

Disposition of the Independent Review Panel



Complainant: Raul Ponce

IRP Case: A 2006.249

Date: August 23, 2007

MDPD Case: PC 2006-0338

The Independent Review Panel met on August 23, 2007, for the purpose of publicly reviewing the complaint made by Raul Ponce 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 MDPD discuss the IRP findings with Officer Humberto Garcia.
2. That an MDPD Community Resource Officer work with Raul and Yolayne Ponce to combat drug activity in the area.
3. That MDPD review policies regarding neighborhood disputes and using civilians to do police work, such as authorizing a civilian to enter someone else's private property.

B. Incident

Mr. Ponce was sleeping at his residence when he was awoken by his wife sometime after 3:00 AM. Mrs. Ponce was yelling, "Call the police!" Mr. Ponce went to his front door and observed his neighbor, George Valdes, jumping the front gate to his residence. Mr. Ponce called the police and got dressed. Mr. Ponce exited his residence and observed Officer Humberto Garcia standing outside the fence with Mr. Valdes. Mr. Ponce did not know that Mr. Valdes had called the police to complain about Mr. Ponce's barking dog, and that Officer Garcia was responding to Mr. Valdes' call. Mr. Ponce also did not know that Officer Garcia authorized Mr. Valdes to jump the fence into Mr. Ponce's yard to wake up Mr. Ponce.

Mr. Ponce was arrested for unnecessary noise and allowed to sign a PTA (Promise to Appear.)

C. Disposition of the Independent Review Panel

Allegation 1: Officer Humberto Garcia made a racist remark when he stated to Mr. Valdes, "Vamos a joder este indio," referring to Mr. Ponce. (Translation: We're going to F--- this Indian.) **INSUFFICIENT EVIDENCE.**

The statements of Mr. Ponce and Officer Garcia are conflicting. Mr. Valdes said he did not hear Officer Garcia make the statement. Other witnesses said they did not, or could not, hear the alleged statement. There is insufficient evidence to show the alleged comment was, or was not, made.

Allegation 2: Officer Garcia gave permission to Mr. Valdes to enter Mr. Ponce's yard illegally. **INSUFFICIENT EVIDENCE.**

The Panel found nothing that addressed the legality of an officer allowing someone to jump the fence onto someone else's property.

Allegation 3: Officer Garcia overreacted by arresting Mr. Ponce. **SUSTAINED.**

One of the characterizations used by MDPD to identify overreaction is "arrest for minor violations that ordinarily warrant a citation or warning." There is no evidence, other than the word of Mr. Valdes, that Mr. Ponce's barking dog prevented him from sleeping. No barking dog is heard on the dispatch tapes. No other neighbors complained of a barking dog, even though they were several apartments located where Mr. Valdes said the dog was tied. In the Arrest Affidavit narrative, Officer Garcia justifies the arrest by stating that upon his arrival, the dog was "barking on the front yard causing long continued noise which was plainly audible at a distance of 100 feet." At that time the dog was tied about 10 feet from the sidewalk where Officer Garcia and Mr. Valdes were located. The barking Officer Garcia heard was a reaction to the officer standing close to the dog, the officer calling on his P.A. system and Mr. Valdes jumping the fence.

The Independent Review Panel concluded the complaint on August 23, 2007.

Independent Review Panel Committee Recommendation to the Panel

August 23, 2007

Complaint: A 2006.249 **MDPD Case:** PC 2006-0338

Complainants: Raul and Yolayne Ponce

Accused Party: Miami-Dade Police Department (MDPD), Officer Humberto Garcia

Date Complaint Received: September 25, 2006

Materials Reviewed: Correspondence, MDPD Case PC 2006-0338, staff notes, and committee notes

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

Meeting Date: August 8, 2007

Present: Sgt. Marcel Palau, MDPD Professional Compliance Bureau; Raul and Yolayne Ponce, complainants

Complaint: On September 14, 2006, at about 3 am, Mrs. Ponce was awoken by sounds in her yard. The dog was barking. She observed her neighbor, George Valdes looking in the bedroom window and she yelled for her husband to call the police. She went outside and saw Officer Humberto Garcia and Mr. Valdes standing next to her gate. She approached Officer Garcia, who asked her for identification.

Mr. Ponce stated that when he was awoken by his wife, he went to his front door and observed his neighbor, George Valdes, jumping the front gate to his residence. Mr. Ponce called the police and got dressed. He then exited his residence and observed Officer Garcia conversing with Mrs. Ponce. Mr. Ponce recalled that he asked Officer Garcia what was happening, at which time Officer Garcia requested identification from Mr. Ponce.

Mr. Ponce was arrested for unnecessary noise. The Arrest Affidavit reads as follows:

Neighbor (Mr. Valdes) called police reference a continuously barking dog located in the area that did not let him sleep. Upon arrival a Rottweiler breed was located at 2771 NW 21 Terr, barking on the front yard causing long continued barking noise which was plainly audible at a distance of 100 feet from other structures. Mr. Ponce, owner of the listed animal was located. He was arrested and was allowed to PTA.

The disposition of the charge was “nolle pros.”
Mr. Ponce alleges that Officer Garcia:

- 1- Made a racist remark when he stated to Mr. Valdes, “Vamos a joder este indio,” referring to Mr. Ponce. (Translation: We’re going to F--- this Indian.)
- 2- Gave permission to Mr. Valdes to enter his yard illegally.
- 3- Overreacted by arresting him.

Department Response: MDPD Case PC 2006-0338

MDPD Disposition

Only Allegation #1 was addressed in the Internal Affairs investigation. The following is excerpted from the MDPD Disposition Memorandum dated December 27, 2006:

Officer Garcia was interviewed and denied making the statement described in the allegation. The complainant also provided the names of two witnesses..... Both witnesses were contacted by telephone and although they saw Officer Garcia on the scene, neither heard Officer Garcia make the statement Mr. Ponce described. Furthermore, Mr. Ponce’s wife, Mrs. Yolayne Ponce... indicated that she could not hear what Officer Garcia stated. Based on these circumstances, this allegation is **Not Sustained**.

Summary of Statements

George Valdes

Mr. George Valdes stated that the Rottweiler breed dog belonging to his neighbor (Mr. Raul Ponce) was barking incessantly during the early morning hours not allowing him to sleep, so he called the police. Mr. Valdes explained that Mr. Ponce’s dog was tied to a leash approximately 12 feet from his window and continued to bark even after Officer Garcia had arrived on the scene.

Mr. Valdes recalled that Officer Garcia was unable to make contact with the occupants of the residence due to a locked gate. Mr. Valdes related that he offered to enter the property located at 2771 NW 21 Terrace, and knock on the doors to alert the occupants in Officer Garcia’s presence. Mr. Valdes explained that Officer Garcia remained near the fence as he (Mr. Valdes) jumped the fence and proceeded to knock on all of the doors of the residence. Mr. Valdes recalled that he knocked on the doors in a quick manner and then exited the property moments later by jumping the fence out of the front yard. Mr. Valdes stated that he did not look into the windows of the residence at any time.

Officer Humberto Garcia

Officer Garcia advised that he responded to a neighborhood dispute involving a barking dog in the area of 2771 NW 21 Terrace. Officer Garcia contacted the reporter, Mr. George Valdes, upon his arrival into the area. Mr. Valdes explained that he is on psychiatric medication was unable to sleep due to his neighbor's barking dog.

Officer Garcia observed a Rottweiler breed dog barking loudly in the front of the residence located at 2771 NW 21 Terrace. A locked gate prevented him from entering the property so he attempted to contact the occupants of the residence by using the public address (PA) system from his marked police vehicle; however, he received no response from within the residence.

Mr. Valdes offered to jump the fence and knock on the doors of the residence in an effort to contact the dog's owner. Officer Garcia related that he stood by and observed Mr. Valdes jump the fence and knock on all the doors to the residence. After Mr. Valdes knocked on the doors, he ran back toward him (Officer Garcia) and exited the front yard by jumping the fence. Officer Garcia indicated that Mr. Valdes did not glance into the windows of the residence at any time while knocking on the doors. Mrs. Yolayne Ponce exited the residence shortly thereafter.

Committee Remarks:**Primary Complaint**

Mr. Ponce's primary complaint is that Officer Garcia allowed Mr. Valdes, who according to Mr. Ponce had been drinking and doing drugs, to enter his property, and that complaint was not addressed in Sgt. Palau's investigation.

Dr. Diaz asked if an officer can authorize someone to enter another person's fenced property. Sgt. Palau responded that Officer Garcia was trying to resolve an ongoing neighbor dispute regarding the barking dog. That issue was not going to be resolved until he made contact with Mr. Ponce. The Officer attempted to cross reference the address to get Mr. Ponce's phone number, however he was not successful. As a result, Officer Garcia allowed Mr. Valdes to enter onto Mr. Ponce's property and knock on doors and windows and leave quickly. The Professional Compliance Bureau command staff reviewed the situation and found Officer Garcia's actions acceptable.

Allegations

Dr. Diaz pointed out that Mr. Ponce made three allegations. Sgt. Palau's investigation focused only on the discourtesy issue. It did not address Mr. Valdes being authorized by Officer Garcia to enter Mr. Ponce's property, or the overreacting by arresting Mr. Ponce. Ms. Boersma asked whether the officer had options other than arresting Mr. Ponce. Sgt. Palau responded that the officer could have given a warning or documented the incident through a Field Investigation Report; however the officer acted within his authority when he arrested Mr. Ponce on a PTA and did not transport him to jail.

The "Green Light"

Mr. Ponce stated several times during the committee meeting that Mr. Valdes repeatedly told him after the incident that he (Valdes) has a "green light" with police officers, leading Mr. Ponce to believe Mr. Valdes had special consideration from the police. Also, Officer Garcia told him

that he and Mr. Valdes were friends. Mrs. Ponce stated that after the incident with the dog, Mr. Valdes threatened to kill her and her husband, once passing by her house with a hatchet. Mr. Valdes was often intoxicated. Mr. and Mrs. Ponce believe that Officer Garcia's permission for Mr. Valdes to enter their property gave Mr. Valdes the "green light" to harass them. Mrs. Ponce stated she called the police several times, but nothing changed.

Sgt. Palau responded by saying that Mr. Valdes has no "green light" with police. The proof is the fact that Mr. Valdes is currently in jail. (Criminal Justice Records document that Mr. Valdes was arrested on April 28, 2007 and charged with "tamper/witness/threat.")

Mr. Valdes' Drug Use

Mr. Ponce stated that Mr. Valdes had been drinking and was high when he called the police. Mr. Valdes also smelled like marijuana. Ms. Velis asked why a person who was intoxicated would call the police if he could possibly go to jail himself. Mr. Ponce stated the reason is because Mr. Valdes had a "green light" with police.

Location of Dog

Mr. Valdes stated that Mr. Ponce's dog was tied to a leash 12 feet from his bedroom window. Officer Garcia stated that upon his arrival, he observed a Rottweiler breed dog barking loudly in the front yard of the residence located at 2771 NW 21 Terrace, where Mr. Ponce lives. Mr. Ponce showed the committee a series of photos indicating that there is a house between his residence and that of Mr. Valdes. Mr. Ponce stated that Mr. Valdes was lying about the location of the dog.

Dispatch tapes

The committee listened to the dispatch tapes. There were five calls recorded:

Call #1 2:41 AM Mr. Valdes states he is disabled with high blood pressure. He advises that: "The man again put the dog 10 ft. from my window. This is the 5th time."

Call #2 Mr. Valdes states he is disabled with high blood pressure. He says he called 30-45 minutes earlier regarding the dog. The dispatcher advises that the call is still holding. Mr. Valdes again states that the dog is 10 ft from his window. Mr. Valdes states: "I have to sleep a lot. I think I'm going to have to call the paramedics. My head is blowing already." When the dispatcher offers to send the paramedics, Mr. Valdes responds that he does not want paramedics, adding: "I want to hold myself. I don't want to have to go to the hospital." Mr. Valdes states that he will be waiting outside because he "can't stay in the house like this." Mr. Valdes says the police have already been here 3 times.

Call #3 Someone from the City of Miami Police Department advises that an anonymous caller reported that a drunk neighbor opened the gate at 2771 NW 21 Terrace (Mr. Ponce's address) and entered his neighbor's yard.

Call #4 Mr. Ponce states that a police officer authorized an intoxicated man to jump the fence into his (Ponce) yard. He wanted to know if that was legal. Mr. Ponce advises that the police officer left the scene, but the man is walking back and forth in front of his house, making him nervous.

Call #5 Made on the day after the incident. Mrs. Ponce explains the incident from the previous day. She inquires whether an officer can allow someone to enter her property. Mrs. Ponce advises that her neighbor is walking by her property with an axe in his hand.

Staff Remarks:

Kristin Anderson and Carol Boersma conducted a property search on the Property Appraiser's website, to better understand the explanation given by Mr. Ponce regarding the location of the dog, Mr. Ponce's house and Mr. Valdes' house. Property records indicate that Mr. Ponce owns three properties, inclusive of the property between his house and the apartments where Mr. Valdes lived.

On August 10, 2007, Ms. Anderson and Ms. Boersma visited the Ponce properties. The three properties are surrounded by one fence. Several houses are on the properties. Mrs. Ponce stated the dog was tied by the sidewalk in front of 2771 NW 21 Terrace, where she lives. The IA investigation documents that Mr. Valdes lived at 2783 NW 21 Terrace. There is approximately 100 ft. and one house between the Ponce house and Mr. Valdes' apartment. (See Attachment)

Miami-Dade County Ordinance 21-28 states that, "The owning, harboring, possessing or keeping of any dog, animal or bird which causes frequent, habitual or long continued noised which is plainly audible at a distance of one hundred (100) feet from the building, structure or yard in which the dog, animal or bird is located," is unlawful.

Findings of Fact:

1. No barking dog is heard on any of the calls made to the MDPD Complaint Desk.
2. A barking dog tied 10 feet from Mr. Valdes' window would have put the same barking dog less than 10 feet from the adjacent house located at 2779 NW 21 Terrace.
3. There is no record that a barking dog disturbed anyone other than Mr. Valdes.
4. When Officer Garcia arrived, the dog was in the front yard of the Ponce residence located at 2771 NW 21 Terrace.
5. Officer Garcia's Daily Activity Report documents his arrival time on the scene at 3:40 am and his departure time at 5 am.

Committee Findings:**A. Regarding the allegation**

1. Officer Humberto Garcia made a racist remark when he stated to Mr. Valdes, “Vamos a joder este indio,” referring to Mr. Ponce. (Translation: We’re going to F--- this Indian.)
INSUFFICIENT EVIDENCE.

The statements of Mr. Ponce and Officer Garcia are conflicting. Mr. Valdes said he did not hear Officer Garcia make the statement. Other witnesses said they did not, or could not, hear the alleged statement. There is insufficient evidence to show the alleged comment was, or was not, made.

2. Officer Garcia gave permission to Mr. Valdes to enter his yard illegally.
INSUFFICIENT EVIDENCE.

Although staff found nothing that addressed the legality of an officer allowing someone to jump the fence into someone else’s property, the officer lacked sound judgment when he allowed a civilian to do police work. Mr. Valdes was agitated when he spoke to the dispatcher, and told her his head was “blowing already.” The police department could have been liable, had the civilian been injured.

3. Officer Garcia overreacted by arresting Mr. Ponce. SUSTAINED

One of the characterizations used by MDPD to identify overreaction is “arrest for minor violations that ordinarily warrant a citation or warning.” There is no evidence, other than the word of Mr. Valdes, that Mr. Ponce’s barking dog prevented him from sleeping. No barking dog is heard on the dispatch tapes. No other neighbors complained of a barking dog, even though they were several apartments located where Mr. Valdes said the dog was tied. In the Arrest Affidavit narrative, Office Garcia justifies the arrest by stating that upon his arrival, the dog was “barking on the front yard causing long continued noise which was plainly audible at a distance of 100 feet.” At that time the dog was tied about 10 feet from the sidewalk where Officer Garcia and Mr. Valdes were located. The barking Officer Garcia heard was a reaction to the officer standing close to the dog, the officer calling on his P.A. system and Mr. Valdes jumping the fence.

B. Other Findings:

Officer Garcia did not conduct a thorough investigation before arresting Raul Ponce. The Arrest Affidavit documents the arrest at 3:50 am, ten minutes after Officer Garcia arrived on the scene. At the time Officer Garcia arrived, the dog was tied 75-100 feet from Mr. Valdes’ window, not 10 feet as stated twice by Mr. Valdes in his calls requesting police assistance.

Recommendations:

1. That MDPD discuss the IRP findings with Officer Humberto Garcia.
2. That an MDPD Community Resource Officer work with Raul and Yolayne Ponce to combat drug activity in the neighborhood.
3. That the Panel adopt the committee findings and recommendations.
4. That the Panel conclude the complaint.

Attachment



**Ponce Properties surrounded by fence:
2779 – 2731 NW 21 Ter.**