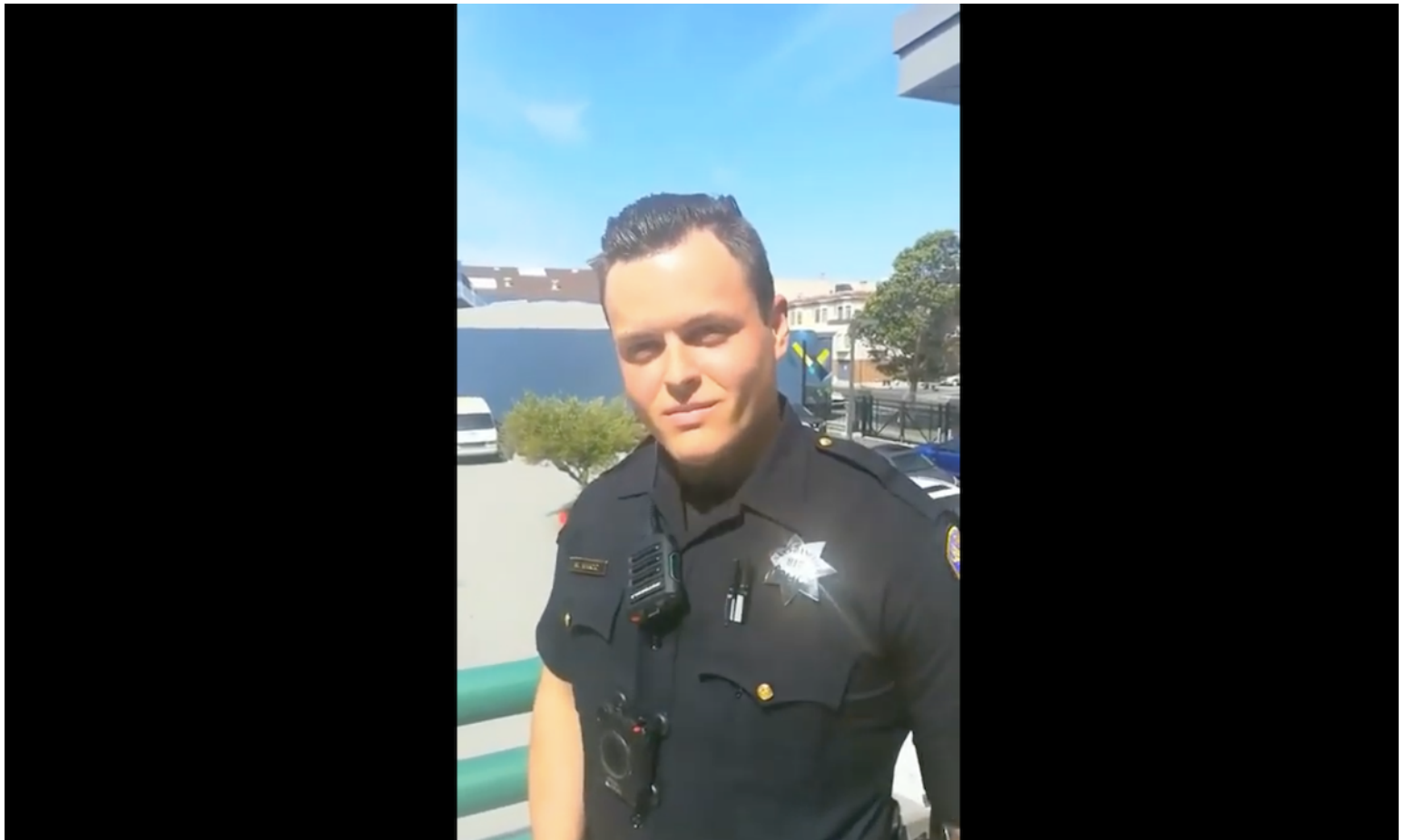


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SFPD officer accused of lying under oath after severely beating bicyclist in SF's Mission

by **JULIAN MARK**

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Officer Michael Marcic during an "SFPD Cares" Twitter introduction.

Officers celebrated with 'high-fives' and 'fist-bumps' after beating man who rode bike on sidewalk, per witness testimony — and body camera footage

A San Francisco police officer lied under oath about the Mission District incident that led to him and another officer punching a man in the head a dozen times while also beating his legs with a baton, according to the Department of Police Accountability.

“A preponderance of the evidence proved that the named officer lied under oath about the subject’s initial non-compliance and wrote an inaccurate and incomplete incident report,” concludes a June 11 Department of Police Accountability (DPA) report.

The officer, Michael Marcic, has remained on duty since the June 20, 2018 confrontation, when Marcic and another officer stopped 37-year-old Jeffery McElroy for riding his bike on the sidewalk near 15th and Mission Streets, chased him for blocks on foot, and then subsequently beat McElroy severely in front of a residential garage on Natoma.

The DPA’s report concluded that Marcic used excessive force. He continued to beat McElroy in the head, even as “both of [McElroy’s] hands are visible and are blocking his face from [Marcic’s] punches,” the DPA complaint says.

The finding, and its conclusions that Marcic lied under oath, used excessive force, and broke numerous other policies will now be forwarded to Police Chief Bill Scott, who will consider the appropriate consequences. If Scott determines that Marcic deserves 10 days or fewer of suspension, Scott can unilaterally impose such punishment. If the infraction warrants a longer suspension, the case will be forwarded to the Police Commission. Marcic would have the opportunity to appeal either outcome.

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“We represent some of the most marginalized persons in society,” said John Paul Passaglia, the deputy public defender who represented McElroy in his criminal proceeding stemming from the 2018 incident. “It’s always troublesome when there’s a police officer who uses his position to take advantage of the more marginalized with the assumption that nothing will ever be seen and come to light.”

Many of the DPA’s findings were independently corroborated during a two-day criminal hearing that began on July 16, 2018 regarding McElroy’s charges of possessing a firearm and resisting arrest. At that preliminary hearing, Judge Stephen Murphy tossed out Marcic’s testimony because the judge had doubts about the officer’s truthfulness — regarding both his reasons for searching McElroy and subsequently beating him, according to court records.

“Let me just say, I have concerns about Officer Marcic’s credibility, and particularly in light of the video we saw today,” Murphy said at the hearing.

Body camera footage revealed that McElroy followed officers’ orders after being stopped — despite Marcic claiming otherwise in his police report and testifying under oath that McElroy “wasn’t being compliant.” Witness testimony and body-camera footage of the incident also showed McElroy was not threatening the officers prior to the beating.

It’s unclear whether Officer Marcic will face discipline for lying about the incident in his police report and on the stand during McElroy’s trial — let alone use of excessive force or any of the other charges.

“To maintain the integrity and fairness of the disciplinary review process, we do not release information regarding the status of such investigations while they are ongoing,” said David Stevenson, an SFPD spokesman.

Stevenson said Marcic is currently assigned to the department’s Field Operations Bureau.

The Department of Police Accountability’s suggested punishment for Marcic is currently confidential. “The case is still pending,” said Sarah Hawkins, the DPA’s chief of staff, “so therefore we cannot discuss discipline recommendations.”

After the hearing, the judge dropped charges against McElroy, according to Danielle Harris, managing attorney of the Public Defender’s felony unit. The Public Defender’s Office subsequently filed its complaint against Marcic with the DPA in August 2018.

The case also raises questions about whether Officer Marcic, who joined the SFPD in April 2017, is additionally subject to criminal perjury charges. A San Francisco District Attorney spokesperson did not immediately respond to a request for comment.

Harris said the Public Defender’s office plans to raise possible criminal perjury charges against Marcic with the District Attorney — perhaps as soon as today.

“If we haven’t already shared the DPA finding with the DA office’s management, we will be doing so [Friday],” Harris wrote in an email to Mission Local.

In contrast to Officer Marcic’s testimony, other witnesses who testified at the 2018 criminal hearing offered a more detailed version of events leading up to the beating.

“The officer on [McElroy’s] shoulders started hitting him on the head repeatedly,” eyewitness Richard Bosveld testified. “I counted at least 10, and there were bloody knuckles.”

Officer Marcic testified in court that he fractured his hand punching McElroy.

Bosveld, the witness, testified that the officers “were fist-bumping and laughing and pointing at this individual here [McElroy], and I saw high-fiving as well.”

The DPA’s report also stated that the body camera footage revealed “discreet” fist-bumps as McElroy was “on the ground moaning in pain.” Moreover, the footage contradicted Marcic’s testimony that McElroy had failed to comply with the officers’ orders.

“The footage shows the subject complying and followed [Marcic’s] orders when asked to get off his bicycle and drop his backpack,” the DPA found.

Nevertheless, Marcic pat-searched McElroy for weapons — a decision the DPA deemed “improper” because McElroy had been compliant. That improper search was a major reason Judge Murphy suppressed Marcic’s testimony, according to the DPA report and a transcript of the July 2018 court proceeding.

When Marcic did not find weapons on McElroy’s body, he and partner Officer Sterling Hayes asked for his name. According to Marcic, McElroy initially gave three false names, which led Hayes to search his backpack and find a handgun. When Hayes indicated he found a handgun, McElroy allegedly ran.

The officers say they chased McElroy down Mission Street to 15th Street, and then another two blocks eastbound on 15th Street to Natoma, where McElroy allegedly hid under a car before running into an open residential garage. Officer Marcic testified that, in the garage, McElroy “brandished” a metal chair in a “fighting stance” and tried to flee again.

“At that point, due to many reasons, I had to go hands-on with him and take him to the ground,” Marcic testified, saying in court that he beat McElroy in the head “because it was the only place readily available.”

That’s when Officer Hayes “strikes McElroy in the leg with his baton at least four times,” says the DPA report. “Hayes yells at McElroy several times, ‘Stop fighting!’ as he is striking him.”

But the witness Bosveld, watching from a third-floor window, testified that McElroy dropped the chair before the officers tackled him. He further testified that he did not see McElroy attempt to reach for weapons, throw punches, or grab the officers — contradicting Marcic’s claims that McElroy was resisting.

Moreover, a second witness, the owner of the garage who was sitting just outside of it, stated that McElroy “crouched behind the chair he picked up to protect himself.” He allegedly dropped the chair when the officers ordered him to. The witness told the DPA that Marcic hit McElroy 12 times, and Hayes struck McElroy’s leg with a baton “approximately 15-20 times.”

According to witness statements, some 15 other officers arrived on the scene, with their guns drawn.

“The supervising officer stated he found the use of force reasonable,” the DPA report says, without naming the supervisor.

Judge Murphy disagreed and said so in court: “It’s obvious from the video at the point he started punching him, the Defendant, he was not a threat. He was subdued as a witness [Bosveld] said today.”

The DPA report also concluded that Officer Marcic lied about the initial pat-down that preceded a search of McElroy’s backpack.

Marcic wrote in his police report that he found no wallet, but Deputy Public Defender John Paul Passaglia argued in court that Marcic purposely overlooked the bulging wallet during the initial search, “and then puts a lie on his police report about it because he wanted to have a reason to search the bag.”

The DPA also concluded that Marcic’s “failure to find a wallet was not truthful.”

All told, the DPA found that Marcic improperly conducted a pat search of McElroy; used excessive force; misrepresented the truth in his police report and on the stand; did not process McElroy’s bike as evidence; and turned on his body-worn camera only after he initiated contact and pat searched McElroy.

McElroy on Sept. 3 sued the City and County of San Francisco in U.S. District Court of Northern California. The lawsuit seeks various damages, including wage loss, medical expenses, and attorney fees. McElroy, who is black, is also asking for injunctive relief for the SFPD to collect racial stop data, which it already does — and “institute training to alleviate racial bias within the department,” which it does, but so far to little effect.

“I don’t want what happened to me to happen to anyone else and I want the police officers to be held accountable,” McElroy said through Patrick Buelna of the Law Offices of John L. Burris, who is handling the civil case.

Mission Station continues to have the highest concentration of officers flagged for repeated use-of-force, citizen complaints, and lawsuits. From April to June of this year, Mission's 144 officers were flagged 42 times by a system designed to ferret out problem officers. This tally is 68 percent higher than the total reported incidents at Tenderloin station, which has more officers. This has been an ongoing problem.

And it appears this was not the first time that Officer Marcic responded to an incident in ways that raised questions about his professionalism.

Just one week before McElroy's 2018 beating, two men told the *Bay Area Reporter* that they been threatened, spit on and called "faggots" at the Last Call bar on 18th and Noe. When Officer Marcic responded and was told what the men were called, Marcic allegedly replied: "Well, are you?" Marcic and his partner, who was not named in the article, allegedly declined to investigate the incident.

Marcic testified that he has been employed by the SFPD since April 2017. "I became a San Francisco Police Officer because I wanted to give back to the community that helped raise me," Marcic said on a video posted the "SFPD Community Engagement Cares" Twitter account, one month before the beating.

"I was born and raised in San Francisco," he added. "You see the good and the bad — and a lot of potential with the bad."

**S**

October 15, 2019, 3:43 pm at 3:43 pm

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