considered objectively reasonable in different situations. The IPA analyzed the actions of Sergeant and Officer during this incident by examining those actions against the policies in place, and the IPA believes the conclusions are sound. Therefore, I have no recommendation in relation to Sergeant 's use of force based on the incident review, and recommend action at the command level relating to violation of 4.9.2 by Sergeant and Officer, as noted above.

Respectfully Submitted,

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