

PSS # 13-0455

ALLEGATION: Investigation of Force/Procedure

PERSONNEL: Officer Joseph Ferrigno
Officer Anthony Liberatore

STATEMENT OF: OFFICER JOSEPH FERRIGNO

DATE: June 13, 2013

TIME: 2:30 p.m.

PLACE: Professional Standards Section
Rochester Police Department
492 Lyell Avenue
Rochester, New York

PRESENT: Sergeant Laszlo Tordai
Sergeant John Drew

Sergeant Ralph Gagliano, RPLC

REPORTED BY: Deborah C. Podgers
Police Stenographer

1 A. I was working 3rd platoon. And I believe I was
2 a 49 car that day.

3 Q. Okay. Were you in uniform or plainclothes on
4 this date?

5 A. I was uniform.

6 Q. Okay. Were you operating a marked patrol
7 vehicle on this date?

8 A. I was a passenger in a marked patrol car.

9 Q. Okay. You're saying that you were a passenger,
10 did you have a partner or a rider with you on
11 this date?

12 A. I had a partner, who was driving.

13 Q. And who might that be?

14 A. Officer Anthony Liberatore.

15 Q. Okay. Did there come a time on this date where
16 you came into contact with Mr. Benny Warr?

17 A. Yes, sir.

18 Q. Do you remember the specific time?

19 A. It was approximately, approximately 8:00, 2000
20 hours.

21 Q. Okay. And where did this contact occur?

22 A. It originally occurred at 580 Jefferson. The
23 corner of Whittlesey and Jefferson Avenue,
24 W-H-I-T-T-L-E-S-E-Y.

25 Q. Could you please explain the circumstances of

1 your contact with Mr. Warr?

2 A. Um, we pulled up at the area of 580 Jefferson.

3 The area is a, it's a known hot spot for, for

4 violence, for vice activity, drug sales; you

5 name it. And we saw a group, a large group.

6 There was probably ten plus people out there.

7 They were shooting dice, playing chess,

8 drinking. That whole thing.

9 And for, you know, for public offense. We,

10 we mainly just were going to disperse the group

11 from participating in the vice activity.

12 Q. Okay. And what happened next?

13 A. Um, most of the group started walking slowly

14 away, except for Mr. Benny Warr, who was seated

15 in the wheelchair at the corner there. I

16 believe his words were, when I told him, gave

17 him the lawful order to disperse, he told me,

18 fuck you, mother fucker.

19 Q. What did you specifically tell him to do?

20 A. I just told him, you know, to disperse the area.

21 Actually, I'll refer to my report here.

22 Excuse me for one minute.

23 When, when he was participating with the

24 other group, hanging out; like I said, there was

25 vice activity. We dispersed him from, as we

1 told everyone to move along off the public
2 sidewalk, that's when, you know, he began
3 yelling and swearing. Yelling, fuck you, mother
4 fuckers. And you know, you suck my dick.

5 And we hadn't even exited the car yet. So
6 we were still just trying to verbally move the
7 group.

8 Q. So you were in the vehicle when you first told
9 him to, you know, to leave the sidewalk, or that
10 area?

11 A. Correct. Our only intentions at that time were
12 just to move the group along.

13 Q. Okay. And how loudly did he scream these
14 obscenities?

15 A. It was loud enough for the group to kind of move
16 slower away, because they kind of wanted to
17 stick around to see, you know, how he was going
18 to continue to act.

19 Q. Okay. How did he -- what happened next?

20 A. Basically, what happened next was, you know,
21 when he was continually swearing, I asked him
22 again, I said, so you're not going to move?
23 You're going to stay there and you're going to
24 continue swearing at me? And he's like, yep.
25 And he's like, you can suck my dick.

OFFICER JOSEPH FERRIGNO 13-0455

1 And that's when everyone was like oh,
2 everyone was surprised and shocked at what he
3 was saying, so.

4 That's when I exited the vehicle, my partner
5 and I. And I walked up to him and I said, so
6 you're really not going to move? I asked him
7 again, so you're not going to move along? He
8 said, fuck you, mother fucker. So I said, all
9 right, now you can go to jail. Now you're under
10 arrest.

11 So he, you know, he immediately drove off in
12 his wheelchair. It was westbound across
13 Jefferson, into like 595, the bus stop right
14 over there.

15 So I had told him he was under arrest. And
16 then he, while swearing at me, drove his
17 motorized wheelchair across the street.

18 Q. And then what happened?

19 A. Um, what happened then was, we kind of stood
20 there for a minute or two to try to make sure
21 the group, the rest of the group moved along.

22 And then we moved across the street to go,
23 again, try to attempt to take Mr. Warr into
24 custody.

25 Q. And how was this done?

1 A. Um, actually, I'm going to elaborate on that a
2 little more.

3 As we walked across the street, a couple of
4 the guys that were hanging out before were like,
5 you know, I overheard them saying, you can't
6 talk to him like that. And he needs to go to
7 jail. And stuff like that.

8 So I mean, I knew that at that point, this
9 created quite a stir out there. Um, you know,
10 he got the attention that he wanted.

11 And we, as we were approaching him at the
12 bus stop, he was with a couple of females, I
13 believe. I'm not really sure who else was
14 around, but you know, he was still carrying on.
15 Fuck them cops, you know, they can suck my dick.

16 And as he's screaming this, not only did the
17 group that we already dispersed kind of stick
18 around and come back, but we actually had more
19 people coming from Bartlett Street and coming
20 out of the, like the store area of 595
21 Jefferson.

22 You know, more and more people started
23 coming out and gathering around, you know,
24 because of, of just his yelling, screaming, and
25 just his blatant disrespect for, for, you know,

1 put your hands behind your back. You're going
2 to jail. He wouldn't do it. He refused.

3 So when I went to go take him by his wrist
4 to try and get his hand behind his back, I
5 couldn't even grab his wrist, because he
6 immediately threw a punch and punched me in the
7 genitals. And it kind of threw me off guard.

8 So at that point, you know, I knew that
9 verbal tactics weren't going to work with this
10 guy, and he's already trying to fight with us.
11 So I deployed a one-second burst of pepper spray
12 to try and see if that would change his channel
13 a little bit. It didn't.

14 So, again, after the pepper spray, I went to
15 try and grab him by his arm, but he was swinging
16 his fist, I couldn't, there was no way I could
17 grab and control his arm.

18 Um, you know, at that point we knew we had
19 to try a different tactic. We weren't going to
20 handcuff him while he was in the chair.

21 The size of him, he's a big guy. He's
22 probably close to 300 pounds, and strong upper
23 body. There was no way we were going to control
24 his wrists while he was seated in that chair.

25 So, you know, we had to change our tactics

1 up a little bit, maybe try to get him on the
2 ground, so maybe we can go from there and
3 attempt to take him into custody.

4 Q. Okay. So then what happened?

5 A. Um, while he was on the ground, he -- you know,
6 once we got him on the ground, things got a
7 little bit, a little bit more stressful. More
8 people started coming out. More people started
9 yelling, threatening us, swearing, screaming.

10 He continued to fight. He was throwing his
11 fists around, trying to hit us; trying to strike
12 us. I was still a little thrown off because of,
13 you know, the spot where he hit me.

14 So, you know, while he was trying to strike
15 us, you know, I threw maybe two or three knee
16 strikes into his stomach to try and get his
17 fists under control, his wrist under control to
18 try and maybe place him in handcuffs.

19 I monitored in between each knee strike, he
20 was still, you know, actively fighting. We were
21 getting, we were getting tired out at that
22 point. We had to divide our attention between,
23 you know, Benny Warr, who's fighting and you
24 know, a large angry group now that has, has, you
25 know, surrounded us.

1 there. You know, 20, 30 people.

2 And then across the street where we dealt
3 with Mr. Warr, you know, there was ten plus
4 people out there. There was large groups out
5 there, shooting dice, playing chess. Basically,
6 drinking. So there was a lot of people out
7 there.

8 Q. You mentioned that Mr. Warr was with a few
9 people. What were your general observations in
10 relation to Mr. Warr or who he was with, or what
11 he was doing?

12 A. Mr. Warr was just, I mean, he was pretty much
13 just sitting on the corner there with a bunch of
14 other groups, a bunch of other males. And he
15 was yelling into traffic. He was participating
16 in, you know, the vice activity down there with
17 those guys.

18 He served no purpose to just be seated there
19 on the sidewalk, other than being, probably be a
20 nuisance.

21 Q. Now, you said that you had previous knowledge of
22 Mr. Warr's associations with other criminals or
23 involved in vice activity.

24 Have you had previous interactions with him?

25 A. Um, I never arrested him before, but I have had

1 able body guy and he was behaving like that, and
2 all of a sudden we told him he was under arrest
3 and he started to run, I mean, then we would
4 have a foot pursuit on hand, and like a three
5 ring circus down there.

6 But because he was in a wheelchair, he moved
7 over. And at that point, you know, I was
8 asking, or telling my partner, you know, I
9 already told him he was under arrest. We need
10 to go effect our arrest.

11 Q. So this is why, instead of trying to stop him at
12 580, why you guys waited for him to cross
13 traffic and then initiate the arrest on the
14 opposite side of the street?

15 A. Correct.

16 Q. Okay.

17 A. Because we stood by for a minute, like I said,
18 to make sure that the rest of the group that we
19 were dispersing, you know, at least started to
20 disperse and clear the area out. So we paused
21 for a minute.

22 And then that's when we made sure traffic
23 was clear, and then we crossed. And that's
24 when --

25 Q. So you're saying that one of the officer safety

1 A. Yes, sir.

2 Q. And what do you think their impression is of
3 you; is it a friendly one or is it a favorable
4 or a non-favorable one?

5 A. It's favorable, um, I believe. It's one of
6 those things where, you know, there's, there's a
7 little bit of a respect. Because, you know,
8 they know if they break the law, they're going
9 to go to jail. So there's that respect, so.

10 I mean, usually when we, when we disperse
11 people, you know, they respect us enough to
12 leave. But in this case -- you know, people
13 know.

14 Q. I believe you stated that the group was
15 loitering, playing -- shooting dice, playing
16 chess?

17 A. Uh-huh.

18 Q. What does shooting dice usually lead to, in your
19 experience?

20 A. Shootings. To be honest with you.

21 A lot of dice games, and you know, I've
22 known in, you know, in dealing with the city,
23 whenever there's a dice game, there's a good
24 chance there's going to be violence. When
25 there's money on the line and people are

1 guess. So, I mean, no, I couldn't. Baggy
2 jeans.

3 Q. So Mr. Warr crosses the street. At any point in
4 time did he say why he was there? Did he say
5 that he was waiting on a bus or anything?

6 A. I didn't hear him say he was waiting on a bus.
7 All I heard is him swearing, yelling; creating a
8 dangerous environment with everybody. And with
9 his actions, creating more people to come out,
10 you know.

11 And these people aren't, you know, happy and
12 willing to help us out, unfortunately.

13 Q. How long would you say that he was at that bus
14 stop area prior -- how long would you say he was
15 at the bus stop in total, I guess?

16 A. He wasn't there very long. As soon as, as soon
17 as he, he drove over there -- we literally stood
18 there for a minute. And then we walked over
19 there. That's all. He wasn't there long at
20 all.

21 Q. And at no point in time did you hear him say,
22 I'm just waiting for the bus?

23 A. No.

24 Q. I'm just waiting to get on the bus?

25 A. Nope.