



# CITY OF MIDDLETOWN POLICE DEPARTMENT

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***Intra Agency***

# Memo

**To: Chief Bethencourt**

**From: Lt Ewanciw**

**Date: May 28, 2014**

**Re: Use of Force Injury Sustained by Defendant Damon Wheeler  
14-9085**

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I am in receipt of a Supervisor's Investigation from Lt. Thoelen and Sgt. Tobin, pertaining to a use of force injury sustained by Defendant Damon Wheeler.

On Saturday April 5th, 2014 at approximately 12:16am, Officer Artola and Officer McHugh, where partnered in marked patrol car # 14, when they observed a vehicle traveling west bound on West Main without its headlights on. Officers also observed that said vehicle did not have a properly functioning license plate lamp. Officers initiated a vehicle stop on said vehicle, however said vehicle did not immediately stop. Said vehicle was found to be operated by Damon Wheeler, and during the interview of Wheeler, Officer Artola advised him of the reason he was being stopped, however Wheeler disagreed. During this interview Officer Artola requested Wheeler exit his vehicle, for further interview, but Wheeler refused and claimed he was going to call his wife. Officer Artola again requested that Wheeler step out of the vehicle, for further interview, and again Wheeler refused and continued to use his cell-phone, at which time Officer Artola reached into the vehicle, in an effort to grab the cell phone. In response to Officer Artola's actions, Wheeler pulled away and began closing the window. Officer Artola then struck Wheeler in the face, prior to removing his arm from the vehicle, in an effort to avoid being injured by the closing window. Wheeler closed the window, almost all the way, leaving a small crack open at the top. Officer Artola continued to instruct Wheeler to exit the vehicle, however Wheeler continued to refuse, and began to video record Officer Artola, with his cell-phone. Wheeler then lowered the window a little bit, at which time Officer Artola utilized his expandable baton to unlock the door. As Officers were opening Wheeler's door, he attempted to grab the baton, at which time Officers pulled him from the vehicle placing him on the ground, where the Officers took him into custody for Obstructing Governmental Administration. Officers subsequently conducted a search of the driver's area of said vehicle, recovering crack cocaine, as well as an open bottle of Hennessy liquor. Wheeler was transported back to the police station, for arrest processing where he was strip searched, yielding negative results for contraband, although he was found to have tissue paper in his underwear, which is commonly utilized to conceal narcotics.

Wheeler was charged with Criminal Possession of a Controlled Substance 3rd, Resisting Arrest, and Obstructing Governmental Administration. Wheeler was also issued summons for inadequate plate lamp, no headlights, and open alcoholic container. After being processed Wheeler was placed into a holding cell to await arraignment. While in the holding cell Wheeler began to shake, as if he was having a seizure, at which time Lt. Thoelen contacted Mobile Life, who responded and began to treat Wheeler. Wheeler was subsequently

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transported to Orange Regional Medical Center for further treatment, to include evaluation for possible narcotics ingestion. Wheeler was seen by Rose Anna Roantree, DO, who diagnosed him with Pseudoseizure and crack cocaine use. As noted in Lt. Thoelens supplement Wheelers urinalysis was found to contain water and no urine, which may have been Wheelers way of preventing his level of intoxication or impairment from being discovered. During the course of this incident Wheeler sustained contusions to the top of his head, and the sides of his face/head, which appear to be the result of being taken to the ground, during the arrest, and possibly from being struck by Officer Artola. These injuries appear to be minor in nature and are consistent with the type and amount of force utilized against Wheeler.

In review of this incident I believe that Officer Artola and Officer McHugh had probable cause to stop Wheeler, based on their personal observations of the equipment violations on Wheeler's vehicle. In regards to the interaction with Wheeler during the vehicle stop, I have several concerns. Firstly, as indicated in Officer Artola's report the vehicle stop was for an equipment violation, and Wheeler willingly produced his driver's license and vehicle registration as requested, therefore I believe Officer Artola's interaction with Wheeler should have been limited to the equipment violation until he was able to establish additional reasonable suspicion that would have elevated his investigation or until he gained Wheeler's compliance to exit the vehicle. In regards to Wheeler utilizing his cell-phone during the stop, I do agree that it could be viewed as an Officer Safety issue, as the possibility does exist that Wheeler could have been making arraignments to endanger the Officers, and I agree that it could impede and/or interfere with the Officers further investigation efforts, however given the circumstances of the stop I do not believe that Officer Artola was justified in trying to prevent Wheeler from using his cell-phone. As indicated in Officer Artola's report Wheeler claimed he was calling his wife, which seems to be reasonable given the situation. Furthermore Officer Artola should know better than to reach into a vehicle, as the inherent risks could be deadly, and if he didn't reach into the vehicle in an attempt to grab Wheeler's cell-phone, he would not have placed himself in jeopardy of becoming injured, by the closing window and therefore would not have had to utilize force to protect himself. Based on the information contained in Officer Artola's report, I believe that Officer Artola, could have expanded the scope of this vehicle stop by simply taking the time to observe the items that were in plain view inside of Wheeler's vehicle, which included a plastic baggie containing an off-white chunky substance that was laying on the front passengers seat and a bottle of Hennessy liquor. Both of these items could have elevated Officer Artola's reasonable suspicion, and led to a DWI investigation or a drug interdiction investigation, which would have resulted in solid probable cause for Wheeler's arrest. I believe that Officer Artola, became so focused on the fact that he knew Wheeler to be a crack cocaine dealer, and that there was a good possibility that he was currently in possession of crack-cocaine, that he overlooked evidence that could have further supported his enforcement effort. Needless to say this may not have changed the fact that Wheeler was noncompliant and intentionally resisted arrest. Additionally I do not believe that an articulable reason was identified to justify, or lead to the approval of a strip search of Wheeler, again I believe that the focus was on Wheelers history of being a drug dealer.

In regards to the use of force against Wheeler, I do not believe that it was reasonable and/or necessary, given the circumstances, as described in Officer Artola's report. The vehicle stop was for an equipment violation and as stated above I believe that Officer Artola's encounter, with Wheeler during this vehicle stop, lacks reasonable suspicion and/or probable cause to justify his actions. However as I also indicated above I believe that the probable cause existed, but was overlooked.

In regards to the issues addressed in Lt. Thoelen's and Sgt. Tobin's reports, concerning Officer Artola and Officer McHugh not immediately reporting Wheelers injuries, I do not believe that they were intentionally avoiding doing so. Officer Artola documents the redness to Wheelers cheek, and indicates that he didn't observe the abrasion to the top of Wheeler's head until Wheeler was being removed from the cell for medical treatment, which is very possible as this injury was located in an area not easily visible from a front profile view, which is the view the Officers would have had during the booking process. Additionally the injuries were minor in nature and did not require immediate medical attention. Furthermore Lt. Thoelen indicates that he did not observe said injuries during his contact with Wheeler.

In conclusion I do not believe that Officer Artola, or Officer McHugh acted maliciously or with ill intent, during this incident, however I do believe, as I stated above, that they became so focused on arresting a drug dealer that they overlooked items that would have furthered their investigative efforts. Nonetheless I believe the issues that I have identified above are training issues that can be resolved through counseling, which I personally conducted with Lt. Thoelen, Sgt. Tobin, and Officer Artola. Additionally Lt. Thoelen and Sgt. Tobin have further

discussed these issues with Officer Artola and Officer McHugh.

Respectfully Submitted

*LTJ Ewo*  
Lieutenant John Ewanciw  
Bureau Commander of Operations

RB  
DATE:  
*05/29/14*



