

INTERNAL AFFAIRS INVESTIGATIVE REPORT

IAMAINID332

File Class: IA INVESTIGATION**Date Occurred:** 12/27/2014 **Date Reported:** 05/21/2015**Comp Type:** EXTERNAL**REDACTED**

IA#:15073

Location: 1634 NE 8TH AVE
GAINESVILLE FL**Date IA/PSD:** 05/21/2015 **Date to Chain:****Date to Chief:** 09/23/2015 **Date Expired:****Status:** Closed**Status Date:** 09/25/2015 **Assnd To:** SCHIBUOLA, M. G.**ASSOCIATED NAMES**

CO [REDACTED], [REDACTED] J

Sex:M Race:B Age:[REDACTED]

SO WHITE, ROBERT P

Sex:M Race:W Action:NONE

ALLEGED RULE OF CONDUCT VIOLATED-----CLOSURE

Improper Contact

Unfounded

SUMMARY/NOTES

On May 21st, 2015, Internal Affairs received a Citizen Complaint Form completed by [REDACTED] in regards to his arrest by Ofc. Robert White under GPD CR# 14-025537. Internal Affairs investigator, Lt. Schibuola had already been made aware of this arrest via a cell phone video of the incident.

Based on citizen concerns, stemming from the video, an Administrative Review of the incident had already been started. This initial review included having the Operational Skills Unit (OSU) evaluate Ofc. White's actions while making the arrest. The controlling techniques used by Ofc. White were found to have been within policy by Sgt. Steve Hayes.

Mr. [REDACTED]'s complaint alleges the following: excessive use of force, questions the validity of the stop (stop sign violation & bike light), improper search, bodily injury, broken personal property, and a violation of his civil rights.

As part of this investigation I reviewed video from the cell phone camera (citizen provided) and video from Ofc. White's in-car camera. I also reviewed the police report completed by Ofc. White. During the course of this investigation I conducted formal interviews of Mr. [REDACTED] and Ofc. White. I obtained written permission from Mr. [REDACTED] to obtain his dental records from Shands. Additionally, the court records of this case were reviewed and the assigned Assistant State Attorney, ASA Mickholtzick, was contacted.

SUMMARY OF INCIDENT:

Ofc. White conducted a traffic stop on [REDACTED], who was riding a bike, on December 27th, 2014 at 2140hrs. The stop sign violation was observed and verified via Ofc. White's in-car video camera. Ofc. White conducted the traffic stop and informed Mr. [REDACTED] that he was being stopped for not having the proper lighting on his bike.

Ofc. White requested [REDACTED] to stand in front of his patrol car. [REDACTED] went toward the front of the patrol car, but then backed away to face Ofc. White. Ofc. White asked [REDACTED] a total of nine times to sit down on the curb. During this time frame Ofc. White is heard on the video calling for back up to respond to his location.

As explained in his IA interview, Ofc. White stated he was concerned that Mr. [REDACTED] was going to attempt to flee from him on foot. Mr. [REDACTED], however, stated in his IA interview that he did not want to sit down due to the possibility of paraphernalia being on the ground around convenience store. The area around the convenience store is a known high drug/crime area.

Ofc. White stated that due to [REDACTED]'s refusal to obey his lawful verbal commands to sit down he made the decision to arrest him for resisting without violence. Ofc. White attempted to handcuff [REDACTED], who had placed both hands on to the hood of the patrol car. Ofc. White had one hand against [REDACTED]'s back and then attempted to grab [REDACTED]'s right arm in order to handcuff him.

On two occasions it appears that [REDACTED] is pushed forward onto the hood of the patrol car by Ofc. White. A slow motion review of the video showed that [REDACTED]'s face did not make contact with the hood of the patrol car. [REDACTED] had long dreads and as his dreads fell forward and it made it difficult to see clearly lack of contact to the car. [REDACTED] also appeared to have one decorative object in his hair which contributed to the loud noise on the

hood when he was pushed forward.

Following the arrest numerous officers arrived on scene to assist. During the majority of the stop [REDACTED]'s cousin was on scene filming the incident. He clearly became agitated by the incident and by the time other back up officers arrived he was cursing at them. [REDACTED]'s cousin was yelling at police "Fuck 12" and several other obscenities. He was contacted by Sgt. Kays by that time and stated to Sgt. Kays that he wanted to file a complaint. Sgt. Kays responded by stating, "You just did". While this investigation was still an Administrative Review, Sgt. Kays was counseled by me that as a supervisor he had an obligation to overlook the citizen's verbal attack and consider his concerns.

INVESTIGATIVE SUMMARY:

Sgt. Hayes with the Operational Skills Unit reviewed the incident and did not find any improper use of police control techniques. I contacted ASA Rebecca Mickholtzick about the case as she was the assigned prosecuting attorney to the case. The case had been ultimately dismissed due to "insufficient evidence to sustain a conviction". ASA Mickholtzick stated the arrest was not improper, but she did not wish to present the case in a trial as she felt a conviction would be difficult.

On June 11th, 2015 I conducted an interview of Mr. [REDACTED]. His sister, Melinda [REDACTED], was present for the interview. [REDACTED] stated that his retainer had been broken when he was arrested. He also stated that his back had been sore following the arrest. Based on Mr. [REDACTED]'s allegations that he was injured, I requested that he sign an "Authorization to Release Protected Health Information" form. The form was for records at Shands Pediatric Dentistry, as Mr. [REDACTED] indicated in his interview that his retainer was damaged during his arrest. I also requested a copy of the intake records at JDC on the night of his arrest.

In reviewing Mr. [REDACTED]'s dental records I observed an entry on January 6th, 2015 with no mention of damage to his retainer. On January 14th, 2015 another entry was made. This entry stated the following, "Emergency - pt reports appliance fell out while eating a big mac. Appliance removed and rebounded." Both of these entries were made after his arrest on December 27th and appear to contradict his statements made in his IA interview that the retainer was broken when he was arrested.

I also reviewed the intake records provided by JDC. On page 33 of 43 (based on attachments provided via PDF format) there was a title of "Next series of questions will be asked of youth:". Questions 4 stated, "Do you have any health complaints such as sickness or pain at the present time?" According to the document provided the answer was "No". Based on all the provided documentation there are no indications that show Mr. [REDACTED] was injured due to his arrest.

Ofc. White was interviewed on July 7th, 2015. Ofc. White's statements were consistent with the narrative of his police report. Ofc. White stated he felt that [REDACTED] was going to run from him based on several factors: [REDACTED]'s body language, lack of compliance with his verbal commands (would not stand in front of patrol car and would not sit down on curb), and stating that he did not have any ID on him. Ofc. White stated based on his experience he thought that [REDACTED] may flee on foot from him. Ofc. White stated he made the decision to arrest [REDACTED] based on his failure to obey his lawful commands to sit down. Ofc. White stated it was his belief that he had the right to order a subject to sit down if he thought that subject was either a flight risk or was going to fight with him. Ofc. White stated his intention for having [REDACTED] sit down was to attain better physical control of him. Ofc. White stated that he was pushing [REDACTED] forward because he was resisting and that [REDACTED] went limp and fell forward toward the hood. Ofc. White stated that [REDACTED] then tried to stand up straight so he pushed him back forward. Ofc. White stated that [REDACTED] never made any complaints of injury to him.

Ofc. White stated he searched [REDACTED], but did not search inside his pants or underwear. Ofc. White stated he did have [REDACTED] remove his shoes to search them. Ofc. White stated he has had past experience of finding paraphernalia in shoes. Ofc. White did not find anything illegal on [REDACTED]. Ofc. White stated he moved [REDACTED] into his car without shoes on to move the arrest process along due to a crowd gathering around the incident. The search was captured on video and appeared proper.

CONCLUSION:

Based on FL Statute, bicyclist are required to obey traffic control devices and are required to have lighting on both the front and back at night. The initial review of the in-car video showed that the traffic stop was valid and lawful as it captured Mr. [REDACTED] running the stop sign as he crossed NE 8th AVE.

The assigned State Attorney to the case did not think the arrest was unlawful but based on the nature of the arrest did not feel it was worthwhile to take to court. The Operational

Skills Unit found that the actions of Ofc. White were within policy.

The Gainesville Police Department through training will emphasize the importance of tactical awareness. Future training will stress the importance that when possible and practical officers should wait for back up before going hands on with a subject. The possibility that a subject will not resist or that a lower level of force will be needed improves with more officers on scene.

Ofc. White also indicated a willingness to meet with Mr. [REDACTED] to discuss the matter and explain to him in person why he took the actions he did. Mr. [REDACTED] will be provided the opportunity to schedule a meeting through the office of the Chief of Police to discuss the case.

In conclusion the allegation of Improper Contact is UNFOUNDED.

"I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes."

IA#:15073

IA Investigator:_____ DATE:_____

IA Commander:_____ DATE:_____

Bureau Commander:_____ DATE:_____

Major:_____ DATE:_____

Chief of Police:_____ DATE:_____