



OFFICE OF POLICE OVERSIGHT

NOTICE OF FORMAL COMPLAINT

ICMS #: 2021-0846

August 13, 2021

Complaint: The complainant alleges:

“This is the timeline I provided my lawyer on [REDACTED]. My subsequent APD blood test (taken upon booking) came back with zero percent blood alcohol. [REDACTED] arrive at [REDACTED] (my friend's house) on [REDACTED] in E Austin to celebrate his birthday with friends, eat lox on cream cheese and everything bagel with poppy seeds, drink nonalcoholic Ginger brew [REDACTED] have 1 can of beer [REDACTED] (sunset/dark): have (2) 6 oz margaritas; I definitely was not drinking after it got dim/dark out and there are witnesses to this [REDACTED] head home. I am tired, usually in bed by [REDACTED]. Looking forward to that. [REDACTED] pulled over at corner of [REDACTED]. I had stopped behind cars pointed south stopped at the light on [REDACTED], noticed the green light for eastbound [REDACTED], then turned into the boarded up gas station driveway. I drove through the driveway and onto [REDACTED], heading west towards my apartment complex. I notice flashing red and blue lights. They are high up, seem to be flashing from the sides instead of all the way across the top, and on a large vehicle. I feel confused and think they are the fire truck that parks on [REDACTED] so I pull over into the bike lane to let it pass. I feel more confused when the flashing light vehicle stops behind me and shines a bright light into my rear view mirrors and I think I hear ‘drive to a safe location’ – not something I expect from a fire truck. I pull into the [REDACTED] parking lot across from my apartment complex entry driveway. I park in a space pointing west. The vehicle with flashing lights follows me into the lot, but I can still only see its nose (it is also facing west). I would normally assume the vehicle is a police car, but this vehicle seems really large (I start to wonder if it is a big truck), doesn’t seem to be the right colors (seems to have a gold or reflective glow on white instead of black/white), has a large black nose grille that I don’t think I’ve ever seen on a police car, and the lights don’t seem to be in the usual place for a police vehicle. I feel cautious and concerned. I’m a female, alone, and it is late at night. I roll down my window and have my wallet in hand, ready to offer my license, but I don’t feel at ease. I have heard of people pretending to be police in the past; and warnings to females to be cautious about getting out of the car for fake police. While living in [REDACTED], this happened to me – that person pulled on my door handle to open the door - but I was able to drive off. The man who approaches my car is wearing a black uniform and black neoprene style mouth mask. The uniform seems legit, but I am so thrown off by the vehicle I feel confused. I don’t recall that the officer introduces himself. He asks if I know why I was pulled over, I say no. He



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says it was for driving through private property and asks if I knew that was against the law. I say no. He asks for license, and though I search my wallet, I unfortunately realized that my license was missing – must have left it in my other purse. The man asked me where I was coming from. I didn't understand his question – I was in Austin, I live in Austin – actually live right across the street – and so I said I was coming from East Austin and friend's birthday party. The man asked me if I had had anything to drink. This all seemed really out of place to me. I didn't understand why he was asking these questions. I told him yes, but it was over four hours ago. The man tells me to step out of the car. I ask why and I think he says he needs to test me for drinking. This is the night that [REDACTED] and I know that people have been out celebrating – I heard them blowing vuvuzelas and shooting fireworks in the park near me from my friend's house in East Austin. I also heard streets were being blocked in downtown Austin to protect against protestors. I have seen videos of Trump supporters' vehicles 'escorting' Biden campaign busses on Austin highways. The truck I am looking at reminds me of those Trump supporters' trucks. I imagine that this night could be a good night for anyone with ill intent towards Biden supporters to be able to identify them by whether or not they have been drinking. I said I didn't feel comfortable getting out of the car and why (female, solo, late). I would have been reluctant to tell him I was worried he wasn't a legit police officer or anything about worry about being pulled out by an upset Trump supporter because I didn't want to rile him up if that was the case. I said I wanted more officers to be there if I stepped out of the car. I seem to recall either the man insisting I get out of the car, or making movements that seemed threatening to me. I was feeling unsafe and wanted to roll up my window. I moved my key towards the console to power up the power windows. He reached in the car. He said I was trying to start the car, and reached in my car to take my keys. I told him I was wanting to close my window and have more people there. There was a struggle over my keys, with me trying to keep my keys. He opened my car door and told me to get out of the car. I seem to recall he had my keys at that point, and I felt scared. I shifted into 'protect myself' mode and wrapped my arms into the steering wheel so the horn would blast continuously. I saw him handle what I guessed was a yellow taser on his belt, and I prepared for the blast, grabbing the steering wheel more firmly. I was not wanting to leave my car – saw that as a highly risky thing to do given the above circumstances. He pulled on my arms, and pulled me from the car. I seem to recall landing on the pavement, but was picked up and moved towards the vehicle with lights. I was kicking and screaming – was not going to get in that car. When we got to the hood of the vehicle, I noticed again the large black grille and the gold reflectivity that didn't seem to fit with the police vehicle colors. I only saw the nose of the car – never saw the sides. I was



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yelling for help and kicking. The man pushed me towards the hood. I wound up on top of the hood. Still struggling to get away, assuming he was trying to put me in his car. Someone drove up in a red SUV on the street and yelled something. The man yelled at them to leave. Not long after this, other officers arrived. Two officers – one male, one female – handcuffed me and held me against the hood of the vehicle. I was calm and didn't struggle – this is what I had requested – to have other officers present. I was willing to do the intoxication tests now that they had arrived. I asked them to explain what was happening and why now that they were there we weren't doing the intoxication tests. They told me I was getting arrested for intoxication while driving and the tests were not necessary. I told the male and female officer holding me against the vehicle hood in handcuffs that I hadn't wanted to get out of the car because I didn't recognize the vehicle as a police vehicle. The female officer listed off several vehicles APD has now – as if to reassure me. I didn't get the sense they understood the situation or were interested to understand what happened. When I later asked the arresting officer how he was justifying arresting me for this, he said he could do it based on my mental indicators! He refused to say what those were. He had me listen to the spoken reading of the breath / blood sample form while reading it. I needed him to get me my reading glasses from my car so I could see the paper. After the form was read out loud, I asked him to hold the page up so I could read it with just flashlight and understand it. I signed it, although I didn't know anything about my options related to signing it – the arresting officer was brusque and wouldn't explain the options when asked for them. No one advised me of my Miranda Rights. No one explained what would happen during the arrest process or what options I had to get help / advising. Officer did not explain the process or what was happening except when asked and then only partly and with derision. This happened numerous times – at the car, in the booking office, in the phlebotomist's office. In the phlebotomist's office, the officer yelled at me aggressively enough that the phlebotomist ducked her head and stared at the desk. I wish I had had my wits about me enough to tell them to NOT tow my car to the [REDACTED] towing yard instead of leaving it in the [REDACTED] parking lot of towing it across the street to my apartment. However, the arresting officer had access to my address and could see that we were RIGHT THERE AT MY HOUSE. My steering wheel was damaged that night. When I picked up my car, I immediately noticed two new gouges in my steering wheel, one with a piece of steering wheel leather dangling. I also noticed weltd abrasions on the underside of the steering wheel. These were not caused by my hands holding the steering wheel while being pulled from the car and did not exist prior to [REDACTED]. When I picked up my car, which had been sitting in the tow lot, all the papers that had been in my LOCKED glove compartment to protect them were in the passenger seat and floorboard. The grocery bag of food I had had



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in the passenger seat was rifled. Coffee from my jar in the console was spilled in my floorboard, and had soaked insurance and legal documents. I had numerous injuries as a result of the struggle with the officer - these were visible and documented by my lawyer days later after I was released from jail. Wrists were sprained and swollen (kitchen sponge thickness of swelling). Left ankle sprained and deeply swollen (golf ball). Bruises on legs and arms. Cut on right knee. Left kidney pain and swelling, left lower rib pain, left underarm pain and swelling, and left from shoulder bruising. I also had PTSD from the experience that required therapy. By the time I was booked into the jail, my wrists had swollen to the depth of kitchen sponges and my ankle swelling was the size of a golf ball. I requested ice in the jail, and was told to 'sit down and shut up' by one of the police officers on staff when I asked for additional ice after the first bag of luke cold water I was given was no longer cool. I subsequently read the officer's affidavit - it was full of lies and inconsistencies. I am happy to go item by item in this affidavit with you. A few items off the top of my head: He claimed he smelled alcohol on me - impossible given my blood alcohol level, how long it had been since I had had anything alcoholic to drink, and he was also wearing a fitted black neoprene mask, so I don't know if he was smelling his own breath or possibly the garbage at [REDACTED]. He also said I acted confused (I was indeed confused by his behavior) and that I had bloodshot eyes (I was wearing gas permeable contacts and had had them in my eyes since early in the morning... plus I was up past my bedtime). Most appallingly, it is apparent from his affidavit that he ignored my request to have other officers present for the field sobriety tests and instead called them for backup because I was (according to him) 'resisting arrest.' I would like an opportunity to go item by item through this affidavit. By the end of this ordeal, there were 12 or 13 body and vehicle camera recordings for my lawyer to review... however, he claimed his body camera fell off between pulling me over and the other officers arriving."

This notice of formal complaint is a request for Internal Affairs to initiate an investigation to determine if the employee conduct is within compliance of APD policy, Civil Service Rules, and Municipal Civil Service Rules.

Recommended Administrative Policies to Review (to include but not limited to):

200.2 DE-ESCALATION OF POTENTIAL FORCE ENCOUNTERS



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When safe and reasonable under the totality of circumstances, officers shall use de-escalation techniques to reduce the likelihood for force and increase the likelihood of voluntary compliance.

200.2.1 ASSESSMENT AND DE-ESCALATION

As officers arrive on the scene, observe conditions, and interact with the persons there, they should continue to gather additional relevant information and facts. These assessments, along with reasonable inferences help to develop an understanding of the totality of the circumstances of the incident.

301.2 IMPARTIAL ATTITUDE AND COURTESY

Employees shall provide equal and fair protection of all rights under local, state, and federal law for all members of the community. Law enforcement will be conducted in an impartial and equitable manner.

In an effort to create an organizational culture that is inclusive and nondiscriminatory, employees shall act professionally, treat all persons fairly and equally, and strive to interact with the community in a positive manner. Employees will perform all duties objectively and without regard to personal feelings, animosities, friendships, financial status, occupation or employment status, sex, disability status, housing status, mental health or ability, citizenship, language, national origin, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity, gender expression, ethnicity, or social or ethnic background. Employees will endeavor to understand and respect cultural, national, racial, religious, physical, mental, and other differences.

Recommended Classification: *The OPO is permitted to make a preliminary recommendation on the classification of administrative cases.*

The OPO recommends this complaint receive a B classification.