

# Disposition of the Independent Review Panel



Complainant: John Dunn

IRP Case: A 2007.012

Date: February 28, 2008

MDCR Case: 78-IA-PTDC-07

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The Independent Review Panel met on February 28, 2008 for the purpose of publicly reviewing the complaint made by John Dunn against the Miami-Dade Corrections and Rehabilitation Department (MDCR) and the department's response to that complaint. The following represents the findings of the Panel:

## **A. Recommendations**

1. That MDCR review its policy on the use of OC spray on psychiatric inmates and prohibit the use of OC spray to gain compliance with an order, given the absence of inmate violence.
2. That MDCR procure software that would facilitate the timely documentation, and distribution, of Use of Force Reports and the preservation of high quality digital photographic evidence.

## **B. Incident**

Mr. Dunn was an inmate at the Dade County Jail for 368 days, from April 25, 2004 until April 28, 2005. He alleges that during the first 10 to 12 days, he was beaten repeatedly and gassed with riot gas, while housed on the 9<sup>th</sup> floor C-wing of the old jail located at 1321 NW 13<sup>th</sup> St. Mr. Dunn reported that he was "mentally tortured," because three officers, whom he identified as Sergeant Garcia, Corporal Burns and Officer Hernandez, knew that he was "paranoid delusional." Mr. Dunn stated that these three officers left him naked in his "cage," and would hide so he could not see them. The officers then whispered things to make him worse than he already was.

Mr. Dunn also reported that he was physically beaten. According to Mr. Dunn, the three officers would "lure him out of his cell," handcuff his hands, shackle his feet, and walk him around the floor totally naked. The officers would talk and whisper until he "freaked out and started going wild from delusions." According to Mr. Dunn, the officers would then beat him until he stopped his outburst. On one occasion an officer jammed his finger in Mr. Dunn's eye. After being beaten outside his cell, Mr. Dunn refused to leave his cell. Mr. Dunn stated that the officers then beat him inside the cell.

Mr. Dunn also alleges that he was assaulted with a weapon. According to Mr. Dunn, the three officers stopped beating him because pictures were taken and other guards rescued him. After that the three officers decided to fill his cell with OC spray. Mr. Dunn reported that the officers discharged a 3-1b can of riot gas through the opening for the food tray into his cell. Mr. Dunn reported that it took 10 to 15 guards to talk him out of his cell.

## C. Allegations

Mr. Dunn alleges that Sergeant Garcia, Corporal Burns and Officer Hernandez:

1. Mentally tortured him.
2. Physically beat him.
3. Assaulted him with a weapon (OC spray).

## D. Disposition of the Independent Review Panel

1. Force was used three times to enable psychiatric staff to inject Mr. Dunn. The file does not document that Mr. Dunn was aggressive prior to being handled in preparation for the injection.
  - **Incident #1** Mr. Dunn became aggressive as he was being escorted from his cell to the table, to which he would be handcuffed prior to the injection. He was wearing handcuffs at the time.
  - **Incident #2** Mr. Dunn was in his cell when ordered to the door to be handcuffed. He was “calm but non-responsive to verbal commands.” Four officers rushed into his cell and held him until the injection was administered.
  - **Incident #3** Mr. Dunn was ordered several times, over a period of about 30 minutes, to place his hands through the chow chute to be handcuffed, so he could receive an “injection due to his violent behavior.” He refused to comply and OC spray was deployed.
2. The use of OC spray to administer an injection for violent behavior, to a man who was not violent at the time, is not reasonable.
3. All of the pictures taken of Mr. Dunn following the use of force incidents are missing from the MDCR File. Department policy requires that the photographs be attached to the Incident Report. There are black and white photocopies of the pictures; however the quality of most is very bad, making the photocopies of minimal value for determining Mr. Dunn’s injuries.
4. Mr. Dunn was injured while in MDCR custody, however the evidence does not substantiate that those injuries were the result of *excessive* Use of Force.

MDCR records document that Mr. Dunn was subjected to Use of Force two times on April 27, 2004 and once on April 29, 2004. The only injury to Mr. Dunn, documented by MDCR, was a small laceration on the nose.

JMH medical records, dated 5/10/04, document that Mr. Dunn suffered a “conjunctival hemorrhage to his right eye. He had “multiple contusions” and “minimally displaced fractures of the left sixth and seventh anterolateral ribs.”

The Independent Review Panel concluded the complaint on February 28, 2008.

# Independent Review Panel

## Committee Recommendation to the Panel

February 28, 2008

**Complaint:** A 2007.012      **MDCR Case:** 78-IA-PTDC-07

**Complainant:** John Dunn

**Accused Party:** Miami-Dade Corrections Rehabilitation Department (MDCR), Sergeant Garcia, Corporal Burns and Officer Hernandez

**Date Complaint Received:** January 24, 2007

**Materials Reviewed:** Correspondence, MDCR Case 78-IA-PTDC-07, staff notes, and committee notes

**Committee:**, Jean-Robert Lafortune, Panel Member; Dr. Eduardo Diaz, Executive Director; Carol Boersma, Executive Assistant; Kristin Anderson, Conflict Resolution Specialist

Meeting Date: September 19, 2007

Present: Maryann Puig, Chief of MDCR Professional Compliance; Danilo Hayes, Internal Affairs Investigator; John Dunn, complainant.

**Complaint:** Mr. Dunn contacted the IRP in January 2007, to complain about treatment he received while in the Dade County Jail in April 2004.

Mr. Dunn stated that he was an inmate at the Dade County Jail for 368 days, from April 25, 2004 until April 28, 2005. He alleges that during the first 10 to 12 days, he was beaten repeatedly and gassed with riot gas, while housed on the 9<sup>th</sup> floor C-wing of the old jail located at 1321 NW 13<sup>th</sup> St.

Mr. Dunn reported that he was “mentally tortured,” because three officers, whom he identified as Sergeant Garcia, Corporal Burns and Officer Hernandez, knew that he was “paranoid delusional.” Mr. Dunn stated that these three officers left him naked in his “cage,” and would hide so he could not see them. The officers then whispered things to make him worse than he already was.

Mr. Dunn also reported that he was physically beaten. According to Mr. Dunn, the three officers would “lure him out of his cell,” handcuff his hands, shackle his feet, and walk him around the floor totally naked. The officers would talk and whisper until he “freaked out and started going wild from delusions.” According to Mr. Dunn, the officers would then beat him until he stopped his outburst. On one occasion an officer jammed his finger in Mr. Dunn’s eye. After being beaten outside his cell, Mr. Dunn refused to leave his cell. Mr. Dunn stated that the officers then beat him inside the cell. He added that the officers always choked him so he him could not scream.

Mr. Dunn also alleges that he was assaulted with a weapon. According to Mr. Dunn, the three officers stopped beating him because pictures were taken and other guards rescued him. After that the three officers decided to fill his cell with CS gas. Mr. Dunn reported that the officers discharged a 3-1b can of riot gas through the opening for the food tray into his cell. Mr. Dunn reported that it took 10 to 15 guards to talk him out of his cell.

Mr. Dunn alleges that Sergeant Garcia, Corporal Burns and Officer Hernandez:

4. Mentally tortured him.
5. Physically beat him.
6. Assaulted him with a weapon (CS gas).

**Department Response: MDCR Case Number: 78-IA-PTDC-07**

*MDCR addressed the complaint through a “Memo to File,” and closed the case based on the following:*

1. Neither video tape nor incident reports indicate that the staff named by Inmate Dunn were involved in any use of force incidents with the complainant.
2. Inmate Dunn admitted that he displayed aggressive behavior towards staff.
3. The use of force incident reports involving Inmate Dunn indicated that the force used by correctional staff was justified by Sergeant Cure and Sergeant Okera.
4. The investigation revealed no evidence of inappropriate behavior by the correctional staff.

***Information from the MDCR Report:***

Mr. Dunn was arrested and charged with Aggravated Battery (Domestic). A second charge of Battery was issued while Mr. Dunn was in police custody. The police report indicates that Mr. Dunn jumped on another individual, who was also in custody, and hit him numerous times in the face.

Mr. Dunn was housed on the 9<sup>th</sup> floor of the Pre-Trail Detention Center, which is the psychiatric unit.

Three Use of Force reports were generated for Mr. Dunn:

- **Incident #1** 4/27/04 - 7:15 am. As Mr. Dunn was being escorted from the cell to the table where he was going to receive an injection, he became aggressive and a struggle ensued. He was taken down by a leg sweep. None of the officers identified by Mr. Dunn were listed on the report. Mr. Dunn sustained a small laceration to his nose.
- **Incident #2** 4/27/04 - 2:00 pm. Dr. Joseph Poitier ordered an injection for Mr. Dunn. Mr. Dunn refused to comply with verbal commands to come to the door to be handcuffed. Mr. Dunn appeared calm and the door was opened. Officers rushed Mr. Dunn and held him until the injection was administered. None of the officers identified by Mr. Dunn were listed on the report. According to the medical addendum, Mr. Dunn did not receive any injuries.
- **Incident #3** 4/29/04 – 10:00 am. Dr. Joseph Poitier ordered an injection for Mr. Dunn. Mr. Dunn was ordered to place his hands through the chow chute to be

handcuffed. He refused. Sergeant Michael Alonso ordered OC spray to be deployed and Officer Michael Urbistondo deployed the spray through the chow chute. Mr. Dunn again was ordered to place his hands through the chute. He was handcuffed and taken to the shower to be decontaminated. None of the officers identified by Mr. Dunn were listed on the report. According to the medical addendum, Mr. Dunn suffered no acute physical or respiratory distress.

Following the last incident, Mr. Dunn complained that he was feeling pain all around his body. He was taken to Ward D on 5/10/04. The medical records document “minimally displaced fractures of the left sixth and seventh anterolateral ribs,” and “conjunctival hemorrhage” to his right eye.

The MDCR Report indicates that the original photographs taken that relate to the incidents in question were not available. Copies of the original photographs were attached to the use of force reports, however none of the copies is clear.

There are video records of the incidents. MDCR found no evidence of wrongdoing on the videos.

### **Committee Remarks:**

Mr. Dunn stated that he did not understand the MDCR report. He stated that when he was reading the report, he recalled some of his statements, while others he does not remember saying. Mr. Dunn showed the committee a scar located on his left wrist and reported that the scar was a result of tight handcuffs. Mr. Dunn reported that there were pictures taken and the pictures were not included in the report.

Dr. Diaz reported that the Independent Review Panel attempts to mine complaints for ideas as to how to improve things. He asked Mr. Dunn what could be done to make things better. Mr. Dunn replied that he doesn't know if Internal Affairs ever said anything to the officers. Mr. Dunn reported that he was subjected to harsh treatment; his ribs were broken and his eye was full of blood for 3 months. He does not understand how MDCR can find excessive force was not used. He fears that the officers' behavior will continue if it is not addressed. Mr. Dunn stated he was “petrified” while he was on the 9<sup>th</sup> floor because of the officers' abuse.

#### Mr. Dunn's Eye

Dr. Diaz asked Mr. Dunn if he believed that the poke in the eye was intentional. Mr. Dunn replied that he did. Mr. Dunn stated that the three officers rushed into his cell and when everyone came out, pictures were taken of his eye.

Ms. Boersma inquired if MDCR had these pictures. Chief Puig reported that the reports contain only black and white copies of the pictures. The originals were not available.

### Dunn's Aggressive Behavior

Dr. Diaz commented that Mr. Dunn mentioned that he does not remember some things. Mr. Dunn may not remember that he was aggressive, but other people observed him being aggressive. Dr. Diaz asked Mr. Dunn if he might have been aggressive.

Mr. Dunn replied that the only time he remembers being aggressive is when he was trying to get the officers to stop choking him.

### OC Gas

Dr. Diaz asked MDCR if the use of the OC spray was according to policy. Chief Puig answered yes to his question. Chief Puig commented that CS spray can be deployed for an individual who may be acting out or who is not responding, especially when the doctor is there and needs to have contact with the inmate.

Mr. Dunn stated that he sat in a cell full of OC gas. He couldn't see and the gas was burning his skin. The only reason he could breathe was because he was holding a piece of bread against his face. After he came out of the cell, they placed him under hot water, almost scalding him.

Chief Puig informed the committee that there is no hot water in the jail. The facility, by law, is not allowed to have hot water.

Dr. Diaz explained that the brain works in such a way that it is possible to feel heat even when water is not hot. Mr. Dunn could have felt hot water even if the water was not hot.

### The Video

Relevant sections of the video, which had been transferred to a DVD, were played during the committee meeting; however, the quality was poor. Chief Puig said she would provide the IRP with a better image of the video. Chief Puig stated that the video tape does not show any of the officers Mr. Dunn complained about.

Mr. Dunn does not understand why excessive use of force was not documented when:

- His rib and eye injuries were documented at Ward D.
- Force was only used on him while he was on the 9<sup>th</sup> floor of PTDC, even though he was housed in different cells during the twelve months he was incarcerated.

### **Staff Remarks:**

The complainant faxed a letter to the Independent Review Panel after the committee meeting, calling attention to the pictures that were taken of him, but were not produced by MDCR. He commented that the video documents an officer coming into his cell and taking pictures of him.

Mr. Dunn stated that the MDCR medical staff was untruthful about the information that they provided, and Dr. Poitier is withholding information from the Panel. He stated that the pictures will show that his eye was full of blood and bruised. Mr. Dunn also stated that he would like the State Attorney's Public Corruption Department to be notified.

On 10/8/07 the complainant sent an email to the "Community Outreach Mailbox," alleging that MDCR violated his Civil Rights and covered up use of excessive force at the jail. That email

was forwarded to the State Attorney's Office. The following is excerpted from the Close Out Memo signed by officials of the Public Corruption Unit of the Sate Attorney's Office:

The criminal charge of Battery cannot be proven beyond a reasonable doubt. Accordingly, the criminal investigation is closed...

Panel staff reviewed the videos which recorded the use of force incidents. None of the cameras are directed to the inside of Mr. Dunn's cell.

**Incident #1** There are two cameras. Camera #1 focuses on the table to which Mr. Dunn was handcuffed. Camera #4 shows part of the door to Mr. Dunn's cell in the lower left-hand portion of the picture and the struggle between Mr. Dunn and the officers as he is moved from his cell. He is handcuffed. He is taken to the floor in the lower right hand corner of the picture. Some of the officers are visible. Other officers and Mr. Dunn are out of camera range. While on the floor, Mr. Dunn is shackled and it appears that a medical officer gives him an injection.

Camera #1 shows Mr. Dunn being taken to the table after the struggle. He is nude. There is a second struggle at the table and Mr. Dunn ends up on the floor with several officers on top of him. There appear to be 10-12 officers dealing with Mr. Dunn. When the officers step back, Mr. Dunn is seen face down on the floor. The officers seat him at the table and handcuff him to the table. He is nude. His arms are stretched across the table and his head is face down on the table. Five minutes later the officers place a Ferguson garment<sup>1</sup> on him. Mr. Dunn is handcuffed to table wearing Ferguson garment for 50 minutes.

**Incident #2** Camera #4 shows part of the door to Mr. Dunn's cell in the lower left-hand portion of picture. Officers gather at his door. A nurse arrives with what appears to be a syringe. Several officers enter the cell, followed by the nurse. Officers and nurse exit Mr. Dunn's cell. The officers are in the cell for 1 minutes, 32 seconds. The camera does not capture anything inside the cell.

**Incident #3** Camera #4 shows part of the door to Mr. Dunn's cell in the lower left-hand portion of picture. Several officers attempt to communicate with Mr. Dunn, who is locked in the cell, over a period of 32 minutes, 33 seconds. Then an officer wearing a mask deploys the OC spray through the chow chutes and closes the chute. Again officers attempt to communicate with Mr. Dunn, who remains in the cell. Officers escort Mr. Dunn out of the cell 9 minutes and 15 seconds after the OC spray is deployed. At no time is Mr. Dunn captured by the camera.

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<sup>1</sup> A simple, sturdily quilted, collarless, sleeveless, gown with adjustable openings at the shoulders and down the front that are closed with nylon hook-and-loop fasteners. It safely provides warmth and modesty for psychiatric patients in locked facilities.

## Committee Findings:

5. Force was used three times to enable psychiatric staff to inject Mr. Dunn. The file does not document that Mr. Dunn was aggressive prior to being handled in preparation for the injection.
  - **Incident #1** Mr. Dunn became aggressive as he was being escorted from his cell to the table, to which he would be handcuffed prior to the injection. He was wearing handcuffs at the time.
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6. The use of OC spray to administer an injection for violent behavior, to a man who was not violent at the time, is not reasonable.
7. All of the pictures taken of Mr. Dunn following the use of force incidents are missing from the MDCR File. Department policy requires that the photographs be attached to the Incident Report. There are black and white photocopies of the pictures; however the quality of most is very bad, making the photocopies of minimal value for determining Mr. Dunn’s injuries.
8. Mr. Dunn was injured while in MDCR custody, however the evidence does not substantiate that those injuries were the result of *excessive* Use of Force.

MDCR records document that Mr. Dunn was subjected to Use of Force two times on April 27, 2004 and once on April 29, 2004. The only injury to Mr. Dunn, documented by MDCR, was a small laceration on the nose.

JMH medical records, dated 5/10/04, document that Mr. Dunn suffered a “conjunctival hemorrhage to his right eye. He had “multiple contusions” and “minimally displaced fractures of the left sixth and seventh anterolateral ribs.”

## Committee Recommendations:

1. That MDCR review its policy on the use of OC on psychiatric inmates and prohibit the use OC spray to gain compliance with an order, given the absence of inmate violence.
2. Than MDCR investigate the missing photographs and hold those responsible accountable.
3. That the Panel conclude the complaint.