

Disposition of the Independent Review Panel



Complainant: Thomas Anderson

IRP Case: A 2002.368

Date: January 27, 2005

MDPD Case: PC 2002-0344

The Independent Review Panel met on January 27, 2005 for the purpose of publicly reviewing the complaint made by Thomas Anderson against the Miami-Dade Police Department (MDPD) and the department's response to that complaint. The following represents the findings of the Panel:

A. Recommendations

The Panel recommended that:

1. Mr. Anderson be commended for standing up for what he believed to be right and demanding a jury trial, instead of accepting a plea.
2. MDPD employ this case in officer training scenarios because it does not reflect the current County policy of "Delivering Excellent Service."
3. Detective Feria be counseled based on the findings and recommendations made in this case.

B. Incident

On September 30, 2002 at approximately 2:15 pm, Mr. Anderson was driving eastbound on SR 836 with four other passengers in his vehicle. Mr. Anderson stated that he was stopped by a man in plainclothes driving a gold Ford Taurus. Mr. Anderson stated that the man (later identified as Detective Anthony Feria) grabbed him and tore his shirt. Detective Feria arrested Mr. Anderson for "Reckless Driving".

C. Allegations

1. Detective Feria failed to identify himself as a police officer and failed to display his badge during a traffic stop.
2. Detective Feria grabbed Mr. Anderson, tearing his undershirt, without cause or justification.

D. Disposition of the Independent Review Panel

1. Allegation 1: The Panel sustained the allegation that Detective Anthony Feria failed to identify himself as a police officer and failed to display his badge to Mr. Anderson during the traffic stop.
2. Allegation 2: The Panel found evidence that Mr. Anderson's shirt was torn by Detective Feria.

E. Other Findings

1. Traffic stops by plainclothes officers in unmarked vehicles are a safety concern for both officers and citizens.
2. Detective Feria failed to conduct the vehicle stop "with caution and forethought." He placed himself and others in unnecessary danger because he failed to make security preparations prior to making the traffic stop. According to Detective Feria's statement:
 - a. He was in plainclothes, driving an unmarked vehicle, did not have a police radio and had not made a traffic stop in 13 years.
 - b. He did not advise the dispatcher of the location and vehicle tag number prior to the stop, nor did he request a marked unit prior to the traffic stop.
 - c. He "fumbled" for his cell phone as Mr. Anderson and his passenger were exiting their vehicle so he could let the dispatcher know he was on a traffic stop and he could get a marked unit to the scene.
 - d. At the time he contacted the City of Miami 9-1-1 dispatcher, Mr. Anderson was walking toward the detective's vehicle, violating the detective's order to return to his (Anderson's) vehicle.
 - e. He stated several times, including to the 9-1-1 dispatcher, that he felt he did not have control of the situation.
3. Detective Feria used his discretionary authority as described in MDPD Departmental Manual Chapter 12-1A (Law Enforcement Operations) when he physically arrested Mr. Anderson. Detective Feria chose not to exercise the options provided in the Manual for alternatives to arrest, "even when a physical arrest is possible:"
 - a. "Issue a verbal warning if the offense is minor and of a general nature without a particular victim; e/g/disorderly intoxication."
 - b. Issue a promise to appear for a misdemeanor, or a traffic citation for an arrestable traffic violation.

C. Observations to Promote Healthy Police/Citizen Interactions:

When an officer making a traffic stop tells a driver or passenger to stay in his/her vehicle, the officer is complying with departmental policy¹ and the law² requires the driver and passenger to obey the lawful order of a police officer.

MDPD policy requires an officer to situate himself in a manner affording maximum cover and protection from the violator or other motorists. “At all times, the officer shall maintain visual contact with the violator and passengers. Officers shall not allow persons to approach the driver’s side door of the police vehicle while the officer is sitting inside.”

The Independent Review Panel concluded the complaint on January 27, 2005.

¹ MDPD Departmental Manual Chapter 28-01, Sec 2 III D 8& 9 (pg 28-01-9)

² FSS 316.072 (3)

Independent Review Panel

Committee Recommendation to the Panel

January 27, 2005

Complaint: A 2002.368

MDPD Case: PC 2002-0344

Complainant: Thomas Anderson

Accused Party: Miami-Dade Police Department (MDPD), Detective Anthony Feria

Date Complaint Received: October 3, 2002

Materials Reviewed: Correspondence, MDPD Case PC2002-0344, staff notes, committee notes, relevant sections of the MDPD Departmental Manual

Committee: Dr. Moiez Tapia, Panel Member; Dr. Eduardo Diaz, Executive Director; Carol Boersma, Executive Assistant to the Director, Duhamelle Desire, Conflict Resolution Specialist.

Meeting Date: November 9, 2004

Present: William Monahan, Esq., MDPD Legal Bureau; Sergeant Neymee Sanchez, MDPD Professional Compliance Bureau, Thomas Anderson, complainant.

Complaint: Mr. Anderson stated that on September 30, 2002 at approximately 2:15 pm, he was driving eastbound on SR 836. Mr. Anderson had four other passengers in his vehicle at the time: Deandre Wilcox, Ms. Laneshia Hush and her two sons (ages 5 months and 1 ½ years).

While Mr. Anderson was driving eastbound on the SR 836, a gold Ford Taurus passed him and merged in front of him, causing him to quickly press on the brakes. Mr. Anderson passed the Taurus, which then pulled behind him. When Mr. Anderson saw the flashing light on the dashboard of the Taurus, he stopped on the side of the road. A man in plainclothes exited the Taurus and stood at the rear of Mr. Anderson's truck, with his gun in his hand. The man asked Mr. Anderson to exit his vehicle with his hands in view. Mr. Anderson repeatedly asked the man what was the problem and why was he being pulled over. Shortly after, the man grabbed Mr. Anderson so hard that he tore Mr. Anderson's shirt. Mr. Anderson pleaded with the man not to grab his shirt. The man released his grip on Mr. Anderson's shirt and proceeded to his car. Mr. Anderson asked the man for his identification several times. At no time did the man comply with Mr. Anderson's request. The man told Mr. Anderson he was going to be arrested for Reckless Driving. The man handcuffed Mr. Anderson and placed him in the front seat of the unmarked vehicle. At that time, passengers Ms. Hush and Mr. Wilcox exited Mr. Anderson's vehicle to ask why Mr. Anderson had been handcuffed and to ask for a badge or identification.

On February 6, 2003, Mr. Anderson was found not guilty of Reckless Driving, subsequent to a jury trial.

Mr. Anderson alleges that:

1. Detective Feria (Unidentified Man) failed to identify himself as a police officer and failed to display his badge during a traffic stop.
2. Detective Feria grabbed him, tearing his undershirt, without cause or justification.

Departmental Response – MDPD File PC2002-0344:

Statement of Ms. Lanesha Hush

Ms. Hush, a female passenger in Mr. Anderson's vehicle, exited the vehicle and demanded that the man (Detective Feria) produce identification and a badge. The man did not comply, but instead placed Mr. Anderson in his unmarked vehicle. Ms. Hush obtained the unmarked vehicle's tag number, and called the MDPD and Miami Police Department complaint desk. Mr. Anderson was later transported to Miami-Dade County Jail by the unidentified man in his unmarked vehicle.

Statement of Mr. Deandre Wilcox

Mr. Wilcox was the front seat passenger in the complainant's vehicle. Mr. Wilcox stated the man who stopped Mr. Anderson did not display a flashing blue light until after he and Mr. Anderson exited their vehicle. He also stated the man pulled his firearm and "cocked it back," at which time he told Mr. Anderson to hold up his hands. Mr. Wilcox observed when Detective Feria grabbed Mr. Anderson, ripping his tee-shirt. Mr. Wilcox stated that Detective Feria ripped Mr. Anderson's shirt only after he had pulled away from him. Mr. Wilcox also stated that Detective Feria failed to provide his badge number or identify himself as a police officer when asked to do so by Mr. Wilcox and Ms. Hush.

Statement of Detective Anthony Feria

Detective Feria stated that on September 30, 2002, he was off duty driving an unmarked car eastbound on SR 836 when he observed Mr. Anderson swerving in and out of traffic, while traveling at a high rate of speed. Detective Feria pulled Mr. Anderson over because he was driving recklessly, endangering himself and others. Detective Feria stated that during the stop he was wearing his police badge around his neck, and that he identified himself verbally as a police officer to Mr. Anderson. When both Mr. Anderson and his passenger exited the vehicle, Detective Feria told them to stay in their vehicle because he felt he had no control over the situation. He had a cell phone but no police radio. He called 9-1-1 and connected with the City of Miami.

Detective Feria stated the passenger returned to the vehicle but Mr. Anderson did not. He directed Mr. Anderson to the back of his (Feria's) vehicle. When he grabbed Mr. Anderson's hand to handcuff him, Mr. Anderson tried to pull away. When Mr. Anderson stopped resisting, he handcuffed him. Detective Feria does not recall grabbing Mr. Anderson's clothing at the time of arrest.

MDPD response to Mr. Anderson's allegations:

1. Detective Anthony Feria failed to identify himself as a police officer and failed to display his badge to Mr. Anderson during a traffic stop. (**Allegation Classification: Departmental Misconduct/ Improper Procedures**)

Allegation #1 Not Sustained:

Detective Feria denies failing to identify himself as a police officer and further states that he displayed his badge by wearing it on a chain around his neck. City of Miami Police Department Motorcycle Officer Alfredo Alvarez, who responded as a back-up unit, confirms that not only was Detective Feria wearing his badge on a chain, but that he also provided his name and badge number on several occasions to Witness Hush. Officer Alvarez does not recall if the complainant ever requested Detective Feria's name and badge number. Since there were no independent witnesses or other evidence to substantiate Mr. Anderson's allegation, the allegation is not sustained.

2. Detective Anthony Feria grabbed Mr. Anderson, tearing his undershirt without cause or justification. (**Allegation Classification: Departmental Misconduct /Abuse of Authority**)

Allegation # 2 Not Sustained:

Detective Anthony Feria testified that he does not recall tearing Mr. Anderson's undershirt. There were no independent witnesses to confirm the allegation; therefore the allegation is not sustained.

Committee Remarks: Detective Feria was invited to participate in the IRP committee meeting. He did not respond to the invitation. Mr. Anderson advised the committee that he was dissatisfied with the MDPD disposition because:

1. It was based on what Detective Feria said: that he *was* wearing his badge. Mr. Anderson stated that it is documented in the record that he and his friends repeatedly asked Detective Feria for his identification because he *was not* wearing a badge; he was in plainclothes and driving an unmarked car.
2. The report also makes Witness Lanesha Hush appear like "an ignorant girl making a scene," when in fact she is a military person who was calling several police departments to find out who Detective Feria was.

3. Detective Feria said Mr. Anderson was driving at an “excessive rate of speed,” which is impossible on a congested highway like SR 836 at 2:30 PM.
4. A jury of his peers acquitted him, and MDPD still found no wrongdoing on the part of the officer.

The committee looked at the following issues:

1. Detective Feria, in his initial contact with City of Miami 911, advised he had a “39,” an arrest. The detective made the decision to arrest Mr. Anderson before he talked to Mr. Anderson.
2. The appropriateness of an off-duty officer in plainclothes, driving an unmarked car, making a traffic stop.

Sgt. Sanchez stated that a police officer is always a police officer, whether on or off-duty. The officer must respond to a dangerous situation. In this case, Detective Feria felt Mr. Anderson’s driving behavior was dangerous and he had a responsibility, as an officer, to do something.

3. The potential danger for the officer. Detective Feria describes Mr. Anderson as “real hostile” to the 911 dispatcher. The dispatcher refers to the incident as “a violent road rage.” Detective Feria, who had not made a traffic stop in 13 years and did not have a police radio, stopped Mr. Anderson prior to having identified Mr. Anderson’s vehicle to any police authority and without backup.
4. Mr. Monahan responded that the detective may have placed himself in danger to prevent a greater danger to the public, such as a major traffic accident.
5. MDPD policy requires that a prisoner be transported in a caged, marked police car. Detective Feria transported Mr. Anderson in the front seat of unmarked vehicle.

Detective Feria stated that he decided to transport Mr. Anderson in his unmarked, uncaged vehicle because Ms. Hush was screaming at the officers and he felt it was in “his best interest” to clear the scene, rather than wait for a marked unit.

Both Sgt. Sanchez and Mr. Monahan responded that the detective did not violate policy because he had requested backup, however the volatile situation required that Mr. Anderson be removed from the scene immediately.

6. Detective Feria was on his way to court, but missed the court date due to the traffic stop.

Mr. Monahan stated that compliance with court dates is required; however there are circumstances that can take priority over the court appearance. An officer who cannot keep a court appointment must notify his supervisor who would then notify the court.

7. The jury trial in which Mr. Anderson was acquitted.

Mr. Monahan pointed out that the requirement for conviction in a criminal case is “proof beyond a reasonable doubt,” however the requirement for arrest is “probable cause.” There was probable case for the arrest, but apparently the jury found reasonable doubt.

8. The basis for not sustaining the allegation that Detective Feria failed to display his badge. Mr. Anderson and his two witnesses collaborated the allegation. Detective Feria and a Miami police officer refuted the allegation.

Sgt. Sanchez responded that there were no “independent” witnesses.

Dr. Diaz explained that not sustained means the evidence did not *support or refute* the allegation.

Quotes from MDPD Departmental Manual:

Traffic Enforcement Chapter 28-01

“Enforcement action shall be taken when violations of State traffic laws are observed. Officers may use discretion, when appropriate. The responsibility for enforcing traffic laws and regulations is shared by all sworn personnel.”

“Traffic enforcement action will be taken upon detection of an illegal and potentially hazardous act, without regard to such factors as quantitative enforcement activities (ticket quotas), attitude, intent or excuse... Enforcement action consists of a verbal warning, citation or an arrest.”

“Vehicle stops pose potential risks to police personnel and the public, and must be conducted with caution and forethought.”

“...nonuniformed police officers are authorized to stop vehicles and their occupants to enforce traffic laws... Whenever possible, nonuniformed officers shall request assistance from a uniformed officer with a marked unit prior to conducting a stop.”

“Nonuniformed officers conducting traffic stops will conspicuously display departmental credentials to the vehicle occupants and announce that they are police officers.

“When conducting a traffic stop, officers shall advise the dispatcher of location and vehicle tag number.”

“While writing citations or conducting records check on the radio, the officer shall situate himself in a manner affording maximum cover and protection from the violator or other motorists. At all times, the officer shall maintain visual contact with the violator and passengers. Officers shall not allow persons to approach the driver’s side door of the police vehicle while the officer is sitting inside.”

Court Attendance - Employee Inability to Appear in Court Chapter 07-01(F)

“An employee unable to appear, due to illness or other emergency, before the designated court on the date and time specified, shall contact a supervisor (sergeant or above) within his chain-of-command for approval. If no supervisor within his chain-of-command is on duty, the employee shall contact any on-duty supervisor in his unit of assignment. The supervisor shall notify the Court Services Bureau as soon as possible, but not less than one hour prior to scheduled attendance...”

Prisoner Transportation Chapter 18-02(Q)

“One-man units shall not transport a prisoner unless the vehicle is equipped with a protective divider or supervisory approval is obtained.”

Drawing a Firearm Chapter 31-01(A)

“The decision to draw or direct a firearm at an individual should be based on the tactical situation and reasonable belief by the officer that there is a substantial and imminent risk that the situation may escalate to a point where deadly force may be justified. ...unnecessary or premature drawing of a firearm limits the alternatives to control a situation, unnecessarily intimidates citizens, and may result in an unjustified or accidental discharge of the firearm.”

Committee Findings:

A. Regarding the allegations

1. The committee found inconclusive evidence to sustain or refute the allegation that Detective Anthony Feria failed to identify himself as a police officer and failed to display his badge to Mr. Anderson.

Mr. Anderson and Witness Lanesha Hush said they made repeated requests for the detective’s identification, without success. Detective Feria stated that he displayed his badge by wearing it on a chain around his neck. Witness Officer Alfredo Alvarez substantiated the detective’s statement. Witness Deandre Wilcox stated the detective did not identify himself, however Mr. Wilcox’s credibility is questionable due to comments he made that were inconsistent with all other statements regarding the blue flashing light.

2. The committee found insufficient evidence to determine how Mr. Anderson's shirt was torn.

B. Other Findings:

1. Traffic stops by plainclothes officers in unmarked vehicles are a safety concern for both officers and citizens.
2. Detective Feria failed to conduct the vehicle stop "with caution and forethought." He placed himself and others in unnecessary danger because he failed to make security preparations prior to making the traffic stop. According to Detective Feria's statement:
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 - a. "Issue a verbal warning if the offense is minor and of a general nature without a particular victim; e/g/disorderly intoxication."
 - b. Issue a promise to appear for a misdemeanor, or a traffic citation for an arrestable traffic violation.

Observation to Promote Constructive Police/Citizen Interactions

When an officer making a traffic stop tells a driver or passenger to stay in his/her vehicle, the officer is complying with departmental policy¹ and the law² requires the driver and passenger to obey the lawful order of a police officer.

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MDPD policy requires an officer to situate himself in a manner affording maximum cover and protection from the violator or other motorists. “At all times, the officer shall maintain visual contact with the violator and passengers. Officers shall not allow persons to approach the driver’s side door of the police vehicle while the officer is sitting inside.”

Recommendations:

1. That Mr. Anderson be commended for standing up for what he believed to be right and demanding a jury trial, instead of accepting a plea.
2. That this case be employed in officer training scenarios as an example of conduct that is allowable under current policy but does not reflect “Delivering Excellent Service.”
3. That the complaint be concluded.