



John Schlittler  
Chief of Police

**Needham Police Department**  
88 Chestnut Street  
Needham MA 02494



**TO:** Lieutenant Baker  
**FR:** Lieutenant Forbes & Lieutenant McGrath  
**DA:** October 29, 2020  
**SUBJ:** Marvin Henry/CVS Incident (IA 20-03)

Dear Lieutenant Baker,

On January 25<sup>th</sup>, 2020 Needham Police responded to a call for service at CVS located at 936 Highland Ave. The call was for a report of a shoplifting in progress which led to police interaction with Marvin Henry. On July 20, Chief Schlittler received a letter from the law firm of WilmerHale stating they were serving as counsel for Mr. Henry. The letter served as a complaint against the Needham officers who were involved in the call. The complaint alleged that the officers violated Mr. Henry's Equal Protection Rights, subjected him to an unreasonable search and seizure, unlawful detainment, and used improper force. Lieutenant McGrath and Lieutenant Forbes were assigned to conduct an Internal Affairs investigation into the incident and the above allegations.

**I. SUMMARY OF POLICE INCIDENT REPORT**

On January 25<sup>th</sup> Needham Police officers responded to a report of a shoplifting in progress at the CVS located at 936 Highland Ave (see call transcript below). Officer Nicole McMahon was assigned to sector three where the CVS is located and was the first officer to arrive on the scene. Officer McMahon completed an incident report. (20NEE-1130F)

McMahon indicated in her report that she responded to CVS to speak with the reporting party, CVS employee [REDACTED]. She stated that upon entering the store, [REDACTED] informed her that the suspect had just exited the store via the Highland Ave exit. McMahon wrote that she, Officer Fitzpatrick, and [REDACTED] exited onto Highland Ave and saw an individual speaking with Officer L. Schlittler. The individual was later identified as Marvin Henry. According to her report, [REDACTED] stated to McMahon that he recognized Henry as he was walking down the street (east on Highland Ave) and confirmed that he was the suspect. She then stated that Schlittler and Fitzpatrick detained Henry while the matter was further investigated.

McMahon then spoke with [REDACTED] and [REDACTED] (CVS store manager). They indicated to her that the persons, whom they believed to be Henry and [REDACTED] had successfully shoplifted from the store two or three times in the past few months but were never identified. [REDACTED] was registered owner of the vehicle Henry was driving. They further stated that they had submitted video of those incidents to Needham Police. They described how the shopliftings occurred. [REDACTED] and [REDACTED] then showed McMahon video of the current incident. According to the report, the video shows a

person, they believed to be ██████ entering CVS at approximately 2:52 pm and a person, they believed to be Henry, entering at approximately 2:53 pm. McMahon indicated in her report that she was going to enter the video into evidence. (20NEE-59-PR)

McMahon indicated that while reviewing the video with ██████ and ██████ they stated this incident was almost identical in both day of the week and time of occurrence to past incidents. They stated the past shopliftings occurred on Saturdays between 3pm and 4pm and the scheme involved the individuals walking out with full carts of unpaid merchandise. McMahon completed an inventory of the items that were placed in the carts left in the aisles. She further stated both ██████ and ██████ confirmed that, in this case, no items were removed from the store. McMahon further indicated in her report that Henry was released after his identity and address were confirmed. She further indicated Henry told them he was an employee of Elements Massage. McMahon further indicated that ██████ and ██████ completed written witness statements. ██████ wrote, "Once the police arrived, I identified the same individual as the same individual who was within the store. The police were speaking with the same individual." She concluded her report by stating that the matter remained under investigation.

On January 30<sup>th</sup>, Officer McMahon wrote a supplemental report to 20-113. In that report, she reviewed the video footage of the CVS shopliftings that occurred August 4, 2019 and October 19, 2019. She documented the movements of the two suspect individuals by time stamp. Based on their RMV photos, McMahon identified ██████ as being the suspect in all three incidents and Henry as the suspect in the October 19, 2019 incident. McMahon also confirmed ██████ and Henry as being employees of Elements Massage.

On February 7<sup>th</sup>, McMahon wrote a second continuation to 20-113. In that report, she wrote that she went to Elements Massage to further investigate if ██████ was the woman in the videos. She brought a photo of ██████ from the CVS video to show Elements Owner, ██████ ██████ stated that Henry and ██████ shared a vehicle and alternated use of the vehicle to commute to work. He also stated that only Henry was scheduled to work on January 25<sup>th</sup> at 3:30 pm. ██████ indicated that since she began working at Elements in 2018, ██████ always had shorter hair. McMahon indicated that the suspect in the video had longer, dark hair and that, based on her investigation, determined that ██████ was not a suspect.

On July 31<sup>st</sup>, McMahon wrote a third continuation to 20-113 that indicated Henry was not being investigated nor was considered a suspect in any of the Needham shoplifting incidents.

On September 21<sup>st</sup>, Chief Schlittler wrote a continuation that confirmed Henry did not appear in the CVS videos regarding August 4, 2019 and October 19, 2019.

## **II. SUMMARY OF WILMERHALE LETTER (ON BEHALF OF MARVIN HENRY)**

On July 20<sup>th</sup> Chief Schlittler received a letter from Wilmer Hale (Lawyer for Civil Rights Boston). The purpose of the letter was to notify the Department that they would be serving as counsel for Mr. Henry "in connection with his unlawful search and seizure and racial profiling by members of the Needham Police Department."

The letter stated that Henry was “accosted by Needham Police Officers outside a local Starbucks – without cause - and detained in handcuffs in full public view without explanation for at least 30 minutes, and ultimately accused of stealing products from a nearby CVS store.” The letter indicated that the Needham Police violated Henry’s state and federal rights and that the firm was seeking redress on his behalf.

The letter discussed Henry’s version of events on January 25<sup>th</sup>, 2020. It stated he went into CVS, where he had shopped numerous times before, and bought cough drops and iced tea at 3:04 pm (according to his receipt). He then proceeded out of CVS and picked up lunch at Town House of Pizza. He then walked to his vehicle where “he was confronted by four police officers, one of who yelled, ‘Hey you, come here!’” The letter stated that one of the officers grabbed Henry and “roughly shoved him against his minivan” and that the officer failed to identify himself nor give Henry a reason for approaching him. Henry believed Chief Schlittler (determined to be Officer Leo Schlittler), Officer Fitzpatrick and two other officers were close to him and that there were two more officers near CVS.

The letter further indicated that Henry cooperated fully, did not resist as he was being handcuffed, and gave no reason for the officers to shove him. It further indicated the officers searched Henry after handcuffing him even though he did not give “any indication of being armed.” It also stated that Henry asked several times why he was being detained and received no response and was not read his Miranda rights. Henry asked multiple times for the handcuffs to be removed or adjusted because they were causing him pain, to which the officers refused. Officers denied Henry’s request to phone his boss that he would be late. The letter stated Henry felt humiliated because the “Needham Police kept a wrongfully accused Black man standing on a public sidewalk....with his hands cuffed behind his back” with people looking at him for 30-35 minutes.

The letter then indicated Sgt Cray arrived on the scene. He informed Henry of the reason for his detainment, and that a store employee had identified him “as the suspected Black man from the camera footage.” Henry stated he made a lawful purchase and offered to show his receipt on his cell phone. Henry stated the officers asked him to open the door to his vehicle which he did because he was “too intimidated to refuse.” The letter indicated that the officers searched his vehicle, including Henry’s CVS bag and workbag and then he was uncuffed. Henry asked for the shoplifting video and was told by Sgt Cray he would have to request it at the Police Station.

According to the letter, no further explanation was provided by the officers. The letter stated not all the officers provided their name and badge number (Fitzpatrick: name & badge number; Cray: name only; L. Schlittler: name & badge number). The letter indicated Officer Fitzpatrick said he would “personally apologize” if Henry was cleared of the shoplifting. Henry was then released and informed he would be receiving a summons in the mail.

The letter further discussed the repercussions for Henry from the incident, including that he had to cancel his Saturday afternoon appointments stating he “was in no state to work after this encounter.” The letter indicated he was “extremely shaken and distressed” and physically injured with deep indents in his wrists from the handcuffs. The injury caused him to miss two days of work and “compensation.”

The letter stated Henry was humiliated and his reputation was damaged, especially considering the “highly visible nature of the incident.”

The letter indicated that after the incident Henry went to the Police Station to request the CVS video. He filed a public records request and received a letter from the Department on February 10<sup>th</sup> denying his request based on public records law exemption ‘f’. Henry’s letter stated with “no ongoing investigation ...it is not apparent why this exemption would apply.” Henry never received a summons and was never charged. The letter then indicated that the officers’ conduct violated Henry’s “right against unreasonable search and seizure, detained Mr. Henry without explanation, improperly using force, and handcuffing him, raises concerns of racial profiling and stereotyping that violate Mr. Henry’s right to Equal Protection under state and federal law.”

### **III. INVESTIGATION**

Officers McMahon, L. Schlittler, Fitzpatrick, Kelleher and Sgt Cray were provided with formal notification letters that a Professional Standards Investigation would be conducted by the Department. Letters were also provided to Union President Sgt Evans and Lt Baker. Chief Schlittler was excluded due to his brother being a named party.

On September 15, Lieutenants McGrath and Forbes conducted a canvass of the area, including local businesses, to locate video surveillance, witnesses, or any other evidence. The canvass yielded negative results.

#### **A. *Call for Service***

The call that initiated a police response originated from CVS employee, [REDACTED] at approximately 3:04 pm. Officer Kelleher, assigned to dispatch, received the call. The phone call was transcribed for the purpose of analyzing the specifics of the dialogue, the description provided, and the dispatch of the call to responding officers.

Officer Kelleher received the phone call from [REDACTED] as the incident occurred. [REDACTED] sounded to be excited as he believed the parties responsible for the on-going CVS shopliftings were going to be caught. During the call, [REDACTED] simultaneously provided Officer Kelleher both the description of the parties and where the responding officers should position themselves to apprehend the parties. Officer Kelleher, in a calm demeanor, continued to elicit information from [REDACTED]. In a back-and-forth conversation, Kelleher asked [REDACTED] for a description of the parties. [REDACTED] responded, “so it’s one black guy, big one with hoodie brown with uh red hoodie and black lady um with like black clothes...but um I want you guys to stay in the back of the store on Highland Ave door in a car so when they go out from the store you can catch them.” Kelleher asked [REDACTED] for a description of the male’s clothes. [REDACTED] responded, “so black/grey...(inaudible)...grey hoodie and a um hat on it.” Based on the investigation, [REDACTED] may have been unaware he was describing two different individuals. Kelleher then asked about the female’s description. [REDACTED] responded, “The female is black uh a big one too and kinda wearing black clothes” and that the parties are leaving the store. He sounded concerned they would evade the police. At 3:06, Kelleher dispatched, “Units responding, they’re exiting the store headed toward the exit on Highland

Ave described as a very large black male and a female, trying to get a clothing description now.” At 3:06, McMahon called out on scene. ██████ indicated to Kelleher that he saw her. At 3:08, Fitzpatrick called out on scene. Kelleher then asked ██████ to speak with the officer on-scene (McMahon), essentially “handing off” ██████. This is common practice as the in-person conversation is more reliable and effective than the phone conversation.

Kelleher stated he was trying to elicit more information from ██████ but it was difficult to keep him focused as ██████ was “excited” and difficult to understand. He stated he felt ██████ sounded “excited” because he believed he had the persons involved in the shoplifting and they were doing it again. Kelleher indicated he was trying to get a confirmed clothing description from ██████ but also wanted to dispatch the information to the units, as soon as possible, because the crime was in progress. He stated this was in case there was a unit in the area or very close to that location. He further indicated that this was his normal method of broadcasting a crime in progress to quickly direct officers to the incident location. He stated his description was based on what ██████ had said to him. He also stated he was trying to determine how to dispatch ██████ description of the female suspect “a big one too” in a professional manner. Kelleher expressed, as he was trying to obtain more information over the phone, McMahon arrived on scene. Kelleher stated he instructed ██████ to speak with her. Kelleher indicated he then entered the call information into the CAD because he had been focused on speaking with ██████ and dispatching officers.

### ***B. Transcript of Phone Call***

15:04:44: Call received on business line from ██████ and answered by Kelleher

**Kelleher:** “Needham Police Department, Officer Kelleher. This line is recorded.”

██████ “Hi, how are you? I’m calling from the Needham CVS the Highland Ave.”

**Kelleher:** “OK”

██████ “...and so we have a shoplifting in the store”

**Kelleher:** “Ok, Highland Ave CVS”

██████ “Yes and it’s happening now, um so if you guys come in...”

**Kelleher:** “hold on, hold on” (Uses Radio)

**Kelleher:** “Can you describe the person to me?”

██████ “uh so it’s one black guy, big one with hoodie brown with uh red hoodie and black lady um with like black clothes...but um I want you guys to stay in the back of the store on Highland Ave door in a car so when they go out from the store you can catch them.”

**Kelleher:** “Ok, um which door are they at?”

██████ “So they are not at front door, so I want you so Highland Ave.”

**Kelleher:** Ok, so they are going towards the Highland Ave door (uses radio to dispatch units).”

██████ “Yes, Highland Ave door, yep back door.”

**Kelleher:** (uses radio) “What was the male wearing?”

██████ “so black/grey...(inaudible)...grey hoodie and a um hat on it.”

**Kelleher:** “Ok, what about the female?”

██████ “The female is black uh a big one too and kinda wearing black clothes.”

**Kelleher:** “Ok, dark clothes.”

██████ “Yeah, dark clothes, yeah”

**Kelleher:** (Uses Radio) "What did they take?"

██████ "So they take like these are two carts, they carrying um like shopping carts and they take like you know candy, detergent."

**Kelleher:** "...and this is two carts worth of stuff?"

██████ "Yes and they now waiting for like two things to buy they're on-line and they will go to get their carts, but they are staying on the line."

**Kelleher:** "So have they taken the carts out of the store yet?"

██████ "No, not yet, they are in the store. They are in the store yeah."

**Kelleher:** "OK' (Uses radio)

**Kelleher:** "So are they in line to buy anything now or no?"

██████ "In-line to pay, yeah like two, three thing."

**Kelleher:** "Ok, where are the carts full of stuff? Did they leave the carts, or did they put it under their clothing?"

██████ "Let me check... I'm waiting I think, just give me one sec. Yep, they left the carts in the aisle and they left."

**Kelleher:** "They left the carts?"

██████ "Before you get here, yeah, yay the officer is here."

**Kelleher:** "Ok, you see the officer?"

██████ "Yes, I do yes."

**Kelleher:** "Ok"

██████ (██████ can be heard greeting Officer McMahon at scene)

**Kelleher:** "Ok, you can speak with the officer."

### **C. Transcript of Radio Transmissions**

**3:05:09: Kelleher:** "Control to 573. Head to Highland Ave CVS. Shoplifter in the store. I'm on the phone with him now."

**McMahon:** "Received"

**L. Schlittler:** "574 will start that way from 1<sup>st</sup> Ave."

**3:06:08: Kelleher:** "Units responding, they're exiting the store headed toward the exit on Highland Ave. described as a very large black male and a female trying to get a clothing description now."

**3:07:00: McMahon:** "3 will be in the area."

**Fitzpatrick:** "4's out here. Received, I don't have eyes on him."

**3:08:15: McMahon:** "573 to control"

**Kelleher:** "Controls on"

**McMahon:** "I'm in the store now. The party already left onto Highland exit. If you want to have someone search the area I'll talk to the store manager."

**Kelleher:** "Received"

**3:08:39: Fitzpatrick:** "On your right Leo. Right there, right there, right there"

**3:09:04: Kelleher:** "Control to the cars, unknown if they actually removed items from the store. They had two carts full of stuff and left it in the center of the store. Unknown if they secreted anything."

**McMahon:** "Control MA Plate when you're ready."

**Kelleher:** "Send It"

**McMahon:** "MA ██████████."

**Kelleher:** "Roger"

**3:10:13: Kelleher:** "Control to 573, the vehicle's active. The registered owner, ████████ expired."

**McMahon:** "Received"

**Fitzpatrick:** "574 to Needham Control"

**Kelleher:** "Control's On"  
**Fitzpatrick:** "Ok, we have this party here [REDACTED]"

**3:11:39: Kelleher:** "Control to 574"  
**Fitzpatrick:** "Go ahead"  
**Kelleher:** "I'm going to need that number again your portables awful."  
**Fitzpatrick:** "Ok hold on..."

**3:12:49: L. Schlittler:** "578 Needham Control"  
**Unknown:** "Control"  
**L. Schlittler:** "OK that S number that was called in is [REDACTED] should come back to a Marvin Henry. "  
**Unknown:** "Standby"  
**L. Schlittler:** "Sir I already ran it. He has one on the BOP."

**3:13:29: Fitzpatrick:** "Go ahead"  
**3:13:48: Fitzpatrick:** "Ok, we are having Officer McMahon speak to the manager at CVS"  
**L. Schlittler:** "Yeah we have that individual detained. Officer McMahon is speaking with CVS management."

**3:15:17: Cray:** "577 will be out with those units"  
**3:35:28: L. Schlittler:** "578 Needham Control"  
**Kelleher:** "Controls On"  
**L. Schlittler:** "I'll be clear"  
**Kelleher:** "Roger"

**3:40:57: Cray:** "577 Needham Control"  
**Kelleher:** "Needham Control"  
**Cray:** "Just for the CAD that party was sent on his way. 3 and 4 are gathering more information and I'll be clear. You can hold an OF for the 3"  
**Kelleher:** "Received" **(END TRANSMISSION)**

#### **D. Video Review**

A review of the security camera footage (20NEE-59-PR) was conducted to see what occurred in the store regarding the actions of the parties involved.

Based on the video, there appeared to be two black males in the store, one later identified as Marvin Henry and an unknown black male. Both were dressed in winter attire. The weather that day, according to the weather.com almanac, was cloudy with a high in the mid-forties. The two parties were very similar in stature, both having a large build. Henry was wearing what appeared to be a dark, possibly leather jacket, unzipped, a light color shirt, a dark cap, lighter colored long pants, and dark footwear. The unknown black male was wearing what appeared to be a dark heavy jacket with a hood, with a light color hooded sweatshirt underneath, a dark ball hat, dark pants, and dark footwear with white trim. The unknown black female, who [REDACTED] believed to be the shoplifting accomplice, was in the store at the same time. Henry and the unknown male followed the same path to the cooler section of the store out of camera view. Henry then re-emerged to make his purchase at the front register. The unknown black female then stood in line behind Henry. After Henry concluded his purchase, he left the store using the Highland Ave exit and headed east. The unknown black male was seen at the back of the store and then

exited the store using the Highland Ave door headed west. This was approximately within one second of Henry leaving.

The video is broken up into 4 different camera angles and broken down by location:

1. Parking Lot Entrance
2. Register View 1
3. Register View 2
4. Highland Ave Entrance

Below is an analysis by camera angle and time stamp of the CVS security footage. Only the parties relevant to incident are referenced.

**1. Parking Lot Entrance:**

- 2:53:55 Unknown BM wearing dark jacket, dark hat, dark pants, dark footwear/white trim exits store.
- 2:54:09 Unknown BM re-enters store w/cart.
- 2:57:20 BF wearing light colored winter hat, dark coat, dark pants, dark boots exits store.
- 2:57:20 BF reenters store with cart.
- 3:06:54 BF exits store with back to camera.
- 3:07:56 McMahon enters CVS.
- 3:10:38 McMahon and employee exit store.

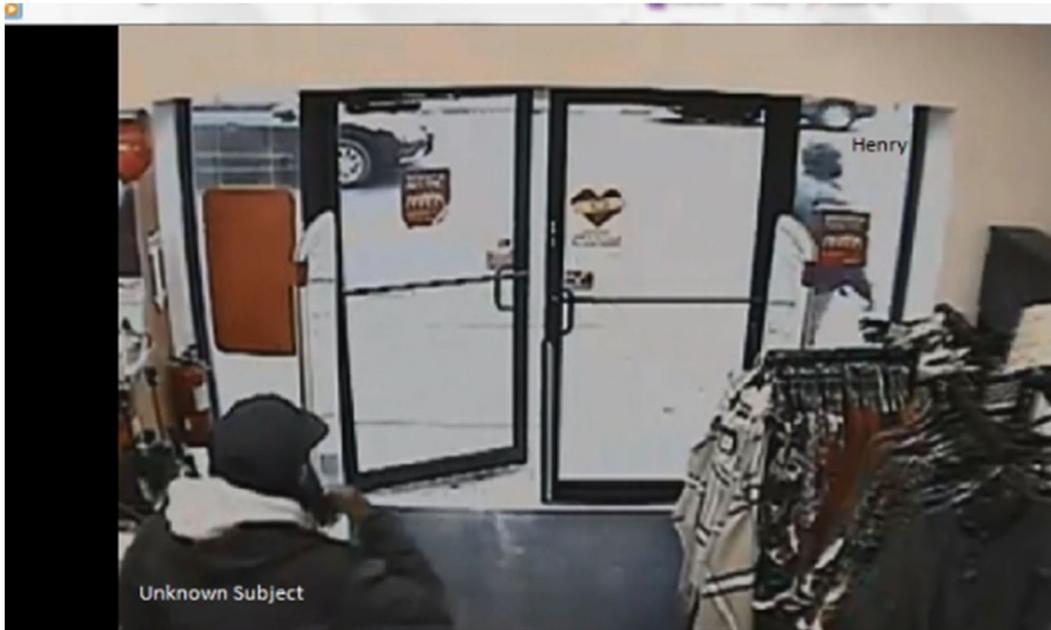
**2. Register View 1&2 (show same footage):**

- 3:02:19 Unknown BM seen pushing cart past registers.
- 3:03:09 Henry wearing dark knit hat, dark jacket, dark footwear is seen getting in line (comes from same direction Unknown BM has just gone to).
- 3:03:22 BF enters line behind Henry.
- 3:04:00 Henry checks out at 3<sup>rd</sup> register from right.
- 3:04:47 Henry finishes checking out and walks toward HLD Ave exit. BF exits line on the phone.
- 3:04:56 Unknown black male and Henry converge at end of aisle.
- 3:05:04 BF checks out.
- 3:06:45 BF leaves toward parking lot.
- 3:07:56 McMahon enters from parking lot.

**3. Highland Ave Entrance:**

- 3:05:06 Henry exits CVS and walks right.
- 3:05:10 unknown BM exits CVS on phone, walks left.
- 3:07:00 cruiser is seen passing by frame on Highland Ave toward Needham Center.
- 3:08:12 Fitzpatrick enters store.
- 3:08:36 Fitzpatrick exits store, starts left, then walks right.
- 3:08:50 McMahon and [REDACTED] exit. McMahon goes right, [REDACTED] remains by door.
- 3:09:17 [REDACTED] walks right.
- 3:09:21 [REDACTED] walks back in store

- 3:10:15 McMahon returns to store.



**HENRY EXITS 3:05:06 (RIGHT ONTO HIGHLAND)**

**UNK SUB EXITS 3:05:10 (LEFT ON HIGHLAND)**

On September 22, Lieutenants Forbes and McGrath went to CVS to interview [REDACTED] and [REDACTED]. We spoke with [REDACTED] privately in the CVS manager's office. She informed us that [REDACTED] was currently on leave residing in Pakistan and would not be returning until after the new year. She stated he could not be reached by phone or any other manner of communication.

We asked [REDACTED] what she recalled from the January 25th incident. She stated she remembered [REDACTED] had notified her that he noticed two individuals in the store, a black male and female, whom he believed were involved in the past shopliftings. [REDACTED] asked him how he could be certain. [REDACTED] replied they were loading up carts in the aisles and were on their phones appearing to be talking to each other, as in the past incidents. [REDACTED] told us that they had had similar shoplifting incidents in the past, occurring on weekend days at approximately the same time. [REDACTED] stated that she then approached the black male she believed [REDACTED] was referring to in the corner of the store. She described him as a larger black male but could not recall what he was wearing. There are no cameras in this area of the store. She asked the man if he needed assistance to which he replied, in a surly manner, that he was all set. She said that he was "dismissive" and "did not want to speak with her." Another customer then asked her for assistance. She stated that the man she had approached then "booked it" (walked quickly) out of there. [REDACTED] stated she instructed [REDACTED] to call the police and that she had lost sight of the man. She could not recall if the man purchased any items. She stated [REDACTED] was focused on the female party believed to be involved. [REDACTED] informed her that the police were speaking to one of the parties involved outside. She did not go outside and continued to work due to

the store being busy. She then reviewed the store video with Officer McMahon and [REDACTED] but did not recall what she specifically observed in the video that day.

We then went to Starbucks and spoke with store manager, [REDACTED] Starbucks' has a glass storefront window that facing Highland Ave where Henry was parked. We informed [REDACTED] that we were investigating an incident that had occurred at CVS on January 25<sup>th</sup> and that we were interested in speaking with any employees working that day. [REDACTED] informed us that he would provide us any assistance needed. [REDACTED] further stated that the store did not keep scheduling records that far back but that he would attempt to determine who was working that day. [REDACTED] also checked with the two employees working with negative results. On October 1<sup>st</sup> we followed up with [REDACTED] who indicated he did not have any new information.

On October 14<sup>th</sup> notification letters were given to the involved Officers, Lieutenant Baker and Union President Sergeant Evans indicating that the matter was still under investigation.

On October 20<sup>th</sup> Sergeant Cray and Officer McMahon were interviewed. On October 22<sup>nd</sup> Officers Schlittler and Fitzpatrick were interviewed. All were done in the presence of Union Representative Sergeant Evans. Officer Kelleher was interviewed on November 12<sup>th</sup> in the presence of Union Representative Officer Bayiates. All were provided and reviewed Administrative Interview Rules forms prior to the interview. On October 27<sup>th</sup> Mr. Henry was interviewed, via Zoom, along with his attorney, Lauren Sampson, and two additional attorneys.

#### ***E. Summation***

On Saturday, January 25<sup>th</sup>, at approximately 3pm, an unknown male and female party, whom CVS employees believed had committed prior CVS shopliftings, were in the store. Based on accounts from CVS employees and video, they appear to be a large black male and a heavyset black female. Mr. Henry was also in the store at the same time purchasing some small items. Henry stated he was on his way to work, ordered his sandwich at Town House Pizza (892 Highland Ave), and went to CVS. He stated, while in CVS, he did not observe any commotion or anything out of the ordinary. During this time, [REDACTED] observed the unknown male and female in the store. [REDACTED] stated, "I recognized them both from previous shoplifting at CVS. Both were speaking on the phone. I notified the manager [REDACTED] and notified the police." [REDACTED] remembered [REDACTED] notifying her that he noticed two individuals in the store, a black male, and a black female, whom he believed were involved in the past shopliftings. [REDACTED] asked him how he could be certain. [REDACTED] replied they were loading up carts in the aisles, speaking on their phones, appearing to be talking to each other, as in past incidents. [REDACTED] stated they had had similar shoplifting incidents in the past that had occurred on weekend days at the same time. [REDACTED] approached the black male [REDACTED] was referring to in the corner of the store. She asked if he needed assistance. She described him as a "larger black male" but could not recall what he was wearing. She indicated there were no cameras in that area of the store. He replied to her, in a "surly manner" that he was all set. He seemed "dismissive" and "appeared to not want to speak with her." Another customer then asked for her assistance. The man she had approached then "booked it" out of there. When asked what she meant by this, she stated he left the area in a hurry. Henry stated

he went into the store, picked up a drink and cough drops, paid at the register, and left. Based on the investigation it appears the "Surly man" [REDACTED] spoke with was the suspect and not Henry. Henry left the store via the Highland Ave exit and headed towards Starbucks (East). Seconds later, the unknown male suspect exited the store behind Henry and headed towards Trader Joe's (West). Henry stated he did not observe the unknown male leaving the store behind him. At this time, it appears [REDACTED] was on the phone with Kelleher trying to coordinate a police response to apprehend the suspect.

McMahon stated that as she arrived on-scene, she conducted a quick check of the vicinity for the suspects, with negative results. She then went into the store to speak with [REDACTED]. Fitzpatrick arrived on scene and did a cursory check of the area. Although he did not recall entering the store he briefly went into CVS. As he was exiting CVS via the Highland Ave exit, he observed a party matching Kelleher's broadcast near Starbucks. He stated it was the only person in the area he observed matching the suspect description of "a large black male." This person was later identified as Marvin Henry. He observed Schlittler stopped in his cruiser at the Highland at West traffic light, by Starbucks, in very close proximity to Henry. Fitzpatrick radioed Schlittler, "Leo, that's him, right there, right there, right there." Schlittler stated he observed Henry by his minivan. He further stated based on the description broadcasted, the close proximity to CVS (approximately 139 feet away), and Fitzpatrick's radio transmission, he exited his cruiser in front of Starbucks to speak with Henry. Schlittler indicated he was the only person he observed matching the suspect description in the area. Schlittler stated he said to Henry in "calm, cordial" manner, "Hey, you got a sec?" to which Henry replied "Yeah." He then asked Henry if he was in CVS, to which Henry replied "yes." Schlittler stated to Henry there was a report of a shoplifting and "someone may have taken some stuff." Schlittler expressed they talked for a few minutes about CVS, Henry's job, and that the minivan belonged to Henry's friend.

[REDACTED] McMahon and Fitzpatrick were in front of CVS on Highland Ave while Schlittler was speaking with Henry in front of Starbucks. [REDACTED] observed Henry and confirmed that he was the suspect. [REDACTED] wrote of the identification, "the male was wearing a winter hat with a hoodie with a jacket above it. Once the police arrived, I identified the same individual as the same individual who was within the store. The police were speaking with the same individual." Fitzpatrick stated [REDACTED] informed them of the modus operandi of the shoplifting scheme, including the purchase of small items. During this conversation, Fitzpatrick asked [REDACTED] "That gentleman speaking with the officer in the dark jacket; is that the man you called us about?" [REDACTED] replied "Yes." Fitzpatrick then walked over to Schlittler and Henry's location. McMahon stated that from her view in front of CVS, the situation at the minivan appeared calm. She did not observe Henry being shoved or handcuffed. McMahon went into CVS with [REDACTED] to review the video.

In his written statement, Henry expressed the officer (Schlittler) said, "Hey you, come here" as he approached. He further wrote "one of the officers grabbed him, roughly shoving him against the minivan" and that Fitzpatrick was also present. Henry wrote he was compliant, did not resist and gave no reason to be grabbed or shoved as the "officers forced his hands behind his back and handcuffed him." Henry wrote he was given no explanation when he was placed into handcuffs. During our interview with Henry, when asked about the handcuffing, he stated it was "not forcefully". When asked

about the actual “shove” referred to in his letter, he indicated he was facing the officer (Schlittler), when the officer “grabbed him by the arm” and proceeded to handcuff him. When asked to describe the specifics of the “shove”, Henry stated he could not remember. Henry stated he did not react to the shove verbally or physically.

Fitzpatrick stated that as he approached Schlittler and Henry, they were speaking to each other and that both were “calm and cool.” Fitzpatrick said Henry was questioning what was going on. Fitzpatrick indicated he and Schlittler were “very open to why they were there”, that CVS had called, and there was a possible shoplifting. Fitzpatrick stated the situation at the car was “calm”, “not over the top”, and “regular.” He informed Schlittler that [REDACTED] had just positively identified Henry as the suspect and had provided a description of how the shopliftings had been committed, including paying for small items. Schlittler added Fitzpatrick also told him [REDACTED] stated, “it’s multiple, multiple times, this has been an issue with this guy.” Although probable cause existed to arrest based on [REDACTED] statement, the officers determined to detain Henry while McMahon investigated. Schlittler indicated he took Henry by the arm, turned him around, “rested” him against the minivan, and placed him into handcuffs. Both officers indicated they did not read Henry his Miranda Rights. Both officers stated they informed Henry he was not under arrest and that he was being detained for further investigation.

Schlittler stated he did not “shove” Henry and took extra time putting the handcuffs on Henry due to the sleeves on Henry’s bulky winter jacket sleeves. He indicated he pushed up the jacket sleeves to put the handcuffs on properly and double lock them. Henry stated that he asked several times for the handcuffs to be “loosened” and to be cuffed in front. Schlittler indicated he checked the cuffs for tightness by placing a finger in the cuff to see if there was extra room. Schlittler stated he was able to get his full index finger in the cuffs. He expressed this is how he always checked the handcuff fit. Henry stated he did not recall him checking the cuffs. Henry stated he was given no explanation as to why they were so tight. Fitzpatrick stated he was present when Schlittler handcuffed Henry and did not recall Henry complaining about his handcuffs being too tight. He further stated he did not shove Henry, nor did he observe Schlittler shove Henry.

Fitzpatrick indicated they “continued to explain the situation to Henry” that a shoplifting had occurred at CVS and it involved a “a gentleman matching your description.” Fitzpatrick further stated they informed Henry they were trying to determine what had occurred and he asked Henry if he was with a female party. Schlittler stated they reiterated to Henry “he was being detained while they determined what happened.” Schlittler stated he then “pat frisked Henry for anything from CVS” with negative results. The officers described their interaction with Henry as “conversational” as they provided him with information as to why he was detained.

Henry stated that during this period, while officers were standing with him, they never provided him any explanation as to what was occurring. He further stated there was no conversation at all. Henry indicated in his statement that, as he stood on the sidewalk, he could see “at least one patron of Starbuck’s staring at him through the window. One man actually shielded a young child’s eyes, to block Mr. Henry from his view, an act that Mr. Henry found humiliating.” During our interview, when Henry

was asked about the people passing by, or any type of crowd, or on-lookers gathering, he stated it was normal foot traffic, looking over as they walked by. Schlittler stated there was “no crowd.” Fitzpatrick stated it “was regular foot traffic” for Needham Heights.

Henry said the officers ignored his requests to show them his receipt and to allow him to call his boss. In his statement, Henry stated there were six officers present, four right around him, and two by CVS. It appears, that at one time, the most officers with Henry were three (Cray, Fitzpatrick and Schlittler) while [REDACTED] and McMahon were at CVS. McMahon never approached Henry. The other two officers assigned to patrol were Ofc. Noll and Ofc. S. Timmerman. They stated they did not respond to the call or the area. There is no record of them in the area.

Henry indicated that the only explanation he received was that someone matching his description had stolen something from CVS and that one of the store employees had identified him. He attempted to explain that it was not him and that he had a receipt on his phone to prove he had paid for items. Henry stated the officers ignored his requests to show the receipt and call his boss. He further indicated he was continuously ignored and there was no discussion between them. Fitzpatrick recalled Henry stating he had a CVS receipt for his items on his phone. Fitzpatrick stated, based on [REDACTED] statement regarding that the shoplifting scheme, he felt the receipt didn’t prove or disprove anything.

Both officers and Henry agree they asked Henry about a CVS bag that was visible through the window on the passenger side of the minivan. Henry told the officers the bag contained the items he had just purchased from CVS. Fitzpatrick asked if they could look in the bag and Henry agreed. Officers confirmed the items observed in the bag were those Henry bought at CVS. Henry said they also looked inside his work bag which was located on the same seat. Henry also indicated in his written statement that the officers “searched the vehicle and its contents, including his work bag and the CVS bag.” Officers stated they did not search the workbag or any other compartments but did slide open the passenger door and visually looked for any CVS bags. He further wrote he “complied with the officer’s directive, as he was too intimidated to refuse.” When asked about the search in the interview, Henry stated he agreed, and that officers looked in both bags and opened the rear sliding door and looked in the vehicle.

Cray arrived on scene. He indicated he observed the officers near Starbucks with Henry. He observed “Fitzpatrick talking back and forth with Henry and all seemed to be calm.” Cray further stated Fitzpatrick was explaining the situation to Henry in a “calm demeanor.” Cray indicated he was given a brief explanation of the situation, including the past shopliftings, and why Henry had been stopped. Cray stated he felt the officers reasoning was appropriate. Cray further stated that he was aware there was probable cause to arrest, but he wanted to be “thorough” and see if McMahon had obtained any additional information. He further indicated he wanted to check on her progress prior to making any decisions. Cray said with the situation being calm at Starbucks, he went into CVS. Cray stated, “his goal was for the best resolution for all parties involved, including Henry.”

Cray went to the manager’s office where the video was being reviewed. [REDACTED] indicated to him, “the guy that’s stopped, talking to your officers, is the guy.” Cray asked [REDACTED] and [REDACTED] if they had

seen the shoplifters take anything from the store today. They replied “No.” [REDACTED] further indicated the shoplifters had abandoned their carts in the aisles and did not remove anything from the store. Cray stated he was aware that Henry was being detained and he wanted to resolve the issue as soon as possible. He made the determination to release Henry, obtain his information, and that further investigation was required. In the interview he that, “he wanted the best resolution for all parties involved, including Henry.”

Cray returned outside to speak with Henry and the officers. Cray indicated he advised Henry of the reason for his being detained and he was being released because “more fact seeking was needed as it was an on-going investigation.” He stated he told Henry he “may receive a summons in the mail.” Cray stated Henry “seemed OK with it.” Henry indicated in his letter that Cray told him he was “suspected of shoplifting and that one of the CVS clerks had identified him as the suspected Black man from the camera footage.” Schlittler indicated Cray also said, “they could not show definitively that Henry took the items today and that further investigation was needed.” Fitzpatrick stated Henry was informed that he may receive a summons in the mail based on the investigation. Both Cray and Henry said that Henry then showed the officers the receipt on his phone. Cray said he found it to be “irrelevant” because he was aware of the past schemes. Henry stated he never complained to Cray about the wrist pain. Cray indicated he did not recall any wrist complaint from Henry.

Henry indicated in his letter that Fitzpatrick, “who had been on scene for the entire duration of the stop, said he would ‘personally apologize’ to Mr. Henry and his employer if he was cleared of the shoplifting accusation.” Fitzpatrick stated he did inform Henry he would apologize if Henry was “not on the tape.” Henry did not receive an apology.

Henry said he asked for the officers’ names and badge numbers. His written statement indicated “Nor did all the officers provide their names and badge numbers when Mr. Henry asked for these.” During his interview, Henry stated he wrote the information on a piece of paper he had but was unsure how he recorded it. Fitzpatrick stated he wrote his name and badge number from his notepad and handed it to Henry. Fitzpatrick indicated Henry “wrote the rest of everyone’s with my pen.” In his letter, Henry indicated that Cray identified himself by name only. Cray said he did not recall what information he provided. Henry’s letter also indicated he was provided Schlitter’s name and badge number. Schlittler said he did not recall what information he provided. Based on the information above, taking into account Cray’s recollection of the information he provided, Henry received at a minimum all the information he requested with the exception of Cray’s badge number.

Henry indicated that after the incident he went to his work at Elements Massage. He stated he was so upset over the incident, he “exploded” at his boss. He stated he missed multiple days of work at both jobs, the other being a Lyft driver, due to his sore wrists. He further stated he did not receive medical attention for his wrists and did not have any photos or documentation of injuries. He stated he iced his wrists that evening.

Henry further stated in his letter that he requested a copy of the CVS surveillance video at the scene. He indicated Cray “deflected” the question telling him he would need to go to the police station to request a copy. Cray confirmed that he informed Henry he would need to go to the police station to request a copy of the report and video through a records request. Henry said he went to the station that afternoon to request the report. He stated in his interview that at the station he was informed how to file a records request but not provided any information on the incident. Detective Sergeant O’Brien was the first half (4p-12p) Sergeant that afternoon. He indicated he said to Henry that he had just come on shift and did not know enough about the incident to comment on it. He informed Henry how to file a records request. O’Brien stated they also discussed Henry’s job as a massage therapist and O’Brien’s training regimen for the Boston Marathon. Henry indicated he filed his public records request that day, Saturday, January 25<sup>th</sup>. The request was received by the Records Division on the next business day, Monday, January 27<sup>th</sup>. Henry’s letter states he received his response denying his request on February 10. During the interview, Henry stated he received the response “several days later.” When informed that the response sent by the Records Division via e-mail was dated January 27<sup>th</sup> at 1:49 pm, Henry did not respond.

Schlittler did not complete a report regarding the interaction between the officers and Henry in front of Starbucks. Schlittler stated he did not think he had too as he was not the primary officer. He further indicated Cray did not instruct him too. Cray stated he felt a report was not required because Henry was released at the scene and the situation was explained to him.

On January 30<sup>th</sup> McMahon continued her investigation of the CVS incident. She wrote a continuation report. She reviewed the video surveillance from the August 4<sup>th</sup>, 2019 and October 19<sup>th</sup>, 2019. McMahon time stamped the movement of the two individuals. McMahon stated that she believed, based on [REDACTED] identifications, that Henry was one of the suspects. McMahon indicated she was also aware that the registered owner of the vehicle Henry was driving on January 25<sup>th</sup> was [REDACTED] [REDACTED]. She said this led her to believe that [REDACTED] may have been the unknown female suspect. Utilizing previous surveillance video and RMV photos, she believed she had identified [REDACTED] as the suspect for all three incidents: and Henry as the suspect in the October 19<sup>th</sup>. McMahon stated that her decision making was based on the information and facts presented and not race.

On February 7<sup>th</sup> McMahon, to confirm [REDACTED] identity, brought a still CVS photo of [REDACTED] to show Elements manager [REDACTED] [REDACTED] stated that based on the hair style of the individual in the photo he could confirm it was not [REDACTED] [REDACTED] informed McMahon that Henry and [REDACTED] shared a vehicle, to commute. He further stated only Henry was scheduled to work on January 25<sup>th</sup>. McMahon stated she did not show Henry’s photo to [REDACTED] due to [REDACTED] previous confirmation that he was the suspect. McMahon concluded, based on her investigation, [REDACTED] was not a suspect.

On July 20<sup>th</sup>, Needham Police received Henry’s complaint from WilmerHale. The case status was open. At this time, McMahon and Chief Schlittler reviewed the video evidence. It was determined that there were in fact two black males inside CVS at the same time of similar build and dress who exited through the same door at almost the exact same time. It was also determined that the unknown black male

(suspect) exited left, and Henry exited right onto Highland Ave and that [REDACTED] mistakenly believed Henry was the suspect. In his interview Henry stated the reason for the six-month delay in coming forward with the complaint was that he had internalized the event. He further stated an Element's client had told him they could put him in contact with a Needham resident who would put him in contact with an attorney.

On July 31<sup>st</sup> McMahon wrote a continuation report stating that Henry was no longer considered a suspect in any of the Needham Shoplifting incidents. In his letter Henry stated he was never notified that he was no longer a suspect. McMahon confirmed that Henry was never notified.

On September 21<sup>st</sup> Chief Schlittler wrote a continuation confirming that Henry did not appear in the CVS videos provided to the Department regarding the August 4, 2019 and October 19, 2019 incidents.

A review was conducted of Needham Police shoplifting physical arrests from 2017 to present to examine the standard Needham Police response as compared to this case. During that time frame, Needham Police made three shoplifting arrests.

- 2017-211: A 36-year-old white male exited Sudbury Farms with a shopping cart of items. He was confronted by the store manager in the parking lot, left the cart, and walked off. An officer observed this interaction and spoke to the manager. The manager stated the suspect had just attempted to leave without paying for several items. The officer encountered the suspect across the street from the store. A sergeant and two patrol officers responded to the scene. After a on scene investigation, the suspect was placed under arrest for shoplifting and transported for booking.
- 2018-53: A 26-year-old white male entered 7-11, removed a pack of red bull, and then immediately exited the store. The clerk reported this to an officer who arrived right after the occurrence. Officers reviewed the store video. A suspect description was broadcasted based on the clerk's description and video. Approximately a half hour later an officer, who had previously observed the video and spoken to the clerk, saw the suspect return to 7-11. The officer handcuffed and detained the suspect. The sergeant and an additional officer arrived on scene. Officers observed the Red Bull in the vehicle. The suspect was placed under arrest for shoplifting and transported for booking.
- 2019-113. A 47-year-old white male exited Roche Brothers with a cart full of items and items in his pants. A Roche Brothers employee reported the shoplifting to the Needham Police. The employee provided a description of the suspect and suspect vehicle which was broadcasted over the air. The suspect was stopped in his vehicle a short distance away at the Needham/Dover line by two officers, a sergeant, and a Dover officer. Officers observed stolen items in the vehicle. An additional officer went to Roche Brothers to review the video, speak with the store manager, and an additional witness. The officer confirmed the shoplifting to the other officers over the radio. The suspect was placed under arrest for shoplifting and transported for booking.

In two of these instances an employee of the business alerted Police to a shoplifting in progress and provided a description. In the other case the officer observed the shoplifting in progress which was

confirmed by the store manager. In all cases, there was a multiple patrol officer response and a supervisor. This multi-officer response is standard. There are many reasons for a multiple officer response. These include officer and civilian safety, multiple exits, and suspects, assist in investigation, and to ensure apprehension. In all three cases, the suspects were arrested after additional on-scene investigative efforts. All three parties arrested were white males. In each of these cases, based on the evidence presented, which included video and the shopkeeper's statement, the decision was to arrest the individual and transport to headquarters for processing.

#### **IV. ISSUES PRESENTED**

- 1. Did the Officers' detainment of Mr. Henry and subsequent search of his person and vehicle violate his Fourth Amendment Search and Seizure Rights and Department Policy.*
- 2. Did the Officers' use improper force and violate Department Policy when they, according to Mr. Henry, shoved him against the car and handcuffed him.*
- 3. Did the Officers' actions in stopping Henry constitute racial profiling in violation of his Equal Protection Rights under State and Federal Law and Department Policy.*
- 4. Did the Needham Police's denial to provide Mr. Henry the video and call information fall within the MA Secretary of State Public Record guidelines?*

In analyzing the above stated issues, we considered, where applicable, Needham Police Department Policies and Procedures, Police Reports, Mr. Henry's letter, interviews conducted, evidence presented, MA General Law, the Massachusetts Declaration of Rights, and the United States Constitution.

#### **1. DID THE OFFICERS' DETAINMENT OF MR. HENRY AND SUBSEQUENT SEARCH OF HIS PERSON AND VEHICLE VIOLATE HENRY'S FOURTH AMENDMENT SEARCH AND SEIZURE RIGHTS AND DEPARTMENT POLICY.**

**Fourth Amendment:** *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

**Policy: Threshold Inquires 1.07** under "Procedure" states: *It is a basic police duty to check on suspicious persons or circumstances...An officer may make a brief investigative stop and inquiry under any of the following circumstances:*

- *When he/she knows that a crime has been committed.*
- *When he/she reasonably believes that a crime has been or is being committed.*
- *When he/she seeks to prevent a crime which he/she reasonably believes is about to be committed.*
- *A police officer has the authority to stop a person for an investigative inquiry in any place where the officer has a right to be, including:*
  - *Any public place.*

- Any place or area open to the public; and
- Any private premises entered with a valid warrant, by consent, or under emergency circumstances.

**Policy: Arrest 1.11** states under section C(3)(a), citing *When (1996)*, “it is required under the Fourth Amendment that a police officer have “probable cause” in order to make a valid arrest without a warrant. The policy, further defines, under section III(B), “Probable Cause” as cause for arrest exists if, at the time of the arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is the crime for which the arrest is being made. The policy further states under Section G “Officer Safety” that officers should take all necessary steps to ensure their own personal safety and that of the public and to secure destructible evidence...obtaining assistance whether before or after an arrest making a search of the area within the immediate reach and control of the persons arrested for weapons or destructible evidence [**Search Incident to Arrest**]. The Arrest Policy further states under section H (8) that officers should make a “full and complete report of any arrests made, with or without warrants.”

**MGL 266 s. 30A Shoplifting:** permits for a warrantless arrest upon probable cause for all violations. Under s30A, a merchant or employee’s statement constitutes probable cause for arrest by any law enforcement officer authorized to make an arrest in such jurisdiction.

**Motor Vehicle Exception:** Applies when police have probable cause to believe a vehicle contains evidence at the time they begin their search; and in lawfully stopped or parked in a public area of potentially public or perpetrator access...General probable cause based on a spontaneous report justifies a vehicle search in public. (Markou)

- In this case, Officer Schlittler was in a lawful public place, had a reasonable belief that a crime had been committed, and had the authority to conduct a threshold inquiry when he stopped Henry. Officer Fitzpatrick’s relay of [REDACTED] identification to Officer Schlittler resulted in probable cause under MGL 266 s30A. The officers determined to detain Henry to investigate. Sergeant Cray, based on collective knowledge, was aware there was probable cause to arrest. As a result of speaking with involved parties, he determined to release Mr. Henry pending further investigation. The officers’ actions were in accordance with Law and Departmental Policy.
- Based on the investigation the search of Henry’s person and mini-van for evidence related to the crime was lawful under the Arrest Policy, Search Incident Arrest, and the Motor Vehicle Exception.
- Needham Police Arrest Policy section H(8) states that officers should make a full and complete report of any arrests made, with or without warrants, in accordance with standard Department Procedures. In this case, Officer Schlittler, failed to write a report, stating he did not think he had too as he was not the primary officer and was not instructed to. Sergeant Cray, the shift supervisor, failed to instruct Officer Schlittler to complete a report stating this was because Mr.

Henry was released, and the situation was explained to him. The failure to complete a report was not in accordance with Department policy.

- *Needham Police should develop and issue a Warrantless Search and Seizure Policy. (Note: This is currently in the process of reviewed.)*

## **2. DID OFFICERS USE IMPROPER FORCE AND VIOLATE DEPARTMENT POLICY WHEN THEY, ACCORDING TO MR. HENRY, SHOVED HIM AGAINIST THE CAR AND HANDCUFFED HIM.**

**Policy: Use of Force 1.01** under the section “Policy” states “Officers use only the force that is reasonably necessary to make a lawful arrest, to place a person into protective custody, to effectively bring an incident under control, or to protect the lives or safety of the officer and others.”

*The Policy further states that “The mere placing of handcuffs on a prisoner will not be construed to be a use of physical force. Use of restraining devices is mandatory on all prisoners, unless in the officer’s judgment unusual circumstances exist which make the use of restraining devices impossible or unnecessary (e.g., very young juvenile, handicapped, injured). The Policy also references MPTC Model of Force stating:*

### **Compliant subject: Level 1**

*This subject complies with officer requests/orders and offers no resistance either verbal or physical. The vast majority of persons an officer will encounter are in this classification.*

**Potential responses:** *Communication skills; physical contact to guide subject; or compliant handcuffing techniques.*

- In this case, Henry states in his letter that, despite being compliant, he was “roughly shoved.” During his interview, when asked about the shove, Henry replied, “not forcefully.” Officer Schlittler indicated that Henry was compliant and that he never shoved him. Fitzpatrick and McMahon stated they did not observe Schlittler shove Henry. We were not able to locate any witnesses or video. Based on the evidence presented we were not able to determine if Henry was “roughly shoved.”
- In this case, per the Use of Force Policy, Officer Schlitter’s handcuffing of Mr. Henry did not constitute a physical use of force.

## **3. DID OFFICERS ACTIONS IN STOPPING HENRY CONSTITUTE RACIAL PROFILING IN VIOLATION OF HIS EQUAL PROTECTION RIGHTS UNDER STATE AND FEDERAL LAW AND DEPARTMENT POLICY?**

### **POLICY 1.18: BIAS BASED PROFILING**

Paragraph three of 1.18 states “Except in specific incidents, police employees are prohibited from considering race, gender, sexual orientation, religion, economic status, cultural group or ethnic origin when deciding to take police action and in deciding the scope or substance of action to be taken.”

**STATE LAW: MA DECLARATION OF RIGHTS, ARTICLE 1 (annulled article 106 (Due Process))**

“All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.”

**FEDERAL LAW: UNITED STATES CONSTITUTION, 14<sup>th</sup> AMENDMENT**

The 14<sup>th</sup> Amendment, in consideration of due process, states: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

- In this case, officers indicated their decisions were based on the information provided by CVS employees, including the suspect description and identification. They further stated their decision making also included Henry was located a short distance away from where the shoplifting had just occurred and he was the only one that matched the description in the area.
- All officers were asked if race played a part in their decision making in their treatment of Mr. Henry. All officers stated they did not consider race as a factor in their decision making. All the officers indicated that their actions were based on the information provided and the facts presented.
- The officers’ actions, including the number of responding officers, was standard as compared to previous shoplifting calls. The response did not differentiate based on race.
- Based on the above, there is no evidence to support that officers’ decisions or actions were racially motivated or driven by bias.

**4. DID NEEDHAM POLICE’S RECORDS’ REQUEST DENIAL TO PROVIDE MR HENRY THE VIDEO AND CALL INFORMATION FALL WITHIN THE PUBLIC RECORD RESPONSE GUIDELINES?**

*\*Note: At the time of the incident the Needham Police Department did not have a “Records Requests” Policy. At the time of the incident, the Department followed the “Guide to Public Records Law” promulgated by the Secretary of State. Therefore, this report will only be based on the MA “A Guide to Public Records Law.” (The Guide)*

***The “A Guide to Public Record Law” (The Guide) states in “The Response” section that “The RAO (Records Access Officer) must respond to requests without unreasonable delay and within ten business days. The RAO may offer to provide records; provide a fee estimate, where applicable; or deny access to records in a manner consistent with G. L. c. 66, § 10(a-b). A denial must detail the specific basis for withholding the requested materials. The denial must include a citation to one of the statutory or common law exemptions upon which the RAO relies, and must explain why the exemption applies. A denial must also advise the requester of the right to seek redress through the administrative process provided by the Supervisor of Records (Supervisor) as well as the judicial remedy available in superior court.***

- In this case, on Saturday, January 25<sup>th</sup> Henry went to the Police Station and filed his public records request. The request was received by the Records Division on the next business day, Monday, January 27<sup>th</sup>. Henry’s letter stated he received his response on February 10<sup>th</sup> and during the interview he stated he received his response “several days later.” The response sent by the Records Division via e-mail was dated January 27<sup>th</sup> at 1:49 pm. The letter denied Henry’s request under “Exemption (f),” known as the “Investigatory Exemption”, which provides custodians a basis for withholding: “*investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.*” In explaining exemption “f” the Guide states, “the exemption allows investigative officials to withhold materials that could compromise investigative efforts if disclosed.” The Guide further states “A records custodian may be permitted to withhold an entire report if the identity of witnesses is known to the requester. Such a record could not possibly be redacted in a manner to avoid identification of such witnesses.”
- In this case, the Police Department’s response was sent on the same business day the request was received. This fell within the ten business days dictated by The Guide. The response also included the exemption cited and, per The Guide, the proper mechanism to appeal the decision.
- The Records Division response was remiss in that it did not include an explanation, per The Guide, as to why exemption “f” applied in this case.
- *Needham Police should issue a Records Request policy based on the Secretary of State’s Guide. (Note: Policy 4.26 was created in April of 2020 that mirrors the “A Guide to Public Record Law”).*

Respectfully Submitted,

Lieutenant Matt Forbes and Lieutenant John McGrath

