
POLICE CONDUCT OVERSIGHT COMMISSION
Case Summary Data #4
April 2014

OVERVIEW

Complainant alleges he was stopped and ordered to exit his vehicle to be arrested for driving with a suspended license. Complainant alleges Officer 1 bent his arm back, causing his muscles in his shoulder to tear. Complainant alleges Officer 1 did significant damage to his car while searching it. Complainant alleges Officer 1 repeatedly accused him of looking for prostitutes and refused to acknowledge his disability. Complainant alleges he was arrested for a misdemeanor without cause.

THE COMPLAINT

1. Excessive Force: That Officer 1 bent Complainant's left arm back, causing muscles in his shoulder to tear.
2. Inappropriate Attitude: That Officer 1 repeatedly accused Complainant of looking for prostitutes and refused to acknowledge his disability.
3. Harassment: That Officer 1 arrested Complainant for a misdemeanor without cause.

OPCR AND MPD POLICIES

1. OPCR Ord. § 172.20(1) Excessive Force
2. OPCR Ord. § 172.20(2) Inappropriate Attitude
3. OPCR Ord. § 172.20(3) Harassment
4. 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.
5. 9-103 MISDEMEANOR ARRESTS – ADULTS: Adult misdemeanor violators shall be issued citations in lieu of arrest *unless* the officer believes that one of the following circumstances exists: to prevent bodily harm to the accused or another; to prevent further criminal conduct; there is a substantial likelihood that the accused will fail to respond to a citation; the officer cannot verify the identity of the accused; the officer has found that the accused has an outstanding warrant. The officer must be able to articulate to the court and in the CAPRS arrest report the reason(s) why it was necessary to arrest a person rather than issuing a citation.
6. 7-610 DRIVER'S LICENSE/TRAFFIC VIOLATIONS: Violations for Driving after Revocation (DAR), Driving after Suspension (DAS) or Driving after Cancellation (DAC) shall be issued citations in lieu of arrest unless the officer believes that one of the following circumstances exists: to prevent bodily harm to the accused or another; to prevent further criminal conduct; there is a substantial likelihood that the accused will fail to respond to a citation; the officer cannot verify the identity of the accused; the officer has found that the accused has an outstanding warrant.
7. 9-200(III)(B)(2)(b) Searching Vehicles- Documentation: If damage to property was caused during the course of a search and/or resulting seizure: a supervisor shall be notified; photographs shall be taken and property inventoried to document any known damages.

COMPLAINT PROCESSING

The case was first sent to a preliminary investigation. After obtaining evidence and speaking with the Complainant, the case was returned to the OPCR joint supervisors with the recommendation that the case be dismissed. The joint supervisors reviewed the available evidence and determined that there was not enough credible evidence to proceed with the complaint. Accordingly, they dismissed the complaint as no basis.

EVIDENCE

In the course of investigating this complaint, the following steps were taken.

1. Complainant submitted a detailed written complaint.
2. Visinet records were obtained.
3. Police report was obtained.
4. Photographic evidence of Complainant's car was obtained.
5. Squad recordings were obtained.
6. Complainant was interviewed.
7. Complainant's medical records were obtained.
8. DVS records were obtained.
9. OPCR Investigative Report.

SUMMARY OF EVIDENCE

Complaint

Complainant alleges that he was driving to pick up a friend, but could not find the building, so he stopped in a parking lot to call for directions. Complainant alleges that Officer 1 drove around him while he was stopped and left the parking lot.

Complainant alleges that he left the parking lot making a left turn, and was trying to figure out how to get back with the one way streets and a lane closure. Complainant alleges that he pulled out, approached the corner to make a turn, and was stopped by Officer 1.

Complainant alleges that Officer 1 came to Complainant's window. Complainant alleges that he asked what was wrong and that Officer 1 stated that he wanted Complainant's driver's license. Complainant alleges that he again asked what was wrong, explained he was lost, showed Officer 1 MapQuest directions he had printed, and asked for directions. Complainant alleges that Officer 1 said, "Do you have a license or not?" Complainant alleges that he said yes and opened up his dash to get his wallet out. Complainant alleges that Officer 1 "screamed, 'Keep your hands where I can see them and get them on the steering wheel.'" Complainant alleges that he replied "which do you want [sic.] my license or hands on steering wheel?" to which Officer 1 responded by telling Complainant not to get smart with the Minneapolis Police.

Complainant alleges that he got his wallet and license. Complainant alleges that due to a thumb injury, he had trouble moving his fingers and asked Officer 1 to help get the license out of its sleeve in the wallet. Complainant alleges that he could physically see Officer 1 get upset by this. Complainant alleges that Officer 1 refused to help.

Complainant alleges that he gave Officer 1 his license and Officer 1 walked away. Complainant alleges that another police car arrived and Officer 1 returned to Complainant's car, told Complainant to put the car in park and get out. Complainant alleges that he asked why and

Officer 1 responded, "You're going to jail!" Complainant alleges that he asked "What for?" and Officer 1 responded, "I said put the car in park and get out!"

Complainant alleges that he tried to tell Officer 1 that he is disabled and has trouble getting out of the car, but his sentence was interrupted by Officer 1 reaching into the open window to unlock the car, opening the door, and grabbing Complainant's arm, bending it backwards until Complainant's knuckles touched the glass of the backseat window, all while Complainant's seat belt was still on. Complainant alleges that this resulted in his shoulder muscles being torn apart, for which he is under a doctor's care.

Complainant alleges that he screamed at Officer 1, "What the hell are you doing, I am disabled and can't move that arm very well. I tried to tell you I can't get out of this car." Another Officer, Witness Officer 1, asked Complainant why he could not get out of the car, and Complainant responded that he is missing part of his foot, his shoulders are arthritic, and he has congestive heart failure with diabetes. Complainant stated that Witness Officer 1 offered to help and gave Complainant his hand to help him stand. Complainant alleges that he was in so much pain that he was crying.

Complainant alleges that once he was standing, Officer 1 grabbed his already injured arm and forced it up to his neck. Complainant alleges that he was screaming in pain and begged Officer 1 to stop, to which Officer 1 told him to quit whining. Complainant alleges that Officer 1 grabbed Complainant's other arm and forced his arms together in an attempt to handcuff Complainant. Complainant alleges that Witness Officer 1 said, "Can't you use two handcuffs?" and Officer 1 ignored this. Complainant claims that he continued to scream in pain.

Complainant alleges that he was forced to walk to Officer 1's squad vehicle and Officer 1 told him to get in. Complainant alleges that he told Officer 1 that he could not, because of his foot. Complainant alleges that Witness Officer 1 came over and offered to help Complainant, grabbed Complainant's arm for balance, and he was able to get in the vehicle.

Complainant alleges that Officer 1 and Witness Officer 2 searched his car, ripping the storage drawers from under the front seat and ruining the tracks that they glide on. Complainant claims he later found them, ruined, tossed in the back seat. In one of the drawers was a small paint sample, which Complainant alleges Officer 1 opened in the car and spilled paint all over the floor, dash, and seat. Complainant alleges that Officer 1 wiped his hands across the seat to get paint off of them. Complainant alleges that Officer 1 also slammed the doors to Complainant's car so hard that the car rocked back and forth. Complainant feels that Officer 1 "treated [his] car like garbage—not respect for [his] property at all."

Complainant alleges that Officer 1 called and had his car towed to the impound lot. Complainant alleges that when he went to retrieve it the next day, someone had taking his belongings and thrown them on the ground next to the car.

Complainant alleges that when Officer 1 came to his squad vehicle and got behind the wheel he asked Complainant if he was going to live and Complainant responded that he would be in therapy for months because of Officer 1. Complainant alleges that again Officer 1 told him to stop whining.

Complainant alleges that he again asked Officer 1 why he was going to jail. Complainant alleges that Officer 1 said, "because [you] don't show up for court dates and you're driving with a suspended license." Complainant told Officer 1 that he had never had to go to court.

Complainant alleges that he asked Officer 1 if Complainant could move the car and call someone to come and get the car. Complainant alleges that Officer 1 responded that Complainant's license was suspended and the car was parked illegally so it was going to be towed. Complainant alleges that he asked Officer 1, "Do you put everyone in jail that is lost and you accuse of missing court

dates that never happened?” and Officer 1 replied, “Only the ones I think are here to buy prostitutes.”

Complainant alleges that Officer 1 asked Complainant why not admit that he was there to buy prostitutes; he had a MapQuest map of an area well known for prostitution, and he was circling the block. Complainant alleges that Officer 1 repeatedly told him to admit that he was there to buy prostitutes.

Complainant alleges that Officer 1 asked him questions about his car’s CD player. When he asked why, Complainant alleges that Officer 1 said he needed a record of it in case it was stolen at the impound lot. Complainant commented about how he could not have someone come pick up his car, but that it would be taken and it might not even be protected. Complainant told Officer 1, “You’re getting off on this, your nothing but an a*****.” Complainant alleges that Officer 1 said, “I am not the one down here at [XX:XX] a.m. looking for prostitutes.”

Complainant alleges that he was removed from Officer 1’s squad vehicle. His handcuffs were switched and he was placed in Hennepin County van for transport to jail. While he was being re-handcuffed, Complainant claims that he again told Officer 1 that he was an “a*****.” Complainant alleges that, in front of other Officers, Officer 1 told Complainant to “quit [his] whining and stop with the drama and don’t come down here looking for prostitutes again.”

Complainant alleges that he was released from Hennepin County Jail the next day and went to his doctor who immediately sent him to the emergency room. Complainant alleges that the emergency room took X-rays and other tests and determined that his shoulder muscles had been stretched and torn beyond their normal function and will take weeks to heal properly. Complainant alleges that he is now being treated by his chiropractor for these injuries as well and that he has lived with pain for over one month at the date the Complaint.

Complainant alleges that when he went to his court date, the District Attorney stated that Complainant has not missed a court date since 1998, asked why his car was impounded, and stated that at the time he was pulled over his license had been re-instated. Complainant alleges that he finally got to see what he was pulled over for, changing lanes without signaling. Complainant alleges that this is not actually why he was pulled over because the lanes on that road were closed. Complainant claims that all charges were dismissed and it was recommended that he contact Internal Affairs.

Visinet Report

The visinet report states that the incident duration time was one hour and twelve minutes. The report indicates that a plate check on Complainant’s car returned a status of suspended. The report also indicates three previous incidents of Complainant failing to appear or pay fines.

Case Report/CAPRS

The police report states, “Officer [1] saw the listed vehicle change lanes without signaling. A traffic stop was done. Routine checks showed that [Complainant] was DAR with many failure to appear or pay fines. [Complainant] was arrested and booked into HCJ for DAS. The booking van transported [Complainant] to HCJ. The listed vehicle was towed to MPLS impound lot as it was illegally parked.

Office 1 did not provide a supplementary report.

Photographs of Complainant's Car

Three photographs of the Complainant's car were provided to OPCR by Complainant. The first photograph shows a small container of paint, with red paint spilled on the outside. The second photograph shows approximately 8 drops of paint spilt on the side of the passenger-side front seat, floor, and floor mat. The third photograph shows two smears of paint on the driver's seat.

Squad Recording

The recording starts when Officer 1 turns his lights on and pulls over Complainant. There is no recording of Complainant in the parking lot. Similarly, there is no recording of the alleged failure to signal. Officer 1 approaches the driver-side door of Complainant's car. There is a back and forth between Officer 1 and Complainant, where it appears that Complainant is showing Officer 1 a piece of paper, potentially the directions. There is no audio recording of their conversation, which continues for a couple minutes. Officer 1 returns to his squad vehicle. A short time later, Officer 1 and Witness Officer 1 approach Complainant's car; Officer 1 approaches the driver's side, Witness Officer 1 approaches the passenger's side.

Officer 1 looks like he is trying to open the driver's side door. He is ultimately able to get Complainant out of the car and handcuffs him almost immediately afterward. Though the audio recording is highly muffled, it appears that Complainant is screaming. Witness Officer 1 is present and standing by, but not in any physical contact with Complainant.

Officer 1 walks Complainant to his squad vehicle and says, "Go in and have a seat." Complainant asks Officer 1 what will happen with his car, and Officer 1 responds that it is going to be towed. Complainant asks why he cannot call someone to get the car. Officer 1 more forcefully tells Complainant to "have a seat." Complainant grunts getting into the car, but is not crying or making any other indication of pain when getting in or sitting in back of squad vehicle.

Officer 1 and Witness Officer 2 return to Complainant's car and conduct a search. Both Officers search the vehicle, but Officer 1 is mainly conducting the search, getting in the rear of the car and opening the trunk as well. It appears that toward the end of the search, Officer 1 looked around the front passenger area of the vehicle, and then stepped away looking at his glove, as if he did get paint on his hand. During the search, Complainant remains handcuffed in the back of Officer 1's squad vehicle, making two comments: "What are you doing to my vehicle?" and "Get out of my vehicle."

The entire recording lasts approximately thirteen minutes. The recording ends with the Complainant still in the back of the squad vehicle, and Witness Officer 2 still standing by Complainant's car.

Interview with Complainant

Complainant stated that he was called by a friend and was driving to go pick him up. Because he didn't know the area where he was picking up his friend, he printed out MapQuest directions.

Complainant stated that he was driving on a four lane road, which due to construction, was down to one lane. He went from the outside lane to the inside lane and was attempting to make a turn when he was pulled over. Complainant stated that he asked Officer 1 why he was pulled over and Officer 1 told him he wanted his license. Complainant asked Officer 1 why he wanted his driver's license. Complainant claimed that Officer 1 said, "You're in a known prostitution area and you're erratically driving." Complainant said that he explained that he was not familiar with the area and showed Officer 1 the directions, to which Officer 1 responded, "I want your driver's license."

Complainant stated that he gave Officer 1 his license and Officer 1 returned to his squad vehicle. When Officer 1 came back to Complainant's car he told Complainant that he was going to jail.

Complainant stated that he asked, "For what? What did I do?" Complainant stated that Officer 1 responded "You're goin' to jail. Get out of the car." Complainant claimed he asked why again and was again told to get out of the car. Complainant stated that he said, "I can't get out of the car. I am handicapped." Complainant stated that Officer 1 never asked about his disability and continued to scream at him to get out of the car.

Complainant stated that Officer 1 reached into the open driver's seat window, grabbed the door lock, unlocked the car, opened up the handle, grabbed his arm, yanked it and pulled it all the way around. Complainant claimed that his knuckles actually "ran into the brass of the back window of the outside of the car." Complainant stated that he still had his seatbelt on at this point.

By this time, additional Officers had arrived on the scene. Complainant stated that Witness Officer 1 came up to the car and asked him why he could not get out of the car. Complainant told him that he only has half a foot and arthritis, and he moves slowly, and "what the hell did you just dislocate my shoulder for?" Complainant stated that he was screaming in pain.

Complainant stated that Witness Officer 1 said, "Please. I will help you get out of the car." Complainant stated that he then undid his seatbelt, and slowly stood to get out of the car. Complainant stated that Witness Officer 1 helped him to turn around so that Officer 1 could handcuff him.

Complainant claimed that Officer 1 grabbed his arm and pulled it so that it ended up on the back of his head. Complainant stated that he was screaming in pain while this was occurring. Complainant stated that Witness Officer 1 told Officer 1 that he needed to use two pairs of handcuffs.

Complainant stated that Witness Officer 1 walked him over to Officer 1's squad vehicle, opened the door and suggested a way for Complainant to get into the vehicle. Complainant stated that got into the squad vehicle and sat there while he watched Officer 1 and Witness Officer 2 "rip his car to shreds." Complainant stated that they spent about a half hour searching through his car. Complainant stated that he was crying in the back of the squad vehicle, with handcuffs on.

After he conducted the search, Officer 1 got into the front of his squad vehicle. Complainant stated that he asked, "What the hell am I here for?" and that Officer 1 responded, "Well, you're in a highly prostitute area, driving erratically, with MapQuest directions of how to get here. You were down here lookin' for a prostitute." Complainant claimed that Officer 1 continued to ask why Complainant did not just admit he was looking for a prostitute. Complainant stated that he had a "gag gift" in his car and Officer 1 stated, "We found your dildo. You're lookin' for a prostitute." Complainant stated that he asked Officer 1 why he was going to jail and Officer 1 said, "Well, you have a habit of not appearing for court dates." When Complainant told Officer 1 that he had not missed any court dates, Officer 1 said, "Nope, you don't show up for your court dates so you're goin' to jail." Officer 1 also told Complainant that he had a suspended license. Complainant stated that he argued with Officer 1 about his license being suspended. Complainant claims that Officer 1 got irritated and said, "You have the right to remain quiet. Use it. Stop your whining. Stop your crying. Act like a man. You're down here to buy a prostitute and you're going to jail."

During his interview, Complaint stated that he did have a suspended license at the time, but did not realize it. Complainant stated that he had been given a ticket for a wrongful U-turn, which he paid, but the payment arrived a day late so his license had been suspended. Complainant claims he dealt with the ticket about a month prior to this incident, and was unaware of his suspended license status.

Complainant's car was towed. He stated that he was never asked for insurance or if he was the owner of the car. Complainant stated that he was told that the car was parked illegally. Complainant stated that when he went to pick up his car from the impound lot, he saw that

Officer 1 had opened up the paint that was in his car, spilled it all over, and then wiped his hands all over the seat of Complainant's car. He also stated that the car had been "ransacked," with the drawers and seat covers lying on the ground outside of the car. He also stated that his "CDs, [his] gag gift, everything was stolen," and when he told the lot employee, he said, "Yeah, we have a problem with that. You can fill out a form."

Complainant stated that eventually a Hennepin County Sheriff's van came to pick Complainant up at the scene of the stop. Complainant stated that one of the Officer's from the van said, "Why don't you have two handcuffs on this man?" Complainant stated that they then removed his handcuffs and placed him in two sets of handcuffs. Complainant stated that he told them he needed to go to the hospital, and they explained that if he did see a doctor he would still have to go to jail afterward, but if he could hold on, he would be in and out of jail in no time.

Complainant stated that he went to his family physician who told him, "You need to go to the emergency room right now. I will call the emergency room and have them ready for you when you walk in the door." Complainant was treated at the emergency room and then released. At the time of his interview, Complainant said he was no longer being treated for his injury as a chiropractor had helped him.

Medical Records

Complainant had an x-ray taken in the afternoon following the incident. The x-ray captured three views of the left shoulder. The "Impression" listed was: "Degenerative arthritis is present in the left shoulder joint with joint space narrowing and subchondral sclerosis. No acute abnormality demonstrated.

The nurse's notes included the following statements:

- "Patient rates L shoulder pain 9/10. Administered Ibuprofen.... Patient able to move L arm without difficulty."
- "Patient able to remove shirt without difficulty. Patient holding water glass in L hand drinking without difficulty when taking medication."
- "Patient states that he spent the night in jail and went to his regularly schedule [sic]. PMD appointment today. 'Dr. XXXX told me to come to the ER for my shoulder.'"

DVS Records

Complainant's DVS record indicates that Complainant's driver's license was suspended from twenty-six days prior to this incident until two days after this stop. The description in Complainant's record is "SUSP- FAIL TO APPEAR OR PAY FINES." The DVS report indicates one other incident of "SUSP- FAIL TO APPEAR OR PAY FINES" from 1998.

OPCR Investigative Report

In the OPCR investigative report, the investigator described the events as follows:

1. On the date of the incident, Officer 1 stopped Complainant for a traffic violation.
2. Officer 1's squad car video began recording the stop as Officer 1 pulled up behind Complainant's car to make the stop.
3. Officer 1 approached Complainant's vehicle alone and after a few minutes he returned to his squad car.
4. Officer 1 approached Complainant's vehicle again after other Officers arrived on the scene.
5. Officer 1 spoke with Complainant briefly and then is seen opening the Complainant's driver's door.

6. Officer 1 took hold of Complainant and assisted him out of the vehicle. While outside of the vehicle, Complainant is heard making a moaning sound while being handcuffed.
7. Complainant was handcuffed without incident and not in the manner described by Complainant (arm forced up to his neck and head).
8. Officer 1 escorted Complainant to his squad car without incident.
9. Officer 1 is heard on the squad car audio telling Complainant several times to sit inside the squad car. Complainant is heard asking Officer 1 about his vehicle and requesting property from his vehicle. Complainant eventually complied and got into the backseat of the squad car on his own without incident. The Complainant is viewed sitting calmly in the backseat showing no signs of distress.
10. During Complainant's interview with the investigator, Complainant stated that he was in extreme pain after behind handcuffed by Officer 1. Complainant stated he was crying and screaming in the backseat of the squad car from the pain.
11. Complainant was seen later that same day at North Memorial Emergency Room with complaint of left shoulder pain. It was noted in the medical report that Complainant was able to move his left arm without difficulty while removing his shirt and holding a glass of water.
12. It was also noted that Complainant claimed his left arm was pulled outside the window and bent back around the frame of the door and he was pushed down to the ground. There was no evidence from the squad car video of Complainant's left arm being bent in the manner he described, and the Complainant was never taken down to the ground during this incident.
13. Complainant alleged that while searching his vehicle, Officer 1 "ripped storage drawers out from under the front seat and ruined the tracks that they guide on" and opened a can of paint that was stored inside the vehicle, "spilling paint all over the floor, dash and seat."
14. Complainant's vehicle was towed incident to the arrest. As part of the towing procedure, Officer 1 and another officer conducted an inventory search of the vehicle. During the search, Officer 1 came in contact with some red paint as he is seen in the squad video withdrawing from the front passenger side of Complainant's vehicle with red paint on his left hand (glove). While it is apparent that Officer 1 came in contact with the red paint incident to the search of the vehicle, there is no evidence of Officer 1 intentionally causing the spill of the paint.
15. In the Complainant's formal statement given to the investigator, he stated that when he saw his vehicle at the impound lot, it had been ransacked; drawers and seat covers were lying on the ground outside the vehicle. The Complainant believed this was caused while his vehicle was stored in the impound lot.
16. Complainant provided three photos of the alleged damage to his vehicle. One photo showed a small amount of drippings of red paint on the front passenger seat, floor and floor mats; one photo showed what appeared to be two spots of smeared red paint near the left side of the driver's seat; one photo showed a small container of apparent red paint. There were no photos of the alleged damage to the storage drawers or any other area of the vehicle.
17. Complainant alleged that Officer 1 arrested him without cause. After checking Complainant's driving status, Officer 1 discovered that Complainant's driving status was suspended earlier in the month, and that he had failed to appear or pay fines on several occasions. Complainant's driving privilege was not reinstated until two days after the incident. According to MPD Policy (7-610), if the officer believes that there is a

substantial likelihood that the accused will fail to respond to a citation, the officer can make an arrest.

18. Complainant alleges that Officer 1 inferred that he was looking for prostitutes. Even if this was true, it does not rise to the level of misconduct.