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City of DeLand

DeLand Police Department

JASON D. UMBERGER
CHIEF OF POLICE

Internal Investigation Report

To: Gary Batten, Deputy Chief of Police

From: Sergeant Juan Millan, Professional Standards

Subject: I.A. #18-14

Date: 10-25-2018

Complainant:

Jason D. Umberger, Chief of Police

Employee Involved:

Officer Joey Mulero, Operations Bureau

Witnesses:

Officer Paul Turner, Operations Bureau

Investigator:

Sergeant Juan Millan, Professional Standards

Type of Investigation:

1.2.1- Members and employees shall not engage in any conduct which constitutes neglect of duty, conduct unbecoming of a member or employee, or any act which is likely to adversely affect the discipline, good order, or reputation of the Department.

1.8.2 -A person shall not be arrested or detained except as provided by law.

1.8.3 -Officers shall not use any more force than is necessary to effect an arrest or take a person into police custody, i.e., Baker Act, missing person, etc.

5.7.2 – Incident Reports – Conduct thorough investigations

5.7.3 – Incident Reports – Obtain sworn written witness and victim statements, whenever possible....

Complaint Summary:

On May 24, 2018, the City Of DeLand received a certified notice from the Law Offices of Scott M. Miller, P.A., advising that they had been retained by a Mr. Allan Kidd, concerning an arrest made by Officer Mulero. The claim was for personal injuries and related damages sustained as a result of the Use of Excessive Force used by Officer Mulero on September 14, 2017 (Associated Case Number: DL170006278).

The information was then forwarded to the DeLand Police Department for further review and correspondence. All pertinent documentation to include an approximately twenty second body worn camera (BWC) video was reviewed by the Chief of Police, Jason Umberger and several members of his command staff. It was determined that the information at hand did not raise any concerns for the actions taken on September 14, 2017, in reference to the arrest of Mr. Allan Kidd. It should be noted that the video depicted only the arrest and not what led up to that particular point.

On or about July 31st, 2018, a second noticed was received along with a second copy of the BWC video that was approximately six minutes and fifty eight seconds long, which claimed, "Officers Mulero's unreasonable arrest and detention." The documents were again brought to the attention of the Chief of Police for further review. The Chief of Police immediately reviewed the second copy of the BWC video, which captured the entire incident. This information raised concerns for the way the investigation transpired and actions that led to the arrest of Mr. Allan Kidd. The information was then forwarded to FDLE for further investigation due to the actions taken by Officer Mulero against Mr. Kidd. FDLE determined that, "While the actions of Officer Mulero were troubling and inappropriate, said conduct did not constitute a crime."

The video was also subsequently reviewed by the State Attorney's Office which declined criminal prosecution and referred the matter back to the DeLand Police Department.

The Chief of Police, Jason D. Umberger, ordered an Internal Investigation to look into the incident.

Synopsis of Interview with Officer Paul Turner:

Officer Paul Turner was provided with a copy of the Police Officer's Bill of Rights and Garrity warnings which he acknowledged receipt and understanding of. Officer Paul Turner took an oath prior to his statement.

Prior to the interview, Officer Turner was given the opportunity to review the BWC video.

The following information was gained from the interview:

Officer Turner confirmed that he was on duty September 14, 2017, with Officer Mulero, who at the time was his assigned third phase training officer. (It should be noted that Officer Turner had been assigned to Officer Mulero for remedial third phase training at time of arrest of Mr. Kidd). Turner advised that he had been remediated due to some issues with officer presence and for being too timid when handling certain situations. It should be noted that Officer Turner had no prior Law Enforcement experience when hired by the DeLand Police Department.

Officer Turner advised that they were dispatched to a call of a white male standing at the intersection of Orange Avenue and New York Avenue, possibly yelling at passing cars and pedestrians. Turner advised that when they arrived on scene, the first thing he was instructed to do by his training officer (Officer Mulero) was to, "Just observe," how he handled the situation and that Mulero wanted Turner to handle future situations in the same manner. Officer Turner continued to state that while on scene, he observed two individuals sitting on the South West corner of Orange and New York Avenue, next to some low hanging wires. Officer Turner stated that Officer Mulero first initiated contact by ordering both subjects to step away from the low hanging wires, which Turner believed was the right thing to do, as it was a safety concern for all parties involved. Turner continued by stating that at time of contact, there were no indications that a crime had been committed.

Officer Turner continued by stating that the situation escalated slowly with tempers on both sides. He stated that Mr. Kidd was being a little belligerent and in response, Officer Mulero began raising his voice, yelling, screaming, and threatening to place Mr. Kidd in handcuff.

Officer Turner did advise that on several occasions, Mr. Kidd would shift and move forward from his seated position, towards Officer Mulero, while having his fist clinched. Per Officer Turner, Officer Mulero asked Mr. Kidd on numerous times, to, "Back up," as he attempted to gather information and his identification. Officer Turner stated that at one point, Mr. Kidd stood up from the curbside and Officer Mulero had to order Mr. Kidd to sit back down. (Note – In reviewing the video, this was not accurate. After Mulero initially instructed Kidd to sit down and then physically sat him down, Mulero never instructed Kidd to sit down a second time before making the arrest.)

It should be noted that the distance between Officer Mulero and Mr. Kidd at that time was approximately one to two feet apart. Also, the angle of the BWC video footage did not capture Mr. Kidd's action when clinching his fist but did capture some movements while Kidd was sitting on the wall. The BWC only captured the upper part of Mr. Kidd's torso.

Per Office Turner, there was no discussion regarding the outcome of the arrest other than Officer Mulero mentioning to him, that his handcuffing techniques were fast and his body search was good.

Officer Turner went on to say, "In my opinion, Mr. Kidd's actions did not warrant Officer Mulero's response." Officer Turner also stated that, "Officer Mulero's actions were inappropriate and the arrest was not warranted based on Mr. Kidd clinching his fist and walking towards Mulero."

Synopsis of Interview with Allan Kidd:

On Thursday, September 27, 2018, at approximately 11:59am, contact was made with Mr. Allan C. Kidd at his residence located at 2777 Whitehurst Road, DeLand Florida 32720, regarding case# DL17-6278. Mr. Kid took an oath prior to any questions and/or statements.

Mr. Kidd began by explaining what took place the evening of September 14, 2017. Mr. Kidd stated that he was just talking to a gentlemen downtown, "About the Lord," when two officers approached him. Mr. Kidd advised that one of the officers was being very aggressive and began giving him all kinds of orders. He stated that he did not know what to do at the time, as he was sitting on the curb when he was approached. Mr. Kidd stated that he complied and stood up to get his "ID," when suddenly he was forced to the ground and placed in handcuff. Mr. Kidd stated that the officer never explained to him the reasons for his presence and that he was never read his rights. Per Mr. Kidd, he felt the officer was on a

power trip and out of control. Mr. Kidd stated that the video shows how aggressive the officer was towards him during the encounter. Kidd went on to say that he was an ex-military MP (Military Police) and he carried a firearm for his country, so he knows a little bit of what he is saying and to be treated that way by two DeLand Officers is unacceptable. Mr. Kidd stated that he has been a residence of the City of DeLand since 1968 and raised his family in DeLand. He stated that the officer's actions really, "Fucked" with his head and that he was still upset that the incident took place. According to Mr. Kidd, "This has left a bitter taste in my mouth."

When asked about the first minutes of the encounter, Mr. Kidd replied by stating that the Officer began giving orders to move away from some hanging wires as Officer Mulero claimed they were about to fall on him. Per Mr. Kidd, he stated to the officer that he did not know what the officer was talking about but before he could say anything else, the officer asked him to move again. Per Mr. Kidd, the officer asked him to move several times, which really upset him. Mr. Kidd stated he did not understand why he was being, "Stopped," because he had done nothing wrong. Kidd stated that because he was, "Pissed off," he might have said something to the officer that, "Really set him off." Mr., Kidd stated that's when everything went downhill. Kidd went on to say that the officer disliked the fact that he, "Challenged him." When asked to elaborate on what he met by challenging the officer, Mr. Kidd responded by stating, "He thought I was getting close to him and I thought well I'm not getting close to you but if you think I am, it's okay for you to get close to me and try to push me down, that's okay right?" Mr. Kidd went on to say that the officer was clearly the aggressor and, "I didn't know where to go with it to tell you the truth because he came at me completely sideways and I ended up in jail for two days unjustly because of it and I never got my personal affect back again."

Mr. Kidd stated that he couldn't remember the entire incident but everything that took place was caught on the video (Referring to Officer Mulero's BWC). Mr. Kidd then asked me if I wanted his personal and professional opinion since he's an ex-vet and in the military. Mr. Kidd went on to state, "I don't think this guy (Officer Mulero) should be in the street carrying a gun, it's just a matter of time before he goes off and shoots somebody with that hair trigger and temper that I saw that day."

Mr. Kidd was then asked if he felt threatened by the officer's actions and whether he felt the need to defend himself at anytime during the encounter. Mr. Kidd responded by stating, "I didn't feel the need to protect myself but was confused as to why I was being detained and why the officer was being so aggressive towards me and issuing me all these orders." Mr. Kidd stated that when he challenged the officer about the entire encounter, the officer, "Got even more aggressive and physically pissed off at me." "Before I knew it, I was on the ground with cuffs."

Mr. Kidd was asked if he recalled clinching his fist anytime during the encounter. Mr. Kidd responded by stating, "I don't remember clinching my fist but I'm not saying I didn't because I was getting angry at the time." Mr. Kidd stated that he was angry because the officer was all over him and that the incident didn't make sense.

Mr. Kidd stated that although he was upset at the situation, he remained calm and cooperative.

Per Mr. Kidd, the incident was absolutely horrible and unforgiveable.

Synopsis of Interview with Officer Joey Mulero:

On October 3, 2018, at approximately 12:24pm, Officer Mulero was interviewed at the DeLand Police Department in the Office of Professional Standards regarding an arrest made on September 24, 2017, reference case#DL170006278.

Officer Mulero was provided with a copy of the Police Bill of Rights and Garrity warnings which he acknowledged receipt and understanding of. Officer Mulero took an oath prior to his statement.

The following information was gained during the interview:

Officer Mulero stated that he responded to the intersection of Orange and New York Avenue in reference to what he recalled was a suspicious person/suspicious incident. He stated that he could not remember exactly how the call was dispatched but knew it had to do with someone screaming at vehicles (traffic) as they passed by the intersection. Officer Mulero stated that upon arriving at the above mentioned intersection, he noticed two males on the South West corner, one subject who was later identified as Allan Kidd, who was, "Throwing his hands around, and talking to another subject." Per Officer Mulero, this was just after the hurricane and there was a lot of debris on the ground and power lines down. Officer Mulero continued by stating his first instinct was to get them away from the power lines as they were relatively close to them. Officer Mulero stated that because he was unsure whether the power lines were live or not, he requested they move away from them.

Officer Mulero stated that on that particular day, he was training Officer Turner, who was in his third phase of remedial training. He stated that the trainee, Officer Turner, was assigned to him due to Turner having issues talking with people and taking charge of a scene along with other issues. Officer Mulero stated that he turned to Turner and said to him that he wanted him to observe how he handled the situation and to watch how he talked to people. Officer Mulero stated that because this was Turners first day in remedial, he felt it was not fair to him to just, "Throw him in but wanted him to just observe on how he did things." Once again, Officer Mulero reiterated that the first thing that came to mind was to get them away from the power lines so he asked them to start walking towards him, but both Mr. Allan and the other subject appeared to be confused as to why he was there. Per Officer Mulero, he again asked both subjects to start walking towards him and to get away from the power lines. Officer Mulero stated that both subjects complied and began walking towards him. Mulero stated that he and Officer Turner also began walking towards both subjects. Officer Mulero stated that, "Eventually they reached each other but that Mr. Allan Kidd kept walking towards me at a fast pace." Officer Mulero stated that Mr. Allan kid was walking towards him as if Mr. Kidd was questioning what he wanted with him. Officer Mulero continued to explain that Mr. Kidd got too close to him at which point he extended his hand and placed it on Mr. Kidd's shoulder to avoid him getting any closer. Mulero stated that he explained to Mr. Kidd not to, "Walk up to me/step up to me that way," and that Kidd was invading his space. Per Officer Mulero, Mr. Kidd asked him what he was talking about. Mulero stated that he explained to Mr. Kidd that he needed to keep his distance. Mr. Kidd replied by saying, "You don't need to touch me."

The following questions were addressed by Lieutenant Millan:

Lieutenant Millan-What made you focus on Mr. Kidd and not the other male present?

Officer Mulero responded that he focused on Mr. Kidd after he arrived on scene and the other male present made a comment that he had stopped to talk Mr. Kidd as he felt Mr. Kidd was in distress. Per Officer Mulero, that was the first reason why he focused on Mr. Kidd and second was due to Mr. Kidd fitting the description that was provided by dispatch, prior to arrival.

Lieutenant Millan-At what point did you feel Mr. Kidd became verbally aggressive and belligerent towards you?

Officer Mulero responded by saying Mr. Kidd became verbally aggressive and belligerent, when he first placed his hands on Mr. Kidd to stop him from getting closer. Per Officer Mulero, he felt it was that moment that Mr. Kidd became upset. Officer Mulero reiterated that the reason he placed his hands on Mr. Kidd was due to that the fact, he felt Mr. Kidd was walking too fast towards him and that he wanted to avoid Mr. Kidd from invading his space.

Lieutenant Millan-Was Mr. Kidd breaking any laws or city ordinances at time of contact?

Officer Mulero responded, "No," but he was trying to explain to Mr. Kidd, the reason for his presence but, "It was impossible as Mr. Kidd refused to listen."

Lieutenant Millan-Why did you threaten to take Mr. Kidd to jail? What Probable Cause did you have at that time?

Officer Mulero responded by explaining that Mr. Kidd got too close to him and in doing so was being very loud. Mulero stated that Mr. Kidd made a statement, "What, are you on a power trip or something." Again, Officer Mulero reiterated that Mr. Kidd became upset after he stopped him from getting any closer. Officer Mulero stated that Mr. Kidd got too close to him and all he was trying to do was to create some distance. Mulero stated that because Mr. Kidd was being so uncooperative, he requested Mr. Kidd to sit down, which he refused. Per Officer Mulero, Mr. Kidd refused to comply after several verbal commands were given. Officer Mulero stated that he forced Mr. Kidd to sit down on the concrete ledge after he refused to cooperate and follow verbal commands. Per Officer Mulero, Mr. Kidd began moving forward as he sat on the concrete wall, all while having his fist clinched. Officer Mulero stated that due to his actions and aggressive demeanor towards him, he felt Mr. Kidd to be a viable threat.

Officer Mulero stated that he believed Mr. Kidd's refusal to follow lawful orders and refusal to cooperate ultimately impeded his investigation and that is the reason why he threatened Mr. Kidd on taking him to jail and eventually determined the charge of Resisting Arrest without Violence. Officer Mulero stated that he was dispatched to a location to address a situation where a male was yelling at passing traffic. Per Officer Mulero, he had a legal reason to be there and to investigate what was going on with Mr. Kidd.

Lieutenant Millan- Did you feel you had enough Probable Cause to detain this person in order to conduct an investigation? Officer Mulero responded, "Yes sir."

Lieutenant Millan- When you wrote the Affidavit, were you able to look at your body camera before you wrote the affidavit?

Officer Mulero responded by stating, "I recalled those were the flip ups that we had with VIEVU." Officer Mulero continued by stating, sometimes the video would download and other times they wouldn't. Mulero advised there were times where he couldn't log into the system to watch any videos. Per Mulero, he tried to view the video prior to writing the affidavit but was unable to do so due to the issues they were having with the system at that time. Officer Mulero stated, "Once I was issued a body camera I did that a lot just to compare and make sure I was putting everything that I needed to or if I missed or forgot something, but it was very hit or miss whenever we could watch them."

Lieutenant Millan addressed the discrepancies between what was written in the report (Affidavit) compared to what the BWC video depicted. The following information was gained.

Lieutenant Millan- Is there any reason why you failed to provide details in your affidavit concerning the moment when you placed your hands on Mr. Kidd?

Officer Mulero stated, "To be honest at this point I am writing a report based on knowledge of what just happened, but you got to remember that I just did this right after... I just got done arresting somebody, taking somebody down to the ground, putting handcuffs on him, throwing him in my car and making sure everything was good, making sure that I had my trainee and that he was still paying attention to me." Officer Mulero continued by stating, "So my adrenalin is through the roof, did I omit it on purpose, absolutely not."

Lieutenant Millan- In the affidavit you stated that once you assisted Mr. Kidd to sit down, he started using profanity towards you. While reviewing the BWC video, it clearly shows, Mr. Kidd getting upset as to why you were being so aggressive towards him and that is when he is heard saying, "Are you on a power trip, is that what it is?" It should be noted no profanity was heard at that time. It should also be noted that Officer Mulero ordered Mr. Kidd to sit down several times before he placed his hands on him (Mr. Kidd).

Officer Mulero responded by stating, "He just kept like, what the fuck is your problem or he started calling me a Nazi, so that's what I met by that." (Referring to the part where he claimed Mr. Kidd was using profanity) Officer Mulero went on to say that Mr. Kidd just continued to attack him verbally. Per Officer Mulero, "Everything with him (Mr. Kidd) was a challenge, everything."

Officer Mulero stated that he dislikes the partial view of the BWC video as it did not show his stance while in contact with Mr. Kidd. Officer Mulero went on to say that the video did not show any of his hand movements and stance, which is important to how he reacted towards Mr. Kidd when he was forced to take Mr. Kidd down to the ground. Per Officer Mulero, he was reaching for his notepad and pen to start writing Mr. Kidd's information, when Mr. Kidd stood up to reach for his I.D. Once Mr. Kidd stood up, the distance between them was less than a foot or so. Officer Mulero stated, "That's when Mr. Kidd called me a Nazi and made some hand movements, which led me to react by taking him to the ground. Mr. Kidd's actions to stand up and point his index finger towards me in an aggressive manner and the fact that he was very close to me when he did, caused me to make the decision to take him down/arrest."

Lieutenant Millan- Why didn't you take a step backwards, when you requested Mr. Kidd to stand up and retrieve his identification?

Officer Mulero responded by stating that the area in which he was standing was too close to the road and felt it was unsafe to do so. He continued to state that there were a lot of things going through his head at the time and one of his main concerns was Mr. Kidd's safety. He stated that he did not want to allow Mr. Kidd such a distance, where he could run into a busy roadway.

Lieutenant Millan- "But, these are all assumptions though, basically you are assuming that he was actually going to get up and run, so on and so forth."

Officer Mulero responded by stating, "Absolutely, but I am just telling you that's how my head works, so I'm just trying to work with what I got and based on that I just stayed there." I caught myself moving back a little bit and on the grass and unstable, there's just a lot of things that just run through my head."

Lieutenant Millan-You said that he was retrieving his I.D, but continued to scream and yell profanities at you and then took a step forward towards you in an aggressive manner with his fist clinched.

Officer Mulero responded, “Right, which is the part that we were just talking about.”

Lieutenant Millan- The video does not show Mr. Kidd taking a step forward in an aggressive manner. Basically when you look at the video it shows Mr. Kidd reaching for his wallet and retrieving what appeared to be an I.D. (The video shows Mr. Kidd retrieved a credit card and not an ID) Mr. Kidd is then observed bringing his left hand forward with what we thought was his ID and then questions you (Officer Mulero) on your actions, as to why you had to push him. This is when you responded by stating, “Because, I don’t like people trying me, I don’t like people not following my orders.” Mr. Kidd is then observed pointing his left index finger at you and saying, “And, I don’t like fucking Nazi’s either.”

Lieutenant Millan-Unfortunately, we can only see the top portion of his Torso and can’t see his hands.

Officer Mulero responded that that is the issue he was having with the video because it does not show Mr. Kidd’s hands/actions.

Lieutenant Millan-What was the basis for the charge of resisting arrest without violence?

Officer Mulero responded by stating, “Honestly, Mr. Kidd not following any of my instructions and being so combative or challenging, I think would be the better word and making the movements he did, and the fact that he resisted everything I asked him to do.”

Lieutenant Millan-Were there any violations prior to this moment that you thought you could make an arrest on?

Officer Mulero responded by stating, “No, but that he was trying to figure out what was going on with Mr. Kidd.” Per Officer Mulero, “I never went with the idea or the assumption with the already made decision of I’m taking this guy to jail, like we are done.”

Lieutenant Millan-Can you tell me the elements of Resisting Arrest without Violence?

Officer Mulero stated, “Off the top of my head I couldn’t give them to you one hundred percent but you are giving a person orders to do certain things and this person is not cooperating or following these orders, at that point this person is resisting every order the officer had given them.”

Lieutenant Millan- Does the fact that the State Attorney’s Office dismissed the charge of resisting arrest without violence concern you?

Officer Mulero responded by stating, “No, The State Attorney’s Office dismisses things that we all sit back and are like what’s the point of us doing our job, So no, to me it is just another day.”

Lieutenant Millan- Did you believe your conduct or your demeanor to Mr. Kidd was consistent with the department’s code of conduct, our mission statement and our core values?

Officer Mulero responded by stating, “If I could go back and do certain things different, I would definitely. There is always room for improvement in our career. There are a lot of things I would have

done different. I would have not yelled as much as I did. I would have probably given him more time to relax. Maybe I could have moved him further into the sidewalk and maybe leaned him into my car and me stepped back further. There was a lot of things that I wish I could go back and do a little bit different to see what outcome would have come out that time. So absolutely, I do feel like I could learn from this incident and apply to something in the future. That's pretty much... I can say that, we can all say that about every incident that we run into. But everything with us is such a split second decision that we have to act, the moment that we don't take charge of the scene we are losing and the moment we don't act we are losing. So to answer the question, yes sir, I can definitely deal with it in a different way if I could."

Reports/Body Camera/CAD Report;

On September 14, 2017, Officer Mulero and Officer Turner were dispatched to the intersection of Orange and New York Avenue in reference to a white male that was alleged to have been screaming at cars and pedestrians. Upon arrival, Officer Mulero made contact with Mr. Allan Kidd, who was sitting on a retainer wall talking with an unidentified white male. Officer Mulero is seen approaching both Mr. Kidd and the unidentified male and orders both to step away from the power lines and to, "Sit over here," which was closer to where Officer Mulero was standing at time of verbal commands. Both males complied with the commands given and began walking towards Officer Mulero. The unidentified male is seen walking past Officer Mulero as Mr. Kidd follows. Mr. Kidd is then seen stopping approximately one to two feet in front of Officer Mulero when Officer Mulero places his right hand on Mr. Allan's left arm and pushes off him, as to stop him from getting any closer. Mr. Kidd immediately questions Officer Mulero's actions and makes a statement, "You pushing me away from you." Officer Mulero is then heard responding by stating, "Yes, I don't need you stepping up to me." Officer Mulero is then heard giving verbal commands to Mr. Kidd to, "Sit down or I'm going to sit you down." Mr. Kidd replied by telling Officer Mulero that he was not stepping up to him, at which point Officer Mulero is seen grabbing Mr. Kidd by his left arm and right chest/shirt area and forcing him to sit down on the retainer wall. Mr. Allan Kidd immediately gets upset and asked Officer Mulero if he is, "On a Power Trip." Officer Mulero replies by pointing his right index finger at Mr. Kidd's face and saying, "No, I need you to listen, that's what's up".

Officer Mulero is then seen shifting his focus from Mr. Kidd to the unidentified white male, where he is heard questioning the male as to who he was. The male explains his presents and Officer Mulero advises him that he is good to go.

Officer Mulero refocuses on Mr. Kidd and asked him for his name. Mr. Kidd complies and provides Officer Mulero with his full name, "Allan Kidd." Officer Mulero is heard asking, "What's going on with you today?" Mr. Kidd replies that there was nothing going on and that all he was doing was talking with another person. Kidd continues by saying that's when, "You showed up and began pushing me and being real physical with me." Officer Mulero is then heard asking Mr. Kidd If he knew why? Mr. Kidd then became verbal and stated, "No, I don't know why." Again, Officer Mulero immediately tells Mr. Kidd to lower his voice or he was going to jail. The conversation continued to escalate as both Officer Mulero and Mr. Kidd seemed very irritated.

Seconds later, Mr. Kidd lowered his voice and kept quiet as Officer Mulero was explaining to him that they were going to start all over. Mr. Kidd is observed moving/shifting forward from his sitting position at which point Officer Mulero stated, "Keep moving forward, I'm going to lay you down." Mr. Kidd explained to Officer Mulero that he was just trying to get comfortable. The conversation continued and Officer Mulero is heard explaining his reasons as to why he was called to Mr. Kidd's location. Mr. Kidd continued to show his frustration and continued to interrupt Officer Mulero by talking over him. The

conversation continued to escalate between both Mr. Kidd and Officer Mulero. During this time, Officer Mulero is heard threatening to place Mr. Kidd in handcuff and take him to jail.

A Short time later, Officer Mulero asked Mr. Kidd to provide identification, which he complied. Mr. Kidd stands up and reaches for what we assume is his wallet and retrieves his ID. Mr. Kidd again expresses his concern as to why Officer Mulero was pushing him. Officer Mulero responded by stating, "I don't like people trying me." Mr. Kidd immediately pointed his index finger at Officer Mulero and made a statement, "I don't like fucking Nazis either." Officer Mulero reacted to the statement and grabbed Mr. Kidd's arm and forced him to the ground.

Officer Turner is observed assisting Officer Mulero in placing Mr. Kidd in handcuff. Once secured, Officer Turner and Officer Mulero assist Mr. Kidd to his feet. Mr. Kidd is escorted to the rear of the patrol vehicle where Officer Mulero conducts a search of his person. During this time, you can hear Mr. Kidd saying he had done nothing and asking Officer Mulero to get his ID. Officer Mulero immediately responded by yelling over Mr. Kidd to, "Stop talking." The BWC ends shortly after Mr. Kidd is placed in the rear of the patrol vehicle.

Conclusion:

Based on the totality of all the facts and circumstances as known the following conclusions were reached and violations of department policy identified:

1.2.1- Members and employees shall not engage in any conduct which constitutes neglect of duty, conduct unbecoming of a member or employee, or any act which is likely to adversely affect the discipline, good order, or reputation of the Department. **SUSTAINED**

1.8.2 -A person shall not be arrested or detained except as provided by law. **SUSTAINED**

1.8.3 -Officers shall not use any more force than is necessary to effect an arrest or take a person into police custody, i.e., Baker Act, missing person, etc. **SUSTAINED**

5.7.2 – Incident Reports – Conduct thorough investigations. **SUSTAINED**

5.7.3 – Incident Reports – Obtain sworn written witness and victim statements, whenever possible....
SUSTAINED

Although Officer Mulero was dispatched to the location, there were several questions concerning the legal rights and detention/arrest of Mr. Kidd.

- First-What Reasonable Suspicion did Officer Mulero have to detain Mr. Kidd?

Reasonable suspicion is a standard established by the Supreme Court in a 1968 case in which it ruled that police officers should be allowed to stop and briefly detain a person if, based upon the officer's training and experience, there is reason to believe that the individual is engaging in criminal activity. The officer is given the opportunity to freeze the action by stepping in to investigate.

Officer Mulero in this case, did not provide a satisfactory amount of details based on his observations that would justify a detention of Mr. Kidd. The fact that Mr. Kidd was uncooperative during Officer

Mulero's encounter does not in itself lead to suspicion for detention. In addition, Officer Mulero's initial contact with both subjects could have been interpreted by any prudent person as immediate seizure of a person and that they were not free to go due to the verbal commands. The fact that Officer Mulero asked Mr. Kidd to move away from the power lines for safety purposes was reasonable, however, the verbal commands given following that initial contact led to a detention. Officer Mulero was dispatched to this situation, however, there was no report of any crime. A brief, consensual encounter to check on Kidd's well being would have been an appropriate course of action under the circumstances.

- Second-What probable cause did Officer Mulero have to arrest Mr. Kidd?

The Fourth Amendment to the United States Constitution states that people have the right to be free from unreasonable searches and seizures. The Supreme Court has interpreted the Fourth Amendment use of the word "seizure" to mean both the seizure of evidence and, as in an arrest, the seizure of a person. According to the Supreme Court, probable cause to make an arrest exists when an officer has knowledge of such facts as would lead a reasonable person to believe that a particular individual is committing, has committed or is about to commit a criminal act. The officer must be able to articulate the facts and circumstances forming the basis for probable cause.

The fact, that Officer Mulero responded to the intersection for a subject who was allegedly yelling at passing traffic with no other details indicating possible violation of law/ordinances, and the fact that Officer Mulero only witnessed a subject waving his hands up in the air, while talking to another individual does not in itself constitute a reasonable suspicion to detain a person for investigation and/or arrest.

On October 12, 2018, in researching the case to determine why the State Attorney's Office dismissed the charge against Mr. Kidd for Resisting Arrest without Violence, it was discovered that Mr. Kidd's defense attorney had entered a Motion to Suppress based on an Unlawful Detention. In order to find out if that motion was granted and thus the reason for the dismissal of the charge I contacted Andrew Langenbach, who was the assistant state attorney assigned to the case. According to Langenbach, the case never got to the point of addressing an unlawful detention as he dismissed the charges immediately after watching Mulero's BWC footage due to the fact that he felt there was insufficient probable cause for the arrest.

Also, there were some discrepancies in the affidavit that contradicted the series of events that took place during the encounter. First, Officer Mulero failed to provide details on the affidavit about the moment in which he felt Mr. Kidd was invading his, "Space," which caused a series of events to follow, such as Mr. Kidd questioning Officer Mulero's authority. Second, he stated that Mr. Kidd was being belligerent and aggressive towards him at the time of contact. The BWC showed Mr. Kidd being cooperative and complying with Officer Mulero's orders. Third, Officer Mulero stated that he asked Mr. Kidd to sit down but he refused. The BWC video shows Mr. Kidd trying to get an explanation as to why Officer Mulero placed his hands on him and also explaining to Officer Mulero that he was not trying to get close to him, when Officer Mulero forced him to sit down on the concrete ledge. This caused Mr. Kidd to become more upset, where he began talking over Officer Mulero as Mulero tried to explain his presence. Finally, Officer Mulero states that he placed Mr. Kidd in handcuff after he took a step forward in an aggressive manner and pointed his left index finger at him, which came close to his face. The BWC video shows, Mr. Kidd complying with Officer Mulero's orders to retrieve his identification, but responded to a comment made by Officer Mulero which he stated, "I don't like people trying me." Mr. Kidd immediately replies to Officer Mulero's comment by stating, "And I don't like fucking Nazi's," at which point Officer Mulero is observed grabbing Mr. Kidd and forcing him to the ground. The discrepancies were addressed with Officer Mulero, who provided the following statement.

Officer Mulero- “To be honest at that point I’m writing the report based on knowledge of what just happened, but you got to remember that I just did this based right after I just got done arresting somebody, taking somebody down to the ground, putting handcuffs on him, throwing him in my car and making sure everything was good, making sure that I had my trainee and he was still paying attention to me. So my adrenalin is through the roof. Did I omit it on purpose, absolutely not.”

Officer Mulero’s initial actions caused a series of events that led to the unwarranted detention of Mr. Allan Kidd. Although Officer Mulero was dispatched to the location, the detention was without foundation. Also, the BWC video confirms that on numerous times, Mr. Kidd challenged Officer Mulero’s actions and authority, which prompted a negative response from Officer Mulero, which ultimately led to the arrest and charge of Resisting Arrest without Violence.

Both Officer Mulero and Officer in Training Turner confirmed that Officer Turner was assigned to Field Training Officer Mulero for remedial Phase 3 training due to Turner having issues with officer presence and being timid. Officer Mulero told Turner to watch how he talked to people and handled the situation and wanted Turner to handle future situations in the same manner.

From the onset of the contact with Mr. Kidd Officer Mulero was overly aggressive, rude, loud and threatening in tone in the way that he spoke to Mr. Kidd. When Mulero asked Kidd to walk over and sit down next to where he was standing, Kidd was explaining that he did not look up or notice the power lines. As this occurred it appeared that Kidd inadvertently got close to Officer Mulero which prompted Mulero to extend his hand and put it against Kidd’s arm to stop him from getting any closer. Officer Mulero then states, “Get away from me.” Kidd did not appear to be approaching Officer Mulero in a fast or aggressive manner. If an officer feels someone is invading their personal space it is not out of the ordinary to extend a hand to stop the person from getting any closer. The main issue lies with Officer Mulero’s demeanor after this occurred. When Kidd questions why Mulero pushed him away, instead of trying to explain to Kidd in a professional manner Officer Mulero states, “I don’t need you stepping up to me like that,” and starts yelling at Kidd to, “Sit down or I will sit you down.” As Kidd again questions Mulero and states, “I wasn’t stepping up to you sir,” Officer Mulero grabs Kidd in a forceful manner and physically places Kidd in a sitting position on a concrete retainer wall that runs beside the sidewalk. Officer Mulero immediately yells at Kidd stating, “When I tell you to do something, you do it.” Kidd asks Mulero if he is on a power trip.

Officer Mulero turns his attention to the second unidentified male that was on scene with Kidd. Mulero asks some basic questions about what he was doing but never gets his name or asks about the initial reason for police response concerning whether he may have witnessed Kidd yelling at traffic. Mulero then tells that subject that he can leave failing to get his name for the report or obtaining a sworn written witness statement. Attempts to later locate this unidentified person to obtain a statement were met with negative results.

Mulero asks Kidd for his name and if he is homeless. Kidd complies, however, he is still questioning why Officer Mulero is, “Doing this.” As Kidd talks over Officer Mulero on several occasions Mulero yells at Kidd to lower his voice or he is going to jail. Mulero is yelling much louder than Kidd was talking. In his interview Officer Mulero stated, that he believed Mr. Kidd’s refusal to follow lawful orders and refusal to cooperate ultimately impeded his investigation and that is the reason why he threaten Mr. Kidd on taking him to jail and eventually determined the charge of Resisting Arrest without Violence.

Kidd identified himself when asked as well as answered all of the other questions asked by Mulero. The only thing that Kidd did not comply with was Mulero's orders to sit down which Mulero had no legal right to enforce. Kidd simply questioned Mulero's actions as Mulero yelled at Kidd, pointed his finger in Kidd's face and repeatedly threatened to arrest him. When asked if he knew the elements for the charge of Resisting Arrest without Violence Mulero stated, "Off the top of my head I couldn't give them to you one hundred percent but you are giving a person orders to do certain things and this person is not cooperating or following these orders, at that point this person is resisting every order the officer had given them." When asked what was the basis for the Resisting Arrest without Violence charge, Officer Mulero responded by stating "Honestly, Mr. Kidd not following any of my instructions and being so combative or challenging, I think would be the better word and making the movements he did, and the fact that he resisted everything I asked him to do."

As Mulero explains to Kidd the reason he is there Kidd denied yelling at traffic. Kidd appeared coherent from the beginning as evidenced by his logical questioning of Mulero's actions. Kidd did not appear at anytime to be a danger to himself or others. A Short time later, Officer Mulero asked Mr. Kidd to provide identification, which he complied. Mr. Kidd stands up and reaches for what we assume is his wallet and retrieves his I.D. Mr. Kidd again expresses his concern as to why Officer Mulero was pushing him. Officer Mulero responded by stating, "I don't like people trying me." Mr. Kidd immediately pointed his index finger at Officer Mulero and made a statement, "I didn't like fucking Nazis either." Officer Mulero reacted to the statement and grabbed Mr. Kidd's arm and forced him to the ground.

Officer Mulero failed to use any type of de-escalation techniques during this encounter. Based on the facts his lack of professionalism and loss of composure aggravated the situation. Instead of remaining calm and courteous Officer Mulero made the following statements during the encounter:

- "I don't need you stepping up to me"
- "I need you to listen, that's what's up"
- "keep moving forward, I'm going to lay you down"
- "I don't like people trying me."
- "If you would shut up and listen you will understand"
- Mulero yelled at Kidd and pointed his finger in close proximity to Kidd's face.

Mulero's demeanor continued to escalate the situations and cause Mr. Kidd to become angry and question Mulero's actions. Officer Mulero's conduct during this encounter was not consistent with the department's code of conduct, mission statement or core values. It was also confirmed that Officer Mulero has completed the following training:

- 08/2018 – Response to Resistance refresher
- 10/04/17 – De-escalation, In Service Training
- 05/18/17 - 8 hour training session titled De-escalation and Changing the Mind Set
- 06/23/15 – Crisis Intervention
- 03/11/15 – Verbal Judo

In analyzing the response to resistance used by Officer Mulero many complicated factors had to be considered. The first action involved during this encounter was when Mr. Kidd walked towards Officer Mulero and Mulero extended his hand to stop/push Kidd away from him to create distance. Officer Mulero stated that he felt Kidd got too close to him and invaded his personal space. Kidd did not appear to approach Officer Mulero in a fast or threatening manner, however, if Mulero felt he was getting to

close to him it would not be improper to use his hand to stop Kidd from getting closer. Officer Mulero did not appear to attempt to step back or create any distance between he and Kidd.

Officer Mulero instructed Kidd to sit down. Mr. Kidd did not comply and questioned why Mulero pushed him. In reviewing the video, there was concern with the manner in which Officer Mulero physically grabbed Kidd and sat him down because it does not clearly show whether Mr. Kidd took a step towards or got closer to Mulero. Officer Mulero stated that because Mr. Kidd was being so uncooperative, he requested Mr. Kidd to sit down, which he refused. Per Officer Mulero, Mr. Kidd refused to comply after several verbal commands were given. Officer Mulero stated that he forced Mr. Kidd to sit down on the concrete ledge after he refused to cooperate and follow verbal commands.

First, there are the officer/subject factors to consider, Mr. Kidd is much older than Officer Mulero and is not large in stature. Second, there were two officers present. Third, Officer Mulero did nothing to try to take a step back from Kidd to create distance that would have made Kidd's intentions more apparent. The fact that this should have been a consensual encounter there was no legal right to force Kidd to sit down in the first place. Officer Mulero stated that he did not take a step back because he was close to the edge of the roadway and the grass area was unstable. Photos of the location clearly show that the grass area was wide and level and Officer Mulero could have reasonably and safely taken a couple of steps back to avoid overreacting. Mulero stated that he was also concerned that Kidd could run into a busy roadway. There were no indications that Kidd was going to run or was in any way a flight risk. Kidd's tone of voice as he tried to explain that he was not stepping up on Officer Mulero did not support the assumption that Kidd was an immediate threat. The amount of force used in grabbing Kidd and pushing him down on the concrete wall was an inappropriate overreaction. Mr. Kidd only appeared to become angry over the incident thus far and never physically retaliated against Mulero from forcing Kidd into a seated position.

As Officer Mulero was talking to Kidd while Kidd was sitting on the concrete wall, the camera footage does show Kidd scooting forward and closer to Officer Mulero. Kidd told Mulero he was just trying to get more comfortable, however, Mulero perceived it as a possible threat. When Kidd stood up to retrieve his ID, he was again questioning Mulero's actions. When Officer Mulero told Kidd that he did not like people trying him Kidd replied that he did not like fucking Nazis either. At that time Kidd pointed his finger in Mulero's face. Officer Mulero then uses a takedown to place Kidd on the ground and places him in handcuffs.

Again in reviewing the video there was concern as to whether or not this was reasonable. It did not appear that Kidd was an immediate threat or was resisting Mulero's efforts. Officer Mulero stated that Kidd's finger was in very close proximity to his face and the camera angle did not show the fact that Kidd had a clinched fist and took a step towards Mulero. Once again, the same factors as mentioned above have to be considered. First, there are the officer/subject factors, Mr. Kidd is much older than Officer Mulero and is not large in stature. Second, there were two officers present. Third, Officer Mulero did nothing to try to take a step back from Kidd to create distance that would have made Kidd's intentions more apparent.

Although Kidd was argumentative, he was attempting to produce his identification as requested by Officer Mulero. The camera footage does not support Officer Mulero's statements that Kidd appeared to be an immediate threat which would justify grabbing Kidd and taking him to the ground. Just prior to this occurring Mulero used no verbal commands asking Kidd to take a step back, to again sit back down or telling him that he was under arrest and to place his hands behind his back. Based on the evidence and the facts as they are known, Officer Mulero's actions were excessive and unreasonable.

Recommended Finding for Review:

I, the undersigned, do hereby swear, under the penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss.112.532 and 112.533, Florida Statutes.

Sergeant Juan Millan, Professional Standards