



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: November 16, 2011

Re: Personnel Complaint against Officer Kristopher Bailey MPD-II-010

On Tuesday November 1, 2011 Tommy Albino made a personnel complaint against Officer Kristopher Bailey, claiming that Officer Bailey was rude and disrespectful. This complaint is based upon the following incident: Officer Bailey responded to Mr. Albino's residence for a noise complaint during which he issued Mr. Albino a City Code Summons for a noise violation (11-31183).

This complaint was assigned to Sgt. Kassel for follow up investigation. Sgt. Kassel thoroughly investigated this incident by following up with all involved parties, including Mr. Albino, who was combative and difficult to talk to, furthermore Mr. Albino came into the Police Station on Friday November 11, 2011, at which time he requested to withdraw his Personnel Complaint.

In reviewing this complaint and investigation I believe that Mr. Albino felt that an exception to the noise ordinance should be made for him due to his personal friendship with a member of our Department, and when Officer Bailey issued him a summons he became agitated and made threatening comments towards Officer Bailey. Officer Bailey then responded in a manner to recognize Mr. Albino's threat and to advise him that he would defend himself if needed.

In conclusion I do not find any violations of our Departmental Policies therefore I concur with Sgt. Kassel's findings that this complaint be classified as "Exonerated" and "Withdrawn by Complainant".

Respectfully Submitted


Lieutenant John Ewanciw

Bureau Commander of Operations



CITY OF MIDDLETOWN POLICE DEPARTMENT

Memo

To: Lt. John Ewanciw

From: Sgt. Neil Kassel

Date: November 11, 2011

Re: Tommy Albino Personnel Complaint

On November 1, 2011 a subject by the name of Tommy Albino came to 370 to make a personnel complaint against PO Kristopher Bailey. Mr. Albino filed the initial Personnel Complaint with Sgt. Thoelen and that report was forwarded to me on November 2, 2011. The complaint alleges that PO Bailey was rude and acted in an unprofessional manner during the investigation of a noise complaint at 182 Highland Ave.

In an attempt to conduct my investigation I spoke with Officer Bailey and Officer Dave Franck. Written memorandums were obtained from both of these officers. I also spoke with the complainant (Mr. Albino) and a possible witness (Kenneth Sherman), via telephone.

Included with my memorandum is a copy of the IMPACT Case Report 6371-11, the original Personnel Complaint, November 10, 2011 IMPACT email from Sgt. Thoelen, and memorandums from Sgt. Thoelen, Officer Bailey and Officer Franck.

The following is a summary of my investigation:

On November 1, 2011 at approximately 12:20 PM Officer Bailey responded to [redacted] to investigate a noise complaint that had been called in by Kenneth Sherman [redacted]. At the date and time of this incident Officer Bailey was working as the Department's Neighborhood Enhancement Officer and was dressed in his City of Middletown Police Department uniform. Officer Bailey approached the residence and could hear loud music being played from the second floor window of [redacted]. Officer Bailey could hear the music from a distance greater than 60 feet and therefore determined it was a violation of Middletown City Code 332 Subsection 2B4. Upon approaching the location he spoke with the caller (Kenneth Sherman) and was advised that the loud noise has been an ongoing problem. Officer Bailey approached the front door to the residence but determined that it was not the primary entrance to the home due to the doors being blocked on the interior side. He responded to the rear door and began knocking.

Officer Bailey had to knock at the rear door for several minutes due to the volume of the music. Mr. Albino stated that he was in the shower during the time Officer Bailey was knocking on the door. After several minutes of knocking Officer Bailey yelled "Open the door it's the police. We are going to kick the door in if you don't." Officer Bailey was aware of the fact that he had no authority to make entry and advised me that he had no intentions of making entry. The reason he made the statement was to get the attention of the occupant.

The occupant (Tommy Albino) finally opened the rear door to the residence. Officer Bailey requested ID from Mr. Albino so he could conduct a file check and prepare an appearance ticket. It was at approximately this time that Officer Franck arrived at the scene to assist. According to both Officer Bailey and Officer Franck, Mr. Albino became very belligerent and irate. He initially refused to provide Officer Bailey with his ID and made statements such as "This is Bullshit! You don't have a warrant! I don't have to give you my license!" The verbal argument escalated and Mr. Albino made statements such as "Officer Bailey you think you're tough behind that badge and uniform. I take boxing; you will be off one day!" Officer Bailey perceived this statement to be a threat to his safety. Officer Bailey responded by telling Mr. Albino that he is not always in uniform and would be ready to defend himself if need be. Mr. Albino was issued his appearance ticket and both officers left the scene.

Mr. Albino's major complaint was that Officer Bailey used foul language and that he felt threatened by Officer Bailey's statement of being of duty and ready for a confrontation. Both Officer Bailey and Officer Franck state in their memo's that Mr. Albino was the person that made the first threat of force in the verbal altercation. Mr. Albino even alluded to the fact that he had made the first aggressive statement in his Personnel Complaint form.

I called Mr. Albino on the phone in an attempt to interview him regarding the above incident. He was highly combative and it was difficult to talk to him. A majority of our conversation concerned the Middletown City Code prohibiting noise, and Mr. Albino's attempts to identify different types of noises that appear to be legal even though they were louder than his radio. I tried to steer the conversation back to the personnel complaint but he was very irate. During the course of our conversation he made another threatening statement towards Officer Bailey. He stated something to the effect of "Forget it. I don't want to make a complaint because I know you won't do anything anyway. We'll do it the way the officer wants to, off duty." I asked Mr. Albino if he was threatening to fight with my officer when he was off duty to which he stated, "No. I mean I will fight him in court."

I also spoke with the initial caller to the incident (Kenneth Sherman) to see if he had heard any of the verbal altercation between Mr. Albino and Officer Bailey. Mr. Sherman was unable to provide any information regarding the discussion that took place at the rear of the house.

I do not believe that Officer Bailey made any threat to hurt or fight Mr. Albino. Both Officers Bailey and Franck stated that Mr. Albino made reference to his training as a boxer and that he would see Officer Bailey in the "street" one day. I cannot think of any valid reason for Mr. Albino to make this statement unless he was attempting to intimidate Officer Bailey. Officer Bailey was threatened first and I do not think that he should have backed down from Mr. Albino's statement. I feel that Officer Bailey's verbal response to Mr. Albino was meant to let Mr. Albino know that his initial threat was recognized by Officer Bailey and that Officer Bailey would be prepared to defend himself should Mr. Albino ever make an attempt to hurt him.

On November 11, 2011 I spoke with Sgt. Thoelen at approximately 2:00 PM. He advised me that Mr. Albino had just come into the lobby at 370 and requested that the personnel complaint be dropped. Sgt. Thoelen advised him that the incident was still under investigation but Mr. Albino stated that he did not want to pursue the matter. Mr. Albino then left without providing any other information.

Based upon my investigation I feel that Mr. Albino's personnel complaint against Officer Bailey should be classified as EXONORATED. I believe that the incident did occur in a manner similar to how it was described by Mr. Albino, but that Officer Bailey's actions were lawful, proper and justified. In addition, based upon Mr. Albino's request to have the complaint dropped I would request that the status of the complaint also be classified as WITHDRAWN BY COMPLAINANT.

Respectfully submitted,



Sgt. Neil Kassel



**City of Middletown
Police Department**
2 James Street
Middletown, NY 10940



Memorandum

Date: 9/4/2011
To: Lieutenant John Ewanciw
From: Sergeant Jeffry Thoelen
Subject: Personnel Complaint—PO Kristopher Bailey
Event #11-31183 / 11-6371

Lieutenant Ewanciw:

On 11/1/2011, at approximately 5:45 PM, a male subject, identified as Tommy Albino, came into the police department to make a personnel complaint against Officer Kristopher Bailey. The complainant alleges that Officer Bailey was rude and unprofessional in the manner in which he investigated a noise complaint at his residence, [redacted] The complainant was issued an Apperance Ticket returnable to Middletown City Court on November 23, 2011 at 1:00 PM for a noise violation. I interviewed the complainant about the incident and at his request completed a written City of Middletown Police Department Personnel Complaint. The complainant was advised how the complaint process would proceed and that he would most likely be contacted again about the incident. I obtained good contact information from him and he departed the police department.)

The incident in question took place earlier on today's date, at approximately 12:20 PM. I have included copies of the case and arrest paperwork. At this time, I have no further information to report. Please do not hesitate to contact me with any questions or concerns related to this complaint.

Respectfully submitted,

Sergeant Jeffry R. Thoelen

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: 11/1/11	Time: 5:45 PM	Event No.: 31183-11	Case No.: (If Applicable) 6371-11
Type of Complaint: External Internal Other	If Other, please explain:		
How Received: Phone Walk-In Other	If Other, please explain:		
Date of Incident: 11/1/2011	Day of Incident: Tuesday	Time of Incident: 12:20 PM	
Location of Incident:		Nature of Complaint: Unprofessional Conduct	


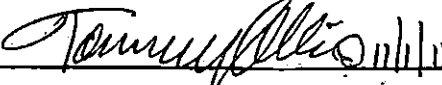
Complainant: Albino, Tommy F.		Date of Birth: _____	
Address: _____	City: Middletown	State: NY	Zip Code: 10940
Home Phone #: _____	Work Phone #: N/A	Other Phone #: _____	
Employer: _____	Occupation: Sales Clerk		
Employer's Address: _____	Employer Telephone No.: Unknown		

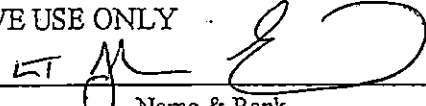
Details of Incident: (ADDITIONAL SPACE AVAILABLE ON BACK OF FORM, IF NEEDED) Complainant states that Officer Bailey responded to his residence earlier today to investigate a noise complaint. Complainant states that he was in the shower and heard someone outside yelling, "Come open the door, or I'm going to kick the fucking door down!" Complainant answered the door and made contact with Officer Bailey who immediately asked him for his identification. The complainant told Officer Bailey that he was late for work and Officer Bailey then stated, "You might not make it to work." The complainant gave Officer Bailey his

Personnel Complained Of: (NAME OR PHYSICAL DESCRIPTION, BADGE #, CAR #, ETC.)
Officer Kristopher Bailey, Shield #1250

Witness Info: (NAME, D.O.B., ADDRESS, TELEPHONE NUMBERS, ETC.)
Officer Dave Franck - 2 James Street - Other officer on scene

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.

	#153 2 James Street, Middletown		Date
Reporting Officer's Signature	Location Report Taken MPD Headquarters	Complainant's Signature	

ADMINISTRATIVE USE ONLY Reviewed By:  1047 Name & Rank _____ Shield No. _____ Date Reviewed: 11/2/11 MPD-II #: 010	No Further Action Needed: _____ Investigation Assigned To: Sgt Kassel 11/2/11
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Details of Incident: (CONTINUED) identification and Officer Bailey then walked away and immediately started writing out a ticket. The complainant contacted his step father via cell phone to advise him what was going on. The complainant states that he has a good relationship with Sergeant Khalil and that he was hoping that he could avoid getting a ticket for a noise violation. The complainant attempted to have Officer Bailey speak to his step father, and handed Officer Bailey the telephone. A short conversation took place between the step father and Officer Bailey and the phone was then handed back to the complainant. A second officer, Officer Franck, arrived on the scene during this time and began speaking to the complainant. The complainant advised Officer Franck that he was angry because Officer Bailey was being a "tough guy," trying to hide behind his badge. The complainant states that Officer Bailey then became rude, stating that he doesn't always wear his badge and that the complainant can see him anytime out of work. The complainant felt threatened by this statement and did not feel that it was warranted or that it was professional on the part of Officer Bailey.

The complainant admits that his home stereo was playing loudly at the time that Officer Bailey responded to his residence, but he did not believe that it was loud enough to warrant being issued a summons. The complainant was previously advised by officers that his music was too loud, but these officers simply had the complainant turn the music down, and no summons was issued. The complainant states that Officer Franck acted professionally and that only Officer Bailey was rude and disrespectful.

7. Report Day: Tue 8. Date: Nov 1 2011 9. Report Time: 12:20 10. Day: Tue 11. Date: Nov 1 2011 12. Time: 12:20 13. Day: Tue 14. Date: Nov 1 2011 15. Time: 12:20

16. Incident Type: NOISE COMPLAINT 17. Business Name: 18. Weapon(s): A.
 19. Incident Address (Street No., Street Name, Bldg. No., Apt. No.): 20. City, State, Zip (C T V): MIDDLETOWN B.
 21. Location Code: 3601

22. OFF. NO.	LAW	SECTION	SUB	CL	CAT	DEG.	AIT	NAME OF OFFENSE	CTS	23. No. of Victims
1	MCC	332	-2	U	V		O	NOISE - PROHIBITED ACTS	1	
2										24. No. of Suspects
3										

25. Person Type: CO=Complainant OT=Other PI=Person Interviewed PR=Person Reporting WI=Witness NI=Not Interviewed VI=Victim 26. Victim also complainant Y N
 TYPE/NO: CA NAME(LAST, FIRST, MIDDLE, TITLE): SHERMAN, KENNETH Date of Birth: 02/02/1949 STREET NO., STREET NAME, BLDG. NO., APT. NO., CITY, STATE, ZIP: 10 Telephone No.:
 BUS ()
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27. Date of Birth: / / 28. Age: 29. Sex: M F U 30. Race: White Black Other Indian Asian Unk. 31. Ethnic: Hispanic Unk. Non-Hispanic 32. Handicap: Yes No 33. Residence Status: Resident Tourist Commuter Military 34. Temp. Res. - Foreign Nat.: Student Other Homeless Unk/Not Indicated
 34. Victim DID receive information on Victim's Rights and Services pursuant to New York State Law Yes No

35. Type/No: AR 36. Name (Last, First, Middle): ALBINO, TOMMY F 37. Alias/Nickname/Maiden Name (Last, First, Middle): 38. Apparent Condition: Impaired Drugs Mental Dis Unk. Unimpaired Alco Inj/ill App Norm.
 39. Address: 40. Phone Res: () Bus: 41. Social Security No.:
 42. Date of Birth: 43. Age: 26 44. Sex: M F U 45. Race: White Black Other Indian Asian Unk. 46. Ethnic: Hispanic Unk. Non-Hispanic 47. Skn: Light Dark Unk. 48. Occupation: CLERK
 49. Height: 5 11 50. Weight: 165 51. Hair: BRO 52. Eyes: BRO 53. Glasses: No Yes Contacts. 54. Build: Small Medium Large 55. Employer/School: CUMBERLAND FARMS 56. Address: 251 HIGHLAND AVE
 57. Scars/Marks/Tattoos (Describe): 58. Misc.:

59. Victim or Suspect No.	Property Status	Property Type	Quantity Measure	Make or Drug Type	Model	Serial No.	Description	Value

60. Vehicle Status: 61. License Plate No: Full Partial 62. State: 63. Exp. Yr: 64. Plate Type: 65. Value:
 66. Veh. Yr: 67. Make: 68. Model: 69. Style: 70. VIN:
 71. Color(s): 72. Towed By: To: 73. Vehicle Notes:

74. 1250:11/01/2011 13:13 -
 ON THE NOVEMBER 1ST, 2011 AT APPROXIMATELY 12:20PM OFFICER BAILEY WAS ADVISED BY DISPATCH VIA CELL PHONE TO RESPOND TO THE AREA OF REGARDS TO AN ON GOING PROBLEM WITH LOUD MUSIC COMING FROM THE LOCATION. OFFICER BAILEY WAS ADVISED THAT PD HAD BEEN TO THIS LOCATION PREVIOUSLY AND THE SUBJECT TURNS THE MUSIC DOWN AS OFFICERS ARRIVE. OFFICER BAILEY RESPONDED TO THE LOCATION AND PARKED CAR# 34 IN FRONT OF 188 HIGHLAND AVE AND WALKED BACK TO NUMBER AND COULD HERE LOUD MUSIC COMING FROM A CLOSED SECOND FLOOR BEDROOM WINDOW. THE MUSIC COULD BE HEARD FROM THE STREET, WELL OVER 60FT AWAY, THUS BEING IN DIRECT VIOLATION OF MIDDLETOWN CITY CODE 332-2B4 EXCESSIVE NOISE. AT THIS TIME

75. Inquiries (Check all that apply): DMV. Want/Warrant. Scofflaw. Crim. History. Stolen Property. Other. 76. NYS PIN Message No.: 77. Complainant Signature:
 78. Reporting Officer Signature (include Rank): 79. ID No: 1250 PO BAILEY 80. Supervisor's Signature (include Rank): 81. ID No Approved By: 1036 LT GRAZIANO
 82. Status: Open Closed (if Closed, check box below). Unfounded. Vict. Refused to Coop. Arrest. Pros. Declined. Warrant Advised. CBI. Juv. - No Custody. Arrest-Juv. Offender Dead. Extrad. Declin. Unknown. 83. Status Date: Nov 1 2011 84. Notified/TOT:
 85. 1 Page of 2 Pages

INCIDENT # 1250:11/01/2011 13:13
 VICTIM # 1
 SUSPECT # 2
 PROPERTY # 3
 VEHICLE # 4
 ADMINISTRATIVE # 5

1
2
3
4
5
6
7
8
9
10
11
12
13
0
B use cover sheet
1
Page of 2
Pages

INCIDENT No. : CM-06371-11

BLOTTER/CC No. : CM-031183-11

ADDITIONAL NARRATIVE

OFFICER BALLEW WAS APPROACHED BY THE CALLED KENNETH SHERMAN WHO STATED THAT THIS IS AN ON GOING PROBLEM. HE FURTHER STATED THAT HE HAS SPOKEN TO THE PARENTS AND THE SUBJECTS RESPONSIBLE WITH NEGATIVE RESULTS

AFTER NUMEROUS ATTEMPTS TO MAKE CONTACT WITH THE SUBJECT RESPONSIBLE R/O WAS MET AT THE DOOR BY THE DEFENDANT. TOMMY F ALBINO (DOB 05/13/1985) R/O ASKED THE DEFENDANT FOR IDENTIFICATION AND HE WAS ADVISED THAT HIS MUSIC WAS TOO LOUD. THE DEFENDANT STATED TO R/O " I DON'T HAVE MY ID. WHY DO YOU NEED IT ANYWAY " R/O ADVISED THE DEFENDANT AGAIN OF THE MCC. THE DEFENDANT GOT DEFENSIVE AT THIS TIME AND STATED " THIS IS BULLSHIT. I DON'T HAVE TO GIVE YOU MY ID. YOU DON'T HAVE A WARRANT. I WAS JUST LISTENING TO MY RADIO, I CAN LISTEN TO IT AS LOUD AS I WANT INSIDE MY OWN HOUSE " R/O WAS ASSISTED AT THIS TIME BY OFFICER FRANCK THE DEFENDANT SUPPLIED R/O WITH HIS ID AND WAS FILE CHECKED THROUGH DISPATCH. HE WAS THEN ISSUED AN APPEARANCE TICKET FOR MCC 332-2R4 EXCESSIVE NOISE. RETURNABLE TO CITY COURT ON 11/01/2011 AT 1:00 PM. THE SUBJECT THEN PROCEEDED TO WALK DOWN HIGHLAND AVE TAUNTING R/O AND ADVISING R/O THAT HE TAKES BOXING LESSONS AND WOULD SEE R/O WHEN HE WAS OUT OF UNIFORM. R/O POLITELY STATED TO THE SUBJECT TO WALK ON THE SIDEWALK AND NOT IN THE STREET AS THIS TOO WAS AN INFRACTION

NO FURTHER TO REPORT

Entry/CC#: CM-031183-11 Date: 11/01/2011 Time: 12:20 Tour: B Desk Officer: 1036

Call Type: NOISE COMPLAINT Priority: 1 How Received: TELEPHONE

Caller: SHERMAN, KENNETH

Bus. Name:

Address:

City/St/Zip: MIDDLETOWN, NY

Call Back #:

Location of Assignment: WN

Cross Street:

Business Name:

Description: LOUD MUSIC/ON GOING PROBLEM/NEO ADVISED/C NARR

Disposition: ARREST

Post: Dispatched: Y Dispatched Date: 11/01/2011 Call Taker: 1192

OFFICERS INVOLVED

Serial #:1250 Rank:PO Name:KRISTOPHER F BAILEY Type:Arresting Officer
Serial #:1092 Rank:PO Name:DAVID W FRANCK Type:Assisting Officer

UNIT'S INVOLVED

Unit: 34 Officers: (1250)
Disp. Time: 12:21 | Arv. Time: 12:25 | Comp Time: 12:46
Rcv'd to Comp: 0:26 :: Disp to Comp: 0:25

Unit: 8 Officers: (1092)
Disp. Time: 12:36 | Arv. Time: 12:36 | Comp Time: 12:46
Rcv'd to Comp: 0:26 :: Disp to Comp: 0:10

ASSOCIATED NUMBERS

Arrest # :CM-03073-11 Defendant: TOMMY F ALBINO DOB:05/13/1985
Case # :CM-06371-11 Incident Type: NOISE COMPLAINT

PERSONS INVOLVED

Name: ALBINO, TOMMY F DOB
Address:
City/State/Zip:
Phone Number: ():
Business Number:
Sex: M Race: WHT
Person Type: DEFENDANT

Name: SHERMAN, KENNETH DC
Address:
City/State/Zip:
Phone Number: ():
Business Number: ()
Sex: M Race: WHT
Person Type: CALLER

NARRATIVE

OUT AT REAR OF 182 HIGHLAND AVE
[Tue 11/01/2011 12:30 By 1192]
MADE CONTACT WILL TENANT
[Tue 11/01/2011 12:38 By 1192]
APPEARANCE TICKET ISSUED

1. NYSID No. 2. OBTS No. New York State ARREST REPORT 3. Case No. CM-06371-11 4. Ref No.

5. FBI No. 6. Arrest No. CM-03073-11 7. Agency Middletown Police Dept 8. Division/Precinct PATRO

9. Name (Last, First, Middle) ALBINO TOMMY F 10. Alias/Maiden Name (Last, First, Middle) 11. Phone Number

12. Street Number and Name, Building No., Apt. No. 13. City, State, Zip (C T V) MIDDLETOWN NY 10940 14. Residence Resident Foreign Non-Res Non-Resident Unk 15. Place of Birth MIDDLETOWN

16. Date of Birth 17. Age 18. Sex M F U 19. Race White Black Asian Indian Other Unkwn 20. Ethnic Non Hispanic Hispanic Unknown 21. Skin Light Medium Dark Other Unknown

22. Height 23. Weight 24. Hair BRO 25. Eyes BRO 26. Glasses No Yes Contacts 27. Build Small Large Med 28. Marital Status Married Single Divorced Widowed 29. U.S. Citizen Yes No 30. Citizen Of

31. Social Security No 32. Education 33. Religion 34. Occupation CLERK 35. Employed Yes No 36. Scars/Marks/Tattoos (Describe)

37. Arresting Officer BAILEY 38. ID No. 1250 39. Assisting Officer FRANCK 40. ID No. 1092 41. Arrest Date 11/01/2011 42. Time 12:20 43. Location of Arrest (C T V) IN

44. Juvenile Yes No 45. Condition of Defendant At Arrest Impaired Drugs Mental Dis Int/ill App Norm 46. Weapon(s) at Arrest 47. Co-defendants Arrest No.

48. Miranda Yes No 49. Miranda By 50. Miranda Date 51. Mir. Time 52. Statements Written None Verbal 53. Status Parole Bail/ROR Probation 54. Search Warrant Yes No 55. ID Procedure Line Up None Show Up Photo

56. Arraignment Court MIDDLETOWN CITY 57. Arraignment Judge BROCKETT 58. Date 11/23/2011 59. Time 13:00 60. Property Yes No 61. Evidence Yes No 61a. Processed By 61b. Disposition

62. Incident No. CM-031183-11 63. Arrestee Status ROR Police Bail Held Cash Bail Bail Bond App Tkt Rel to 3rd Party 64. Bail Amount 65. Bondsman 66. Photo No.

67. Arrest Type PW IW SUM CIP COMP OP FC VOP BW AW QT 68. Warrant No. 69. Arrest FOA Yes No 70. Other Agency 71. F/P/Taken Yes No

72. Location of Offense (C T V) 73. Offense Date 11/01/2011 74. #Offn'drs 75. # Vict. 0 76. Return Court MIDDLETOWN CITY 77. Return Judge BROCKETT 78. Return Date 11/23/2011 79. Time 13:00

80. Defendant/Case TOT Agency 80a. Officer's Name 80b. ID No 81. Time 82. Date

Table with columns: 83. Law, Article & Section, SUB, CL, CA, DEG, ATT, NAME OF OFFENSE, CTS, NCIC Code, VICTIMS, ASSOC. NO, TYPE. Row 1: MCC, 332, -2, V, N, NOISE - PROHIBITE, NO, APP, UTT, OTH.

84. Person Type EM = Employer OT = Other SP = Spouse CD = Co - Defendant SC = School PO = Parole Officer VI = Victim RE = Relative RP = Religious Person CH - Child PA = Parent AS = Associate LA = Lawyer PR = Probation Officer WI = Witness CO = Complainant DR = Doctor

Table with columns: TYPE, NAME (LAST, FIRST, MIDDLE, TITLE), STREET NAME & NUMBER, CITY/STATE/ZIP, TELEPHONE NO. Row 1: CA, SHERMAN, KENNETH, () 343-5059

85 THE DEFENDANT WAS ISSUED AN APPEARANCE TICKET IN THE FIELD FOR THE ABOVE CHARGE RETURNABLE TO CITY COURT ON 11/23/2011 AT 1PM.

NARRATIVE section for case details.

86. Arresting Officer's Signature 87. ID No. 1250 PO BAILEY 88. Supervisor's Signature 89. ID No. 90. Arrest Made as a Result of A SAFIS Latent Print identification? 91. 92. 93. 94. 1 Page of Pages

**CITY OF MIDDLETOWN POLICE
DEPARTMENT**

MEMORANDUM

TO: SGT. KASSEL
FROM: P.O. KRIS BAILEY
DATE: 11/02/2011

CASE# 11-06371

ON NOVEMBER 1ST, 2011 I RESPONDED TO [REDACTED]) AVE FOR A NOISE COMPLAINT. AS I APPROACHED THE RESIDENCE I COULD HEAR LOUD MUSIC BEING PLAYED FROM A SECOND STORY WINDOW. THE MUSIC COULD BE HEARD FROM THE STREET LEVEL WELL OVER 60FT FROM ITS SOURCE AND OVER PROPERTY LINES, THUS BEING IN DIRECT VIOLATION OF MCC 332-2B4. I APPROACHED THE RESIDENCE AND AFTER NUMEROUS ATTEMPTS TO MAKE CONTACT WITH THE RESIDENT, I WAS MET AT THE BACK DOOR BY THE DEFENDANT, TOMMY F. ALBINO. THE DEFENDANT WAS ISSUED AN APPEARANCE TICKET IN THE FIELD. (SEE CASE#-11-06371)

WHILE TRYING TO GET THE DEFENDANTS ATTENTION, I TRIED TO YELL LOUD ENOUGH OVER THE RADIO FOR THE DEFENDANT TO HEAR ME "OPEN THE DOOR IT'S THE POLICE" THAT NOT WORKING, I YELLED AGAIN "OPEN THE DOOR IT'S THE POLICE, WE ARE GOING TO KICK THE DOOR IN IF YOU DON'T." I HAD NO INTENTIONS ON KICKING THE DOOR IN, I WAS MEARLY TRYING TO GET THE SUBJECT TO TURN DOWN THE RADIO AND OPEN THE DOOR. AT THIS TIME HE COMPLIED WITH MY REQUEST. WHILE TRYING TO OBTAIN THE DEFENDANTS LICENSE TO CONDUCT A FILE CHECK AND WRITE OUT HIS APPEARANCE TICKET, THE SUBJECT BECAME VERY BELIGERANT STATING TO MYSELF AND OFFICER FRANCK ON MORE THAN ONE OCCASION, "I DON'T HAVE TO GIVE YOU MY FUCKING LICENSE", "YOU DON'T HAVE A WARRANT TO BE IN MY HOUSE", "THIS IS FUCKING BULLSHIT", "OFFICER BAILEY YOU THINK YOUR TOUGH BEHIND THAT BADGE AND UNIFORM, I TAKE BOXING, YOU WILL BE OFF ONE DAY". AFTER HEARING THE DEFENDANT MAKING THE LAST STATEMENT AND FEELING AS THOUGH IT WAS A DIRECT THREAT TO MY SAFETY OFF DUTY, I SIMPLY STATED TO HIM "I'M NOT ALWAYS IN UNIFORM AND I DO HAVE DAYS OFF. I DON'T KNOW WHY YOU ARE ACTING LIKE SUCH AN ASSHOLE, IT'S A SIMPLE TICKET FOR A MCC VIOLATION" THE DEFENDANT THEN BEGAN TO CALL SOMEONE ON THE PHONE STATING TO ME THAT "SAMMY" WILL TAKE CARE OF THIS SHIT, THERE IS NOTHING YOU CAN DO ABOUT IT. IT WILL BE LIKE IT NEVER HAPPENED. YOU WILL SEE OFFICER TOUGH GUY. YOU WILL SEE." AS STATED ABOVE HE WAS THEN ISSUED AN APPEARANCE TICKET FOR THE VIOLATION.

167 1250
OFFICER KRIS BAILEY

STATE OF NEW YORK:

DATE: 11/3/2011

COUNTY OF ORANGE: ss

TIME: 2:00AM

CITY OF MIDDLETOWN:

CASE: 11-31183

I, Police Officer David Franck, being duly sworn, deposes and say that I am 34 years of age, dob [redacted], and I reside at [redacted] n, NY 10940 and I give this statement to Sergeant Kassel of the Middletown New York Police Department, and that on November 1st, 2011 at approximately 12:20pm I was working in the capacity as a uniform police officer for the City of Middletown Police Department working and 8:00am – 4:00pm patrol shift. At about 12:20pm on November 1st, 2011 I had just finished a scheduled foot patrol assignment in the second ward of the City of Middletown. Specifically I patrolled, on foot, the area of Eisenhower Dr. After clearing from the foot patrol assignment, I continued to patrol areas within the second ward, to include Highland Ave. I heard, via police radio, unit #34, Officer Kris Bailey, call out in the area of [redacted] ve. I patrolled near that location and observed unit #34 parked on Highland Ave. in the area of #190 Highland Ave. After patrolling through the stated area, I heard Officer Bailey state that he had made contact with a subject in the rear of [redacted] Dispatch then inquired if Officer Bailey was in need of another unit. Officer Bailey did then request for another unit to stand by. Dispatch then advised unit #16, Officer C. Dolan, to respond to Officer Bailey's location. Being that I was in the direct area, I advised dispatch and Officer C. Dolan that I would be responding to assist Officer Bailey. I arrived in front of [redacted] and proceeded to walk down the driveway. As I was approaching the rear of the residence I could hear an unfamiliar voice speaking loudly while Officer Bailey was explaining the reason for police presence. Upon arriving to the rear of the residence, Officer Bailey briefed me on the nature of the call, that being an going complaint of noise. Officer Bailey was attempting to issue an appearance ticket for the Middletown City Code violation of excessive noise. I did not recognize the male subject, at which time Officer Bailey showed me a NYS picture driver's license of the male subject, who was identified as Tommy F. Albino. Albino was visibly and verbally irate over police presence, and continued to state, "this is bullshit", "you don't have a warrant", and so on. As Officer Bailey was completing the appearance ticket and necessary file check, I stood inside of the back door of the residence keeping Albino within sight for safety purposes. While I was standing by, I attempted to calm Albino down and further explained the reason for police presence. Albino again stated, "you don't have a warrant, get out of my house", and continued to act irrationally. I informed Albino that he had every right to dispute the offense, and would have an opportunity to plead not guilty for the violation. Albino continued to speak loudly and demanded our information, at which time I provided my last name and shield number, along with Officer Bailey's information. Albino then began to call each of us names such as "faggots", "bitches", etc. I once again advised Albino to calm down and told him to stop acting like a child. Albino then began to verbally berate Officer Bailey and stated something to the effect that Officer Bailey hides behind the shield and his gun and told officers that he takes boxing lessons and would see Bailey on the street one day. Officer Bailey responded to Albino's comments in a professional tone, admitting to the fact that he may see him on the street one day out of uniform, without the shield and gun. Officer Bailey then issued the appearance ticket to Albino and again explained the offense while advising Albino of his court date. Officers left the residence and observed Albino walking north on Highland Ave. I briefly stood by with Officer Bailey to assure that Albino did not make any further actions that could warrant a disorderly conduct arrest. I cleared from the area and was later requested to give this statement after Albino submitted a personnel complaint.

I have read this statement consisting of 2 pages and swear it to be the truth to the best of my recollection and knowledge.

Police Officer David Franck #1092

PO David Franck #1092

Sworn to before me this
3rd day of November 2011

NOTE: False statements made herein are punishable as a Class "A" misdemeanor pursuant to section 210.45 of the New York State Penal Law.

Sent to: 1041

SGT NEIL KASSEL

From: 1153

SGT JEFFRY R THOELLEN

Date/Time Sent: 11/10/2011 02:12:02 PM

Subject: TOMMY ALBINO

Also Sent to: 1041

Message: Neil,

Today, 11/10/2011, at approximately 2:00 PM, Tommy Albino came into the police department lobby and asked if he could withdrawn the personnel complaint he made against Officer Kris Bailey on 11/2/2011. I informed Mr. Albino that the incident was still under investigation and he advised me that he no longer wants to pursue the matter. He then left the police department lobby. He did not provide any reasoning as to why he wanted the complaint withdrawn. I just wanted to advise you so that you can complete the investigation.

—Jeff