

## **Brutality or good police work?**

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By ERIC LEINS  
Staff Writer

GILROY - When Gilroy resident Gary Vogel is asked today in court how he pleads to five felony and two misdemeanor charges against him, the 37-year-old landscaper and electrician may say one thing to the judge, but believe something entirely different.

Donning a green Elmwood county jail jumpsuit he's worn for more than two months, sitting on a vinyl chair in a cement brick interview room and still showing the physical signs of what he contends was police brutality, Vogel is ready to make a deal.

The deal - plead guilty to charges that he violated his probation when he used pepper spray on the afternoon of Dec. 4 against two Gilroy police officers trying to search him for drugs and, in return, spend three to seven months in state prison instead of six years.

"My counsel isn't very confident, so that doesn't give me any confidence going into trial. I have a public defender and they work for the county, so they're just trying to get me to plea out on this as quickly as possible. If I had proper counsel or my own attorney I'd take this to trial," Vogel said.

Regardless of Friday's outcome Vogel says he will take his complaints to civil court and sue the city.

"I'm going to jail because I used pepper spray in my self-defense," Vogel said. "I was afraid for my life."

Afraid for the life, Vogel says, he was trying to turn around before the Dec. 4 incident between he and Gilroy police officers Chad Gallacinao and Erik Tiner.

On the afternoon of Dec. 4, Vogel, serving a three-year probation for a July 2001 misdemeanor drug charge, said he was working a landscaping job just a few doors down from his Cypress Court home. According to their police report, officers Gallacinao and Tiner saw Vogel while on uniformed patrol of the area in a marked police vehicle and approached him to perform a search, in keeping with Vogel's probation terms.

It's at this point the word of Vogel and the officers' begin to differ.

The police report says that Vogel refused to be searched by the officers and ran away after they grabbed his right arm to begin a search. Vogel says he never refused to be searched, he only asked that the search be done away from his immediate job site.

"I didn't want to do it in front of a customer's house, just out of respect for the customer. I asked if we could just go a few doors down in front of my house," Vogel said. "Next thing that happened, (Gallacinao) said, 'No, we can do it right here' and he grabbed me by the wrist and threw me to the ground and they both jumped on me."

Vogel said both officers hit him numerous times with their billy clubs on several parts of his body. Vogel said he never ran from the officers and did not provoke them in any way.

"At one point I said 'Go ahead, search me here' and (Gallacinao) said, 'No, it's too late for that,'" Vogel said.

It's not clear if any witnesses can corroborate either Vogel or the officers' side of the story. Officer Tiner's report mentions a Dec. 5 visit to the area where two potential witnesses were contacted. Both were not named in the report and both said they did not see anything, but that a brother of one of the potential witness, Lupe Sanchez, had. Tiner left a business card for Sanchez, but the report does not say if contact was ever made.

Attempts by the Dispatch to contact Sanchez were not successful.

After allegedly sustaining numerous billy club whacks to his head and body, Vogel reached for the pepper spray he was carrying and shot it into the eyes of both officers. Carrying pepper spray was in violation of Vogel's parole. Vogel claims he needed it because of a stray dog he has encountered in the neighborhood.

A criminal investigation of Gallacinao and Tiner, a GPD internal affairs review, a few broken ribs, several facial and body bruises and nine stitches to his leg later, Vogel found himself in jail and the officers found themselves cleared of any wrongdoing.

Assistant Police Chief Lanny Brown defended his department in a telephone interview this week.

"We have a very proactive approach regarding probationary searches. We stand behind it. We've briefed City Council on it. We've hired a full-time probation officer from the county," Brown said. "We don't have time to search every single person on probation, but when a particular person has a history, when the word on the street is that a person is still involved in drugs, we're probably going to do a search."

Gallacinao was involved in Vogel's two prior arrests, Vogel said. And when he approached Vogel, Gallacinao noticed a long round object in his right front pocket and believed it may have been drug paraphernalia, Gallacinao stated in his report. Gallacinao also wrote in his report that Vogel was "extremely nervous" and "his pupils appeared to be extremely constricted," signs of stimulant usage.

Hospital blood tests would later conclude that Vogel was not under the influence of any drugs. However, the district attorney's office would not comment before Friday's hearing about the results from tests taken at a police crime lab after his arrest.

To Vogel, the search and the ensuing melee was payback from Gallacinao for making the officer look bad.

Gallacinao was part of a July house raid launched after an informant said Vogel was selling methamphetamines. The arrest yielded no contraband, only drug paraphernalia and a charge against Vogel for being under the influence of a controlled substance.

"It looks foolish for them to come into someone's house and try to arrest them for drugs and then there's no drugs there," Vogel said. "He has animosities toward me, I guess, and he decided to take them to another level."

Vogel claims another GPD officer took department animosities to a higher level, too.

When getting booked for the Dec. 4 incident, Vogel overheard officers talking about a youth who attended the same school as his 14-year-old daughter. Vogel asked the officers to tell him who they were talking about so he could instruct his daughter to stay away from this person.

Vogel claims that Officer Steve Morrow then made a threat against his daughter.

"He said, '(expletive), I'll introduce this guy to your daughter.' That's word for word," Vogel said.

Morrow declined to comment.

Brown, the assistant police chief, said this was the first he heard of the allegation. He said the department does not have a chip on its shoulder against Vogel and that he is not on the GPD's Lucky 7 list.

Persons who have been arrested or are on probation or parole are eligible to be placed on the Lucky 7 bulletin.

"He never made it to that list," Brown said.