

# Disposition of the Independent Review Panel



Complainant: Marvin George

IRP Case: A 2004.233

Date: August 24, 2006

MDPD Case: PC 2004-0295

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The Independent Review Panel met on August 24, 2006 for the purpose of publicly reviewing the complaint made by Marvin George against the Miami-Dade Police Department and the department's response to that complaint. The following represents the findings of the Panel:

## A. Recommendations

- 1) That Officer Daniel Figueroa receive a Record of Counseling for not providing his name and badge number when asked by a citizen.
- 2) That MDPD require its supervisors to check their facts before providing information to citizens that could possibly be erroneous, as was the case with Sgt. Mario Knapp's interaction with the complainant.

## B. Incident

The complainant was stopped by three undercover Miami-Dade Police Department officers. The complainant stated that the officers took everything out of the glove compartment and placed the contents on the passenger seat even though he did not give consent for the search. The complainant stated he was also searched. The complainant asked why was he stopped and what the officers were looking for in his vehicle. One officer stated they were conducting a narcotics investigation. After no narcotics were found the officers let the complainant go. The complainant then asked for their names and badge numbers. One officer told him to come over to the police car if he wanted his name and badge number. The complainant did not, however another officer drove up next to him and provided him with his name and badge number.

## C. Allegations

- 1) The MDPD officers searched Mr. George's vehicle without his consent.
- 2) Officer Daniel Figueroa and Officer Kevin Thelwell refused to provide the complainant with their names and badge numbers when requested.

## D. Disposition of the Independent Review Panel

- 1) The complainant's vehicle was searched illegally by officers from MDPD. – EXONERATED

MDPD Department Manual Chapter 25 - Part 2 - Search Procedures Section IV states:

*“A vehicle may be searched in its entirety without a warrant if the search is based on probable cause that the vehicle contains the items sought.”*

In this case, Mr. George was observed by Officer Cruz in a hand-to-hand narcotics transaction thus establishing probable cause for a traffic stop and search of his vehicle. The officers were not obligated to ask for his consent.

- 2) Officers Kevin Thelwell and Daniel Figueroa refused to provide the complainant with their names and badge numbers when requested - SUSTAINED

MDPD Departmental Manual Chapter 3 - Part 3 - Employee Identification Section I B. states:

*“Sworn personnel shall have credentials in their immediate possession and shall give their name and identification number upon request, unless extenuating circumstances dictate otherwise.”*

Officer Figueroa did not provide Mr. George with his name and badge number when asked thus violating departmental policy.

#### **E. Other Findings**

Sgt. Mario Knapp's September 17<sup>th</sup>, 2004 memo to Major Ramon Secades contains inaccurate information. Sgt. Knapp wrote, "I explained that when no contraband was discovered, he was allowed to leave with no paperwork being generated by the officers." A Miscellaneous Incident Report was written with Mr. George's identifying information and a description of the stop.

#### **F. Observations to Promote Healthy Police/Citizen Interactions:**

When a citizen feels they are being mistreated by a police officer, one of the few options available is the right to ask and obtain the officer's name and badge number. If the officer does not comply or makes it difficult for a citizen to acquire this information, it fosters an attitude of mistrust between law enforcement and the public. To this end, police officers should make it a point to be accommodating when asked for their identification as to remove the perception they are trying to cover up inappropriate behavior.

The Independent Review Panel concluded the complaint on August 24, 2006.

# Independent Review Panel

## Committee Recommendation to the Panel

August 24, 2006

**Complaint:** A 2004.233

**MDPD Case:** PC 2004-0295

**Complainant:** Marvin George

**Accused Party:** Miami-Dade Police Department (MDPD)

**Date Complaint Received:** September 17, 2004

**Materials Reviewed:** Correspondence, IA Case 2004-0295, staff notes and committee notes

**Committee:** Julie C. Ferguson, Esq., Panel Member; Dr. Eduardo Diaz, Executive Director; Carol Boersma, Executive Assistant to the Director; Fernando L. Robreño, Conflict Resolution Specialist

Meeting Date: July 17, 2006

Present: From MDPD Compliance Bureau: Sgt. Al Stier, Sgt. David Goldberger, Sgt. Chris Carothers, Sgt. Rosanna Cordero; Marvin George, Complainant

**Complaint:** The complainant was stopped by three undercover Miami-Dade Police Department officers on NW 77<sup>th</sup> Avenue and 12<sup>th</sup> Street. A female, who was filming the incident, accompanied the officers. The complainant stated that the officers took everything out of the glove compartment and placed the contents on the passenger seat even though he did not give consent for the search. The complainant stated he was also searched. The complainant asked why was he stopped and what the officers were looking for in his vehicle. One officer stated they were conducting a narcotics investigation. After no narcotics were found the officers let the complainant go. The complainant then asked for their names and badge numbers. One officer told him to come over to the police car if he wanted his name and badge number. The complainant did not, however another officer drove up next to him and provided him with his name and badge number.

*\*The complainant filed a complaint with the Professional Compliance Bureau on August 27<sup>th</sup>, 2004. The response was Contact Report 2004-262 that was submitted on September 15<sup>th</sup>, 2004. On September 17<sup>th</sup>, 2004, the complainant filed his complaint with the IRP and an IA investigation was ordered on October 1<sup>st</sup>, 2004.*

**Department Response: MDPD PC 2004-0295**

**IA Investigator: Sgt. Al Stier**

**MDPD Disposition: Lt. Steve Czyzewski, Narcotics Bureau**

**Approving Supervisor: Major Charles Nanney, Narcotics Bureau**

MDPD investigated the allegations that the officers on the scene searched the complainant's car without his consent and that they refused to provide him with their names and badge numbers.

*The following is excerpted from the MDPD Disposition memo dated March 1, 2006.*

**Allegation # 1 - The complainant's vehicle was searched illegally by officers from MDPD. – NOT SUSTAINED**

A surveillance officer observed the complainant making a hand-to-hand narcotics-for-currency transaction. The officer provided a vehicle description, direction of travel and a description of the driver. The complainant then exited the area in his vehicle and was stopped by Detectives Figueroa and Thelwell. The officers then conducted a search of the vehicle based on probable cause that the vehicle contained contraband. The actions of the officers were consistent with departmental policy and legal guidelines established in the State of Florida.

**Allegation # 2 – Officers Kevin Thelwell and Daniel Figueroa refused to provide the complainant with their names and badge numbers when requested.  
NOT SUSTAINED**

In reviewing the videotape of the traffic stop, the complainant stated he wanted the detectives' names. Detective Martinez provided the information. Detective Figueroa did not refuse to give his information, conversely, he asked the complainant, who was a considerable distance away from him, to walk over to his vehicle for the requested information, which the complainant refused to do and left the scene. Officer Thelwell did not have the opportunity to provide the information as Mr. George hastily departed. The officers deny refusing to provide their names and badge numbers. There are no independent witnesses to support this allegation.

***Summary of other Statements***

**Officer Kevin Thelwell (Narcotics Bureau/TNT)**

Officer Thelwell stated he was assigned to a two man unit with Officer Figueroa and they were a take down team for a narcotics operation. Officer Thelwell also advised that Ms. Carrera was riding in their vehicle filming the operation. Officer Thelwell advised the traffic stop on the complainant was prompted by the "eyeball" observing the complainant making a narcotics transaction. Officer Thelwell stated that when he conducted a traffic stop of the complainant, he began to search his vehicle. Officer Thelwell stated he recalls the complainant consented to the search. Officer Thelwell stated he conducted a thorough search of the vehicle and did not find

any narcotics so they allowed the complainant to leave. Officer Thelwell stated the complainant never asked him specifically for his name and badge number.

**Officer Daniel Figueroa (Narcotics Bureau/TNT)**

Officer Figueroa stated he was assigned as a take down team with Officer Thelwell and an observer, Ms. Carrera, who filmed the traffic stop. Officer Figueroa stated the “eyeball” advised them of a description of the complainant’s vehicle and advised he had been involved in a hand-to-hand narcotics transaction. Officer Figueroa stated they located the complainant’s vehicle and conducted a traffic stop. Officer Figueroa stated right after that vehicle was stopped the complainant gave him verbal permission to search the vehicle. Officer Figueroa stated they searched the vehicle and did not find any narcotics so the complainant was allowed to leave. Officer Figueroa stated that the complainant did ask him for his name and badge number and that he was willing to provide it to him, but he requested that the complainant come over to his vehicle to prevent an escalation of the incident as the complainant was already agitated.

**Officer Alain Cruz (Robbery Bureau, RID)**

Officer Cruz stated he was assigned as the “eyeball” to monitor an area known for hand-to-hand narcotic transactions. Officer Cruz stated that when he observes a hand-to-hand narcotics transaction he provides the description of the purchaser and vehicle information as well as direction of travel to the take down units. Officer Cruz viewed the videotape of the traffic stop of the complainant and indicated he had no recollection of the complainant purchasing narcotics but indicated that if he provided that information to the take down units it would have been based on his observations.

**Lizeth Carrera (TV Producer/Video Services Unit)**

Ms. Carrera stated she was riding with officers assigned to the Tactical Narcotics Team (TNT) to videotape traffic stops for use in training videos. Ms. Carrera stated that while riding with Officers Thelwell and Figueroa they received a radio transmission from another officer providing a vehicle description, direction of travel and a description of the driver who had apparently purchased narcotics. Ms. Carrera stated they located the complainant’s vehicle and conducted a traffic stop. Ms. Carrera stated she videotaped the traffic stop and the search of the complainant’s vehicle.

**Officer Raul Martinez (Narcotics Bureau/TNT)**

Officer Martinez stated he was assigned as a transport unit for TNT operation that involved the take down of street level narcotics buyers and sellers. Officer Martinez stated he responded to the traffic stop of the complainant as a back-up and did not take part in the initial traffic stop. Officer Martinez stated he did not become involved in the search of the complainant’s vehicle. Officer Martinez advised he provided his name and badge number to the complainant when asked.

## **Committee Remarks:**

### Consent to Search

Mr. George stated that the officers never asked him whether they could search his vehicle.

Dr. Diaz stated that Ms. Carrera stated she did not recall if Mr. George had given permission for his vehicle to be searched. However, the officers stated that Mr. George did grant them permission.

Dr. Diaz stated he reviewed Chapter 25 Part 2: *Search Procedures*, in the MDPD Departmental Manual and a vehicle may be searched without a warrant if the search is based on probable cause that the vehicle contains the items sought. In this case, Officer Cruz “eyeballed” Mr. George purchasing narcotics.

Dr. Diaz questioned why the officers asked Mr. George for consent when the MDPD manual allows officers to search a vehicle without consent if probable cause is established. Sgt. Stier stated it depends on the individual officer, it is purely discretionary. Sgt. Stier stated they did have probable cause to search the vehicle.

### Videotape

Mr. George stated Ms. Carrera started filming right after the officer stepped out of the police car and she stopped filming after they searched his vehicle.

Sgt. Stier stated he saw the video and the confrontation between Mr. George and the officer was captured. Sgt. Stier stated there was an exchange of words between Mr. George and Officer Thelwell.

Dr. Diaz stated that Staff should review the tape.

### Request for Officer Identification

Ms. Boersma stated her concern that Officer Figueroa stated he wanted Mr. George to approach his vehicle so that he could give him the information on his “terms.”

*The following is quoted from Officer Figueroa’s IA interview:*

*Q: At some point did Mr. George request you for your name and badge number?*

*A: Yes, sir.*

*Q: And did you provide that information for him?*

*A: I wanted him to come towards my vehicle where I have a barrier, because he was a little agitated and I wanted him to come towards me and I would provide him with that information without any problem, but I wanted it to be in my terms. I didn’t want to give him a chance to become hostile and aggressive.*

*Q: Did Mr. George come over to your vehicle when you requested him to do so?*

A: *No, sir.*

Q: *So basically you weren't able to provide him that information because he wouldn't come to you to get it?*

A: *Yes, sir.*

Ms. Boersma said MDPD policy requires that officers provide their names and badge numbers when asked to do and it is an abuse of authority to require someone to meet the officer's "terms" to get that information. Sgt. Stier stated Mr. George was agitated and the officer wanted him to come by his car door so it would serve as a barrier.

Ms. Ferguson stated that if a suspect is agitated it wouldn't make sense to ask him to come closer. Providing his name and badge number when asked would have reduced the agitation and Officer Figueroa would not have needed a barrier. Sgt. Stier stated it is the officer's discretion on how to control a situation.

#### Contact Report

Sgt. Mario Knapp visited Mr. George and wrote in the Contact Report that Mr. George was satisfied with his explanation. Subsequently, Mr. George called the IRP to file his complaint. Mr. George stated that Sgt. Knapp told him his complaint would have no affect on the officers.

Sgt. Knapp wrote that he told Mr. George since he wasn't arrested no paperwork was generated. However, a Miscellaneous Incident Report was created. Ms. Boersma stated that Sgt. Knapp gave Mr. George incorrect information. Sgt. Stier stated that he cannot speak for what Sgt. Knapp did or did not write and it was not part of his investigation.

#### **Staff Remarks:**

Staff contacted the Professional Compliance Bureau's record section on July 19<sup>th</sup>, 2006 to request a copy of the videotape of the traffic stop. Staff was informed that the tape was exempt from public record because the footage shows the images of the officers.

#### **Committee Findings:**

##### A. Regarding the allegations

- 1) **The complainant's vehicle was searched illegally by officers from MDPD. – EXONERATED**

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In this case, Mr. George was observed by Officer Cruz in a hand-to-hand narcotics transaction thus establishing probable cause for a traffic stop and search of his vehicle. The officers were not obligated to ask for his consent.

2) **Officers Kevin Thelwell and Daniel Figueroa refused to provide the complainant with their names and badge numbers when requested - SUSTAINED**

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Officer Figueroa did not provide Mr. George with his name and badge number when asked thus violating departmental policy.

**B. Other Findings:**

Sgt. Mario Knapp’s September 17<sup>th</sup>, 2004 memo to Major Ramon Secades contains inaccurate information. Sgt. Knapp wrote, “I explained that when no contraband was discovered, he was allowed to leave with no paperwork being generated by the officers.” A Miscellaneous Incident Report was written with Mr. George’s identifying information and a description of the stop.

**Observation to Promote Constructive Police/Citizen Interactions**

When a citizen feels they are being mistreated by a police officer, one of the few options available is the right to ask and obtain the officer’s name and badge number. If the officer does not comply or makes it difficult for a citizen to acquire this information, it fosters an attitude of mistrust between law enforcement and the public. To this end, police officers should make it a point to be accommodating when asked for their identification as to remove the perception they are trying to cover up inappropriate behavior.

**Recommendations:**

- 1) That Officer Daniel Figueroa receive a Record of Counseling for not providing his name and badge number when asked by a citizen.
- 2) That MDPD encourage its supervisors to check their facts before providing information to citizens that could possibly be erroneous, as was the case with Sgt. Mario Knapp’s interaction with the complainant.