



VIRGINIA ALCOHOLIC BEVERAGE CONTROL BUREAU OF LAW ENFORCEMENT

TO: Travis Hill
COO, Virginia ABC

DATE: August 10, 2015

THRU: Ryant Washington
Chief of Law Enforcement

FROM: J. Chris Goodman
Deputy Director – Field Operations

SUBJECT: Fact Finding Investigation 15-05

Pursuant to the completion of a Virginia State Police (VSP) criminal investigation and administrative review into the actions of ABC Special Agents John S. Cielakie, Jared B. Miller and Thomas S. Custer, as they relate to the arrest of Martese Rashaad Johnson on March 18, 2015, ABC Enforcement now undertakes a critical review of those Agents' actions as they relate to compliance with Bureau General Orders. The review is based entirely on the facts and findings contained in the VSP administrative review, summarized in part herein, and is limited to the Agents' actions based on the information they had leading up to and during the incident.

In the weeks prior to working in and around licensed establishments to monitor St. Patrick's Day activities on March 17th and into the early morning hours of March 18, 2015, Charlottesville Special Agents Miller, Custer and Cielakie, in conjunction with Special Agent in Charge Joe Cannon, assessed Bureau priorities during St. Patrick's Day and worked to identify the most efficient and effective use of Agency resources. Discussion and planning involved identifying Irish pub type establishments that tend to have large crowds on St. Patrick's Day and determining the most appropriate and effective approach to monitoring these establishments. Consideration was also given to focusing on other events, such as a sorority party slated to be held on the same date. However, it was decided that the best use of agency resources was to monitor the identified licensed establishments. Part of the discussion also involved the determination that it was most appropriate to conduct the planned activities in the Bureau issued uniform to ensure the Agents were clearly recognizable as law enforcement officers.

The decision by the Agents to wear Bureau issued uniforms during the operation complies with Bureau General Order 207 (III, A, 1 and 2 and B, 2, a)

Prior to working on March 17th and 18th, 2015 additional consideration was given to completing an operational plan for the proposed operation. General Order requires the completion of operational plans in certain settings or circumstances. Special events or specific observation of any one establishment may have required a written plan. The officers were in uniform and displaying badges. They were not operating with undercover officers or in a group of five or

more officers that would have also triggered a required plan. The proposed operation on March 17th and 18th did not automatically trigger the requirement; therefore, no written operational plan was prepared.

The determination that an operational plan was not needed for the particular operation is the proper assessment of Bureau General Order 216 (III, A, 1-7)

Prior to beginning their tour of duty on March 17th, Agents notified both Charlottesville Police communications and Virginia State Police communications of their anticipated activities and the locations of proposed operation and provided Agent names, unit numbers, a description of vehicles being driven and denoted that they would all be in uniform.

Advance notice to the local jurisdiction and VSP comply with Bureau General Order 211 (II and III, B, 1-4)

Upon arrival at Trinity Irish Pub, the Agents identified themselves to the owner of the establishment, with at least one Agent entering the premises in order to observe the operations and patron behavior. While working outside of the establishment, in a uniformed capacity, the Agents observed a large crowd attempting to enter the premises. At approximately 12:45am on March 18th, Martese Johnson attempted to enter the establishment. He presented an Illinois ID card to an individual checking IDs at the front door of the establishment and when asked for his zip code, provided a different zip code than that which appeared on the ID. The individual checking IDs denied Johnson entry and Johnson persisted with attempts to prove the ID was valid. According to witnesses interviewed by VSP, his objections became louder and included cursing.

Agent Miller, having observed the interaction between Johnson and the ID checker, approached Johnson in order to investigate the validity of the ID presented. Agent Cielakie, also having observed the interaction, asked Miller if he were going to check the ID and Miller advised he was.

The Agent's decision to approach Johnson to further investigate potential criminal activity complies with Bureau General Order 103 (IV, C, 1)

According to Agent accounts and witness statements, when Agent Miller approached Johnson, he verbally identified himself as a police officer and asked to see the ID. Johnson did not comply, using words such as, "No, I'm good," and attempted to ignore Miller and walk away. Upon approaching Johnson, Miller noted that he had blood shot, glassy eyes. Miller continued to seek the ID of Johnson and placed his hand on Johnson's arm. Miller noted, and was supported by witness accounts, that Johnson "shrugged off" the contact. Agent Custer then confronted Johnson and told him, "The police officer behind you is trying to talk to you." Johnson turned away and continued to try and leave before the agents could investigate further.

The Agent's attempts to gain voluntary compliance from Johnson, through mere presence and verbal commands, in determining if violations had occurred comply with Bureau General Orders 103 (III, A) and 200 (IV, A, 1)

Agents Miller and Custer each took hold of an arm and were immediately met with resistance from Johnson. The resistance offered by Johnson caused the three to move around on the sidewalk area for several seconds. Based on the continued resistance, one Agent made an attempt to "escort" Johnson to the ground. However, before Johnson could be safely escorted to the ground all three individuals fell. The Agent assisting with the arrest stated he did not have time, nor did he attempt, to take Johnson to the ground and felt that the fall was accidental. Most witnesses, and both Agents, reported

the three tripped and fell hard to the ground, simultaneously. With Johnson's arms restrained, his head struck the ground first, causing the laceration. Based on witness and Agent accounts, while on the ground, Johnson continued to aggressively and actively resist the Agents. Miller again noted a strong odor of an alcoholic beverage coming from Johnson's person during the very close contact. After being joined by Agent Cielakie, Agents Miller and Custer continued to struggle to get Johnson handcuffed, ultimately having to utilize two different sets of handcuffs, one on each wrist, and then locking the two sets of cuffs together. Throughout the arrest, Agents instructed Johnson to stop resisting and fighting and to put his hands behind his back. Despite being handcuffed, Johnson continued to actively resist by kicking his legs and trying to get to his feet. Agents Miller and Cielakie worked to control Johnson's legs when an officer from another department brought over a pair of leg shackles that Miller and Cielakie placed on Johnson's legs.

The Agents' reaction to an increased active resistance by Johnson resulted in only the application of force reasonably necessary to halt the resistance and complies with Bureau General Order 200 (IV, A, 3 and IV, B, 1). The Agents' application of shackles provided by another law enforcement agency to assist with the continued active resistance by Johnson complies with Bureau General Order 204 (II, B and III, A, 2 – shackles are approved law enforcement restraint devices)

When Agents initially approached Johnson to speak with him about his ID, some witness accounts indicate he was making biased based accusations toward the Agents. As Johnson was actively resisting Agents on the ground, he continued directing biased based accusations toward the Agents, referring to them as "Fucking racists". Additionally, according to witness and Agent accounts, a large, raucous crowd gathered around with many yelling racially charged accusations at the Agents. Agents ignored the taunts and biased based accusations from Johnson and the crowd and remained focused on their responsibilities and did not respond except to continue to encourage Johnson to stop resisting and put his hands behind his back.

The Agents' lack of reaction to the biased based accusations by disregarding them and maintaining a high level of professionalism complies with requirements in Bureau General Order 106 (II – paragraph 1 and IV, A-B)

When Miller, Custer and Johnson fell to the ground and Johnson sustained the laceration to his head, and as the Agents were surrounded by a large crowd, Agent Cielakie immediately utilized his Charlottesville Police Department radio to request additional law enforcement resources and assistance from emergency medical services (EMS). As EMS was dispatched at 12:51am, Cielakie made the call for assistance within mere minutes of the initial engagement with Johnson. After gaining control of Johnson, the Agents involved medical personnel to assess and treat the laceration to Johnson's head. Johnson was ultimately transported to UVA medical center for treatment.

Providing Johnson access to medical treatment for the laceration sustained as a result of the active resistance complies with Bureau General Order 200 (IV, B, 8)

As soon the Agents gained control of Johnson and while waiting for him to be checked out by EMS, Agent Cielakie contacted SAC Joe Cannon and advised him of the situation. SAC Cannon was advised that Johnson was being transported to the hospital and Cannon responded to the hospital. After conducting a brief investigation and taking photographs of all injuries, Cannon called his supervisor, Regional Agent in Charge Michael McKee. McKee in turn immediately contacted the Deputy Director, Chris Goodman.

The notification, up the chain of command, of the incident and SACs Cannon's response to

the hospital to conduct an investigation and take pictures complies with requirements in Bureau General Order 200 (IV, E, 2-4)

After release from UVA Medical Center, Johnson was immediately transported to a magistrate by a Charlottesville Police transport van that transported Johnson at the request of Agent Miller. The magistrate found probable cause based on sworn statements from Miller and issued an arrest warrant for a violation of Section 18.2-460, Code of Virginia for Obstruction of Justice, a Class 1 Misdemeanor and a summons for a violation of Section 18.2-388, Code of Virginia for Public Intoxication.

Taking Johnson to a magistrate, without unnecessary delay, to obtain an arrest warrant (and ultimately a magistrate summons) complies with Bureau General Order 103(IV, A, 2). Additionally, utilizing the assistance of the local police department transport van to take Johnson from the hospital to the magistrate complies with Bureau General Orders 204 (III, B, 4, a.)

Prior to ending their tour of duty, Agents Miller and Custer reported to the Charlottesville ABC office to complete the response to active resistance reports.

The Agents completing the response to active resistance reports prior to the end of duty complies with requirements in Bureau General Order 200 (IV, E, 1, b)

The critical assessment of the actions of Special Agents Miller, Cielakie and Custer on March 17th and 18th, 2015, concludes that all three Agents' actions were fully compliant with all Bureau General Orders. It is recommended all three Agents be returned to an unrestricted duty status immediately.