

District Attorney's Report
In the Matter of the
Arrest of Yugeshwar Gaindarpersaud
On July 6, 2020

Schenectady County District Attorney
Robert M. Carney
October 28, 2020

On July 6, 2020 Yugeshwar Gaindarpersaud was arrested and charged with the misdemeanor crime of Criminal Mischief in the Fourth Degree for allegedly slashing his next-door neighbor's tires. He was also charged with the misdemeanor of Resisting Arrest by the responding Schenectady Police Officer, Brian Pommer. This case attracted considerable public attention following the release that day of cell phone footage taken by the defendant's father that showed Officer Pommer struggling with and restraining Mr. Gaindarpersaud.

Because of the considerable public interest generated by this misdemeanor arrest, I asked retired Chief Assistant District Attorney Philip Mueller to investigate this matter for my office. Mr. Mueller retains a part-time position of counsel to my office. He has done so and has also conducted negotiations on our behalf with Derek Andrews, counsel to Mr. Gaindarpersaud. In conducting his analysis, Mr. Mueller examined all available police records and witness statements, and also video/audio evidence captured by several civilian security cameras, Mr. Gaindarpersaud's father's cell phone camera, the police car cameras and the officers' body-worn cameras. I adopt Mr. Mueller's findings and conclusions and will outline my findings for the public in this report.

PERTINENT FACTS

At 7:27 a.m. on July 6, 2020, Nathan Chow-Chick made a 911 call complaining that two of his tires were slashed overnight while his car was parked outside his home at 332 Brandywine Avenue in the City of Schenectady. He stated that he did not see the slashing but that he suspected his next-door neighbor, with whom he had an ongoing dispute, and who had blamed Mr. Chow-Chick when his own car tires had been slashed previously. Later, at 9:25 a.m., Mr. Chow-Chick made a second 911 call stating that he now has videotape evidence.

Officer Brian Pommer, assigned to a single-officer patrol car, responded to 332 Brandywine Avenue at 9:39 a.m. He had just been to another tire-slashing call nearby where that complainant suspected his feuding neighbor had vandalized his tires. Officer Pommer told that complainant that as he did not see the neighbor slash his tires and he did not have video of him doing it, Officer Pommer could not make an arrest.

Nathan Chow-Chick told Officer Pommer that he had been having ongoing problems with his neighbor who lived downstairs at 334 North Brandywine but whose name he didn't know. He pointed out the neighbor's vehicle and Officer Pommer ran the plate and determined that the owner was Yugeshwar Gaindarpersaud. Mr. Chow-Chick and a female friend told Officer Pommer that Mr.

Gaindarpersaud had run over some of his landscaping and that he blamed Mr. Chow-Chick for slashing his tires the prior week (which Nathan Chow-Chick denied doing). Mr. Chow-Chick told Officer Pommer that his car was fine and safely parked in his back yard when he went to bed the night before, but when he went outside this morning to go to work he found that two tires had been slashed. He told Officer Pommer that he then reviewed video footage from a security camera maintained by his neighbor on the other side of Mr. Gaindarpersaud's property, which he said showed Mr. Gaindarpersaud slashing the tires. He also told the officer that he would be willing to forego criminal charges if and only if Mr. Gaindarpersaud paid to repair the tire damage. Officer Pommer offered Mr. Chow-Chick the option of speaking directly with his neighbor in an attempt to resolve the dispute, but Mr. Chow-Chick wanted the officer to talk to Mr. Gaindarpersaud. Officer Pommer then attempted unsuccessfully to contact Mr. Gaindarpersaud by knocking on his door. Officer Pommer got on his cell phone in his patrol car, spoke to his Sergeant¹, and then returned to speak with Mr. Chow-Chick again before leaving the scene. As they were speaking Officer Pommer spotted Yugeshwar Gaindarpersaud walking in his own back yard.

¹ They discussed the fact that the complainant from the earlier tire slashing call had complained that Officer Pommer had failed to arrest the neighbor he suspected of the tire slashing. Officer Pommer explained to his Sergeant the lack of evidence to support an arrest in that matter.

Mr. Chow-Chick confirmed that this was his neighbor who slashed his tires.

Officer Pommer asked Mr. Gaidarpersaud to come out front to talk with him, and Mr. Gaidarpersaud complied. They met in Mr. Gaidarpersaud's driveway. Their conversation lasted one minute. Officer Pommer asked him what happened next door with the car; Mr. Gaidarpersaud replied "What are you talking about?" Officer Pommer told him that "we have you on camera" and "you slashed their tires." Mr. Gaidarpersaud said "Bring me the camera and show it to me." Officer Pommer replied "All right, I'm going to. Ok, look, I'm trying to talk to you about this first, without going any farther." Officer Pommer further told him "They don't want to press charges right now." Mr. Gaidarpersaud replied "I don't care what they (points to Nathan Chow-Chick's residence) want to do, because I (points to himself) don't know what you (points to Officer Pommer) talking about. So bring that camera (points to neighbor's house with the security camera on the other side), show it to me." With that Officer Pommer tells him to "turn around, put your hands behind your back."

Mr. Gaidarpersaud did not comply, but instead slapped the officer's hand away and ran from him, full speed, into his own back yard. Officer Pommer chases after him and in the process loses his police radio. Officer Pommer tackled Mr.

Gaindarpersaud in the backyard and struggled with him for 2 minutes and 37 seconds, never succeeding in handcuffing him until backup officers arrived and assisted. During this time Officer Pommer gave Mr. Gaindarpersaud at least 19 more orders to put his hands behind his back, but Mr. Gaindarpersaud never complied and continued to forcefully struggle to avoid being handcuffed. Officer Pommer also had to give Mr. Gaindarpersaud's father and wife, who were in the back yard yelling at the officer, 22 orders to stay back from the struggle. Mr. Gaindarpersaud continued to talk throughout the struggle, making 8 demands to see the videotape, 14 demands to know what he was accused of, and 4 denials of guilt.

During the final 2 minutes of the struggle, Officer Pommer applied his knee to the right side of Mr. Gaindarpersaud's head, thereby pinning the left side of his head to the ground. A close examination of the father's cell phone video reveals one instance, at the 30-second mark on that video, when Mr. Gaindarpersaud's squirming appears to cause Officer Pommer's knee to slip from its position higher on the side of Mr. Gaindarpersaud's head to a lower position, either on his jaw or neck. However, this accidental slippage lasted for only 1 second and Officer Pommer quickly moved his knee higher up the side of Mr. Gaindarpersaud's head. During this struggle, Yugeshwar Gaindarpersaud never once complained of pain to his

neck, never once complained of difficulty breathing, never lost consciousness, and never lost the considerable strength required to successfully resist Officer Pommer's persistent efforts to handcuff him. He did however complain about pain to his head during the struggle, repeating 10 times, "Ow, my head." Toward the end of the struggle, Officer Pommer also delivered a series of 6 submission punches to the right side of Mr. Gaindarpersaud's torso, which similarly failed to gain compliance. The struggle did not end until backup officers arrived and a total of 3 officers finally succeeded in securing Mr. Gaindarpersaud in handcuffs.

CONCLUSION ONE

Officer Pommer did not violate any criminal laws in arresting Yugeswar Gaindarpersaud.

1. Aggravated Strangulation: Newly enacted after the death of George Floyd, this felony statute is violated when a police officer commits the misdemeanor of criminal obstruction of breathing or blood circulation or uses a chokehold, and thereby causes serious physical injury or death. There is no evidence here that Mr. Gaindarpersaud suffered serious physical injury, and considerable evidence that he did not, including his physical appearance and behavior during the struggle and immediately after the arrest, his prompt release from the

hospital the same day after being brought there by police and paramedics for a precautionary examination, and his attendance and speaking at a rally later that day. Further, defendant's counsel did not put Mr. Gaindarpersaud's physical condition in issue: He provided our office with three photos showing superficial abrasions to Mr. Gaindarpersaud's thumb, knee, and forehead, but he declined our request (as is his right) to provide us with Mr. Gaindarpersaud's hospital records or a medical release that would allow us to obtain them.

A person can only be convicted of Criminal Obstruction of Breathing or Blood Circulation if he applies pressure to the neck, nose or mouth with the intent to impede the normal breathing or circulation of the blood of another person. There is no evidence that Officer Pommer intentionally applied pressure to any of these areas, or intended to impair Mr. Gaindarpersaud's breathing or circulation, or even unintentionally did so. To the contrary, the video and audio evidence shows that the pressure was applied to the side of Mr. Gaindarpersaud's head, not to his neck, nose or mouth. A knee pressing on the side of the head, while effective at helping to control a struggling suspect, and certainly presenting a risk of abrasion, poses no significant risk of obstructing the suspect's windpipe or his carotid arteries, which run through the neck not the side of the head. Although these important distinctions

seem obvious, we also consulted with a forensic pathologist, Dr. Michael Sikirica, who confirmed this. The actions of Mr. Gaidarpersaud throughout the encounter further demonstrate that his breathing and circulation were unimpaired, as follows: he never lost consciousness, he never even lost the strength to successfully resist the entire time, he never stopped talking, including protesting his innocence and demanding to see the proof, and he walked under his own power to the patrol car immediately after he was finally handcuffed. Although he falsely claimed later that during the struggle he complained that he couldn't breathe, the video and audio footage clearly shows that he complained only of head pain, consistent with the side of his head being pressed to the ground.

2. Assault 3rd: Officer Pommer did not commit the misdemeanor of Assault in the Third Degree because, as a police officer, he was authorized under Penal Law 35.30 to use such non-lethal force as was reasonably necessary to effectuate Mr. Gaidarpersaud's arrest. Under our law, the amount of non-lethal force a police officer is authorized to use to effect an arrest or prevent an escape is determined, not by the level of the crime, but by the amount and nature of the suspect's resistance. Here there is no evidence that Officer Pommer used excessive force beyond what he reasonably believed necessary to effectuate the arrest. Indeed, the force he used was

insufficient to overcome Mr. Gaidarpersaud's persistent resistance to handcuffing. The videos make clear that Mr. Gaidarpersaud at all times had the power to end the struggle by complying with any one of Officer Pommer's 21 commands (2 in the driveway and 19 during the physical struggle) to put his hands behind his back, or by simply stopping his active resistance and going limp.

3. Official Misconduct: To commit this offense, a public servant such as a police officer must commit an act related to his official function, but which he knows to be unauthorized, and he must do so with a corrupt intent to gain a benefit for himself or to deprive another of a benefit. Officer Pommer believed he was authorized to arrest Mr. Gaidarpersaud for the crime of Criminal Mischief or at least to detain him while he further investigated the matter. We agree with his legal conclusion.

A police officer is authorized to respond to citizen complaints of criminal behavior and to make arrests for violations, misdemeanors and felonies. Here Nathan Chow-Chick identified himself and claimed personal knowledge that he had witnessed Mr. Gaidarpersaud commit criminal vandalism on a security videotape created by another neighbor. Multiple court cases make clear that probable cause to arrest (or the lower standard of "reasonable suspicion" to detain) can be based on

the unsworn statement of a single, identified civilian witness, whose reliability the law presumes unless the officer knows at the time of "materially impeaching circumstances." See, for example: Medina v. City of New York, 102 AD3d 101 (1st Dept 2012); People v. Gonzalez, 138 AD2d 622 (2d Dept 1988); Bratge v. Simons, 173 AD3d 1623 (4th Dept 2019). The controlling cases also make clear that mere denial of guilt by a suspect will not constitute "materially impeaching circumstances." Neither pressure applied to a suspect's head to prevent his escape, nor punches delivered to overcome his resistance to handcuffing, were forbidden by law or by Schenectady Police Department rules then in effect. The executive order of the Mayor dated June 10, 2020 (4 days after this event) prohibits placing a knee on a suspect's neck, and the use of chokeholds, neither of which occurred here.

CONCLUSION TWO

There is sufficient evidence to further prosecute Yugeshwar Gaidarpersaud for Resisting Arrest, but not for Criminal Mischief.

After the arrest, Officer Pommer did go with Nathan Chow-Chick to the home of the neighbor whose surveillance system allegedly captured images of Mr. Gaidarpersaud committing vandalism. The post-arrest investigation revealed that Mr. Chow-Chick had grossly overstated to Officer Pommer the strength and clarity of the video evidence; that the complainant had not

in fact been able to recognize the figure dimly shown on the recording to be walking from Mr. Gaindarpersaud's back yard toward Mr. Chow-Chick's back yard; and that the tire-slashing itself could not be seen in the recording. Mr. Chow-Chick conceded his error in claiming that it did in a subsequent written statement taken by a Schenectady Police investigator. Attempts to enhance the security video by State Police experts did not significantly improve its clarity.

For these reasons, there is insufficient proof to prosecute Yugeshwar Gaindarpersaud for the charge of Criminal Mischief. The evidence neither exonerates nor sufficiently inculcates him; it is insufficient to prove this charge against him and therefore it must be dismissed.

There is however sufficient evidence to prosecute the charge of Resisting Arrest against Mr. Gaindarpersaud. The crime of Resisting Arrest is committed when a person intentionally attempts to prevent a police officer from "effecting an authorized arrest of himself." Here there is no question that Mr. Gaindarpersaud spent 2 minutes and 37 seconds actively attempting to prevent Officer Pommer from arresting him. The only question is whether that arrest was legally authorized.

At the time of the arrest Officer Pommer reasonably understood the complainant Nathan Chow-Chick to say that: (1)

he personally knew Yugeshwar Gaindarpersaud, his next door neighbor; (2) they had an ongoing dispute; (3) Mr. Gaindarpersaud blamed him (falsely) for recently puncturing Mr. Gaindarpersaud's own tires; (4) two tires on the Mr. Chow-Chick's car were slashed overnight while it was parked in the his back yard, suggesting that Mr. Gaindarpersaud had not only retaliated against a feuding neighbor, but retaliated in kind; (5) Mr. Chow-Chick had personally viewed a neighbor's video showing the vandalism in progress; (6) the video showed in Mr. Chow-Chick's words "everything"; and (7) Mr. Chow-Chick recognized Mr. Gaindarpersaud on the video as the perpetrator. This provided evidence of motive, opportunity and identity.

The facts disclosed post-arrest, that the video evidence did not support the conclusions asserted by Mr. Chow-Chick, cannot retroactively negate Officer Pommer's reasonable understanding of the evidence, and therefore his reasonable suspicion to detain Mr. Gaindarpersaud, and his probable cause to arrest.

Moreover, the recognition, in hindsight, that Officer Pommer might have exposed the complainant's exaggerations had he asked Mr. Chow-Chick more precise and probing questions, or insisted on seeing the surveillance video for himself, does not make it unreasonable for Officer Pommer to have relied upon Mr. Chow-Chick's description of what he saw. Patrol officers do not

have the training or experience to be seasoned detectives. Officer Pommer also did not have a lot of time, having already answered one tire-slashing call that morning, spent approximately a half hour on this call, and been notified at 10:03 (6 minutes before encountering Mr. Gaidarpersaud) that he had another trouble call to respond to. The fact that a more experienced officer, or Officer Pommer himself in the future, might conduct a better investigation, does not mean that Officer Pommer could not reasonably rely on an identified civilian's description of what he saw. After all, the complainant Mr. Chow-Chick was much more familiar with the physical appearance of his next door neighbor than was Officer Pommer, who had never seen him before, and therefore much more likely to know whether the perpetrator allegedly shown on the video was Mr. Gaidarpersaud.

There is a view of the evidence that supports a finding that Officer Pommer intended only to temporarily detain Mr. Gaidarpersaud while he viewed the video and not to arrest him, at least not yet, when he told Mr. Gaidarpersaud to put his hands behind his back. First, it is consistent with Officer Pommer's initial intent before the incident, upon approaching Mr. Gaidarpersaud; he did not want to make an arrest. As he had agreed with Mr. Chow-Chick, Officer Pommer intended to mediate the neighbors' dispute, not make an arrest. Officer

Pommer made repeated attempts to explain this to Mr.

Gaindarpersaud, despite the suspect's interruptions and demands to be shown the video evidence.

Second, it is consistent with what Officer Pommer said to Mr. Gaindarpersaud during the incident, moments before directing him to submit to handcuffing. After Officer Pommer advised Mr. Gaindarpersaud that he was on camera slashing the tires, Mr. Gaindarpersaud responded by saying, twice: "Bring me the camera and show it to me." Officer Pommer in reply stated "All right, I'm going to. Look, I'm trying to talk to you about this first, without going any farther..." at which point Mr. Gaindarpersaud again interrupted him.

Third, it is consistent with what Officer Pommer stated to Mr. Chow-Chick immediately after the incident, after fellow officers had transported Mr. Gaindarpersaud from the scene, when Officer Pommer and Mr. Chow-Chick went together to 338 North Brandywine to review the surveillance video. In the course of summarizing for Mr. Chow-Chick his own encounter with Mr. Gaindarpersaud, Officer Pommer said:

"To be honest with you, with your statements, I had enough to detain him at least, so I told him to put his hands behind his back. And he jettted, and that was it and I lost by radio."

Fourth, when Officer Pommer spoke with Assistant District Attorney Phil Mueller on July 21, 2020, Officer Pommer told him

that when he first ordered Yugeshwar Gaiindarpersaud to put his hands behind his back, he meant only to temporarily detain him while he pursued his investigation by viewing the surveillance video. While it is true that in a previous written statement Officer Pommer had given to Detective Ryan Maloney he had stated that he intended to arrest him, he clarified in speaking with Mr. Mueller that he initially intended to temporarily detain Mr. Gaiindarpersaud, but formed the intention to arrest him when Mr. Gaiindarpersaud defied his orders to submit to handcuffing, and instead fled and began to struggle.

Under the constitutional analysis in People v. DeBour, 40 NY2d 210 (1976), police are permitted to detain a suspect temporarily for an investigative purpose provided they have "reasonable suspicion" that the suspect committed a crime. We have concluded that the information provided to Officer Pommer by Mr. Chow-Chick provided probable cause to arrest him for criminal mischief, but that information also well-satisfied the lesser standard required for a temporary investigative detention. Temporary detention would have allowed Officer Pommer to forcibly detain and secure Mr. Gaiindarpersaud long enough to go next door, and, if the neighbor was still home, and if she granted Officer Pommer permission to enter and view the videotape, to verify (or dispute) the Mr. Chow-Chick's claims,

or even, if logistically possible, to bring the video to Mr. Gaindarpersaud as he had repeatedly demanded.

Since Officer Pommer was alone on this call, he could not physically detain the suspect without placing him in handcuffs and, presumably, having him wait inside his patrol car, while he attempted to personally review the videotape. In such circumstances, our law allows an officer who has a "reasonable suspicion" to use handcuffs and/or a locked squad car to temporarily detain a suspect while pursuing a brief, on-scene investigation in order to determine whether to make a full-blown arrest.

Under this view of the evidence, when Mr. Gaindarpersaud resisted Officer Pommer's initial order to put his hands behind his back, he was at least interfering with an authorized detention, if not an arrest, which would support an additional misdemeanor charge of Obstructing Governmental Administration. That crime is committed when a person attempts to prevent a public servant from performing an official function. By preventing the officer from detaining him and then continuing to struggle, Mr. Gaindarpersaud commits the crime of resisting an arrest for Obstructing Governmental Administration. But for reasons outlined below, we elect to resolve this matter rather than prolong the proceeding by adding or revising charges.

CONCLUSION THREE

The public interest and balance of equities in this case warrant the exercise of prosecutorial discretion to resolve this case rather than to seek a conviction.

We have concluded that the charge of Resisting Arrest (and the as-yet uncharged crime of Obstructing Governmental Administration) can still be lawfully prosecuted. The District Attorney nevertheless retains the discretion to determine how to prosecute even crimes for which there is legally sufficient evidence to support a conviction at trial. The exercise of that discretion should be guided by the balance of equities regarding the individual case and defendant, and also by the welfare of the public.

It is clear that Mr. Gaindarpersaud made mistakes here. A citizen is not entitled to resist an authorized detention or arrest merely because he claims to be, or believes to be, or even if he is in fact, completely innocent. The presentation of evidence and arguments, and the determination of guilt or innocence, can only properly and safely occur in the controlled setting of a courtroom, not out on the street. Mr. Gaindarpersaud might in fact be innocent of Criminal Mischief, but it is at least clear that had the complainant not exaggerated the probative value of the surveillance video, Officer Pommer would not have attempted to detain him (just as he did not detain or arrest the suspect in the earlier call

alleging tire-slashing in the course of a neighbor dispute), and Mr. Gaindarpersaud then would have had no occasion to commit either Obstructing or Resisting. That may entitle him to some sympathy.

Whether Mr. Gaindarpersaud's dangerous response to Officer Pommer's orders was motivated by outrage at an accusation he considered to be false, or distrust of police based on personal history or generalized fear or antipathy, he should have known better than to defy the officer's lawful orders, flee, and engage in an extended struggle. He did have some history with the criminal justice system. The collateral consequences to him of a conviction in this case could be more harsh than normal for a misdemeanor because he is already under probation supervision for a previous, unrelated felony conviction in New York City.

We have concluded that Officer Pommer was lawfully entitled to detain and arrest Mr. Gaindarpersaud, but it is a different question to ask whether he should have done things differently. It is easy to critique a police officer's conduct from the comfort of an office with the luxury of hindsight, calm reflection and videotape, long after a fast-moving incident we collectively sent him to resolve is completed. But we can identify actions and statements by Officer Pommer here that may have contributed to the deterioration of this encounter into a physical struggle. It is appropriate to consider these both for

the opportunity they present for improvement through training and as part of the balancing of equities favoring resolution.

First, Officer Pommer could have asked the complainant more probing questions. Officer Pommer could have more thoroughly pinned down Mr. Chow-Chick by asking, for example: "when you say that you watched the video, that it shows everything, and that it was your neighbor slashing your tires, are you telling me that: (a) the video is clear enough for you to actually recognize your neighbor's face or some other distinctive feature; and (b) you can actually see the slashing, not just your neighbor walking in the direction of your car?"

Second, Officer Pommer could have viewed the security video recording before attempting to speak with the suspect. The fact that an officer does not need to corroborate an identified civilian witness's statements before making a detention or arrest, does not mean that he should not do so when it's feasible. Officers should be reminded that, although the law presumes the reliability of an identified civilian witness, such witnesses have been known to be mistaken, and even to lie. An ongoing neighbor dispute, while supplying a motive for the suspect to commit vandalism, could also supply a motive for the complainant to make a false or exaggerated accusation. Here Officer Pommer elected to speak with Mr. Gaindarpersaud when he made an unexpected appearance in his backyard because he

reasonably believed that he could mediate this dispute without needing to view the videorecording, the complainant having said he was willing to forego an arrest if he was compensated for his tires. And Mr. Gaindarpersaud's actions in fleeing ultimately prevented the officer from viewing the video prior to making an arrest. The fact remains, however, that had Officer Pommer viewed the video himself, he probably would not have approached Mr. Gaindarpersaud in the same way and would not have sought to forcibly detain him.

Third, Officer Pommer could have spoken to Mr. Gaindarpersaud in a more neutral and less accusatory way. Officer Pommer tried to approach Mr. Gaindarpersaud with a message of conciliation: that his neighbor was willing to settle the matter without arrest if Mr. Gaindarpersaud would simply pay for the damage he'd allegedly done. It's also clear that Officer Pommer believed Mr. Chow-Chick and wanted to impress upon Mr. Gaindarpersaud the seriousness of the matter. By saying "we checked the neighbor's cameras, ok, and you slashed their tires," Officer Pommer was likely to promote a hostile response from a suspect who may be innocent or who harbored a pre-conceived distrust of police. By adopting the complainant's observation as his own, Officer Pommer arguably communicated to Mr. Gaindarpersaud that he'd made up his mind,

rejecting the possibility of another side to the story. A better, more neutral approach may have been to say, for example:

"There's been an allegation. Your neighbor says you slashed his tires last night and he has you on video doing it. He won't file charges if you'll just repay him and there'll be no arrest, no problem at all. I haven't seen the video yet and I'd like to hear your side of the story. But if you don't agree to pay, I'll have to watch the video, and if it shows you slashing his tires you're going to be arrested."

Fourth, Officer Pommer should have told Mr. Gaindarpersaud, when he first told him to put his hands behind his back, that he intended only to detain him temporarily while he watched the video. A suspect may be less likely to flee or fight if he knows that the detention is not an arrest and is not meant to be permanent. Especially if a suspect is innocent, or even guilty but confident that no incriminating evidence will be found, he may be more inclined to submit than to flee or resist.

These suggestions for improvement are not intended to imply there is an equivalence between the manner in which Officer Pommer conducted himself and the actions taken by Mr. Gaindarpersaud to resist arrest. As stated above none of the officer's conduct was criminal. Whether any actions or statements by the officer amount to violations of department policy will be up to the Schenectady Police Department, not this office.

But, an additional reason to resolve this litigation is provided by the fact that the Schenectady Police Department has acted to change its policies to avoid another arrest like that of Mr. Gaindarpersaud in this case. On July 9, 2020 the City announced that it would be revising its policies to provide that "all warrantless arrests will be approved by patrol supervisors, who will be on scene to supervise all custodial arrests to assure that any force used is in compliance with departmental policy, and local, state, and federal laws."² Had a supervisor been on scene, or even if Officer Pommer was in a two-person car, one of the officers could have checked the video while the other remained in the presence of the suspect without the need to formally detain him. And as has been stated already, a thorough review of that security video would have yielded the conclusion that it does not sufficiently support a Criminal Mischief charge against Mr. Gaindarpersaud. There is less of a public interest in pursuing a conviction when the City has decided that the procedures used here to arrest Mr. Gaindarpersaud should not be replicated in the future.

In balancing the equities here it must be noted that certain statements made by Mr. Gaindarpersaud publicly about

² The actual language of the revised policy has not yet been promulgated but I am told by Chief Clifford that this language will include the phrase "where practicable" to distinguish ongoing crimes such as robberies or shootings in progress from historical crimes where immediate action is not necessary.

this incident were exaggerated or false and have served to worsen the relationship between police and the community. Among his false statements disproved by audio and video of the arrest, Mr. Gaindarpersaud stated: (1) that he never ran from Pommer; (2) Pommer kept his "knee on my neck;" (3) "I kept yelling I can't breathe, I can't breathe;" (4) Pommer "held my head with his hand, rub it to the concrete, smash it to the concrete;" (5) "If he had me like 5 more minutes on that ground I would be gone"; and (6) "I was blacked out when they threw me in the car...I wake up at Ellis Hospital."³

In light of these statements, it is important that before we resolve this case the parties come to an understanding of applicable legal principles that apply to police and citizen interactions and to the extent we can agree, how we can reconcile them to the events of July 6, 2020 on Brandywine Avenue. For this reason, we have negotiated a disposition of these charges that involves execution of an agreed upon resolution by the defendant, his counsel and this office. That signed resolution is attached hereto as Exhibit 1.

In this resolution, we have agreed as stated above to the dismissal of the Criminal Mischief charge, and we agree that the

³ These statements together with the release of the cell phone video invited false comparisons between this incident and the death of George Floyd at the hands of Minneapolis police. See Exhibit 2 attached hereto for a summary of the vast dissimilarities between the two cases.

charge of Resisting Arrest will be adjourned in contemplation of dismissal (ACOD). An ACOD is neither an admission of guilt nor is it considered as a favorable outcome for the defendant. It is a compromise that ultimately, after the passage of 6 months with no additional misconduct by the defendant, results in an automatic dismissal of the charge.

Although we have concluded as outlined above that Officer Pommer was lawfully authorized to make an arrest for Resisting Arrest, the defense maintains that he did not have probable cause and was obligated to conduct a more extensive investigation prior to making an arrest. The agreed upon resolution does not require either side to subscribe to a legal position with which they do not agree.

But the resolution does embody points of agreement that should be helpful in achieving reconciliation in this matter. It acknowledges that "both parties recognize that the unhelpful assumptions and mistakes made by both the officer and Mr. Gaindarpersaud contributed to a chaotic situation that endangered the safety of the officer, Mr. Gaindarpersaud, and nearby citizens." The resolution acknowledges that the officer should have made a more thorough investigation, that he should have first attempted to view the video before confronting Mr. Gaindarpersaud, and that he "should have approached Mr. Gaindarpersaud in a less accusatory and dogmatic way."

The resolution also acknowledges that Mr. Gaindarpersaud "should have complied with the officer's orders to submit to being detained and handcuffed, should not have run, and should not have continued to resist handcuffing once the officer caught him." It further acknowledges that a "suspect is not entitled to see the evidence against him before deciding whether to submit to a detention or arrest."

It is in the public interest to re-affirm this important truth that no citizen can, lawfully or safely, decide for himself to refuse to submit to a detention or arrest by a police officer, to defy the officer's orders, and to insist that the presentation of evidence occur in the street rather than in court. A contrary belief would inevitably produce more violent confrontations between police officers and citizens, any of which could easily end in tragedy.

I would like to express my appreciation for the work of Mr. Andrews who also thought it was important to further the goal of community reconciliation with its police department, without conceding or compromising his client's legal position or rights. He and his client's willingness to execute this statement of resolution were key factors to me in deciding that the public interest would be best served by concluding this matter rather than prolonging it with further litigation.

Also attached to this report in addition to the signed resolution (Exhibit 1), is a comparison contrasting this matter and the death of George Floyd (Exhibit 2), and a notated transcript of the recording from Officer Pommer's body worn camera (Exhibit 3).

EXHIBIT 1

RESOLUTION

In the matter of the People of the State of New York vs. Yugeshwar Gaindarpersaud , the parties have reached the following resolution, which they believe to be in the best interests of both Mr. Gaindarpersaud and the citizens of Schenectady County. All parties sincerely hope that this resolution will promote better understanding and cooperation between our citizens and the police officers assigned to serve and protect them.

In that spirit, the parties jointly state:

1. Mistakes were made in this matter by both the responding police officer and Mr. Gaindarpersaud.
2. Mutual distrust and unhelpful assumptions contributed to these mistakes.
3. On the morning of July 6, 2020, the Schenectady Police Department received a 911 call from a resident of the 300 block of North Brandywine Avenue, complaining that his car tires had been slashed overnight, and that he suspected his next door neighbor, with whom he had an ongoing dispute. A single uniformed patrol officer, Brian Pommer, responded in a marked police car.
4. Upon the officer's arrival, the complainant told him that the vandalism had been captured on videotape by another neighbor's surveillance camera, that he (the complainant) had personally watched the videotape, that it captured the crime in progress, that it showed "everything", and that the perpetrator was his next door neighbor, Mr. Gaindarpersaud. The complainant wanted Mr. Gaindarpersaud to pay to replace the slashed tires, or, if he refused, to be arrested. The officer believed that the complainant's description of the ongoing neighbor dispute, together with his claim to have watched a videotape showing Mr. Gaindarpersaud committing the crime, supplied a sufficient legal basis to detain or arrest Mr. Gaindarpersaud. The People understand that the defense disagrees. The officer went next door to try to convince Mr. Gaindarpersaud to pay for the tires. Before doing so, he did not attempt to get access to and view the neighbor's surveillance video.
5. The brief conversation between the officer and Mr. Gaindarpersaud did not go well, and ended with the officer attempting to detain and handcuff Mr. Gaindarpersaud. Mr. Gaindarpersaud fled instead, the officer pursued and caught him, and the two men wrestled on the ground for a little over 2 minutes, until backup police officers arrived and were finally able to handcuff Mr. Gaindarpersaud.

6. The People maintain that the responding officer was legally authorized to detain and ultimately arrest Mr. Gaindarpersaud in reliance upon statements of personal observation made by the complainant, an identified civilian witness. The complainant's account supplied evidence of Mr. Gaindarpersaud's alleged motive, opportunity, and identity as the perpetrator of the alleged crime. The law permits a suspect to be temporarily detained upon "reasonable suspicion" that he committed a crime, and arrested upon "probable cause" that he did so, even if a subsequent, more thorough investigation undermines the original basis for suspicion, or even demonstrates the suspect's innocence. The People and Mr. Gaindarpersaud agree that "reasonable suspicion" and "probable cause" do not equal guilt, that even innocent people can sometimes be lawfully arrested, and that the law presumes the innocence of all arrested persons unless and until guilt is established in court.

7. The People also recognize that the officer should have made a more thorough investigation of the facts before confronting Mr. Gaindarpersaud, and, had he done so, the officer would likely not have attempted to detain Mr. Gaindarpersaud. Although legally entitled to rely on the complainant's description of the videotape evidence, the officer did not himself go to the neighbor's house and request permission to view the videotape before confronting Mr. Gaindarpersaud. Had the officer viewed the videotape before confronting Mr. Gaindarpersaud, the People believe that he would have judged that the videotape was not sufficiently clear or complete to identify a perpetrator. In short, the complainant had substantially exaggerated the probative value of the videotape.

8. The officer properly exercised his discretion to try to resolve the neighbor dispute, at the complainant's request, by offering Mr. Gaindarpersaud the chance to pay for the tires and avoid arrest. However, Mr. Gaindarpersaud became rapidly defensive and interrupted the officer's attempt to mediate, because he was being accused of a crime he maintains he did not commit. Here, both the officer and Mr. Gaindarpersaud could have responded in a more measured and productive way.

9. For his part, the officer should have approached Mr. Gaindarpersaud in a less accusatory and dogmatic way, recognizing that, although the law allowed him to rely on the complainant's account, that didn't guarantee that it was true, or that Mr. Gaindarpersaud was in fact guilty. Had the officer's approach been more measured, Mr. Gaindarpersaud might have responded better.

10. For his part, Mr. Gaindarpersaud's preconceived distrust of police officers in general contributed to an uncomfortable situation escalating to a dangerous one.

11. Mr. Gaindarpersaud acknowledges that he should have complied with the officer's orders to submit to being detained and handcuffed, should not have run, and should not have

continued to resist handcuffing once the officer caught him. Even though he maintains his innocence of the underlying vandalism, he now recognizes that his claim of innocence did not entitle him to refuse to comply with the officer's orders.

12. Mr. Gaidarpersaud also recognizes that, although every defendant is entitled to see and confront the evidence against him, that right is properly exercised in a court of law, after an arrest. A suspect is not entitled to see the evidence against him before deciding whether to submit to a detention or arrest. Trials are not held in the street.

13. Most importantly, both parties recognize that the unhelpful assumptions and mistakes made by both the officer and Mr. Gaidarpersaud contributed to a chaotic situation that endangered the safety of the officer, Mr. Gaidarpersaud, and nearby citizens.

Accordingly, once this Resolution is signed by all parties:


a) The People will move to dismiss the charge of Criminal Mischief in the Fourth Degree, on the basis that the People deem the evidence as currently known to be insufficient to merit bringing this charge to trial; and

b) The People and Mr. Gaidarpersaud will both consent that the charge of Resisting Arrest be adjourned in contemplation of dismissal; and

c) Consistent with their hope to promote understanding and cooperation between the police and citizens, both parties consent to this resolution being made public.

Signed,


Yugeswar Gaidarpersaud Dated: 10/26/2020


Derek Andrews, counsel to Yugeswar Gaidarpersaud Dated: 10/21/2020


Robert M. Carney, District Attorney Dated: 10/27/2020

EXHIBIT 2

Comparisons To George Floyd Are False

George Floyd

Mr. Floyd was already in handcuffs, and securely in custody, when the officer first applied his knee, and throughout the time he applied his knee.

The kneeling officer was in no danger, was surrounded by fellow officers, & was on a public street where he could receive still further aid if needed.

The kneeling officer's hands were free; indeed, he kept them nonchalantly in his pockets while kneeling on the Mr. Floyd's neck.

The officer's knee was on Mr. Floyd's neck, possibly cutting off his Carotid arteries and windpipe, both located in the neck.

Yugeshwar Gaiindarpersaud

The suspect was never handcuffed or in custody when the knee was applied. To the contrary, the suspect successfully defeated the arresting officer's persistent efforts to handcuff him, causing the officer to use his knee to hold the suspect down while he used his hands to attempt, unsuccessfully, to handcuff the suspect. The officer removed his knee as soon as the suspect was handcuffed.

The kneeling officer was in danger, alone with no fellow officers, having lost his radio, surrounded by hostile members of the suspect's family, shielded from public aid in the suspect's back yard. The fact that the suspect's family did not attack the officer does not negate the real danger, which persisted as long as the suspect continued to resist arrest, that they could do so at any moment.

The kneeling officer's hands were fully occupied wrestling with the suspect. The officer and the suspect alternately grabbed onto and lost their grip on one another's hands. This left the officer with no means of restraining the struggling suspect's movements without using other body parts (his knee) - or resorting to a weapon.

The officer's knee was on the side of the suspect's head, where it could not possibly obstruct the suspect's Carotid arteries, windpipe, or breathing.

The officer applied his knee for **nearly 9 minutes**, including nearly 3 minutes after Mr. Floyd **lost consciousness**, and removed his knee only after Mr. Floyd died.

While the knee was on his neck, Mr. Floyd said **"I can't breathe"**, more than 20 times.

While the knee was on his neck, Mr. Floyd **became unconscious**, obviously giving credence to his claims that he couldn't breathe, but the officer still **kept a knee on his neck for nearly 3 more minutes**, causing death.

The officer's knee on Mr Floyd's neck allegedly caused **unconsciousness and death**.

In sum, an officer knelt on a handcuffed George Floyd's neck for nearly 9 minutes, not to restrain him, but apparently to impose unauthorized **street-side punishment**, and continued

The officer applied his knee for **less than 2 minutes**, and the suspect **never lost consciousness**. To the contrary, the suspect never even stopped talking or forcefully struggling. The officer removed his knee immediately when backup officers arrived and secured the suspect.

While the knee was on his head, the suspect **never said he couldn't breathe and never even mentioned his neck**, despite talking constantly during the struggle. Instead, the suspect said "Show me the evidence" 4 times; protested his innocence using various phrases ("What I did?", "I didn't do nothing", and "Why are you harrassing (or "arresting") me?") 16 times; and complained "Ow, my head!" 10 times.

While the knee was on his head, the suspect **never lost consciousness or showed any sign that he had difficulty breathing**. To the contrary, he continued to breathe effectively throughout the struggle, and never stopped talking or struggling effectively against the officer's persistent efforts to handcuff him.

The officer's knee on the suspect's head, and the suspect's persistent struggling, caused **only minor abrasions** and no serious injury. He was checked at the hospital minutes after his arrest and quickly released, in time to protest in front of police headquarters hours later.

The officer knelt on a struggling suspect's head in order to **overcome his active resistance to arrest and prevent his escape**, only until backup officers arrived, and then removed his knee as soon as the suspect was secured. The struggle resulted in minor abrasions.

to do so well after Mr. Floyd lost consciousness, until he died.

EXHIBIT 3

Pommer BWC Transcript (PWM's 10/27/20 draft)

[All times are a.m.]

- 9:38:29 Pommer in squad car alone, driving, no sound
- 9:39:55 Pommer arrives at 332 Brandywine, sound activated
- 9:40:15 Pommer on front porch 332/330 Brandywine. 330 mailbox reads: [REDACTED], [REDACTED]". 330 window has Security Camera warning sign.
- Pommer's car is clearly marked "Police" & is parked on Brandywine directly IFO 330/332 porch (So: suspect and/or his family knows Pommer is mtg w/ Chow-Chick)
- 9:40:30 Pommer has radio in hand
- 9:40:38 Mailbox at 332 says [REDACTED]"
- 9:40:57 Red 4 dr Sedan parked IFO suspect's house next door (334/336). White 4-dr sedan parked IFO of next house over (338/340, where surveillance video was shot)
- 9:41:10 No one answers door at 332, complainant's residence, so Pommer calls dispatch on radio and asks them to call comp. and ask him to step out.
- 9:41:20 Unknown person, possibly B/M, stands in roadway on far side of Brandywine, facing toward 330/332 and Pommer (watching?) – Wearing all dark clothing (not Gaiendarpersaud's outfit) – Person then crosses the street to even-numbered side, maybe 2 houses to right of 332 and disappears.
- 9:41:50 Pommer knocks on 330 door – NA
- 9:42:15 Pommer leaves 330/332 porch, goes to complainant's driveway on R side of 330/332, facing bldg, walks to rear yard, encounters adult male doing yard work. (Chow-Chick's downstairs tenant?) White SUV parked in comp's back yard near garage.
- Male is light-skinned Hispanic or Guyanese, wears white sleeveless t-shirt, dark shorts, white sneakers [Common garb, but similar to [REDACTED] description] – No hat – Red bandana at neck.
- Male tells Pommer that complainant re slashed tires just stepped out, to have his car towed. Adds: "They got video too". Says comp intends to bring video to SPD.
- 9:43:20 Pommer gets radio call saying comp is en route back to scene.

9:44:00 Pommer waits for comp in his squad car

Unknown W/M wearing facemask approaches Pommer from opposite side of Brandywine, complains that a contractor has dumped a load of stone in the road on upper Broadway – Pommer calls it in to dispatch.

Pommer waits several minutes in squad car for comp., listens to dispatch calls

9:49:05 Complainant Nathan Chow-Chick returns (in black 4 dr BMW) driven by Chow-Chick's female friend [REDACTED] BMW drops Chow-Chick off out front to talk to Pommer, and drives up Chow-Chick's driveway to his back yard.

Chow-Chick wears: white short-sleeve t-shirt; black shorts; white socks; Nike sandals; Red hat on top of head, fitted tight with brim facing backward. He is medium-skinned, has short beard on chin.

Pommer and Chow-Chick talk out front, in easy view [and probably hearing] from suspect's house next door.

9:49:12 Pommer [to Chow-Chick]: "Is that the car?" (referring to the BMW)

Chow-Chick: "No"

9:49:19 Pommer: "You have, uh, you've got footage, you said?"

Chow-Chick: "Well I'm trying to get it from my neighbor , so she has it on camera out back – you can see everything straight." [gestures toward his back yard]

9:49:30 Pommer: "You, um, do you know your license plate number?"

Chow-Chick checks his phone but can't find license number, says: "Just a second."

Pommer: "No, that's fine. Hey, how many tires was it?"

Chow-Chick: "Both the, the driver's side, on driver's side, front and back."

Pommer: "Just the 2 sides, the 2 tires?"

Chow-Chick: "Yeah."

While Pommer and Chow-Chick speak out front, the white SUV previously parked behind Chow-Chick's residence leaves from Chow-Chick's driveway. [Chow-Chick's downstairs tenant again?]

9:50:20 Chow-Chick: "My license is "HSK...where is it?would it be on the insurance?"

Pommer: "Could be, yeah."

Chow-Chick: "Here it is." Takes insurance card from his wallet & shows card to Pommer.

Chow-Chick walks over to speak briefly to the driver of the departing white SUV, apparently the same who was previously working in Chow-Chick's back yard.

9:50:45 Chow-Chick [to Pommer]: "I seen everything on the camera, where he kicked, because I had a gate nailed to my garage, the gate was kicked, you can see when he kicked it down, and he walked around, to make it look like ..."

9:50:55 Pommer [interrupting]: "Oh, so you saw it?"

Chow-Chick: "Yeah"

9:50:57 Pommer: "Do you know who it is?"

Chow-Chick: "Yeah, right next door, downstairs." (gestures to 334, suspect's building)

9:51:01 Pommer: "You know it's him?"

Chow-Chick: "He and my Mom have issues and the other day, I don't, the weekend, when the issue happened, I came out, I go to work in the morning, I was supposed to go to work today, and I couldn't go to work because my tires were slashed..."

9:51:13 Pommer: "Yeah."

9:51:15 Chow-Chick: "He, I came out in the morning, I saw his tires flat, and I'm like, oh, ok, not my concern, I don't care, I saw it, and I just continued going, so I'm thinking, he automatically thinks it's me, but I have nothing to do with it."

9:51:27 Pommer: "Yeah"

A female walks from the rear of Chow-Chick's yard toward the front and joins Chow-Chick and Pommer out front. She is medium dark, wears dark "Levi" logo t-shirt, light print shorts, sandals. [Chow-Chick's subsequent affidavit seems to name her as his best friend [REDACTED] [REDACTED]. But on the BWC she seems to say she lives just down the street from Chow-Chick.

[REDACTED]

whose security camera allegedly captured the slashing? Female sits down on driveway sidewalk step near Chow-Chick

9:51:30 Chow-Chick: "I didn't take anything. I didn't do anything. I don't have time to do that. I'm not that type of person."

Pommer: "Right"

Female: "He's mean" [referring to the suspect]

Pommer: "How old is he?"

Chow-Chick: "He's about my ..."

Female [interrupting]: "30?"

Chow-Chick: "About, yeah."

Female: "He be cursing at him [Chow-Chick], the other person next door ..."

Chow-Chick: "Since he moved in he's always had problems with everybody. With the neighbor next door. He has a problem with me, with my Mom. He has problems, he just has issues all the time. Since he's been here, there's always been issues..."

9:51:54 Pommer: "Yeah, absolutely."

Chow-Chick: "All right."

Pommer: "Sorry, what's your last name?"

9:52:00 Chow-Chick: "Chow-Chick C-H-O-W, Dash, C-H-I-C-K"

9:52:03 Chow-Chick (looks at his phone): "And I know that he has a bond on him. And I don't know what does that mean."

Pommer: "Sorry, what was that?"

Pommer holds his small notepad in view, w/ notes on 1 pg. from this call

Chow-Chick: "A bond on him..."

9:52:10 Pommer: "It could mean, maybe he's out on bail. Could be, that might be what it is."

Chow-Chick: "Whatever it is"

Pommer: "What's your first name, sorry?"

Chow-Chick: "Nathan, that's fine."

Pommer: "Nathan, what is your date of birth?"

Chow-Chick: [REDACTED]"

9:53:27 Pommer: "Do you know his name?"

Chow-Chick: "Not really"

9:52:28 Pommer: "No? Upstairs or downstairs?"

9:52:46 Chow-Chick: "I have no contact with him, I don't do anything, I see him. One time he came up to me and he asked me whether my cameras were working at the time. He came up to ask me, I says, I don't want no issues with you, I see you, I don't see you. I respect you, I don't respect you. At the end of the day, I have nothing to converse with you.

Pommer: "Yeah"

9:52:49 Chow-Chick: "You disrespect my Mom, I'm going to stay my distance, you stay your distance."

Female: "I was here, I was here, and his (Chow-Chick's) mom don't live here, she lives in Queens. And she just came, because he [the suspect] drove off on her brick, and she asked him to put her brick back, you know, glue it back, and he starts saying 'Oh fuck you, fuck this...' 'Why are you cursing, she's just telling you to put the brick back, and I was there when you moved the brick out.' He's cursing her, and that's very rude."

9:53:15 Chow-Chick: "The thing, overall, he's just trouble."

This conversation is still out front of 330/332, in view of the suspect's home.

Chow-Chick: "You understand?"

Pommer: "Yup."

9:53:22 Chow-Chick: "And I just, like I said, I come in, I work through the pandemic, I'm a medical assistant."

Pommer: "Yeah"

Chow-Chick: "I work, that's all I do, I don't have time on my hands. I'm with my best friend" (gesturing to the female). [Chow-Chick's later affidavit says that his "best friend" is ██████████.]

Female: "I live right next door, 2 houses down"[But Chow-Chick's later affidavit says Sukeado lives at 1221 4th Ave.]

Pommer: "So, you live at the white one, not the yellow one, the gray one"

Female: "Yeah"

9:53:44 Pommer: "Seems like he's a real black hole of the street here."

Chow-Chick: "Yeah"

Pommer: "Is he upstairs or downstairs?"

9:53:45 Chow-Chick: "Downstairs."

Pommer: "Which one of the cars is his?"

Chow-Chick: "His cars were in the back."u

9:53:58 Chow-Chick: "And, as soon as he know that I, cause I was talking to my tenant downstairs, I was telling him, and I don't know if he overheard me, and I said 'Oh, we got him on camera, and I'm taking it to the police, and that's where it's going to happen'. So, when I said that, like 5 minutes later, he left."

9:54:08 Pommer: "So he's gone"

Chow-Chick: "He's gone, his car is not there. But his wife is there."

Female: "His truck is there."

Chow-Chick: "His truck is there?"

Female: "Yeah"

Chow-Chick: "Oh"

Pommer: "Can I see it? Can you show me it from the back?"

9:54:15 They all go to Chow-Chick's rear yard.

Pommer: "Cause, I mean, if he's not there, I'll try to get as much information as I can, and then just do the report, and we can...Are you looking to press charges, are you looking to sue him? What do you ..."

Female: "Everything."

9:54:25 Chow-Chick: "That's his car right there, the gray one."

Pommer: "Which one?" [There are 2 vehicles in suspect's rear yard, parked side by side] "On the right?"

9:54:33 Pommer radios to dispatch: "35. Can you run [REDACTED] And let me know who that comes back to?"

9:54:51 Pommer: "So, ultimately, I mean, you know, obviously you had 2 of your tires popped. Where's the camera that catches it?"

Chow-Chick (pointing past suspect's rear yard to the next yard over): "You see the camera on the 3rd house?"

Pommer: "Oh yeah"

Chow-Chick: "You catch everything from the back, right on this side"

Pommer: "Ok, what are you looking at?"[meaning, what action does he want]

9:55:04 Chow-Chick: "To be honest, I'm not that type of person. He has a family. I know he has a history, or whatever is going on. That's not my concern, I don't give a fuck to be honest."

9:55:15 Female: "Language."

Chow-Chick: "Listen, I'm pissed off. But I'm being nice at the same time."

Pommer: "You're not offending me."

9:55:24 Chow-Chick: "But like I said, he has a family. Just let him know, it's either he repay me back for the, the, the damages that he just did, and keep himself to himself, and we're not going to have any situation. You see my Mom, don't say nothing. You approach her nice if you approach her."

9:54:44 Pommer: "Now is this something, you want me to go talk to ...Because he's not there. I can try to go and make contact with the wife, again, if she's gonna open the door for me. You know what I mean? I'd love to kick everyone's door in for everything, because it makes my job more fun, but I can't. Then I'd get fired."

[Pommer and Chow-Chick both laugh out loud at this unfortunate, but obvious, joke.]

9:56:16 Pommer: “So I can try to go make contact with her, say, ‘Look, we have him on camera, he did this, ok, he needs to repay, and we’ll be done with this, or we’ll go whatever route.’ Or, if you would like, ok, I can just do all the paperwork and lay the groundwork. If you want to make the advisement, and say, ‘Hey, look at, this is the video, this is you, I reported it to the police, it’s not going to go anywhere if you pay me back, here’s the bill. If you don’t, then I’m going to press charges and have you arrested.’”

9:56:23 Chow-Chick: “That’s exactly what I want to do...He has 2 options.”

9:56:25 Pommer: “Ok, so. I’ll do the report. If you want to talk to him, you know, that’s fine.”

9:56:31 Chow-Chick: “Well, I don’t want to approach him on my own, because, again...”

Pommer: “Ok...he’s gone...OK, I mean...”

Dispatch calls Pommer on radio: “I have that plate coming back to a Y. Gaidarpersaud, with a Schenectady address, 334 N. Brandywine Ave. It’s a [REDACTED].” [Dispatcher’s description of the car matches the car that Chow-Chick pointed out as suspect’s car.]

9:57:05 Pommer to Dispatcher: “Copy, can you put his name and date of birth in the notes for me please?”

Pommer to Chow-Chick: “Um, we., if you want, I can go try to talk to the wife right now, and at least lay a base, and say, ‘Hey, look at, this is what’s going on.’”

Chow-Chick: “Yeah”

9:57:14 Pommer: “Are they upstairs or downstairs?”

Chow-Chick: “Downstairs”

Pommer: “Well, hang out here.” [in Chow-Chick’s back yard]. “Let me go knock, and see if they answer the door for me. If not, we’ll go over our options, ok? “

Chow-Chick: “OK”

9:57:22 Pommer: “You’ve got a hawk up there?... a pigeon?”

9:57:26 Pommer walks down Chow-Chick's driveway to front of house. A B/M in brown "SCCC" logo t-shirt approaches Pommer on sidewalk

B/M: "Officer, can I help you?"

Pommer: "Yeah, I'm talking to people in the back. Can I help you?"

B/M: "I live here" [gestures toward Chow-Chick's yard]

Pommer: "I'm talking to your neighbor."

B/M: "All right."

9:57:55 Pommer walks over onto 334/336 porch, repeatedly knocks and rings bell at suspect's apartment, # 334. No response.

From the suspect's front porch and apartment windows, a person at the suspect's house could easily see Pommer's marked squad car and Chow-Chick's front yard, where Chow-Chick initially told Pommer about the tire slashing, the surveillance video, and that the video caught the suspect in the act.

Pommer stands aside from suspect's front door while knocking on it (safety measure?)

Black SUV parked in driveway at far side of 334/336.

9:59:18 Pommer leaves 334/336 porch, returns to squad car, types on keyboard, using his field notes.

10:00:51 to 10:03:15 Pommer answers his cell phone while sitting in his squad car, and has a 2 & ½ minute conversation with his Sgt. The Sgt does most of the talking (his remarks are largely inaudible).

The Sgt has called Pommer about the [REDACTED] tire slashing incident that Pommer responded to just before coming to Brandywine. At McClellan St, Pommer had refused to arrest the complainants' Guyanese neighbor based on the complainant's logical assumptions, their history of disputes with the suspect [which led to an OOP against the suspect], and one complainant having seen someone near their car in the middle of the night. The McClellan St complainants didn't witness the slashing or have any videotape. Pommer refused to arrest based on their evidence, but told them he'd ask for the nearby pole camera footage to be reviewed for evidence. They were so angry at his refusal to arrest that they called 911 to complain and request that a sergeant come to the scene and direct an arrest. The Sgt didn't go to the scene, but called Pommer for his side of the story. Only Pommer's side of the conversation can be heard clearly:

Pommer: "Hey Sarge, what's up?"
 "Oh, yeah."
 "What?! 100%"
 "No, yeah, correct"
 [Pommer laughs] "Yeah. Yeah."
 "That's what I told her! I go, 'Look it, if she's not on the order, I can't violate, he can't violate the order.'
 "I go, 'if you want... "
 "No, nothing."
 "100%"
 "And he's listed, he's listed in the report. I go, 'Dude, I gotta do, you have no cameras, I've got to check around and see. You know what I mean? Like, because, because of your assumptions I can't arrest someone. And he was like, 'Well, they violated the order yesterday.' I'm like, 'Dude, no they didn't.' I'm like, 'If she's not on the order, it's not violated.'"
 "I go, 'If she wants to report a crime', I go, I go, 'I will talk to her away from you, because you're screaming at me. I'm not doing that.' You know?"
 [Laughs]
 "Yeah. Yeah. Yup."
 "No"
 "Yeah, that's all I did, that's what I told her."
 "Yeah."
 "You got it."
 "I go, 'Dude, that's not what happens here, we don't do that. I go, I got people on Brandywine with slashed tires, I gotta go.' You know."
 "Yeah."
 "No."
 "Well, I appreciate it."
 "All right man, later."

10:03:15 End of phone call with Sgt. During call, radio reported still other neighbor trouble, elsewhere on Pommer's beat.

Pommer to Dispatch: "35. That neighbor trouble, the problem party's off scene, correct?"

Dispatcher: "Affirmative"

10:03:28 Pommer: "Alright, I'll take that in a couple minutes. Let me finish this."

Pommer types on computer in squad car, sings to himself

10:05:41 Pommer [to himself, while typing]: "What the hell?"

10:05:45 Pommer [to himself, while typing]: "There we go."

10:05:55 Pommer exits squad car, returns to rear yard of Chow-Chick's residence, resumes talking to Chow-Chick.

10:05:47 Pommer: "Do you have that insurance card again? I'm trying, I'm trying to get your plate and I can't find it. Make sure I wrote the VIN # correct [He checks his note pad & determines that he was off by 1 digit]

10:06:28 Chow-Chick: "It's [REDACTED]. And I'm _____ - my name."

10:06:35 Pommer: "So, obviously there's no answer over there. Whether the wife was home or not. She's probably home, but she's obviously not going to come to the door. He is on probation, for life. I don't know what he did."

Chow-Chick: "Ok...so I'm pressing charges." [hard to hear this]

10:06:54 Pommer: "I'm trying to figure this out for you, ok? He's on probation, for life. I don't know what he did, ok, but obviously if he does something, he gets in trouble with his probation officer. So there's a couple things that I can do, all right? I can do the report, notate that we have video evidence. And when you see

10:07:13 him come back, you can call us, and I can come make the advisement to him, and say, 'Hey, look it, we did the report, we have you on camera, you did this, you're on probation. Either you pay Nathan back, ok...' Obviously, keep the bill for today. 'You pay Nathan back, and we're done. Ok, we'll squash it, leave everyone alone, this doesn't need to go any further. Ok? If not, then, Nathan's going to press charges, I'm going to contact your P.O., and you're going to get whipped and, you know, back in the piss-can.' Ok?

10:07:30 While Pommer is talking, his wristwatch becomes visible in front of his BWC, and the time on the wristwatch exactly matches the time stamp on the BWC video: "July 6, 10:07".

Chow-Chick: "OK"

Pommer (explaining to both Nathan & Female): "That's probably, it's not parole, parole is serious, probation is just like a monitor. You know what I mean. Like, parole is like when someone gets released from prison, they're on parole. Probation is, they do something and they're on probation. Clearly, it was serious enough in the military [unclear] where he's on ..."

Female [interrupting]: "...I'm on probation. [inaudible]"

Pommer: "But, I mean, you're probably not on probation for life."

Female: "No, I'm getting off in August."

10:08:07 Chow-Chick: "I'm just curious, one question, this is off topic."
Pommer; "Yeah"
Chow-Chick: "What is such severity for someone to be on probation for life?"

10:08:16 Pommer: "It could be...Is this my man right here?" [Pommer and Chow-Chick both look into the suspect's back yard, where the suspect can be seen walking in his back yard toward his 2 parked cars.]

10:08:20 Chow-Chick: "That's him."
Pommer (calling over to Gaidarpersaud who is in rear yard of 334/336 Brandywine.) "Hey what's going on man? Can I talk to you out front, please? Can I talk to you out front?"

10:08:30 Pommer walks out front to Brandywine and meets Gaidarpersaud in Gaidarpersaud's driveway at the front of his house. Gaidarpersaud wears light gray sleeveless t-shirt, light gray shorts, sandals. His hands are at his sides.

10:08:55 Pommer [as he reaches the sidewalk IFO Gaidarpersaud's driveway]: "Hi. What's your first name?"
Gaidarpersaud: "Huh?"
Pommer [walks up the driveway, closer to Gaidarpersaud, and repeats his question]: "What's your first name?"

10:08:57 Gaidarpersaud: "Chris."
Pommer: "Ok, what happened next door with the car?"
Gaidarpersaud [defensive tone]: "What are you talking about?"
Pommer: "What am I talking about? Ok, we have you on camera..."

10:09:03 Gaidarpersaud [interrupting]: "Bring me the camera and show it to me. [He doesn't ask what he's accused of doing with the car next door, just asks for proof he did it.]
Pommer: "Huh?"
Gaidarpersaud: "Bring me the camera and show it to me. What are you talking about?"

Pommer: “All right, I’m going to.” [Sounds like Pommer was willing to get the video and show it to him, but hoped to resolve the situation amicably first.] “OK, look, I’m trying to talk to you about this first, without going any farther.”

10:09:11 Gaidarpersaud [interrupting again]: “I understand what you’re saying, but what are you talking about?”

Pommer: “What I’m talking about, ok, let me finish what I have to say, ok?”

Gaidarpersaud: “Ok” [Gaidarpersaud folds arms across his chest]

10:09:20 Pommer: “We checked the neighbor’s camera, ok, and you slashed their tires.”

Gaidarpersaud: “I slashed the tires?”

Pommer: “Yes, let me talk to you...”

10:09:23 Gaidarpersaud [interrupting again]: “I slashed the tires?”

Pommer: “Let me, let me talk to you, OK?”

10:09:26 Gaidarpersaud [for the 3rd time]: “I slashed the tires?”

Pommer: “Yes, let me talk to you, OK?”

Gaidarpersaud: “Ok” [arms again folded, defensive posture] “Go ahead.”

Pommer: “We have it on camera. They don’t want to press charges right now...”

Gaidarpersaud: [interrupting again, angry tone & gestures] “I don’t care what they [points to Chow-Chick residence] want to do, because I [points to himself] don’t know what you [points to Pommer] talking about. So bring that camera [points in direction of 338/340, the neighbor’s house with the security camera], show it to me.” [Pommer hasn’t told him where the camera is.]

10:09:39 Pommer: “Ok, turn around, put your hands behind your back.”
[Gaidarpersaud does not immediately turn around or put hands behind back. He continues facing forward, hands at sides]

10:09:42 Pommer on radio: “35, ...send me a car.”
[Gaidarpersaud puts hands behind back but remains facing forward.]

Gaidarpersaud: “Put my hands, why?”

Pommer: “Turn around, put your hands behind your back.”

Pommer reaches forward toward Gaindarpersaud. Gaindarpersaud swats at Pommer's hands before Pommer touches him. Simultaneously, Gaindarpersaud spins around and runs full speed down driveway toward rear of house, running out of his sandals, which fall off and remain in the driveway. Pommer pursues.

10:09:48 Pommer on radio: "35, foot pursuit! Guyanese male." [remainder is inaudible]

10:09:50 Pommer quickly catches up to Gaindarpersaud in rear yard.

Pommer: "Hands behind your back! Hands behind your back!"

Gaindarpersaud: "Why you ["harrassing" or "arresting"] me?"

Pommer: "Hands behind your back!"

10:09:55 [Both men together on ground. Pommer's L hand grasps Gaindarpersaud's R bicep. Pommer's R hand grasps Gaindarpersaud's R wrist. Gaindarpersaud rolls around, trying to roll out of Pommer's grasp. Gaindarpersaud appears to call out to others, presumably his wife and father.]

10:09:56 Pommer: "Hands behind your back!"

Gaindarpersaud: "Yo, why you ["harrassing" or "arresting"] me?"

Pommer: "Hands behind your back!"

10:09:58 Gaindarpersaud on L side, struggling. Gaindarpersaud's L hand is free. Pommer holds Gaindarpersaud's R wrist. No foot/knee on head yet.

Gaindarpersaud: "Yo, why you ["harrassing" or "arresting"] me?"

10:10:01 Pommer still trying to secure Gaindarpersaud's hands as Gaindarpersaud rolls away and struggles. No foot/knee on head yet.

10:10:02 Pommer: "Put your hands behind your back!"

Gaindarpersaud: "Why you ["harrassing" or "arresting"] me?"

Pommer: "Put your hands behind your back right now!"

Gaindarpersaud: "What I did? What I did?"

Pommer's R hand on Gaindarpersaud's L bicep. Pommer's L hand trying to grab Gaindarpersaud's R wrist. Gaindarpersaud on his R side; head and neck unencumbered.

10:10:07 Gaidarpersaud rolls away from Pommer, onto his back. Gaidarpersaud's R hand is free. Gaidarpersaud's head and neck unencumbered.

Pommer [to Gaidarpersaud's family] : "Stay back! Stay back! Stay back!"

10:10:09 Gaidarpersaud rolls to his back & gets his R arm free. He yells to his family [indecipherable].

10:10:10 Pommer has Gaidarpersaud's L wrist; tries to move it behind Gaidarpersaud's back. Gaidarpersaud resists.

10:10:11 Gaidarpersaud points finger of his free R hand toward rear door where his family is, and yells to them [indecipherable].

Pommer: "Put your hands behind your back!"

10:10:18 Pommer: "Call the Police!"

Gaidarpersaud: "Tell him to bring the evidence! Bring the evidence and show it to me! Bring the evidence and show it to me!"

Pommer: "Put your hands behind your back!"

10:10:21 Gaidarpersaud's R hand is still free. Head and neck unrestrained.

Pommer: "Put your hands behind your back!"

Gaidarpersaud: "Bring the evidence and show me! Bring the evidence and show it to me!"

10:10:26 Female yells: "No!"

Gaidarpersaud rolls onto L side; his L arm is free.
Pommer tries to grab his R wrist.]

10:10:27 Gaidarpersaud's hand and neck still free.

Pommer: "Put your hands behind your fucking back!"

10:10:28 Gaidarpersaud on back, both hands in front of his body, still struggling.
Pommer's L hand grasps Gaidarpersaud's L wrist; Gaidarpersaud's L fist is clenched. Pommer's R hand grasps Gaidarpersaud's R wrist.

Gaidarpersaud gets his L arm free. Pommer applies his knee to R side of Gaidarpersaud's head.

10:10:37 Gaidarpersaud: [w/ knee on R side head]: “Bring the evidence and show it to me!”

Pommer [to family]: “Back up! Back up!”

Gaidarpersaud’s L hand grasps Pommer’s L hand

10:10:39 Gaidarpersaud’s L hand grasps Pommer’s L hand. Pommer’s knee on R side of Gaidarpersaud’s head.

10:10:40 Gaidarpersaud: “Bring the evidence and show it to me!”

Pommer: “Put your hands behind your back!”

Gaidarpersaud’s L hand grasps Pommer’s L hand. Pommer’s R hand grasps Gaidarpersaud’s R wrist. Both of Gaidarpersaud’s legs are free. Knee on R side of head.

10:10:41 Gaidarpersaud: “Bring the evidence and show it to me! What I did?”

10:10:43 Gaidarpersaud: “I didn’t do nothing!”

Pommer: “Put you hands behind your back!”

Gaidarpersaud: “I didn’t do nothing! I didn’t do nothing!”

Pommer [to family]: “Get back inside now!”

10:10:49 Gaidarpersaud’s L hand still grasps Pommer’s L hand. Pommer’s R hand grasps Gaidarpersaud’s R wrist.

10:10:50 Family yelling

Pommer: “Get back inside!”

Gaidarpersaud: “I didn’t do nothing.”

10:10:53 Pommer: “Get back inside!”

10:10:57 Pommer: “Back up! Back up! Back up!”

10:11:02 Family yelling: “What he do to you?”

Gaidarpersaud repeatedly calls out a name, sounds like: “Vigram! Where’s Vigram? Vigram!”

Pommer: "Back up!"

10:11:08 Pommer yanks his L hand from Gaindarpersaud's grasp. Pommer's knee on R side of Gaindarpersaud's face. Gaindarpersaud's chin and neck are visible and unrestrained.

Pommer: "Put your hands behind your back! Put your hands behind your back!"

10:11:10 Gaindarpersaud: "What I did? What I did? What I did?"

10:11:14 Pommer tries to roll Gaindarpersaud from back onto stomach. Gaindarpersaud still struggles. Gaindarpersaud's L hand grasps Pommer's L wrist; Pommer's L hand grasps Gaindarpersaud's R wrist.

Pommer: "Back up! Back up! Back up!"

Female yelling

10:11:17 Gaindarpersaud: "What I did?" [knee still on R side head, chin visible]

10:11:22 Gaindarpersaud: "Ow, my head! Ow, my head!"

Female yelling: "...please!"

10:11:24 Gaindarpersaud: "Ow, my head!"

10:11:27 Gaindarpersaud: "Ow, my head!"

10:11:29 Female: "What did he do?"

Pommer: "Back up!"

10:11:32 Gaindarpersaud: "Ow, my head!"

Male yelling

10:11:35 Gaindarpersaud: "Ow, my head! My head!"

Pommer has something in his R hand

10:11:40 Pommer: "Back up! He's under arrest!"

Gaindarpersaud: "What I did?"

10:11:42 Gaindarpersaud still struggling; looks like he's trying to get up. Pommer delivers "softening blows": 6 punches to the side of Gaindarpersaud's torso. Gaindarpersaud has rolled onto his L side. Sirens can be faintly heard in the background.

Pommer: "Back up! Hands behind your fucking back! Behind your fucking back!"

Gaindarpersaud: Screaming

10:11:50 Pommer: "Hands behind your fucking back! Back up!"

10:11:57 Male Family: "This is my property!"

10:12:00 Pommer [to backup officers] "Backyard! I'm in the backyard! Backyard!"

10:12:07 Pommer's vest camera dislodged; shows only the ground.

10:12:08 Pommer: "Get back! Get back! Get back!"

Gaindarpersaud: "Ow, my head!"

Female Family: "Poppy!"

Male Family: Yelling

10:12:18 Pommer: "Put your hands behind your back!"

10:12:21 Gaindarpersaud: "Ow, my head! My head!"

10:12:28 Sirens

10:12:32 Sounds like backup officer(s) have arrived: "Yeah." "You OK?" "Yeah."

10:12:35 Gaindarpersaud's Father: "What he did? What he did?"

10:12:38 Pommer has retrieved vest camera and it shows that backup officers have arrived.

10:12:40 Two rear doorways open onto suspect's back patio; both doors are open. Gaindarpersaud's father is in one rear doorway filming with iPad type device.

Off. Weekes holds Gaindarpersaud's legs. Gaindarpersaud's hands cuffed behind his back. Another officer holds down Gaindarpersaud's shoulder and lower back.

10:12:41 Gaindarpersaud: "What I did?"

10:12:43 Gaindarpersaud's head and neck now in view, unrestrained except Pommer holds head and neck down with fingers of one hand.

Gaindarpersaud's father: "What he did?"

10:12:50 Officers get Gaindarpersaud to his feet and walk him up drive to front.

10:13:00 Gaindarpersaud stops and reaches down, possibly to retrieve his sandals in the driveway. Officer pulls him up again and moves him forward.

Officer: " Get up, stand up, fucking asshole!"

10:13:30 Officers get Gaindarpersaud to squad car for transport to SPD, and as car is being unlocked, one officer checks Gaindarpersaud's R shorts pocket [both the officer's hand and the suspect's pocket appear empty]. Gaindarpersaud wrenches violently, trying to break free, but fails. Pommer is one of the officers holding him at the car; in the brief struggle, Pommer or his BWC falls to the ground & shows only ground.

An Officer: "Just get him out of here guys. Get him out."

10:13:47 Pommer resets his BWC and walks to suspect's house to retrieve his radio, which he lost during the fight with suspect.

On/near suspect's porch now are 2 people, including the father, apparently still filming; then appears to stop filming.

10:14:04 Pommer, out of breath, walks back through suspect's driveway where chase began; suspect's sandals still on ground.

10:14:20 Pommer reaches suspect's rear yard, sees his radio on ground, partially hidden by a child's plastic scooter. "My fucking radio, there it is." Camera shows quick view of 2 doors at rear of suspect's house, 1 with railings IFO of door.

10:14:23 Pommer tells other officers (inaccurately) that suspect said "Fuck you, I didn't do shit, I ain't talking to you."

Pommer recaps part of the events for other officers. "The entire family came out, and I'm holding him down & holding everyone back. ... I went to grab my radio and it's gone, so I'm yelling 'Call the police!'"

10:15:20 Pommer, still out of breath, leaves suspect's yard after getting his radio, returns to C-C's back yard.

10:16:05 In Chow-Chick's back yard, Pommer mutes vest mic for 17 seconds while talking to 3-4 other SPD officers. (Ch. Clifford says SPD policy allowed him to mute mic

while talking to supervisor.) (Other officers' BWCs capture this segment, so nothing is lost.)

10:16:22 Pommer's turns his vest mic back on. C-C hands Pommer the business card of the towing/repair shop. Pommer reviews it.

10:16:30 Pommer asks C-C: "Is the neighbor home with the camera?" C-C: "Yeah, she ..."
C-C leads Pommer from his yard.

10:16:___ Pommer, following CC down CC's driveway, says to other officers: "Well, I appreciate it boys, my fucking radio fell out of my belt."

Pommer to officers: "Yeah, I'm good. It's on camera. When I went to try to resolve it ... You want to hang out here in case things blow up again?" [Pommer is worried about the suspect's family, who are gathered on their front porch watching him & CC pass by on their way to ██████████]

10:17:10 Pommer & CC reach the home of ██████████ the neighbor with the security camera. It's the yellow house one past the suspect's house. ██████ meets them on the porch and brings them inside to the video screen. Chow-Chick operates the replay.

Pommer, still out of breath: "Oh boy. I went to talk to him, and he just, he booked on me. Yeah. I told him, I said, 'Hey we want to talk about it.' He said 'Talk about what? Nothing until you show me, anything. So I, to be honest with you, with your statements, I had enough to detain him at least, so I told him to put his hands behind his back. And he jetted, and that was it and I lost my radio."

██████ says she has had a lot of problems with the suspect also, that there are always parties there, and that they wash their grill onto her property & she's had to clean up food and worms.

10:18:24 Pommer to Dispatch: "35. That last male I ran, in the notes, he's on probation, can we get ahold of his probation officer please?"

10:18:58 Chow-Chick says: I came back from the city yesterday at 6-7, and ... next door, so I checked my car before I went in at 9 o'clock, and it was OK, so it happened after 10 pm.

10:19:20 Chow-Chick says 'maybe 10:30 or so'. He shows Pommer the video screen & says: "you can see somebody went this way, you can barely see them in that corner" (points to top of screen). Pommer stands there & watches, says "uh huh" as CC narrates the action, but Pommer does not closely scrutinize the video, approach the screen, ask CC to replay it, or ask any questions. (He still seems to be taking CC's word for what the video shows.)

- 10:19:58 C-C asks what happened & Pommer describes it, says he told the suspect that they didn't want to press charges, we just want to talk about this, but he got immediately aggressive "because he knows he's caught, so when I told him to put his hands behind his back, he just ran. Don't know where he thought he was going to go, but ... I mean, we pretty much boiled it down to, 'just repay him and we're done', you know?"
- 10:21:30 Pommer asks CC to come to the station to sign paperwork. CC agrees & says he'll definitely get the video to the police.
- 10:21:44 Pommer & Chow-Chick leave [REDACTED] house. They've been inside [REDACTED] for about 4.5 minutes. En route to CC's house, they pass the suspect's house again. Now there is a large medium skinned male out front talking to people on the porch. Then he crosses the st and leaves.
- Pommer asks Chow-Chick to come to SPD for paperwork
- 10:22:55 Pommer leaves scene in squad car, alone, says "What the fuck!" END VIDEO