

PSS # 13-0455

ALLEGATION: Investigation of Force/Procedure

PERSONNEL: Officer Joseph Ferrigno  
Officer Anthony Liberatore

STATEMENT OF: OFFICER ANTHONY LIBERATORE

DATE: June 10, 2013

TIME: 2:15 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 Q. And were you in uniform or plainclothes on this  
2 date?

3 A. Uniform.

4 Q. Were you operating a marked patrol vehicle?

5 A. Yes.

6 Q. Did you have a partner or a rider with you on  
7 this date?

8 A. Yes.

9 Q. May I ask who that was?

10 A. Partner, Officer Joe Ferrigno.

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

13 A. Yes.

14 Q. And what was the specific time?

15 A. It was in regards to when myself and Officer  
16 Ferrigno were clearing the sidewalk in front of  
17 580 Jefferson.

18 Q. Do you know what time that was?

19 A. Right around 8:14.

20 Q. Okay. You said that was 580 Jefferson Avenue;  
21 correct?

22 A. Correct.

23 Q. And could you please explain the circumstances of  
24 your contact with Mr. Warr?

25 A. Um, there was probably about ten to a dozen

1 individuals congregating in front of the  
2 establishment. Mr. Warr was one of them.

3 Myself and Officer Ferrigno directed  
4 everyone to disperse from the area; at which  
5 point everyone except Mr. Warr did.

6 Q. Okay. And what establishment was this, what was  
7 the address?

8 A. 580 Jefferson is a, it's a Mini Mart.

9 Q. Okay. And what happened after you requested for  
10 people to disperse?

11 A. As I stated, most of the crowd dispersed on  
12 their own. Mr. Warr was left, still out in  
13 front of the establishment. He was in a  
14 motorized wheelchair.

15 We again asked him to disperse from the  
16 location, at which point he basically said to  
17 myself and Officer Ferrigno, fuck you. He was  
18 asked again, at which point he told us to suck  
19 his dick.

20 And then we both advised him that he was  
21 under arrest.

22 Q. Okay. When he was using these vulgarities, what  
23 was his demeanor or how loudly did he state this?

24 A. It was loud enough that people on the  
25 surrounding sidewalk still could hear. And they



1 reacted to that, due to the fact that he said it  
2 in an aggressive manner towards us.

3 The individuals who could still hear, you  
4 know, stated, you know, I believe some of them  
5 yelled out, are you going to let him talk to you  
6 guys like that? There was a lot of, you know,  
7 just like the oohs and the aahs.

8 So, obviously, it was loud enough that other  
9 individuals took notice and continued to take  
10 notice.

11 Q. How many people, could you estimate, were around  
12 still in the area?

13 A. Um, probably a good ten. I mean, the group that  
14 we told to disperse, you know, was still, you  
15 know, in the area dispersing. So they hadn't  
16 gone too far.

17 Q. And what happened after he made these statements?

18 A. After he made the statements and we told him  
19 that he was under arrest, he proceeded to take  
20 his motorized wheelchair with him and cross the  
21 street to the other side, which would be 595  
22 Jefferson.

23 Q. Okay. And what were your actions then?

24 A. Once we finished on the 580 side, myself and  
25 Officer Ferrigno crossed the street to address

1 Mr. Warr and to effect the arrest for disorderly  
2 conduct.

3 Q. Now, why did, why did you guys wait to arrest him  
4 instead of arresting him right at 580 Jefferson?  
5 Why did you wait to cross the street?

6 A. Due to the fact that he was in a wheelchair and  
7 we saw where he was going, we didn't feel the  
8 need to make it, big of a spectacle of us  
9 chasing after a wheelchair in the middle of the  
10 street.

11 We knew where he was going to be. We knew  
12 he wasn't going to go far. So once we finishing  
13 on that side of the street, we were able to  
14 basically collect our thoughts and then proceed  
15 over to make the arrest.

16 Q. Now, were you guys patrolling on Jefferson Avenue  
17 prior to that incident --

18 A. Yes.

19 Q. -- during your shift? How many times?

20 A. Um, well, if it was about 8:00; I would say we  
21 were down there several times. I mean, that  
22 would be our, primarily the street that we would  
23 stay at due to the violence and the drugs in  
24 recent past.

25 So that would be the area and the block that



1 from?

2 A. It would range from simple disorderly conduct  
3 up to harassments on police officers; open  
4 containers; drugs, possession; and  
5 paraphernalia.

6 Q. What were your general observations of Mr. Warr  
7 when you guys first pulled up onto Jefferson  
8 Avenue?

9 A. It was basically Mr. Warr, along with another  
10 group of individuals, who were just congregating  
11 on the sidewalk, no real reason, in front of the  
12 store. And that was pretty much it.

13 Q. I'm not sure if I already asked this, were there  
14 other people around in that general vicinity?

15 A. Yes.

16 Q. And what kind of activity were they doing?

17 A. Um, there's chess games that go on on the  
18 sidewalk. There's open containers, as well.

19 Q. Do you have, have you had any previous  
20 interactions with Mr. Warr, either arrest-wise or  
21 any other street stops?

22 A. I can't recall. As far as arrests, I don't  
23 believe.

24 But Mr. Warr has been seen out there, and  
25 he's able to remember due to the fact that he is

1           could be concealing weapons on his person or  
2           underneath him, which we didn't know.

3   Q.   What was the general physical description that  
4           you can describe to Mr. Warr?

5   A.   Well, in regards to him, he was a very large  
6           man. You know, well -- 300 pounds. A very  
7           large upper body.

8           We could not tell at the time that, um, he  
9           did in fact have a prosthetic leg, due to the  
10          fact that he was clothed. But it wasn't obvious  
11          that, you know, he was disabled.

12          So we, we believed that he was still able to  
13          walk. Which in fact, he is.

14   Q.   So your initial thoughts that, while he was  
15          utilizing the wheelchair, that he might have  
16          still been able to use his legs?

17   A.   Sure.

18   Q.   And just, he had difficulty getting around?

19   A.   Uh-huh.

20   Q.   Okay. So what happened when you guys approached  
21          him for the arrest?

22   A.   Officer Ferrigno attempted to obtain one of Mr.  
23          Warr's arms, in which he began swinging both of  
24          his arms wildlly, um, to resist Officer Ferrigno  
25          grabbing.



1 At one point I believe that he, Mr. Warr  
2 struck Officer Ferrigno or hit him while he was  
3 flailing his arms.

4 Officer Ferrigno deployed his OC spray to  
5 Mr. Warr's face, which had absolutely no impact  
6 at all.

7 I then went to the right side of Mr. Warr's  
8 wheelchair in an attempt to grab that side, as  
9 far as arms. At which he flailed his arms away  
10 from me, and basically said that he wasn't  
11 going.

12 Q. Okay. And what happened then?

13 A. It was my determination that we weren't making  
14 any progress and that he was continuing to  
15 resist with his arms. And that was -- at that  
16 time, that I pushed Mr. Warr's wheelchair, along  
17 with him, to the ground.

18 Q. And why did you utilize this technique?

19 A. The fact that he was in his wheelchair still, we  
20 weren't able to obtain and control his arms.  
21 And due to the large, you know, mass of his  
22 upper body, officer safety, we needed him out of  
23 that chair so we could control him better.

24 He wasn't going to go with us, so I felt  
25 that that was the best technique to get him onto



1 be in danger and harm would come our way, Mr.  
2 Warr was still on his back; I effected an elbow  
3 to his face in an attempt to end the situation  
4 as fast as I can.

5 He continued to fight. We were able to get  
6 him onto his stomach. At which point Officer  
7 Ferrigno was attempting to obtain one of Mr.  
8 Warr's arms. He was still placing his hands and  
9 his arms underneath his body, not allowing us to  
10 grab in order to effect the arrest.

11 At that time, Sergeant Stewart arrived and  
12 was able to assist us with obtaining Mr. Warr's  
13 arms and putting them behind his back for  
14 handcuffing.

15 Q. Okay. After handcuffing, what happened?

16 A. We disengaged. And we immediately went into a  
17 protection/observational stance against the  
18 crowd that was forming and yelling and becoming  
19 extremely agitated with what had just occurred.

20 Q. Did you at any time kick Mr. Warr in the head or  
21 anywhere in the body?

22 A. I did not.

23 Q. Okay. Did you guys ever ask for medical  
24 attention?

25 A. Absolutely. Right after, Rural/Metro was

1 Q. Like a threat?

2 A. -- my safety?

3 Q. Uh-huh.

4 A. Just exactly that. He knew that he was under  
5 arrest. The only way he was going to leave was  
6 in an ambulance, meaning that we were definitely  
7 going to have to get physical. And that either  
8 he was going to have to be hurt, or one of us  
9 were going to be hurt.

10 Q. I believe you stated that you delivered an elbow  
11 strike to Mr. Warr?

12 A. Uh-huh.

13 Q. At what position were you at when you delivered  
14 the elbow?

15 A. I was kneeling over him while he was on his  
16 back.

17 Q. And you were more towards which part of his body?

18 A. His head, his upper body.

19 Q. Is that like, as far as defensive tactics, is  
20 that -- how does that play in your defensive  
21 tactics?

22 A. Um, the elbow strike or the actual placement of  
23 where I was?

24 Q. The placement.

25 A. Basically when there's an open area, you know,



1 that's the place that you would deliver a strike  
2 or a technique. And the closest area is his  
3 head, at the time.

4 Q. I believe Sergeant Tordai asked if you had kicked  
5 Mr. Warr at all. Did you observe any other  
6 officers kick Mr. Warr at all?

7 A. No, I didn't.

8 Q. After the wheelchair got tipped over and you were  
9 trying to place his arms behind his back, how  
10 many officers were there?

11 A. At the time it was just me and Officer Ferrigno.  
12 And then towards the end, it was Sergeant  
13 Stewart. So, three.

14 Q. During the initial use of force with you and  
15 Officer Ferrigno, could you notice Officer  
16 Ferrigno's position; was he standing, sitting  
17 kneeling, squatting?

18 A. He was -- while he was in the chair or once he  
19 was on the ground?

20 Q. Once he was on the ground.

21 A. Once he was on the ground, Officer Ferrigno was  
22 also kneeling on the ground next to him.

23 Q. After the use of force, after you applied a  
24 technique, was the techniques you applied  
25 successful?

## C E R T I F I C A T I O N

I, Deborah C. Podgers, hereby certify that I reported in stenotype shorthand, the statement of OFFICER ANTHONY LIBERATORE in the above-entitled matter on June 10, 2013, and that the foregoing transcript, numbered pages 2 through 26, was typed by computer-aided transcription and constitutes a true, accurate and complete record of those stenographic notes.

Deborah C. Podgers

Deborah C. Podgers  
Police Stenographer

Dated this 11th day of June, 2013