

Clinton County Sheriff's Office

Report of Investigation

03-03-2022

On the above date I received from Col. Prickett a request from Mayor Kathi Stone of New Vienna, Ohio to do an internal investigation into 2 incidents that had taken place involving the New Vienna Police Dept.

The first incident involves an arrest of Frank Music on February 28th 2022, and the second incident is a tasing that took place on February 1st 2022 involving William Cluxton. I will be looking into the tasing first, do to Mr. Cluxton having filed a complaint on Chief Pate.

I took the initial paper work to the prosecutors office for review as there is the possibility of criminal charges, and another agency would need to look into that. I was advised to go ahead and do the internal and the case would be reviewed and a decision made at that time on the criminal investigation.

On 3-8-2022 I called Mr. Cluxton but received no answer. On 3-9-2022 I received an email from Mr. Cluxton asking about the investigation, I advised him that I had been doing preliminary work on the case and I would be in contact with him next week.

On 3-11-22 I received information that Chief Pate had a use of force investigation involving the use of a taser on an individual at Addyston PD where he had previously worked. I attempted contact with Addyston PD no answer. I also made contact with Brett Rudduck who is the solicitor for the village of New Vienna. I asked him for copies of all policies and procedures for the Police Dept. He also gave me New Vienna PD website newviennapolice.org.

On 3-14-2022 called Mr. Cluxton and made an appointment to meet with him at his home on 3-15-2022 at 1:00 pm.

On 3-15-2022 I called Addyston PD. I had to leave a message with Hamilton Co. S.O. dispatch to have the Chief call me.

I responded to 120 Church St. in New Vienna. There I met with Mr. Cluxton and his daughter, I explained that the Sheriff's office would be doing the internal investigation on his complaint and after review of all facts there was a possibility of criminal charges then another agency would handle that investigation which is separate from mine. I asked him to tell me about what had occurred. He advised that he had already written out a statement and asked if he could read it to me, and was becoming emotional, I advised him that would be fine.

He advised he was at 140 Church St. which he owns and uses the house as a workshop. He was sharpening chainsaw chains when he observed 2 police cars stopped in the middle of the street. He advised that he walked to the fence while remaining on the inside of the fence. He advised that officer

Pate got out of his cruiser and asked if this was his car referring to a white Subaru parked on the side of the street, Mr. Cluxton replied yes. Officer Pate stated that Mr. Cluxton had 24 hrs to move it or he would have it towed, Mr. Cluxton felt that was said in a very aggressive manner. Mr. Cluxton stated you can't do that, to which Officer Pate stated I'll have towed right now. Mr. Cluxton replied no you can't! You better be careful. Mr. Cluxton advised that Officer Pate turned and advanced to the open end of the fence and stated I can do it right now. Mr. Cluxton once again stated You better be careful! Referring to Officer Pate's aggressive and rude treatment. Mr. Cluxton advised that Officer Pate continued around the fence onto his property located at 120 Church St. New Vienna, Ohio. Mr. Cluxton told him that he can't come into his yard its private property, but he kept advancing towards him. Mr. Cluxton kept asking what he had done wrong, was he under arrest? What was he being arrested for? All while backing up the fence line. Once again Mr. Cluxton began asking if he was being arrested and what he was being arrested for. He advised that Chief Pate did not respond, but continued advancing towards him and attempting to grab his wrist, all while Mr. Cluxton was walking backwards. Mr. Cluxton states that Chief Pate said you're resisting, stop resisting! Mr. Cluxton states he once again asked what he had done and why was he being arrested with no response from Chief Pate nor the second officer that had come into the yard. Mr. Cluxton states that both officers attempted to gain control over him while he was backing up. Mr. Cluxton advised that Chief Pate drew his taser and fired at him from a distance of approx.. 4 feet, Mr. Cluxton pulled the wires out, he went onto say that Chief Pate loaded another cartridge and fired again from the same distance, Mr. Cluxton once again pulled the wires out, at which time he was grabbed from behind and thrown down to the ground by officer Peters. He stated that officer Peters grabbed his left arm and twisted it behind his back and then did the same with his right arm. He states Chief Pate grabbed his left arm to continue straining him and stated stop resisting. Once again Mr. Cluxton asked if he was being arrested and what for with no response from either officer. Mr. Cluxton stated that that he backed up approx.. 80 feet on his property and the whole thing lasted approx.. 30 seconds.

Mr. Cluxton states that handcuffs were placed on him, behind his back and he was stood up. He was then forcibly walked back down the yard by both officers, and once again asking if he was being arrested? What he did wrong? And why are you doing this. Mr. Cluxton did ask if they would secure his dog that was running free in yard and lock his house. He stated Chief Pate stated no and jerked his arm. Mr. Cluxton stated that Officer Peters did finally get his keys and secured the dog and locked his house.

Chief Pate walked Mr. Cluxton to the cruiser and asked for his ID, once again Mr. Cluxton asked if he was being arrested, what he had done and why are you doing this. Chief Pate once again asked where is his ID and Mr. Cluxton replied in my back pocket, at which time Chief Pate reached into his back pocket and forcibly removed the wallet. He was then forced into the cruiser and with the door open, Chief Pate searched thru his wallet. Chief Pate kept his wallet and got into the drivers seat of the cruiser. Chief Pate and Officer Peters pulled the cruisers out of the street which had traffic backed up both ways. The ambulance arrived and the remaining barb from the taser was removed. Mr. Cluxton states that he was placed back into the cruiser, and the two officers stood at the back of the cruiser and talked for 3 to 5 minutes. The tow truck arrived and the driver was instructed by chief Pate to take to the impound lot.

Mr. Cluxton advised to have towed to his rear yard and the tow bill sent to him, Chief Pate said no its going to Impound.

Mr. Cluxton advised that the two officers talked, and Chief Pate opened the door and stated, you have two options you can go to jail right now or he would take me to the hospital for a psychiatric evaluation. Mr. Cluxton replied he was not having a psychiatric evaluation. Chief Pate stated, you can go to jail right now or I will take you to the hospital and have you pink slipped. Once again Mr. Cluxton advised he was not going to have a psychiatric evaluation.

Mr. Cluxton states that the Mayor (Kathy) pulled up in her car and stopped, the cruiser door was shut and the two officers walked over to her car where they talked for several minutes. Chief Pate then walked over to Cheryl Mongold's house who is his estranged sister, she came over to the cruiser with Chief Pate who opened the door of the cruiser. His sister asked what was going on? To which he replied this guy has gotten out of hand. Chief Pate then said once again I am going to take you to jail right now or I will take you to the hospital for a psychiatric evaluation to which Mr. Cluxton responded, Take me to jail. Chief Pate responded I will have you pink slipped and they will keep you for 3 days. Once again Mr. Cluxton stated that he was not having an evaluation. Officer Pate looked at Cheryl then turned towards Mr. Cluxton and said, Okay I will release you into Cheryl's custody and she will take you directly to the hospital for psychiatric evaluation, Mr. Cluxton responded take me to jail. The cruiser door was closed. Both officers returned to the Mayors vehicle and talked for approx. 8 to 10 minutes, Chief Pate returned to the cruiser and drove to the New Vienna Police Dept. Once at the Police Dept. Officer Peters got in the front passenger seat. Chief Pate began driving and stopped in front of Mr. Cluxton's restaurant. The Officers made some small talk with Mr. Cluxton thru the screen window. He advised they asked if he was reopening the restaurant, how much Officer Peters liked the food and how Chief Pate wished he could try the food. Mr. Cluxton advised he participated in the small talk that went on for about 5 minutes.

Chief Pate stated that they had decided not to arrest him and they would take him to get his car from the impound lot. Both Officers exited the vehicle and opened up the rear door, removed the handcuffs and gave his keys and wallet back to him. Chief Pate advised they would take him to the impound lot to get his vehicle, Mr. Cluxton he believed the keys were at his house. He was taken to his house to get the keys, they went to the impound lot where he was directed to drive his car which had the expired tags on it and follow them to the Police station. He complied. He was charged \$180.00 for the impounded vehicle, cash was paid and a receipt given.

I had Mr. Cluxton take me outside and show me where this occurred, he went thru the whole incident step by step. He also told me about a short video that was taken by a UPS driver that was waiting in traffic due to the cruisers blocking the street, I advised him to send that to me along with his statement. While there I also collected a used taser cartridge. I will note that during his statement he became very emotional.

03-16-2022

Responded to 120 Church St in New Vienna, picture were taken with Oscar 360 and still camera of the area where the incident occurred.

03-24-2022

Went to Addyston PD and met with Chief Pennekamp I advised him that I was doing an internal investigation into Darnell Pate and understood Mr. Pate had been in some trouble while he was an officer with their dept.. He advised that Darnell Pate had represented to businesses in the area that he had a k-9 that is working for the village of Addyston, and had received dog food and grooming from area businesses. This was done without the authorization from the Chief or counsel of Addyston. Mr. Pate was placed on unpaid Administrative leave on May 10, 2021.

Chief Pennekamp went onto say that there was another internal investigation of Mr. Pate for a use of force involving a tasing incident, that occurred on April 27, 2021, in short thru the investigation it was found that there was no basis for the arrest, and had he not been put on unpaid administrative leave on 5-10-2021, the investigating officer had recommended training in the areas of communication and de-escalation techniques as well as a refresher course focusing on the legal aspects of police work and establishing probable cause. It was also recommended that Mr. Pate receive additional Use of Force training with a focus on handcuffing non-compliant subjects and control/takedown maneuvers. It was recommended that Mr. Pate be suspended for a minimum of three days. I will note this investigation was completed on 5-11-2021 a day after Mr. Pate was placed on unpaid Administrative leave. Copies of the administrative leave, the use of force investigation and thumb drive with the use of force video are attached to this case. I will also note that Mr. Pate had received counseling for similar incidents in the past according to the use of force investigation.

03-29-2022

Made contact with Zach Docter at UPS. I introduced myself and let him know why I was there. I advised him I had the last 10 seconds or so of his snap chat of the altercation on Church St., I asked if he had the rest of the video, he replied that he did not. I asked if he could recover it and he advised that he had tried but was not able to. I asked Zach to tell me what he saw.

Zach stated that he was a UPS driver and was out making deliveries. He was on Church St. in New Vienna and had to stop due to 2 Police cars blocking the road. He stated that they began talking to an older man in his front yard.

Zach stated they talked for about a minute before the officers attempted to detain him. Zach states that the older man was shouting and trying to pull his hands from behind his back as both officers struggled with him. Zach went onto say that once that began he pulled his phone out and recorded the altercation on snap chat. He stated they quickly tazed him and he fell down and was handcuffed. Zach could not hear what was being said.

04-13-2022

On the above date I spoke to Chief Vincent Demasi of the Mt. Healthy Police Dept.. I advised him I had heard of an incident involving Chief Pate and a New Vienna Police Dept. unmarked vehicle.

Chief Demasi advised that they had received a call from a security guard at the Reminisce bar, he advised that this area has several bars and is a trouble area for shootings. The guard advised of a explorer that had been picking patrons of the bar up and releasing them after sitting stationary for a short period of time. The Mt. Healthy officers made contact with the subject patrolling in the lot of the Hilltop Plaza in a Grey late model Ford Explore, the vehicle had no license plates or Police markings. Mr. Darnell Pate Jr was found to be operating the vehicle and advised that he is the Chief for the village of New Vienna and the vehicle was his take home cruiser.

A copy of the report was emailed to me.

05-12-2022

On this date I met with Chief Darnell Pate at the Clinton County Sheriff's Office, I took him into the interview room, tape was turned on.

I Handed Chief Pate a Garrity form and asked if he had ever been read Garrity and he advised no, I read the Garrity form to him and he signed the form. I advised him that I wanted him to tell me what had occurred with Mr. Cluxton. He advised counsel wanted him to start enforcing vehicles sitting around unlicensed and had been expired for awhile. He advised he saw the car and stopped to check it out. He advised a subject who was in the yard stopped and looked at him. Chief Pate asked if this was his car, Chief Pate advised that the subject started to get upset and said yes why, Chief Pate advised that he stated the registration had been expired since September of last year so you have 24 hrs to correct it or the vehicle would be towed. Mr. Cluxton became more upset and said something about your kind. Chief Pate asked for Mr. Cluxtons ID, at this point Chief Pate approached the sidewalk near the fence towards the end of the fence, with Mr. Cluxton on his property and the Chief still on the sidewalk side of the fence. Mr. Cluxton stated he was not giving him his ID. Chief Pate walked towards Mr. Cluxton now entering onto Mr. Cluxton's property and stated he needed to see his ID or he would arrest him for obstruction. Mr. Cluxton swung his arm and Chief Pate felt he was throwing a punch at him, he blocked the punch and drew his taser and sometime during the struggle Sgt. Peters came over to assist and Mr. Cluxton was tased during this time, the first time the probes didn't stick, he still didn't comply and after the second taser he still was fighting and with Sgt. Peters help they were finally able to get him cuffed. He advised he called for a squad do to the tasing to have Mr. Cluxton checked, EMS checked him. Chief Pate states he then called the mayor to advise her of the situation. He advised she came to the scene at which time she advised that Mr. Cluxton was having some issues and had been angry. The Mayor suggested talking to Mr. Cluxton's sister, who lives across the street. Chief Pate states that he talked with the sister and explained what had happened. His sister advised him that he has been angry lately and has some issues. Chief Pate told her that he didn't think arresting him would help. Chief Pate stated he thought maybe Mr. Cluxton should talk with someone at the hospital about his mental state. His sister attempted to talk with him but he refused. Chief Pate advised Mr. Cluxton that if he didn't go with his sister, that he would take him to jail or the hospital. Chief Pate advised he talked Mr. Cluxton into going to the hospital. Chief Pate advised that they started towards the hospital and stopped at Main and

N. South St and talked to him for approx. 10 mins. Chief Pate stated that Mr. Cluxton talked about being upset lately do to his Father passing and some other issues, Chief Pate asked Cluxton if he would take himself to the hospital and he stated yes. Mr. Cluxton then asked what he had to do to get his car back. Chief Pate explained the process. Chief Pate states that Cluxton paid to get his car out of impound and stated that he was going to get the new registration sticker. Chief Pate took Cluxton to the impound lot to retrieve his car. Chief Pate allowed Mr. Cluxton to drive the vehicle with expired tags to the alley behind Mr. Cluxton's house.

I asked how many times he tased Mr. Cluxton and he advised twice, I then referred to his statement he gave at the time of the complaint on him and that he said at that time he blocked his punch and drive stunned him then when he kept resisting, he shot him with the prongs two more times, I asked how he blocked the shot, because it takes two hands to take the cartridge off. Chief Pate could not really explain how the initial drive stun happened.

I asked Chief Pate why he entered onto the property, he advised that he had asked Mr. Cluxton for his ID several times, and he had refused. He then went around the end of the fence, at which time Mr. Cluxton advised him to get off his property numerous times, Chief Pate advised I have a right to be on your property I've asked for your ID and I'm arresting you for Obstruction of Justice, at that time I advised Chief Pate that Mr. Cluxton did not have to give him his ID, so with no criminal action Mr. Cluxton should not have been arrested for obstructing justice, in which case the tasing and physical arrest never would have happened, but it did happen and that's a problem. I asked if he did a use of force on the incident and Chief Pate replied no, do to the paperwork process situation there. I asked to clarify and he said being able to find the correct papers, He advised he is now in the process of looking into updating policies and paper work.

FINDINGS

- 1) It is apparent that there was no basis for Mr. Cluxtons arrest which causes everything else that occurred to be null and void which opens Chief Pate to possible criminal charges and Chief Pate and the village of New Vienna to possible Civil Litigation.
This case is almost identical to an incident that occurred at Addyston P.D. Where a subject was arrested and tased and was later found that there was no basis for the Obstructing Official Business arrest which again makes everything null and void. In this case, a three day suspension along with communication and de-escalation techniques, a refresher course focusing on the legal aspects of police work and establishing probable cause, and additional training on use of force, with a focus of handcuffing non-compliant subjects and control take down maneuvers. This action was not issued to Chief Pate due to Chief's Pate's dismissal from the Addyston PD for other violations.
- 2) Second issue is that after telling Mr. Cluxton he was under arrest, fighting and tasing him, Mr. Cluxton was released and never charged. I can't even begin to understand this thought process
- 3) Third Mr. Cluxton's vehicle had expired tags on the vehicle and was told he had 24 hrs to take care of the vehicle. Chief Pate then has it towed. After the incident Chief Pate has Mr. Cluxton pay for the tow and impound fee, takes Mr. Cluxton to the impound lot and allows him to drive

the vehicle home. Chief Pate can't allow him to operate the vehicle on streets, especially after just having the vehicle towed for being parked along the street for expired registration.

Since I talked to Chief Pate I received another complaints. One from a Tim Hamilton that stated he was pulled over by Chief Pate on 01-27-2022 for expired registration. He was pulled over near Strebers Market. He advised the outcome of the stop was he was allowed to drive to Strebers to get cash from the ATM for his tow bill and impound, the tow driver showed up took a picture of his truck and left. Mr. Hamilton payed the Chief cash and got a receipt. Mr Hamilton was allowed to drive off.

The second complaint is more towards Sgt. Peters, but one of the comments that was made to Ms. Dunlavey was that Peters bragged about tasing a 70 year old man. Ms. Dunlavey took exception with Sgt. Peters laughing about it. She explained she is a nurse and has a soft spot for elderly people. Sgt. Peters told her the 70 year old man called Chief Pate the N word and started throwing his hands around, so the Chief tased him.

During my conversation with Sgt. Peters he stated to me that Chief Pate tends to get mad before he thinks.

Conclusion

A Chief should be held to a higher standard. He should be knowledgeable in laws, his Departments policies and procedures. Its apparent the Chief has no idea of the correct interpretation of law and how to put into use, or not put into use. It seems that he has a pattern of acting before thinking which is not a good attribute and could be dangerous in certain situations.

When it comes to traffic violations, once the officer is aware of a violation the subject is stopped for the violation, he does not have to cite, but you cannot allow that subject to leave and knowingly allow the subject to continue to break the law. Taking money for an impound and tow that never occurred could be considered Fraudulent.

I feel that Chief Pate is a liability for the Dept.

I will be speaking with the Prosecuting Attorney about opening up a criminal investigation into this complaint and other actions of the New Vienna Police Dept.

Frank Music Arrest

After concluding the Cluxton Interview with Chief Pate we moved onto the arrest of Mr. Music and the circumstances leading up to it. I asked what he knew about the case.

Chief Pate advised that he was advised by Sgt. Peters of the investigation concerning the two trailers on College St. in New Vienna. He advised that Sgt. Peters and himself went to the Prosecutors office and met with Mel, Danny, Rob and two others. Sgt. Peters explained the case. Mel said that they had probable cause to arrest. Mel told them to make sure they do it on a Friday around four so we can have the charges by Monday, after you interview him while he is in jail, (this didn't make much sense to me). Mel said to go to his house and take the Sheriff's office and if he was not at home go to his work.

They went to Mr. Music's home, they were told he was not there. Sgt. Peters interviewed female subjects there including a juvenile female who they didn't think was telling the truth due to facial expressions. They asked where Frank was and the Female advised he was at work. Law enforcement left and went to Franks work at PC connection. Upon arrival it was found that Frank was at lunch and should be on his way back. Units went to the parking lot to await his arrival. Units were made aware that Frank could possibly have two firearms in the vehicle. Frank pulled in and units approached at his car. Chief Pate assisted in the arrest along with Sgt. Peters. Chief Pate advised he stayed at the car with Mr. Music, Chief Pate asked about the guns, Mr. Music advised they were in the car. Chief Pate advised that he was going to put them in his car for safe keeping. Chief Pate said that Frank was cooperative thru out the contact. I asked about the car being towed, Chief Pate advised to his knowledge he was told that PC connection did not want the car to stay there. I asked why New Vienna PD towed the vehicle because I could not see where they had any authority to do so. Chief Pate advised he had no answer for that except he knew somebody said they did not want it there. (as a side note after reviewing Wilmington PD video, the security guards told them it was okay for the vehicle to stay.)

I asked what happened to the guns that he took. Chief Pate advised that while at New Vienna PD with Frank that he Showed Frank the locker he was securing them in and that once he was out of jail he could come back and get them, that they were only being kept for safe keeping.

I asked about bodycam footage from Sgt. Peters on the music arrest. Chief Pate stated that he did not think he had one. I advised that during the review of Wilmington PD body cam footage Sgt Peters was observed in a conversation and shutting it off. I asked for a copy of the bodycam that Sgt. Peters had on. Chief Pate advised he should be able to get it, that he will have to check and see which system it is on due to recently switching programs.

Prosecutors statements

I reviewed the statements from everyone that was in the meeting at the Prosecutors office. In short Sgt. Peters and Chief Pate were advised that they did not have any felony charges, but they had possible misdemeanors charges gave them the section numbers and told them they to right them down, they would need to type the charges, submit them to Municipal court for a warrant, before they could arrest him. Sgt. Peters and Chief Pate indicated they were going back to New Vienna PD to do the charges and then get their vests and cruisers.

Findings

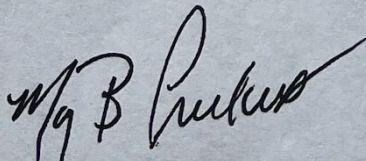
- 1) That Chief Pate and Sgt. Peters did not follow the instructions of the Prosecutors office that were given concerning the Music case
- 2) That they were out of their jurisdiction when a illegal warrantless arrest was made
- 3) That they took control over Mr. Music's property without the appropriate authorization.
- 4) Under Garrity Chief Pate and Sgt. Peters were asked for a copy of the bodycam being worn by Sgt. Peters, and to this date 6-2-2022 I have not received it. Which under the rules of Garrity constitute Insubordination

Conclusion

Chief Pate did not follow instruction given to him and Sgt. Peters by the Prosecutor's office, and has caused a illegal warrantless arrest of Mr. Music. These are all fundamental rules that each Law enforcement officer deals with on a daily basis. They should know this.

They took control over Mr. Music's property without his consent or the legal right to do so. Finally under Garrity if asked about something or asked for something involving the investigation the officers must answer or provide items that was asked for. I asked both Chief Pate and Sgt. Peters for a copy of the body cam and as of this date I have not received it. This is insubordination and is an offense that they can be let go for.

These two Officers have left the Village and themselves in a very bad situation legally. I recommend that disciplinary action be taken up to and including termination.



Major B. Prickett