
POLICE CONDUCT OVERSIGHT COMMISSION
Case Summary Data #6
December, 2016

OVERVIEW OF THE COMPLAINT

Complainant alleges Officer 1 and 2 have towed his cars on numerous occasions between July and December of 2014. Additionally, Complainant alleges that one occasion Officer 2 maced him, threw him against the fence, threw him to the ground, and put his knee on his back. Complainant alleges he was ordered up from the ground and unable to do so because he was hurt. Complainant alleges he was brought to the hospital, and afterwards Officer 2 put a 48 hour hold on him at the jail.

ALLEGED VIOLATIONS

1. OPCR Ord. § 172.20(3) – HARASSMENT
2. OPCR ORD. § 172.20(1) – EXCESSIVE FORCE
3. OPCR ORD. § 172.20(2) – INAPPROPRIATE ATTITUDE
4. OPCR ORD. § 172.20(2) – INAPPROPRIATE LANGUAGE

5. 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.
6. 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.
7. MPD P&P § 5-105(14) PROFESSIONAL CODE OF CONDUCT: Employees shall not use any derogatory language or actions which are intended to embarrass, humiliate, or shame a person, or do anything intended to incite another to violence.

COMPLAINT PROCESSING

The complaint was received by the Office of Police Conduct Review by way of a written, signed complaint form. Upon receipt of the complaint, 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 matter to preliminary investigation. Upon the conclusion of the preliminary investigation, the Joint Supervisors again reviewed the matter and decided to send it to an administrative investigation, whereupon it was sent to the Review Panel. Ultimately, the Review Panel decided there was no merit to the allegations – the Police Chief concurred with the decision.

EVIDENCE

1. Complaint
2. Driver's license

3. Driver Diversion Certificate
4. Towing Receipt 1 and citation
5. Towing Receipt 2 and citation
6. Towing Receipt 3 and citation
7. Towing Receipt 4
8. Minnesota Public Criminal History Search for Name 1 and Name 2
9. Criminal History Search for Name 1 and 2
10. VisiNet 1
11. VisiNet 2
12. VisiNet 3
13. VisiNet 4
14. VisiNet 5
15. CAPRS 1
16. CAPRS 2
17. Use of Force Report – CAPRS 2 incident
18. CAPRS Report Documenting Death Of Complainant

SUMMARY OF EVIDENCE

Complaint: Complainant contends that he was taking the trash out from his residence when an officer “jumped out” of his vehicle with mace in his hand, stating that he had a warrant to arrest Complainant. Next, Complainant contends that the officer: told Complainant to put his hands up; told him he was under arrest; maced him; threw him up against a fence; and finally threw him to the ground. After being thrown to the ground, Complainant contends that the officer placed his knee on his back, handcuffed him, and ordered him up from the ground.

However, Complainant asserts that he wasn’t able to get up as the officer’s actions had further injured a preexisting injury. Complainant claims that he ended up in the hospital. In the hospital, Complainant states that Officer 2—the partner of Officer 1—told Officer 1 that he might as well “put in overtime,” perhaps in reference to all the time spent with Complainant at the hospital. Complainant also claims that Officer 1 mockingly asked Complainant if he wished to go to the hospital in the squad car or by ambulance – a joke in reference to Complainant telling the officers that he did not have insurance. Complainant also states that he was put on a 48 hour hold, forcing him to pay bail.

Additionally, Complainant alleges that Officer 1 has harassed him by issuing him 3 tickets and having his car towed on numerous occasions. Complainant contends that the harassment has lasted for 15 years.

Driver’s license: A driver’s license with Complainant’s Name 1.

Driver Diversion Certificate: A certificate of completion for a Driving Diversion Program with Name 1 completed prior to Complainant’s last arrest.

Towing Receipt 1 and citation: Receipt from the municipal lot and citation issued months’ prior to the last arrest.

Towing Receipt 2 and citation: Receipt from the municipal lot and citation issued several months after Receipt 1.

Towing Receipt 3: Receipt from the municipal lot and citation issued several months after Receipt 2.

Towing Receipt 4: Receipt from the municipal lot issued several days after Receipt 3 and which resulted from Complainant’s last arrest.

Criminal History Search for Name 1 and 2: Search revealed that there existed ten different names for Complainant and two different birthdates. Also, the investigator checked for CAPRS report hits with Name 1 and 2, which netted approximately 92 hits – that is, indicating that those names came up 92 times in CAPRS reports.

VisiNet 1: The problem is listed as a “Parking Problem” and occurred several months prior to the last arrest of Complainant. Officers 1 and 2 are listed as the report takers. A note in the report states that a vehicle with license plates belonging to Complainant had been red-tagged. There is, however, no record check of Complainant evinced from the report.

VisiNet 2: the Problem is listed as “Suspicious Vehicle”. The incident occurred a few days prior to VisiNet 3. Officers 1 and 2 were assigned to the call.

VisiNet 3: The problem is listed as “Traffic Law Enforcement”. The report was taken by Officer 1. Also, Officer ran Complainant’s criminal and driving history under Name 2, which yielded a “REVOKED” driving status.

VisiNet 4: The Problem is listed as “Parking Problem”. Again, Officers 1 and 2 were assigned to the call. The report was made several days before VisiNet 5.

VisiNet 5: The call is listed as “Officer Needs Help”. Also, Officer 1 is listed as the first officer at the scene. Lastly, a record check was done regarding Complainant’s Name 2, which again displayed a revoked status. It is also noted in the report that Complainant was transported to a local hospital.

CAPRS 1 (relating to VisiNet 3): In the Public Data section the incident is described as an arrest for DAR (Driving After Revocation) that resulted in a “flee on foot”. Also, it is also alleged that Complainant drove a vehicle shortly after being cited for DAR.

Supplement 1: According to Officer 1, he and his partner pulled over Complainant earlier in the day for driving with a revoked license. After citing and releasing Complainant, Officer 1 asserts that Complainant had been picked up by his wife and left the area. According to Officer 1, he and Officer 2 believed that Complainant would return to retrieve the vehicle. Officer 1 claims that the Complainant was dropped off about ten minutes later and proceeded to drive the vehicle he had been cited in; Officer 1 states that he and Officer 2 pulled over Complainant soon after.

Upon pulling over Complainant, Officer 1 claims that Complainant got out of his car and began walking away from the vehicle. According to Officer 1, Officer 1 approached Complainant due to his “past history with [Complainant]” and told Complainant that he was under arrest for DAR. Upon being approached, Officer 1 asserts that Complainant told the officers that he “would give [them] a reason to arrest” him. After uttering such, Officer 1 claims that Officer 2 grabbed Complainant’s arm and that Complainant reacted by pulling his arms away and clenching his hands into fists. Officer 1 also contends that Complainant kept telling both officers that he would give them “a reason to arrest” him.

Next, Officer 1 contends that Complainant’s fighting posture and other intimations led him to mace Complainant in the face. After being maced, Officer 1 asserts that Complainant “immediately stopped” and told officers that his eyes were burning.

Next, Officer 1 asserts that he and Officer 2 “physically held [Complainant] up and pushed him onto the hood of the squad so he wouldn’t fall to the ground.” During the escort to the squad, Officer 1 alleges that the Complainant “started to pretend that he couldn’t walk or stand.” After being placed in the squad vehicle, Officer 1 asserts that Complainant began to complain of neck and back injuries and also about Officer 1 “harassing” Complainant.

After Complainant's apprehension, Officer 1 claims that Complainant's wife tried to drive the vehicle Complainant was driving back home but was prevented from doing so by Officer 1, who claimed that the vehicle was "impounded...to prevent further criminal conduct."

Officer 1 claims that, after telling a sergeant that his injuries were preexisting and not "from [the officers]", Complainant was transported to the jail to be processed, where his eyes were flushed out.

Supplement 2: Officer 2 asserts that he was working with Officer 1. Officer 2 asserts that a license check was done under both of Complainant's registered names—Name 1 and Name 2—and that he had mentioned to Complainant in the past that he could not drive until his driving privileges had been reinstated under Name 1, which they also did prior to arresting Complainant.

According to Officer 2, he and Officer 1 waited for Complainant to return to retrieve his car and again violate his DAR. Officer 2 claims that an individual was dropped off in front of Complainant's car matching his description and drove off in the vehicle. After confirming that it was Complainant driving, Officer 2 contends that squad lights were activated and a pull over was attempted of Complainant. After activating the lights, Officer 2 claims that Complainant pulled over but got out of his car and began walking away. According to Officer 2, he had to run to catch up with Complainant, telling him that, "he needed to come back to our squad as he could not be driving."

Officer 2 asserts that Complainant "started arguing with me [sic] pleading his case of just needing to get to his vehicle and that he was tired of being harassed." Officer 2 also claims that, after being advised to do so, that Complainant came back to the officers' squad car, arguing all the while with the officers. Officer 2 also claims that Complainant would not let Officer 2 search him.

At this point, Officer 2 claims that Complainant pulled his right arm from Officer 2, yelled "I'll give you something to arrest me for, go on hit me," and then ran away. Officer 2 contends that he and his Officer 1, "stayed with [Complainant]" and instructed him to stop or he would get tazed." While he was running, Officer 2 claims that Officer 1 maced Complainant, leading him to stop and allowing the officers to place him into custody.

Officer 2 asserts that next Complainant was searched and told to sit on the ground, leading Complainant to complain about his back. Officer 2 claims that next the officers "picked [Complainant] up and eventually got him in the rear" of the squad car.

Next, Officer 2 claims that Complainant's wife arrived and attempted to retrieve the car but was prevented from doing so by Officer 2.

Lastly, Officer 2 states that Complainant told a sergeant that he was injured but also told him that the injury had occurred from a car accident.

CAPRS 2 (relating to last arrest): In the Public Data section, it is noted that Officer 2 was:

...IN FULL MPD UNIFORM AND DRIVING MARKED MPD SQUAD OBSERVED AP [Complainant] ON THE STREET AT ABOVE. OFFICER RECOGNIZED AP FROM MULTIPLE ARRESTS OVER SEVERAL YEARS OF POLICE WORK...KNEW AP HAD A WARRANT...OFFICER APPROACHED AP, INFORMED HIM HE HAD A WARRANT AND TOLD HIM HE WAS UNDER ARREST. OFFICER INFORMED AP TO PUT HIS HANDS ON THE HOOD OF THE SQUAD. AP REFUSED...THEN REACHED INTO HIS POCKET. FEARING AP MAY BE ATTEMPTING TO OBTAIN A WEAPON OFFICER APRAYED AP WITH MPD ISSUED CHEMICAL IRRITANT. OFFICER THEN GRABBED AP. AP ATTEMPTED TO ELBOW OFFICER. OFFICER CONTINUED LOUD

VERBAL COMMANDS BUT GOT NO COOPERATION. AFTER A STRUGGLE AP WAS FINALLY HANDCUFFED. DURING THIS STRUGGLE AP ATTEMPTED TO ELBOW OFFICER AND RESISTED OFFICER ATTEMPTS TO GET HIS HANDS BEHIND HIS BACK. AP WAS BOOKED FOR PC OBSTRUCT.

Supplement 1: Officer 2 claims that he was alone “on patrol in the area” when he, “observed [Name 2 of Complainant] walking on the sidewalk and into [sic] the street.” After seeing Complainant, Officer 2 claims that he exited his squad and told Complainant that he was under arrest and also instructed Complainant to put his hands up. According to Officer 2, Complainant shouted back, “I DON’T HAVE A WARRANT.”

Based on the prior incident in which Officer 2 claims that Complainant attempted to fight Officer 1 and 2, he had his mace out, believing “[Complainant] may become violent”. While at Officer 2’s squad, Officer 2 alleges that he told Complainant to put his hands on the hood; however, Officer 2 asserts that Complainant “unzipped his jacket and began to reach inside”, leading Officer 2 to spray Complainant with mace.

Next, Officer 2 contends that he grabbed Complainant by his jacket and ordered him to the ground. At this point, Officer 2 alleges that Complainant attempted to strike him with his elbow, leading Officer 2 to tighten his grip and push “[Complainant] a few feet to the south and into a privacy fence”.

After grabbing onto Complainant’s right arm, Officer 2 claims that Complainant pushed away from him and he pushed Complainant to the ground in reply. Afterwards, Officer 2 claims that Complainant was handcuffed, assisted to his feet, and placed in the squad car.

A while later, Officer 2 contends that an ambulance arrived and transported Complainant to the hospital.

Supplement 2: Officer 2 claims that Complainant was booked after seeing hospital staff.

Supplement 3: Officer 1 contends that he responded to the hospital to “assist [his] partner” in “guard[ing]” Complainant.

Supplement 4: Officer 3 contends that he interviewed Complainant following his arrest. According to Officer 3, Complainant told him that he was taking out his garbage when he saw a police car. Further, Officer 3 states that Complainant told him that he took a flashlight out to see why the police were in the area – “to make sure everything was [OK]”.

Officer 3 also claims that Complainant told him that Officer 2 told him that he had a warrant, to which Complainant replied that he didn’t. Officer 3 asserts that Complainant next reached into his jacket to retrieve a phone in order to call his wife. It was at this point, Officer 3 asserts, that Complainant said he was maced and thrown to the ground. Afterwards, Officer 3 claims that Complainant told him that he was handcuffed and put inside the squad car. Prior to this, Officer 3 states that Complainant yelled to his wife.

Lastly, Officer 3 claims that he “tab charged [Complainant] with obstruct legal process.”

Use of Force Report – CAPRS 2 incident: Officer 4 asserts that Officer 2 told him that mace was applied as Officer 2 thought that Complainant may be trying to use a weapon.

Further, Officer 4 claims that Officer 2 told him that Complainant refused to listen to his commands to get on the ground and also that Complainant attempted to elbow him, leading Officer 2 to pin Complainant to a nearby fence in order to gain control. Later, Officer 4 claims that Officer 2 told him he was able to handcuff Complainant. After helping Complainant to his feet and taking him to the squad car, Officer 4 contends that Officer 2 told him that then Complainant began to complain of back pain and requested an ambulance.

Officer 4 asserts that Complainant told him that he was told by Officer 2 he had a warrant to arrest Complainant, to which Complainant replied that he didn't. Next, Officer 4 contends that Complainant told him that he was told to put his hand on the squad vehicle, but, "he wanted to call his wife quick, so he reached into his jacket to get his phone." Upon doing this, Officer 4 asserts that Complainant told him that he was maced and was then ordered to the ground – an order he refused.

Further, Officer 4 contends that Complainant told him that he has a bad back from "back surgery over 1 year ago". Officer 4 claims that Complainant told him that he did not tell Officer 2 of his injury, indicating his desire to not go to the ground. Also, Officer 4 contends that Officer 2 moved Complainant's handcuffs from the back to the front after he repeatedly complained about them.

Also, Officer 4 asserts that Officer 2 told him that Complainant requested a trip to the hospital after being in custody. Officer 4 contends that no video or eyewitness accounts exist of the incident, though audio should.

Interview of Officer 4: Officer 4 stated that he was called to scene of the last arrest. When Officer 4 arrived at the scene, he contends that Complainant was handcuffed in the back of the squad car. He also allegedly told Officer 4 that he was notified of a warrant by Officer 2 and was placed under arrest. Officer 4 also contended that Complainant told him that a "scuffle" ensued prior to being put into custody.

Officer 4 also stated that Complainant told him that put his hands in his jacket after being told to put his hands on the car. He also recalled that Officer 2 had told him that Complainant had "squared to fight" on a prior occasion. He also claims that Complainant kept telling Officer 2 that he didn't have a warrant.

Officer 4 also asserted that Officer 2 was working the night of the last arrest. Officer 2 also contended that Complainant had told him that his face was pushed up against a fence and maced prior to that. He also recalled that Complainant had had back surgery about a year prior and had been going to a chiropractor.

Officer 4 claimed that neither party admitting to throwing "strikes", kicks or anything of that nature—leading him to conclude that the narratives were similar. Officer 4 also stated that Complainant's handcuffs were moved from the back to the front due to Complainant complaining about the tightness of the cuffs, which he declared was cutting off circulation.

Officer 4 also asserted that Complainant had a hard time, "getting out of the car and asked the officer to help him stand up." After being instructed by Complainant to do so, Officer 4 claims that an officer lifted Complainant by his jacket. Officer states that he doesn't remember Complainant being hunched over or otherwise having difficulty walking.

Lastly, Complainant contends that an ambulance was called and Complainant was transported to a local hospital, followed by Officer 2.

CAPRS Report Documenting Death Of Complainant: Officer 5 contends that he was called to the scene of a DOA (dead on arrival). At the scene, Officer 5 contends that Complainant's wife was "visibly upset and crying". Officer 5 contends that Complainant's wife told him that Complainant complained of back pain earlier in the day and subsequently went to bed in the late afternoon. Officer 5 asserts that Complainant's wife stated that it was common for Complainant to make such statements. According to Complainant's wife, Complainant was breathing normally late at night and she did not otherwise notice anything unusual.

According to Officer 5, several medications were in the bedroom. He also asserts that Complainant "had a history of diabetes, heart problems, and high blood pressure and had visited his doctor sometime last week."

At the advice of his sergeant, Officer 5 contends that he contacted the medical examiner and released information requested. Upon release of the information, Officer 5 contends that the body was released to the family.

Squad video 1 (related to incident 1): In the video, Officers are seen pulling over Complainant and eventually issue him a citation. Complainant was also warned against driving due to his driving status.

Squad video 2 (related to incident 1): the video begins when Complainant has entered his vehicle again and makes a U-turn driving down the street. After Officers 1 and 2 pull to the side of Complainant, they put their lights on to pull him over. Upon exiting the vehicle, Complainant begins to walk away from the vehicle. After being told that he is under arrest, Complainant can be heard telling officers, "Under arrest! Man, come on now. Come on. Nah, come on. Nah, I'm gonna give you a reason. Come on. Give me a reason – hit me. Hit me, mother f*c**r – hit me." The officers can also be heard giving Complainant commands to stop.

Squad video 3: Officer 2 can be seen in the video telling Complainant to put his hands on the hood. Complainant is out of view. While in the process of telling Complainant to comply with his orders, Officer 2 can be seen spraying his mace can in the direction where Complainant is likely located. A struggle can also be heard. The struggle occurs off-camera. After the apparent struggle, Complainant can be heard telling Officer 2 "what's your problem, man", to which Officer 2 retorts, "What's your f****ing problem? I say you're under arrest and you f***in' don't do it?"

REVIEW PANEL

The Review Panel did not find merit to any of the allegations against Officer 1 and 2. In regards to impartial policing, the Review Panel concluded that Officer 2's actions were "reasonable" (though the Panel did express concern over there not being a statement from Officer 1). The Panel also found Officer 1 had acted appropriately as video and transcripts showed that he "had consulted with his partner before taking action, and both officers reached the same reasonable conclusion". In particular, the Panel noted that Complainant had not notified the officers of the completion of his driving certificate, and nothing else indicated that the officers knew of the certificate. The Panel also stated again that a statement from Officer 1 and would have been helpful.

In regards to the allegation of force involving Officer 2, the Panel stated that "force was reasonable and within policy."