

CITY OF MIDLETOWN POLICE DEPARTMENT

Memo

To: Lt. Paul Rickard, Bureau Commander of Operations

From: Lt. Gregory Metakes

Date: November 2, 2009

Re: Supervisor Investigation-Incident #31206-09, arrest #2753-09
Injury to defendant Matthew Thomas

I have reviewed the Supervisors investigation conducted by Sergeant Ron Magsamen, consisting of 2 pages and involving injury to defendant Matthew Thomas during an arrest on 11/01/09. My findings are as follows:

Prior to the arrest of Matthew Thomas and after being asked to leave Jenna's nightclub, Mr. Thomas stood and struck another patron of the bar, seemingly without provocation. As a result of this offense, officers immediately attempted to arrest Mr. Thomas as his actions were endangering other patrons of the bar. Mr. Thomas was advised repeatedly that he was under arrest but continually refused officers commands that he place his hands behind his back. Despite commands and PO Gass deploying two baton strikes to Mr. Thomas' calves, Mr. Thomas continued to attempt to conceal his hands beneath his body, apparently in an attempt to avoid being handcuffed. Mr. Thomas' actions clearly constituted "resisting arrest" as described in the New York State Penal Law section 205.30 wherein a person is guilty of resisting arrest when "**he intentionally prevents or attempts to prevent a police officer or peace officer from effecting an authorized arrest of himself or another person**".

As a result of this offense, Officer Michael McDonald deployed his department issued TASER to the back of Mr. Thomas enabling officers to retain Mr. Thomas' left wrist for handcuffing. Officers were not able to get Mr. Thomas' right wrist secured during the TASER cycle and Mr. Thomas maintained his right wrist beneath his body, again

ignoring commands that he present his wrist for handcuffing. As a result, PO McDonald, who was still maintaining control of the TASER with probes in contact with Mr. Thomas, deployed the TASER a second time. Mr. Thomas' right wrist was then secured and Mr. Thomas was taken into custody. The probes, disconnected from Mr. Thomas after the second deployment so skin penetration may not have occurred.

In my opinion, the initial attempt to take Mr. Thomas to the floor was justified in that he clearly presented a danger to other bar patrons and failure to take control of him during this time period could have resulted in injury to other patrons. Clearly, his actions at this time were in violation of the New York State Penal Law section 240.20 subsection one in that **"A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly create a risk thereof: (1) He engages in fighting or in violent, tumultuous or threatening behavior"**. Further, it appears that the deployment of both the baton by PO Gass and the deployment of the TASER by PO McDonald were justified as Mr. Thomas continually refused to allow himself to be handcuffed.

Following Mr. Thomas' transport to Police Headquarters, I attempted to speak with him in regards to any injuries he may have received and observed a small laceration above Mr. Thomas' above his right eye. Mr. Thomas refused to speak with me in regards to the incident and instead, challenged officers to fight with him while stating that his arresting officers were "fags" and "pussy's". Mr. Thomas refused medical attention as well. Mr. Thomas did state that he was out for the night because his ex-girlfriend is pregnant, he then started to cry and stated that he "only wanted to go out and have a good time".

As a result of this investigation, my own observations and review of the New York State Penal law and the General Orders of the City of Middletown Police Department, I have concluded that the actions of the officers involved in this arrest were justified and it does not appear that these injuries could have been avoided.

Respectfully submitted

A handwritten signature in black ink that reads "Gregory W. Metakes 741". The signature is written in a cursive style.

Lieutenant Gregory W. Metakes

CITY OF MIDDLETOWN POLICE DEPARTMENT

Memo

To: Lt. Gregory Metakes

From: Sgt. Ronald Magsamen

Date: 11/01/2009

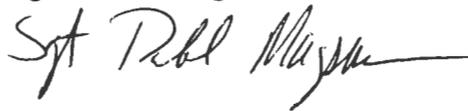
RE: Minor injuries to defendant- Matthew Thomas Blotter: 09-31206 Case: 09-6413
Arrest: 09-2753

1. On the above date, at approximately 0303hrs, Officers Berman and Sommer responded to a report of a unwanted subject at Jenna's; located at 5 Canal Street.
2. Officers interviewed the caller, who pointed out the subject that was asked to leave several times and refused. Officers informed the defendant that he was not wanted in the establishment and he needed to leave. The defendant refused the officers requests as well.
3. The defendant then pushed away from the bar and without warning or any justification, he punched the patron next to him in the face. Officers advised the defendant that he was under arrest. The defendant refused to cooperate with the officers.
4. While attempting to place the defendant into hand restraints, that defendant began to struggle with the officers. The defendant placed his hands underneath his body to prevent officers from gaining control. Officer Berman then called for additional units to respond.
5. Officers McDonald, Gass, Gallagher and Khalil responded to the location.
6. Officer Gass struck the defendant twice in the rear calves area with his department issued impact weapon. This showed minimal effectiveness on the defendant, as he continued to struggle with officers.
7. Officer McDonald announced the deployment of his taser and struck the defendant in his back. Officers took advantage of this opportunity and gained control of the defendants left arm. The defendant refused to give officers his right arm by continuing to lay on top of his arm. Officer McDonald deployed the taser for the second time. Officers were then able to secure the right arm and the defendant was placed into hand restraints.

8. The defendant was escorted out of the building, and walked to car #9. The defendant continued to resist officers while being placed in the patrol car.
9. The actions by the officers were justified and reasonable when encountered by this subject who acted aggressively towards the public and who used physical force to resist lawful orders by officers. Implementing the taser significantly decreased the opportunity of serious injury to both defendant and officers.
10. At headquarters, the defendant refused medical treatment for minor abrasions to his head/face area. Defendant stated that he was going to get a lawyer; and declined to give a statement to Sgt. Magsamen regarding this incident. While processing the defendant, he asked officers several times to taser him again because it didn't hurt and it made him feel good.
11. All officers involved completed supplements. Use of force forms completed by Officers Gass and McDonald. Taser probes were collected and vouchered. Security tape from inside of Jenna's was requested by officers.

Respectfully Submitted,

Sgt. Ronald Magsamen

A handwritten signature in black ink, appearing to read "Sgt. Ronald Magsamen", with a long horizontal flourish extending to the right.