
POLICE CONDUCT OVERSIGHT COMMISSION

Case Summary Data #10

November, 2016

OVERVIEW OF THE COMPLAINT

Complainant alleges that officers used "unnecessary force" against his client while the client was protesting.

ALLEGED VIOLATIONS

1. OPCR Ord. § 172.20(1) – EXCESSIVE FORCE
2. MPD P&P § 5-301.01: 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.

COMPLAINT PROCESSING

Upon receipt of the complaint by way of Complainant's attorney, an intake investigation was conducted and the matter was subsequently brought before the Joint Supervisors for intake review. Upon review of the complaint, the Joint Supervisors sent the case to preliminary investigation and assigned an investigator. Following the preliminary investigation, the matter was dismissed for "no basis".

EVIDENCE

1. Complaint
2. Email from Complainant to Attorney authorizing representation
3. Complainant's civil complaint against the City of Minneapolis
4. Complainant's initial disclosures to the court
5. City of Minneapolis initial disclosures to the court
6. Video of the incident
7. Still-frame and other photos from the incident
8. Affidavit of witness/victim

SUMMARY OF EVIDENCE

Complaint: In the complaint, Complainant's attorney asserts that Complainant, her mother, and a "group of ten protestors were protesting the killing of Jamar Clark at the 4th Precinct" when, "a group of about 10 police used unnecessary force against them." Also, the attorney promised to provide information regarding the incident—such as initial disclosures for both sides, video of the incident and photos.

Email from Complainant to Attorney authorizing representation: In the email, it appears that an alleged victim grants permission to Attorney to represent her in filing a claim with the Office of Police Conduct Review.

Complainant's civil complaint against the City of Minneapolis: Under the General Allegations section, Complainant asserts that: she was "peacefully protesting"; she was protesting the recent shooting of an unarmed, black male by Minneapolis Police Officers, Jamar Clark; she was also

protesting similar incidents throughout the country; she was concerned about her daughter's safety due to police allegedly shooting protestors with rubber bullets and spraying them with mace; Complainant went looking for her at the 4th Precinct; that Complainant met her daughter at the protest; that officers appeared agitated and hostile to the protestors when Complainant arrived; Complainant and 10 other protestors moved to the side entrance of the Precinct; about ten officers—in full riot gear—placed themselves between the protestors and the entrance; an officer's name was visible from the helmet; Complainant "feared" that force would be used; Complainant informed police she was filming and held up the phone to them; about ten to fifteen minutes later officers told protestors to move back for a van driven by an officer and protestors complied; van stopped in the middle of the street and an officer soon yelled, "[p]ush 'em this way!" and another yelled "push 'em!"; officers began to attack protestors; Complainant was hit with a night stick several times, including in the face "under her left eye" [photo of Complainant's left eye, which appears to be bruised on the left side]; an officer grabbed Complainant's phone on the ground and hit it with a nightstick [image of cracked phone screen]; white van never left the area; van was moved so as to block sight of other protestors and media nearby; and treatment was sought for injuries sustained.

Counts enumerated: violations of 42 U.S.C. § 1983 – Civil action for the deprivation of rights—and the Fourth and Fourteenth Amendments due to the amount of force used; and violations of the First (infringement on free speech) and Fourteenth (due process of the law) Amendments.

Complainant's initial disclosures to the court: disclosure of information such as Complainant's personal information, damages sought, and various forms of relief requested.

City of Minneapolis initial disclosures to the court: City provided discoverable information such as pertinent police reports and names of officers present.

Video of the incident: When the video opens, a person (Person 1) can be heard saying "a bunch of bullies". Directly in front of the camera is an officer in riot gear (helmet with visor and vest protection), wielding what appears to be an assault rifle –there are a few other officers nearby. Both parties are off to the side of the 4th Precinct side gate. It is unclear whether the protestors are on the street or a sidewalk.

Next, an officer appears to nudge/push a protestor (tall male) directly in front of the camera. After the nudge/push, Person 1 can be heard saying, "oh oh...really...don't do that...you're being recorded." Next, Person 1 can be heard saying the name inscribed on the back of an officer's helmet, and subsequently referring to that person as "Officer [so and so]" (Officer 1). She also mentions that the incident has been captured on video. Meanwhile, another person can be heard saying "being a b***h".

After this, Person 1 and another can be heard telling Officer 1, "Are you mad...you sound mad...he looks super irritated". The two can also be heard laughing. Next, Person 1 can be heard saying "go get your friend. You all can't do nothing. I got you on camera. I dare you", presumably to Officer 1.

Next, Person 1 and another can be heard laughing in regards to Officer 1 "talking without his lips". Person 1 can a little later be heard asking Officer 1 or another officer, "Why you laughing? This funny to you." She also states, "You think you are so tough with your little rubber bullets. What can you do really." In the video, officers can be seen facing the camera, and the backs of protestors can also be seen.

Person 1 says to the officers, “we’ve been peaceful protestors – done nothing to you.” She also tells an officer, “Don’t look sad. You’re trying to make us, uh, uh, persecute us.” She further states, “You get to go home to your family tonight in a different community, different from this.”

Soon after, a van is backed slowly into an area close to the protestors. Person 1 is heard saying, “What you all gonna do. I got every single one of you on tape. Where all you all goin’.” An officer can be heard mentioning, but with not great certainty, “Stay here with us so you don’t get hit with rocks.” Person 1 can be heard replying to the officer, “Hey, ain’t nobody throwin’ no rocks.” In the distance, other protestors can be seen barricaded off from Person 1 and the other protestors.

Next, an officer can be seen motioning and telling the protestors, “Hey, guys, were gonna let a vehicle go. Move up a little bit.” Person 1 can be heard responding, “No we’re not.” Some mild screaming and yelling can be heard. Person 1 can also be heard saying, “We’re backing up.” An officer can be heard telling the protestors, “You are standing in the alley – you guys gotta move.” Next, someone can be heard saying “hey hey hey” and also “don’t push them”. The camera begins to rock and lose focus somewhat.

Next, a person can be heard saying excitedly, “you hit your wife and your sister” and also “f*** you.” A person can be heard saying, “I cannot deescalate her”, likely in reference to the person who cursed at an officer.

After this, the camera turns to an individual with their hands over their eyes. Person 1 asks the individual, “are you OK?” the individual appears to be crying, but crying is not audible. Person 1 also states to an officer, “why you got that Billy club?” In the video, more officers arrive to the area from the gate entrance.

An officer tells the protesters, “Why don’t you all back up.” Person 1 retorts, “You not gonna get through this way.” Loud bangs can be heard coming from the front of the precinct building where other protestors are located. At this time, more officers arrive to the area by Person 1.

Next, a van appears in the video and is placed between two sidewalks. Person 1 next comments, “you all gonna accidentally run us over...we are backing up...don’t touch us.” An officer can be heard responding, “All you gotta do is do what you are told.” Officers continue to move protestors toward the sidewalk area and south of the gate.

The van keeps moving forward toward the sidewalk where protestors are near. Protestors are told to “keep going” by an officer. After this, a protestor states, “why are you out here with this patriarchal bulls**t,” to which an officer replies, “What does that even mean.” Soon after, Person 1 and other protestors begin to laugh at the officer. After this, an officer can be heard saying, “Push ‘em this way” – another officer can be heard saying the same thing. Soon after, screaming can be heard for a few seconds before the video ends. Also, not much can be made visibly from these last scenes as the camera is moving wildly.

Still-frame and other photos (three in total) from the incident: First image indiscernible though labeled “Screen shot of officer hitting protestors”; second image shows a slightly discernible face with what appears to be a white helmet; and the third shows an officer wielding a baton, about the size of his arm, and wearing a helmet; a name tag is visible but the lettering on it is not discernible.

Affidavit of witness/victim: In the affidavit, the witness/victim contends that: s/he could attest to the accuracy of Complainant's allegations; the use of force was unwarranted in relation to the protestors' actions; protestors did not interfere with the officers and were cooperative; officers did not issue warnings prior to using force; an officer hit him/her with a baton at least three times; it appeared that other protestors were struck by police; he witnessed one officer pull a protestor to the ground and subsequently drag her; he had a clear view of all the aforementioned and was not under the influence of drugs, alcohol or otherwise physically or mentally impaired.

INVESTIGATION

The investigator reviewed all the relevant information—including video of the incident, court documents and other information—and determined that the case be dismissed for “no basis”. For one, the investigator determined that the police had a “lawful and legitimate” to clear the protestors as reports from throughout the day alleged that protestors had launched projectiles at the precinct and police; therefore, police needed to establish control of a crowd that had become “riotous”. The investigator also noted instances from where Complainant was located, citing Complainant's daughter's—and that of other protestors—cursing, taunting and ridiculing officers. The investigator also cited the aggressive stance of a male protestor after being pushed by an officer who was trying to create room.

Further, the investigator established that officers were lawfully permitted to move the protestors as they were blocking—and intimidating a refusal to move from—an alley used by Minneapolis Police Department personnel to traffic to and from the precinct parking lot.

The investigator also found that the use of force was reasonable as the officers' use of “jabs”—the use of the end of a baton while being grasped with both hands to push non-compliant individuals—is low on the force continuum. Additionally, he asserted that the bruising shown by Complainant was consistent with injuries sustained from officers using the baton to push people.

Also, he asserted that nothing was evinced from the video he saw which indicated that someone—as Witness/Victim claimed—had been hit “baseball” style with a bat. Namely, the investigator asserted that nothing indicated that the woman in the hijab—or her sister who had run off—had sustained injuries that would likely result from a baseball-type swing to the head or from being dragged on the ground, such as profuse bleeding, abrasions or lacerations.

Lastly, the investigator determined that the claims that the van was used as “cover” so as to prevent filming from afar and the breaking of phones to be unmeritorious. The investigator asserted that the van moved from the area prior to the pushing and also that the phones were—if anything—only incidentally damaged by the baton push as such an intentional strike by a baton would obliterate a phone; this notion was buttressed by the investigator's assertion that Complainant's phone only showed signs of a cracked screen.