



ICMS #: 2020-0300

April 20, 2020

Complaint: Mr. [REDACTED], complainant, alleges that Austin Police Department (APD) officers may have violated APD policy while conducting a traffic stop in which he was the driver. [REDACTED] alleges the following:

“As I was driving in my vehicle down [REDACTED] from my [REDACTED] to my home in [REDACTED] I noticed another vehicle, a Ford Explorer, driving erratically and nearly causing a collision at the intersection of [REDACTED]. The vehicle then turned westbound to follow behind me. As I passed through the intersection of [REDACTED] the vehicle continued to follow me. I pass through this intersection every day and have seen many car accidents at this intersection. One time I was nearly T-boned at this intersection and reported the driver to 911 who was later arrested for DWI by [REDACTED]. After passing through this intersection and still concerned for my own safety and the possibility of being tailgated by an intoxicated driver, I pulled over to the curb to let the vehicle pass. The Ford Explorer that had been following me pulled around me and stopped at the curb directly in front of my vehicle. At just about this same moment an APD squad car pulled up behind me and then pulled around and stopped in front of the other vehicle that was stopped in front of me. After about a minute somebody left the apartment adjacent to where we were all parked and entered the Ford Explorer and that vehicle then left the area. I then turned on my left turn signal and departed from where I was stopped on the curb and continued to drive straight down the street passing the marked patrol unit. As I approached the red light at [REDACTED] I looked in my rear-view mirror I noticed another vehicle approaching me from behind. I had my left turn signal indicating my intention to turn left for well over 100 ft before the stoplight. The vehicle behind me did not use its turn signal until I was already turning left but it then turned on its blinker and also turned left following directly behind me. I was again concerned for my personal safety and the possibility that I was being tailgated by an intoxicated driver due to the vehicle behind me not properly using its turn signal so as I approached the loading zone in front of [REDACTED] [REDACTED] I again used my turn signal to indicate that I was pulling over to the side of the road to allow the vehicle to pass me. The vehicle did not pass me but pulled up behind me again. This again made me concerned for my safety, not only because they were stopping at an elementary school at 8pm which might be another indication of intoxication, but also because I was not sure whether or not the vehicle that was following me was targeting and trying to follow me to my home to rob me or commit some other violent crime. After pulling over to the side of the road in the loading zone I was able to take a closer look in the mirror and see that there may have been overhead lights and the vehicle might just be an AISD officer so I continued on my path home. I used my turn signal to indicate my pulling out of the loading zone and back into the main lanes of travel and signaled continuously for until I turned left on [REDACTED]. The vehicle again began to follow me and continued to not signal its intent to change lanes and was not following the traffic laws which again increased my concern for my own personal safety and that of my passenger. As I traveled past a half dozen homes on [REDACTED] I again used my turn signal to indicate my intent to turn right onto [REDACTED] and as I was turning right the red and blue



overhead lights on the vehicle behind me came on. I came to a complete stop at the first available place to stop, which happened to be immediately in front of my house and my destination. As I pulled over I still had significant concern that I might be being targeted by some violent criminals posing as law enforcement as I would not expect actual officers of the law to be committing such blatant traffic violations as the car that was behind me had been doing. I am aware of many incidents in the Central Texas area over the past years where criminals pose as law enforcement to commit violent rapes and robberies. I also had no idea why I was being stopped as I believed that I followed every traffic law and I was unaware of committing any traffic violations myself. I have a valid driver's license, valid insurance, valid registration, and did not believe that I committed any traffic offenses. Coincidentally as I pulled over there were two other vehicles that were also parked in front of my house on opposite sides of the street that both had their engines running and were occupied by drivers who were both parked illegally facing the wrong direction and on the wrong side of the road. Although I was not certain that it was actual law enforcement that had pulled me over I figured if I was being robbed that I would give up whatever they wanted to take as it was not worth my life or the life of my wife and children to try to fight them. Just two days previously CPS and Travis County had awarded us temporary foster care custody of two children, a toddler and a 10-year-old, and I thought that potentially this may be a plot by their parents to kidnap the children. But that if it was actual law enforcement officers, to put the officers at ease I did as I had been instructed in my driver's education class, and law enforcement PSAs, and I rolled down my windows, turned off my vehicle, turned on my overhead lights, and put my right hand on the steering wheel and my left hand out of the window. When the officer approached my window, I don't remember him clearly articulating the basis for my detention or any traffic violations, but instead he said something vague about stopping me for driving weird. I asked him for clarification, and he said something to the effect of you passed me, and then you pulled over, and then you passed me again. I was thinking that this was the exact same driving behavior that he was exhibiting, and I didn't understand how any of this amount to a crime that warranted a detention. I think I remember the officer on the passenger side specifically asking, "why I was being so weird". I found the driving behavior of the officers to be more odd than my own and didn't understand what traffic law I violated. The officer then asked if I had a drivers license and insurance and I told him that I did and that I was going to reach for it in by back pocket so that he wouldn't be alarmed that I was reaching for a weapon or making any type of furtive movement. Before I reached for my wallet I again informed the stopping officer at my window that I was going to put my hand down by my side to remove my safety belt and again the other officer on the passenger side said something to the effect of stop being a weirdo. I was only informing the officers of my movements for both of our protection as we have all seen the videos of unarmed men reaching for their wallets and being shot by officers who mistakenly thought that they were reaching for a weapon. Instead of being thanked for trying to be cooperative and informative I was ridiculed and called a weirdo. The officer at my window then began to ask me a bunch of personal questions about my property that I did not believe were any of his business and when I simply asked him if I was required by law to answer those questions he said that's it, since you don't want to cooperate I'm going to have you step out of the car. I unlocked my car door and stepped out with my wallet in my hand



and my hands in the air to show him that I was not armed, not reaching for any weapons, and not trying to pose him any type of threat. Upon exiting my vehicle, the officer spun me around and shoved me up against the car and began to forcefully frisk me. I have been frisked for weapons many times before, like we all do every time we go through an airport, but I feel that this was an unnecessary use of force and was just a tactic to intimidate me, bully me, and embarrass me. I was being cooperative and not resisting in any manner whatsoever and it was completely unnecessary for him to use that level of force when frisking me. I understand that officers have a right to frisk subjects that they have legally detained and even though I believed my detention to be illegal I did not use any force whatsoever to resist his frisk. He frisked me and was much more forceful than was necessary and I believe it was only intended to intimidate me and to embarrass me in front of my neighbors, many of whom had left their homes and come to their front yards to see what was going on. The officer then informed me that because I was not willing to answer his intrusive personal questions about my personal property that he was going to make me come over to his squad car. The questions he was asking me were questions that I am not required by law to answer, questions that I didn't want to answer because I felt not only were the questions themselves an invasion of my privacy, but also that they may have just been intended to embarrass me. It was very cold outside, the winds were gusting, and it was raining, and I was only wearing a T-shirt and the officer did not offer to let me grab my jacket or umbrella from the back of my car, and demanded that I just stand out in the rain despite the fact that there was a covered patio just steps away where we could have sheltered from the elements. The officer then told me to sit down on the hood of his car. I sat down as he asked but when I did, I felt the water from the hood of his car run down to my bottom and pool up and run onto my shorts and completely soak my clothing. Because I didn't want to sit in a pool of water, I stood back up to stop from getting more wet. It was cold and raining and I was beginning to shiver. He told me something to the effect of I told you to sit down, to which I responded that it was cold and wet, and I politely asked if we couldn't have this conversation while I was standing. The officer then responded by telling me something to the effect of, well if you want to be a smart ass then you can go in cuffs and into the back of the squad car. I did not run, I didn't fight, I didn't resist, or even argue; I just politely turned around and offered him my hands for him to cuff. I wasn't reaching for my pockets; I wasn't making any verbal threats or physically threatening gestures. I wasn't clinching my fists nor jaw, raising my hands above my waste nor putting them in my pockets. I was purposely attempting to not show any signs of physical aggression. I wanted to let the officer know that I was trying to be compliant with his requests for my physical submission to his authority while at the same time preserving my right to keep my personal private information private and not have my privacy invaded. As he put me in the back seat of the cop car he told me that everything I said was being recorded and I was thankful that it was because I was scared of how he might treat me if there were no cameras. I have old sports injuries to my shoulder and elbow and being put into cuffs immediately triggered a flaring sense of pain. Additionally, the cuffs were squeezing tightly onto my wrists and being squashed between my back and the hard plastic seat caused significant pain to my wrists. A full day later I can still see marks on my wrist from the cuffs being secured too tight and my wrist bones are still sore. I suffer from high blood pressure and anxiety and although I was feeling claustrophobic in



the not well ventilated back seat of the car, I tried to remain calm and use breathing techniques that I learned with my wife when we took birthing classes during her recent pregnancy. The officer then began to question me about my vehicle registration insinuating that I had either forged a government document and somehow printed a fake registration sticker or received it from some place that does. I pay my taxes and paid to the tax office the fee required to obtain a valid registration sticker and was offended of being accused of having a fake registration. After running my name through his computer system, the officer told me that he was going to let me off with just a warning. I asked him what law I violated that he was going to give me a warning for and he said that I had parked in a no parking zone and not used my turn signal. If anyone didn't properly use their turn signal it was [REDACTED], not me, and I never parked, I just pulled over to let an erratic driver pass me by. I never turned my vehicle off until I was in front of my home. As the officer gave me back my driver license, he asked if there was anything else he could do for me and I told him that yes at a matter of fact there was. The occupied vehicle that was illegally parked across the street from us with its lights on and running belonged to a known drug dealer. My neighbors and I have filed dozens and dozens of complaints with 311 for the activities going on with the house across the street and for the safety of our families we wish that APD would enforce the laws as aggressively against these drug dealers as they were against me. I politely asked the officer that if he was going to antagonistically enforce the traffic laws in my neighborhood by pulling me over for parking in a no parking zone when I wasn't even parked, and not using my turn signal when the DMAV will clearly show that I did, that he should at least be responsive to the requests from the good citizens of our neighborhood and detain and investigate person who was indisputably committing a crime right in front of his eyes. He responded by telling me that he doesn't take orders from me and then walked away. My understanding of the Sandra Bland Act is that it requires officers to give written warnings and that verbal warnings are no longer permitted. I was never given a written warning. If this is the way that officer [REDACTED] treats a white person who has a little bit of knowledge of his rights and the law in a good neighborhood, I feel sorry for any people of color who are not as well versed in their rights and who are forced to interact with him. I believe that the both of the officers did not follow the procedures outlined in their policy manual and that my constitutional rights were violated. I believe that they used offensive language that was only intended to belittle and insult me by calling me a weirdo. More significant than being insulted and called names in violation of the Department's policy, I have a constitutional fourth amendment right to be free from illegal and baseless detention when there are no clear articulable allegations of any violation of the law. I have a fourth amendment right to be free from suspicionless searches in the form of a baseless pat down searches and demands to look inside of my car when they have no probable cause and have not obtained written consent to search pursuant to their policy manual. I believe that both officers violated the APD policy regarding searches and seizures of citizens. I believe that the officers engaged in conduct that damaged the public's view of the department. I would like for a supervisor to review the body cam and DMAV video to confirm that no traffic violation was committed. I believe that these officers should be reprimanded for violating APD Policy and my constitutional rights."



This notice of formal complaint is a request for Internal Affairs to initiate an investigation in order 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):

301.1 PURPOSE AND SCOPE

All persons deserve protection by fair and impartial law enforcement and should be able to expect similar police response to their behavior wherever it occurs. Employees will serve the public through direction, counseling, assistance, and protection of life and property. Employees will be held accountable for the manner in which they exercise the authority of their office or position. Employees will respect the rights of individuals and perform their services with honesty, sincerity, courage, and sound judgment.

301.2 IMPARTIAL ATTITUDE AND COURTESY

Employees are expected to act professionally, treat all persons fairly and equally, and perform all duties impartially, objectively, and equitably without regard to personal feelings, animosities, friendships, financial status, sex, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity or gender expression or social or ethnic background.

318.3 DETENTIONS

Detentions are "seizures" under the Fourth Amendment. Officers may stop and question individuals when reasonable suspicion that the person may be involved in past, present or future criminal activity exists.

318.3.1 HANDCUFFING DETAINEES

- (a) As a practice, officers should not handcuff lawfully detained individuals. However, situations may arise where it may be reasonable to handcuff a lawfully detained individual.
- (b) Some factors reasonably causing an officer to handcuff a detained individual include, but are not limited to:
 - 1. physical resistance;
 - 2. verbal threats against the officer or others nearby;
 - 3. investigation of a violent crime or a crime involving weapons; or
 - 4. reliable information that the person is armed (without appropriate license), the person is violent, or is a flight risk.
- (c) Officers should weigh the safety interests of all involved individuals against unreasonable intrusion upon a detainee when deciding to place handcuffs on a detainee.
- (e) If not documented in a report, officers will document their justification for handcuffing a detainee for a limited investigation, with a Street Check/Field Interview report.



1. Officers will check “detained” in the Reason field dropdown list.
2. Officers will justify handcuffing the detainee in the Remarks field.

328.3.2 REQUIRED DOCUMENTATION

Every member of the Department is required to document and report to the Department any detention, frisk, search, nonconsensual stop and/or arrest of a person. Officers shall document the following information in the appropriate fields of an incident report, field release citation, warning, field observation card or electronic street check:

- (a) a physical description of any person who is detained or arrested, including (if applicable) passengers in a motor vehicle, including: 1. the person’s gender; and 2. the person’s race or ethnicity, as stated by the person or, if the person does not state the person’s race or ethnicity, as determined by the officer to the best of the officer’s ability.
- (b) whether the officer knew the race or ethnicity of the individual detained before detaining that individual;
- (c) the initial reason for the stop;
- (d) whether the officer conducted a search during the stop and, if so, whether the person detained consented to the search;
- (e) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;
- (f) the reason for the search, including whether:
 1. any contraband or other evidence was in plain view;
 2. any probable cause or reasonable suspicion existed to perform the search;
 3. the search was performed as to inventory a motor vehicle or other package being impounded or seized; or
 4. the search was performed incident to arrest.
- (g) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;
- (h) the street address or approximate location of the stop; and
- (i) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and
- (j) whether the officer used physical force that resulted in bodily injury during the stop.

402.2.2 REPORT WRITING

- (a) All reports shall accurately reflect:
 1. The identity of the persons involved.
 2. All pertinent information seen, heard, or assimilated by any other sense.
 3. Any action(s) taken.



900.1.1 RESPONSIBILITY TO KNOW AND COMPLY

The rules of conduct set forth in this order do not serve as an all-inclusive list of requirements, limitations, or prohibitions on employee conduct and activities; employees are required to know and comply with all Department policies, procedures, and written directives.

900.3.2 ACTS BRINGING DISCREDIT UPON THE DEPARTMENT

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

900.3.4 PERSONAL CONDUCT

- (c) While on-duty or on the premises of City facilities, employees will not:
2. Ridicule, mock, taunt, embarrass, humiliate, or shame any person, nor do anything that might incite that person to violence.

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

The OPO recommends that this allegation receive an A classification.