



Boulder Police Department

Executive Summary

Internal Affairs Investigation

Case Number: IA2019-001

This report is an executive summary of a personnel investigation into the allegation of serious misconduct involving a Boulder Police Officer. The community member is being identified as he was previously publicly identified.

Class 1 Professional Standards investigation for alleged violation of:

Department Rule 5: Police Authority and Public Trust - Members are entrusted to effectively, helpfully, and non-abusively use the authority and public trust vested in them. Members do not take any police action which they know, or reasonably should know, is not in accordance with the law, and always use their position and credentials appropriately. Members appropriately utilize city equipment, resources, and public monies.

Department Rule 8: Conduct - Members use reasonable judgment and refrain from conduct which reflects unfavorably on the department. This type of conduct includes that which:

- a) causes embarrassment to the department or its members, or compromises the department's reputation;
- b) reflects discredit upon the individual as a member of the department; or
- c) tends to impair the operation, effectiveness, credibility, or efficiency of the department or its members.

Incident Summary

On March 1, 2019, a Boulder Police Officer (subject officer) indicated that he drove to the area of Folsom Street and Arapahoe Avenue specifically to conduct extra patrol. The subject officer was providing extra patrol due to his recent response to a few crimes in the area that included an attempted bike theft, burglary and trespass at an orthodontics office.

At approximately 8:20 a.m., the subject officer was driving northbound on Folsom Street approaching Grove Street when he observed a man, later identified as Zayd Atkinson, from a distance at 2333 Arapahoe Ave. The officer stated that he saw Mr. Atkinson manipulating an unknown object in his left hand as he held it close to his mouth. (Note: during the internal affairs investigation a review of video from a building mounted camera indicates that Mr. Atkinson was eating food and using his mobile phone.) The subject officer decided to drive closer to Mr. Atkinson to see what he was doing. The subject officer turned his vehicle around and pulled into a driveway east of 2380 Grove St. to observe. Mr. Atkinson was seated on a bench in the patio area and was wearing a backpack. The subject officer observed him for approximately one minute from his patrol car and then decided to approach Mr. Atkinson on foot. While the subject officer was walking, he noticed a red and white sign posted next to an entry door on the

northside of 2333 Arapahoe Ave. that read "Private Property." During his interview, the subject officer stated that at this point, he was unaware of Mr. Atkinson's race, because he had only seen him from a distance and approached him from behind. The subject officer also stated that he could see that Mr. Atkinson was holding a long metal object in his left hand and appeared to be using it to make contact with the stone benches surrounding the patio. As the subject officer got closer, he could also see that Mr. Atkinson was picking items up off the ground with the long metal object and placing them into a white bucket that he was holding. Mr. Atkinson was picking up trash.

The subject officer then activated his body camera and decided to self-initiate contact with Mr. Atkinson to determine what he was doing and if he lived or worked there. The subject officer notified dispatch and initiated what he described as a consensual contact. The subject officer asked Mr. Atkinson if he lived there. Mr. Atkinson told the officer that he lived there. The subject officer then asked Mr. Atkinson for his address. Mr. Atkinson turned around, looked up and pointed at the address numbers on the front of the building and said 2333 Arapahoe. The subject officer then asked Mr. Atkinson what unit he was in. Mr. Atkinson replied, "I don't think I actually have to tell you that." The subject officer replied that he just wanted to make sure Mr. Atkinson had a right to be there. Mr. Atkinson replied that he already told him that he lived there and that he also worked there. The subject officer stated that he needed to verify that he did in fact live there. The subject officer asked to see Mr. Atkinson's ID. Mr. Atkinson produced a Naropa student ID, which did not contain Mr. Atkinson's address or date of birth. The subject officer asked for Mr. Atkinson's date of birth. Mr. Atkinson did not answer and began walking away picking up trash. The subject officer called for a routine cover car. The subject officer told Mr. Atkinson that he was obstructing a police officer and that it was an arrestable offense. The subject officer told Mr. Atkinson that he was detaining him and investigating him for trespass.

The subject officer updated dispatch that Mr. Atkinson was failing to comply and had a blunt metal object, referring to the trash grabber, in his hands. Dispatch sent two officers and they responded with an emergency response. A sergeant acknowledged the emergency response and started toward the call as well. Some of the responding officers, including the Sergeant, were delayed because the subject officer reported to dispatch the address as 2333 Folsom, which dispatch transmitted. Those officers responded first to 2333 Folsom, which is .8 miles from 2333 Arapahoe Ave.

As Mr. Atkinson walked away, the subject officer followed from a distance. During this period, the subject officer repeatedly asked Mr. Atkinson to stop and advised him that he was obstructing a police officer. Mr. Atkinson raised his voice and yelled. The subject officer reported that he felt threatened by the trash grabber and drew his Taser and later transitioned to his handgun, both weapons were pointed in a downward direction in front of the officer. Neither weapon was ever pointed at Mr. Atkinson. The subject officer said that he did not believe that the taser would be effective, because Mr. Atkinson was wearing a heavy coat. He drew his handgun after Mr. Atkinson stopped behind the building out of site of the street. During this period, the officer was alone with Mr. Atkinson.

All of the additional officers responding reported that they believed this to be a serious situation because of what they knew from the radio traffic. There was an uncooperative person who was

heard with a raised voice or yelling in the background, failing to comply and carrying a weapon (a blunt metal object). Eight officers and one supervisor responded. One of the officers was from the University of Colorado Police Department (CUPD). All of the officers that responded to this call believed the trash grabber could be used as a weapon, based on its material and length, if it was used to strike at another person.

As cover officers arrived, they took up positions at a safe distance away forming a perimeter around Mr. Atkinson. Another officer arrived with his handgun drawn but holstered it in approximately 30 seconds. Two officers attempted to deescalate the situation by speaking to Mr. Atkinson in a calm manner. One officer had a Taser out as he arrived but never pointed it at Mr. Atkinson. He holstered his Taser early on while reasoning with Mr. Atkinson to drop his trash grabber, which he did. The subject officer holstered his handgun after Mr. Atkinson put down the trash grabber. No weapons were ever pointed at Mr. Atkinson. The responding sergeant brought a shield and a shotgun loaded with bean bags, based on the information that an uncooperative subject was armed with a "blunt metal object." The sergeant did so, consistent with department training and practice to bring resources and tools to the call to provide alternatives to lethal force. The less-lethal shotgun was never pointed at Mr. Atkinson and the sergeant tried to keep it out of sight and behind his back.

Another officer was able to gain access through the back door of the building they were standing next to and talk with residents inside. That officer confirmed that Mr. Atkinson lived in the building and passed that information on to the Sergeant on-scene. Around the same time, information that Mr. Atkinson was a resident was confirmed with a Naropa employee who arrived on-scene. The Sergeant conferred with the subject officer who initiated the contact and instructed him to return Mr. Atkinson's Naropa ID. Mr. Atkinson was not cited for any violation and officers cleared the scene at 8:52 a.m. The entire contact lasted 22 minutes.

A video that was posted on YouTube did not capture the first nine minutes of the contact. A statement made in the video that eight officers pointed guns at Mr. Atkinson is contrary to information developed during the investigation and depicted on body worn camera video. The voice captured on the video telling Mr. Atkinson that he was probably racially profiled came from a Naropa employee.

Department Policy

Allegations of employee misconduct are investigated and managed through department policy General Order #120 (Professional Standards Investigations).

The allegations in this incident are considered allegations of serious misconduct and were investigated as a Class One Professional Standards Investigation.

Final Disposition

The subject officer's contact of Mr. Atkinson was permitted as a police officer can contact anyone; however, his stop and detainment were based on Mr. Atkinson turning and pointing to

the address on the building. The subject officer's decision to attempt to detain Mr. Atkinson was not supported by reasonable suspicion that Mr. Atkinson was committing, had committed, or was about to commit a crime, therefore he did not have authority to detain Mr. Atkinson. When Mr. Atkinson walked away, continuing to pick up trash, the subject officer believed he had probable cause to charge Mr. Atkinson for obstructing a police officer. The subject officer did not have probable cause to charge Mr. Atkinson with any crime. The contact evolved into a stop and detainment that caused multiple officers to respond. The subject officer should have ended his contact with Mr. Atkinson as soon as Mr. Atkinson provided his name, address and a brief explanation of what he was doing.

There was no information developed in the investigation that responding officers violated department rules, policies or values. No officer, including the subject officer, used profanity or racial language during this incident. During the subject officer's interview, he was specifically questioned if his actions were based on Mr. Atkinson's race and he stated that his actions were not. Mr. Atkinson believes and stated that the subject officer's actions were based on racial profiling.

Based on a preponderance of the evidence, the subject officer violated department Rule #5 (Police Authority and Public Trust) and Rule #8 (Conduct).

At the conclusion of the supervisor and Professional Standards Review Panel review process, the subject officer, through his counsel, waived the timeframe provisions within the Boulder Police Officer's Association contract and department policy. He resigned from his position as a Boulder Police Officer before an administrative hearing was held. His resignation is effective May 15, 2019.