

Name of officer who is the subject of an unsustained finding of misconduct is exempt: "Therefore, only Officer Cain's identity *420 is exempt under the PRA and should be redacted. Subject to those redactions, the remainder of the PCIR and the MIIR, including the nature of the agencies' response to the allegation, are nonexempt." *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wash. 2d 398, 419-20, 259 P.3d 190, 200 (2011)

**YAKIMA POLICE DEPARTMENT
INTERNAL INVESTIGATION**

PERSONNEL COMPLAINT

Type of complaint Excessive Force **300.3 USE OF FORCE** Complaint #AI-2013-04
Complainant: [REDACTED] / / Disclose
/ / Do Not Disclose
/ / Not discussed

Date/Time of Occurrence: 5/10/13 0314hrs

Location of Occurrence: 305 N 7th St Yakima

Employee(s) Involved (if known)
Name / Personnel Number

1. Casey Gillette 7467 accused
2. Marc Scherzinger 7019 witness
3. Booker Ward 7239 witness
4. [REDACTED]

Details of Complaint

5/10/13 at 0314hrs, Officer Casey Gillette punched or otherwise struck an adult male on the head. At the time force was used there was no probable cause to arrest the man or need to use force upon him. The force was unnecessary and therefore excessive in violation of policy.

300.3 USE OF FORCE *Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.*

Supervisor Receiving/Initiating Report: [REDACTED] Sgt patrol Division 05/10/13 0314hrs

How Received: [REDACTED] observed the alleged violation

Complaint Investigated by: Lt. T. Foley 3621 Watch Commander Patrol Division

Reviewed by:
Reviewed by:

Date:
Date:



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Yakima Police Department
Internal Investigation
Supervisory Review and Recommendation

Employee(s):

Allegation(s):

Complaint #: AI2013-04

1. Casey Gillette

Excessive Force 300.3.2

2. [REDACTED]

Finding codes:

- A. Proper conduct
- B. Improper conduct
- C. Insufficient evidence

- D. Policy/Training failure
- E. Misconduct not based on original complaint
- F. Unfounded

Disposition codes:

- A. Oral reprimand
- B. Training
- C. Written reprimand

- D. Suspension (Days)
- E. Demotion
- F. Termination
- G. None

Lieutenant Foley: Officer Gillette struck a man on the head and took him into custody. Although there was an opportunity to give verbal commands and allow the man an opportunity to comply, no verbal direction was given. He was not permitted an opportunity to voluntarily comply before force was used. This is inconsistent with YPD training which complies with Graham-v-Connor reasonableness standards.

Gillette used the force to arrest the man for disorderly conduct, which does not exist in the City of Yakima. [REDACTED] consulted with Officer Gillette and the two agreed to charge the man with Obstructing, even though the man was not obstructing, hindering or delaying any lawful duties of the officers. The charge appears to have been chosen to justify Gillette's prior use of force and to possibly protect the city

The man was drunk and loudly inviting the officers to fight. But he was not obstructing them from performing any of their duties.

Signature/Date: [Signature] 3/22/13

Captain Schneider:

Complimentary history checked: Yes ☒ No ☐

Disciplinary history checked: Yes ☒ No ☐

Employee	Finding	Disposition
1. Gillette	B	C
2. [REDACTED]	E	C
3.		

Concur with Lieutenant's findings: Yes ☒ No ☐

If no, explain and enter your finding and disposition.

Employee	Finding	Disposition
1.		
2.		
3.		

Signature/Date: J SCHNEIDER 6/14/13

Chief Rizzi:

See Attached Memo from Chief Rizzi

Signature/Date:

Concur with Captain's findings: Yes ☐ No ☐

City of Yakima
Police Department

Dominic Rizzi Jr, Chief of Police

200 S. 3rd Street
Yakima, Washington 98901

Telephone (509) 575-6200 Fax (509) 575-6007



Memorandum

June 13, 2013

To: Jeff Schneider
Captain, Patrol Division

From: Lt. T. Foley 3621
Blue Team watch commander

Subject: Gillette Excessive Force AI2013-04

Name of officer who is the subject of an unsustained finding of misconduct is exempt:
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This investigation came to me May 17th, based on a memo [REDACTED] had written on or around May 10th, 2013.

On May 10th, [REDACTED] had been filling in as a D-squad supervisor on the Blue Team. During that night, he went with officers to the 300blk of N. 7th St to investigate a large fight in the street. When officers arrived, there was no fight, nor any of the combatants still present. However, almost immediately an intoxicated [REDACTED] exited his house at 305 N. 7th St. He loudly and repeatedly invited the officers into enter his front yard to fight him.

Officer Gillette entered the fenced yard and without saying anything to [REDACTED], walked to him and punched him on the head. Gillette then wrestled [REDACTED] to the ground where Gillette and another officer cuffed him.

Questioned by [REDACTED], Officer Gillette announced his intention of arresting [REDACTED] for Disorderly Conduct. [REDACTED] advised Officer Gillette that no such municipal code exists in the City of Yakima. Together, Gillette and [REDACTED] agreed the appropriate charge to arrest [REDACTED] was Obstructing a Police Officer. He was booked into the city jail on that charge.

I interviewed Officers, Booker Ward, Marc Scherzinger and Casey Gillette, as well as [REDACTED]. All of their statements were consistent with [REDACTED] earlier memo. There was only one minor difference. While Officer Gillette and [REDACTED] described the blow to [REDACTED] head as punch, both Officers Ward and Scherzinger were relatively certain it as an open handed strike, due to a failed attempt to grab [REDACTED] by the back of his neck or head. [REDACTED] said he was 90% certain it was an actual punch, with a closed fist.

Although Gillette's arrest report also described a failed attempt to scoop [REDACTED] head, in his recorded statement, he described it as a punch. After concluding his recorded statement, I spoke further with Gillette regarding the blow to [REDACTED] head. He reiterated that it was punch, but clarified that it was with an open hand while trying to grab the back of [REDACTED] neck and/or head. When I told Gillette that I would only consider a punch as with a closed

fist, he said it would not have been a punch, but more of a strike with the heel of his open hand.

All officers present agreed that none of them gave any verbal commands to [REDACTED] or afforded him an opportunity to voluntarily comply with any commands. They also agreed that had any verbal command been given, there was almost no chance [REDACTED] would have complied.

Shortly after the arrest, Officers Ward and Scherzinger spoke to each other privately. Both of them seemed to agree that they were somewhat uncomfortable with the way force was used upon [REDACTED] without at least the opportunity to comply.

In their statements, all the officers and [REDACTED] agreed there was no risk in at least attempting to gain voluntary compliance through verbal commands.

I asked each of them to describe how [REDACTED] violated the Obstructing ordinance, specifically what lawful duty had [REDACTED] been obstructing. Each of them said they had an obligation to investigate the original fight complaint, but instead had to deal with the drunk and belligerent [REDACTED]. Having to deal with him prevented or delayed them from investigating the fight complaint.

I reviewed the case with the City Prosecutors' Office. I was advised there was no probable cause to arrest or charge [REDACTED] with obstructing. He had no obligation to cooperate or assist the police with their investigation and that his verbal rants and threats did not hinder or delay any of their duties.

It would appear, based on the police reports and the recorded statements that Officer Gillette's use of force on [REDACTED] was unlawful, and therefore excessive. He used force with the intent to arrest for disorderly conduct, a crime that does not exist in the city of Yakima. Since that crime does not exist in Yakima, Gillette could not have probable cause to make that arrest. Furthermore, YPD policy requires the least amount of force necessary to affect the arrest. Our defensive tactics training regarding use of force is consistent with case law *Graham -v- Connor* which would require officers, when reasonably practical, to attempt lesser forms of force. In this case, there was ample opportunity to inform [REDACTED] that he was under arrest and give him an opportunity to comply with verbal commands, so that force could be minimized. No commands were given.

Additionally, once [REDACTED] advised Officer Gillette that he could not charge for disorderly conduct, the two of them agreed to charge [REDACTED] with obstructing. It would appear [REDACTED] was attempting to protect the city from liability after Gillette had already used force. While the attempt to protect the city is understandable, allowing an arrest, absent probable, exposes the city to greater liability. The appropriate response would have been to order [REDACTED] release.

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

The "reasonableness" of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation with limited information and in

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circumstances that are tense, uncertain and rapidly evolving. Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

An officer may use all means reasonably necessary to effect an arrest if, after notice of the intention to arrest the person, he/she either flees or forcibly resists (RCW 10.31.050).

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to officers or others.*
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.*
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue; the number of officers available vs. subjects).*
- (d) The effects of drugs or alcohol.*
- (e) Subject's mental state or capacity.*
- (f) Proximity of weapons or dangerous improvised devices.*
- (g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.*
- (h) The availability of other options and their possible effectiveness.*
- (i) Seriousness of the suspected offense or reason for contact with the individual.*
- (j) Training and experience of the officer.*
- (k) Potential for injury to officers, suspects and others.*
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.*
- (m) The risk and reasonably foreseeable consequences of escape.*
- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.*
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.*

340.3 CONDUCT WHICH MAY RESULT IN DISCIPLINE


The following list of causes for disciplinary action constitutes a portion of the disciplinary standards of this department. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient department service:

340.3.5 PERFORMANCE

- (v) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.*

340.3.8 SUPERVISION RESPONSIBILITY

- (a) Failure of a supervisor to take appropriate action to ensure that employees adhere to the policies and procedures of this department and the actions of all personnel comply with all laws.*


Lieutenant Patrol Division T. Foley 3621

Captain Jeff Schneider

YAKIMA POLICE DEPARTMENT MEMORANDUM

Date: July 5, 2013

To: Officer Casey Gillette
From: Chief Dominic Rizzi Jr.
Subject: Notice of Disciplinary Action

1. Notice of Disciplinary Action

Cause of Action: On May 10, 2013 at about 0314 hours, Officer Casey Gillette is alleged to have punched or otherwise struck [REDACTED] in the head as [REDACTED] stood in his front yard at 305 North 7th Street. [REDACTED] was subsequently taken into custody and charged with Obstructing. It is alleged that Officer Gillette did not have probable cause for the arrest of [REDACTED] and that the force used was unnecessary and therefore excessive in violation of policy.

After reviewing the records in this matter, your actions appear to be in violation of the following Yakima Police Department Policies and Procedures:

Yakima Police Policies and Procedures:

- **300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE**
When determining whether to apply force and evaluating whether an officer has Used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:
 - (a) Immediacy and severity of the threat to officers and others.
 - (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
 - (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
 - (d) The effects of drugs or alcohol.
 - (h) The availability of other options and their possible effectiveness.
 - (i) Seriousness of the suspected offense or reason for contact with the individual.
 - (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.

The following factors were considered:

- Your tenure with the Yakima Police Department
- Your past disciplinary record.

Disciplinary Action

- Written Reprimand

This notice will serve as your Written Reprimand.

Notice of Right to Appeal.

You have the right to appeal this disciplinary action to and in accordance with the rules of the Police and Fire Civil Service Commission (attached), or to grieve the disciplinary action in accordance with Article 7 of the current Collective Bargaining Agreement (CBA) with the Yakima Police Patrolman's Association (attached). If you appeal this disciplinary action to the Police Civil Service Commission, you will waive any and all rights to grieve the disciplinary action under Article 7 of the CBA. If you grieve this disciplinary action in accordance with Article 7 of the CBA, you will waive any and all rights to appeal this disciplinary action to the Police Civil Service Commission.



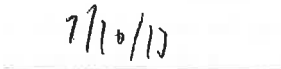
Dominic Rizzi Jr., Chief of Police



Jeff Schneider, Captain




Date

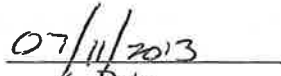


Date


Acknowledgement of Receipt:



Officer




Date



Signature of witness



Date



Print Witness Name:



Memorandum

January 13, 2013

To: Lt. S. Finch / Chain of command
From: [REDACTED]
Subject: Use of force / Officer Casey Gilette

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On 05-10-13 at 0314 hrs, I was in the 300 block of North 7th Street looking for a reported fight. I was just at 6th Street and G Street clearing a traffic stop when a woman contacted Officer Marc Scherzinger to advise of a possible fight nearby.

Officers first checked the area around 7th Street and G St. then the woman corrected the fight location to the area near 7th Street and Lincoln. I drove to Lincoln and approached from the south driving north on 7th Street. I could see other officers approaching from the north.

While I was still seated in my patrol vehicle, I used my spotlight to pan the area to look for any signs of fighting. My car windows were down when I did this. As the spotlight crossed 305 North 7th Street, I noticed a large, shirtless male standing in the front yard. I heard him say, "Aww yeah, mother fuckers. I'm gonna whoop some ass. Come on! Come on in." I then watched as other officers were approaching on foot walking south along the east sidewalk. I advised via radio that I thought he was at my location.

I got out of my patrol vehicle and walked toward the residence. When officers reached the gate, the male was standing inside the yard approximately 15 feet inside the gate with both fists clenched. He was bouncing aggressively back and forth with his clenched fists and saying "Come on, mother fuckers. Come on in."

On my way to the yard, I noticed a white t-shirt on the sidewalk in front of the residence. It was then that I believed this was the likely location for the fight.

Officer Casey Gilette opened the gate and walked toward the male. The male was still standing with fists clenched as Officer Gilette was walking towards him. Gilette then punched the male on the left side of his jaw causing the male to move backward slightly. Other officers then stepped in and assisted in placing handcuffs on the male.

The male identified himself as [REDACTED]. During our interaction with [REDACTED], his family members exited the residence and contacted officers in the front yard. A man who claimed he was [REDACTED] father told [REDACTED], "That's what you get for being drunk. I told you you were going to get into trouble."

Officer Gilette booked [REDACTED] into the city jail for Obstructing. See other officers' reports for additional details.

At the station and after [REDACTED] was booked, I spoke with Officer Gilette about this incident. Officer Gilette asked if I was ok with what happened. I told him that I had some concerns. He said he thought I was bothered about what happened. I asked him at what point was [REDACTED] under arrest. Officer Gilette said that based on his observations, he thought the fighting was likely coming from the residence where the male was yelling. He said that the man was obviously confrontational and he looked like he wanted to fight the police. He asked if we used the charge "disorderly conduct". I told him that we didn't regularly use that charge and I hadn't ever seen it used here. He said that they used the charge regularly in Toppenish. I told Officer Gilette that his use of force was more than I was comfortable with and that I didn't feel right about it. Officer Gilette said he was sorry he put me in that spot and said he understood. He said, "If I have to take a hit, I guess I'll take it."

I spoke about this incident with Lt. Steve Finch as he was present on the morning it occurred. After speaking with him, he advised me to forward this memo to him and he would see that Lt. Foley knew about it.

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Memorandum

July 2, 2013

To: Captain Jeff Schneider

From: Dominic Rizzi Jr
Chief of Police

Subject: Non-Concurrence AI2013-04

Name of officer who is the subject of an unsustained finding of misconduct is exempt:
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The recommendation by Lieutenant Foley is that Officer Gillette was guilty of improper conduct, with a recommendation of a written reprimand. The recommendation for [REDACTED] is Misconduct not based on original complaint and a written reprimand.

The complaint against Officer Gillette should be divided into two separate allegations.

Allegation # 1, Officer Gillette did not have probable cause to arrest the subject he used force against.

Allegation # 2, Officer Gillette used unnecessary force.

The complaint against [REDACTED] is:

Allegation: Failure to Supervise.

After reviewing the investigative file, state law, Department Policy and FBI statistics, I find the following:

Officer Gillette

Allegation #1, Finding: A Disposition: G

Allegation #2, Finding: B Disposition: C

[REDACTED] Allegation, Finding: A Disposition: G

In regards to Allegation #1 for Officer Gillette, he and other officers were investigating a fight when they were challenged to fight and threatened by an apparent intoxicated male. The fact that Officer Gillette and other officers were challenged by this individual diverted and obstructed their attention from investigating the original complaint of a fight.

Statistics have shown that officers are increasingly becoming victims of ambush type attacks, (See attachments #1, 2 and 3), and officer safety practices dictate they address the threat at hand. In this case, the man challenging the officers was the highest level of threat at that time. Had the officers ignored the threat they would have put themselves in a position to become victims of an ambush.

The officers did have probable cause to make an arrest for "obstruction." The offenders actions caused the officers a "delay" and "hindered" their investigation, which is a

requirement for the charge of "obstructing a law enforcement officer" under RCW 9A.76.020. In addition, the officers had probable cause to make an arrest for "Assault in the third degree," RCW 9A.36.031 (g): "Assaults a law enforcement officer ... who is performing his or her official duties..."

In regards to Allegation #2, Officer Gillette mistakenly believed that the probable cause for arrest, and the threat at hand, gave him the authority to use force. The level of force employed by an Officer should be a direct result of the threat and the immediacy to react to that threat. In this case Officer Gillette had time and distance in his favor. I believe there were other options available, at that point in time, which Officer Gillette could have utilized, including but not limited to verbal direction.

As a supervisor, [REDACTED], acted appropriately and represented the department in a professional manner. He recognized when an officer utilized an unwarranted level of force in making an arrest and took immediate action. [REDACTED] addressed the issue with the officer and initiated an internal investigation as required by department policy.

The mere fact that [REDACTED] was present when Officer Gillette violated the use of force policy does not mean that he was negligent as a supervisor. [REDACTED] took immediate action, addressed the behavior and initiated an investigation. These actions are appropriate for a supervisor.


Dominic Rizzi Jr

AI 2 3-04

ATTACHMENT # 1

VEGAS USA TODAY TRAVEL EXPERIENCE LAS VEGAS

There are **over 150,000 luxury hotel rooms** in Vegas. We'll show you which are worth the splurge.

PLAN NOW

More police officers die in ambush attacks

By Kevin Johnson, USA TODAY

Updated 12/22/2011 4:46 PM

Recommend 3

60

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WASHINGTON—Despite a national campaign focused on police safety, the number of officers killed in the line of duty will increase for the second consecutive year, largely because of an alarming spike in ambush-style attacks, a Justice Department review found.

Federal and local officials have been troubled for the past two years by the overall number of firearms-related fatalities, which are up 23% in 2011, even though violent crime has declined in much of the country, according to preliminary statistics compiled by the National Law Enforcement Officers Memorial Fund.

Yet in 63 of the 65 shooting deaths that the Justice Department analyzed this year, 73% were the result of ambush or surprise attacks, said Josh Ederheimer, deputy director of the Justice Department's Community Oriented Policing Services Office. (The Justice Department hasn't reached a determination on the other two shootings.)

"It is an incredibly large number," Ederheimer said.

This year, a USA TODAY review of officer deaths highlighted a rising number of ambush slayings. In that August review, nearly 40% of the shooting deaths at that time were attributed to ambush or surprise attacks. That number was up from 31% in all of 2009, according to the most recent FBI study.

Ederheimer said the ongoing Justice review has revealed a more troubling pattern of violence.

Although the pace of overall shooting deaths has slowed since midyear, the numbers continue to frustrate law enforcement officials who convened a national review of officer safety this year.

Less than two weeks until the end of the year, the total number of officer deaths from all causes — 174 — marks the third largest death toll in the past decade.

Alarmed by the recent spikes in officer deaths, Attorney General Eric Holder called a meeting of law enforcement officials in March to examine the problem. Police departments were directed by the Justice Department to require officers to wear body armor or risk losing millions of dollars in federal aid.

(A 2009 study by the Police Executive Research Forum, a law enforcement think tank in Washington, found that 41% of departments did not require officers to wear armor at least some of the time.)

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AI 2013-04

ATTACHMENT #1

19 of 50 slain police killed in ambushes

By Kevin Johnson, USA TODAY

Updated 8/25/2011 5:23 PM

Recommend 6

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WASHINGTON—Nearly 40% of police officers fatally shot this year have been slain in ambush-style attacks or when they were surprised by suspects with firearms, according to a USA TODAY review of officer deaths.

The killings, many stunning for their brutality, have some law enforcement and Justice Department officials scrambling to provide additional protection or training for their forces.

Of the 50 officers killed by gunfire this year — a 32% increase from the same time last year — at least 19 were victims of ambush or surprise attacks, according to a review of the case summaries and interviews with police officials.

Nelvin C. Cepeda, AP
Police Chief William Lansdowne at the casket of Officer Jeremy Henwood, who was shot in an unprovoked attack during a routine police patrol in San Diego.

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leaves the neck and head exposed.

"There is an increasing trend in the number of fatalities involving ambush," Kaminski said. "I think it is a big concern."

Kaminski said ambush killings of police have been generally rising since 1994 when 10% of officer slayings were the result of ambush attacks. Although the numbers have fluctuated over the years, ambush killings increased to 31% of firearm-related officer deaths in 2009, according to the most recent statistics gathered by the FBI.

Police officials and analysts said motivations for the killings stem from a wide range of social problems, from mental illness to increased desperation caused by domestic or economic pressures. Bernard Melekian, director of the Justice Department's Community

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17 2013-04

ATTACHMENT

'Ambush' killings of lawmen part of increase in slain police

By Michael Martinez, CNN
updated 6:28 AM EDT, Sat April 6, 2013

CNN.com

(CNN) -- They're often called "ambush" killings.

Recent slayings of lawmen -- a [Colorado prison chief](#), a [Texas prosecutor](#), a [West Virginia sheriff](#) and a [California cop](#) -- conjure up comparisons to the deadly surprises and have contributed to a disturbing increase this year in law officer killings nationwide, analysts say.

"When somebody says 'ambush,' you see a character in a movie and you expect a guy to trip over a line or somebody pop up from a garbage can or somebody has the high ground and shoots on them," said Steve Weiss, research director for the [Officer Down Memorial Page](#), whose website tracks slain U.S. law officers.

The Colorado, Texas, California and West Virginia deaths "are kind of like that movie-style ambush," Weiss said.



Texas police search for DA's killer



Dorner manhunt comes to an end



Evan Ebel's red flags overlooked



Commander: We lost a good man

It's
what
many

officers fear most, said CNN contributor Tom Fuentes, a former FBI assistant director.

"Rookie officers are taught generally you're not concerned about the bullet with your name on it, but about those addressed 'To Whom It May Concern,'" Fuentes said, referring to random ambush shootings against police.

While an ambush often refers to an assailant lying in wait, the FBI statistics include "unprovoked attacks" without hiding, which one analyst likened to the circumstances in the Texas and California slayings.

RCW 9A.76.020

Obstructing a law enforcement officer.

(1) A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.

(2) "Law enforcement officer" means any general authority, limited authority, or specially commissioned Washington peace officer or federal peace officer as those terms are defined in RCW 10.93.020, and other public officers who are responsible for enforcement of fire, building, zoning, and life and safety codes.

(3) Obstructing a law enforcement officer is a gross misdemeanor.

[2001 c 308 § 3. Prior: 1995 c 285 § 33; 1994 c 196 § 1; 1975 1st ex.s. c 260 § 9A.76.020.]

Notes:

Purpose – Effective date – 2001 c 308: See notes following RCW 9A.76.175.

Effective date – 1995 c 285: See RCW 48.30A.900.

RCW 9A.36.031
Assault in the third degree.

*** CHANGE IN 2013 *** (SEE 5484.SL) ***

(1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself, herself, or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a firefighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(h) Assaults a peace officer with a projectile stun gun; or

(i) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: "Nurse" means a person licensed under chapter 18.79 RCW; "physician" means a person licensed under chapter 18.57 or 18.71 RCW; and "health care provider" means a person certified under chapter 18.71 or 18.73 RCW who performs emergency medical services or a person regulated under Title 18 RCW and employed by, or contracting with, a hospital licensed under chapter 70.41 RCW; or

(j) Assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any other employee, regardless of title, who is engaged in equivalent functions.

(2) Assault in the third degree is a class C felony.

[2011 c 336 § 359; 2011 c 238 § 1; 2005 c 458 § 1; 1999 c 328 § 1; 1998 c 94 § 1; 1997 c 172 § 1; 1996 c 266 § 1; 1990 c 236 § 1; 1989 c 169 § 1; 1988 c 158 § 3; 1986 c 257 § 6.]

Notes:

Reviser's note: This section was amended by 2011 c 238 § 1 and by 2011 c 336 § 359, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date – 1988 c 158: See note following RCW 9A.04.110.

Severability – 1986 c 257: See note following RCW 9A.56.010.

Effective date – 1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

1 It's on. The following interview is in regard to an internal
2 investigation that has not yet been assigned a number. It is an
3 allegation of possible excessive force by Officer Casey Gillette.
4 The interview is being conducted in Lt. Tom Foley's Office at the
5 Yakima Police Department on May 17th, 2013 at 1637 hours. Present
6 during this interview are Lt. Tom Foley and [REDACTED].

9 Q. And, [REDACTED], are you aware that the statement you're about to give
10 is being recorded?

11 A. Yes.

13 Q. Prior to the, prior to turning on the tape recorder, I gave you
14 a form called Rights and Responsibilities of Employees During
15 Administrative Interviews. Did you read and understand that
16 form?

17 A. Yes.

19 Q. Any questions about your Rights and Responsibilities During
20 Administrative Interview?

21 A. No.

23 Q. All right. According to our policy, you have the right to 24
24 hours advance notice and I just served your response request
25 fifteen minutes ago. Is it correct that you're waiving your
26 right to 24 hours notice and just proceed with the interview at
27 this time?

28 A. Yes.

30 Q. Okay. This allegation is in regard to an incident that occurred
31 on May 10th of this year at approximately 0314 hours at 305
32 North 7th Street?

33 A. Correct.

35 Q. All right. Can you tell me basically what happened there?

36 A. We had just cleared a traffic stop, 6th Street and G-George. I
37 had left the area southbound. Was advised by radio that a woman
38 had contacted the individual officers at 6th and G indicating
39 there was a fight somewhere on 7th Street. I drove sou..I drove
40 south on 7th Street to the area of the 500 block and advised
41 there was nobody present. Then I believe it was Officer
42 Scherzinger said the individual had mentioned it's nearer to
43 Lincoln. So I shot down 8th Street, west on Lincoln to 7th and
44 then back up 7th Street so I'm northbound on 7th Street from
45 Lincoln. I could see that the other officers' headlights were
46 coming southbound on 7th towards me from a couple of blocks
47 ahead to the north. So we're moving towards each other. I lit
48 up the area with my sidelights and spotlight looking for this
49 fight. What drew my attention was a male who walked out of 305

50 North 7th Street not wearing a shirt. Appeared belligerent and
51 intoxicated and was just yelling out expletives, indicting that
52 he wanted to fight and he was inviting officers to come in. I
53 believe his comments were something like I'm gonna whoop some
54 ass, come on in, that sort of thing. So I put my spotlight on
55 the individual and actually got on the air and said to the
56 officers, I think he's over here. The officers then moved along
57 the, to the east sidewalk and walked south in the direction of
58 the male. I was just getting out of my car and approaching. I
59 could see that Officer Gillette was in the lead with Officer
60 Ward and Officer Scherzinger behind him. Booker Ward behind
61 them. The three of them entered the yard. The individual was
62 still taking a fighting stance and still shouting at them,
63 inviting them come on in. He then crouched down like he was
64 going to get into a fight, like a, similar like a linebacker
65 stance like he was gonna charge them. Um, I watched as Officer
66 Gillette walked right up to him and socked him one time in the
67 side of the, left side of his face with his right fist. The
68 individual was stunned a little bit. He didn't go down, didn't
69 go, well, didn't appear groggy but it stunned him enough to
70 where the officers were able to take him to the ground. Then he
71 made a commotion, started yelling. He's, I believe he was
72 yelling he's gonna call his dad. I didn't know who he was
73 yelling at initially and I found out there was a female outside,
74 that was his, I believe, it's his girlfriend who wanted to know
75 what he had done wrong. Of course, all the commotion, the
76 individuals we later found out were parents, his mother and
77 father had come out and a brother from inside the house wanted
78 to know what happened. The father had made some comment that he
79 knew he was gonna get himself in trouble because he was drunk
80 and he told him to stay inside and he didn't. The mother also
81 said that she knew that he needed to stay inside. He was drunk
82 and he just needed to calm down. I had told the officers to get
83 him handcuffed and get him out of the area and into the car to
84 kinda, to calm the situation down so they did as instructed.
85 And then we stuck around for a little while and spoke with the
86 parents and the other people that were there. Then I left the
87 scene. The officers brought the individual to the station and
88 he did not seem very concerned about being arrested. He seems
89 more concerned about a suicide investigation that he believed
90 was a homicide investigation involving Francisco Villegas at
91 30..I believe it's 308 North 7th Street. Again, he was
92 apologetic. He said he knew that he was drunk and he knew we
93 were just doing our job. And that's how that situation ended.
94 He wound up getting booked into the City Jail for obstructing.
95

96 Q. Okay.

- 97 A. Well, there was a torn tee-shirt outside on the sidewalk in
98 front of the residence which led me to believe there was some
99 sort of fighting going on and he did make the comment that maybe
100 I was the one fighting, maybe I wasn't. But there was nobody
101 else around at the time so. Were..I'm gonna, I would guess that
102 whoever called or whoever the RP was, that was the location or
103 the person that was involved in the fighting.
104
- 105 Q. Okay. When you first saw this guy out in the yard at 305, how
106 confident would you say you were, yeah, this is gonna be a guy
107 that was fighting?
- 108 A. Oh, I'd say very confident, high nineties.
109
- 110 Q. Okay.
111 A. Not, not 100% but that individual, very belligerent, wanting to
112 fight and challenging police to fight. I mean, clearly he saw
113 us. The area was lit up with spotlights. I could see that the
114 officers were in uniform from the half a block I was away. And
115 they're marching towards him and he's looking at them and saying
116 come on in, inviting them in to fight, challenging them. And we
117 had, the only reason we were there was to see if there was a
118 fight going on.
119
- 120 Q. You indicated that when you spotlighted him, you heard the guy
121 yelling, you could hear the guy. Were you still sitting in your
122 car, could you hear him from inside your car is what I'm gettin'
123 at?
- 124 A. I could, I had my windows down and I was probably fifty feet
125 away and I was just getting out of my car and the spotlight was
126 still on him.
127
- 128 Q. Were you out of your car by the time Gillette enters the front
129 yard?
- 130 A. I was. I was about twenty, twenty feet behind the last officer
131 and that I was able to observe what happened.
132
- 133 Q. Okay.
134 A. There were no words spoken at all between the officers or the
135 individual. The individual was making all of the comments.
136
- 137 Q. That was one of my, my thoughts was, were there any verbal
138 commands, get down or come here or anything like that?
- 139 A. No, there was none, none spoken.
140
- 141 Q. Okay. You indicated that Gillette walked up and in, in your
142 statement, you said socked him. I think in your report, you
143 said he pun..in your memo, you said he punched him?

144 A. Yeah.

145

146 Q. In his report he writes that with his right hand, I attempted to
147 clasp the back of his head to take him to the ground. My open
148 hand struck him on the left side of his face which stunned him.
149 How confident are you that it was a closed fist?

150 A. About 90%, not 100% positive but he wasn't, it swung and it
151 looked like a punch to me and he punched him on the left side of
152 his jaw.

153

154 Q. Okay. Your memo indicates that shortly after the use of force
155 and the guy's arrested, you have a conversation with Officer
156 Gillette taking some supervisory corrective action. Can you
157 describe that for me?

158 A. We were at the station and I asked to speak with him after he
159 was done with his report. So he finished his report and
160 contacted me in the hallway and he said I guess you're not okay
161 with what happened and I said no, I'm really not. At what point
162 was that individual under arrest and he explained well, I was
163 investigating a potential fight. I believe that that's where the
164 fight was happening or the fighting was happening and so that
165 individual was being disorderly. So his thinking, he was taking
166 him for disorderly conduct. And I explained to him that the guy
167 was still in his own yard although he was challenging you to
168 come on in. Verbal, some verbal communication or verbal queues
169 might have helped and at least we would have tried and we would
170 have known how that would have worked with him. And all real
171 and the reality is he's drunk, he's not very cooperative and
172 he's challenging us and he sees we're in uniform. I don't
173 believe that the verbal communication would have worked but it
174 would have been worth a try. And so I explained to him that we
175 can't just walk up and punch people, that he put me in a bad
176 spot and I'm gonna have to report what happened and he fully
177 understood that. But he said that at his prior agency when they
178 had a person that was being disorderly, that's just the way
179 things were handled there and so I think it's an issue from one
180 agency to another and I think it'll be handled differently from
181 now on.

182

183 Q. Okay. Did you have any conversation with him about the
184 obstructing charge, what was he obstructing?

185 A. Oh, yes. I told him that on the, on its face an obstructing
186 charge all by itself is very transparent and defense attorneys
187 will look at an obstructing charge and say okay, what's the rest
188 of the story, there's more to this story. And so he understood
189 that as well but he said that he was looking at charging him for
190 disorderly and I said we just, we haven't had those here, I

191 don't, that's not our thing. And so he understood that from one
192 agency, one agency does things differently than the other but he
193 fully understood about the obstructing charge and that's really
194 all we had at that point. So that's why he booked him in under
195 that charge.

196
197 Q. I looked at the Yakima Municipal Code for disorderly.
198 Technically speaking we do have a disorderly but it, it goes on
199 to describe a person is disorderly if by the amount of noise
200 they disturb the peace. Well, we charge that as noise,
201 excessive noise. Or if they are, their actions are fighting in
202 public, they're a disorderly person, we charge that as fighting
203 in public. So it might be semantics. He was disorderly because
204 he was fighting or he was disorderly because he was so loud and
205 yelling at us. We would charge different. We don't use the
206 words disorderly but it's essentially the same thing. Okay.
207 Anything else I need to know?

208 A. I will say that we..something had to be done. Had we just left
209 and let that guy scream and yell in his front yard, we would
210 have eventually had to come back either for noise or for some
211 other situation with a domestic cause the parents were clearly
212 upset by his drunken attitude. So had we not acted at all and
213 just left the area, we would have had to come back anyway and
214 deal with the problem. So it's kind of those, one of those
215 situations where you have to act. If you don't, something else
216 is gonna happen so you're, you're hanging out there either way.

217
218 Q. Brings up a good point. I don't know if you're aware that the
219 way I think this actually came out was while Gillette's on this
220 traffic stop, a woman comes up and stops and tells him about
221 this fight. So it had happened moments before that and then you
222 guys take some time looking for the guy and then when you do
223 find him, he's still out in the front yard and he's still acting
224 that way. How much time would you say there was between the
225 time she tells Gillette and you guys actually find him?

226 A. Oh, that's within a minute and a half, two minutes. Whatever
227 time it took for me to drive from 8th and..8th and G south to
228 Lincoln and back up 8th Street. So, you know, less than a
229 minute, minute and a half tops.

230
231 Q. Right.

232 A. So she, she sees it, reports it to us and we're, we're right
233 there immediately.

234
235 Q. Okay. All right. Anything else I need to know, [REDACTED]?

236 A. No.

237

Statement of [REDACTED]
Page 6 of 6

Name of officer who is the subject of an unsustained finding of misconduct is exempt:
"Therefore, only Officer Cain's identity *420 is exempt under the PRA and should be redacted. Subject to those redactions, the remainder of the PCIR and the MIIR, including the nature of the agencies' response to the allegation, are nonexempt." *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wash. 2d 398, 419-20, 259 P.3d 190, 200 (2011)

238 Q. All right, end of statement at 1650 hours.
239
240
241 End of Statement, 1650 hours
242 Lt. T. Foley, #3621/ps

YAKIMA POLICE DEPARTMENT

INTERNAL INVESTIGATION

RIGHTS/RESPONSIBILITIES OF EMPLOYEES

ADMINISTRATIVE INTERVIEWS

1. You are about to be questioned as part of an internal investigation being conducted by the Police Department. You are hereby ordered to answer the questions which are put to you which relate to your conduct and/or job performance and to cooperate with this investigation. Your failure to cooperate with this investigation can be the subject of disciplinary action in and of itself, including dismissal. The statements you make or evidence gained as a result of this required cooperation may be used for administrative purposes but will not be used or introduced into evidence in a criminal proceeding.
2. The purpose of this interview is to determine if misconduct or violations of Rules and Regulations, Policies and Procedures, or any other departmental guidelines have occurred.
3. You have a right to be informed of your status regarding this investigation:--whether you are the accused or a witness.
4. You may have legal counsel or union representation present for consultation if you so desire at your own expense. Reasonable time will be allowed to consult with them.
5. All answers and statements may be used in departmental administrative or disciplinary proceedings and may result in administrative action up to and including dismissal.
6. This investigation is confidential pursuant to the Yakima Police Department Internal Investigations Policy. In order to ensure that the integrity of the investigation is preserved and that all department rules and regulations are understood and followed, you shall not discuss the allegation or investigation nor allow anyone else to gain access to that information without the expressed authorization of the Chief, his designate, or the Internal Affairs Investigator. If you are the accused employee, you may disclose to others that you are the subject of an investigation, and also discuss the matter with your supervisor, union representative, and/or your attorney without prior approval.

Employee's Signature _____

Date 5-17-13 Time 1630

Administered by _____

Date 5-17-13 Time 1630

II 07

PDI B9

Name of officer who is the subject of an unsustained finding of misconduct is exempt:
"Therefore, only Officer Cain's identity *420 is exempt under the PRA and should be redacted. Subject to those redactions, the remainder of the PCIR and the MIIR, including the nature of the agencies' response to the allegation, are nonexempt." *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wash. 2d 398, 419-20, 259 P.3d 190, 200 (2011)

YAKIMA POLICE DEPARTMENT
INTERNAL INVESTIGATION
RESPONSE REQUEST

To: [REDACTED]

Date: 5/17/13

From: Lt. Foley

Complaint number: AI-2013-04

The Department is presently conducting an investigation into certain allegations of misconduct. These allegations stem from an incident that occurred on:

Date: 05/10/13

Time: 0314hrs

Location: 305 N 7th St

Case/Citation number: 13Y018622

Complaint: Excessive Force

Complainant:

Summary of complaint: On 5/10/13 at 0314hrs Officer Casey Gillette punched or otherwise struck with his hand an adult male. At the time, there was no probable cause to arrest the man. There was no lawful purpose to use force, so the use of force was therefore excessive.

Personnel Involved

Casey Gillette

Personnel as Witnesses

Booker Ward

[REDACTED]
Marc Scherzinger

Upon receipt of this notice please contact Lt Foley at

All interviews will normally be conducted during your shift of duty. All internal investigations will be conducted in accordance with Department Policy. While the investigator will advise you of a number of your administrative rights/responsibilities, you are encouraged to review the Policy prior to contacting the investigator. This investigation is confidential pursuant to Yakima Police Department Policy 1020.6.4, Confidentiality of Investigations. *Employees shall not discuss the allegations or the investigation, nor allow anyone else to gain access to that information without the express authorization of the Chief or his/her designee. The accused employee, however, may discuss the matter with his/her supervisor, union representative, and/or his/her attorney without prior consultation with the Chief or his/her designee.* Violation of this policy, in and of itself, will be grounds for disciplinary action, up to and including dismissal.

PDI B7 (revised 12/12)

Name of officer who is the subject of an unsustained finding of misconduct is exempt: "Therefore, only Officer Cain's identity *420 is exempt under the PRA and should be redacted. Subject to those redactions, the remainder of the PCIR and the MIIR, including the nature of the agencies' response to the allegation, are nonexempt." *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wash. 2d 398, 419-20, 259 P.3d 190, 200 (2011)

This statement edited to make for easier reading. Random sounds, hesitations and other sounds removed. Line numbers will differ from original copy.

1 The following statement is in regard to administrative interview
2 number AI2013-04. The date today is June 5th, 2013. The time is
3 2101 hours. We're in Lt. Foley's office at the Yakima Police
4 Department. The person being interviewed is Officer Casey Gillette.
5 The interviewer is Lt. Tom Foley. There are no additional persons
6 present.

7
8
9 Q. Casey, are you aware that the interview you're about to provide
10 is being recorded?

11 A. Yes, I am.

12
13 Q. Did you read and understand your Rights and Responsibilities for
14 Administrative Interviews?

15 A. Yes, I did.

16
17 Q. Any questions about your Rights and Responsibilities?

18 A. No, sir.

19
20 Q. Have you discussed this incident with anyone other than your
21 supervisor or a YPPA representative?

22 A. No, sir.

23
24 Q. Yesterday when I gave you your response request I told you that
25 you were free to review your reports on this incident. Did you
26 do that?

27 A. Yes, sir, I did.

28
29 Q. Okay, then from the beginning, can you just briefly describe
30 what was the incident you guys were responding to?

31 A. I was on a traffic stop about 7th and G Street, I believe. And
32 a female approached us saying that she tried to get into her
33 apartment but there was a large fight in front of her house, so
34 we went to the area to investigate. Upon arriving to the area,
35 I contacted a female who was exiting a car and walking towards a
36 house. I asked her to please talk to me so we could figure out
37 if there was a fight. She said there wasn't a fight. As soon
38 as I started talking to her a male exited his house. I believe
39 it was 307 North 7th Street. He started yelling loudly,
40 claiming La Raza. Saw us, you know, started cursing at us. I
41 don't want to call, I don't want to say he invited us in but he
42 says open that gate and see what happens, you fools. He called
43 us, you know, numerous curse words. I entered the gate. I
44 don't recall the gentleman's name but you could tell he was
45 incredibly agitated and bladed, clinched his fists, bladed his
46 stance and at that point, I attempted to do like a rear leg
47 sweep by grabbing the back of his head. In turn, I punched him

48 in the left side of the face. Took him down and he resisted
49 slightly at, when we took him down but then we were able to take
50 him into custody and put him in the back of my car and nothing
51 else really pertinent after that.

52
53 Q. I've already talked to [REDACTED], he was there..

54 A. Yes, sir.

55
56 Q. During the whole thing?

57 A. Yes, I think he was pulling up about the time I was walking into
58 the gate. Cause I know as soon as we got him into custody, he
59 wanted to know what happened cause I don't think he, he may, he
60 may have saw the whole thing but it sounded like he was asking
61 to make sure everything was good.

62
63 Q. I talked to Officer Ward, Booker Ward?

64 A. Yes, sir.

65
66 Q. He was there?

67 A. Yes, sir. He was actually either right behind me or right to my
68 side.

69
70 Q. Okay. And Officer Scherzinger?

71 A. Yes, sir. I think he helped me put him into cuffs.

72
73 Q. All right. So [REDACTED], Ward, Scherzinger present for either all
74 of it or most of it?

75 A. Yes, sir.

76
77 Q. Were there any other officers there?

78 A. I want to say Officer Martinez showed up later maybe but I don't
79 think he, it was well after everything had happened.

80
81 Q. Okay.

82 A. So there was, I don't think he saw anything.

83
84 Q. Okay. So if I understand it correctly while you're on a traffic
85 stop say in District 1 area..

86 A. Right. I think we had just cleared the traffic stop.

87
88 Q. This woman approaches and indicates she's living in the 300
89 block of South..North 7th Street and she was trying to go home
90 but she didn't stop because there was a fight going on?

91 A. Right.

Statement of Officer Casey Gillette

Case number AI2013-04

Page 3 of 9

- 93 Q. So you and the other two officers and [REDACTED] [REDACTED] go to that
94 area looking for the fight?
95 A. Yes, sir.
96
97 Q. Do you see any fight when you arrived in the area?
98 A. No, sir. We didn't see any fight. All we saw was a tee-shirt
99 on the sidewalk and then the male that we arrested shirtless.
100 So, and then he later admitted that that was his shirt and he
101 was fighting.
102
103 Q. Okay. When you first get there, you contacted this woman
104 walking across the street?
105 A. No, she parked on the side of the, I guess, what later turned
106 out to be the suspect's house. She parked on that side of the
107 street, on the east side of the street and she was exiting her
108 car, walking on the planting strip slash sidewalk.
109
110 Q. One of the other officers, I don't remember whether it was Ward
111 or Scherzinger said they contacted some guy sitting in a truck?
112 A. He, I don't think he had anything to do with it. I didn't talk
113 to him about that. It just was suspicious and I think he was
114 either getting ready for work or something else. I never did
115 talk to him.
116
117 Q. Right, I think they indicated they believed it when the guy said
118 he was heading to work and they seemed to believe him?
119 A. Yeah.
120
121 Q. So during the time you're contacting this woman and they're
122 contacting the guy in the truck, this fellow comes out of 305
123 North 7th Street?
124 A. Yes, sir.
125
126 Q. Was it immediately he starts cussing and a..
127 A. Oh, immediately. As soon as he come out the, I didn't
128 no..honestly, notice him at first until he started yelling but
129 as soon as he came out the door, he immediately just yelled this
130 is La Raza's hood, you know, smoke you fools. He ended up
131 saying at one point but he said he pretty much owned this hood
132 and that he was La Raza. And then he started challenging us
133 from what I remember.
134
135 Q. Was there any possibility he was confused about who you guys
136 were?
137 A. I don't think so. I mean, I was in full uniform. I had police
138 badge. Everybody's in uniform.

139
140 Q. How far away from him were you?
141 A. I would say I was one house to the north so I was probably at
142 309 when I contacted the female so..and his porch light was on
143 too so it wasn't dark.
144
145 Q. At that point, you're responding to what is reported to be a
146 fight?
147 A. Yes, sir.
148
149 Q. There's a shirt on the ground and this fellow comes out of the
150 house. What was your opinion of the likelihood he was gonna be
151 somebody involved in that fight?
152 A. I would say 100%. His demeanor. The fa..I mean, people take
153 their shirts off all the time but he's shirtless, there's a
154 shirt right here, you know, you put two and two together, I
155 would say in my, I was pretty positive this guy was involved.
156
157 Q. Did you say anything to him?
158 A. I don't recall if I said anything to him. As soon as we opened
159 the gate and started walking towards him, that's when he started
160 blading his stance and clinching. So, you know, a few verbal
161 commands could have been in order but I don't think I did.
162
163 Q. Well, afterward [REDACTED] [REDACTED] tells you look, I'm gonna have to
164 write this up?
165 A. Um-hum.
166
167 Q. And he did, of course?
168 A. Yes, sir.
169
170 Q. He indicates, you know, from his point of view what it would
171 appear to a bystander is you, the guy invited you to fight so
172 you walked up and just cracked him? I'm not saying that was his
173 ultimate opinion..
174 A. Um-hum.
175
176 Q. But he said that was the appearance?
177 A. Yes, sir.
178
179 Q. Was there anything between the time this guy invited you to
180 fight and you walking up and sl..
181 A. He's talking about, like I said, he mentioned I'll smoke you
182 fools, pretty much threatening assault towards us. You know, I,
183 the family members ended up coming out of the house. A man that
184 intoxicated, that agitated, that aggressive, you know, you fear

for their safety if he goes back in the house. And the dad had issues calming him down even after he was in cuffs. So, you know, a man like that so I felt better off in our custody as opposed to being letting him go to his own.

Q. To your understanding, well, let me, let me scratch that, let me back up. How long have you been a cop?

A. I've been employed for Yakima for about nine months and I was employed in Toppenish for three years.

Q. So damn near four years altogether?

A. Yes, sir.

Q. What's your understanding of your ability and right as a police officer to use force, I know that's a tough question, let me rephrase it. Does a person have to be under arrest necessarily for you to use force?

A. No, sir.

Q. Can you describe a circumstance outside of arrest when you're entitled as a police officer to use force?

A. When you feel that the males in danger of endangering other people. You know, if you're feeling like you're protecting that person from themselves or from hurting others, then, you know, after obviously some commands and doesn't comply and then you can use force whether or not he's under arrest or not.

Q. If I understand right though, under this circumstance there was no indication he was any threat to anyone in the house at that point?

A. Not at that point, no, sir.

Q. Okay. Was it your intent at that point that he was under arrest?

A. Just with his, his aggressive attitude, I wanted to at least detain him and figure out what happened because, I mean, if he's already challenging the police officers, obviously he was just in a fight. I wanted to at least detain him and figure out what happened from there. And then my intention was not to strike him in the face which I ended up doing but my intent was yes, to take him to the ground. Due to the fact that he was challenging us and I'm not gonna stand face to face with him. He's quite a bit bigger than I was.

Q. Did you feel any obligation to investigate this report of a fight?

- 231 A. Absolutely. I mean, if a female can't even go to her house
232 because she afraid of people fighting in front of it, you
233 under..you understand this, want to change that.
234
- 235 Q. At what point did you tell the man that you are under arrest?
236 A. I don't believe I verbally told him. After he resisted on the
237 ground and put him in cuffs and we escorted him to the car, I
238 think we, I believe I told him in the back of the car that he
239 was under arrest.
240
- 241 Q. I understand from my interview with [REDACTED] [REDACTED] that there was
242 some discussion about your intent to arrest him for disorderly
243 conduct?
244 A. Yes, sir.
245
- 246 Q. Describe that conversation to me please?
247 A. It's my, it was my initial intention, disorderly conduct is a
248 crime that we commonly charge in Toppenish. It was creating the
249 risk of assault to yourself or to others. And obviously with
250 his demeanor, he fit that mold to a tee and in speaking with
251 [REDACTED] or, I'm sorry, [REDACTED] [REDACTED], he said that's not a
252 RCW that we use here and so that, and that was my initial
253 intention was the disorderly conduct.
254
- 255 Q. Okay. Had you offered this man any opportunity to comply with
256 being detained, being arrested prior to using any force?
257 A. No. As soon as we opened the gate, we started, I mean, we
258 weren't sprinting towards him. We were walking towards him two
259 or three seconds but the, just the mere fact that he was
260 posturing up to us. We could have, we could have offered him
261 commands to turn around, put your hands behind your back but I
262 did not.
263
- 264 Q. Okay. Based on your nearly four years of experience as a police
265 officer, what was the likelihood he would have complied with any
266 of those directions?
267 A. I would say almost zero percent. His demeanor obviously showed
268 that he didn't care that we were police officers and why we were
269 there. It didn't matter so he, you know, if it was a..if he was
270 talking to a civilian, I can..probably likelihood would be
271 better but the fact that he was already talking to police that
272 way I felt that the likelihood was very, very low.
273
- 274 Q. Are you familiar with Graham versus Conner, the case law that
275 dictates use of force?
276 A. Yes, sir.

Statement of Officer Casey Gillette

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277
278 Q. It lists a whole lot of factors that a police officer has to
279 consider, given the opportunity, before using force and the
280 reasonableness of that force. One of them, of course, is size
281 mismatch.
282 A. Yes, sir.
283
284 Q. How tall and how much do you weight?
285 A. I'm about 5'7, 155.
286
287 Q. Okay.
288 A. On a good day.
289
290 Q. Your best estimate, what about the man that was arrested?
291 A. About six foot, 220.
292
293 Q. Okay. Of course, the other side of that coin is there's four of
294 you and one of him.
295 A. Yes, sir.
296
297 Q. One of the other factors in Graham versus Conner is the
298 availability and opportunity for lesser forms of force and the
299 opportunity to comply voluntarily.
300 A. Yes, sir.
301
302 Q. After your discussion with [REDACTED] [REDACTED] about disorderly conduct
303 and that not being available within the city limits of Yakima as
304 a municipal code, the man was ultimately charged with
305 obstructing?
306 A. Yes, sir.
307
308 Q. How did you guys come to that conclusion?
309 A. Well, we were there investigating a fight. The male comes out
310 of his house belligerent, very aggressive. Being a reasonable
311 officer, I was under the assumption that he was most likely in
312 the fight and his very aggressive attitude towards us, you know,
313 even if we would have attempted to talk to him in a peaceful
314 manner, the male, even after he was under arrest, the male did
315 not want to talk to us in any shape or form. So being there for
316 a lawful reason and then him not cooperating, I felt that would
317 be a correct charge.
318
319 Q. Specifically, our obstructing law says that a person is guilty
320 of obstructing a law enforcement officer if the person willfully
321 hinders, delays or obstructs any lawful, any law enforcement
322 officer from the discharge of his or her official powers or

Statement of Officer Casey Gillette

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323 duties. Given that definition, can you explain what did he
324 hinder, delay or obstruct you from doing?
325 A. We're investigating a fight. The female was obviously, you
326 know, afraid, she wouldn't stop. You know, at that point since
327 we didn't observe it, we didn't have a crime but we were there
328 for a lawful reason and so, you know, whether or not we were
329 looking for injured parties or doing our jobs and, you know, we
330 were there, we were there for a lawful reason, want to talk to
331 him, obviously the male didn't want to so..
332
333 Q. The one thing you can't, you can't consider is he doesn't talk
334 to you, that, you can't use that against him at anytime?
335 A. Yes, sir.
336
337 Q. Was he hindering or delaying your investigation into this
338 complaint of a fight?
339 A. Yes, sir. Being belligerent, I mean, we can't take our focus
340 off of him and still investigation a fight. He's obviously an
341 officer safety issue. We cannot leave him there and turns out
342 he was part of the fight so it definitely hindered our
343 investigation into the fight.
344
345 Q. So you were there investigating a fight?
346 A. Yes, sir.
347
348 Q. Did you ultimately, once he's under control, investigate the
349 fight?
350 A. Yes, sir.
351
352 Q. Tell me about that?
353 A. He eventually admitted to fighting with several subjects out on
354 the street. He admitted that that was his shirt on the street.
355 And this was after several questions, he was very uncooperative
356 but he admitted to, he didn't want to say why he was fighting
357 but he said he was fighting with you know, he used several gang
358 terms but he was fighting with people in the street and that's
359 about all he said.
360
361 Q. Did he give you any indication of where those other combatants
362 were?
363 A. No, sir.
364
365 Q. Were you ultimately convinced they were not in the house?
366 A. Yes, sir. The dad had came outside. The parents and a brother
367 came outside and dad was incredibly cooperative. Dad did not
368 blame us for arresting him. He'd been acting drunk and

369 belligerent all day. He said it's your own fault for getting
370 arrested, so I, based on his attitude and his cooperation, we
371 didn't feel that anybody else was in the house.
372

373 Q. Can't think of any other questions, is there anything else I
374 need to know or need to consider, I haven't asked you about that
375 you can think of?

376 A. Not that I can think of, sir.
377

378 Q. Okay, then. End of the statement at 2121 hours.
379

380
381 End of Statement, 2121 hours

382 Lt. T. Foley, #3621/ps

**YAKIMA POLICE DEPARTMENT
INTERNAL INVESTIGATION
RESPONSE REQUEST**

TO: Officer Casey Gillette

DATE: 06/4/13

FROM: Lieutenant Tom Foley

COMPLAINT NO AI 2013-04

The Department is presently conducting an investigation into certain allegations of misconduct. These allegations stem from an incident that occurred on:

Date/Time: 05/10/13 0314hrs

At: 305 N 7th St

Complainant : [REDACTED]

Case or Citation Number: 13Y018622

Complaint: Excessive Use of Force

Summary of Complaint: 5/10/13 at 0314hrs, Officer Casey Gillette punched or otherwise struck an adult male on the head. At the time force was used there was no probable cause to arrest the man or need to use force upon him. The force was unnecessary and therefore excessive in violation of policy 300.3 Use of Force.

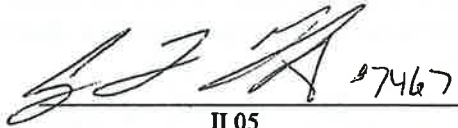
Personnel Involved
Casey Gillette

Personnel as Witnesses
Marc Scherzinger
Booker Ward
[REDACTED]

Please contact Lt. Foley at his office June 5th, 2013 at 2045hrs

All interviews will normally be conducted during your shift of duty.

All internal investigations will be conducted in accordance with Department Policy. While the investigator will advise you of a number of your administrative rights/responsibilities, you are encouraged to review the policy prior to contacting the investigator.


II 05

PDI B7

Name of officer who is the subject of an unsustained finding of misconduct is exempt: "Therefore, only Officer Cain's identity *420 is exempt under the PRA and should be redacted. Subject to those redactions, the remainder of the PCIR and the MIIR, including the nature of the agencies' response to the allegation, are nonexempt." *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wash. 2d 398, 419-20, 259 P.3d 190, 200 (2011)

YAKIMA POLICE DEPARTMENT

INTERNAL INVESTIGATION

RIGHTS/RESPONSIBILITIES OF EMPLOYEES

ADMINISTRATIVE INTERVIEWS

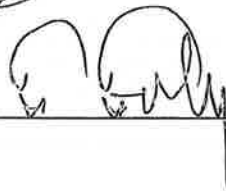
1. You are to be questioned as part of an internal investigation being conducted by the Police Department. You are hereby ordered to answer the questions which are put to you which relate to your conduct and/or job performance and to cooperate with this investigation. Your failure to cooperate with this investigation can be the subject of disciplinary action in and of itself, including dismissal. The statements you make or evidence gained as a result of this required cooperation may be used for administrative purposes but will not be used or introduced into evidence in a criminal proceeding.
2. The purpose of this interview is to determine if misconduct or violations of Rules and Regulations, Policies and Procedures, or any other departmental guidelines have occurred.
3. You have a right to be informed of your status regarding this investigation:--whether you are the accused or a witness.
4. You may have legal counsel or union representation present for consultation if you so desire at your own expense. Reasonable time will be allowed to consult with them.
5. All answers and statements may be used in departmental administrative or disciplinary proceedings and may result in administrative action up to and including dismissal.
6. This investigation is confidential pursuant to the Yakima Police Department Internal Investigations Policy. In order to ensure that the integrity of the investigation is preserved and that all department rules and regulations are understood and followed, **you shall not discuss the allegation or investigation nor allow anyone else to gain access to that information without the expressed authorization of the Chief, his designate, or the Internal Affairs Investigator. If you are the accused employee, you may disclose to others that you are the subject of an investigation, and also discuss the matter with your supervisor, union representative, and/or your attorney without prior approval.**

Employee's Signature

 # 7467

Date 06/04/2013 Time 2036

Administered by



Date 6-4-13 Time 2036

INTERVIEW QUESTIONS REFERENCE INTERNAL INVESTIGATION

Administrative Investigation # AI 2013-04


Date/Time: 6-5-13

Location: Foley's office

Person Interviewed: Gillette

Interviewer Foley

Additional Persons Present: ϕ

-
1. Are you aware that the interview you are about to give is being recorded?
 2. Read & understand rights and responsibilities for administrative interviews?
 3. Any questions about your rights or responsibilities?
 4. Have you discussed this incident with anyone other than supervisor or YPPA representative?
 5. Reviewed your report?
 6. Describe incident 
 7. Explain force used.
 8. Explain need for force. - DETAIN - INVESTIGATE
 9. Explain violation of law -
 10. Subject advised of being under arrest? - IN BACK OF CAR
 - > 11. Subject offered opportunity to comply? - NONE - WOULD NOT HAVE WORKED
 12. Review OBSTRUCTING. Obstructing what lawful duty?
 13. How decision made to charge obstructing

NOT A PUNCH, OPEN HAND

