



**LOUISVILLE METRO POLICE DEPARTMENT  
PROFESSIONAL STANDARDS UNIT  
INVESTIGATOR FINDINGS**

PSU-017  
Revised 10/17

**TO:** Lieutenant Jensen Godfrey  
Commander, Professional Standards Unit

**FROM:** Sergeant Joshua Hughes  
Investigator, Professional Standards Unit

**DATE:** February 19<sup>th</sup>, 2021

**RE:** Preliminary Findings and Conclusions Case Number: 20-122

**ACCUSED:** Officer Darell Wagner #7321

**COMPLAINANT:** Chief Yvette Gentry

**PRELIMINARY FINDINGS:**

**Officer Darell Wagner**

**LMPD SOP 3.6.4 FIELD INTERVIEW PROCEDURES.....SUSTAINED**  
**LMPD SOP 9.1.3 DE-ESCALATION.....SUSTAINED**

**CASE SUMMARY:**

On July 29<sup>th</sup>, 2020, at approximately 0209 hours, Officer Darell Wagner observed a vehicle traveling W/B on Valley Station Rd. towards Dixie Hwy, matching the description of a vehicle used in the commission of a robbery earlier in the day. The vehicle was described as a possible 1996-1997 white Ford F150 with gold around the bottom (see the CAD and iLeads report for 80-20-044875 under the documents tab of this case file for information regarding the robbery). The vehicle Officer Wagner observed was an early 1990's white Ford F150 with red along the bottom. He activated his WVS while following the vehicle code 1 in an unmarked vehicle, calling off directions to dispatch. He followed the vehicle for several blocks until the vehicle turned into the Waffle House parking lot located at 10563 Dixie Hwy.

Officer Wagner staged in a nearby parking lot and deactivated his WVS while waiting for assistance to arrive. He reactivated his WVS as they were pulling into the Waffle House parking lot. By this time, the occupants of the vehicle had exited and were seated inside of the restaurant. Officer Wagner walked inside of the restaurant and over to the suspects and stated, "let me talk to you for a minute." He instructed the suspects to walk out of the door. The B/M suspect (later identified as Khalil Harrison) asked Officer Wagner, "for what?" to which Officer Wagner replied, "I'm going to talk to you in a quick second." Mr. Harrison refused to step outside with Officer Wagner. Officer Wagner made a statement about Mr. Harrison placing his hands inside of his pockets, and his refusal to step outside of the restaurant so he placed him in handcuffs. While doing so he advised him he was not under arrest, but he was being detained.



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Officer Wagner escorted Mr. Harrison outside of the restaurant and to the front of his vehicle while he was handcuffed. The W/M suspect (later identified as [REDACTED]) followed them out, being escorted by Officer Travis Tracy #7295. Once he was placed next to the vehicle, Mr. Harrison becomes irate with Officer Wagner and yelled at him. [REDACTED] can be heard on Officer Wagner's WVS telling Mr. Harrison to, "just chill." Officer Wagner responded to Mr. Harrison with his voice raised and tried to explain the situation to him. Mr. Harrison advised Officer Wagner to read him his rights and take him to jail. Officer Wagner then turned his attention to [REDACTED] and tried to obtain information about the vehicle. Mr. Harrison interjected and told [REDACTED] not to talk with the officers. Officer Wagner then instructed an officer to place Mr. Harrison in the backseat of a nearby police car.

Officer Marson approached Mr. Harrison and used empty hand controls to attempt to seat him in the backseat of the police car. Mr. Harrison resisted, continued to be irate, and told the officers to "shoot him." With Mr. Harrison's back against the door frame, and Officer Marson's arm across his chest, Officer Livers OC sprayed Mr. Harrison across the face. While the OC was taking its affect, Officer Marson moved Mr. Harrison into the backseat and closed the door. No other force was used against Mr. Harrison for the remainder of this incident aside from empty hand controls for direction.

[REDACTED] was laughing while Officer Wagner told Mr. Harrison to, "shut up and get in the car." Officer Wagner began talking with him and explained the vehicle he was driving, matched the description of a vehicle used during the commission of a robbery. [REDACTED] immediately indicated he, "didn't do nothing wrong" while Officer Wagner was talking. This seemed to frustrate Officer Wagner as he raised his voice towards him and instructed him to stop talking. Officer Wagner started to question [REDACTED] about the owner of the vehicle whom he advised was, "[REDACTED]."

Officer Wagner continued to talk to and debate [REDACTED] about [REDACTED] coming out of the restaurant to talk to him. He advised [REDACTED] his, "eyes are blown right now...which means you're on something." [REDACTED] began to laugh and started to walk towards the entrance of the store. He asked, "am I detained," which Officer Wagner responded with "yea you are." Officer Wagner instructed him to walk back to the front of Officer Wagner's vehicle, to which he complied. [REDACTED] repeatedly told Officer Wagner, "you a bitch." Officer Wagner continued to talk at him and made comments on his actions. [REDACTED] advised, "bruh I'm trying to leave." Officer Wagner continued to try to gather more information about the vehicle owner. [REDACTED] told him, "I'm done talking to you."

Officer Wagner continued to argue with [REDACTED] telling him, "when you come into contact with us, your job is to help us get you away from that." [REDACTED] was clearly frustrated and told Officer Wagner he was, "pissing him off." Officer Wagner then asked, "what you going to do?" [REDACTED] asked again, "can I leave?" Which Officer Wagner responded, "no you cannot." Officer Wagner ask him for his identifying information, which he provided.



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Officer Wagner stepped over towards the vehicle where Mr. Harrison was seated and had him step out of the vehicle. He again attempted to explain the reason for the stop to Mr. Harrison. While attempting to talk with Mr. Harrison the Pleasure Ridge Park EMS arrived on scene to decontaminate him of the OC spray. While walking over towards the truck Officer Wagner advised him, "I need some information from you, EMS is going to come out here to check you out real quick." While EMS was treating Mr. Harrison he advised him, "when they get done taking care of you young man I need to talk to you, I just got a couple questions to ask you and then if that's the case then we'll get you on your way."

After Mr. Harrison was checked out by EMS, he was taken over to the rear of a police car while Officer Livers held his arm. Officer Wagner approached and began to question him regarding where he was at earlier that night, and who the owner of the vehicle was. Officer Wagner asked Officer Livers what they were going to do with him, which he advised Mr. Harrison was going to be arrested for disorderly conduct. Officer Livers then placed Mr. Harrison in Officer Marson's police car to be transported to the Louisville Metro Department of Corrections.

Officer Wagner asked [REDACTED] for verbal consent to search the vehicle to which he said yes. Sergeant Cobb advised Officer Wagner, given the circumstances to instead tow the vehicle for an investigation and have the robbery detective follow up with the vehicle. [REDACTED] was transported to the SafePlace.

#### **FACTS OF CASE:**

- On July 28<sup>th</sup>, 2020, at approximately 1956 hours, LMPD 3<sup>rd</sup> Division Officers responded to 5540 New Cut Rd. (T-Mobile) on a report of a holdup.
- Upon arrival officers learned the suspects took business cash and products then fled in an 1996-1997 Ford F150, white in color with gold around the bottom.
- On July 29<sup>th</sup>, 2020, at approximately 0209 hours, Officer Wagner noticed a similar vehicle traveling W/B on Valley Station Rd. towards Dixie Hwy. The vehicle was later noted to be an early 1990's Ford F150, white in color with red along the bottom.
- Officer Wagner followed the vehicle until it pulled into 10563 Dixie Hwy (the Waffle House). He then staged in a nearby parking lot until assistance arrived.
- Officers Wagner and Tracy walked into the restaurant to talk with the two suspects who were already seated. Officer Wagner advised them to step outside so he could talk with them. The B/M (later identified as Khalil Harrison) refused so Officer Wagner placed him in handcuffs and advised him he was being detained and was not currently under arrest.



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- The suspects were escorted outside, where Officer Wagner attempted to talk with both of them. The subjects were uncooperative and hesitant answering Officer Wagner's questions.
- Officer Wagner was argumentative with the subjects and eventually advised another officer to place Mr. Harrison in the backseat of a police car.
- Officer Marson used empty hand controls in an attempt to get Mr. Harrison in the police vehicle.
- While Mr. Harrison resisted sitting in the vehicle, and Officer Marson was holding Mr. Harrison, Officer Livers walked up and OC sprayed Mr. Harrison across the face. Officer Marson was then able to place Mr. Harrison into the backseat of the police vehicle.
- Pleasure Ridge Park EMS responded to check on Mr. Harrison and attempted to decontaminate him of the OC.
- Mr. Harrison was arrested and charged with menacing, resisting arrest, and disorderly conduct in the 2<sup>nd</sup> degree. He was transported to the Louisville Metro Department of Corrections.
- [REDACTED] was transported to the SafePlace (juvenile).
- The truck was towed to LMPD's tow lot pending the investigation.

#### **SUMMARY OF INTERVIEWS:**

- Officer Darell Wagner #7321

On January 28<sup>th</sup>, 2021, at approximately 1517 hours, Officer Wagner came to the PSU office to give an official statement. He advised he first noticed the vehicle traveling at a high rate of speed and swerving across lanes which made him think the driver could possibly be driving under the influence. He then thought the vehicle may have been used in the robbery which occurred a few hours earlier. He waited for backup to arrive before attempting to stop the vehicle. Officer Wagner was in an unmarked police car and followed the vehicle until other officers could get on scene. He made contact with the two suspects inside of the Waffle House restaurant and asked them to step outside. He advised the B/M suspect (herein Mr. Harrison) kept placing his hands inside of his pockets, so he decided to place him in handcuffs and detain him given the nature of the crime and Mr. Harrison's demeanor. While asking the suspects about the vehicle Mr. Harrison became verbally aggressive to the point uninjured witnesses stepped outside from the



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restaurant to see and record what was taking place. Officer Wagner talked loud enough to ensure the witnesses knew of the situation and why the officers were stopping these two individuals.

Officer Wagner stated he tried to de-escalate the situation by talking with the suspects and explaining what was going on. He indicated Mr. Harrison was talking loudly but he didn't feel it was a problem at the time, and at no point did he feel Mr. Harrison was being physically aggressive. As he was trying to gather identifying information from the W/M suspect (herein [REDACTED] Mr. Harrison cut him off and wouldn't let him talk with the police. At this point Officer Wagner asked another officer on scene to place Mr. Harrison in a police car because he believed Mr. Harrison was tampering with [REDACTED] by not letting him talk.

Officer Wagner told investigators the suspects were not obligated to answer their questions and had the right to go. To the best of his knowledge he has not had any prior contact with either subject. Officer Wagner said his sergeant talked with him and had him fill out a form about the incident and about how he could have handled it differently.

This is a brief synopsis of the interview. The interview was audio recorded and a copy has been made part of the case file.

#### **INVESTIGATORS NOTES:**

It should be noted Sergeant Paul Cobb spoke with Officer Wagner about this incident prior to this investigation being initiated. Per the BlueTeam report Sergeant Cobb, "personally discussed with Officer Wagner how de-escalating the situation by speaking in a lower voice to encourage an irate individual to do the same may have proven successful. Continuing to lecture the white male juvenile was unnecessary and unproductive."

Sergeant Cobb also stated, "Officer Wagner did a good job of investigating felony crimes in the division. However, he did not do a good job de-escalating the situation or control the subjects. He was verbally counseled for his actions and respond to it very well (see the BlueTeam report under the Documentation tab of this case file)."

Officer Wagner confirmed this counseling in his interview with the investigators and stated he talked with his sergeant about the stop and filled out a form.

#### **CONCLUSION:**

##### ***3.6.4 FIELD INTERVIEW PROCEDURES***

*Officers will conduct a Terry Stop of individuals for the purpose of conducting a field interview only when reasonable suspicion is present. In justifying the stop, the officer must be able to point to specific facts that, when taken together with rational inferences, reasonably warrant the stop.*





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*Merely being nervous or in a highcrime area are not sufficient factors, by themselves, to conduct a Terry Stop.*

*Based upon an observance of suspicious circumstances or upon information from an investigation, an officer may initiate the stop of a suspect if he/she has an articulated reasonable suspicion of a crime to do so. The following should be done when making an authorized stop to conduct a field interview:*

- *When approaching the suspect, the officer should clearly identify himself/herself as a LMPD officer and, if in plainclothes, announce his/her identity, displaying his/her credentials.*
- *Officers will be courteous at all times during the contact but maintain caution and vigilance for movements to retrieve weapons, conceal or discard contraband, or other suspicious actions.*
- *Before approaching more than one (1) suspect, officers should determine whether the circumstances warrant a request for backup and whether the contact can, and should be, delayed until assistance arrives.*
- *Officers are not required to advise suspects of their Miranda rights in order to conduct field interviews unless the person is in custody and about to be interrogated.*
- *Suspects are not required, nor can they be compelled, to answer any questions during field interviews.*
- *Under no circumstances will an officer detain a suspect for longer than what is reasonably necessary to make reasonable inquiries and either confirm or refute his/her suspicions of criminal activity.*

Officer Wagner stopped the individuals based on the belief they may have been involved in a robbery which occurred hours before. Officer Wagner articulated reasonable suspicion for the stop: the robbery happened within six miles of the location where he first observed the vehicle, he observed the vehicle within hours of the time the crime occurred, and the vehicle observed was of a similar description.

Upon his contact with the suspects they were hesitant to speak with Officer Wagner and made it clear they wanted to leave. It was evident Mr. Harrison did not want to talk with the officers when Officer Wagner asked him, “do you want to sit here and have a conversation or not?” Mr. Harrison told him, “No, I do not.” Officer Wagner continued attempting to have a conversation with Mr. Harrison. During his conversations with Mr. Harrison, Officer Wagner attempted several times to explain to him why he was talking with him. Mr. Harrison was clearly upset and irate with Officer Wagner.

██████████ later asked, “Am I detained?” Officer Wagner advised him he was and continued to ask him further questions. ██████████ told Officer Wagner he was wanting to leave and was done talking with Officer Wagner. Officer Wagner continued to talk at ██████████ and reiterate



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the reasoning for the stop. Officer Wagner continued to lecture [REDACTED] about his responsibilities while talking with the police.

Because the suspects were not required, nor could they be compelled to answer any questions, this investigator recommends a finding of **Sustained** regarding Field Interview Procedures for Officer Wagner.

#### 9.1.3 DE-ESCALATION

*At times, policing requires that an officer must exercise control of a violent or resisting subject in order to make an arrest, or to protect the officer, other officers, or the public from the risk of imminent harm. De-escalation is a desired outcome achieved by utilizing decision-making, communication, and tactics to resolve conflict, or potential conflict, ethically based on the preservation of life per the safety priorities. Clearly, not every potentially violent confrontation can be de-escalated, but officers have the ability to impact the direction and the outcome of many situations that they encounter, based on their decision-making and the tactics that they choose to employ. It is the policy of the LMPD that officers resolve situations in an impartial manner, free of bias, and in accordance with applicable laws and the SOPs of this department.*

*When considering de-escalation techniques appropriate to the individual situation, officers should recognize they may be dealing with a person of diminished capacity. People suffering from intoxication, suicidal tendencies, medical complications, or mental illness may present members with a wide range of behaviors usually different than those exhibited by other persons in the community or persons involved in criminal activity. Persons of diminished capacity may display conduct that is bizarre, irrational, unpredictable, and/or threatening. They may not receive or comprehend commands or other forms of communication in the manner that the member would expect. These persons often do not respond to authoritative persons or the display of force. It is the primary task of the members of the LMPD who confront these special needs persons to resolve the encounter in the safest manner possible. Officers should refer to SOP 12.20 (Persons of Diminished Capacity) if the circumstances lead the officer to believe he/she may be encountering a person of diminished capacity. Officers should refer to SOP 12.11 (Crisis Intervention Team (CIT)) if the circumstances lead the officer to believe he/she may be encountering a situation requiring a CIT response. If the circumstances lead the officer to believe he/she may be encountering a subject who is experiencing excited delirium, he/she will refer to SOP 12.21 (Excited Delirium).*

*When reasonable under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum, and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion, and other tactics as alternatives to higher levels of force. Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of force options. Officers*



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*should perform their work in a manner that avoids unduly jeopardizing their own safety, or the safety of others, through poor tactical decisions.*

*The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of an overall response to potential violent encounters by coordinating resources and officers' tactical actions. Supervisors should possess a good knowledge of tactics and supervise officers under their command in regard to proper training standards. As a good practice, supervisors will acknowledge and respond to incidents in a timely manner where law enforcement use of force is probable.*

As Officer Wagner's commanding officer advised him, "de-escalating the situation by speaking in a lower voice to encourage an irate individual to do the same may have proven successful." Throughout this incident Officer Wagner tried talking over both subjects and seemed to become frustrated at their hesitation and resistance in answering his questions. He yelled at them a few times which did not encourage cooperation on their part. He continued to detain both individuals and reiterate why he was talking with them although it appeared they understood his claim for stopping them. They just didn't agree with it and did not wish to answer his questions or talk with him.

This investigator recommends a finding of **Sustained** regarding De-escalation for Officer Wagner.

It should be noted as it is stated in the "Investigators Notes" above Officer Wagner was verbally counseled regarding this issue.

#### **DISCIPLINE TO BE CONSIDERED:**

No discipline to be considered.