

Sergeant Stewart exited his vehicle, went to Mr. Warr's left side and took hold of his left arm. He then described that he pulled back on this arm to direct it behind his back. He described how he combined two sets of handcuffs and was able to secure the second wring on Mr. Warr's left wrist. When Sergeant Stewart attempted to help Mr. Warr to his feet, Mr. Warr told him he was in too much pain to be of any assistance in getting up. Sergeant Stewart noted that he made the decision that they should leave him and call Rural Metro. He then ordered photographs be taken, a neighborhood check be conducted and that the camera room be called to review footage. After Sergeant Stewart learned that the camera room did in fact have some footage of the incident, he personally called their extension and requested the incident be preserved. (See **Exhibit C**).

Attached hereto as **Exhibit G** is a copy of relevant portions of Sergeant Mitchell Stewart's statement, dated June 20, 2013, which he gave as part of the Professional Standards Investigation. Sergeant Stewart testified that when he pulled up, the officers were right in the middle of arresting Mr. Warr who was face down on his stomach (see pgs. 4 and 6). Sergeant Mitchell testified that it was a nice evening with a large crowd in the area, as there generally is (see pg.7). He clarified that there was "no active hostility per the crowd" but cautioned that the area of Jefferson and Bartlett "can turn any second" (see pg. 8). Sergeant Stewart described this area as "a hub where people congregate" (see pg. 9). Sergeant Stewart testified that he has seen Benny Warr before but does not recall ever putting a "pen to paperwork with him, because for whatever reason, you know, it's more the young kids that are associated with violence" and "I concentrate more on them, be it right or wrong" (see pg. 9).

THE UNDISPUTED PROOF

Relevant Blue Light Camera Footage

Attached hereto as **Exhibit H** is a CD containing video footage taken from the Blue Light Camera located at the intersection of Bartlett Street and Jefferson Avenue. The footage contained on this CD is from May 1, 2013 from 7:45 to 8:45 p.m. The following is what is shown during the relevant time intervals:

8:02:28 – Three (3) individuals are congregating on the east sidewalk in front of Zack's Mini Mart at 580 Jefferson Avenue (**Exhibit A** – see "3"). There are two (2) individuals on the sidewalk in front of the Swan Bridge building at 584 Jefferson Avenue (**Exhibit A** – see "2") and one pedestrian walking northbound on the east sidewalk. Benny Warr is seen in his wheelchair in the northbound lane on Jefferson Avenue speaking with the driver of a vehicle which is stopped in the east curb lane;

8:02:34 – The vehicle which is stopped in the east curb lane leaves, Benny Warr proceeds back onto the east sidewalk and backs his wheelchair against the Swan Bridge building at 584 Jefferson Avenue (**Exhibit A** – see “2”) where he congregates with Derrick Latham and one other person;

8:04:16 – A group of people is seen congregating on the west sidewalk in front of a building located at 581 Jefferson Avenue (**Exhibit A** – see “7”) north of the bus stop;

8:04:50 – Benny Warr is seen sitting in his wheelchair eating a popsicle or ice cream with his wheelchair backed up in front of the Swan Bridge Building at 584 Jefferson Avenue (**Exhibit A** – see “2”). Derrick Latham is sitting on the sidewalk to the right of Benny Warr (Derrick’s legs/boots are visible);

8:05:03 – A group of approximately 5 men leave the front of Zack Mini Mart at 580 Jefferson Avenue (**Exhibit A**, see “3”) and begin walking southbound across Whittlesey Street (**Exhibit A** – see “6”) on the east sidewalk toward Benny Warr and Derrick Latham;

8:05:07 – Four seconds later, a Rochester Police Department vehicle is seen heading northbound on Jefferson Avenue passing the Swan Bridge building at 584 Jefferson Avenue (**Exhibit A** – see “2”) where Benny Warr is still sitting eating his popsicle/ice cream. The group of approximately 5 men stop at the southeast corner of Whittlesey Street and Jefferson Avenue (**Exhibit A** – see “6”) as the police car passes them with its brake lights activated. The group of 5 men stop approximately 10 feet north of where Benny Warr is sitting in his wheelchair backed up against the Swan Bridge Building eating his ice cream;

8:05:13 – Derrick Latham stands up in front of the Swan Bridge Building entrance. He stands up to the right of Benny Warr who is still seated in his wheelchair eating his ice cream;

8:06:20 – One minute and 13 seconds later, Benny Warr has crossed to the west side of Jefferson Avenue and is seen in his wheelchair with a popsicle/ice cream in his hand stopped at the driveway entrance of Warren’s Pharmacy (**Exhibit A** – see “8”). Benny Warr is facing west towards the Warren’s Pharmacy building (**Exhibit A** – see “9”). He is alone and completely stopped in his wheelchair.

8:06:24 – The Rochester Police Department vehicle has not yet parked along the west curb on Jefferson Avenue.

8:07:07 – The group that was previously in front of Zack Mini Mart, 580 Jefferson Avenue (**Exhibit A** – see “3”) is now gone.

8:07:24 – Officer Ferrigno is seen walking out of Zack Mini Mart, 580 Jefferson Avenue (**Exhibit A** – see “3”);

8:08:41 – Benny Warr is seen in his wheelchair sitting at the bus stop (**Exhibit A** – see “4”) speaking with Tache Young and Derrick Latham. There is a group of people congregating in front of a building at 581 Jefferson Avenue (**Exhibit A** – see “7”) on the west side of Jefferson Avenue, approximately 40-50 feet north of where Benny Warr is sitting. A Rochester Police Department vehicle is now parked along the west curb;

8:08:53 – RPD Officers Joseph Ferrigno and Anthony Liberatore are now seen in front of the building at 581 Jefferson Avenue (**Exhibit A** – see “7”) on the west side of Jefferson Avenue. The officers are congregating with approximately 6 males on the west sidewalk area in front of this building;

8:09:20 – The corner of Whittlesey Street and Jefferson Avenue (**Exhibit A** – see “6”) and Zack Mini Mart, 580 Jefferson Avenue (**Exhibit A** – see “3”) remains clear. Nobody is seen congregating at this intersection;

8:10:56 – Benny Warr is seen in his wheelchair eating a popsicle/ice cream at the bus stop (**Exhibit A** – see “4”) with Tache Young standing to his right and Derrick Latham standing to his left. Benny Warr is facing a southbound direction opposite to the Rochester Police vehicle which remains parked on the west curb facing southbound on Jefferson Avenue approximately 30 feet north of Benny Warr;

8:10:59 – Officer Joseph Ferrigno is seen on the west sidewalk leaving the front of the building at 581 Jefferson Avenue (**Exhibit A** – see “7”). The Rochester Police vehicle remains parked in front of this building facing southbound along the west curb of Jefferson Avenue. Officer Ferrigno steps off the curb and appears to proceed in an eastbound direction to cross Jefferson Avenue;

8:11:18 – Officer Liberatore’s head and upper body appear on camera. He walks eastbound in front of a parked maroon SUV in the west curb lane on Jefferson Avenue, stops and then stands facing southbound in front of the SUV. He looks towards Warrens Pharmacy (**Exhibit A** – see “9”).

8:11:32 – Officer Liberatore is seen crossing Jefferson Avenue in an eastbound direction;

8:11:35 – Officer Ferrigno, who is on the east sidewalk, steps off the east curb on Jefferson Avenue and into the east curb lane to greet Officer Liberatore who is in the northbound lane on Jefferson Avenue crossing eastward;

8:11:43 – 8:12:00 – Both Officers Liberatore and Ferrigno are seen on the east side of Jefferson Avenue in front of the Swan Bridge building, 584 Jefferson Avenue (**Exhibit A** –

see B). Officer Ferrigno stands in the east curb lane looking north and west. Both officers walk onto the east sidewalk and stand on the east sidewalk at the south side of the Swan Bridge building (**Exhibit A** – see “2”). Both officers are looking in a south west direction. There are no people congregating around the officers except one man in a white t-shirt who walks towards the officers;

8:13:13 – Benny Warr is seen sitting in his wheelchair at the bus stop (**Exhibit A** – see “4”) with Tache Young, Derrick Latham and one other person. The Rochester Police vehicle is still parked along the west curb on Jefferson Avenue facing southbound. Neither officer appears on the west side of Jefferson Avenue;

8:13:53 – Both Officers Ferrigno and Liberatore remain standing on the east sidewalk near the curb on Jefferson Avenue in front of the Swan Bridge building (**Exhibit A** – see “2”);

8:13:57 – Both Officers Liberatore and Ferrigno step off the east curb on Jefferson Avenue and start to cross Jefferson Avenue in a westbound direction;

8:14:04 – Both Officers Liberatore and Ferrigno are half way across Jefferson Avenue walking in a westbound direction. A southbound car on Jefferson slows down to allow the officers to cross;

8:14:10 – Officer Liberatore’s head is last seen as he is walking in the southbound lane crossing Jefferson Avenue;

8:14:20 – Still nobody is congregating on the east sidewalk on Jefferson Avenue;

8:15:08 – The blue light camera swings around showing Warren’s Pharmacy (**Exhibit A** – see “9”) and a young man running across Bartlett Street in a northeast direction towards Benny Warr;

8:15:12 – Four people run towards the incident scene;

8:15:18 – Benny Warr’s wheelchair is now shown laying on the sidewalk and Officers Liberatore and Ferrigno are arresting him. At this time, Mary Adam’s car pulls into Warren’s Pharmacy driveway entrance (**Exhibit A** – see “8”);

8:15:26-27 – Officer Liberatore looks in both directions before delivering a left elbow strike (**8:15:29**) to Benny Warr’s head as he is laying on the sidewalk;

8:15:34 – Officer Ferrigno is shown delivering abdominal strikes to Mr. Warr with his right knee as Sergeant Mitchell arrives on scene;

8:15:49 – Officers Ferrigno, Liberatore and Stewart proceed to arrest Benny Warr;

8:16:00 - Several more people gather around the incident scene;

8:16:34 – Officer Liberatore moves towards onlookers and gestures them to move away;

8:17:19 – Officer Liberatore is shown forcing onlookers to disperse as Benny Warr lays on the sidewalk;

8:42:26 – After laying on the sidewalk handcuffed for over 25 minutes, Benny Warr is finally lifted onto a stretcher by Rochester Police officers.

THE ROCHESTER POLICE DEPARTMENT'S "INTERNAL INVESTIGATION"

Professional Standards Section Investigative Summary #2013-D455

Attached hereto as **Exhibit I** is a copy of the Rochester Police Department Professional Standards Section Investigative Summary #2013-D455. The investigation involved three allegations: (1) whether Officers Joseph Ferrigno and Anthony Liberatore unlawfully arrested Benny Warr; (2) whether Officers Ferrigno and Liberatore used unnecessary and excessive force on Benny Warr during his arrest; and (3) whether an officer was discourteous toward Mr. Warr.

As part of the RPD investigation, the cell phone video of Shakur Muhammad which was posted on youtube.com was reviewed and considered. On May 20, 2013, Benny Warr's attorney served a Verified Notice of Claim, verified May 17, 2013, upon the City of Rochester which disclosed the true identity of Shakur Muhammad as Tache Young. With knowledge of Ms. Young's true identity, the RPD apparently did not contact her as an independent eye witness as part of their investigation.

The Professional Standards Section of the RPD recommended a finding of Unprovable for Officers Ferrigno and Liberatore in regards to the **First Allegation** of Unlawful Arrest. The Summary indicates that the conflicting testimonial evidence, the NY Penal Law, the Court of Appeals ruling of People v. Baker and the lack of independent witnesses were all considered. It is important to note that the Blue Light Camera footage was not even considered. Had this footage been considered, the RPD should have concluded that there were not 10 to 12 people congregating in front of 580 Jefferson Avenue but rather only 5 people. The footage also would have confirmed that Benny Warr was not congregating with this small group since he was sitting across Whittlesey Street in front of the Swan Bridge Building at 584 Jefferson Avenue (**Exhibit A** –see "2"). Also, had the blue light camera footage been considered, the public harm element of disorderly

video
no
consider

BLL
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consider