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# POLICE CONDUCT OVERSIGHT COMMISSION

Case Summary Data #3

March, 2016

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## OVERVIEW

Complainant alleges her family was stopped by officers as they were removing supplies from a job. Complainant alleges her minor son was hit on the head with a flashlight. Complainant alleges when she asked officers why that happened, she was told to "stay away." Complainant alleges once the property owners confirmed Complainant's story the officers refused to believe her story and did not explain to Complainant's oldest son why his brother was hit. Complainant alleges officers tried to knock the cell phone from her eldest son's hand. Complainant alleges that when her eldest son was arrested, a group of officers took him to the ground, and pushed his entire body and head into the ground.

## THE COMPLAINT

Use of Force – Complainant alleges her family was stopped by officers as they were removing supplies from a job. Complainant alleges her minor son was hit on the head with a flashlight. Complainant alleges when she asked officers why that happened, she was told to "stay away." Complainant alleges once the property owners confirmed Complainant's story the officers refused to believe her story and did not explain to Complainant's oldest son why his brother was hit. Complainant alleges officers tried to knock the cell phone from her eldest son's hand. Complainant alleges that when her eldest son was arrested, a group of officers took him to the ground, and pushed his entire body and head into the ground.

## ALLEGED VIOLATIONS

1. OPCR § 172.20(1) – EXCESSIVE FORCE
2. OPCR § 172.20(3) – HARASSMENT
3. MPD P&P § 5-301 – 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.
4. MPD P&P § 5-104 – IMPARTIAL POLICING: All investigative detentions, pedestrian and vehicle stops, arrests, searches and seizures of property by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution and statutory authority. Officers must be able to articulate specific facts, circumstances and conclusions that support reasonable suspicion or probable cause for a pedestrian or vehicle stop, investigative detention, arrest, non-consensual search or property seizure.

## COMPLAINT PROCESSING

A complaint was received via the online system and the matter was brought before the joint supervisors for intake review. Upon review of the matter, the joint supervisors determined that it be sent to preliminary investigation and assigned an investigator. Upon recommendation of the investigator, the matter was dismissed for failure to cooperate by the joint supervisors.

## **EVIDENCE**

1. *Complaint*
2. *VisiNet Report*
3. *CAPRS Report*
4. *SCALES audio interview*
5. *Photos of Eldest and Youngest Sons*
6. *Safezone footage (video)*
7. *Use of Force Report*
8. *911 call (audio)*
9. *Dispatch calls (audio)*

## **SUMMARY OF EVIDENCE**

*Complaint:* In the complaint, Complainant contends that she and her youngest son, a juvenile, assisted her eldest son—who owned a cleaning business—in cleaning a daycare center; a job that was completed in the early morning hours. Complainant alleges that while loading supplies into vehicles following the end to the job and during a search for missing keys, Officers 1 and 2 approached the group of cleaners. According to Complainant, the officers inquired as to their actions, to which Complainant replied that they had just finished assisting her eldest son, were loading vehicles and were searching for missing keys. Complainant asserts that when she asked the officers if, “there was something going on,” one officer replied that a person in the neighborhood had reported “proowler activity.”

Next, Complainant contends that her youngest son told the officers that his brother’s (eldest son’s) car keys were missing and was searching for them in his pockets. Complainant alleges that Officer 1 then struck her youngest son on the side of the head with his flashlight. After the strike, Complainant contends that she asked Officer 1 “for an explanation for hitting” her youngest son. During her inquiry, Complainant contends that Officer 2 told her to stay away, and other officers that arrived at the scene also threatened to tase her. At one point, Complainant contends that she was pushed by Officer 2 and told to “stay out.” Further, complainant contends that the owners of the business that had been cleaned by Complainant and her son called and informed police that her sons and the rest of her son’s crew had a legal right to be there. According to Complainant, the officers refused to believe their story.

Also, Complainant contends that her eldest son began to question Officers 1 and 2 as to their actions, and began to record them via his phone. During the filming, Complainant alleges that an officer attempted to knock her eldest son’s phone down. Soon after the arrival of other officers, Complainant alleges that the officers were instructed that her eldest son had been obstructing justice, which led to four to six officers subduing her son. Complainant contends that the arrest began with the officers pushing her eldest son’s entire body and head to the ground, and that her eldest son only muttered “ok, ok [sic]” to the officers upon apprehension. During the arrest, Complainant states that she was “screaming and begg[ing] the [officer’s] not to hurt [her] son.”

VisiNet Report: In the report, it is noted that Officers 1 and 2 were the first to arrive at the scene of the incident, followed by other officers. It is also noted in the report that a caller had placed a call alleging that:

“2 [males of a particular racial group]” were “WALKING UP AND DOWN...ONE IN WHI T SHIRT AND THE OTHER INBLK CLOTHING ABOUT 40YO...TRYING CAR DOORS.”

In the report, as well, the record checks of both the eldest and youngest sons were searched post arrest.

CAPRS: In the public data section of the report it is stated that the officers responded to a prowler complaint and had located “POSSIBLE SUSPECTS.” Further, it is stated that the officers approached a group outside in parked vehicles, with one male leaning inside of a parked vehicle. The report states that the youngest son was taken into custody and that the eldest son, “ATTEMPTED TO OBSTRUCT AND INTEREFERE...WAS TOLD THAT HE WAS UNDER ARREST...AND HE [eldest son] FORCEFULLY RESISTED OFFICERS.” The report goes on to further elaborate that the eldest son was eventually “secured” following a “struggle.”

Supplement of Officer 1: In the report, Officer 1 contends that he witnessed two males next to a car vehicle. Further, Officer 1 alleges that a male, later identified as youngest son, was attempting to, “conceal himself behind the parked vehicle and put something into his pocket.” Upon exiting the squad car, Officer 1 contends that he told the youngest son to put his hands on the vehicle, to which the youngest son failed to comply by “walking backwards” from the officers. At this point, Officer 1 states that he grabbed the youngest son’s, “arm with his left hand” while holding a flashlight in the other. Upon grabbing the youngest son, Officer 1 alleges that the youngest son tried to “twist” away and grabbed onto Officer 1’s right arm. Officer 1 further elaborates that the youngest son left hand, “shot down to his left pocket.” Officer 1 alleges that he feared the youngest son would grab a weapon and instinctively struck the juvenile with his flashlight, aiming for the youngest son’s, “muscle mass of [his] upper shoulder of the arm that was reaching for his pocket.” However, Officer 1 asserts that the strike, “bounced off the top of [the youngest son’s] should[er] and I believe also hit on the lower left side of his head.”

Further, Officer 1 states that the eldest son began interfering with the arrest and was ordered to stop and leave the area. Allegedly due to his non-compliance and “belligerent behavior,” Officer 1 ordered the eldest son arrested upon the arrival of other officers.

Supplement of Officer 2: Officer 2 received the call and responded to the scene. Upon arrival, Officer 2 states that he noticed a male looking into a van and another standing on a sidewalk. Upon approaching the group, Officer 2 claims that he noticed the youngest son shoving something into his pockets. Officer 2 also claims that the youngest son appeared to be hiding from the officers. The officers then allegedly approached as they feared that the youngest son may “flee on foot.” While the officers approached the youngest son, Officer 2 claims that Complainant approached him and asked him why the officers “were stopping” and inquiring. Officer 2 contends that soon after the eldest brother and two others joined Complainant. In response to Complainant’s questions, Officer 2 contends that he told her that they were there due to a complaint involving a “car prowler” and further explained that two individuals [neither the youngest or eldest son] matched the description of suspicious individuals from the dispatch call.

Next, Officer 2 states that he heard a female scream and saw the youngest son pulling away from Officer 1. Officer 2 then states that he told the crowd to stay away. Nonetheless, according to Officer 2, Complainant ran passed Officer 2, placing herself between Officer 2 and Officer 1, who was struggling with the youngest son. In response, Officer 2 contends that he grabbed Complainant around “the upper chest with [his] arm” and pulled her back away. Afterward, Officer 2 states that he and Officer 1 were able to put the youngest son in handcuffs. During the arrest, Officer 2 contends that the group surrounding them was yelling and began moving in closer.

Upon the arrival of other officers, Officer 2 states that he walked the youngest son to the squad car and did a weapons search of his person; two cell phones, a wallet and a set of keys were retrieved from the youngest son.

Officer 2 alleges he also heard people yelling during his search of the youngest son and saw officers arresting the eldest son.

Supplement of Officer 3: Upon Officer 3’s arrival to the scene, he claims that he heard officers telling others to “GET BACK!” Officer 3 believed the group to be about six individuals, among them was a male in his 40s wearing “black clothing” and a younger male wearing dark clothing. According to Officer 3, the eldest son was not following the directives of the officers, instead yelling back at officers and “attempting to interrupt the lawful arrest of” his brother.

Further, Officer 3 alleges that eldest son was two feet from the officers and recording the event. Officer 3 claims that he warned the crowd to “get back’ as they were involving themselves in the arrest.” During this, Officer 3 contends that eldest son became more irate and uttered negative comments to Officer 3. Afterwards, Officer 3 states that he told the eldest son to get back and pushed him when did not cooperate. Next, Officer 3 contends that Officer 1 told him that eldest son had obstructed legal process and ordered him arrested.

During Officer 3’s attempts to arrest eldest son, Officer 3 contends that he resisted, leading him to use a “straight-arm take down” on the eldest son. During the take down, Officer 3 alleges that the eldest son used his elbows to strike Officer 3’s neck area. During the struggle on the ground, Officer 3 contends that he lost control of the eldest son’s wrist but was able to gain control of eldest son with his knee after an “exhausting struggle.” With his knee placed on eldest son, Officer 3 contends that he instructed him to stop resisting. Instead, Officer 3 alleges that eldest son kept rolling around, eventually freeing himself. In order to gain control of eldest son, Officer 3 contends that he moved his knee from eldest son’s upper shoulder to his head. The maneuver, Officer 3 states, allowed him to gain control of eldest son’s body so as to handcuff him.

Lastly, Officer 3 states that the eldest son complained of injury on his way to jail and was transported to a local hospital.

Supplement of Officer 4: Officer states that upon arriving he noticed officers attempting to handcuff eldest son with “4 other people around screaming.” During the apprehension, Officer 4 contends that a person alleging to be eldest son’s wife began screaming at Officer 4 that the police had “assaulted her husband and her brother.” Also, Officer 4 states that Complainant began asking him questions in regards to police action.

Next, Officer 4 asserts that he inquired the officers as to what occurred, to which they replied that they had been called to a “report of a prowler in the area.” According to Officer 4, Officers 1 and 2 asserted to him that they had seen parties matching the description of the call and that one party “attempted to duck out of their sight and go into his pocket,” leading them to suspect that he was “concealing something in his pocket.”

Further, Officer 1 told Officer 4 that he tried to gain control of the youngest son by grabbing his arm and was “forced to strike the youngest” with his flashlight when the youngest son grabbed Officer 1’s arm. Also, Officer 4 contends that Officer 1 managed to break away from Officer 1 and attempted to hide behind eldest son. Upon this happening, Officer 4 alleges, Officers 1 and 2 informed Officer 4 that eldest son “began to interfere with the arrest” of youngest son.

Also, Officer 4 contends that Officer 1 told him that eldest son was not apprehended till backup arrived due to the “angry crowd of people who were also at the scene,” and when he was apprehended, he actively resisted and was taken to the ground, leading Officer 3 to drop a knee on him in order to handcuff him.

According to Officer 4, Complainant told Officer 4 that her sons, other co-workers, and she had been “cleaning a business and had lost some keys.” Officer 4 further states that Complainant told him that the youngest son was not hiding behind a van but was looking for the missing keys when Officers 1 and 2 approached. Officer 4 also contends that Complainant told him that officers instructed her as to their presence (prowler activity), but that her youngest son had been struck for no apparent reason, and that neither of her children (youngest son and eldest son) had done anything wrong—a sentiment reiterated by eldest son’s wife to Officer 4.

Officer 4 also spoke to youngest son, who allegedly told him that he was near the van “looking for keys” and denied hiding from Officers 1 and 2. Officer 4 also contends that the youngest son told him that he had his hands in his pockets as he was looking for the missing keys, and did pull away from Officer 1 upon being grabbed, but only as it was a “natural reaction’ to being grabbed.” Officer 4 also states that youngest son told him that he recognized that Officers 1 and 2 were officers, and that he did not need medical attention.

According to Officer 4, eldest son told him that he was “simply recording the situation with his phone when he was attacked by Officers [sic],” and also that he did not require medical attention but that his stomach did hurt. Officer 4 also contends that eldest son appeared to have scuff marks on his face resulting from the arrest.

Lastly, Officer 4 states that Complainant told him that the police had used unnecessary force, upon which Officer 4 provided her with information to file a complaint and a blue number.

Supplement of Officer 5: Officer 5 states that he arrived to the scene during the apprehension of eldest son. Upon arrival, Officer 5 told a short female, later identified as Complainant, to “step back and not interfere with what was happening.” Later, Officer 5 claims he spoke with Complainant who told him that, “they had finished cleaning a nearby building and they then began loading two vans with cleaning equipment.” Further, Officer 5 states that Complainant told him that she and her youngest son were looking for keys to one of the vans when the officers arrived. Upon their arrival, Complainant allegedly told Officer 5 that the officers began asking questions and one of

them soon struck her youngest son with a flashlight, prompting her eldest son to begin recording the event. Allegedly in response to his filming, Officer 5 states that Complainant told Officer 5 that officers grabbed her eldest son's phone and pushed him against a wall and to the ground.

Afterward, Officer 5 states that he spoke to Witness 1 who told him that Officers 1 and 2 arrived while youngest son and eldest son were loading vans, and soon began asking questions. Next, Officer 5 states that Witness 1 told him that one of the officers struck the youngest son, and not long after apprehended the eldest son for filming the incident.

Lastly, Officer 5 claims that Witness 2 alleged that police began beating and hitting youngest and eldest son without saying anything to them.

Supplement of Officer 6: Officer 6 states that, along with Officer 3, he responded to the call, and helped to apprehend eldest son. Officer 6 alleges that eldest son began to struggle with both officers upon apprehension. During the struggle, Officer 6 claims that he "secured [eldest son's] legs and pinned him to the sidewalk," while other officers secured the handcuffs on eldest son.

Supplement of Officer 7: Officer 7 states that the Post-Miranda interview was denied by eldest son as he had requested a lawyer.

SCALES audio interview: In the audio, the eldest son denies Officer 7 (investigator) the right to interrogate him without the presence of a lawyer.

Photos of Eldest and Youngest Sons: Eldest son appears to have two abrasions on the left side of his cheeks approximately  $\frac{3}{4}$  of an inch to an inch in circumference. There is also apparently pierced skin on the left side, and a smaller abrasion on his right side. The eldest son also appears to have rosy, slightly busted lips. Lastly, the youngest son does not have any apparent injuries, aside from reddened eyes.

Safezone footage (video): the footage does not provide a view of the incident.

Use of Force Report: See Supplement 4 of the CAPRS report.

911 call (audio): Reported in the call that "2 [individuals of a particular racial background] are trying to break into cars, "in front of building...one has white T-shirt and the other is in black." The caller also tells dispatch that they appeared to be in their 40s and that neither had gained entrance to a vehicle.

Dispatch calls (audio): mentioned that an officer needs help, code 4, at the scene of the incident.

## INVESTIGATION

After the complaint was filed, the investigator called Complainant but failed to reach her, instead leaving a message with her phone. The same day, Complainant called the investigator back, and the investigator informed her that he wished to set up interviews with her sons in relation to the matter. He also told Complainant that her eldest son may wish to consult an attorney before speaking to him as he was currently dealing with a criminal charge from the incident. Complainant then told the investigator that her youngest son had sought medical

treatment from the incident, and that she would provide medical information to the investigator. At the end of the conversation, Complainant told the investigator that she would call back the following week, of which she failed to do. Several months after the Complainant failed to reply, the investigator sent a letter via certified mail requesting that Complainant speak with him in relation to the matter. The letter was delivered but no party was able to accept, and a notice of delivery was left. Approximately a month later, the investigator called Complainant but she failed to answer. Further, the investigator attempted to leave a message; however, the phone would not relay back to a voice answering machine and no message was left resultantly. Afterward, the investigator suggested that the office dismiss the complaint for "Failure to Cooperate."