
POLICE CONDUCT OVERSIGHT COMMISSION
Case Summary Data #9
January 2018

OVERVIEW OF THE COMPLAINT

It is alleged that Officer 1—who arrived at the scene to assist other officers who were attempting to place the suspect in custody--kicked the suspect in the face while the suspect was “pushing off of the ground,” knocking the suspect unconscious. Upon collapsing to the floor, the suspect’s head struck “the pavement,” leading to a “pool” of “[b]lood.” Prior to Officer 1’s alleged use of force, it also alleged that Officer 2 kicked the suspect in the “abdomen” while he was slowly moving towards the ground after exiting a vehicle.

ALLEGED VIOLATIONS

1. MPD P&P § 5-301.01 POLICY: 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.
2. MPD P&P § 5-303 USE OF FORCE: Minn. Stat. §609.06 subd. 1 states, “When authorized...except as otherwise provided in subdivision 2, reasonable force may be used upon or toward the person of another without the other’s consent when the following circumstances exist or the actor reasonably believes them to exist: When used by a public officer or one assisting a public officer under the public officer’s direction: In effecting a lawful arrest; or In the execution of legal process; or In enforcing an order of the court; or In executing any other duty imposed upon the public officer by law.” In addition to Minn. Stat. §609.06 sub. 1, MPD policies shall utilize the United States Supreme Court decision in *Graham vs Connor* as a guideline for reasonable force.
3. MPD P&P § 5-305 USE OF DEADLY FORCE: Minn. Stat. §609.066 sub. 2 – “The use of deadly force by a peace officer in the line of duty is justified only when necessary: To protect the peace officer or another from apparent death or great bodily harm; To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force, or; To effect the arrest or capture, or prevent the escape, of a person who the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person’s apprehension is delayed.”

COMPLAINT PROCESSING

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 an investigation, and then to a panel review, which resulted in them finding

EVIDENCE

1. VisiNet Report
2. CAPRS Report of Officer 1
3. CAPRS Report with Supervisor Force Report
4. Incident Detail Report
5. Statement of Officer 1
6. Statement of Officer 2
7. Statement of Officer 3
8. Statement of Officer 4
9. Statement of Complainant
10. Follow-up statement of Complainant
11. Investigative Report
12. Review Panel Recommendation of Officer 1
13. Notice of Discipline for Officer 1
14. Completed Discipline Worksheet for Officer 1
15. Relieved of Duty Letter of Officer 1
16. Grievance Filed for Officer 1
17. Discharge Form of Officer 1
18. Review Panel Recommendation of Officer 2
19. Notice of Discipline for Officer 2
20. Completed Discipline Worksheet for Officer 2
21. Suspension Form of Officer 2

SUMMARY OF EVIDENCE

VisiNet Report: It is reported that there was a Domestic Abuse in Progress.

CAPRS Report: It is reported that the officers were called to the scene because of an assault. When they arrived they realized it was a domestic abuse. When the officer arrived on the scene the victim was with the security guard and had wounds to her face. The officers were given a picture of the suspect and located the suspect in his vehicle. Officer 2 supplements that he gave the suspect loud and clear verbal commands to get on the ground. Officer 2 then proceeds to move towards him, in which he contends that that as he was trying to handcuff the suspect there was resistance, causing Officer 2 to deliver one toe kick to the suspect's abdomen. Officer 1 supplements that when he arrived to the building the victim was covered in wounds and scared. Officer 1 contends he saw another squad car arrive and the officers ordering the suspect out of the vehicle and beginning to take him down. Officer one alleges that he saw the suspect trying to push off the ground so Officer 1 kicked the suspect in the face one time with the top part of the boot and the suspect immediately went to the ground, hitting his head, and blood starting to pool. The paramedics were then called. Both the victim and the suspect went to the hospital.

CAPRS Report with Supervisor Force Report: The Narrative says that Officer 1 went to assist Officer 2. Officer 2 gave verbal commands to the suspect and concern of violence Officer 2 kicked the suspect in the torso. The suspect was knocked unconscious so an ambulance and fire rig was called. Officer 1 was talking to the victim when Officer 3 stated that the suspect arrived. Officer 1 ran out to assist. Officer 1 observed the suspect pushing up off the ground, made a quick decision and kicked the suspect in the face. Officer 1 observed blood, handcuffed the suspect, and called paramedics. The supervisor goes to talk to the suspect and he seemed confused with the questions. The suspect said his right eye and neck area hurt. The supervisor could see swelling and abrasions on the right side of the suspects face and possibly a broken nose. A security camera was observed, which the supervisor watched and observed what Officer 1 and Officer 2 reported. Officer 2 was advised to ride to the hospital with the suspect. Officer 2 reported back that the suspect as stable and would not be admitted.

Incident Detail Report: The report shows that there was an assault in progress and changed to Domestic Abuse.

Statement of Officer 1: Officer 1 states that when he arrived to the scene Officer 2 was assisting the suspect to the ground. From the video Officer 1 saw Officer 2 kick the suspect and because it looked like the suspect was trying to back up Officer 1 states that he aimed for and kicked the suspects' face, which caused the suspect to fall to the ground. Officer 1 states that in the circumstances he would not have used deadly force on the suspect.

Statement of Officer 2: Officer 2 states that he gave the suspect commands to get out of the vehicle. The suspect was slow moving but went down on his hands and knees. Officer 2 states that he felt resistance from the suspect, resulting in Officer 2 aiming and kicking him in the torso to get him on the ground. Officer 2 states that he believes to have acted necessary at the time of the incident. However, he does not believe that this incident was a deadly force situation.

Statement of Officer 3: Officer 3 states that he remembers Officer 2 yelling commands to the suspect. He asserts that it looked like the suspect hesitated but was moving slowly. Officer 3 states that he did not see the suspect resisting. It is then reported that Officer 3 saw Officer 2 kick the suspect twice in the groin/torso area and Officer 1 kick the suspect once in the head/neck area, which resulted in what appeared to be the suspect knocked out. Officer 3 asserts that the situation was not dangerous enough for deadly force to be used.

Statement of Officer 4: Officer 4 states that he and the other officers gave the suspect commands to get out of the vehicle. Officer 4 also states that the suspect got out of the vehicle and slowly began to drop down, and never saw the suspect fail to follow the verbal commands or resist the officers. However, Officer 4 believes that the suspect was given enough time to follow the verbal commands.

Statement of Suspect: The suspect states that he heard the officers tell him, 'stop the vehicle and get out,' and "facedown." The suspect alleges that he listened to the officers and he did not resist.

Follow-up statement of Suspect: The suspect was asked if he had gone to his scheduled surgery on his nose. The suspect replied "no," because of dizziness, headaches, confusion, and problems with his nose.

Investigative Report: In the Case Overview it is reported that while the suspect was on all fours, Officer 2 kicked the suspect twice in the abdomen and at approximately the same time Officer 1 kicked the suspect in the face, which resulted in the suspect immediately losing consciousness and falling to the ground. The suspect was then taken to the hospital for a broken nose and a "brain bleed." The body camera video suggests that the officers did not give the suspect enough time to comply with their commands before they kicked him. It was noted that from the officer's observations of the victim's injuries, it could be assumed that the officers understood the severity of the crime to be serious. However, it is notes that the suspect was unarmed, cooperating by following verbal commands, and did not appear to pose an immediate threat to the safety of the officers or others. The officers did not give the suspect time to completely get flat on the ground before kicking him, which resulted in the suspect suffering from a broken nose requiring surgery.

Review Panel Recommendation of Officer 1: The panel found merit for the allegation of Use of Force in that Officer 1 used unreasonable (deadly) force on the suspect.

Notice of Discipline for Officer 1: A letter stating that Officer 1 violated MPD P&P § 5-305 Use of Deadly Force.

Completed Discipline Worksheet for Officer 1: Officer 1 is found to have violated MPD P&P § 5-305 Use of Deadly Force as a category "D."

Discharge Form of Officer 1: A discharge form to Officer 1 effective January 10, 2017 for the violation of Civil Service Commission Rule 11.03 and the Violation of the Department Rule P&P § 5-305 Use of Deadly Force.

Grievance Filed for Officer 1: A letter enclosed with the grievance filed on behalf of Officer 1, which resulted in termination.

Review Panel Recommendation of Officer 2: The panel found merit for the allegation of Use of Force in that Officer 2 used unreasonable force by kicking the suspect twice in the torso when the suspect was not resisting.

Notice of Discipline for Officer 2: A letter stating that Officer 2 violated MPD P&P § 5-301.01 POLICY.

Completed Discipline Worksheet for Officer 2: Officer 2 is found to have violated MPD P&P § 5-301.01 Use of Force as a category "D" and MPD P&P § 5-301 Use of Force as a category "B."

Suspension Form of Officer 2: A suspension form to Officer 2 effective February 27 until March 4 for the violation of Civil Service Commission Rule 11.03 and the Violation of the Department Rule MPD P&P § 5-301.01.

One officer terminated, Second officer suspended

According to the review panel while the suspect had committed an act of violence towards the victim, he did not show an immediate threat towards the officers at the scene, nor did he attempt to resist or evade arrest. In fact, the suspect was seemingly complying with the officers' orders to exit the vehicle and get on the ground. The suspect was timely in his effort to get on the ground as ordered.

The panel found no support for the reasoning of officer 1 on his use of force. The panel finds that officer 1 took no time to assess the situation as required. Officer 1 ran around the front of the vehicle and delivered a kick to the suspect's face without properly assessing the situation. At no point was the suspect struggling with officers, nor did he offer any actions that would indicate he was going to do anything by comply with officers. This coupled with the presence of 4 officers at the scene, the panel finds that the force of officer 1 is without reasonableness and does not fall within policy. As a result of the kick to the suspect's face from officer 1, the suspect suffered a broken nose that required hospitalization.

The conduct of officer 1 irreparably damaged the trust the MPD and the public must have in its officers. The panel finds the decision making and level of violence displayed by officer 1 cannot be tolerated and that officer 1 should be terminated.

The panel found no support for the reasoning of officer 2 on his use of force. The panel finds that officer 2 took no time to assess the situation as required. He came around the front of the vehicle and delivered two kicks to the suspect's torso without properly assessing the situation. At no point was the suspect resisting officers or pushing up as officer 2 says, nor did he offer any actions that would indicate he was going to do anything by comply with the officers. Had officer 2 properly assessed the situation he should have determined that the suspect was complying with orders. This coupled with the presence of 4 officers at the scene, the panel finds that the force of officer 2 is without reasonableness and does not fall within policy.