

that they did not want the focus of the incident to be about the MPD, but they wanted to keep the focus on the occupy protesters instead.

Officer Lehner went to great lengths to explain the danger posed to officers by the Occupy protesters, stating that they were “organized” and “were coordinating with each other.” The protesters would “obstruct” their faces to avoid identification; they were “using handheld walkie-talkies” and “they were videotaping everything we did.” The protesters also “live stream stuff. So when they’re videotaping you it immediately goes on the internet so people can see...”

According to Officer Lehner, the protesters would “coordinate through their walkie-talkies or their cell phones,” and in his opinion, the protesters “were doing counter surveillance” on the officers. This was of concern to Officer Lehner because “the Occupy Wall Street in Minneapolis” protesters are also “connected with the New York, the Oakland groups all over the country” and “these people have been armed.”

Officer Lehner added that “these people have followed the police; they’ve thrown feces on ‘em, urine on ‘em.” The protesters “chant” to get the police to “get into altercations with them” and they “confront” officers about the law and the limits of the police officers’ authority. He pointed out that when Sergeant Nelson tried to advise the protesters that they had to leave Peavey Plaza, they were “confrontational” with him, “questioning what his authority is” and questioning “what the police have...the right to do to them.”

He conceded that when the protesters left Peavey Plaza and went to Loring Park, they were “fairly cooperative,” but they were “still obstructing the street, causing traffic issues” and causing a disturbance by “being loud and doing their chants.” Officer Lehner

believes that the protesters' conduct shows "their mindset and the unwillingness to be cooperative with the police." He added that the protesters would walk in and out of the street as they marched down the mall, and they "purposely made it so the police would have to confront them."

At approximately 2300 hours an order was given to arrest protesters who were in the street at S 9th St and Nicollet Mall. Officer Lehner was in a squad car and when the order to arrest was given, he saw a male (AP4/Neef) holding a camera, run to where Sergeant Jindra was trying to arrest a different male.

Officer Lehner had seen this AP4/Neef earlier at Peavey Plaza. AP4/Neef had his face covered with a bandana and had been videotaping officers at Peavey Plaza. Officer Lehner stated that he "didn't trust" AP4/Neef being so close to Sergeant Jindra during the arrest, so he moved to arrest AP4/Neef.

As Officer Lehner walked past the marked SUV he saw Sergeant Tom Ryan walking another arrested party in the opposite direction from him. According to Officer Lehner, he, Sergeant Ryan, and the arrested party were so close to the marked SUV that Officer Lehner had to put up his right hand to "get through"; implying that there was a spatial issue to deal with.

As soon as Officer Lehner passed Sergeant Ryan, he "noticed someone in front of" him. Officer Lehner "pushed through" the person, who ended up being "that KSTP cameraman." Officer Lehner claimed that there was "no more than two to three feet" between the cameraman and Sergeant Jindra. He claimed that did not see the cameraman following Sergeant Ryan and the cameraman's sudden presence "startled" him.

Officer Lehner did not say anything to the cameraman because the incident “happened so fast.” He stated that he “pushed through” the cameraman and moved to the individual that he intended to arrest near Sergeant Jindra.

He did not see the camera fall off the cameraman’s shoulder, and he did not have an opportunity to speak with him afterwards because he was busy walking AP4/Neef to be processed. Officer Lehner stated that he had “no idea” if the cameraman was filming when the incident occurred, but conceded that because the camera was on the cameraman’s shoulder he would assume that the eyepiece was up to the cameraman’s eye.

Officer Lehner stated that he did not believe that what he did was a use of force “because of the situation.” He added that “It was my way of getting through this guy to go after that guy.” He did not document the contact in his CAPRS statement because “I thought it was so insignificant to go through the individual to arrest a guy, it didn’t even occur to me.” He asserted that he was not trying to interfere with the cameraman’s constitutional rights by his actions.

Officer Lehner concluded by attempting to place blame for the incident on complainant by iterating that the people at the protest, the Occupy protesters as well as the media, were given an order to leave the street. He asserted that “the complainant, this KSTP cameraman, actually came from the sidewalk and walked right into the fray of everything.” He added that he was “disappointed” that he was not able to view the video perspective of the cameraman.

[After his statement, Officer Lehner was shown the video that was provided by KSTP of the ten to fifteen seconds of recording before the contact occurred and the camera stopped recording.]

SUMMARY OF ALLEGATIONS AND RECOMMENDATION

Allegation # 1: It is alleged that on 04/07/2012 at a "Reoccupy Minneapolis" protest at S 9th St and Nicollet Mall, Officer Blayne Lehner used unreasonable and unnecessary force when he shoved a camera off of the shoulder of a KSTP Ch 5 cameraman, knocking the camera to the ground. If this allegation is found to be true it would violate the following department policy:

5-300 Use of Force

5-301.01 POLICY (10/16/02) (08/17/07)

Based on the Fourth Amendment's "reasonableness" standard, sworn MPD employees shall only use the amount of force that is objectively reasonable in light of the facts and circumstances known to that employee at the time force is used. The force used shall be consistent with current MPD training.

5-302 USE OF FORCE DEFINITIONS (10/16/02) (10/01/10)

Objectively Reasonable Force: The amount and type of force that would be considered rational and logical to an "objective" officer on the scene, supported by facts and circumstances known to an officer at the time force was used. (08/17/07)

Use of Force: Any intentional police contact involving: (08/17/07) (10/01/10)

- The use of any weapon, substance, vehicle, equipment, tool, device or animal that inflicts pain or produces injury to another; or
- **Any physical strike to any part of the body of another;**
- Any physical contact with a person that inflicts pain or produces injury to another; or
- Any restraint of the physical movement of another that is applied in a manner or under circumstances likely to produce injury.

5-303 AUTHORIZED USE OF FORCE (10/16/02) (08/17/07)

Minn. Stat. §609.06 subd. 1 states, "When authorized...except as otherwise provided in subdivision 2, reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor

reasonably believes them to exist:

When used by a public officer or one assisting a public officer under the public officer's direction:

- In effecting a lawful arrest; or
- In the execution of legal process; or
- In enforcing an order of the court; or
- In executing any other duty imposed upon the public officer by law."

In addition to Minn. Stat. §609.06 sub. 1, MPD policies shall utilize the United States Supreme Court decision in *Graham vs Connor* as a guideline for reasonable force.

The *Graham vs Connor* case references that:

"Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, its proper application requires careful attention to the facts and circumstances of each particular case, including:

- The severity of the crime at issue,
- Whether the suspect poses an immediate threat to the safety of the officers or others, and;
- Whether he is actively resisting arrest or attempting to evade arrest by flight.

The "reasonableness" of a particular use of force must be judged from the perspective of ***the reasonable officer***

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation."

Authorized use of force requires careful attention to the facts and circumstances of each case. Sworn MPD employees shall write a detailed, comprehensive report for each instance in which force was used.

Investigative Facts

- Officer Lehner was working a detail for the "Reoccupy Minneapolis" protest on 04/07/2012.
- At approximately 2300 hours an order was given to arrest any protesters who had not left the street at S 9th St and Nicollet Mall.

- Video shows Officer Lehner using his right hand to push a camera off the shoulder of a cameraman.
- When Officer Lehner makes contact he pushes the camera up and over the cameraman.
- The cameraman appears to be recording when the contact occurs.
- The cameraman would later claim that he was injured by the contact; although he did not report the injuries to any MPD personnel.
- Officer Lehner stated that the contact was not a use of force, but was necessary on his part as he was moving to make an arrest and the cameraman was blocking his path and he put his hand up simply to move the cameraman out of the way.
- The videos appear to contradict Officer Lehner's perception that a congestion of people created a necessity for his actions.

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Allegation # 3: It is alleged that on 04/07/2012, Officer Blayne Lehner failed to be decorous in his conduct and brought discredit to the department when he shoved a camera off of the shoulder of a KSTP Ch 5 cameraman, knocking the camera to the ground. If this allegation is found to be true it would violate the following department policy:

5-105 PROFESSIONAL CODE OF CONDUCT

15. Employees shall be decorous in their language and conduct. **They shall refrain from**

actions or words that bring discredit to the Department.

Investigative Facts

- Officer Lehner was working a detail for the “Reoccupy Minneapolis” protest on 04/07/2012.
- At a briefing before the detail started, the officers were told by Sergeant Gary Nelson that the department wanted to keep the attention focused on the protesters and to not make it an issue about the MPD.
- At approximately 2300 hours an order was given to arrest any protesters who had not left the street at S 9th St and Nicollet Mall.
- Video shows Officer Lehner using his right hand to push a camera off the shoulder of a cameraman.
- When Officer Lehner makes contact he pushes the camera up and over the cameraman.
- The cameraman appears to be recording when the contact occurs.
- The incident was part of a national protest that was video recorded by many individuals.
- The video was played on the local mainstream media outlets as well as on the internet.

INVESTIGATIVE SUMMARY

The panel reviewing this case will have to make several preliminary determinations. First, is the contact made by Officer Lehner against the KSTP

cameraman a use of force? Second, if the contact is a use of force, was it objectively reasonable based upon the totality of the circumstances? And third, if the contact was a use of force, does it rise to the level of force requiring a force report by the officer? The answers to these questions will guide the panel through the first two allegations.

Officer Lehner stated that he did not believe that what he did was a use of force as he was simply moving the cameraman out of his way and his contact is with the camera and not the person of the cameraman. Complainant disagrees with Officer Lehner, asserting that the way in which the camera was positioned on his shoulder and next to his head made it a part of him. Therefore, when Officer Lehner attacked the camera, he was actually attacking complainant.

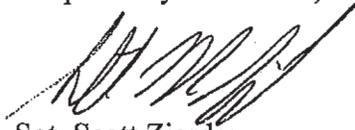
The panel should view all of the available video to assess Officer Lehner's explanation. The video from the 9th St & Nicollet Mall safezone camera could be particularly helpful in this assessment. The safezone camera is taken from above, and although the camera moves at the moment of contact, it does show the area around the incident; appearing to contradict Officer Lehner's spatial explanation.

The YouTube videos may also be helpful to the panel's assessment of force as they show the push, and more importantly, they show Officer Lehner's hand coming up in preparation of the contact and the follow-through motion to end the contact, thus possibly indicating intent.

After determining whether or not force was used in allegations one and two, the panel must determine whether or not Officer Lehner's actions brought discredit to the department. The incident was certainly not a positive incident, and was video recorded from many different angles. In the "News Articles" section of the file are small

samplings of media stories and associated blogs related to this incident. The videos are also included in this file. They do not depict the incident favorably for the MPD.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Sgt. Scott Zierden', written over a horizontal line.

Sgt. Scott Zierden

Internal Affairs Unit



MINNEAPOLIS POLICE DEPARTMENT

Internal Affairs Unit

Administrative Case #12-74

Sgt. Melissa Chiodo

08/29/2012

CASE BACKGROUND

On May 16th, 2012 the City of Minneapolis received a copy of a lawsuit filed by Mauricio McKinney alleging that on 09/13/2011, Officer Blayne Lehner and former Minneapolis Police Officer Terry Nutter forced entry into 2109 Chicago Avenue South without a search warrant. Once inside the residence, McKinney alleged that Officer Lehner kicked him in the face and torso and that Sgt. Jason Case then entered the residence and kicked him in the face five to seven times. As a result of the alleged kicks Mauricio McKinney suffered injuries. An Internal Investigation was opened to address these allegations brought forth in the lawsuit.

CASE INVESTIGATION

This event was a PERGUN (person with a gun call) and the MPD case number for the call is 11-276997. I reviewed the police CAPRS report, Visinet report for the call and listened to the 911 call and the police radio transmissions. I made several attempts to call the 911 caller 13.82 - Law Enforcement, his phone was not in-service when I attempted to

call him several times and I do not have an address or any other contact information for him.

Through the CAPRS report I learned that there were a total of ten people in or around the front of 2109 Chicago Avenue South during the incident, including Mauricio McKinney. I spoke with Ryan O. Vettleon, an attorney with Gaskins, Bennett, Birrell & Schupp on 7/2/12 at approximately 1253 hours requesting to interview his client, Mauricio McKinney. Mr. Vettleon told me that they would be advising their client not to do an interview with me. Mr. Vettleon informed me that I could have a copy of his client's deposition after it is taken in approximately three to six months. Mr. Vettleon can be reached at (612)333-9548.

I sent certified letters to the other nine individuals that were in or around the residence at the time of the incident, eight of the nine letters came back as refusing to accept them or bad addresses, the letter sent to Shane Gross was signed for and to this date I have not received a call from him to schedule an interview. The nine people that I sent letters to are: Reva Bearstops, Shane Gross, Kashka Shannon, Percy Lacey, [REDACTED], Dontae Peterson, Maurice Johnson, Rico Rodriguez and Andrew Peterson.

I read the CAPRS report and two officers wrote supplements, Officer Lehner and [REDACTED] 13.43. According to Visinet there were 14 officers that responded to the PERGUN call. I interviewed 15 officers. The Officers interviewed were, [REDACTED] 13.43

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Blayne Lehner, [REDACTED] 13.43 - Personnel Data