



Police Department

Nannette H. Hegerty  
Chief of Police

March 28, 2005

Alderman Michael D'Amato, Chair  
Judiciary and Legislation Committee  
200 East Wells Street – Room 205  
Milwaukee, WI 53202

Dear Alderman D'Amato:

This letter comes in response to your concerns regarding the arrest of Mr. R.L. McNeely by Police Sergeant Kimberlee Foster and Police Officer Szidon McNulty on July 9, 2003.

In your letter, dated February 25, 2005, you cite the fact that the City of Milwaukee has paid a \$20,000 settlement to Mr. McNeely. You indicated that the Judiciary and Legislation Committee felt the actions of the officers could have been avoided, thus protecting the City of Milwaukee from making a monetary settlement. I share your concern in this matter and have reviewed the internal investigation into this situation.

On August 13, 2003, the Milwaukee Police Department received a citizen complaint report from Mr. McNeely, listing twenty-eight points of contention regarding his arrest. Deputy Inspector Vincent Flores, then a Captain and the commanding officer of District Five, reviewed the complaint and recommended that the matter be placed on file, as no rule violations were evident. Mr. McNeely's complaint, along with the commanding officer's recommendation was forwarded to Inspector Steven Settingsgaard, then a Commander of Police and the commanding officer of the Internal Affairs Division (now the Professional Performance Division). Inspector Settingsgaard caused an internal investigation to be conducted.

The internal investigation revealed that Officer McNulty lawfully stopped Mr. McNeely for a charge of Unsafe Lane Deviation and Unreasonable and Imprudent Speed. Officer McNulty requested a fingerprint from Mr. McNeely, which is required under the Standard Operating Procedures of the Milwaukee Police Department. Mr. McNeely refused to provide a fingerprint for the citation, and became belligerent and uncooperative according to Officer McNulty. When a cited person refuses to provide a fingerprint, the issuing officer is required to consult with his or her immediate supervisor, which in this case was Sergeant Foster.

Officer McNulty had placed Mr. McNeely under arrest for his traffic violations and Obstructing an Officer. Based on the probable cause standard, the arrest was legal per Wisconsin State Statute 968.07 (Arrest by Law Enforcement Officer). Arrest for "fine

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only" offenses is not prohibited constitutionally. In *Gail Atwater, et. al. v. the City of Lago Vista, et. al.* (U.S. Supreme Court, Writ of Certiorari, 99-1408), it was held that probable cause is the measure of permissibility of an arrest, and the commission of an offense in the arresting officer's presence is the strongest possible case of probable cause.

When Sergeant Foster arrived on the scene, she spoke with both Officer McNulty and Mr. McNeely. In an interview with internal investigators, she indicated that she smelled the sweet odor of alcohol on Mr. McNeely's breath, and observed him leaning against his auto as if he needed to support himself. She also stated that he stumbled when walking. She also indicated that Mr. McNeely was uncooperative with officers, which is often the case with persons under the influence of intoxicants.

Sergeant Foster reported that the totality of her observations, coupled with her training and experience, led her to believe she had probable cause to arrest Mr. McNeely for operating an automobile under the influence of an intoxicant. She indicated that she had asked Mr. McNeely if he was sick or had been drinking, and he replied to her that he was not ill and he does not drink.

When Sergeant Foster made her decision, it was rooted in the reasonable officer standard of probable cause. The State of Wisconsin Law Enforcement Officer Handbook defines probable cause for an arrest as "that quantum of evidence which would lead a reasonable police officer to believe that the defendant committed a crime." The Handbook instructs officers that probable cause is more than a hunch, but less than to convict at trial. Sergeant Foster believed she had the probable cause needed to make the arrest, an action taken in good faith.

Once Mr. McNeely was at the District Five police station, Police Officer Roy Meinzer placed him under a twenty-minute observation period, which is a required procedure for arrests related to operating under the influence of an intoxicant. Officer Meinzer reported that during the observation period Mr. McNeely was belligerent, sweating, and had bloodshot eyes. Officer Meinzer stated that it was his job to run the intoximeter, and during his observation period he did not notice signs of intoxication on Mr. McNeely, but due to his behavior he did believe that Mr. McNeely was possibly under the influence of some other drug.

Police Officer Ronald Brown filed an affidavit regarding the arrest of Mr. McNeely. In that affidavit, he supports the claims of Mr. McNeely, refuting the events as described by other officers. Although this affidavit is a sworn and notarized document, it does not mitigate the fact that two other officers and a supervisor provided statements that were contradictory to the claims of Mr. McNeely and Officer Brown's affidavit.

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Upon careful review of this matter, the commanding officer of the Internal Affairs Division ordered that the matter be closed with a disposition of not sustained, meaning that there is insufficient evidence to either prove or disprove the allegation. The level of proof needed to sustain a rule violation is preponderance of evidence.

Although the circumstances surrounding the arrest of Mr. McNeely may have been less than ideal, it was determined that the officers acted within the scope of their legal authority. Officers making arrests, when acting in good faith, are protected by Wisconsin State Statutes. To discipline officers contrary to the protection afforded them by law, would be inappropriate, when the preponderance of evidence is lacking that they committed a rule infraction.

Lastly, the prosecutorial decision not to issue charges against Mr. McNeely does not factor into the legality of the actions of the police officers involved when making the arrest. Therefore, based upon the totality of the circumstances, disciplinary action was not imposed against officers involved in this matter.

Sincerely,



NANNETTE H. HEGERTY  
CHIEF OF POLICE

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