

Cocoa Police Department Investigative Report



Complaint Number:

18-08-IA

Date of Occurrence:

February 19, 2018

Date Complaint Filed:

February 23, 2018

Start Date:

February 27, 2018

Closing Date:

May 22, 2018

Location:

1723 Dixon Blvd

Allegations:

Burglary, trespass, Battery, Excessive use of force, false arrest

Criminal Statute:

810.02, 784.03, 810.08

Complainant Name:

Employee Name:

Officer's George Menendez & Jerry Nava

Investigator:

Lieutenant Patrick Dovale

Disposition:

Sustained

Summary of Alleged Misconduct:

The complainant,	alleges in sworn citizens complaint form dated February 23, 2018 that
on February 19, 20	118, Officer Menendez, threatened her with arrest if she did not tell him her son's name
He then entered h	er residence uninvited and without a warrant. He then used excessive force to arrest
her without probal	ble cause and threatened to tase her by putting his taser on her face while it was turned
on.	also alleges that during the excessive use of force, she defecated on herself and Officer
Menendez did noti	hing to help her clean herself. stated that this all happened in front of her juvenile
children.	

Investigation:

On February 23, 2018, Chief Cantaloupe directed me to initiate an investigation into the alleged misconduct of Officer's George Menendez and Officer Jerry Nava. On February 26, 2018, Officer's Menendez and Nava were both noticed with a notification of charges/allegations form, which will be attached to this report. The alleged misconduct was a violation of Florida State Statute 810.02, 784.03, 810.08 and General Orders 210 and 600. They were both placed on administrative duty pending the results of this investigation.

Along with the chief's request of investigation, additional paperwork included was a packet that contained a memorandum from Sergeant Worthy to Major Hankins, body camera footage and case reports of the incident. Sergeant Worthy's memo stated that he was checking off on Officer Menendez's arrest report, and became concerned that there wasn't probable cause for the arrest. Sergeant Worthy then consulted with the state attorney's office. They Sate attorney's officer recommended that they release with a notice to appear on the resisting without violence charges.

Chief PC

There was body camera footage of the incident from Officers Menendez, Nava, Torello, Kelly, and Carpenter. I also retrieved the 911 call and the radio traffic from the incident.

A review of the radio traffic revealed the following:

At 2:40 pm an anonymous female called 911 to report a large crowd of people having a dispute and that a black male had a black handgun in his hand. The caller stated that the incident occurred twenty minutes prior to her call. In another 911 call, another female is requesting medical and police for the same incident. She stated that there was a fight between several boys and one of them had a knife. At 2:40 pm, Officer Menendez, (further referred as Menendez) and Officer Nava (Further referred as Nava) are dispatched to the call. Dispatch updates officers and advises them that there is a twenty-minute time lapse since the incident occurred. Menendez then cancels Nava and advises he will do an area check. At 2:44 pm, dispatch then advises Nava to continue responding to the call due to several additional 911 calls coming in for the same location. A 911 caller then notifies dispatch that there is a victim at apartment that is "cut up". Officer Torello (further referred as Torello) then notifies dispatch that she is in route to the call as well. At 2:49 pm Menendez advises that he is following a Honda to a section of the apartment complex to meet with one side of the disturbance. He tells Torello to go to apartment and speak to the victim. At 2:52 pm Torello advises Menendez that the victim in apartment does not want to talk to police and does not want medical help. It should be noted that at that specific time, body camera footage from Menendez shows him telling the complainant, that if she doesn't give him her son's name, he is going to arrest her for obstruction. Menendez never acknowledges Torello's transmission that the victim does not was to cooperate. At 2:53 pm Menendez keys up his radio and you can hear that there is a struggle.

A review of Menendez's body camera video revealed the following:

Menendez's video starts with him pulling into Village Green apartment complex located at 1713 Dixon Blvd. Menendez makes contact with a black female standing outside the complex. The unknown black female tells Menendez that she called 911. She then tells him that a bunch of boys jumped her nephew. Menendez points to several children standing with the female and asks, one of them? She responds, no, he is in the house. She then tells Menendez that her sister is driving over to an apartment at 1723 Dixon where the suspect is supposed to be. Menendez and Nava drive to 1723 Dixon Blvd. In the video you see a vehicle parked in the middle of the road and a black female is half out of her car speaking to another black female upstairs in apartment later identified as the complainant, Menendez does not speak to anyone at this point, and then walks upstairs and positions himself to hear what both parties are saying. Menendez then asks the female in the vehicle downstairs, "where is he", referring to the suspect. The female answers, I don't know, his name is supposed to be Menendez then asks the sif she knows the suspect, and she says no, he doesn't live around here, he is from Crosswinds. At that time, Nava walks up and asks, "Who got cut up"? Menendez says, "no, the victim is in the suspect was supposed to be here". Nava then asks, "So what do we have here"? Menendez says, no, the suspect was supposed to be here, but he's not here. At that time, both Nava and Menendez turned to walk away, until the female in the vehicle points back to was her son, referring to son. At that time, Menendez re-directs his attention back to is standing in her apartment in the doorway and asks her, "Who's your son"? then tells Menendez that "He doesn't live here". Menendez replies, that's not the question. He, again asks for her son's name tells him that he doesn't live here. Menendez then says, "Ok, a third time, if I find out that someone is stabbed, I'm going to charge you with a felony charge of obstruction". Menendez that her son does not live here, Menendez then puts his pen in his pocket, and motions to get his handcuffs to arrest need to handcuff you in front of your kids"? askes him, "why would you do that"? Menendez, raises his voice and says, "I'm asking you a name, and you're not giving it to me"! then says, that's my son

and he doesn't live here. Menendez, again puts his pen in his pocket and makes the motion to arrest
then says, it's Menendez then states, "Was that so hard". then says
that she doesn't feel like she has to tell on her son when he doesn't live with her. Menendez says,
absolutely you have to tell on him in a felony investigation. At that point, juvenile daughter then
asks Menendez, so you were going to arrest her for not giving his name? Menendez says yes, and starts
to explain his reasoning to the daughter by asking her, if I asked you your brother's name, you're going to
tell me, I had to ask your mother five times before she told me. At that time, tells her son to get her
phone because she wants to call and speak to a police supervisor, Menendez then asks how to spell
the son's name. Menendez askes again how do you spell your son's name. At time, Menendez reaches for
arm in an attempt to arrest her. Immediately pulls her arm away and retreats further in the
apartment. Menendez enters the residence in attempts to arrest her. At that time, all the children start
screaming and crying while Menendez yells at to "Tell me his name, or you're going to jail".
tells Menendez to leave her house because he doesn't have a search warrant. Menendez replies, I don't
need a search warrant. And pushes his way past daughter and grabs her to put handcuffs on her.
The daughter then grabs her mother to prevent officers from arresting her.
onto the couch while both Menendez and Nava struggle to get hands behind her back. The struggle
residence. Menendez continues to struggle to secure and removes his Taser and sticks it on her
face, and states "you see this, you want to get tased"? The struggle continues until Torello arrives and
calms down both Menendez and so they can handcuff her. Menendez then secures
in his patrol car. Immediately after, Menendez addresses the crowd of approximately twenty people that
have gathered outside and starts to explain to everyone the justification of his actions and what just
occurred could have been avoided if she would have just answered his questions. Menendez then walks
back into the apartment to retrieve items that he dropped during the struggle. Menendez then makes
contact with two juveniles approximately five and seven years old in the apartment and apologizes for
what they had to witness and then starts to explain to them why he had to do what he did and then
schools them on how should have behaved when he asked her questions. One child then tells
Menendez that "She told you the name". Menendez then makes contact with Sergeant Rush (further
referred as Rush) on scene. Menendez explains to Rush that refused to give him "her" name and
then he went to grab her and she went into her house because she was obstructing a felony investigation
and he can go into her house. Rush never questions Menendez about entering the residence with just the
resisting charge. Menendez leaves out critical information explaining the call to Rush. He gives Rush the
impression that the suspect had a knife and he was at apartment and that's the reason why he was
at the apartment to begin with. At the 45:20 mark of the body cam video, Torello notifies Menendez that
accidently defecated on herself and Menendez acknowledges Torello. Menendez continues to
explain to other people on scene that brought this upon herself and she should have just given the
information to him. and her daughter are handcuffed and sitting in the back of the patrol car for a
total of thirty-five minutes on scene before Menendez transports them to the station. The body cam video
ends when they arrive at the station. While on station, is screaming in the holding cell and
Menendez turns on his body camera and makes contact with the booking.
she wants to speak to a supervisor. Menendez attempts to talk to her, buts continues to yell, so
Menendez walks away. Menendez forgets to turn off his camera and then takes a phone call. Menendez
tells the unknown person that he is stuck here with a "Nasty ass bitch, a stupid ass bitch, who ended up
shitting all over herself, all crying about a supervisor, I'm just like just shut up, dammit." Menendez then
realizes that his camera is recording and states, "Oh, my camera was on, I will probably get in trouble for
that".

Chief BC

A review of Nava's body camera video revealed the following: Nava's video reflects the same events as Menendez's video, just from a different angle until Nava handcuff's daughter and stands at the doorway with her. Nava is preventing anyone from coming into the apartment while Menendez attempts to arrest. While standing in the doorway, anothe female, later identified as (further referred as is next to Nava trying to see what is going on inside the apartment. Sees Mendez put his Taser to the face of and starts to yell at Nava that Menendez is going to tase her in the face. Nava draws his Taser and yells are to back up three times. Sooks down at the laser light of the Taser, then looks at Nava and starts to back up. Nava then fires his Taser striking. Officer Kelly arrives on scene and secures. Nava then secures in his patrol car. At that time Rush walks up to talk to him and he turns off his camera. Nava never turns his camera on again.
A review of Torello's body camera video revealed the following: Officer Torello arrives at apartment and is met by the victim's mother. She notifies Torello that he son does not want to talk to the police or want any medical help. Torello then notifies Menendez that the victim is refusing to cooperate over the radio. Torello then responds to Menendez and Nava's location to assist.
A review of Officer Carpenter's and Kelly's body camera videos did not reveal anything further that would assist in this investigation.
On March 20, 2018, I conducted a sworn, taped, statement with Officer Amanda Torello who stated that she was directed by Menendez to make contact with the victim. She stated that she made contact with the victim's grandmother who stated that he didn't want anything to do with the police and he refused to speak to her. Torello stated that she stated over the radio that the victim was uncooperative. She ther heard key ups on the radio and then dispatch trying to call Menendez. Menendez then asked for more units to respond, so Torello ran towards their location to assist. Torello stated that when she arrived Menendez was on top of the on the couch trying to get her handcuffed. Torello stated that Menendez was yelling at to put her hands behind her back, and was yelling that she couldn't move her arms because he was sitting on her. Torello moved some pillows from the couch and was able to get hands from underneath her. Torello confirmed that the notified her that she defecated or herself during the struggle and that she immediately notified Menendez, who was like "whatever". Torello stated that this was the extent of her involvement in the call and hat concluded the interview with Torello stated that this was the extent of her involvement in the call and hat concluded the interview with Torello
On March 20, 2018, I conducted a sworn, taped, statement with Sergeant Mark Rush who stated that after he made contact with Menendez on scene, he had concerns about the call. He stated that he was waiting to see Menendez's report before he questioned him further. He stated that Menendez was all over the place on scene, and he couldn't stand still long enough to get the whole story. Rush stated that he did hear Torello notify units over the radio that the victim was uncooperative and questioned Menendez about that. Menendez acknowledged and stated, "but he's a juvenile". Rush then stated that he told Menendez to get with his parents to see if they want to prosecute because as a juvenile, he can't make that decision. It should be noted that the victim was an adult. Rush did state that Menendez notified him about wanting to speak to a supervisor at the station, however he stated that it was very busy that night, and never had time. He also stated that Menendez told him the defecated on herself Rush stated that Sergeant Worthy did make contact with her. Rush stated initially that he felt Menendez had a terry stop situation at the time of the incident, however since then he stated that he did not, and it was more of a casual encounter. That concluded the interview with Rush.

Chief PC

On March 21, 2018, I conducted a sworn, taped, statement with Sergeant Alan Worthy (further referred as Worthy) who stated that Menendez came to him while at the station to look over his arrest report. Menendez also stated to him that wanted to speak to a supervisor. Worthy stated that he had concerns after reading the arrest report. Worthy did not read in the report where Menendez had probable cause to detail her. He then spoke to Menendez and asked him to walk through the call with him. Worthy asked Menendez if he specifically arrested her for refusing to answer her question, and Menendez stated yes. Worthy asked Menendez where did the think he can do that and he stated that there is case law that says it he is doing an in investigation, he is able to. Worthy then asked Menendez to show him that. Worthy then called the state attorney's office for advice. He was instructed by to release with a court date, because she hasn't reviewed the entire case. Worthy completed a memorandum of what occurred and provided copies of all reports and videos to Major Hankins for review. That concluded the interview with Rush.

On March 28, 2018, I conducted a sworn, taped, statement with Officer Jerry Nava. I provided Nava with the opportunity to review all the evidence that I had in this case. He also declined to have a representative with him during the interview. Nava signed, acknowledging his Garrity rights, which will be included in this report. Nava stated that he responded to the incident location because he heard that someone was possibly stabbed or cut. He pulled up to 1723 Dixon and walked with Menendez upstairs. He asked Menendez "what do we have here"? Menendez told him that the person was not here and that the victim did not want to talk to him. Nava then stated that they had nothing at that location and he started to make his way to the stairs to leave. Nava then heard Menendez raise his voice, so he walks back to the apartment. Nava stated that Menendez got angry over the not wanting to give Menendez her son's name. He stated Menendez started screaming at and tried to grab her. Nava tried to calm everyone down because he said it get very hectic very quickly. As stated earlier, Nava was able to secure daughter and stood at the entrance to prevent anyone else from entering. Nava stated that while he was standing at the door, a person who he thought was a male (later determined to be a female was getting upset with what was going on in the apartment and kept getting close to him. At that to back up several times at which time she did not comply. Nava un-holstered his point he told Taser and told again to back up. Nava said at that time, had her fists clenched and was sizing him up. He stated at that time, he felt his safety was in jeopardy and was was not listening to him to get back so he tased her. Nava did acknowledge that watching the video now, he saw that was actually backing up slowly prior to him discharging his Taser. Nava reiterated that there was chaos at the apartment, he had a juvenile detained he was holding and was not listening to his commands and he felt, at that time, that he needed to take control of the area for his safety and tasing justified. Nava concluded in the interview by saying he was mad at Menendez for the way he escalated the call to the level it went to. Nava stated that it should have never reached that level, and he blames Menendez for it. That concluded the interview with Nava.

On April 20, 2018, I spoke with Officer George Menendez, who provided a sworn, recorded statement. Menendez was provided the Garrity Warning; additionally, he requested that Al Boettjer be present as his union representative. Menendez was also given the opportunity to review the entire package with all of its contents. Menendez wanted on the record that he was under the impression that General Counsel Greg Forehand would be present with him today, however he sustained a back injury and was unable to attend. Menendez stated that he responded to a call at 1717 Dixon Blvd for a fight where someone was possibly stabbed and his investigation led him to apartment where he made contact with the complainant at that location. He stated that at that time of the incident he believed that by refusing to give him her son's name she was obstructing

a felony investigation, and that she was committing the offense of felony resisting but he now realizes that he was wrong. Menendez states that his intention was to grab her and pull her outside to detain her or just to continue talking to her. Menendez continues to state that all he was thinking about was getting her into custody. He thought that since she pulled away when he tried to grab her, he now had charges of physical resisting. He also stated that since he was thinking, she can't just turn around and walk away, which again he now realizes was incorrect. I then asked Menendez what gave him the right to enter residence to grab her and put her into custody at that time. Menendez stated that he believes was not in her residence, she was standing in the doorway. I explained to him that the threshold of the doorway was a raised threshold that you had to step up into, so would you not be inside your residence if you had to step up to enter. Menendez played semantics about whether was in her residence or not. I then questioned Menendez about his right to enter the residence after into the residence and her daughter stepping in front of her to protect her. He stated that he felt he had a third-degree felony for refusing to provide him with the spelling of her son's name. Again, he stated that today he knows that is not a felony offense but he thought it was at the time the incident occurred. I asked Menendez about holding court in front of twenty plus people explaining to them that what he did was a direct result of behavior and when the police ask you a question, you just need to answer them. He responded by talking in circles and never really provided an answer. I then asked Menendez at what time did he realize that there was no such statute for felony obstruction. He stated he felt he was correct in the way that he handled the call until Worthy questioned him about his probable cause. He then went home and searched the internet looking for statute. He stated that he found the statute; however, it wasn't applicable in this case. Menendez also acknowledged that Torello told him on scene that defecated on herself. Menendez could not provide an answer on why he didn't make arrangements for to change her clothes. Even on station, asked for a blanket to cover up because she had to remove her soiled clothes, and Menendez told her that we did not have any blankets. I then questioned Menendez on the phone call he took while on station. He wasn't aware his camera was recording and he made some vulgar and inappropriate comments to the unknown person on the phone. Menendez stated that he didn't remember who he was talking to when he made those statements. He stated that he was feeling sick, he hurt his shoulder, his hip, he could not get his report done and she was constantly screaming so he was aggravated. Throughout the interview, Menendez continued to state that at the time of the incident, he believed that committed a crime. He since has realized that he did not have any reason to detain or demand answers from That concluded the interview with Menendez.

Conclusion:

Both Menendez and Nava responded to a disturbance at 1717 Dixon Blvd. One of the 911 callers alleged that the suspect was in apartment while both officers were present on the balcony of apartment both parties, the victim's family and the suspect's family made allegations as to what occurred between the juveniles in the complex. Stated that her son didn't live with her or live in the apartment complex, and she didn't know where he was. Menendez did not realize that son was a suspect until one of the victim's family stated that. Menendez also doesn't hear Torello say over the radio that the victim is un-cooperative and is also refusing medical treatment.

Menendez then asked to provide her son's name. refuses to provide her son's name until
Menendez threatened to arrest her if she didn't provide him with her son's name. then provided
the name, at which time Menendez asked how to spell it and did not answer Menendez. Menendez
then entered residence without a warrant or felony charges in attempts to arrest her. A struggle
ensued on the couch with Menendez, Nava, and her daughter. Nava was able to secure the
daughter and took her to the doorway of the apartment to protect officers who were inside of the
residence, which now included Torello. While standing at the doorway, a neighbor
yelling at Nava for the <u>way Menendez</u> was fighting with saw Menendez remove his Taser
and threaten to shoot in her face if she did not stop resisting. Nava felt threatened and warned
three times to get back. Nava testified that he believed at that time, was a threat to his
safety, that she had her fists balled up and was sizing him up, so he tased her. In the video however; you
see looks at Nava, and slowly moves back two steps before she is tased. Menendez continues to
fight with for approximately two minutes until Torello arrives and de-escalates the scene. While on
scene Menendez is told by Torello that defecated on herself while fighting with Menendez.
Menendez responds to Torello with a shrug of his shoulders and an ole well attitude. While on station
with Menendez is heard on video telling an unknown person that is a "Nasty ass bitch, a
stupid ass bitch, who ended up shitting all over herself, all crying about a supervisor, I'm just like just shut
up, dammit."
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tase her. Additionally, he entered into her residence without being invited or with a warrant or felony charges and used excessive force by removing his taser and threatening to tase her in her face to effect the arrest. Menendez also failed to show compassion to

G.O. 0210 (III)(F)(3) states the following:

Law enforcement officers shall use powers of arrest strictly in accordance with the law and with due regard for the rights of the citizen concerned. Their office gives them no right to judge the violator or to mete out punishment for the offense. They shall, at all times, have a clear appreciation of responsibilities and limitations regarding detention of the violator. They shall conduct themselves in such manner as will minimize the possibility of having to use force. To this end they shall cultivate a dedication to the service of the people and the equitable upholding of the law, whether in the handling of the law violators or in dealing with the law-abiding.

G.O. 0210(III)(A)(5) states the following:

Personnel shall be courteous to the public and the other personnel. Personnel shall be tactful, control their tempers, exercise patience and discretion and shall not engage in argumentative discussions even in the face of provocation.

I consulted with FDLE, and the Brevard County State Attorneys 18th Judicial Circuit for possible criminal charges on the actions of both Menendez and Nava. Assistant State Attorney Michael Hunt declined to prosecute either officer.

Mitigating Circumstances:

Officer Nava stated that at the time of the incident, he felt his safety was compromised when refused to step back. He felt that was in a fighting stance, and was "sizing him up". He felt he was justified in deploying his Taser at that time. After watching the video, he admitted that fact, stepping back as requested, however he did not see that during the incident.

Finding(s):

The allegations against Officer George Menendez:

F.S.S. 787.02 False Imprisonment SUSTAINED

F.S.S. 810.09 Trespass SUSTAINED

F.S.S 784.03 Battery SUSTAINED

Conduct Unbecoming SUSTAINED

G.O. 0210 (III)(F)(7)

G.O. 0210 (III)(A)(5)

G.O. 0210 (III)(F)(3)

The allegations against Officer Jerry Nava:

Unlawful Search & Seizure SUSTAINED

G.O. 0650 (IV)(A)(2) Taser Deployment SUSTAINED

G.O. 0650 (IV)(A)(3) Taser Deployment SUSTAINED



Cocoa Police Department Commission of Florida Law Enforcement Accreditation compliant since 2006

The Commission for Florida Law Enforcement Accreditation establishes standards, oversees an accreditation program, and awards accreditation to compliant Florida law enforcement agencies. The Commission strives to improve the ability of law enforcement agencies to deliver professional public safety services. Cocoa Police Department accreditation has enhanced the community understanding of law enforcement and its role in the community as well as its goals and objectives.

"I, the undersigned, do hereby swear or affirm, under penalty of perjury, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes."

CHARLENE JENKINS-CATECHIS Notary Public - State of Florida Commission - 65 in 182044 My Coom Expires Feb 13, 2022 (Stal Apopary Signature) (Notary Signature) (Notary Printed Name) Approval Signature: Date:	Subscribed and sworn (or affirmed) to		
(Type of Identification) (Identification Number) State of Florida, County of Brevard CHARLENE JENKINS-CATECHIS Notary Public - State of Florida Commission - GG 182044 Apr Conm. Expires Feb 13, 2022 (Notary Printed National Notary Assn. (Notary Printed Name) Approval Signature: Date: 5724/18	20 <u>/ 》</u> by		
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Date: 5/24/18	(Notary Printed Name)		
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Date: 5/24/18	A LAVIET	1/_)	
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