

Independent Police Auditor Use of Force Review

SUBJECT'S NAME: [REDACTED]
CASE NUMBER: 2024-00024315
DATE OF INCIDENT: 03/01/2024
DATE OF REPORT: 05/07/2024

IPA REVIEW OF INCIDENT

On March 1, 2024, Officer Ryan Westlake, #1402, responded to the Firestone Mini-Mart, 1459 Aster Ave., Akron, OH 44301. Upon arrival he learned the store owner had an issue with juveniles stealing merchandise. During his investigation, Officer Westlake detained a black female juvenile, identified as [REDACTED], as one who had stolen items before. She resisted Officer Westlake's attempts to place her in handcuffs. However, Officer Westlake eventually was able to handcuff and detain her.

[REDACTED] continued to be verbally and physically disruptive towards Officer Westlake as he attempted to walk her out to his police cruiser. [REDACTED] continued to pull against Officer Westlake's efforts to direct her towards his cruiser to secure her in the back seat. Officer Westlake was able to get the back door of his cruiser open, and at that time Officer Westlake threw [REDACTED] whose hands were handcuffed behind her back, backwards into the open door of the police cruiser, while screaming "Get into the fucking car you crazy bitch!"¹. [REDACTED] fell backwards into the door and onto the ground, striking her back, head, and buttocks against cruiser door and ground. Officer Westlake then assisted in picking [REDACTED] up. After standing up, [REDACTED] sat down into the back seat.

Hunt was interviewed on the scene by Sergeant Stanar. [REDACTED] was then transported to the Juvenile Justice Center under arrest for Obstructing Official Business and Resisting Arrest. [REDACTED] was not charged with theft.

Officer Westlake prepared a Field Case Report², but failed to mention in this report anything about [REDACTED] falling or being thrown into the back door of the police cruiser. Officer Westlake followed Akron Police Department (APD) protocol and prepared a Use of Force/Resisting Arrest Report. In his report, Officer Westlake stated that "***As she pulled away from me, I pulled her arms towards the cruiser. [REDACTED] back struck the rear door and she fell to the street, landing on her buttocks.***"³ Officer Westlake failed to include the fact that he used profanity towards [REDACTED] and that he threw her into the door of the vehicle. The use of force report authored by Officer Westlake was not a factual account of the events that occurred between himself and [REDACTED]

¹ Extraction_2_1_CLIP_1_1_Extraction_1_1_1459_Aster, mark 4:33

² Akron Police Department Field Case Report, case number 2024-00024315, dated 03/01/2024.

³ Akron Police Department Use of Force/Resisting Arrest Report dated 03/06/2024 (redacted public version, released on 5/7/2024)

Independent Police Auditor Use of Force Review

EVIDENCE and MATERIALS REVIEWED

- Ohio Revised Code (ORC) §2919.22 – Endangering Children, [Section 2919.22 - Ohio Revised Code | Ohio Laws](#)
- Akron Police Department Directives – Resisting Arrest/Use of Force Procedure, #P-2021-013, Effective Date January 4, 2021, [SKM C45820122310350 \(revize.com\)](#)
- Akron Police Department, Form 190, To Chief Harding, From Lt. Miles, Sergeant Williams, and Sergeant Falcone, dated 4/23/2024, re: Use of Force report #2024-00024315.
- Akron Police Department Field Case Report, case #2024-00024315, dated 03/01/2024.
- Akron Police Department Use of Force Report (Blue Team), record ID Number 10693, dated 03/15/2024.
- Akron Police Department Use of Force Investigation, Case #2024-00024315, dated 3/1/2024.
- Akron Police Department Use of Force/Resisting Arrest Report dated 03/06/2024 (redacted public version, released on 5/7/2024).
- Akron Police Department Manual of Rules and Regulations, Revised 1991
- BWC – Extraction_2_1_CLIP_1_1_Extraction_1_1_1459_Aster
- BWC – (Extraction_1.1)_Med_Call-No_EMD_1459_Aster_Ave-8
- BWC – (Extraction_1.1)_1459_Aster-2
- Video Surveillance Clip – 20240301182033496_LNRZ9360E72523B
- Doc13741420240402093946_Redacted (Westlake’s personnel file which was released to the public on 5/7/2024)

INTERVIEWS

Below is a summarization of the interviews conducted, not a verbatim translation of them.⁴

WITNESS STATEMENT:

Sergeant Stanar interviewed Gajjar and recorded it on his BWC. The following is a summary of his statement. The entire statement can be found on BWC video (Extraction_1.1)_Med_Call-No_EMD_1459_Aster_Ave-8.

Ofc. Westlake was trying to put the suspect’s hands behind her back, but she was fighting him. Ofc. Westlake was giving the suspect verbal orders to put her hands behind her back, but she was refusing to comply. She kept telling Ofc. Westlake “no”. Ofc. Westlake put the suspect’s hands behind her back and put her in handcuffs.

Ofc. Westlake was telling her to come with him, but she was refusing. Ofc. Westlake was escorting the suspect, and she just dropped. It wasn’t Ofc. Westlake’s fault. Ofc. Westlake was trying to get her to walk, but she refused.

⁴ APD Use of Force Investigation, prepared by Sergeant T.J. Shmigal 1380, redacted (version provided to the public on May 6, 2024), [ShareBase by Hyland](#)

Independent Police Auditor

Use of Force Review

WITNESS STATEMENT:

Sergeant Shmigal spoke with Suthar and recorded it on his BWC. The following is a summary of her statement. The entire statement can be found on BWC video (Extraction_1.1)_1459_Aster-2.

The suspect was resisting Ofc. Westlake and refused to walk. Ofc. Westlake kept telling her to walk, but she would just curse at him and say no. She kept pulling away. Ofc. Westlake was trying to push her in the car, but she wouldn't go. She flew on the ground because she wasn't walking. Ofc. Westlake didn't do anything wrong.

SUSPECT STATEMENT:

Sergeant Stanar attempted to interview the suspect and recorded it on his BWC. The following is a summary of her statement. The entire statement was recorded on BWC video (Extraction_1.1)_Med_Call-No_EMD_1459_Aster_Ave-8.

She wasn't hurt. She then stated she was hurt because Ofc. Westlake pushed her down. She didn't know her name, how old she was, or where she lived. She then refused to make any more statements. Later she agreed to speak again. She didn't put her hands behind her back because she didn't want to, and because she doesn't listen to anyone. She didn't want to go to the cruiser, so she refused to go. Ofc. Westlake tried to push her into the car, but she ended up on the ground. She then stated she was thrown to the ground.

CONCLUSION

Sergeant Shmigal investigated the force used by Officer Westlake in this incident. I found issues raised in the report prepared by Sergeant Shmigal.

1. The date of Sergeant Shmigal's report is March 1, 2024. Officer Westlake's report is dated March 6, 2024. Did Officer Westlake prepare a report on March 1, 2024, before the end of his tour of duty, as is customary for APD officers when they use force on someone and charge the person with resisting arrest? If so, then where is the original report prepared by Officer Westlake?
2. Sergeant Shmigal stated in his report that he returned to the incident location on March 16, 2024, to see if there were any surveillance cameras outside that could have captured the incident. Sergeant Shmigal failed to document the reason(s) he returned to the mini mart in search of additional video footage of the incident to verify Officer Westlake's version of events more than two weeks later?
3. Sergeant Shmigal wrote on March 19th, 2024, that he spoke with Captain Beitz about the surveillance video recording which contradicted the report filed by Officer Westlake

Independent Police Auditor

Use of Force Review

on March 6th, 2024, which was previously approved by Sergeant Shmigal. Why did it take three days to notify the chain of command of the discrepancies between Officer Westlake's version, the original Use of Force report and the independent video surveillance footage?

4. Sergeant Shmigal met with Officer Westlake on March 27, 2024, to discuss the incident. Shmigal stated, "We would have discussed this sooner, but we only worked together once since the collection of the paperwork and video." This statement implies there was no one else within Officer Westlake's chain of command who recognized the seriousness of the matter and/or could make this investigation a priority. Why did it take more than a week to address the discrepancies found in the report versus the surveillance video with Officer Westlake?

Sergeant Shmigal went to great lengths to describe the defiant, passive, and active resistance behavior of [REDACTED]. It is clear from the BWC video and surveillance video that she was not being cooperative with Officer Westlake. However, Officer Westlake's actions were not objectively reasonable when he threw her into the rear door of his police cruiser while [REDACTED] hands were handcuffed behind her back. Sergeant Shmigal provided details of the profanity used by [REDACTED] but failed to note in his report the extreme use of profane language used towards [REDACTED] by Officer Westlake.

Sergeant Shmigal also went into great detail of how [REDACTED] body responded, as he put it in his report, **"...at the 22 second mark the suspects knees were bowing forward as her upper body started to bend over backwards...consistent with the suspect losing her balance."**⁵ While that description was accurate, if you review the video footage provided to the public, It is visibly clear that Officer Westlake uses unnecessary force against [REDACTED] by throwing her into the rear door of the police cruiser. Sergeant Shmigal's report did not indicate the reason [REDACTED] lost her balance. Officer Westlake threw [REDACTED] into the rear door of the police cruiser, while simultaneously yelling, **"Get in the fucking car (inaudible) crazy bitch!"**⁶.

The screen shots on the following pages were taken from the videos released to the public:

⁵ APD Use of Force Investigation, prepared by Sergeant T.J. Shmigal 1380, redacted (version provided to the public on May 6, 2024), [ShareBase by Hyland](#)

⁶ Video Surveillance Clip – 20240301182033496_LNRZ9360E72523B, 00:26 mark

Independent Police Auditor Use of Force Review

Extraction_2_1_CLIP_1_1_Extraction_1_1_1459_Aster, mark 4:33 – this is where Officer Westlake begins to throw juvenile female into the rear door of the police cruiser.



At 4:34 mark, juvenile female is falling to the ground while Officer Westlake is seen in the reflection on the vehicle, still standing upright.

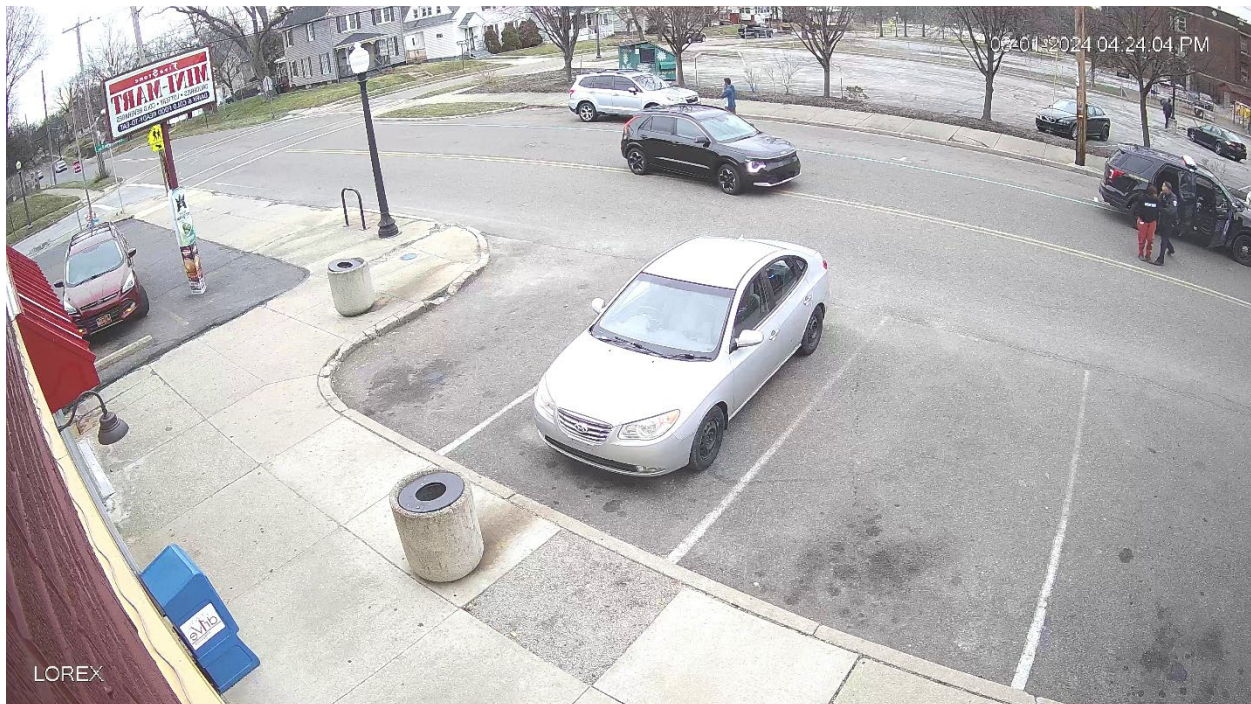


Independent Police Auditor Use of Force Review

At the 4:35 mark, juvenile female is down on the ground, after hitting her back and head on the door.



Video Surveillance Clip – 20240301182033496_LNRZ9360E72523B; Officer Westlake preparing to throw juvenile female into car door, at 00:21 mark.



Independent Police Auditor Use of Force Review

At 00:22 mark



At 00:23 mark



Independent Police Auditor Use of Force Review

00:23 mark con't.



Sergeant Shmigal wrote in his report ***“When the video is watched in full speed without context it appeared Ofc. Westlake threw her to the ground. During the course of my investigation, after slowing the video down frame by frame, I do not believe that is an accurate conclusion.”***⁷ If you watch the video in real time, it is clear that Westlake throws ██████ to the ground causing ██████ back and head to hit the door and her buttocks hitting the ground. When Officer Westlake prepared the required APD Use of Force/Resisting Arrest Report, he was dishonest in his description of the events that transpired leading to ██████ being injured. The Use of Force report was prepared five days after Officer Westlake’s tour of duty, ending March 1, 2024.

Sgt, Shmigal wrote in conclusion of his investigative Use of Force report, ***“it would have been objectively reasonable for Ofc. Westlake to take the suspect to the ground and wait for backup at almost any time during this incident.”***⁸

I find the actions performed by Officer Westlake to be ***Not Objectively Reasonable*** and are against APD directives, policy, and procedures. I would also add, Officer Westlake’s use of force against ██████ may rise to the level of a criminal offense such as endangering children.⁹

⁷ APD Use of Force Investigation, prepared by Sergeant T.J. Shmigal 1380, redacted (version provided to the public on May 6, 2024), [ShareBase by Hyland](#)

⁸ APD Use of Force Investigation, prepared by Sergeant T.J. Shmigal 1380, redacted (version provided to the public on May 6, 2024), [ShareBase by Hyland](#)

⁹ [Section 2919.22 - Ohio Revised Code | Ohio Laws](#). Endangering Children

Independent Police Auditor

Use of Force Review

On April 16, 2024, the APD Office of Professional Standards and Accountability (OPSA) conducted an extensive review of the use of force investigation involving Officer Westlake and ██████. OPSA determined that Sergeant Shmigal and all reviewers on Platoon 2¹⁰ concurred that the force used was within policy.¹¹¹² OPSA determined Officer Westlake's use of force was not objectively reasonable and not in accordance with APD policy and procedures. I concur with the findings by OPSA.

There are several observations in the timing of when the required APD reports (Field Case Report, Use of Force/Resisting Arrest Report, Use of Force Investigation Report) were prepared. The Field Case Report was prepared on the date of the incident, 03/01/2024. This report did not provide any detail of how ██████ behaved during the arrest and did not mention she either fell, tripped or was thrown into the back door of the police cruiser and hit the ground.

The Use of Force/Resisting Arrest Report (provided) is dated 03/06/2024. Officer Westlake provided a detailed description of ██████ behavior during the arrest in this report. Officer Westlake also provided a detailed description of how ██████ fell into the back door of the police cruiser. This is the type of information, if it were true, would have been included in the original Field Case Report and in the standard Use of Force/Resisting Arrest Report (which would have been prepared on the date of the incident before Officer Westlake's tour of duty ended). None of the information contained in the Use of Force/Resisting Arrest Report aligned with the surveillance video obtained from the mini mart. One could draw the conclusion that this version of the report was prepared after it became known there was video of Officer Westlake throwing ██████ into the back door of the police cruiser to justify the actions depicted on the video.

Sergeant Shmigal's Use of Force Investigation report is dated 03/01/2024. However, in his report, Sergeant Shmigal references supervisor's action taken on 03/16/2024, 03/19/2024, and 03/27/2024¹³, more than two to three weeks after his initial report is dated. This discrepancy in the date of Sergeant Shmigal's report could simply be attributed to a mistake when typing the report date. It could also indicate the date was either overlooked or intentionally left as being prepared on 03/01/2024 when the report was rewritten to justify the actions of Officer Westlake once the footage from the surveillance video was reviewed.

I must look at the totality of the evidence, to include physical and verbal evidence as well as circumstantial, when determining whether the preponderance of evidence supports my findings and conclusions. In this instance, it is my belief that Officer Westlake was dishonest in his description of the events when he threw ██████ into the back door of the police cruiser. I believe Officer Westlake was frustrated with her behavior, as illustrated not only with his actions, but also by saying ***"Get in the fucking car you crazy bitch!"***. Officer Westlake's actions indicate someone who is out of control and reckless in nature.

¹⁰ Lieutenant Kimberly Williams, #1387 and Captain Kris Beitzel, #1068

¹¹ Akron Police Department, Form 190, To Chief Harding, From Lt. Miles, Sergeant Williams, and Sergeant Falcone, dated 4/23/2024, re: Use of Force report #2024-00024315.

¹² Akron Police Department Use of Force Report (Blue Team), record ID Number 10693, dated 03/15/2024.

¹³ Akron Police Department Use of Force Investigation, Case #2024-00024315, dated 3/1/2024.

Independent Police Auditor

Use of Force Review

It is also my belief that Sergeant Shmigal, Lieutenant Williams and Captain Beitzel may have attempted to mitigate Officer Westlake's misconduct by preparing and approving the Use of Force Investigation where Officer Westlake's actions were deemed to be objectively reasonable. This incident and the subsequent Use of Force investigation has exposed a systemic issue in which violence and unnecessary uses of force are condoned by some members of the APD. Discrepancies between what is reported by the officer and what is later learned through new, compelling, and independent evidence seemed to have been overlooked, reinforcing misconduct within the ranks of APD. This misconduct shows that the problem is both cultural and systemic. It is possible that if this unwarranted use of force, the untruthfulness of Officer Westlake, along with the efforts of Sergeant Shmigal (through his supervisory investigation into the incident to justify Officer Westlake's actions) had been immediately addressed, Officer Westlake may not have been on patrol April 1, 2024, when he was involved in an OIS.¹⁴

Reasonable people can disagree and not come to the same conclusion. The mere fact OPSA reached a different conclusion than Sergeant Shmigal and the other members of Platoon 2 that signed off on his findings does not indicate misconduct. However, where the evidence could not reasonably be found to justify Officer Westlake's conduct, there could reasonably be an indication of misconduct by the supervisors.

APD has taken the first step in addressing the issue of Officer Westlake's misconduct by terminating his employment with the APD. The next steps for accountability and transparency within the APD should be taken to address the permissiveness and willingness for some supervisors to justify officer misconduct. To allow such misconduct to continue will only breed more distrust, violations of citizen's constitutional rights and unnecessary harm to the City of Akron.

My recommendations are as follows:

1. APD add an additional violation of APD Manual of Rules and Regulations, Section 700.03(d) – **No officer/employee shall knowingly make a false statement¹⁵**; specifically, through the preparation and issuance of the Use of Force Investigation report to former Officer Westlake's termination decision.
2. APD investigates the use of force incident by Officer Ryan Westlake as a criminal offense and refers the matter to the City of Akron, Prosecutor's office for the filing of appropriate criminal charges.
3. The CPOB requests APD initiate an OPSA investigation into Sergeant Timothy Shmigal, and Lieutenant Kimberly Williams and Captain Kris Beitzel and any other members of

¹⁴ OIS is an acronym for an officer involved shooting. The referenced OIS is currently under investigation and the OIPA does not have an opinion on whether the incident is justified or not. It is only mentioned to highlight the fact that if Officer Westlake's supervisors had reviewed the evidence objectively.

¹⁵ Akron Police Department Manual of Rules and Regulations, Section 700.03(d), Revised 1991

Independent Police Auditor Use of Force Review

Platoon 2 who concurred with the finding of objectively reasonable for the actions of Officer Ryan Westlake in the use of force incident, case #2024-00024315, for potential allegations of misconduct, such as, but not limited to the following:

- a. Failure to properly supervise.
4. OIPA, CPOB and APD work together to review and amend APD Directive P-2021-013, Resisting Arrest/Use of Force Procedure as needed.
5. APD provides a list of the APD tracking numbers and case numbers for all use of force investigations completed by Sergeant Timothy Shmigal between the period of January 1, 2021, through February 29, 2024, to OIPA and the OIPA initiate an audit of the same.



Anthony W. Finnell
Independent Police Auditor