
POLICE CONDUCT OVERSIGHT COMMISSION
Case Summary Data #4
May, 2016

OVERVIEW OF THE COMPLAINT

Complainant alleges she overheard officers conspiring to commit perjury while outside a courtroom prior to trial.

ALLEGED VIOLATIONS

1. OPCR Ord. § 172.20(8) –Violation of MPD P&P Manual
2. MPD P&P § 5-102 - All sworn and civilian members of the department shall conduct themselves in a professional and ethical manner at all times and not engage in any on or off-duty conduct that would tarnish or offend the ethical standards of the department. Employees shall abide by the City’s Ethics in Government Policy, Chapter 15.

COMPLAINT PROCESSING

Following receipt of the complaint via the online system, the matter was put before the joint supervisors for review, who determined that it be sent to preliminary investigation. At the conclusion of the preliminary investigation, the investigator recommended that the matter be dismissed for “no basis” as the officers involved were trying to “refresh their memories” involving non-material particulars of the case and not attempting to “fabricat[e]” any material facts “relevant to the culpability of the defendant.”

EVIDENCE

1. Complaint
2. VisiNet 1
3. CAPRS
4. Video
5. Memo from Prosecutor

SUMMARY OF EVIDENCE

Complaint: In the complaint, Complainant states that she is a defense attorney who was called to a proceeding at court. While waiting for a client, Complainant asserts that she overheard Officers 1 and 2 having a discussion regarding an upcoming case in the hallway. According to Complainant, she heard Officer 1 tell Officer 2, “You gotta have this. Look, this is how you win the case.” Complainant believes that the statement was a reference to a document. In reply, Complainant states that Officer 1 asked Officer 2 if he was the driver of the car, to which he replied, “I don’t remember it that way.” Complainant contends that Officer 1 told Officer 2 ‘something to the effect’ of “No, you were the driver, got it?” Afterward, Complainant states that Officer 1 and 2 continued to get their stories in alignment prior to testifying. She also contends that Officer 3 and a Hennepin County Sheriff were present during the exchange.

After overhearing the incident, Complainant contends that she approached the defendant of the case and told him what had occurred and that she would testify in support of him. Also, Complainant states that she approached the prosecutor and informed the prosecutor of the alleged ethical violation, prompting the prosecutor to have a word with Officer 1 and 2. After

speaking with Officer 1 and 2, Complainant asserts that the prosecutor decided to dismiss the case—a petty misdemeanor.

Following the dismissal, Complainant contends that Officers 1 and 2 became upset.

VisiNet 1: The report details that Officers 1 and 2 were at the scene of the incident for the purposes of “Traffic Law Enforcement.” It is also noted in the report that Officers 1 and 2 ran the plates of a vehicle and a background check of the suspect, later defendant.

Video: The video begins with the pull-over of a vehicle. After pulling over the vehicle, Officer 1, the driver, exits the vehicle first, and Officer 2 follows. Upon exiting the vehicle, Officer 1 walks to the driver side and begins, it appears, a conversation. [All conversations from the stop were non-audible due to the lack of mic coverage from Officer 1 and 2]. Officer 2 also approaches the passenger side of the vehicle. After some apparent discussion with the driver, Officer 1 eventually retrieves documents from the suspect. Upon retrieving the information, both officers returned to their squad vehicle. Shortly after entering the vehicle, Officer 2 asks Officer 1 if he is “giving him a citation,” to which Officer 1 replies, “Yep.” After a few minutes, Officers 1 and 2 exit their vehicles again and hand some documents to the driver. Not long after that, the video ends. The video is approximately 10 minutes long.

Memo from Prosecutor: The prosecutor contends that she was approached by Complainant, who was at court regarding a different case, and asked to speak with her in the hallway. After agreeing, the prosecutor alleges that Complainant told her that she had overheard “one officer tell another officer ‘don’t say that, testify like this’ or something to that effect.” Complainant also informed the prosecutor that she had told the defendant and would go to the referee if necessary, to which the prosecutor contends she told Complainant to do what was necessary and that the prosecutor would speak to the officers.

During the prosecutor’s discussion with the officers regarding Complainant’s comments, the prosecutor contends that the officers told her that they were trying to get “their ducks into a row” regarding who was driving the vehicle. Further, the prosecutor states in her memo that the officers told her they remembered why the defendant was pulled over—for using his GPS while in traffic.

Afterward, the prosecutor contends that she approached the defendant and told him that the officers had “differing recollections about who had been driving and who approached on what side.” According to the prosecutor, the defendant said he remembered who had approached and on what side, that his wife was present, and that the officers had been lying. Upon the defendant’s statement, the prosecutor claims she asked if the defendant would be OK with a continuance due to the faulty memories of the officers—a suggestion the defendant refused.

After the exchange, the prosecutor contends that Officer 1 asked to speak to her in private and admitted that he was beginning to “doubt his recollection of what happened” as he did not remember who was driving, on what side he approached, and whether the defendant’s wife was present. The prosecutor also states that Officer 1 admitted that he and his partner should have retrieved a squad video to refresh their memories. Upon Officer 1’s admission, the prosecutor informed the defendant that he could acquiesce to a continuance or shake “hands with the officers realizing that sometimes people don’t have perfect memories” and the prosecutor would dismiss the case. According to the prosecutor, after the defendant agreed to the latter proposal, the case was dismissed without informing the referee as to why.

INVESTIGATION

At the outset of the investigation, the investigator met with the prosecutor, showed her the written complaint of the Complainant, and asked her if the officers' actions amounted to perjury. According to the investigator, the prosecutor dismissed the perjury claim as the officers were trying to remember "the facts of the case in preparation for trial" and not trying to lie in court. Shortly after, the investigator contends, the prosecutor sent him a memo outlaying what occurred per his request.

Also, the officer reviewed the squad video and noted that the defendant was pulled over not long after moving from a stop light. The investigator also notes that Officer 1 exited the vehicle from the driver side and approached the defendant/driver of the vehicle; Officer 2 exited from the passenger side and approached the passenger side of the vehicle. Finally, in relation to the video, the investigator notes that Officer 1 is seen issuing a citation while Officer 2 is observing from the passenger side of the vehicle.

After reviewing the evidence, the investigator surmised that Officers 1 and 2 had not committed a violation. In support of this, the investigator noted that Officers 1 and 2 were trying to straighten non-material facts—such as who was driving and who approached from what side—and not any facts material to the alleged crime itself. The investigator also noted that:

[I]t is a "known general principle that officers discuss details of incidents, citations, arrests, investigative casework, and other aspects of a particular case prior to trial –just as attorneys do, in order to be prepared in court.

The investigator believes that the "general principle" is supported by the statement that the officers remembered what the "defendant was doing and what he was cited for, and were only discussing administrative aspects of the case." Also, the investigator noted it was reasonable to infer that, based upon the experience of the senior officer involved—Officer 1—and the petty nature of the violation, that the officers would not risk perjuring themselves. Furthermore, the investigator noted that the prosecutor did not "write that the discussion between the officers had any bearing on her decision to dismiss the case."