

## NOTICE OF DISCIPLINE (Arbitration Award)

November 15, 2019

Blayne Lehner

13.43 - Personnel Data

RE: OPCR #15-16258

Blayne Lehner,

As a result of the Arbitration Award following grievance #19-3, the final discipline for OPCR Case #15-16258 is as follows:

<u>Policy Number</u>	<u>Sub-Section</u>	<u>Policy Description</u>	<u>Category</u>	<u>Disposition</u>
5-301.10		Use of Force		<u>SUSTAINED</u>

The discipline originally imposed by the Police Department related to #15-16258 specifically associated with 5-301.10, Use of Force was termination. As a result of the arbitrator's decision the discipline originally imposed by the police department for the aforementioned alleged misconduct has been upheld.

This case will remain in OPCR files per the record retention guidelines mandated by State Law.

Sincerely,

*Thomas Wheeler*

Thomas Wheeler  
Commander  
Internal Affairs Division

CC: Personnel file  
OPCR  
Deputy Chief of Professional Standards

# DISCHARGE, SUSPENSION OR INVOLUNTARY DEMOTION FORM

Please enter the requested information directly into the form and provide a copy to the employee once completed and signed.

Employee Name: <b>Blayne Lehner</b>	Employee ID: <b>004073</b>
Job Title: <b>Officer</b>	Job Code:
Department: <b>Minneapolis Police Department</b>	
Is this employee a Veteran? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown	
Has this employee passed probation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

**NATURE OF ACTION:**

- Discharge:                      Effective Date: **February 25, 2019**                      At **1600 Hours**                       a.m.  p.m.
- Probationary Release:    Effective Date:                      At                       a.m.  p.m.
- Suspension without pay:
  - Total Working Days (or hours):
  - Beginning on:                      Ending on:
- Demotion:
  - Permanent – Effective Date:
  - Temporary – Beginning on:                      Ending on:

Demoted to:

Job Title:                      Job Code:                      at the following hourly rate of pay or annual salary: \$

**REASON(S) FOR THIS ACTION:** (Check applicable boxes below and attach Letter of Determination that includes specific violations)

- Violation of **Civil Service Commission Rule 11.03** – Subdivision: **B19, B20**
  - A. Substandard Performance
  - B. Misconduct
- Violation of the Department Rule(s), Law(s), Ordinance(s), or Regulation(s)                      **5-301.10**

## NOTICE TO CLASSIFIED EMPLOYEES OF LEGAL RIGHTS

### DISCHARGE AND PROBATIONARY RELEASE AND SUSPENSION AND INVOLUNTARY DEMOTION

**Probationary Employees** – Employees, including veterans separated from the United States military service under honorable conditions, who have not passed an initial hiring probationary period do not have a right to a hearing before the Civil Service Commission (CSC).

**Veteran Employees (Permanent)** - Employees holding a permanent position with the City or Park Board of Minneapolis, and who is a veteran separated from the United States military service under honorable conditions and who has passed an initial hiring probationary period, has a right to a hearing prior to discharge from employment or involuntary demotion. Temporary employees who are veterans do not have a right to a hearing.

**Permanent Non-Veteran Employees** have a right to a hearing by the CSC upon written request. Non-veterans who have passed probation are permanent employees.

**Disciplinary Suspension or Demotion** - Employees may be suspended without pay for disciplinary reasons for periods not to exceed 90 calendar days. Suspensions of 31 to 90 calendar days may be appealed by the employee to the CSC.

Employees may be demoted for disciplinary reasons and/or for substandard performance, either temporarily (up to 180 days) or permanently. Permanent employees may appeal any permanent demotion and/or salary decrease.

**NOTICE TO CLASSIFIED EMPLOYEES OF LEGAL RIGHTS continued**

**REQUESTING A HEARING**

**IMPORTANT:** The employee should refer to the Civil Service Rules and/or the appropriate labor contract to determine what, if any, appeal rights he or she may have. The employee may choose whether to appeal this action through the Civil Service Commission or through processes available through a labor contract, but may not appeal through both.

**Requesting a Hearing: Non-Veterans** - A written request for hearing must be postmarked or received by the Civil Service Commission within 15 calendar days from the date disciplinary action was provided to the employee. The 15 days are counted from the first day after the notice was provided to the employee. If the 15<sup>th</sup> day falls on a Saturday, Sunday, or legal holiday, the request may be served on or before the following business day. The date of postmark must be within that 15-day period. The request for a hearing may be accompanied by the employee's statement of his or her version of the case.

**Requesting a Hearing: Veterans** - A written request for hearing must be received by the Civil Service Commission within 30 calendar days of receipt by the employee of the notice of intent to discharge. The 30 days are counted from the first day after receipt of the notice by the employee. If the 30th day falls on a Saturday, Sunday, or legal holiday, the request may be served on or before the following business day. The request for a hearing may be accompanied by the employee's statement of his or her version of the case. A failure to request a hearing within the provided 30 day calendar period constitutes a waiver of the right to a hearing.

**ALL REQUESTS FOR A HEARING AND APPEALS MUST BE MAILED WITHIN THE REQUIRED TIMELINES TO:**

Minneapolis Human Resources Department/Civil Service Commission  
250 South 4th Street, Room 100  
Minneapolis, MN 55415

**NOTIFICATION TO EMPLOYEE:**

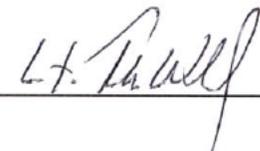
The employee was given an opportunity to respond to the written charges at a pre-determination meeting held on: Date: November 15, 2018

The employee failed to appear at the pre-determination meeting.

A copy of this form and relevant accompanying information was given to the employee on February 25, 2019.  
 A copy of this form and relevant accompanying information was sent by US mail, to the employee's address of record provided by employee.

Signature of Department Head: 

Date: February 25, 2019

Signature of Person Mailing/Delivering Notice: 

Date: February 25, 2019

Entered into COMET-HR by: \_\_\_\_\_ Date: \_\_\_\_\_

Chief Medaria Arradondo  
Minneapolis Police Department  
350 South 5<sup>th</sup> Street, Room 130  
Minneapolis, MN 55415



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February 25, 2019

Memo Re: OPCR #15-16258

MPD Officer Blayne Lehner.

Date of Incident December 29<sup>th</sup>, 2013.

We must first do no harm.

On December 29<sup>th</sup>, 2013, at approximately 0300 hours, Officer Lehner you and your partner Officer Wuorinen responded to a shots fired call that originated at 37<sup>th</sup> & Nicollet Ave. S. Eventually a suspicious vehicle involved in that call was stopped by officers at 43<sup>rd</sup> & Nicolet Ave. S.

While you were at that incident location (43<sup>rd</sup> & Nicollet Ave. S.) you had an interaction with a passenger from that suspicious vehicle a Mr. Luis Daniel Garcia-Pineda. At one point during your interaction with Mr. Garcia-Pineda with your squad car doors closed, while he was handcuffed and contained in the rear of your squad (#513), you chose to open the rear squad car door and delivered a kick to his face that rendered him unconscious.

Just as disturbing about the level of force you used was that it was used against a member of our community who was secured, contained and handcuffed behind his back in the rear of your squad car. Furthermore your partner Officer Wuorinen stated "Mr. Garcia Pineda was not fighting when he reached in to remove him from the squad. Mr. Garcia-Pineda was not thrown or dropped to the ground, and did not hit his face on the curb or any part of the squad during the extraction." Based on your partner's account that Mr. Garcia-Pineda was not fighting or posing a serious threat to you or others your level of force was not reasonable or appropriate based on the circumstances.

When a peace officer uses unreasonable force against those they took an oath to serve and protect it is one of the greatest singular acts that erodes the public trust, furthermore when that unreasonable force is used against a vulnerable handcuffed subject lying on his back it is a stain on our badge and our profession.

Officer Lehner you chose a level of force which was unwarranted and unacceptable. When you were asked if you would have considered other options you predicted that no matter what other options were available to you Mr. Garcia-Pineda was still going to thrash about the inside of the squad car and hit his head. Because of that problematic foresight and decision making you locked yourself into one way only to try and resolve the situation where the goal should have been to de-escalate and minimize the risk of injury and harm.

MPD officers are taught and trained in a variety of different areas related to use of force however officers must exercise sound judgment in the type of force they decide to use and must ensure that it is both reasonable and proportional, based on the circumstances and facts they have at the time. For this I do not believe in the strongest terms your force was reasonable in light of *Graham V. Connor* which outlines the test of reasonableness under the 4<sup>th</sup> Amendment which includes: The Severity of the Crime, Whether the Suspect Poses an Immediate Threat to the Safety of the Officers or Others, and Whether the Suspect is Actively Resisting Arrest or Attempting to Evade Arrest by Flight.

Lastly I'm deeply troubled by your statement as you were serving as a sworn peace officer referencing why the incident was not captured on your squad car Mobile Video Recorder (MVR) when you said "do you know how easy it could have been for me because I knew it was not on the video just to lie?" Officer Lehner there should never be a space of consciousness where a Minneapolis Police Officer would ever contemplate lying under any circumstances regardless of whatever perceived assumptions one might have on your actions while performing your duties.

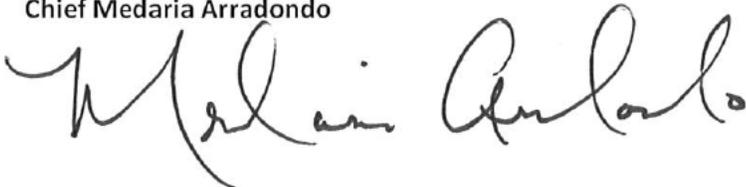
Officer Lehner you could have utilized other options if in fact you were concerned about him harming himself. Instead you used such unreasonable force that violated both department policy and the public trust.

I will not allow these acts to define the men and women of the MPD who work so hard to build trust and good will with those we serve.

After reviewing the case file including your own statement when asked during your interview if given the opportunity is there anything you would have done differently and you firmly held on to the belief that kicking Mr. Garcia-Pineda was your only option.

For those reasons stated you have forfeited your right to be a member of the Minneapolis Police Department. I have made the decision to terminate your employment effective immediately.

Chief Medaria Arradondo

A handwritten signature in black ink, appearing to read "Medaria Arradondo". The signature is written in a cursive, flowing style.

Minneapolis Police Department



## MINNEAPOLIS POLICE DEPARTMENT

Office of Professional Standard

*Deputy Chief Henry Halvorson*

*(612) 673-3634*

350 South 5<sup>th</sup> Street  
Minneapolis, MN 55415

**TO:** Chief Arradondo

**02-22-19**

**Subject: OPCR 15-16258**

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Sir, the listed case has been reviewed by the Police Conduct Review Panel (PCRP). The focus officer was Blayne Lehner. Here are the list of allegations and the PCRP decisions:

-5-301.10 Use of Force, Reasonableness-Split Decision (2-Merit and 2 No

Merit)

On 02-01-19 I convened a Discipline Panel with AC Kjos and DC Fors. We reviewed the case and believe that the allegation against Officer Lehner should be a Merit Decision.

There is no dispute that the subject arrested in this incident was in handcuffs when Officer Lehner used force on him. The decision to use force on this handcuffed subject becomes more scrutinized. The 'push kick' used by officer Lehner on the subject appears to be unreasonable. We recommend Termination for this employee.

# Minneapolis Police Department Discipline Worksheet

Blayne Larry Lehner, Badge #4073      12-29-2013      15-16258  
 Employee's Name and ID Number      Date of Incident      Administrative Case Number

## Discipline Panel Recommendation

Policy Number	Sub-Section	Policy Description	Category	Disposition
5-301.01		Use of Force, Reasonableness		

Deputy Chief of Professional Standards      Date

**Minneapolis Police Department  
Discipline Worksheet**

**Office of the Chief of Police**

<b>Policy Number</b>	<b>Sub-Section</b>	<b>Policy Description</b>	<b>Category</b>	<b>Disposition</b>

**Final Disposition**


Chief of Police

Date

MP-1408 (Revised 1/17)

Complaint Number 15-16258

Complainant: Joint Supervisors

Officer: Blayne Lehner, Badge #4073

Jurisdiction: M.C. O. §§ 172.20

Date of Incident: December 19, 2013

Date Filed: August 13, 2015

Date of Panel: April 20, 2017

<b><u>Allegation 1</u></b>	
5-301.10 – Use of Force, Reasonableness	
Civilian 1 Vote	
Civilian 2 Vote	
Sworn 1 Vote	
Sworn 2 Vote	

Panelists in Attendance (Sign below)

Panelist 1

\_\_\_\_\_  
Civilian 1

Panelist 2

\_\_\_\_\_  
Civilian 2

Panelist 3

\_\_\_\_\_  
Sworn 1

Panelist 4

\_\_\_\_\_  
Sworn 2

The Chair is

\_\_\_\_\_  
Civilian

**Incident Summary**

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On December 29, 2013 at approximately 0230 hours, 5<sup>th</sup> Precinct officers responded to a shots fired call in the area of 37<sup>th</sup> St. E. and Nicollet Ave S. While officers were out of their squads on foot searching for evidence, a vehicle reportedly sped up and appeared to target an officer who was on foot in the street. This vehicle was stopped 6 blocks away at 43<sup>rd</sup> and Nicollet Ave. S., and the driver was arrested.

During the course of the stop, the left rear passenger, later identified as Luis Daniel Garcia-Pineda, was found to show signs of intoxication and was determined to be under the age of 21. Mr. Garcia-Pineda was removed from the vehicle and placed under arrest for consumption of alcohol by a minor. He was searched and handcuffed behind his back and placed in the rear of Squad 513m which at the time was driven by Officer Steve Wuorinen with the passenger officer being Officer Blayne Lehner.

While in the rear of the squad, Mr. Garcia-Pineda reportedly became upset and began kicking the rear partition and allegedly banging his head on the partition and door security bars. Officer Lehner opened the rear squad door and upon doing so, Mr. Garcia-Pineda attempted to kick Officer Lehner in the leg. Officer Lehner then delivered a “push-kick” to Mr. Garcia-Pineda, stating that he was aiming for his torso. Officer Lehner reported that Mr. Garcia-Pineda leaned forward as he kicked, and that this action changed the target of his push-kick, causing his foot to make contact with Mr. Garcia-Pineda’s jaw area, which caused Mr. Garcia-Pineda to momentarily lose consciousness.

Officer Lehner reported that he closed the door, and then reopened it and grabbed Mr. Garcia-Pineda by the upper torso and pulled him out of the squad with the help of Officer Wuorinen and put him face down on the street where he was kept until he calmed down.

Officer Lehner reported that he observed Mr. Garcia-Pineda to be bleeding from his mouth area and that he said he was going to cooperate with police and was then placed back in the squad.

Officer Lehner notified Sgt. Altonen of the use of force. Sgt. Altonen responded to the scene and conducted his force review.

Mr. Garcia-Pineda was taken to HCMC and treated for his injuries, which were determined to

13.384 Medical Data



There was no squad MVR of the use of force or any other video.

Mr. Garcia-Pineda was convicted of one misdemeanor count of consumption of alcohol by a minor. Charges of obstructing legal process, giving a peace officer a false name and disorderly conduct were dismissed.

## Allegations

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1. It is alleged that Officer Lehner used unauthorized force on Luis Garcia-Pineda when he kicked him in the face while Mr. Garcia-Pineda was handcuffed behind his back while in police custody. (*5-301.10 – Use of Force, Reasonableness*)

Allegation #1: It is alleged that Officer Lehner used unauthorized force on Luis Garcia-Pineda when he kicked him in the face while Mr. Garcia-Pineda was handcuffed behind his back while in police custody. (5-301.10 – Use of Force, Reasonableness)

Supportive Findings:

<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>REMAND</b> <input type="checkbox"/>	<b>SPLIT</b> <input type="checkbox"/>
<i>This allegation has merit.</i>	<i>This allegation does not have merit.</i>	<i>Remand to investigation for additional information.</i>	<i>There is no majority vote.</i>

Complaint Number 15-16258

Complainant: Joint Supervisors  
 Officer: Blayne Lehner, Badge #4073  
 Jurisdiction: M.C. O. §§ 172.20  
 Date of Incident: December 19, 2013  
 Date Filed: August 13, 2015  
 Date of Panel: August 1, 2017

<b><u>Allegation 1</u></b>	
5-301.10 – Use of Force, Reasonableness	
Civilian 1 Vote	Merit
Civilian 2 Vote	Merit
Sworn 1 Vote	No Merit
Sworn 2 Vote	No Merit

Panelists in Attendance (Sign below)

Panelist 1

**Phil Trebatoski**

Civilian 1

Panelist 2

**Donald Bellfield**

Civilian 2

Panelist 3

**Lt. Jonathon Kingsbury**

Sworn 1

Panelist 4

**Lt. Aaron Biard**

Sworn 2

The Chair is

**Donald Bellfield**

Civilian

Incident Summary

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13.384 Medical Data

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Allegation #1: It is alleged that Officer Lehner used unauthorized force on Luis Garcia-Pineda when he kicked him in the face while Mr. Garcia-Pineda was handcuffed behind his back while in police custody. *(5-301.10 – Use of Force, Reasonableness)*

Supportive Findings:

Half of this panel finds no merit with this allegation. The evidence provided shows that the complainant was uncooperative and attempted to assault Officer Lehner during this interaction. Complainant thrashed, kicked and displayed aggressive behavior while handcuffed in the back of the squad. Complainant was a threat to his own personal well-being. Complainant escalated the situation and threatened injury to Officer Lehner by kicking at him. Officer Lehner responded appropriately by delivering a push kick to the complainant's chest area to separate himself from the complainant. Unfortunately, as Lehner delivered the push kick, the complainant lunged forward and the push kick struck the complainant's face. The momentum of the complainant's lunge paired with the Officer's push kick caused enough force to injure the complainant.

The other half of this panel finds merit with this allegation due to the fact that the amount of force said to have been applied in this situation does not match the severity of the injuries. As described, a "push kick" is when the officer "...essentially put your foot, the whole bottom of your foot right up against the chest and physically push them" (quote from Officer Lehner on pg. 245 of the indemnification hearing). This half of the panel believes that force was necessary given the uncooperative and aggressive behavior of the complainant, even if the complainant was handcuffed. This was a close decision, however, the injuries sustained by the complainant lead this half of the panel to believe that the push kick was not delivered properly and it is questionable as to what technique was actually delivered.

<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>REMAND</b> <input type="checkbox"/>	<b>SPLIT</b> <input checked="" type="checkbox"/>
<i>This allegation has merit.</i>	<i>This allegation does not have merit.</i>	<i>Remand to investigation for additional information.</i>	<i>There is no majority vote.</i>

Complaint Number 15-16258

Complainant: Joint Supervisors

Officer: Blayne Lehner, Badge #4073

Jurisdiction: M.C. O. §§ 172.20

Date of Incident: December 19, 2013

Date Filed: August 13, 2015

Date of Panel: April 20, 2017

<b><u>Allegation 1</u></b>	
5-301.10 – Use of Force, Reasonableness	
Civilian 1 Vote	Merit
Civilian 2 Vote	Merit
Sworn 1 Vote	No Merit
Sworn 2 Vote	No Merit

Panelists in Attendance (Sign below)

Panelist 1

**Phil Trebatoski**

Civilian 1

Panelist 2

**Donald Bellfield**

Civilian 2

Panelist 3

**Lt. Jonathon Kingsbury**

Sworn 1

Panelist 4

**Lt. Aaron Biard**

Sworn 2

The Chair is

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Supportive Findings:

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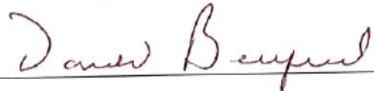
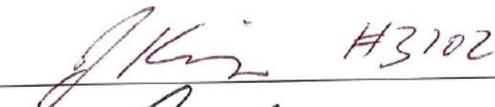
<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	<b>REMAND</b> <input type="checkbox"/>	<b>SPLIT</b> <input checked="" type="checkbox"/>
<i>This allegation has merit.</i>	<i>This allegation does not have merit.</i>	<i>Remand to investigation for additional information.</i>	<i>There is no majority vote.</i>

# The Office of Police Conduct Review Review Panel Session

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## Sign-in Sheet

**Case #** 15-16258  
**Date** April 20, 2017  
**Time** 10:00am  
**Location** City Hall Room 239, Intake Conference Room

PANELISTS	NAME	SIGNATURE
Civilian 1	Phil Trebatoski	
Civilian 2	Donald Bellfield	
Sworn 1	Lt. Jonathon Kingsbury	
Sworn 2	Lt. Aaron Biard	

Chair is: CIVILIAN

Chair's Name: 

## Loudermill Summary

November 16, 2018

**To: Deputy Chief Halvorson**  
Minneapolis Police Department  
Deputy Chief of Professional Standards

**From: Inspector Kathy Waite**  
Minneapolis Police Department  
Fifth Precinct

**Ref: Administrative Case 15-16258**

On 11/15/18, a Loudermill panel consisting of Commander Moore and Inspector Sullivan convened to hear information regarding 15-16258. This hearing was conducted in accordance with procedures defined in the Minneapolis Police Discipline Guidebook. Lieutenant Kroll was present as his Federation Representative.

During the hearing, Officer Lehner addressed the following Merit allegations:

5-301.01 – Use of Force, Reasonableness -- Merit

A brief summary of the information presented during the hearing is as follows:

Officer Lehner was well prepared for the hearing. Officer Lehner provided the panel with list of pertinent statutes and a series of e-mails, both of which he referenced in his Loudermill statement. He also provided a copy of his Loudermill statement which he read verbatim. All of these documents have been included with this memo. Officer Lehner was very thorough in his statement to the panel, as summarized below.

Officer Lehner brought forward several points as to why this incident evolved into OPCR and Internal Affairs cases. First, he explained the incident occurred on 12-30-13. On 06-26-14,

the criminal case involving defendant Garcia went to trial. 08-03-15, OPCR Joint Supervisors opened a complaint against Officer Lehner, regarding Use of Force involving Garcia. Officer Lehner quoted Minnesota State Statute 172.30 (a) Complaint filing, "Absent extenuating circumstances deemed sufficient to warrant untimely filing, no person may file a complaint if more than two hundred seventy days have elapsed since the alleged misconduct." Officer Lehner noted the only extenuating circumstance that had changed was the filing of a Federal lawsuit against him for Use of Force. He believed the filing of the OPCR complaint was in violation of the law (172.30), due to timeliness of starting the complaint process and that there were no extenuating circumstances defined in either the OPCR or IA file regarding the case.

Officer Lehner informed the panel he had provided three separate statements regarding the case, a CAPRS statement, Rasmussen Testimony and an IA statement. He pointed to IA Sergeant McLean's finding of the IA Investigative Report that he was consistent in all of the accounts of the incident. He then pointed to IA Sergeant McLean's Investigative Report regarding the Use of Force and says he was in the process of affecting an arrest under 609.06. He then went on to explain Sergeant McLean's analysis of Graham v. Connor. Sergeant McLean said that Garcia showed active aggression, and attempt to exit from the squad, which was why Officer Lehner was authorized to Use Force in an effort to prevent Garcia from getting out of the squad.

Officer Lehner then pointed to the IAU case and that LODD Commander Schoenberger and Lieutenant Wheeler provided documents which supported that Officer Lehner was a Defensive Tactics instructor and that the push/thrust kick was a technique.

Officer Lehner stated the first Merit Panel convened on 04-20-17 and concluded there a finding of No Merit. The panel noted Garcia's story regarding the events that occurred on 12-29-13 changed several times. The panel noted Officer Lehner's story never changed.

Officer Lehner noted the following day, the case was returned to OPCR for further review due to new evidence which was uncovered in an ALJ hearing. Officer Lehner said he felt the OPCR violated state law 172.50. Officer Lehner also quoted Minnesota State Statute 172.50 (a) Request for reconsideration by complainant, "Within fifteen days of receipt of notification of the review panel's decision recommending that a complaint not be sustained, a complainant may submit a written request for reconsideration to the office of police conduct review." He said he never received written notification that a request for reconsideration was made.

Officer Lehner then noted a string of e-mails (submitted with this letter) were sent and that no new evidence was uncovered, and that it was merely ALJ testimony that had been previously revealed to IAU and OPCR. He also referred to another e-mail string regarding the ALJ testimony and sharing it with the panel.

He then went on to discuss the second meeting of the Merit Panel on 08-01-17. The panel was split regarding their findings the second time they met regarding this case. He contended that the panel did not receive any new data to support excessive force was used. He believed the second panel found merit based on the injuries to Garcia and for no other reason. He noted no new information was presented to the Merit Panel.

Officer Lehner went on to make a formal complaint against Commander Glampe regarding his handling of this case and proceedings related to the case. Officer Lehner inquired about his Due Process in this matter. He believes he was justified in his use of force; he followed all policy and procedure throughout the call which included rendering medical aid, notifying a supervisor and writing a report detailing his actions.

For further details, please see the statement that is included which Officer Lehner read verbatim to the panel.

Sincerely,

A handwritten signature in cursive script that reads "Inspector Kathy Waite". The signature is written in dark ink and is positioned to the right of the typed name.

Inspector Kathy Waite

Fifth Precinct

Minneapolis Police Department

## Notice of Loudermill Hearing

Date: August 22, 2018

Officer Blayne Lehner  
Internal Affairs  
Minneapolis Police Department

RE: 15-16258

Officer Lehner,

This letter is to inform you that a Loudermill Panel will be convened on Thursday, August 30 at 1300 hours at the Fifth Precinct in the Inspector's Conference Room. At this time you will have an opportunity to present information to the panel regarding the following allegations:

5-301.01 – Use of Force, Reasonableness

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.

You may have a federation representative or an attorney present during the hearing. A written summary of the case file containing information collected during the course of the investigation shall be provided to you upon request. It is your responsibility to contact the Internal Affairs Unit to obtain a copy of the case file at least 72 hours prior to the time of your scheduled Loudermill hearing. A copy of the data will only be released if you provide a written request to the Internal Affairs Unit to have the data released to you, your representative, or attorney.

If you chose not to attend the Loudermill hearing you are ordered to notify the panel chair by Monday, August 27.

Sincerely,



Inspector Kathy Waite  
Fifth Precinct  
Minneapolis Police Department

## Internal Affairs Garcia Case

Good afternoon everyone. We are hear today to address allegations against me of Excessive force related to an incident that happened on December 29<sup>th</sup> 2013.

On December 29<sup>th</sup> 2013 force was used on Daniel Garcia by me in effecting the lawful arrest of him for multiple offenses. An injury to Garcia occurred during that incident. Immediately after the force was used upon Mr. Garcia by me Sgt. Altonen was notified and he responded to the scene. Medical attention was given to Garcia at the scene and Mr. Garcia was transported to HCMC as soon as possible after Sgt. Altonen was finished completing his on-scene Force Assessment.

All reports were completed before the end of the shift in which I document what I did on scene and the reasons why I did what I did. I even completed a second report to clarify actions to paint as good of a picture of the incident that I could.

On December 30<sup>th</sup> of 2013 at approx. 1056 hours, two days after the incident, an Internal Force Review was conducted by and Internal Affairs Sergeant and no further investigation was conducted.

On June 26<sup>th</sup> 2014, approximately six months later, a Rasmussen Hearing was conducted in this case in front of the Honorable Judge Barnette and the representative for the City Attorneys office was Assistant City Attorney Ronald Blum. It was at this time that I was first informed by Assistant City Attorney Blum the true extent of Garcia's injuries. The Rasmussen Hearing was conducted and ultimately Garcia plead guilty to Minor Consumption. The City Attorney's office at that time never once made notice that the force was excessive in this case.

Then on August 3<sup>rd</sup> 2015, over a year and a half after the incident, a City of Minneapolis Office of Police Conduct Review Complaint was opened by the Joint Supervisors in regards to *Excessive Force. Specifically, my force used on Daniel Garcia.*

Before I move on it needs to be noted that the Office of Police Conduct Review violated Chapter 172 Police Conduct Oversight. In particular statute 172.30 Subdivision (a) which states, Absent extenuating circumstances deemed sufficient to warrant untimely filing, no person may file a complaint if more than two hundred seventy (270) days have elapsed since the alleged misconduct.

Around the date of August 3<sup>rd</sup>, the City of Minneapolis received a Federal Lawsuit in regards to Garcia and the incident at hand. The sheer presence of a lawsuit is not justification of extenuating circumstances deemed sufficient to warrant untimely filing. Nowhere in this case file does Internal Affairs show department policy or law in regards to a lawsuit being an automatic trigger into a conduct investigation.

The filing of the OPCR Complaint was well over the 270 days that is mandated by law and OPRC was in violation of Chapter 172.30. Due to this violation of law this investigation in fact was never supposed to be conducted. There is no explanation in this case file that documents OPCR's reasoning and justification for not being timely and there is no reason or justification into extenuating circumstances that would bypass the timeliness requirement.

Now, since an investigation was conducted in violation of Law which I strongly object to and I am being offered the ability to defend myself in this Lauderhill proceeding let's talk about this OPCR case investigation.

This is an incident that happened on December 29<sup>th</sup> 2013, almost five years ago from today. In the case file myself and many other Officers and witnesses met with OPCR and Internal Affairs investigators and gave their version of events of what happened that morning. Upon reading through the case file, you will find that I have given three different statements in regards to this incident, my original CAPRS Report, my Rasmussen Testimony, and my Internal Affairs statement. You will find on page 10 of the Investigative Report Sgt. McLean states "Officer Lehner's statements in his CAPRS report, Internal Affairs Unit Interview and Rasmussen Hearing deposition all were consistent in regards as to why and how he employed a front thrust/push-kick." Sgt. McLean again states on page 21 of the Investigative Report that I was consistent in all of my accounts of the incident.

Sgt. McLean then goes on to show on page 15 of the Investigative Report the Minneapolis Police Departments Authorized Use of Force Statute 5-303. This policy references Minnesota Statutes 609.06 subdivision 1. Sgt. McLean states "In this case, Officer Lehner was legally justified in potentially using force, as he had determined that Mr. Garcia-Pineda showed signs of intoxication and was under the age of 21, so legal grounds for his arrest were met in accordance with section 2." Sgt. McLean was referring to my ability In Effecting a Lawful Arrest of Garcia under the Use of Force statute 609-06.

Sgt. McLean goes on to reference Graham vs. Connor on page 16 of the Investigative Report. On this page Sgt. McLean discussed the tree points of Graham vs. Connor and Sgt. McLean states "He (Garcia) did show active aggression in the form of a kick to Officer Lehner when he opened the squad door, and Officer Lehner stated he felt Mr. Garcia-Pineda was attempting to get out of the squad by hooking his leg over the seat, which was in part why he delivered the push-kick, to prevent him from getting out and push him back into the squad." With this statement alone by Sgt. McLean I met the third bullet of Graham vs. Connor which references whether the suspect is actively resisting arrest or attempting to evade arrest by flight and in my belief the second bullet which references whether the suspect poses an immediate threat to the safety of the officers or others.

I was questioned in my OPCR/Internal Affairs interview if I was ever taught a push/thrust kick and taught in how to implement it. Sgt. McLean states on page 19 of the Investigative Report "Commander Troy Schoenberger, Commander of the Leadership and Organizational