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**POLICE CONDUCT OVERSIGHT COMMISSION**  
Case Summary Data #10  
July, 2016

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**OVERVIEW OF THE COMPLAINT**

Officer conducted a search based upon the assumption that homeless individuals generally have weapons.

**ALLEGED VIOLATIONS**

1. OPCR Ord. § 172.20 (8)
2. MPD P&P § 5-103 – Use Of Discretion: Police Action - Legally Justified: Officers must act within the limits of their authority as defined by law and judicial interpretation, thereby ensuring that the constitutional rights of individuals and the public are protected. 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.

**COMPLAINT PROCESSING**

The complaint originated from a prior complaint after the joint supervisors reviewed the case and believed a statement within the CAPRS report—that the officer was concerned the suspect would have a “weapon as homeless general do”—pertaining to the officer’s sense of safety and reasoning for frisking the suspect deserved further inquiry. After deliberation during intake review, the joint supervisors decided that the matter be sent to coaching. A completed coaching was received by the Office of Police Conduct Review not long after and approved by the joint supervisors, who then closed the complaint.

**EVIDENCE**

1. VisiNet
2. CAPRS

**SUMMARY OF EVIDENCE**

VisiNet: The problem in the report is listed as “Check the Welfare.” In the comments section the following is noted: UNK RACE M/SHORT HAIR/WRG BLK PEA COAT STUMBLING INTO TRAFFIC PAN HANDLING...HAVING A HART TIME KEEPING BALANCE.”

CAPRS: In the public data section it is stated that an individual was booked for disorderly conduct, “loiter open bottle,” and “obstructing traffic”.

Supplement 1: The officer states he received a call that “a male was on the center island and was stumbling into traffic pan handling.” The officer contends that he witnessed the individual “stumble into traffic” as he passed by the area. After witnessing such, the officer asserts that he asked the individual how he was doing, to which the individual told him to “f@#k off! I ain’t doing anything!” After the individual’s reply, the officer states that he asked the individual for his ID, and he once again told the officer to “f @#k off!” The officer asserts that he asked one more time, to which the individual replied again to “f @#k off!” and also replied that he only had a birth certificate.

According to the officer, “it was clear to [him] that the [individual] was going to be uncooperative,” and also likely that the individual was a public safety concern and a danger to himself.

As such, the officer contends that he ordered the individual to put his hands behind his back so he, “could frisk for weapons. The [individual] was so uncooperative that [he] was concerned that he had a weapon[,] as homeless generally do.” Despite his commands, the officer alleges that the individual told him “I don’t speak f@#cking English!” Further, the officer claims that he told the individual to “stop playing games with [him] or he would arrest him,” to which the individual told the officer, “f@#cking arrest me then a#%h#le!” During the encounter, the officer claims that he tried to activate his squad camera along with his remote mic, but he was unable to, largely due to the individual struggling with the officer.

According to the officer, he was able to handcuff the individual, and, incident to arrest, uncovered an open bottle of vodka in the individual’s coat pocket. While trying to maintain control of the individual and call for backup, the officer claims that the individual made a “sucking noise like he was going to spit on [the officer].” When he heard this, the officer asserts that he used the web of his hand to push the individual’s face away, staying clear of the individual’s throat but still maintaining control of his head.

Then, the officer claims that he used an “arm bar to control the [individual] and then brought him over to [his] squad.” Throughout the attempts to place the individual in custody, the officer asserts that the individual was telling him that he was going to “kick [his] ass” and for the officer to release him from his cuffs so he could do so. As more squads arrived, the officer states he was finally able to control the individual and to activate his squad camera.

In addition, the officer claims that a person from a nearby restaurant screamed at him to stop choking the individual, claiming he had witnessed it. The officer alleges he told the restaurant patron that he had not choked the individual but pushed his head away so he couldn’t spit on him. Further, the officer alleges that the individual told the restaurant patron that he had not been hurt.

Afterward, the officer states that the individual was taken to jail and booked for disorderly conduct, loiter open bottle and obstructing traffic. He further claims that the individual “continued to be uncooperative” at the jail and spit on the officer.

## **COACHING**

Upon being sent coaching documentation, the precinct supervisor analyzed the CAPRS report and interviewed the officer. At the conclusion of his investigation, the precinct supervisor coached the officer but failed to find a policy violation. The precinct supervisor asserted that the officer had stated that his words were taken “out of context,” and that he wished only to intimate that, in his years of experience, “persons within the homeless community in this area” are known to carry sharp-edged weapons, and that persons “who are acting out of control and very uncooperative routinely” have “concealed weapons on their persons.” As such, the precinct supervisor stated that, “[a]ll these factors combined to heighten [the officer’s] level of concern for the possibility of a weapon being produced upon confronting [the individual]”; thus, the statement that “homeless” are armed was not pretext to search the individual.