

Domestic Violence Child Abuse Arson Homicide Hate Crime Elderly Gang Related Liquor Establishment

Agency: SPD

Incident / Investigation Report

Case Number: 11-25469



F/OBEY POLICE OFFICER

Reported 10/28/2011 23:10

Found 10/28/2011 23:10

Occurred 10/28/2011 23:10

Location 4282 N Drinkwater Bl, Scottsdale, AZ

Original Officer (745) PETERS, J

Supplement Information

Supplement Page: 1

Date Added: 10/31/2011 23:00:36

Added By: (745) PETERS, J

Supplement Notes

On 10/28/11 at approximately 2245 Hrs, I was working a special enforcement detail in the area of 3rd Ave (south) to 4th Ave (north), Drinkwater Blvd (east) to Winfield Scott (west) while in regulation uniform. The detail is in response to quality of life complaints from surrounding businesses.

I was standing in the shadows of the businesses On the N/W corner of 4th Ave and Brown Ave when I observed two male subjects and a female subject fail to use the crosswalk as they crossed from the Westside of Brown Ave to the eastside of Brown Ave. The subjects were walking S/E and entered the roadway approximately 40 feet south of the crosswalk.

The three got into a motor vehicle that was parked in a space of the eastside of the road approximately 70 feet south of the crosswalk.

Before I could walk to their location and contact them for jaywalking, the vehicle was backing out and started to drive N/B on Brown Ave. The vehicle then turned E/B on 4th Ave and drove into the parking lot. As the vehicle, a maroon Pontiac G6 bearing AZ plate [REDACTED] turned from N/B to E/B I noticed the license plate light was not operational.

The vehicle made a u-turn in the parking lot and with my flashlight illuminated I walked up to the vehicle and identified myself as a police officer.

I requested the driver's driver license, registration and proof of insurance. While I waited for these documents I advised the occupants that the reason for the stop was because the license plate light was not working. The female passenger, who was later identified as the owner of the vehicle, advised me that she had been having problems and had just recently replaced a turn signal light. I asked if there was any aftermarket stereo equipment in the car since I have learned that if not properly installed that seems to contribute to lights and fuses blowing out. The female advised me there was not.

While speaking with the female passenger I observed/detected the following clues of impairment from the driver: Blood shot, watery eyes and an odor of alcoholic beverage. I also believed I could smell the odor of marijuana coming from the interior of the car. I asked the driver if he had had anything to drink and he stated he had not consumed any alcohol. He stated he was the designated driver and that the two passengers had been drinking at Gilligan's.

Based on the jaywalking violations all three had committed and the current observation of the odor of marijuana I was detecting I requested the front seat passenger and rear seat passengers identification also.

The driver was identified verbally and by means of photo AZ DL [REDACTED] The front seat passenger was identified verbally and by means of photo AZ DL [REDACTED]

Due to the position of the back seat passenger I advised him to give his identification to Officer Michael who was working with me on this detail. I then walked to the back of the vehicle to give the license plate to SPD Communications. When I got to the back, Officer Michael advised me the rear seat passenger was refusing to provide his identification. I walked back up to the driver's window and looked at the back seat passenger and ordered him to provide his identification to Officer Michael. The back seat passenger advised me he did not have to provide his identification. I told him he did because he was a witness in a criminal

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investigation. The back seat passenger removed his wallet and said "I have a lot of ID's. Let's see which one I should give you." He removed something from his wallet and began to hand it to Officer Michael when I told him the only ID that would work is a state issued form of identification.

At this point is when I lost all control of the traffic stop and subsequent investigation. From this point until the eventual arrest of the back seat passenger ten minutes later at approximately 2256 Hrs I was constantly trying to gain control of the traffic stop and the investigation. I have learned from my training and experience as a law enforcement officer that subjects do use the following behavior as a tactic to divert officer's attention from other criminal activity.

The back seat passenger was eventually identified verbally and by means of photo PA DL #25-145-471 as (OF1) Andrew Thomas

Thomas immediately began making statements that suggested this stop was purely racially motivated. Thomas was very confrontational and would not stop trying to divert my attention from the driver. I first tried talking loud and sternly to Thomas. This had no effect on Thomas. He made comments about me trying to intimidate everyone with my badge and gun numerous times. Thomas' behavior during the traffic stop was also causing a safety hazard to me because of where I was standing which was in the entrance to the parking lot for valet parking at the After Life Night Club. So I ordered everyone out of the car.

I asked to sit down on the curb of the sidewalk the vehicle was parked next to. complied without questions. made a statement as he was exiting that he would do whatever I needed he just wanted to do it quickly so he could take everyone home. Thomas exited the vehicle when I told him to and in plain view I noticed a clear cup with a small amount of red colored liquid inside. I removed the cup from the floorboard and smelled it. I believed there was a faint odor of alcohol coming from the cup.

Thomas me put the cup on the roof of the car and became non-compliant. He argued with me about having to get out of the vehicle. He continued making statements that suggested this stop was racially motivated. He refused to sit down on the curb like he was ordered. After numerous direct orders to sit down to which he replied, "Why are you yelling at me?" He stated if he sat down it would cause him back pain. I told him he had just been sitting down and needed to sit down. Thomas refused and stated, "I will kneel down but I will not sit." Thomas got down on both knees.

I immediately noticed that Thomas was kneeling in a way that made him powerful (strength wise). Thomas had his knees slightly wider than shoulder width, his feet were in line with his knees, he was not bent at the waist and had his arms by his side. This is a position Thomas chose and placed himself in. This is not a position I would ever put someone in. In this position with a skilled fighter it would be impossible to prevent an attack. This position allowed him to be comfortable and gave him leverage on anyone walking nearby. From this position he would be able to take an officer to the ground. Also this put Thomas at the level of our gun belts and all of their weapons. Officer Michael and I were trying to control three people at this point if our attention was diverted at the wrong time it could result in one of us being attacked.

Not knowing what Thomas' background was and his aggressive behavior I told Officer Michael to place Thomas in handcuffs, which he did.

Thomas became more aggressive. He kept making statements about my badge and gun. I yelled at him numerous times to stop

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interfering or he would go to jail. Thomas continued making suggestive comments and acting in a way that caused me concern that intoxicated subjects walking by the stop could get involved.

I gave Thomas one last order to sit down and remain quiet. [REDACTED] also told Thomas to calm down and just listen. Thomas ignored my command to sit down, but stopped talking.

I turned to [REDACTED] to start my investigation into Thomas. I had him close his eyes and observed a noticeable flutter in his eyelids. I explained to him that I could smell marijuana and that from my training and experience as a law enforcement officer that flutter is from THC, the active ingredient in marijuana in a person's system. I turned to [REDACTED] who had been watching what I was doing and asked if she saw the flutter. Thomas immediately interrupted again telling [REDACTED] not to speak to me and hindering the overall investigation.

At this point I advised Thomas he was under arrest at approximately 2256 Hrs, 11 minutes after the traffic stop started, for failure to obey a police officer and hinder a criminal investigation. I had Officer Michael escort him to our patrol vehicle to get him out of the area.

After Thomas was gone I began speaking to [REDACTED]. Without Thomas there [REDACTED] admitted to "being around marijuana" but would not say who had been smoking it. [REDACTED] also changed his story and admitted to consuming alcohol.

Officer B. Roberson responded to conduct an impaired driver investigation. Officer Roberson advised me he did not believe [REDACTED] was impaired and could drive.

I then asked [REDACTED] what Thomas' problem was. [REDACTED] advised me that he believed I "came off strong at first". He stated that Thomas is from PA and they would not have conducted a traffic stop like we did for a light being out. He also stated that Thomas is extremely educated but is from the inner city of PA and has been dealt with by police differently. [REDACTED] then made a statement, "But that is no excuse. Just cooperate and we would be out of here." [REDACTED] then turned to [REDACTED] and advised that his whole family has a gene that makes them aggressive and he is just glad he did not get it.

Due to the fact this traffic stop was almost 35 minutes old I did not want to fringe on [REDACTED] civil rights just because of the actions of Thomas so I told [REDACTED] he and [REDACTED] were free to go. However due to this I forgot about the cup I found on the floorboard at Thomas' feet that I believed contained alcohol and did not investigate further the possibility of marijuana being in the car.

Warner requested to speak to Thomas at the patrol vehicle. I said he could follow me and I would allow that as long as he did not reach into the car. I escorted [REDACTED] to my marked patrol vehicle at 3rd Ave and Buckboard Tr where I planned on completing the booking paperwork.

[REDACTED] spoke to Thomas which I did not listen to. While [REDACTED] was speaking to Thomas [REDACTED] apologized for Thomas actions stating, "He was out of control." [REDACTED] then asked me what was going to happen. I told [REDACTED] Thomas would be held in-custody since he was providing an out of state address. [REDACTED] explained that Thomas was in AZ to visit his brother in prison. He stated Thomas' brother was just recently transferred from a PA prison to Safford prison. [REDACTED] stated he believed that could have also played a role in Thomas' actions tonight. [REDACTED] also stated that Thomas is a very educated person but "plays around a

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lot" and does not know when to quit.

I read Miranda per standard issued Miranda warning card to Thomas at approximately 2336 Hrs while he sat in the back of my patrol vehicle. Thomas refused to look at me or acknowledge me. He made no statement.

Once I completed the booking paperwork I then transferred Thomas to transport Officer C. Burnett for transportation to the Scottsdale City jail.

At approximately 0542 Hrs I contacted Thomas who was in his cell. I re-read Miranda per standard issued Miranda warnings card. Thomas stated, "Yes" to understanding his rights and did not request a lawyer be present during questioning. In conversation with Thomas he vented at first. All he would say is that I intimidated him, that I put him in fear of his life and that I used terroristic tactics to control him. I asked Thomas how he could be in fear when he never followed one direction and controlled the traffic stop until he was arrested and removed.

Thomas again spoke about me intimidating him and then stated that I was mad because "instead of me doing what is normally done I did what I did." Thomas believed that he was calm the entire time and that he had a right to question me about my actions and my authority. He kept stating, "You got mad when I started making statements about your badge and gun. Tell me is that when you got mad?"

I eventually agreed with Thomas when he made a statement stating that I mis-read the situation after hearing him tell another person in the cell that made a comment twice that it was because Thomas was black that that was not the case. I told Thomas that did not excuse his behavior or his actions. After doing this Thomas seemed to calm down and not be as angry.

At the end of our conversation I told Thomas that there were things neither one of us will agree on and I was not going to argue with him over those things anymore. Thomas stated, "I was wrong for what I said about your badge and gun. I know that now."

Thomas and I ended our contact with a handshake.

Upon successful completion of the booking process Thomas was held in-custody to see a judge from the Scottsdale City Court for S.R.C. 19-13 Failure to Obey a Police Officer.

Please see all involved officers supplements.

I took no further action.