
POLICE CONDUCT OVERSIGHT COMMISSION
Case Summary Data #5
August, 2016

OVERVIEW OF THE COMPLAINT

Complainant was at a barbeque with a number of friends. There was a gun call to the address. Officers arrived, and Complainant alleges that they approached with guns drawn. Complainant alleges that they were told to lie down on the ground, but he was tackled before he could. Complainant alleges that he was kicked and kneed while he was on the ground. Complainant alleges that one of the officers kicked a hot dog bun towards his face. Complainant alleges he was handcuffed and put in the squad car to go to jail for obstruction. Complainant alleges that he was driven several blocks away from the location, and the officer stopped the squad car. Complainant alleges that the officer told him that if he apologized "to the officer who hurt [Complainant] that maybe [he] wouldn't go to jail." Complainant alleges that they asked if he had relatives in the area and drove him to his aunt's house instead of the barbeque.

ALLEGED VIOLATIONS

1. OPCR Ord. § 172.20(3) – Inappropriate Language or Attitude
2. OPCR Ord. § 172.20(1) – Excessive Force
3. 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.
4. 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.

COMPLAINT PROCESSING

A written complaint was received by the office and an intake investigation was done subsequently. At intake review, the joint supervisors decided to send the case to preliminary investigation and assigned an investigator. At the conclusion of the preliminary investigation the joint supervisors decided that the case be dismissed for no basis.

EVIDENCE

1. Complaint
2. VisiNet
3. CAPRS
4. Interview Transcript – Witness 1
5. Interview Transcript – Witness 2
6. Interview Transcript – Complainant
7. Photos 1-9

SUMMARY OF EVIDENCE

Complaint: In the complaint, Complainant asserts that he was at a friend's barbeque when, "out of nowhere," police cars were everywhere and officers he and others at the barbeque with "guns drawn." Further, Complainant contends that the officers told him to lie down and was tackled

before he could do so. In the process of being apprehended, Complainant contends that he was kicked and kneed while he was lying down. Also, he claims that officers were “talking down” to him as if he was a “criminal,” accusing him of “having a gun.” Additionally, Complainant states that an officer kicked a “hot-dog bun towards [his] face” while he was lying on the ground, and that he and a friend—who was also apprehended by police—were the only “African Americans” at the barbeque. While being taken in for obstructing legal process, Complainant asserts that Officer 1 kept trying to get him to apologize to the “officer who hurt [him]” (Officer 2) so that he wouldn’t go to jail. Complainant asserts that he did apologize to Officer 2, and, subsequently, he was released by the police at his friend’s house.

VisiNet: In the report, the problem is listed as “Person with a Gun.” The following is also noted:

“IN REAR.....PERGUN W/M WHI SHIRT TATOOS ON NECK.....ALSO MEXICAN MALE WITH BLU HAT.....APPROX 6 OR 7 OF THEM PERGUN HAD SILVER HANDGUN.” It is also noted in the report that: officers checked the alley; a “WM WITH WHI SHIRT” was possibly in a nearby car; and that officers had a “GROUP AT GUNPOINT IN BACKYARD.” Further, it is stated that all individuals were checked for weapons and none were found and that “1 male was transported at his request to [a particular address] to get away from the poor environment.”

CAPRS: In the Public Data section it is noted that that “[a] field contact report was completed and recovered prescription drugs were inventoried.”

Supplement 1: Officer 5 states that he received the call and arrived from the west of the residence. During the inspection, Officer 1 contends that he “deployed his shotgun.” Upon approaching the residence, Officer 5 asserts that he noticed a white male wearing a white shirt and who had multiple tattoos getting into a vehicle, and promptly took him into custody.

Officer 5 claims that assisting officers put those in the backyard into custody, and he provided shotgun cover for them. During a “Terry Frisk” for weapons, Officer 1 states that only a knife was found, but—as heaps of junk and scrap were in the backyard and numerous ways to access the garage—there were ample places to hide the weapon.

Also, Officer 5 claims that officers uncovered pill bottle with suspected “aderol pills” and also that several persons at the party had informed the officers that “a ‘scrapper’ had stopped by prior to police arrival and an ‘altercation’” had occurred between the parties present.

Lastly, Officer 5 contends that Complainant—who was identified as a homeless individual—expressed that he was uncomfortable staying at the residence and asked to be transported, to which officers obliged.

Interview Transcript – Witness 1: According to Witness 1, he and some friends were having a barbecue when “cops came to [him and his friends]” with guns drawn and ordered them to “put [their] hands up.” Next, Witness 1 alleges that he saw officers “kickin’ [Complainant] in the gut and like shovin’ his face into the dirt and s***.” Witness 1 asserts that he was not far from where the alleged force occurred and that he and his friends were just having a “barbecue” prior to the arrival of the officers.

He further contends that an officer pointed a shotgun at him and his friends and simultaneously gave commands for them to lie down. Witness states that he complied with the officer’s commands and that he was “shakin’” during the ordeal.

Also, Witness 1 claims that Complainant was not doing anything wrong when his legs were kicked from under him by officers and when he was kicked on the ground afterwards. Witness 1 also asserts that officers never told them directly the reason for their presence and that no one at the party had a weapon.

Witness 1 states that he could not recall if Complainant questioned the officers about their presence, but does believe that Complainant did not threaten officers.

Interview Transcript – Witness 2: Witness 2 asserts that he and some friends were having a “good old time” when strangers came asking if they could have some scrap metal in the yard. Witness 2 claims that Complainant told them they could not have the scrap metal and also that there were no incidents thereafter with the strangers. Shortly after, Witness 2 contends that officers, with guns drawn, entered Complainant’s yard and the neighbors and pointed them at Complainant, Witness 2 and others in the backyard. Upon being approached by police, Witness 2 states that he asked officers “What’s going on,” to which the officers replied “oh, be quiet—everybody on the ground.” Further, Witness 2 claims that Complainant and another were asking officers questions like the following: Why are we getting arrested? What’s going on? Why are you guys on our property without our consent? Witness 2 asserts that officers failed to reply to the questions.

Also, Witness 2 contends that he complied with the officers’ commands to get on the ground. However, he claims that Complainant and the other did not immediately go to the ground as they were asking questions. During this, Witness 2 asserts that officers kicked Complainant’s back leg and Officer 1—who Witness 2 could not definitively identify when shown photos—drove his knee into Complainant’s back/spine area and “continued to push [Complainant’s] face into the ground.” He also claims that Officer 2, who was not physically putting Complainant into custody, kicked a hot dog bun mixed with dirt at Complainant and was “talking s*** -- just being passive-aggressive about it.” During his physical apprehension, Witness 2 states that Complainant was not resisting but kept asking questions.

Witness 2 believes that Complainant was treated this way because “[the officers] didn’t like the way [Complainant] was asking questions.” Further, Witness 2 alleges that officers did not give himself or Complainant any reason for their presence or commands. However, Witness 2 does state that later, when the homeowner came out of the home and approached officers, the homeowner was told that the party attendees had been accused of brandishing a gun by the strangers they met earlier asking for scrap metal.

After placing Complainant into custody, Witness 2 claims that officers took Complainant and the other friend to squad cars, eventually releasing the other friend but not Complainant. Afterwards, Witness 2 alleges that officers told them that they had to leave the premises.

Witness 2 denied that anyone at the party had a weapon and further accused the officers of failing to apologize for the incident and for using unreasonable force. Lastly, he asserts that he and his friends threw the barbecue to celebrate the return of a friend from the army.

Interview Transcript – Complainant: Complainant asserts that he was at a barbecue with some friends when officers with guns drawn ordered him and friends to put their hands in the air and lay on the ground. Complainant asserts that he was the closest to the officers who entered the yard. Complainant also contends that, later, officers asked if anyone had a gun and accused Complainant of having one, and also of throwing gang signs. Before Complainant could comply with the officer’s commands, he alleges that officers tackled him to the ground. Whereupon Complainant contends that an officer or officers applied pressure to his back and neck, leading to severe pain.

Complainant states that he doesn’t recall what officer took him to the ground or if he was kicked while on the ground. According to Complainant, he was on the ground for 20-25 minutes, and that during this Officer 2 and other officers were “talkin’ to [him] wrong,” telling him like as “their shoes cost three times more than [his]” and the like. Further, Complainant alleges that he was very scared of Officer 2. He also contends that Officer 2 kicked a hot dog bun toward his face. Complainant believes the officers were doing this to elicit an angry reaction from him.

Complainant contends that the encounter left him with bruises on his back and scratches on his forehead. Complainant alleges that his injuries prompted him to go to the hospital to have x-rays done. He claims that the visit did not uncover any serious damage, but contends that his back still makes a “crackin’ noise”.

Also, Complainant alleges that he did not tell the officers anything till the point he was taken to the ground. At that point, Complainant asserts that he began asking officers questions such as “why are you guys doin’ this.”

Complainant asserts that he never resisted and that officers told him that he was going to jail for obstruction though he was not obstructing. He further states that he was in a squad vehicle when this occurred. After telling officers that he had a clean record, he contends that Officer 3 told him to apologize to Officer 4. When Complainant complied with Officer 3’s demand, he contends that they agreed to let him he could go and asked where he wished to be dropped off. According to Complainant, he was told that he could not go back to the residence where the incident occurred, though he wished to return to care for a friend who is “slow.” Further, Complainant asserts that he told officers he didn’t have a specific place that he lived at but could be dropped off at his aunt’s house. Complainant states that officers agreed to drop him off at his aunt’s house.

Complainant asserts that he did not wish to be transported or be in a squad vehicle, and that he was forced to do so beyond his will. Complainant also elaborated that he believed officers threatened him obstruct in order to “scare [him] or...were tryin’ to make somethin’ happen.”

Afterward, Complainant contends that he and his mother went to the appropriate precinct to file a complaint but were told to go to a different precinct and were not given the appropriate badge numbers.

Complainant did recall in the interview that some strangers came seeking scrap metal but that they merely told them no, and that no serious altercation arose between the two parties, especially one involving guns. He also declared that no one at the party had a gun, and that the person described in the report as having a gun only had a spatula in his hand, as he was the main cook at the barbecue.

Complainant also asserts that another at the barbecue, Friend, was put into custody. Complainant states that Friend was asking the officers persistent questions when they entered the yard and that Complainant told him numerous times to be quiet. Complainant does not recall any force being used on Friend. Lastly, Complainant declared that he and friend were the only, or 2 of three, African Americans at the party. He also asserts that Friend had just recently returned from the army.

Photos 1-9: In the photos, a series of light scratches can be seen from Complainant’s forehead, approximately two inches long, along with some possible bruising near the scratched areas. There is also some noticeable reddening on his left and right wrists in a circular pattern. There also appears to be an abrasion approximately $\frac{1}{2}$ x $\frac{1}{2}$ an inch on his left wrist, close to the thumb. Lastly, there appears to be some reddening around the center of the latissimus dorsi (back), to the left of the spine on the left side, as well as some possible reddening on the center-right side of the back.

INVESTIGATION

The investigator reviewed numerous reports and interviewed individuals at the party, including Complainant. Under the first allegation, the investigator found that the officers—due to the nature of the call—had probable cause to detain and search persons/area in relation to the call. In regards to use of force, the investigator was unable to ascertain who the alleged perpetrator was, as neither the witnesses or Complainant could positively identify the officer. Further, as the case was older than two years, officers were not interviewed as it is surmised that they could not

give a reasonable interview more than two years after the alleged incident. As such, the investigator recommended that the case be dismissed for no basis.