

PROVIDENCE EXTERNAL REVIEW AUTHORITY

INDEPENDENT REVIEW MEMORANDUM

MEMO

Date: September 1, 2020

To: Jose Batista, Providence External Review Authority (PERA)

From: Eugene Monteiro, Investigator (PERA)

Re: PERA Inquiry: Providence Police Department, Office of Professional Responsibility (OPR) – Sergeant Joseph Hanley

On June 4, 2020, at approximately 9:00 am Monteiro met with the Providence Police Department, Office of Professional Responsibility (“OPR”) to review the internal investigation into the actions of Sergeant Joseph Hanley on April 19, 2020.

INITIAL INFORMATION/ BASIC CASE FACTS

A Use of Force internal investigation was initiated by the Providence Police Department because of a civilian complaint from a woman (“the witness”) who observed and videotaped an incident involving the arrest of a man (“the complainant”). The witness observed the incident from a 3rd floor apartment on Tell Street in Providence.

On April 19, 2020, at approximately 7:55 pm Providence Police officers responded to a domestic dispute at a home near the corner of Tell Street and Knight Street in Providence. This original incident resulted in the arrest of a 28-year-old Woonsocket man who was charged with domestic disorderly, obstruction and resisting arrest.

According to OPR and statements by the police officers on scene, there were several people in and outside of the reported location who were shouting at the police during the initial arrest. Among these individuals was the complainant.

According to statements by the police officers on scene; after the original arrest was made and the individual was transported to Central Station, the complainant was allegedly walking away from the scene towards Tell Street, possibly videotaping and yelling at the police. (There is no Body Camera footage of this interaction.)

OPR stated the decision to detain the complainant was made by Sergeant Hanley, which resulted in the arrest of the complainant for Disorderly Conduct and Resisting Arrest. Additionally, a woman who was with the complainant at the time was also arrested and charged with Obstruction.

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VIDEO EVIDENCE REVIEW

Mr. Monteiro was able to review the cell phone video provided to the police department by the witness who recorded the incident from a third floor apartment as well as Body Worn Camera (BWC): X6039A9J4 - engaged by Patrolman #2 at approximately 20:09 (8:09 PM). The following information was observed:

- **NOTE:** *There is a 30 second video buffer once the BWC is engaged – no audio during this time*
- Minimum of three (3) officers are observed walking down Tell Street toward a parked vehicle
- Sergeant Hanley and Patrolman #3 approach the vehicle on the passenger side and appear to immediately attempt to open the door where the complainant is located (front passenger seat).
- **NOTE:** Due to the audio video buffer on the BWC we are unable to confirm if any initial verbal commands to exit the vehicle were given by Providence Police.
- Patrolman #2 also approaches the passenger side and assists Sergeant. Hanley
 - Sergeant Hanley, Patrolman #2 and Patrolman #3 forcibly removed the complainant from the vehicle to the ground; face down in the prone position.
- Detective # 1 also on-scene approaches the vehicle on the driver's side door and attempts to remove a female from the driver's seat.
- Detective #1 and Patrolman #3 remove a woman from the driver's seat of the vehicle.
 - She is charged with Obstruction.
- Sergeant Hanley and Patrolman #2 secure the complainant in handcuffs.
- During the incident Sergeant Hanley can be heard several times verbally taunting the victim and repeating "you asked for this," "You want to be a tough guy", along with other vulgar remarks.
- Using video from the BWC (X6039A9J4) and the cell phone footage, Sergeant Hanley is observed in the following acts after the complainant is in handcuffs and lying on the ground in the prone position:
 - Kneeling on the back of his neck/shoulder (Sergeant Hanley appears to use the open car door as support, lift his supporting foot off the ground bearing his full weight on the complainant's neck and shoulder)
 - Punch to the ribs (left side)
 - Kick to the rib area
 - Kick to the head
 - Walking on the back of the complainant's lower legs
 - **NOTE:** During the assault(s) Sergeant Hanley continued to verbally taunt the complainant.

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- From viewing the video provided by the witness; an individual, now known to be a Detective of the Providence Police (Detective #1) appears to kick and step on the complainant's cell phone which fell to the ground.
- **NOTE:** Sergeant Hanley's BWC (X6039A9J4) was engaged after the complainant was arrested and placed into a police car.
 - He announces that he is going live and then tells a supervisor that he and another officer (Patrolman #3) were unable to engage BWC prior because their units were knocked off during the arrest of the complainant.

CURRENT CASE STATUS AND INFORMATION

1. Criminal Case

a. Pending

i. Agency: Rhode Island Attorney General's Office

1. Current Charges:

a. 1 count of Simple Assault, Misdemeanor

i. Using video from the BWC (X6039A9J4) and the witness' cell phone footage; Sergeant Hanley is observed committing the following acts after the complainant is in handcuffs and lying on the ground in the prone position:

1. Kneeling on the back of the complainant's neck/shoulder (Sergeant Hanley appears to use the open car door as support, lift his supporting foot off the ground bearing his full weight on the complainant's neck and shoulder)
2. Punch to the ribs (left side)
3. Kick to the ribs
4. Kick to the head
5. Walking on the back of the complainant's legs

ii. **Question: Do the charges adequately reflect the assault(s) inflicted by Sergeant Hanley?**

2. Internal Investigation

a. Pending

i. Agency: Providence Police Department

1. According to video evidence there were a minimum of four (4) officers on scene during the arrest of the complainant.

a. According to the Internal Investigation conducted by the Providence Police Department none of the following points were addressed with the officers on-scene and involved in the arrest of the complainant:

1. No officers on scene were questioned about the Use of Force used by Sergeant. Hanley.
2. No officers on scene were questioned about their failure to report any Use of Force concerns.
3. No officers on scene were questioned about their failure to intervene to prevent the Use of Force incident.

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2. Law Enforcement Officers Bill of Rights

1. Sergeant. Hanley was suspended with pay in accordance with department policy.
2. No other action(s) until criminal case is completed.

CONCLUSION

PERA MONITORING PROCEDURES, NOTES AND RECOMMENDATIONS TO THE PERA BOARD:

Findings in this report were based on a briefing provided by the Providence Police Department Office of Professional Responsibility. For PERA to provide a true monitoring of Providence Police Internal Investigations, PERA must receive a full copy of the entire Internal Affairs investigative file including, but not limited to all reports, statements, video, BWC footage and all pertinent information associated with said case.

- Probable Cause for the arrest:
 - According to OPR, there is no evidence or witness that puts the complainant inside 77 Knight Street during the original domestic disturbance or arrest.
 - According to Officers statements Probable Cause for the arrest and the Disorderly Conduct Charge was based on the complainant actions, yelling at police and making statements (i.e.) “you’re going to see what you get.”
 - There is no BWC footage to support the officers' written statements to justify the arrest.
- Body-Worn Camera(s)
 - There is 2 minute and 14 second gap with no video between the ending of the original domestic dispute and when Patrolman #2’s BWC was engaged. (There is no BWC evidence during this time of the interaction between the complainant and the Providence Police).
 - During and prior to the arrest Sergeant Hanley and Patrolman #3 did not engage their department issued BWC.
 - Sergeant Hanley’s BWC (X6039A9J4) was engaged after the complainant was placed into a police car.
 - **Note:** During the original domestic dispute and arrest, the complainant is observed via BWC footage videotaping.

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- Use of Force

NOTE: The Supreme Court has recognized that "the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat. The degree of coercion or force used must be proportional to the threat and escalate only in response to the threat. In an ideal situation, an officer should use the following graduated methods to diffuse a situation:

- Physical presence: Using mere presence.
- Verbalization: Using verbal statements, from non-threatening requests to direct orders.
- Empty-Hand Control: Using physical bodily force through grabs, holds, punches or kicks.
- Less Lethal Methods: Using weapons such as a baton, chemical sprays, Tasers, or police dogs.
- Lethal Force: Using lethal weapons such as firearms.

In order to be considered reasonable and compliant with the U.S. Constitution, the use of physical force must stop when the need for the force ceases.

Based on the BWC of Patrolman #2, the complainant was successfully restrained, handcuffed and no longer resisting. Sergeant Hanley's actions are a direct violation of this common policing practice.

- Using video from the BWC (X6039A9J4) and the cell phone footage taken from the third floor apartment, Sergeant Hanley is observed doing the committing the following acts after the complainant is in handcuffs and lying on the ground in the prone position:
 - Kneeling on the back of his neck/shoulder (Sergeant Hanley appears to lift "his supporting foot off the ground bearing his full weight on the complainant's neck and shoulder)
 - Punch to the ribs (left side)
 - Kick to the ribs
 - Kick to the head
 - Walking on the back of the complainant's legs

According to OPR and Providence Incident Report ORI Number RI0040900, Patrolman #2, Patrolman #3 or Detective #1 did not mention Use of Force concerns in their statements.

PROVIDENCE POLICE DEPARTMENT POLICY VIOLATIONS

Below is a list of agency policy violations that should be considered pertinent to this investigation

- 100.02 ETHICS AND LIMITS OF AUTHORITY
- 200.2 OBEDIENCE TO LAWS AND RULES
- 200.5 STANDARD OF CONDUCT
- 200.6 RULES GOVERNING CONDUCT
- 200.8 DUTY RESPONSIBILITIES
- 200.13 DEMEANOR
- 200.15 CONDUCT TOWARDS THE PUBLIC
- 200.39 DUTY TO REPORT INFORMATION
- 300.01 USE OF FORCE
- 320.02 BODY-WORN CAMERA

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SUGGESTED PERA RECOMMENDATIONS

1. Based on the information viewed during this inquiry none of the officers on scene reported any use of force concerns related to Sergeant Hanley's actions.
 - a. Officers of the Providence Police are required to report any violations of law including actions by a Providence Police Officer
 1. PPD Policy:200.39 DUTY TO REPORT INFORMATION
 2. PPD Policy:200.2 OBEDIENCE TO LAWS AND RULES
 3. PPD Policy: 300.01 USE OF FORCE
 - b. **The City of Providence and the Providence Police Department should implement an Ordinance and department policy that encourages and enforces an officer's responsibility to report officer misconduct and Use of Force Violation** (PPD Policy: 300.01 USE OF FORCE). Failure to report these issues is a violation of Providence Police Rules and Regulations, Section 2 (200.39 DUTY TO REPORT INFORMATION)
 - i. **What progressive disciplinary actions were taken to address officer's failure to intervene or report Sergeant. Hanley's actions?**
2. **PERA recommends the City of Providence and the Providence Police Department implement a Duty to Intervene City Ordinance, Clause, Policy or Rule.**
 - a. This addition is only effective if expressly enforced by the City of Providence and the Command Staff of the Providence Police Department.
 - b. Below is a policy example from Baltimore Police Department, 2018)
<https://www.powerdms.com/public/BALTIMOREMD/documents/355131>
 - c. Other Police Departments that have implemented similar policies; St. Petersburg PD, Minneapolis PD, and Dallas PD.
 - d. Providence Police is the only Municipal Police Department in the state of Rhode Island without a Duty to Intervene clause/ policy or rule.
3. 320.02 BODY-WORN CAMERA (BWC) PROGRAM: Based on facts discovered in this inquiry only one (1) out of the three (3) patrol officers involved in the arrest engaged their Body-Worn Camera(s) prior to engaging with the complainant.
 - a. Sergeant Hanley's BWC (X6039A9J4) was engaged after the complainant was placed into a police car.
 1. Sergeant. Hanley announces that he is going live and then tells a supervisor that he and another officer were unable to engage BWC prior because their units were knocked off during the arrest of the complainant.
 1. **Did OPR address this claim?**
 2. **What actions were taken by supervisors to verify this claim?**
 3. **What progressive disciplinary actions were taken to address officers' failure to engage their department issued Body worn Camera?**

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- b. PERA Recommendation: The City of Providence and the Providence Police Department should review PPD Policy 320.02 BODY-WORN CAMERA (BWC) PROGRAM and the progressive discipline process for officers who fail to comply with this PPD policy. **The department must include immediate corrective action for officers who fail to comply with the policy. This policy is only effective if expressly enforced by the City of Providence and the Chain of Command of the Providence Police Department.**

Other Notes and Recommendations: The PERA Board should review as a reference, the State of Colorado; ENHANCE LAW ENFORCEMENT INTEGRITY bill signed into law June 2020. Please see the link below for more information: https://leg.colorado.gov/sites/default/files/2020a_217_signed.pdf