

# Disposition of the Independent Review Panel



Complainant: Karen Austin

IRP Case: A 2005.102

Date: September 20, 2007

MDPD Case: PC 2005-0192

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The Independent Review Panel met on September 20, 2007 for the purpose of publicly reviewing the complaint made by Karen Austin and William Austin against the Miami-Dade Police Department and the department's response to that complaint. The following represents the findings of the Panel:

## A. Recommendation

That MDPD discuss the IRP findings with Officer Luis Nieves.

## B. Incident

On Saturday, June 4, 2005, at approximately 7:30 p.m., Karen Austin was riding in the vehicle with her nephew, William Austin, (who was the driver) and her niece, Dana Smith. They were traveling eastbound on NW 69 Street and made a right turn onto NW 17 Avenue. Ms. Austin stated that she was in the back seat joking about a bag of mangos that were lying on the floor of the vehicle, which had attracted fruit flies.

Ms. Austin stated that approximately two blocks later Officer Nieves stopped them. Officer Nieves told Mr. Austin to give him the car keys and get out. The officer then pointed to his taser and told Mr. Austin he would tase him, if he ran. Officer Nieves looked to the back seat and stated he stopped the car because of the "knucklehead" in the back seat, referring to Ms. Austin. Mr. Austin got out and went to the back of the car.

Officer Nieves then told Ms. Austin to get out and go the back of the car. He stated that he was going to search the vehicle. Mr. Austin told the officer he did not have permission to search the car. Officer Nieves searched the car, digging between the seats.

A second officer, Richard Sell, arrived on the scene. After running a records check, Officer Nieves allowed everyone to leave.

## C. Allegations

Complaint #1 (Ms. Karen Austin) Allegations:

1. Officer Luis Nieves was discourteous to her when he referred to her on several occasions as "knucklehead."
2. Officer Luis Nieves was discourteous when he stated to her, "South Miami cops don't do shit."

Complaint # 2 (Mr. William Austin) Allegations:

1. Officer Nieves searched his vehicle without consent.
2. Officer Nieves used profanity while talking to Complainants #1 and #2.

**D. IRP Disposition**

*Allegation 1-* Officer Luis Nieves was discourteous to Karen Austin when he referred to her on several occasions as “knucklehead.” The preponderance of the evidence supports a SUSTAINED finding for allegation #1.

*Allegation 2-* Officer Luis Nieves was discourteous when he stated to Karen Austin, “South Miami cops don’t do shit.” INSUFFICIENT EVIDENCE to make a determination regarding allegation #2.

*Allegation 3-* Officer Nieves searched William Austin’s vehicle without consent. The preponderance of the evidence supports a SUSTAINED finding for allegation #3.

*Allegation 4-* Officer Nieves used profanity while talking to Karen Austin and William Austin. The preponderance of the evidence supports a SUSTAINED finding for allegation #4.

The Independent Review Panel concluded the complaint on September 20, 2007.

# Independent Review Panel

## Committee Recommendation to the Panel

September 20, 2007

**Complaint:** A 2005. 102 Austin      **MDPD Case:** PC 2005-0192

**Complainants:** Karen Austin and William Austin

**Accused Party:** Miami-Dade Police Department (MDPD), Officer Luis Nieves

**Date Complaint Received:** June 23, 2005

**Materials Reviewed:** Correspondence, MDPD Case PC 2005-0192, staff notes, and committee notes

**Committee:**, Josie Perez Velis, Esq., Panel Member; Dr. Eduardo Diaz, Executive Director; Carol Boersma, Executive Assistant; Kristin Anderson, Conflict Resolution Specialist.

Meeting Date: September 11, 2007

Present: Sgt. Milton Hall, MDPD Professional Compliance Bureau

### **Complaint:**

#### **Karen Austin**

On Saturday, June 4, 2005, at approximately 7:30 p.m., Karen Austin was riding in the vehicle with her nephew, William Austin, (who was the driver) and her niece, Dana Smith. They were traveling eastbound on NW 69 Street and made a right turn onto NW 17 Avenue. Ms. Austin stated that she was in the back seat joking about a bag of mangos that were lying on the floor of the vehicle, which had attracted fruit flies.

Ms. Austin stated that approximately two blocks later Officer Nieves stopped them. Officer Nieves told Mr. Austin to give him the car keys and get out. The officer then pointed to his taser and told Mr. Austin he would tase him, if he ran. Officer Nieves looked to the back seat and stated he stopped the car because of the “knucklehead” in the back seat, referring to Ms. Austin. Mr. Austin got out and went to the back of the car.

Officer Nieves then told Ms. Austin to get out and go the back of the car. He stated that he was going to search the vehicle. Mr. Austin told the officer he did not have permission to search the car. Officer Nieves searched the car, digging between the seats.

A second officer, Richard Sell, arrived on the scene. After running a records check, Officer Nieves allowed everyone to leave.

**Mr. William Austin**

Mr. Austin advised that he was traveling eastbound on NW 69 Street toward NW 17 Avenue, and after stopping at a stop sign, he made a right turn onto NW 17 Avenue.

Mr. Austin stated that he noticed a marked MDPD vehicle with illuminated red and blue lights behind him. He stopped his vehicle at the corner of NW 63 Street and 17 Avenue. Officer Nieves approached him and advised him to turn off the car, give him the keys, and get out of the vehicle. Mr. Austin stated that he inquired from Officer Nieves the reason for the stop at which time Officer Nieves responded, while pointing to his Electronic Control Device (ECD), "this is a taser and if you run you will be tased." Mr. Austin advised that he told Officer Nieves that he was not going to run and that Officer Nieves stated to him, "Go to the back of the vehicle and sit your ass down."

Mr. Austin stated that he continued to inquire from Officer Nieves the reason for the stop, and the officer responded, "It's not you, it's the knucklehead in the back seat," referring to Ms. Karen Austin. After Mr. Austin and Ms. Austin exited the vehicle, Officer Nieves asked if there were drugs in the car. They replied that there were not. Mr. Austin told Officer Nieves he did not have permission to search the vehicle. Mr. Austin did not see Officer Nieves search the vehicle, however he believes that the officer did conduct a search because the rear seat cushion was pulled out.

Officer Nieves did not issue a traffic citation, but told Mr. Austin he should not ride with this "knucklehead," referring to Karen Austin, because she was a trouble maker.

**Department Response: MDPD Case PC 2005-0192**

MDPD investigated the following allegations:

Complaint #1 (Ms. Karen Austin) Allegations:

1. Officer Luis Nieves was discourteous to her when he referred to her on several occasions as "knucklehead."
2. Officer Luis Nieves was discourteous when he stated to her, "South Miami cops don't do shit."

Complaint # 2 (Mr. William Austin) Allegations:

3. Officer Nieves searched his vehicle without consent.
4. Officer Nieves used profanity while talking to Complainants #1 and #2.

All of the allegations were NOT SUSTAINED, primarily due to the lack of independent witnesses.

### ***Summary of Statements***

#### **Ms. Dana Smith**

Ms. Smith stated was riding in the front seat of Mr. William Austin's vehicle along with her aunt, Ms. Karen Austin, who was seated in the back seat. Officer Nieves approached Mr. Austin from the driver's side of the vehicle and asked him to turn the car off, give him the keys, and step out of the vehicle. Ms. Smith advised that as Mr. Austin was exiting his vehicle, Officer Nieves stated to him that if he tried to run, he would be tased.

Ms. Smith stated that Mr. Austin complied with Officer Nieves' request and asked the reason for the stop. Officer Nieves replied, "You didn't do anything, it's the knucklehead in the back seat," referring to Ms. Karen Austin.

While the three occupants were standing at the rear of the car, Officer Nieves told Mr. Austin that he was going to search his vehicle and Mr. Austin advised Officer Nieves that he did not have permission. Officer Nieves ignored Mr. Austin and proceeded to search the vehicle.

#### **Officer Richard Sell**

Officer Sell stated that he exited his marked MDPD vehicle and stood next to Officer Nieves as Mr. Austin exited his car. He did not recall if Officer Nieves searched Mr. Austin's car. He could not recall if he searched the vehicle either. He did recall that Mr. Austin was very cooperative; however Ms. Austin was loud and obnoxious. Officer Sell did not recall hearing any of the comments attributed to Officer Nieves in the allegations.

#### **Officer Luis Nieves**

Officer Nieves was working a Robbery Intervention Detail (RID) when he observed Mr. Austin make a right turn without making a complete stop. He pulled Mr. Austin over and asked him for his driver license. Officer Nieves asked Mr. Austin to exit the vehicle because he had difficulty speaking with Mr. Austin due to Ms. Karen Austin's interruptions. Officer Nieves denied calling Ms. Austin a "knucklehead" and using profanity. He could not recall if he said "South Miami cops don't do shit." Officer Nieves stated he looked into the interior of Mr. Austin's vehicle; however he did not search the vehicle.

#### **Committee Remarks:**

Ms. Boersma reported she sent a letter to the complainant, inviting her to the meeting. In addition, she left a message on Ms. Austin's home phone. There was no response; therefore the meeting would proceed without the complainants.

#### **Independent Witnesses**

Ms. Velis inquired about the "not sustained" findings due to the lack of independent witnesses. She commented that the complainants are not considered independent witnesses because they are all family members. Dr. Diaz replied that it is routine from the police perspective, not to

consider family members independent witnesses. In this case, there was an aunt, nephew and niece.

### The Ticket

Ms. Velis asked whether a citation was issued to Mr. Austin. Dr. Diaz replied that there was communication between Officer Nieves and Officer Sell, and it was determined that a ticket would not be issued. In his statement, Officer Sell said that he told Officer Nieves: "This is a good kid [William Austin] and this scene is secure. Let's move on."

### The testimony

Ms. Velis reported that she has a problem with the "I do not recall" testimonies. Dr. Diaz mentioned that Officer Sell said in his statement that he could not recall whether or not Officer Nieves searched the car. Neither could he recall if he himself searched the car. Dr. Diaz stated that it seems that one would remember if he had, or had not, searched a vehicle, however sometimes an officer maybe "doesn't recall" because he/she does not want to be labeled a "rat." Sgt. Hall responded that those days are over. Today everyone is concerned about their job and they realize that they are going down if they try to cover up for another officer.

### The Search

Ms. Velis stated that the testimony of the officers directly opposes that of the civilians. The civilians were consistent in their testimony regarding the allegations and the officers were together in saying the allegations didn't happen. The truth probably lies somewhere in the middle. Mr. Austin said he did not see his car being searched but he believed it was because the rear cushion was pulled out. The two women said the car was searched.

### The Taser and car keys

Dr. Diaz stated the three occupants of the vehicle gave consistent testimony that Officer Nieves made reference to the taser and that he asked for the car keys. Dr. Diaz inquired whether it is acceptable police procedure to ask a driver to give his keys to the officer making the traffic stop.

Sgt. Hall replied that an officer can ask for the keys if he feels threatened or thinks the driver might flee. He added that there is a big difference between asking and taking.

Dr. Diaz asked if officers are taught during taser training to make sure civilians know an officer is carrying a taser, especially during a traffic stop. Sgt. Hall replied that advising that an officer has a taser is like a warning. It is not necessarily a threat. Sgt. Hall added that this was more than just a routine traffic stop. It was not like Officer Nieves walked up and said, "I'm going to taser you if you run." There was other dialogue between them that is not contained in the testimony. We do not know what might have been said to escalate the situation.

## **Committee Findings:**

### **Regarding the allegations**

1. Officer Luis Nieves was discourteous to Karen Austin when he referred to her on several occasions as “knucklehead.”
2. Officer Luis Nieves was discourteous when he stated to Karen Austin, “South Miami cops don’t do shit.”
3. Officer Nieves searched William Austin’s vehicle without consent.
4. Officer Nieves used profanity while talking to Karen Austin and William Austin.

The testimonies of the two complainants and the witness are consistent in stating that Officer Luis Nieves asked William Austin for the car keys, told Mr. Austin he would tase him if he ran and called Karen Austin a “knucklehead.” Officer Nieves denied allegations #1, #3, and #4; and said he could not recall if he made the comment in allegation #2. Officer Richard Sell responded that he “did not recall” to questions about all four allegations.

The committee found INSUFFICIENT EVIDENCE to make a determination regarding allegation #2.

The committee found that the preponderance of the evidence supports a SUSTAINED finding for allegations #1, #3, and #4,

### **Recommendations:**

1. That MDPD discuss the IRP findings with Officer Luis Nieves.
2. That the Panel adopt the committee findings and recommendations.
3. That the Panel conclude the complaint.