



CITY OF MIDDLETOWN POLICE DEPARTMENT

2 James street Middletown, NY 10940
(845) 343-3151 FAX (845) 343-2660



Intra Agency

Memo

To: Chief Bethencourt

From: Lt Ewanciw

Date: October 14, 2016

**Re: Personnel Complaint against Officer Bailey by Peter Levato
16-29672 MPD-II-06-16**

I am in receipt of a Personnel Complaint, made by Peter Levato, alleging that Officer Kristopher Bailey engaged in unprofessional conduct.

According to the personnel complaint, which was secured by Lieutenant Graziano, on September 10th, 2016 at 8:44pm, Mr. Levato alleges that he was stopped on Linden Ave., by Officer Bailey and after receiving a parking and traffic ticket Officer Bailey threw his license at him, striking him in the face.

As part of this investigation I requested written memorandums from Officer Bailey and Officer Ryer.

According to Officer Baily's memorandum, on Saturday September 10th, 2016 at approximately 8:25pm, he stopped Mr. Levato who was operating a 1997 grey Jeep Cherokee, on Linden Ave., after observing Mr. Levato commit a parking violation (parking more than 12 inches from the curb) as well as a traffic infraction (failed to signal). At the time of this vehicle stop Officer Bailey was assisted by Officer Ryer. During the course of the vehicle stop Mr. Levato became argumentative over the reason for the stop, expressing himself in a condescending, belligerent manner, while videotaping the officers. Officer Bailey states that after explaining why he stopped Mr. Levato, he returned to his police vehicle, where he conducted a file and license check of Mr. Levato. Officer Bailey then attempted to further speak with Mr. Levato about the reason for the stop, intending to give Mr. Levato a warning and sending him on his way. However Mr. Levato continued to act belligerent, talking over Officer Bailey and stating, do what you have to do. During this interaction Mr. Levato handed Officer Bailey a business card, indicating that it was his attorney's card and that Officer Bailey should expect a telephone call from his attorney. Officer Baily states that he attempted to hand the card back to Mr. Levato, advising Mr. Levato that he did not need it, however Mr. Levato refused to take the card, at which time he (Bailey) tossed the card onto Mr. Levato's lap. Officer Bailey further states that he then called Mr. Levato a fool and informed him that he (Bailey) was going to give him a warning but had since changed his mind. As Officer Bailey walked back to his patrol car., he heard Mr. Levato state "I work on their cars, wait till they bring their cars through again". Officer Bailey then issued Mr. Levato a parking summons and a traffic ticket, and sent him on his way.

According to Officer Ryer's memorandum, he was positioned on the passenger's side of Mr. Levato's vehicle and could not hear the entire conversation, as the passenger refused to roll down the window. However Officer Ryer does indicate that he could hear Mr. Levato being rude and disrespectful to Officer Bailey.

On Thursday October 13, 2016, at approximately 2:35pm, I contacted Mr. Levato, via telephone, and spoke with him about his complaint. Mr. Levato informed me that he was the owner of Mario & Sons Auto

8
15

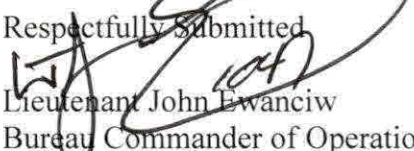
During this conversation Mr. Levato advised me that he let this issue go. As I further inquired about this incident and his complaint, Mr. Levato advised me that he does have a video recording of this incident, and that he would only share it with me upon his attorney's approval. Mr. Levato further advised me that he feels he was racially profiled, and that Officer Bailey stopped him because he was white. I asked him to further explain his statement, and he stated that Officer Bailey advised him that he was being stopped because he was white and white guys only come to Linden Ave. to buy drugs. Mr. Levato stated that he became angry with Officer Bailey's statements because he didn't feel that he did anything wrong, that he is a local business owner, he pays his taxes, and there is no reason why he can't be on Linden Ave, especially since he has several customers that live on Linden Ave. Mr. Levato also advised me that Officer Bailey called him a fool and threw his attorney's business card at him. Mr. Levato further stated that he suffers from PTSD and in response to Officer Bailey throwing the business card at him, he lost it and started screaming at Officer Bailey. Several times during my conversation Mr. Levato indicated that he was over this incident that he has moved on and that he doesn't want to proceed with his complaint. Mr. Levato also indicated that he is following the advice of his civil rights attorney, who advised him to let it go. Mr. Levato stated that he had no prior encounters with Officer Bailey, nor has he had any since this incident. Mr. Levato is currently awaiting his court date to address the tickets he was issued.

Based on my conversation with Mr. Levato, I am classifying his complaint as "Withdrawn by Complainant", as he stated that that he did not wish to proceed with the complaint.

Nonetheless in review of this incident it appears that Officer Bailey's and Mr. Levato's emotions became involved in this incident, causing it to escalate, Mr. Levato's due to him feeling he did nothing wrong, and was being mistreated, and Officer Bailey, due to the harsh response he received from Mr. Levato. In regards to Mr. Levato I can understand him becoming upset, as many people do when they feel that they have done nothing to warrant being stopped by the police, however he admits that he "lost it" and started screaming at Officer Bailey. In regards to Officer Bailey, it appears that he had sufficient probable cause to stop Mr. Levato, based on his personal observations of both a parking violation and a traffic infraction, and he indicated that he was prepared to give Mr. Levato a verbal warning in regards to these violations, until Mr. Levato became argumentative. Officer Bailey also admitted that he referred to Mr. Levato as a "fool", due to the fact that he was planning to give Mr. Levato a verbal warning and Mr. Levato continued to argue with him. Officer Bailey also admits to tossing Mr. Levato's attorney's business card onto Mr. Levato's lap, after advising Mr. Levato that he (Bailey) did not need the card and after Mr. Levato refused to take it back, however this in contrary to what Mr. Levato alleges, as he claims that Officer Bailey threw the business card at him striking him in face.

In conclusion, I believe that this is a he said she said type incident, in which both Mr. Levato and Officer Bailey openly admit to various aspects of this incident, but have different perceptions of them. As previously stated I believe that Officer Bailey had sufficient cause to stop Mr. Levato, for the traffic and parking violations. Furthermore I find no evidence to support Mr. Levato's claim that he was stopped by Officer Bailey, because of his race. I also believe that it is possible that the business card could have struck Mr. Levato in the face, when it was tossed back into the vehicle, by Officer Bailey, but in regards to the intent of Officer Bailey when he tossed the business card, I cannot conclude that he intentionally tried to strike Mr. Levato in the face, or if the card struck Mr. Levato's face at all. In regards to Officer Bailey calling Mr. Levato "a fool", although it was taken offensively by Mr. Levato, I do not believe that it was intended to be derogatory, as Officer Bailey indicates that he used the word in a context to inform Mr. Levato that he was being foolish by yelling and arguing, as he (Bailey) was trying to explain the reason for the stop and that he (Bailey) was planning on issuing him a warning.

I advised Mr. Levato to contact me if he would like to discuss this incident further and/or is he was willing to share his video with me.

Respectfully Submitted,

Lieutenant John Ewanciw
Bureau Commander of Operations

RB
DATE:
10/20/11

CITY OF MIDDLETOWN POLICE DEPARTMENT PERSONNEL COMPLAINT

The City of Middletown Police Department encourages citizens to report legitimate complaints against employees of this Department. As a result, a thorough, impartial and confidential investigation will be conducted. If this complaint leads to a formal charge against the employee, you will be asked to participate in the hearing and/or arbitration process.

Date of Report: 9/10/16	Time: 8:44 pm	Event No.: 29672-16	Case No.: (If Applicable)
Type of Complaint: External	Internal	Other	If Other, please explain:
How Received: Phone	Walk-In	Other	If Other, please explain:
Date of Incident: 9/10/16	Day of Incident: Saturday	Time of Incident: 8:32 pm	
Location of Incident: Linden Ave / Short St		Nature of Complaint: unprofessional conduct	

Complainant: Levato, Peter M		Date of Birth:	
Address:	City:	State: NY	Zip Code: 10840
Home Phone #: 545 No Home	Work Phone #:	Other Phone #: No cell	
Employer:		Occupation: mechanic	
Employer's Address:		Employer Telephone No.:	



Details of Incident: (ADDITIONAL SPACE AVAILABLE ON BACK OF FORM, IF NEEDED)

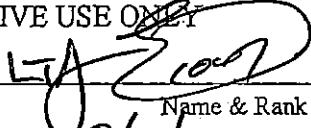
Peter Levato came into the police station to report that he was stopped on Linden Ave by Officer Robert Bailey. Officer Bailey issued a parking ticket and a traffic ticket to Peter Levato. Peter Levato was upset because he states the officer Bailey had thrown his license at him and hit him in the face with it. I am not upset by this.

Personnel Complained Of: (NAME OR PHYSICAL DESCRIPTION, BADGE #, CAR #, ETC.)

Witness Info: (NAME, D.O.B., ADDRESS, TELEPHONE NUMBERS, ETC.)

NOTE: PURSUANT TO SECTION 210.45 OF THE PENAL LAW OF THE STATE OF NEW YORK, ANY INCORRECT OR FALSE STATEMENT ATTRIBUTED TO YOU AND CONTAINED HEREIN IS PUNISHABLE AS A CLASS "A" MISDEMEANOR.

 Reporting Officer's Signature	MPD Location Report Taken	 Complainant's Signature	9-10-16 Date
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ADMINISTRATIVE USE ONLY Reviewed By:  Name & Rank: _____ Date Reviewed: 9/14/16	Shield No.: 10067 MPD-II #: 06-16	No Further Action Needed: _____ Investigation Assigned To: Edward W
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Details of Incident: (CONTINUED)

CITY OF MIDDLETOWN POLICE DEPARTMENT

Memo

To: LT. EWANCIW
From: P.O. K. BAILEY
Date: 09/13/2016
Re: VEHICLE STOP- SHORT ST (BLOTTER# 16-29672)

ON SEPTEMBER, 10, 2016 AT APPROXIMATELY 8:25PM I WAS PARKED STATIONARY IN FRONT OF 84 LINDEN AVE IN REGARDS VARIOUS COMPLAINTS REAGARDING FIGHTS, NARCOTICS OFFENSES AND LARGE GROUPS CONGREGATING AT ALL HOURS. WHILE PARKED AT THIS LOCATION I OBSERVED THREE SUBJECTS SITTING ON THE CURB IN FRONT OF THE OLD MEMEORIAL SCHOOL (83 LINDEN AVE). ONE OF THE SUBJECTS WAS SITTING ON A BICYCLE USING HIS PHONE TO VIDEO ME AND OFFICER RYER WHO HAD PULLED UP NEXT TO ME TO DISCUS THE EARLIER DISPUTE ON LINDEN AVE AND THE PEOPLE INVOLVED. AT THIS TIME A GRAY/SILVER JEEP CHEROKEE TRAVELING NORTH ON LINDEN AVE PASSED ME AND OFFICER RYER AND PROCEEDED TO PARK ON LINDEN AVE. THE VEHICLE PULLED TO THE RIGHT SIDE OF THE ROADWAY IN FORNT OF 86 LINDEN AVE APPROXIMATELY 24 TO 36 INCHES FROM THE CURB WHICH IS A PARKING VIOLATION. THE OPERATOR PLACED THE VEHICLE IN PARK. NOW THE MALE SUBJECT WITH THE BICYCLE WALKED OVER TO THE JEEP AND PLACED HIS BICYCLE IN THE REAR HATCH AREA AND THEN TOOK A SEAT IN THE PASENGER SIDE OF THE VEHICLE. THE OPERATOR THEN PLACED THE VEHICLE IN DRIVE AND BEGAN TO PULL INTO THE ROADWAY NORTH ON LINDNE AVE. FAILING TO SIGNAL FROM HIS PARKED POSITION IN VIOLATION OF VTL 1163D. AFTER PULLING INTO THE ROADWAY THE OPERATOR ACTIVATED HIS LEFT SIGNAL FOR ONE FLASH AND CONTINUED NORTH. AT THIS TIME I ACTIVATED THE EMERGENCY LIGHTS AND SIREN IN CAR# 34 AND CONDUCTED A VEHICLE STOP ON SHORT ST.

I WAS NOW ASSISTED BY OFFICER RYER AND WE APPROACHED THE VEHICLE. AS I GOT CLOSER TO THE DRIVER WINDOW I COULD DETECT A FAINT ODOR OF MARIJUANA EMENATING FROM THE VEHICLE. I ANNOUNCED "GOOD EVENING SIR, LICENSE, REGISTRATION AND INSURANCE CARD PLEASE." I FURTHER STATED "THE INITIAL REASON FOR THE STOP IS THE PARKING VIOLATION BACK

THERE ON LINDEN AVE AND THEN YOU FAILED TO SIGNAL AS YOU LEFT THE PARKED POSITION AND ENTERED THE ROADWAY." THE OPERATOR ADVISED ME HE DID NOT PARK ILLEGALLY. I ADVISED HIM THAT HE COULD NOT PARK HIS VEHICLE OVER 12 INCHES FROM THE CURB. THE OPERATOR THEN STATED TO ME "12 INCHES, DID YOU HAVE A RULER?" THE OPERATOR THEN PROVIDED ME WITH HIS NYS DLIC IDENTIFYING HIM AS PETER M. LEVATO I ASKED MR. LEVATO ABOUT THE SMELL OF MARIJUANA AND ASKED "WHEN DID YOU OR SOMEONE ELSE LAST SMOKE MARIJUANA IN THE VEHICLE?" MR. LEVATO REPLIED "ABOUT TWO WEEKS AGO." I THEN ADVISED HIM THAT I COULD SMELL THE ODOR OF MARIJUANA EMANATING FROM THE VEHICLE. MR. LEVATO STATED "THERE IS NOTHING IN THE VEHICLE, DON'T YOU HAVE ANYTHING BETTER TO DO." I ADVISED HIM THAT I WAS ONLY DOING MY JOB. I FURTHER ADVISED HIM THAT ANYTHING ILLEGAL HAPPENING ON LINDEN AVE IN MY PRESENCE WAS GOING TO BE DEALT WITH ACCORDINGLY. AT THIS TIME MR. LEVATO AND HIS PASSENGER BEGAN VIDEOING ME AND OFFICER RYER. THEY BECAME VERY CONDESCENDING AND BELLIGERENT. I RETURNED TO CAR# 34 AND FILE CHECKED MR. LEVATO. HE HAD NO ACTIVE FILES AND A VALID NYS DLIC. I THEN DECIDED TO SPEAK WITH MR. LEVATO AGAIN IN AN ATTEMPT TO REACH AN UNDERSTANDING IN REGARDS TO THE PROBLEMS ON LINDEN AVE AND POSSIBLY SEND HIM ON HIS WAY WITH A WARNING. AS I APPROACHED THE VEHICLE AGAIN MR. LEVATO STARTED BEING BELLIGERENT AGAIN AND ADVISED ME TO GO AHEAD AND DO WHAT I NEED TO DO. HE THEN HANDED ME A BUSINESS CARD WITH AN ATTORNEYS NAME AND NUMBER ON IT. HE ADVISED ME THAT THIS WAS HIS ATTORNEY AND I SHOULD EXPECT A PHONE CALL FROM HIM. I ADVISED MR. LEVATO I DID NOT NEED THE CARD AND HE REFUSED TO TAKE IT. I THEN TOSSED THE CARD BACK INTO MR. LEVATOS LAP. I ADVISED HIM I HAD BEEN PREPARED TO GIVE HIM A WARNING AFTER SPEAKING WITH HIM BUT HAD SINCE CHANGED MY MIND. DURING THIS EXCHANGE MR. LEVATO KEPT TALKING OVER ME ALONG WITH HIS PASSENGER. I CALLED MR. LEVATO A "FOOL" FOR NOT LISTENING AND ALLOWING ME TO WARN HIM AND I WALKED BACK TO MY VEHICLE TO ISSUE THE TICKETS. AS I WALKED AWAY I HEARD MR. LEVATO SAYING "I WORK ON THERE CARS, WAIT TILL THEY BRING THEIR CARS THROUGH AGAIN". I COMPLETED THE TICKETS AND RETURNED TO THE VEHICLE TO ISSUE THEM TO MR. LEVATO. AT THIS TIME I EXPLAINED TO MR. LEVATO THAT HE HAD UNTIL 09/29/2016 TO RESPOND TO THE UTT. MR. LEVATO AND HIS PASSENGER CONTINUED TO ARGUE WITH ME AND OFFICER RYER. MR. LEVATO WAS ADVISED HE WAS FREE TO GO AND HE THEN DROVE AWAY.

Respectfully Submitted,



PO K BAILEY #1250

Entry/CC#: **CM-029672-16** Date: **09/10/2016** Time: **20:25** Tour: **2** Desk Officer: **1036**

Call Type.....: **VEHICLE STOP** Priority..: **1** How Received: **FIELD**

Caller.....: **LAVATTA, PETER**

Bus. Name...:

Address.....:

City/St/Zip: ,

Call Back #:()-

Location of Assignment: **SHORT ST, MIDDLETOWN**

Cross Street.....:

Business Name.....:

Description.....:

Disposition.....: **UTT(S) ISSUED**

Post: Dispatched: **Y** Dispatched Date: **09/10/2016** Call Taker: **1340**

VEHICLES INVOLVED

Plate & State:

Year/Make/Model/Color: **1997 JEEP GRAND CHEROKE SIL**

Vin:

OFFICERS INVOLVED

Serial #: **1478** Rank: **PO** Name: **QUANTE J RYER**

Serial #: **1250** Rank: **PO** Name: **KRISTOPHER F BAILEY**

UNITS INVOLVED

Unit: **14** Officers: **(1478)**

Disp. Time: **20:26** | Arv. Time: **20:26** | Comp Time: **20:42**

Rcv'd to Comp: **0:17** :: Disp to Comp: **0:16**

Unit: **NEO34** Officers: **(1250)**

Disp. Time: **20:26** | Arv. Time: **20:26** | Comp Time: **20:42**

Rcv'd to Comp: **0:17** :: Disp to Comp: **0:16**

ASSOCIATED NUMBERS

PERSONS INVOLVED

Name.....: **LEVATO, PETER M** DOB:

Address.....:

City/State/Zip:|

Phone Number...:

Business Number

Sex.....:|

Person Type...: **DRIVER**

Name.....: **LAVATTA, PETER** DOB: / /

Address.....:

City/State/Zip: ,

Phone Number..: ()

Business Number..: ()

Sex.....: Race:

Person Type...: CALLER

Certified by _____

Approved by _____

Dated: _____

Dated: _____

