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# POLICE CONDUCT OVERSIGHT COMMISSION

Case Summary Data #8

February 8, 2016

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## OVERVIEW

Complainant alleges that while driving, officers followed him for multiple blocks. Complainant allegedly stopped at a convenient store in search of a restroom, when the store did not have one, Complainant alleges he was directed by a store employee to relieve himself outside behind the store. While the Complainant did so, allegedly officers approached him from behind with their weapons drawn. Complainant alleges that one officer put a weapon in his mouth and stated "If you move one more inch I will paint the walls with your brains". Complainant alleges he was instructed to put his hands on the hood of the squad car, where he burned his hands and was unable to keep them there. Complainant alleges that he was then violently handcuffed, received a knee to the back and his face was pushed against the hood of the squad car, causing additional burns. Complainant alleges he was called a "stupid mother\*ck\*r" and told "if you move another inch, I will break every bone in your hand". Complainant alleges he was then searched, with all possessions removed from his pockets, including the Complainant's driver's license and money. The license was returned after the incident but the Complainant alleges that the money was not. Complainant alleges excessive force was used to put him in the back of the squad car, where he was detained for approximately 20 minutes while officers allegedly played video games on their phones. Complainant was then allegedly questioned, cited for public urination and allowed to leave. Before leaving, the Complainant alleges he asked for one of the officer's badge number to which they responded "It's on the citation, you f\*ck\*ng retard". Complainant alleges he was told to "Have a nice day, you \*sshole" as he left the incident.

## THE COMPLAINT

Complainant alleges that while driving, officers followed him for multiple blocks. Complainant allegedly stopped at a convenient store in search of a restroom, when the store did not have one, Complainant alleges he was directed by a store employee to relieve himself outside behind the store. While the Complainant did so, allegedly officers approached him from behind with their weapons drawn. Complainant alleges that one officer put a weapon in his mouth and stated "If you move one more inch I will paint the walls with your brains". Complainant alleges he was instructed to put his hands on the hood of the squad car, where he burned his hands and was unable to keep them there. Complainant alleges that he was then violently handcuffed, received a knee to the back and his face was pushed against the hood of the squad car, causing additional burns. Complainant alleges he was called a "stupid mother\*ck\*r" and told "if you move another inch, I will break every bone in your hand". Complainant alleges he was then searched, with all possessions removed from his pockets, including the Complainant's driver's license and money. The license was returned after the incident but the Complainant alleges that the money was not. Complainant alleges excessive force was used to put him in the back of the squad car, where he was detained for approximately 20 minutes while officers allegedly played video games on their phones. Complainant was then allegedly questioned, cited for public urination and allowed to leave. Before leaving, the Complainant alleges he asked for one of the officer's badge number to

which they responded "It's on the citation, you f\*ck\*ng retard". Complainant alleges he was told to "Have a nice day, you \*sshole" as he left the incident.

### **ALLEGED VIOLATIONS**

1. OPCR § 172.20(1) – Excessive Force
2. OPCR § 172.20(3) – Harassment
3. OPCR § 172.20(5) – Theft
4. OPCR § 172.20(8) – Violation of the P&P Manual
5. MPD P&P § 5-301.01 – Use of Force: Based on the Fourth Amendment's "reasonableness" standard, sworn MPD employees shall only use the amount of force that is objectively reasonable in light of the facts and circumstances known to that employee at the time force is used. The force used shall be consistent with current MPD training.
6. MPD P&P § 5-105 (10) – Professional Code of Conduct: Employees shall not use indecent, profane or unnecessarily harsh language in the performance of official duties or in the presence of the public.
7. MPD P&P § 9-200(III) – Search and Seizure; Search of Persons: A full search of a person is not justified with reasonable suspicion; it requires probable cause or other condition outlined below. Officers can legally search people without a warrant in the following circumstances: Probable Cause; Search Incident to Arrest; Medical Emergency/Life-Saving; Plain View; Consent Search.
8. MPD P&P § 10-401 – Responsibility for Inventory of Property and Evidence: All MPD employees taking possession of property, whether evidentiary or non-evidentiary, shall place such property in the custody of the Property and Evidence Unit and complete the inventory prior to the end of their shift. The inventory shall include all evidence seized regardless of whether an arrest has been made.

### **COMPLAINT PROCESSING**

Following receipt of the complaint via the online system, an intake was conducted, and the matter was put before the joint supervisors for review. Upon review, the supervisors sent the matter to preliminary investigation and an investigator was assigned. Afterwards, the matter was again brought before the joint supervisors who determined that the complaint be dismissed for "Failure to Cooperate."

### **EVIDENCE**

1. Complaint
2. VisiNet
3. CAPRS
4. MNCIS
5. Squad video

### **SUMMARY OF EVIDENCE**

Complaint: In the complaint, Complainant alleges that officers followed him to a store. At the store, Complainant states that an employee told him that the store lacked a restroom and that he would have to go to the restroom in the alley behind the store. As Complainant was urinating in the alley behind the store, Complainant alleges officers approached him from behind with guns drawn and demanded that he put his hands up. When requesting more time to put to zip his pants, Complainant contends that an officer told him not move or he would, "paint the walls with your [Complainant's] blood." The Complainant then states that, as he turned toward the

officers with his arms raised, an officer placed a gun in Complainant's mouth. Complainant then states that the officer ordered him to the squad car and to place his hands on the hood of the car. According to Complainant, the hood of car was very hot and led to third degree burns on his hands.

Complainant also contends that the officers used "excessive force" when he was being placed in custody. More specifically, Complainant contends that he was harmed when: his legs were kicked outwards; his arms were forced back; he was kned in the back; and the handcuffs were placed on him. Further, Complainant contends that the officers told him that he was verbally threatened by the officers who told him that he was a "stupid m\*\*\*\*\*" and that they would, "break every bone in your [Complainant's] hand" if he moved another "inch." Afterwards, Complainant contends that the officers tightened his handcuffs to the point that "metal broke skin" and circulation was almost cut off. Complainant alleges to have photographic evidence of the injuries. According to Complainant, the officers then conducted a pat-down search of his person despite not have "probable suspicion" that he was carrying any weapon or provoked the officers in any way, and removed all of his possessions from his pockets, including money that he claims was never returned.

Following the pat-down, Complainant claims that the officers used "excessive force" when he was shoved into the back of squad car "on his face" despite being cooperative, and detained for approximately twenty minutes. During his detention, Complainant alleges that the officer's played games on their phones. While in apprehension, Complainant states that the officer's asked him why he was in the neighborhood, to which Complainant responded that he was on his way to pick up a friend and had only stopped at the store to buy a drink and use the restroom. Complainant contends that the officers accused him of attempting to buy narcotics, to which Complainant protested that he was innocent and cited the officers' lack of evidence to support the conclusion.

Complainant also asserts that he was cited for "public urination" by the officers. Upon being cited or shortly after, Complainant alleges that the officers' threatened to put handcuffs on him again and to jail him after Complainant asked the officers, "if [he] was free to go or if [he] would be shot in the head for attempting to leave." As Complainant was walking away from the scene and had inquired as to the badge numbers of the officers, he contends that an officer told him, "Have a nice day, you a\*\*\*\*\*." Lastly, Complainant contends that the injuries sustained from the incident—in particular the damage to his wrists—left him unable to perform his job, and that his treatment by the officers was a "gross misuse of power to harass [him]."

VisiNet: The report confirms that the officers named in the complaint were at the scene. The report also shows that the officers ran a background check of Complainant.

CAPRS: In the report, officers notated that they noticed an individual (Complainant) urinating in public. Officer 1 states that the officers approached Complainant and asked him to show his hands, to which Complainant did not respond promptly. According to Officer 1, the failure of Complainant to produce his hands led Officer 1 to draw his weapon. According to Officer 1, upon learning that the officers had drawn their weapon, Complainant yelled, "I'm only peeing, man!" to the officers; Officer 1 claims that he holstered his weapon upon hearing that Complainant was peeing, and ordered him to the squad car. Officer 1 further alleges that, after being ordered to the squad car,

Complainant became “argumentative” and kept repeating that he was only “peeing.” Also, Officer 1 claims that, during a pat-down search, Complainant was very tense and would not keep his hands out in front, leading Officer 1 to perform a “wrist lock” on Complainant in order to handcuff him. Finally, Officer 1 states that he cited the Complainant for public urination.

MNCIS: A register of actions—dispositions—from Complainant’s prior charges, arrests and convictions, including his public urination charge.

Squad video: In the squad video, which lasts close to two minutes, an officer can be heard asking Complainant “why he was peeing in the alley.” The officer also instructs Complainant that it is against ordinance to do so. In the video, the Complainant is noticeably handcuffed in the backseat, occasionally moving his head from side to side. In the video, Complainant apparently responds to the officers; however, Complainant’s audio is extremely muffled and mostly inaudible.

## **INVESTIGATION**

The investigator called Complainant on two occasions. On the first occasion, the investigator was unable to reach Complainant directly, but was able to speak to a sibling, who told the investigator that she would leave a message with Complainant. According to the investigator, Complainant never returned his initial call. A few weeks later, the investigator claims he called again, this time reaching Complainant. During the discussion, Complainant confirmed that he had received the prior message from his sibling; he also told the investigator that he would call another time to set up an interview with him. The investigator contends that Complainant never called back.

The investigator reviewed available evidence—including a squad video of Complainant in custody—but failed to find a violation. Without more, in particular Complainant’s statement, the case lacked evidence to proceed.