

DETROIT POLICE DEPARTMENT
Police Trial Board

March 4, 1957

DECISION OF THE TRIAL BOARD IN THE MATTER OF CHARGES AGAINST:

PATROLMAN JAMES R. DAVIS, #12 Precinct

and

PATROLMAN ROBERT J. LESSNAU, #2 Precinct

COMMISSIONER PIGGINS: Patrolman Robert Lessnau and Patrolman James Davis are charged on the complaint of Mr. Robert F. Mitchell with conduct unbecoming an officer, "assaulting a citizen", in violation of Chapter 10, Section 130, Subsection No. 7 of the Detroit Police Manual.

This Trial Board in accordance with the requirements of the Charter consisted of the Commissioner, the Superintendent of Police acting as Chief Inspector, and the Chief of Detectives. In addition to Counsel for the Police Department and Counsel for the officers charged, Mr. Thomas H. Healy, Jr., Assistant Attorney General for the State of Michigan was present throughout the hearing as an observer. In addition, Mr. Julian Rodgers, Jr., Counsel for Mr. Mitchell was present throughout the entire proceedings, produced witnesses and exhibits, and was permitted to examine and cross examine witnesses.

The Board has listened carefully to all of the testimony offered by all interested parties. Every available witness has been procured and has testified. The Board has thoroughly reviewed all of the testimony and has examined all of the exhibits. In rendering this opinion, the Trial Board does not believe it necessary to repeat all of the testimony submitted. The Board does believe, however, that it is necessary to repeat some of the important and significant facts upon which it bases its opinion.

The complainant, Robert F. Mitchell, is an educated, intelligent and personable individual. He is a family man, a former Marine Corporal and a business owner operating a Class C bar on Tireman Avenue. He is of good standing in the community.

He testifies in substance that he was jerked from his automobile by the officers on trial, improperly and illegally searched on a public street, and then unjustifiably and excessively beaten with night sticks and fists.

With the exception of admitting that he was driving with a defective headlight for which he expected to receive only a violation notice, he contends that there was absolutely no provocation for the police action. He denies that he offered the slightest resistance to the search, the beating, or the arrest. As he testified, he merely preferred to be searched in the station rather than on the street. His preference, however, he testified was not expressed in the form of violence or objection, but rather in the form of a passive suggestion or plea.

He stresses particularly the seriousness of the injuries which he claims to have sustained, testifying that he was struck "closer to fifty" times, sustained a serious scalp wound and a fractured bone in his hand, suffered cuts and bruises about his head and over his entire body, sustained slit, torn and bleeding gums, the loss of a false tooth affixed to a partial plate, and serious damage to other teeth. He contends also that his eyes, lips and face were beaten and swollen.

In substantiation of this contention insofar as damages are concerned, he offers the testimony of Dr. Edward Anderson and Dr. Leon Dickson, physician, both reputable professional men. Dr. Anderson testified that Mr. Mitchell's false tooth was

March 4, 1957

missing and four or five teeth were loosened and sensitive. He stated that the prognosis was poor. It is important to note that in spite of this condition, Dr. Anderson has done nothing outside of examination to Mr. Mitchell's teeth, although over five weeks have elapsed since the incident. Outside of the patient's claim to continued sensitivity, Dr. Anderson's explanation of this lack of treatment or repair was noticeably hesitating and not impressive.

Dr. Dickson testified that Mr. Mitchell's scalp wound from which he removed 8 sutures, was his most serious damage. He testified that Mr. Mitchell sustained a chipped bone in his right hand, unnoticed on the first x-ray and barely discernible on the second. He testified also to a number of contusions and abrasions, although lengthy in their list, comparatively minor in their nature.

Dr. Anderson saw Mr. Mitchell on Sunday following the Friday incident, and Dr. Dickson a day or two later. On personal examination, the Chairman of the Board observed a small scalp scar on Mr. Mitchell, not over two inches in length and almost completely healed. On request, the only other physical evidence displayed to the Board by Mr. Mitchell was a small laceration in the process of healing, just under the knee cap, and not over one inch in length. In addition, Mr. Mitchell carries his right hand in a bandaged cast. There appeared to be no other physical evidences of damage, although the Board is cognizant that five weeks could have eliminated some.

Contradicting the extent of the injuries claimed is the testimony of Dr. Felix Engel of Receiving Hospital, who treated Mr. Mitchell not much more than an hour after the incident. He stated that the only and most serious damage sustained by Mr. Mitchell was a scalp laceration, one and one-half to two inches in length. This he sutured with 8 to 10 stitches, although he stated that two or three would have been sufficient.

In addition, he stated that Mr. Mitchell suffered a small bruise or contusion on his forehead and an even smaller or less noticeable one under the eye. He questioned Mr. Mitchell in the hospital about the other injuries, but Mr. Mitchell complained of none. He examined his mouth but found no lacerations or bleeding. The only bleeding came from the scalp wound, part of which had dropped on his clothing. He denied observing any swelling of the lips, eyes or face. Mr. Mitchell made no complaint of his hand to Dr. Engel--or any other portion of his body--and while in the hospital, used his hand normally and freely. X-rays indicated no other damage to the skull. The total treatment of Mr. Mitchell at Receiving Hospital did not consume more than five minutes. Mr. Mitchell was relaxed and required no anesthesia.

Dr. Engel's medical observation was substantiated by Miss Marcine Davies, a Wayne University medical student and an assistant to Dr. Engel. Both Dr. Engel and Miss Davies expressed considerable amazement at the injuries complained of by Mr. Mitchell

as subsequently reported in the press. In attempting to question Mr. Mitchell at the hospital, Dr. Engel stated that Mr. Mitchell told him, "I am not going to give you any information if you are one of them." Miss Davies likewise states that Mr. Mitchell was uncooperative and hostile.

It is significant for this Board to note in this opinion that although Mr. Mitchell claimed to have been suffering from extremely serious and extensive injuries, which if true would have naturally made medical aid his first concern, he continually and repeatedly, both in the precinct station and in the hospital, requested the services of a photographer before he would submit to medical treatment. This attitude was substantiated by several police officers as well as hospital attendants.

March 4, 1957

The Board's attention was called to photographs of himself taken at the request of Mr. Mitchell and his attorney in the attorney's office and offered as evidence by Counsel for Mr. Mitchell. These photographs, taken less than a day later, convincingly belie the claim of Mr Mitchell as to the swelling of the face, eyes and lips. From the photographs they appear to be very normal. His clothing appears to be partially splattered with some blood. There appears to be a slight contusion on the forehead. No other marks are clearly visible and it is difficult to observe from the photographs that there is little if any swelling of the right hand. We repeat that these photographs are offered in support of Mr. Mitchell's claim of damage.

The only other testimony relative to damages is that of Mr. William Taylor, a Receiving Hospital medical attendant, who stated that he, Mitchell, had but one cut on his head. Mr. Taylor had shaved a portion of the head and had carefully examined it.

In relation to the events which led to the injuries there is considerable contradictory testimony. Mr. Mitchell claims he was absolutely free from provocation or resistance. There are no eye witnesses to support his claim. The officers contend that he was resentful, uncooperative, belligerent, violent, and provoked the incident. They maintain that he punched Patrolman Lessnau, which commenced the fracas.

This is substantiated by the only independent eye witness to the beginning of the trouble, a Mr. Edward Hayes who was emerging from a building a few feet from the scene. He testified that as the officers pushed him against the wall to search him, Mr. Mitchell struck one of the officers to such an extent that the officer staggered.

It is significant at this point to note also that in his statement to Detective Oscar Kovacich, in charge of the investigation, Mr. Mitchell stated, "He may have thought that I slugged him, but I pushed him." It is also significant to note at this point again, that the Receiving Hospital attendants and the police officers present at Receiving Hospital stated that Mr. Mitchell was hostile and belligerent.

The only other witness to the complete incident was Mr. Oscar Dodson who was the better part of a block away and who testified positively that all of the action took place on the sidewalk and not in the store entranceway as testified to by others. The physical facts lend credence to his observation because it would have been impossible for him to have seen the incident had it taken place within the confines of the store entranceway. By the time Mr. Dodson ran to the scene, Mr. Mitchell had been handcuffed and was on his feet. Mr. Dodson testified that there was no striking after Mitchell was on his feet and handcuffed.

The Board listened to the testimony of Nancy Carol Alexander and Barbara Marie Jernigan, both aged 13, whose testimony apparently was the basis for the withdrawal of the Recorder's Court proceedings. Both of these young ladies agree on continued and severe beating by the police officers while Mr. Mitchell was handcuffed and on the ground. Both claim, contrary to Mr. Dodson, that the alleged beating took place entirely within the recessed entranceway to a facant store.

Nancy testified that Mitchell was lying face up and was beaten by the officers about the chest and shoulders. Barbara insists that Mitchell was lying face down and was being beaten "no place but on the head." There is a substantial variance between the number of blows claimed to have been seen by these two young ladies and the statement made by Mr. Mitchell.

In their testimony there were statements made about "the big fat officer and the little skinny one." It is important to note that both officers are slim of build, about

March 4, 1957

5'10" to 5'11" in height, and weigh between 165 and 175 pounds. Both of these witnesses disagree on many other details. Barbara admits that her original statement to the Prosecutor was wrong and that she dreams a lot. It is unfair to ask this Board or any honest observer to rely on this type of evidence.

Mr. George Bobo, Mr. Mitchell's passenger, who came from the bar after being informed of the fracas, saw no blows struck with the exception of one officer whom he claimed poked Mr. Mitchell in the back with a night stick as he was entering the scout car. Mr. Dodson claimed that Mr. Mitchell ended up on the floor of the car. This is not even claimed by Mr. Mitchell himself and is contradicted by other witnesses.

Patrolmen Jenkins and Banks who were called to the scene and who drove all parties to the precinct station saw no blows and describe the entire incident as routine. Mr. Mitchell testified that enroute to the precinct station he was told by one of the officers that "he would get more of the same". This was denied by all four officers in the car.

Mrs. Eloise Rahaman who also made a statement to the Prosecutor, which apparently was further basis for the withdrawal of the Recorder's Court proceedings, denied being close enough to describe the details. She called the scout car and didn't even know that police officers were involved in what she described as a fight.

Several witnesses, police officers and Receiving Hospital attendants, heard Mr. Mitchell state that the incident was his own fault and that he should have been more cooperative. To Patrolman Jerry Cody, Mr. Mitchell stated that "I wouldn't let them search me on the street. If they wanted to do it, they were going to take me to the station to do it." At the conclusion of an interview with Detective Kovacich who was in charge of the investigation, Mr. Mitchell in the hallway of the precinct station, became emotional and stated, "Some day I will have to learn to control my temper."

Both of the accused officers, young and comparatively new in the department, who have excellent records with no previous demerits or Trial Board charges, testified substantially the same. They were attracted to Mr. Mitchell's car by a defective headlight. They had been assigned to the Special Patrol Force, created as a special crime fighting division, and as a result of it, had been cautioned to be particularly alert to possible crime in the area.

They were patrolling an intersection described by Mr. Mitchell and Mr. Bobo as a "hot corner". They noticed, as every alert police officer should notice, that a man had left a car and entered a bar; that the car remained stopped in front of the bar with the motor running. This would normally create a suspicion sufficient to alert any police officer.

On questioning Mr. Mitchell, to them he appeared nervous, uncooperative, hostile and in a hurry. On checking over the call box, they found an outstanding warrant for a Robert F. Mitchell. Although at the time they were not certain that it was not this Robert F. Mitchell, it turned out to be another. According to their testimony, in the midst of being questioned, Mr. Mitchell suddenly started his car and moved it a distance described by several witnesses as anywhere from 30 to 82½ feet.

Mr. Mitchell claims the officers ordered him to curb his car. The officers deny this, and Officer Lessnau claims he was dragged or pulled by the abrupt movement of the car as it started, and while he was talking to Mr. Mitchell, he disengaged himself from the car after grabbing the license and registration card from Mr. Mitchell's hands.

Decision of Police Trial Board
Re: Mitchell Case

March 4, 1957

To any trained and alert police officer, such a series of incidents was ample to raise sufficient suspicion and to create adequate reason, both legal and practical--if not a necessity--for a search and for further questioning. Mr. Mitchell resented the extensive questioning and the search on the street. This is a natural and justifiable resentment. In his own mind he knew that he had not committed a crime, neither was he a criminal. The officers, however, did not know this at the moment and had cause to believe otherwise. Had he been more of an understanding citizen and conscious of the duties of a police officer, he would have recognized that the officers did not know this, and that in their own mind they were justified in stopping, questioning and searching him in view of the physical facts, his attitude and the information they had received.

Although it is humiliating to be searched on the street, and although it is not the practice of this department to promiscuously search every individual on a public thoroughfare, at times it becomes necessary in the performance of efficient police work, and as it was most appropriately stated by one of the witnesses, "Some officers have been killed by their failure to do so."

If Mr. Mitchell resisted the search and the arrest, which under the circumstances the Board finds was proper and legal--and this Board also finds that he did resist--, then the officers did not exceed their authority. Even though the arrest was legal, if Mr. Mitchell then became the victim of excessive force, then the officers would have exceeded their authority.

However, no fair minded, reasonably intelligent person, in the light of the testimony presented, could honestly conclude in all good conscience that the officers indulged in excessive, inhuman, or brutal treatment of Mr. Mitchell. Neither this Board nor the Detroit Police Department for one moment will condone the use of excessive force or brutality. Contrary to the opinion of some, this policy is known and is adhered to by every good officer of this department.

Too often police officers are the victims of unjustifiable criticism by unthinking citizens who otherwise mean well. Too often there are some of us who refuse to recognize that a police officer's sworn duty, of which he is constantly reminded, is to protect and defend and not to persecute or abuse. Too often some of us forget that every time a police officer steps on the street he puts his life on the line, and that tragedies frequently result from instances which originally appear to be minor or commonplace. For this, he makes untold and seldom recognized personal sacrifices, in return for which he too often receives insufficient respect and an abundance of ready criticism.

For this slightest infraction of departmental rules, he suffers the humiliation of Trial Board proceedings, jeopardizes his job and the possible security of his family and himself.

The Detroit Police Department in this case and in all others believes that a fair, thorough and complete hearing of all charges should be had at all times. This belief is shared by a number of good citizens in the community who, following this incident, visited the department and requested such a hearing. To the credit of these citizens, their fairness and their civic-mindedness urged them to ask for nothing more than a thorough and fair hearing, and for a decision based solely on the facts. This has now been done.

A hearing of these facts was originally scheduled before the Recorder's Court. This hearing has been recommended by the Prosecuting Attorney and all parties and all witnesses were prepared to proceed. It is regrettable that these proceedings were abruptly withdrawn. As the result, the Police Department in accordance with its policy of insisting on a fair, full and complete hearing, had no alternative but to

Decision of Police Trial Board

Re:

March 4, 1957

institute these Trial Board proceedings. Not to have done so in the face of the withdrawal of the Recorder's Court proceedings--although we cannot believe that the Prosecutor in his good judgment intended it so, in view of his obvious lack of knowledge of all of the facts--could have left a mistaken public impression, and could have by inference indicted the officers involved without the benefit of a fair hearing. It likewise prevented Mr. Mitchell from having the opportunity of proving his innocence.

The Police Department in the past three years has conscientiously endeavored to build good public relations among all segments of our community and to extend fair treatment to everyone. No one in the community can conscientiously and honestly deny this. Progress has been made and will continue to be made. The practice, however, of preventing a fair trial in a proper court, with the unfair inferences possibly resulting from such a practice, can create misunderstanding and could become an obstacle to the efforts of the Detroit Police Department in building public respect and efficient police service.

This Board has listened diligently and patiently to these proceedings. This Board has acted fairly and honestly and has arrived at its conclusion free from any other influence except the influence of the facts presented at the hearing.

On the basis of the facts, this Board finds Patrolman Davis and Patrolman Lessnau not guilty.

MEMBERS OF THE TRIAL BOARD:

COMMISSIONER - Edward S. Piggins, Chairman
SUPERINTENDENT - Jack Harvill
CHIEF OF DETECTIVES - Marvin G. Lane.