

INTERNAL AFFAIRS INVESTIGATIVE REPORT

IAMAINID: 481

File Class: ADMIN. REVIEW **Date Occurred:** 06/24/2016 **Date Reported:** 07/08/2016
Comp Type: EXTERNAL **IA#:**16083
Location: 2300 SE 12TH TER
 GAINESVILLE FL
Date IA/PSD:07/05/2016 **Date to Chain:** **Date to Chief:** **Date Expired:**
Status: Open **Status Date:** 07/08/2016 **Assnd To:** STOUT, W. R.

ASSOCIATED NAMES

CO WILLIAMS, KIZZIE R Sex:F Race:B Age:39 1900 SE 4TH ST
 SO FUNDENBURG, TRACY C Sex:F Race:W Action:NONE
 ALLEGED RULE OF CONDUCT VIOLATED-----CLOSURE
 Productivity/workmanship Not U No Misconduct

 SO SMOAK, KARLEIGH C Sex:F Race:W Action:NONE
 ALLEGED RULE OF CONDUCT VIOLATED-----CLOSURE
 Productivity/workmanship Not U No Misconduct

 SO HILAIRE, PHILIPPE G Sex:M Race:B Action:NONE
 ALLEGED RULE OF CONDUCT VIOLATED-----CLOSURE
 Productivity/workmanship Not U No Misconduct

SUMMARY/NOTES

On July 5th, 2016 the Gainesville Police Department Internal Affairs Office received a complaint from Kizzie Williams alleging Cpl. Tracy Fundenburg improperly arrested her on June 24th, 2016. The complaint is several pages long and alleges she was pulled over for running a stop sign which she denies doing. She states Cpl. Fundenburg was rude to her and called two back up officers unnecessarily. She says Ofc. Kerkau arrived and his police K-9 scratched the door of her car. The officers removed panels from her car and damaged them. She states they searched her car multiple times and did not locate any drugs. She states she was arrested but never told she was under arrest, never read her rights and never told why she was arrested.

I assigned the investigation to myself as an administrative review. If sustained, the actions of the involved officer could constitute a violation of City Policy E-3, Rule 13, "Productivity or workmanship not up to required standard of performance"

I reviewed GPD Incident report 02-16-011606 completed by Ofc. Smoak. Ofc. Smoak's report states she stopped Ms. Williams for running a stop sign and also describes a suspicious driving pattern. Williams responded with hostility and profanity from the very first contact and Ofc. Smoak asked for back up. Ofc. Hilaire and Cpl. Fundenburg responded. Cpl. Fundenburg stood by with Williams as Ofc. Smoak completed a traffic citation. Williams was texting and Cpl. Fundenburg asked her to put her phone down as she feared Williams was recruiting someone to respond to the stop. Williams refused and Cpl. Fundenburg took Williams phone to prevent her from summoning help. Williams began to walk toward her phone and was believed to be attempting to retrieve it against the orders of Cpl. Fundenburg. Because she resisted this order, Williams was arrested. Ofc. Kerkau arrived and used his

police K-9 to conduct a sniff check of the car and alerted at the driver`s door. 2 unknown pills were located in the car and later sent to FDLE for identification.

I reviewed Ofc. Smoak`s in-car video of the arrest. The video shows Williams to begin cussing at Ofc. Smoak almost immediately. Ofc. Smoak is not rude and does not respond with any insolent language. Ofc. Smoak asked for a drug detection K-9 and back up. Williams was originally left in her car, but Ofc. Smoak asked her to exit her car and stand at the front of Ofc. Smoak`s car. Cpl. Fundenburg and Ofc. Hilaire arrived and stood by with Williams at the front of the car for a few minutes. It is difficult to hear what is said, but Cpl. Fundenburg can be heard saying "ma`am" twice, forcefully as if giving a directive to Williams who is using her phones touch screen. Williams shows no reaction to Cpl. Fundenburg`s order. Ofc. Hilaire then physically removed the phone from Williams`s hand with Cpl. Fundenburg`s assistance. Cpl. Fundenburg set the phone on the hood of Ofc. Smoak`s car and Williams moved toward the phone as if to retrieve it. Cpl. Fundenburg can be heard saying "don`t grab the phone" twice as Ofc. Hilaire held Ms. Williams in an arm bar escort while directing her to the hood of the car. At this time, Cpl. Fundenburg effected the arrest and was assisted in handcuffing Williams by Ofc. Hilaire and Ofc. Smoak. Williams was told she was under arrest for Resisting Arrest Without Violence. Ofc. Kerkau arrived and his dog clearly alerted to Williams driver`s side door by scratching at it. Ofc. Kerkau told Ofc. Smoak that there was "shake" (small cannabis particles) in the car which caused the alert and subsequent scratches to the car.

I left 2 phone messages for Williams and when she did not call me back I went to her residence. I received no answer at the door and left a business card in the door jamb with a request to call me. Ms. Williams called me and agreed to come to GPD for an interview. I interviewed Kizzie Williams at GPD in the Internal Affairs Office. Ms. Williams would not agree to be audio recorded for the interview. At the beginning of the interview I explained to Williams that I thought she may have inadvertently exchanged Cpl. Fundenburg`s name and Ofc. Smoak`s name. When I described who I observed doing what on the video, Ms. Williams agreed that she confused them in her complaint.

Ms. Williams told me prior to this stop, she had been stopped by Ofc. Smoak about two weeks before for a different traffic infraction. On that occasion, Ms. Williams failed to signal a turn and was stopped near NE 1st Ave or NE 3rd Ave. At that time, Ofc. Smoak ran her name and gave her a warning. On the day she was arrested, Ms. Williams said she drove past Sugarhill and as her mind was wandering she drove past her home. She decided to drive through the neighborhood instead of turning around. When she saw Ofc. Smoak behind her, she was nervous and pulled into a yard. She told me that the house she stopped at was her aunt`s house. It was after Ms. Williams pulled into the yard, that Ofc. Smoak activated her emergency lights to signal the stop.

She was adamant that she had not run the stop sign and that the stop was invalid. Ms. Williams began describing the verbal exchange between herself and Ofc. Smoak. However the recollection of Ms. Williams was contrary to the video depiction. Ms. Williams stated that Ofc. Smoak was rude, insolent and unprofessional. Ms. Williams describes herself as cooperative and as not using profanity. However she did say she was mad at being stopped and there was a "back-and-forth" exchange.

She explained that Ofc. Smoak asked for back up and then ordered her out of her car. This made Ms. Williams mad and more nervous. Ms. Williams began scrolling through her phone. She explained she wanted to call someone to come to the stop. The next thing she knew, her phone was snatched from her and she was told, "Don`t reach for your phone."

She was handcuffed and told she was going to jail but not told that she was arrested. She

was searched, her shoes removed and she was placed in the back of the police car. Ofc. Kerkau asked her for her car keys and his dog scratched the driver`s door of her car. Her car was searched and they went through it five times. They tore off panels but put most of them back and did not cause permanent damage to the panels.

She was also upset that her car was towed and she was not permitted to call anyone to come and get it from the scene.

Ms. Williams and I went on to discuss a few of her complaints such as the fact that two back up officers showed up and the fact that she was not read her rights. I explained to her that we often have multiple officers respond to a call for assistance and we do not specify the number of back up officers we want or will accept. I also explained that Miranda warnings are only read when a subject in custody is questioned and since she was not likely questioned about her offense, a Miranda warning was not required. Ms. Williams understood these explanations and accepted them.

I also relayed to Ms. Williams that she was actually the one who cursed at Ofc. Smoak and that Ofc. Smoak was not unprofessional from what I saw on the video. I told her that on the video, I did hear the officers tell her she was under arrest for resisting without violence. Ms. Williams was difficult to convince as we spoke, so I played her the first few minutes of the video. She heard herself swear and was surprised. She explained that her recollection of the stop was not accurate in that regard. She did not wish to see the whole video.

I asked Ms. Williams to show me the damage to her car. She showed me several scratch marks on the driver`s door of her car. She also told me two panels that had been pulled loose from the trunk and had not been reassembled. I asked Ms. Williams if I could look in her car and she allowed me to do so. At this time, I did not see cannabis shake or smell any cannabis. The car instead smelled strongly of cologne.

I took photographs of the damage on my GPD issued phone.

At the end of the interview, Ms. Williams agreed that her only two complaints were that she was arrested for using her phone and that she was not permitted to call someone to get her car.

ON 8/2/16, I spoke with GPD legal advisor Lee Libby about this arrest. He told me that there was no case law or precedent he could find regarding police taking a phone from a subject detained at a traffic stop. He said he discussed the case with some prosecutors and ultimately determined that in his opinion, police can take a phone from a person detained on a traffic stop if the officers can articulate a specific fear they have that the person in question is indeed calling others to the scene for purposes of disruption. Mr. Libby said that without the specific fear, the arrest may not be valid.

I contacted Sgt. Brad Litchfield who is the current GPD K-9 sergeant. He told me that when a GPD K-9 damages a car a report is generally completed and the damage photographed. This is not a written policy, but an accepted practice. Through an e-mail exchange with Sgt. Litchfield, I was able to determine Ofc. Kerkau completed a report on the day this occurred, but the damage was not photographed.

A review of GO 84.2 regarding vehicle tows indicates that prisoner property tows do not require officers to allow the owners to call someone to pick up their car in lieu of a tow.

GO 82.1. C. 2. j., Field Reporting and Management, does indicate a police report gets completed anytime damage is caused by "City property, city employee." Nowhere in any

department orders are photographs required, although it is common practice for this to occur. Per Sgt. Litchfield, photographs are generally taken anytime a police K-9 damages a car during a sniff detection. However, this is also not mandated by policy.

A search of Alachua County Court records show that Judge Roundtree found probable cause when Ms. Williams went to First Appearance on this issue. The case is still currently open with the court.

The administrative review conducted does not support the allegations made by Ms. Williams. In fact the in-car camera clearly contradict several allegations made by Ms. Williams.

Based on this administrative review no further investigative action is recommend and I request the complaint be closed as unfounded.

Disposition: UNFOUNDED

"I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes."

IA#: 16083

IA Investigator:

DATE:

8-22-16

IA Commander:

DATE:

8-22-16

Bureau Commander:

DATE:

8-24-16

Major:

DATE:

8-24-16

Chief of Police:

DATE:

8-24-16