

PSS # 13-0455

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4 ALLEGATION: Investigation of Force/Procedure

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7 PERSONNEL: Officer Joseph Ferrigno  
8 Officer Anthony Liberatore

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11 STATEMENT OF: SERGEANT MITCHELL STEWART

12  
13 DATE: June 20, 2013

14 TIME: 2:25 p.m.

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

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20 PRESENT: Sergeant Laszlo Tordai  
Sergeant John Drew

21 Sergeant Ralph Gagliano, RPLC

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23 REPORTED BY: Deborah C. Podgers  
24 Police Stenographer

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SERGEANT MITCHELL STEWART 13-0455

1 requested a back up.

2 I took the back up. While I was en route to  
3 the location, they called out for the officer to  
4 step it up. At which time I turned on my  
5 lights, I believe my sirens, and proceeded to  
6 that location.

7 I was headed eastbound on Bartlett Street.

8 And I pulled up on the, it would be the west  
9 curb way on Jefferson, facing the wrong way on  
10 Bartlett Street with my lights still activated.

11 Pulled up right in front of the officers,  
12 who were right in the middle of arresting a  
13 suspect.

14 Q. Okay. When you first pulled up, how was this  
15 suspect positioned?

16 A. He was on his stomach. His face was headed  
17 towards Bartlett Avenue. His feet were facing  
18 in a northbound direction.

19 Q. And as you, you were approaching the officers  
20 and the suspect, were there, did you overhear  
21 any commands being given by the officers towards  
22 the suspect?

23 A. Um, yeah. Stop resisting.

24 Q. And what were the suspect, or Mr. Warr's  
25 reaction to those commands?

1 having a hard time gaining control and  
2 compliance from him.

3 Q. To the best of your recollection, could you  
4 describe the physical characteristics of Mr.  
5 Warr?

6 A. Heavysset. I don't know. Average height,  
7 heavysset male.

8 Q. When you say heavy, is there any way you could  
9 estimate his weight?

10 A. Upwards of 250.

11 Q. Did you observe anything about, anything else  
12 about Mr. Warr?

13 A. Initially when I approached, like I said, he was  
14 face down on his stomach. It looked like he was  
15 tensed. He was refusing commands to put his  
16 hands behind his back.

17 Q. Do you remember who was able to handcuff Mr.  
18 Warr?

19 A. Um, I know that as I'm pulling his hand back,  
20 his left, or his left arm back, he's got a  
21 handcuff on his right wrist.

22 As I'm pulling with his arm back as far as  
23 we can, between myself and Joe, we couldn't pull  
24 his arm back any further. It was still too far  
25 for the handcuffs to be attached to the other.

1           So I took my other hand, I took my set of  
2 handcuffs out of my rear handcuff pouch and  
3 attached it to the one that was already on.

4           And then I attached it to his arm. And I  
5 remember he had rather large wrists, too,  
6 because I could only hear the one click, the  
7 first click of the handcuff and that's as far as  
8 it could be tightened.

9 Q.       What happened immediately after Mr. Warr was  
10 handcuffed?

11 A.       After he was handcuffed, as far as I remember,  
12 both officers kind of retreated a bit. I, I  
13 tried to help him up, as taught by our DT  
14 standards. At which point he told me that he  
15 was in too much pain. I asked him if he had any  
16 specific pain. He said no. All over.

17           So in my opinion, I decided it was best to  
18 leave him where he was. And I called for Metro  
19 to come get him.

20 Q.       What were your observations in regards to the  
21 street or the crowd?

22 A.       Um, it was a nice evening. There was a large  
23 crowd out in that area, as there generally is.  
24 But especially with the nice evening, a lot of  
25 onlookers, a lot of chirping.

1                   No active, no active hostility per the  
2                   crowd, but from working in that area you know  
3                   that that area can turn at any second; Jefferson  
4                   and Bartlett.

5           Q.     How long have you worked in that area?

6           A.     I pretty much worked there my whole patrol  
7                   career, until I got promoted to sergeant.

8           Q.     And what kind of arrests have you made there in  
9                   that specific area?

10          A.     I've made narcotics arrests; assault arrests.  
11                   Pretty much the whole gamut.

12          Q.     Any way you can describe the general number of  
13                   people that hang out in that area on a given  
14                   day?

15          A.     At any one particular time?

16          Q.     (Nods head).

17          A.     I would say easily a hundred could be in that  
18                   square block.

19          Q.     And what are the usual things you see as you  
20                   patrol the area?

21          A.     You see, you see -- generally, you see young  
22                   males hanging around the corner store.  
23                   Probably, most likely, you know, vice related.  
24                   You see elderly people there. Some of them  
25                   playing board games; some of them drinking

1 alcohol.

2 It's kind of a hub where people congregate.

3 It's just a well-known and well documented vice  
4 area. It's well-known for violent acts in that  
5 area.

6 Q. Now, you alluded to that in some instances there  
7 could be a chance where the crowd can turn on  
8 you.

9 Have you experienced that in that area?

10 A. I've experienced hostility where people have  
11 yelled at me, questioned what I'm doing.

12 I can't say anyone has actively swung at me  
13 or anything like that. But at any given time,  
14 it could have went, it could have went that way.

15 Q. Do you know any background, did you ever have  
16 any contact with Mr. Warr prior to this  
17 incident?

18 A. I've, I've seen him out in that same general  
19 block hundreds of times. I know I've spoken to  
20 him before.

21 But I don't recall that I've ever put pen to  
22 paperwork with him, because for whatever reason,  
23 you know, it's more the young kids that are  
24 associated with the violence. And I concentrate  
25 more on them, be it right or wrong.

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## 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 **SERGEANT MITCHELL STEWART** in the above-entitled matter on June 20, 2013, and that the foregoing transcript, numbered pages 2 through 22, 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 21st day of June, 2013