LEXINGTON POLICE DEPARTMENT **PERSONNEL ORDER** Lexington, Kentucky	DATE OF ISSUE	EFFECTIVE DATE	NUMBER
	September 13, 2021	October 9, 2021	PO:21-349

TO: RETIREMENT	AMENDS:
INDEX AS: OFFICER JUSTIN BURNETT	RESCINDS:

This is to advise on the retirement of Officer Justin Burnett on Years of Service, to be effective, October 9, 2021.

Lawrence B. Weathers

Lawrence B. Weathers
Chief of Police

LBW/rmh

Lexington-Fayette Urban County Division of Police **MEMORANDUM** Lexington, Kentucky	DATE OF ISSUE August 23, 2021	EFFECTIVE DATE	NUMBER COP: 21-0138

TO: Commander Chad Bacon Public Integrity Unit	SUBJECT: Formal Complaint PIU2021F-016 Officer Justin Burnett
FROM: Lawrence B. Weathers Chief of Police	

I am recommending that Officer Justin Burnett be scheduled to go before the Disciplinary Review Board in regards to his Formal Complaint (PIU2021F-016).

Lawrence B. Weathers

Lawrence B. Weathers
Chief of Police

LBW/rmh

Attachment

cc: Public Integrity Unit

FORM 202

LEXINGTON POLICE DEPARTMENT **MEMORANDUM** Lexington, Kentucky	DATE OF ISSUE	EFFECTIVE DATE	NUMBER
	08/11/2021	08/11/2021	PIU 21-080

TO: Lawrence Weathers Chief of Police	SUBJECT: Summary of Formal Complaint on Ofc. Justin Burnett, PIU2021F-016
FROM: Lieutenant Matt Brotherton Bureau of Investigation - Public Integrity Unit	

Sir,

This memorandum will provide a summary of the investigation into the Formal Complaint filed by Lt. Chris Van Brackel against Officer Justin Burnett. According to the Complaint:

On 06-25-21, officers were dispatched to 175 N. Mt. Tabor regarding a report of domestic violence. Upon arrival they located the suspect in an apartment at this location after speaking briefly with the female victim. The officers asked the subject to come out of the apartment, however he did not comply and attempted to close the door on the officers. While the suspect continued to force the door closed on the officers the Taser was utilized on the suspect in order for the officers to gain access into the residence. Upon gaining control of the suspect and handcuffing him, Officer Burnett continued to engage with the subject and the situation escalated to the point where Officer Burnett placed his hands in the area of the subject's neck. Officer Burnett was eventually pulled off the suspect by another officer on-scene to de-escalate the situation.

If the above allegations are true, Officer Justin Burnett has violated **General Order 1973-02K Disciplinary Procedures of Sworn Officers, Appendix B, Operational Rule 1.23 Use of Force,** which states *No officer shall use more force in any situation than is reasonably necessary under the circumstances. The use of physical force shall be restricted to that amount of force which is reasonable and necessary to effect a lawful arrest, overcome resistance, or in defense of self or others. Officers shall use force in accordance with law and established procedures.*

Investigation

Pursuant to being assigned the formal complaint, I reviewed all relevant BWC footage and submitted memos. The following is a synopsis of the event:

On Friday, 06/25/2021, Officers Justin Burnett and Rebecca McAllister were dispatched to 175 N. Mt. Tabor Apt. for a report of domestic violence. At the scene, they met with the victim and then attempted to make contact with the suspect who was still in the apartment. Based on the statements given by the victim, the Officers had sufficient information to charge the suspect with Assault 4th, Domestic Violence.

Officers Burnett and McAllister made contact with the suspect, Juan Turcios, when he opened the apartment door slightly. Mr. Turcios refused to allow Officers inside. Mr. Turcios attempted to close the door on the Officers, but Officer Burnett was able to get his body into the doorway enough to prevent the door from being completely shut; however, Mr. Turcios pressed his body against the door, trapping Officer Burnett in the doorway.

After giving repeated directions to Mr. Turcios, Officer Burnett deployed both of his Taser Cartridges; the deployments were ineffective. Officer Burnett then borrowed Officer McAllister's Taser and Mr. Turcios stepped away from the door. Officers Burnett and McAllister then entered the apartment, deployed a third cartridge, and were able to handcuff Mr. Turcios.

Following the handcuffing of Mr. Turcios, Officers moved him to a seated position in the apartment hallway. There, Officer Burnett and Mr. Turcios continued speaking to each other about the incident. Ultimately, Officer Burnett yells at Mr. Turcios and tells him to "Shut the fuck up!" and then reaches down and begins to engage physically with Mr. Turcios. The two of them move down the hall, Mr. Turcios handcuffed on his back and side, and Officer Burnett standing over him.

The two end up in the bathroom where they are yelling at each other and Officer Burnett places his right hand under Mr. Turcios' chin in the neck area. Officer McAllister and Officer Logan Stricker then pull Officer Burnett off of Mr. Turcios. Officer Burnett then leaves the apartment and Officer Sticker stays with Turcios.

Officers Stricker, in his submitted memo, stated that he "observed Officer Burnett's hands around the suspect's neck" and that he assisted Officer McAllister in "pulling Officer Burnett off of the suspect." Officer McAllister, in her submitted memo, stated:

> *The suspect was also yelling so much that he was spitting in Officer Burnetts' face, causing him to lose his patience with the suspect to the point that Officer Burnett had placed his hands around the suspect's throat. Officer Stricker and I pulled Officer Burnett off the suspect to keep Officer Burnett from hurting the suspect. Recognizing that Officer Burnett was clearly upset, I told him to go outside to get away from the suspect.*

Lt. Van Brackel reviewed the incident and determined that Officer Burnett placed his hand first over Mr. Turcios' mouth and then on his neck, utilizing inappropriate control techniques and force. Additionally, he determined that Officer Burnett's language escalated the situation.

<u>Training Review</u>

The incident was submitted to the training section for review. According to Sgt. Kidd:

> *Based on the suspect's actions and the totality of circumstances presented at the time of the incident, it was not an appropriate use of force by Officer Burnett to choke the handcuffed suspect. Under our policy "Choke holds (i.e. a physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation) are prohibited unless deadly force is authorized."*
>
> *Officer Burnett was not presented with a deadly force situation that justified physically choking a handcuffed suspect. In this case the actions by Officer Burnett are not consistent with our department's policy and runs counter to our Defensive Tactics instruction. Officer Burnett's actions were not an objectively reasonable amount of force in this particular case.*

Additionally, on July 19th, Officer Burnett completed de-escalation and defensive tactics retraining with the Training Section.

Interview with Officer Burnett

On July 23rd, 2021, Lt. Biroschik and I spoke with Officer Burnett in the PIU Office. We spoke to Officer Burnette after he completed his retraining. Below is a summary of the recorded interview.

During the conversation, Officer Burnette acknowledged that he did not act appropriately and that he allowed Mr. Turcios to frustrate him to the point that he used inappropriate language and control techniques that are not approved.

When asked whether he violated policy, Officer Burnette said that he did violate policy in regards to profanity and that he "maybe" violated policy with the force he used. Officer Burnette said that he was attempting to move Mr. Turcios' head so that Mr. Turcios could not continue to spit on Officer Burnette. He stated that he does not know what else he could have done.

Officer Burnette acknowledged that he did not clearly recall his actions from the incident. He stated that he did not know that he had his hand on Mr. Turcios' neck until he watched Officer Stricker's BWC footage.

Conclusion

Officer Burnette, during his interactions with Mr. Turcios, failed to use de-escalation techniques as taught by the Lexington Police Department. Officer Burnette's use of profanity and unauthorized control techniques ultimately led to other officers having to remove him from the scene. According to the Training Section, the force used by Officer Burnette was not consistent with the Lexington Police Department's training or expectations.

Lieutenant Matt Brotherton
Bureau of Investigation
Public Integrity Unit

cc: file – PIU 2021F-015

Lexington Police Department **MEMORANDUM** Lexington, Kentucky	DATE OF ISSUE	EFFECTIVE DATE	NUMBER
	July 14, 2021		PIU: 21-073

TO:	SUBJECT:
Assistant Chief Brian Maynard Bureau of Patrol	FORMAL COMPLAINT
FROM: Lieutenant Matthew Brotherton Bureau of Investigation Public Integrity Unit	

COMPLAINANT: Lieutenant Chris Van Brackel

ACCUSED OFC.: Officer Justin Burnett

ALLEGATION: Violation of General Order 1973-02K Disciplinary Procedures of Sworn Officers, Appendix B, Operational Rule 1.23 Use of Force.

ALLEGED CIRCUMSTANCES: On 06-25-21, officers were dispatched to 175 N. Mt. Tabor regarding a report of domestic violence. Upon arrival they located the suspect in an apartment at this location after speaking briefly with the female victim. The officers asked the subject to come out of the apartment, however he did not comply and attempted to close the door on the officers. While the suspect continued to force the door closed on the officers the Taser was utilized on the suspect in order for the officers to gain access into the residence. Upon gaining control of the suspect and handcuffing him, Officer Burnett continued to engage with the subject and the situation escalated to the point where Officer Burnett placed his hands in the area of the subject's neck. Officer Burnett was eventually pulled off the suspect by another officer on-scene to de-escalate the situation.

ACTION REQUESTED:

- The Bureau Commander and Officer Burnett should sign the Acknowledgment Sheet and process this complaint.
- The Commanding Officer should provide the attached copy of the Form 111 and the Officer's Rights Packet to Officer Burnett.
- Officer Burnett should contact the Public Integrity Unit to arrange for a time to provide a formal statement.

	DATE	TIME
Bureau Commander	07/19/21	0830
Supervisor	07/19/2021	0723
Officer	07/19/21	0723

Accused officer would like the Public Integrity Unit to notify the FOP President or their designee that a formal complaint is filed against them. (Circle One) YES or NO

Returned to the Public Integrity Unit M L BROTHERTON 07/19/21 11:45

Lieutenant Matthew Brotherton
Bureau of Investigation
Public Integrity Unit

mrv

enclosures

cc: Chief Lawrence Weathers
file – PIU2021F-016

FORM 202

Lexington Police Department
Formal Complaint
Form 111

File #: PIU2021F-016

Member(s) Involved	Employee No.	D.O.B.	D.O.E	Present Assignment
Burnett, Justin	43978		3/21/2005	BOP - East Sector

Complainant	Address-Apt. No. - Zip Code	Telephone No.
Lt. Chris Van Brackel		
Employed By	**Business Address - Zip Code**	**Telephone No.**
Lexington Police Department	150 E. Main, 40507	

Date of Incident	Time of Incident	Location of Incident	Date and Time Reported	How Reported:
6/25/2021		175 N. Mt. Tabor	7/14/2021 @ 09:57	☐ Letter ☐ Phone ☑ Person ☐ Email

Brief Description of Allegations:

On 06-25-21, officers were dispatched to 175 N. Mt. Tabor regarding a report of domestic violence. Upon arrival they located the suspect in an apartment at this location after speaking briefly with the female victim. The officers asked the subject to come out of the apartment, however he did not comply and attempted to close the door on the officers. While the suspect continued to force the door closed on the officers the Taser was utilized on the suspect in order for the officers to gain access into the residence. Upon gaining control of the suspect and handcuffing him, Officer Burnett continued to engage with the subject and the situation escalated to the point where Officer Burnett placed his hands in the area of the subject's neck. Officer Burnett was eventually pulled off the suspect by another officer on-scene to de-escalate the situation.

If the above allegations are true, Officer Justin Burnett has violated **General Order 1973-02K Disciplinary Procedures of Sworn Officers, Appendix B, Operational Rule 1.23 Use of Force,** which states *No officer shall use more force in any situation than is reasonably necessary under the circumstances. The use of physical force shall be restricted to that amount of force which is reasonable and necessary to effect a lawful arrest, overcome resistance, or in defense of self or others. Officers shall use force in accordance with law and established procedures.*

I swear/affirm that the facts set out above are true to the best of my knowledge and belief.

_______________ (Complainant) Date: 07/14/2021

Subscribed and sworn before me this date: 7/14/21 (Date) Melanie R. Votaw KYNP20919 (Notary)

My Commission Expires: 2.3.2025

Witnesses:

Name | Address | Phone Number

Recorded By: Melanie Votaw, Bureau of Investigation, Public Integrity Unit

(Rev. 10/19)

Chief of Police (or "Designee"):	
Policy Violation	**Finding**
GO 1973-02K OR 1.23 USE of FORCE	☐ Proper Conduct
	☒ Improper Conduct
	☐ Insufficient Evidence
	☐ Policy Failure
	☐ Unfounded

Chief of Police Recommendation

☐ Recommend Case Be Closed ☐ Corrective Training Recommended ☐ Below Disciplinary Action Recommended

Comments:

RELIEVED OF DUTY REFERED TO REVIEW BOARD LEVEL 2 ADMIN ASSN. VIEW BWC's PIU SYNOPSIS.

Signature: [signature] **Date:** 08/23/2021

Disciplinary Review Board	
Policy Violation	**Finding**
	☐ Proper Conduct
	☐ Improper Conduct
	☐ Insufficient Evidence
	☐ Policy Failure
	☐ Unfounded

Disciplinary Review Board Recommendation

☐ Recommend Case Be Closed ☐ Corrective Training Recommended ☐ Below Disciplinary Action Recommended

Comments:

Signature: **Date:**

Chief of Police 2nd Recommendation

☐ Recommend Case Be Closed ☐ Corrective Training Recommended ☐ Below Disciplinary Action Recommended

Comments:

Signature: **Date:**

Proper Conduct: Allegation is true; the action of the agency or the officer was consistent with agency policy.
Improper Conduct: The allegation is true; the action of the agency or the officer was inconsistent with agency policy.
Insufficient Evidence: There is insufficient proof to confirm or to refute the allegation.
Policy Failure: The action of the agency or the officer was consistent with agency policy, but the policy did not take into account the circumstances present in this instance.
Unfounded Complaint: Either the allegation is demonstrably false or there is no credible evidence to support it.