

# Disposition of the Independent Review Panel



Complainant: Mrs. Q

IRP Case: A 2007.226

Date: July 24, 2007

MDPD Cases: CR 2007-1035 and PC 2007-0341

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The Independent Review Panel met on July 24, 2008 for the purpose of publicly reviewing the complaint made by Mrs. Q against the Miami-Dade Police Department and the department's response to that complaint. The following represents the findings of the Panel:

## A. Incident

Mrs. Q's husband called 911 to report that she was not taking her medications and she was in an agitated state. Mrs. Q stated that she was having an argument with her husband. The officer who came to the door was very nice and separated the spouses. She wanted to speak but Officer Cabrera told her to "Shut up." He then told other officers to put the "F---ing handcuffs on her." That increased her agitated state. Officers handcuffed her, put her in Cabrera's vehicle and closed the door. She started screaming at her husband and banged her head against the plastic divider because she thought she was being arrested. Officer Cabrera opened the door and pointed his taser gun at her. She yelled "I'm pregnant." He tased her anyway. One probe landed on her breast and the other on her abdomen. She was Baker Acted and transported to JMH South with the probes still attached.

## B. Allegations

Mrs. Q alleges that Officer Emilio Cabrera:

1. Tased her while she was handcuffed and sitting in the police car, after she told him she was pregnant.
2. Agitated her by telling her to "shut up" and telling other officers to "put the f---ing handcuffs on her."

## C. Disposition of the Independent Review Panel

### 1. Allegation 1: **Insufficient Evidence to Support or Refute Allegation.**

There are conflicting statements regarding when the officers learned that Mrs. Q was pregnant. However, the Panel believes that Mrs. Q's statements regarding the allegation are credible, regardless of this finding. She said she told Officer Webster when he arrived at the door of her house and she told Officer Cabrera just before he tased her. Mr. Q stated that he heard Mrs. Q say, "Don't tase me I'm pregnant." The three officers stated Mrs. Q did not say she was pregnant until after she was tased.

### 2. Allegation 2: **Insufficient Evidence to Support or Refute Allegation.**

There are conflicting statements regarding Officer Cabrera's language. Mr. Q said he heard Officer Cabrera say "shut up" and use the "F" word. Officer Cabrera denied using the alleged language, and Officers Webster and Gonzalez said they did not hear Officer Cabrera use defamatory language. An area canvass found no one who heard the alleged language.

**D. Other Findings**

The allegation that Officer Emilio Cabrera tased Mrs. Q while she was handcuffed and sitting in the police car, after she told him she was pregnant was documented in the MDPD Professional Compliance Bureau (PCB) Preliminary Case Report and it was a specific allegation in the IRP Grievance Report sent to PCB. The Supervisor's Report of Response to Resistance (SRRR) revealed discrepancies that were not reconciled by PCB.

The Independent Review Panel concluded the complaint on July 24, 2008

# Independent Review Panel

## Committee Recommendation to the Panel

July 24, 2008

**Complaint:** A 2007.226

**MDPD Cases:** CR 2007-1035 and PC 2007-0341

**Complainant:** Mrs. Q

**Accused Party:** Miami-Dade Police Department (MDPD); Officer Emilio Cabrera

**Date Complaint Received:** August 14, 2007

**Materials Reviewed:** Correspondence, MDPD cases CR 2007-1035 and PC 2007-0341, staff notes and committee notes

**Committee:** Julie Ferguson, Panel Member; Carol Boersma, Executive Assistant to the Director; Kristin Anderson, Conflict Resolution Specialist

Meeting Date: May 27, 2008

Present from MDPD: Sgt. Mehan Sawal and Sgt. William Sanchez

Complainant: Mrs. Q

**Complaint:** Mrs. Q's husband called 911 on July 12, 2007 to report that she was not taking her medications and she was in an agitated state. The husband said she broke a lamp, hit her head against a door and threw rocks at him. Officers Edward Webster, Roberto Gonzalez and Emilio Cabrera responded.

Mrs. Q stated that she was having an argument with her husband and he called the police. The officer who came to the door was very nice and separated the spouses. She wanted to speak but Officer Cabrera told her to "Shut up." He then told other officers to put the "F---ing handcuffs on her." That increased her agitated state. Officers handcuffed her, put her in Cabrera's vehicle and closed the door. She started screaming at her husband and banged her head against the plastic divider because she thought she was being arrested. The three officers ran toward the car.

Officer Cabrera opened the door and pointed his taser gun at her. She yelled "I'm pregnant." He tased her anyway. One probe landed on her breast and the other on her abdomen. She was Baker Acted and transported to JMH South with the probes still attached. Mrs. Q stated that she was discredited and held at the hospital against her will for three days. While at the hospital, she had an ultrasound which showed the baby had not been harmed.

Mrs. Q alleges that Officer Cabrera:

1. Tased her while she was handcuffed and sitting in the police car, after she told him she was pregnant.
2. Agitated her by telling her to "shut up" and telling other officers to "put the f---ing handcuffs on her."

### **Department Response:**

#### Supervisor's Report of Response to Resistance (SRRR) (Narrative Attached)

Officer Webster placed Mrs. Q, with her two-year-old son in the rear of the police vehicle after Mrs. Q exited her house and began screaming obscenities at Mr. Q. When Mrs. Q again began yelling obscenities... and striking the rear passenger door with her right elbow, Officer Webster removed the child. Officer Gonzalez then handcuffed Mrs. Q and placed her back into the police vehicle without incident. Mrs. Q began striking her head against the divider causing a minor laceration to her forehead. The three officers attempted to remove Mrs. Q from the vehicle at which time she attempted to bite and kick them. When Mrs. Q refused to comply with orders to calm down, Officer Cabrera deployed the taser. One probe landed on the side of her right breast and the other on the side of her right thigh.

Sergeant Katherine Bierstedt responded to the scene and interviewed all parties present. Mr. Q stated that he believed the officers acted appropriately. Mrs. Q complained about being tased while she was pregnant. The three officers stated Mrs. Q did not say she was pregnant until after she was tased.

#### CR 2007-1035

This report was written by Sgt. Sawal on August 24 2007, in response to the complaint Mrs. Q filed regarding the tasing. In the Contact Report Sgt. Sawal stated that a review of the SRRR revealed that the incident was thoroughly documented by Sergeant Bierstedt. Sgt. Sawal explained the Electronic Control Device to Mrs. Q and she stated she was satisfied with the explanation. No further action was required.

#### PC 2007-0341

This is the investigation of the allegation that Officer Cabrera told Mrs. Quintana to: "Shut up," and "Shut up. If you don't DCF will take your son," and "You people act all crazy until you get tasered," and "Put the f...ing handcuffs on her."

MDPD did not sustain the allegation of discourtesy because "there was no evidence to support the allegation." Officer Cabrera denied the allegation and the two witness officers said they did not hear Officer Cabrera use defamatory language toward Mrs. Q. An area canvass found no witnesses who heard the alleged statements. Only Mr. Q said he heard the alleged language.

## **Committee Remarks:**

### Internal Affairs investigation

Mrs. Q stated that Sgt. Sawal was very profession and conducted a thorough investigation; however she is dissatisfied because the officers “lied” in their statements when they said she was violent toward them and tried to bite them. Mrs. Q said she never kicked or tried to bite the officers. Mrs. Q said she was agitated with her husband and she became more agitated when she was handcuffed and placed in the police vehicle because she thought she was going to jail. She called out to her husband, blaming him that she was being taken to jail, and then banged her head against the plastic divider, thinking that if she were injured, she would be taken to a medical facility instead of jail. Mrs. Q stated that if the officers had told her she was going to be Baker Acted, she would not have “freaked out.”

Ms. Boersma stated that, in his tape recorded statement, Mr. Q said that he did not see Mrs. Q strike her head against the plastic divider while she was in the police vehicle. He said he heard her call to him that they were going to take her to jail, but she was not kicking and she never tried to hurt the police.

### Tasing

Sgt. Sawal stated that the SRRR served as the investigation of the tasing incident. The supervisor, Sgt. Bierstedt, was on the scene and interviewed each officer, as well as Mr. and Mrs. Q. Sgt. Bierstedt ensured that department procedure was followed. Sgt. Sawal stated that Mrs. Q wanted Officer Cabrera’s command staff to be aware of what happened and he explained that command staff reviews all SRRR reports. Sgt. Sawal said that Mrs. Q was satisfied with his explanation and no further action was required by the Professional Compliance Bureau.

Ms. Ferguson read the following statement from the SRRR: “Since the officers could not approach Mrs. Q without being assaulted, and to prevent her from further injuring herself, Officer Cabrera deployed his [taser].” Ms. Ferguson inquired how a woman who was handcuffed and in the police car could assault the officers. Sgt. Sawal responded that officers are not expected to put themselves at risk from kicks or bites that might be inflicted when they try to remove a handcuffed person from the police vehicle. The officers wanted to prevent Mrs. Q from continuing to hurt herself and the taser was most effective means to control her without causing injury to her or the officers.

Ms. Boersma asked how the decision was made to address the tasing allegation through a Contact Report instead of an IA investigation. Sgt. Sawal replied that the decision was not made by him, but through the chain of command: Lt. Artime, Captain Gallagher and Major Rifkin. Sgt. Sawal clarified that the allegation had been investigated however. He pulled all the reports and worksheets and verified that everything had been done according to department standards.

### Pregnancy

Mrs. Q said she told Officer Webster she was pregnant when he first arrived at the door of her house and she told Officer Cabrera just before he deployed the taser. In his statement to Internal Affairs, Mr. Q said he heard his wife say, "Don't tase me, I'm pregnant" just before she was tased. Ms. Ferguson inquired whether it would have been appropriate for the officers to tase Mrs. Q, if they had known she was pregnant. Sgt. Sawal stated that every tasing incident is reviewed by IA, including this case, and "It was indicated to us that tasing does not harm the fetus." There is no prohibition against tasing a pregnant woman.

Ms. Ferguson noted that the IA investigation documents that all three officers used the same words to state that Mrs. Q did not ask Officer Cabrera not to deploy the taser because she was pregnant, which makes the statements sound "coordinated."

### IA Statements

Sgt. Sawal stated that officers are allowed to look at reports before they provide a statement because statements are often taken several months after the incident. The witness officers provide statements separately, prior to the subject officer. The subject officer does not know what the allegations are until he/she gets to PCB. At that time the subject officer is given an allegations memo as well the entire investigative file including all witness statements, which he/she reviews prior to giving his/her statement.

### Computer Assisted Dispatch (CAD) Report

Sgt Sawal read the CAD report, which documents that officers were dispatched regarding a bi-polar violent mental patient, with a history of suicide, who was not taking medications.

### In police vehicle

The SRRR indicated that Mrs. Q and her two-year-old son were placed in the rear seat of the police vehicle "to separate her from her husband, calm her down and interview her." Officer Webster said that when she didn't calm down, he removed the child, handcuffed Mrs. Q and placed her back in the police car without incident.

Ms. Boersma inquired whether the officers might have placed the child at risk when they locked him in the police car with a "violent mental patient."

Mrs. Q responded that she was never in the police car with her child.

### No voice

Mrs. Q stated that she tried to speak to Officer Cabrera but instead of listening to her, he said "Put the f...ing handcuffs on her." He then took her son away, handcuffed her and put her in the backseat of the police vehicle. If he had allowed her to speak, the tasing incident might have been avoided. She continued by saying that mentally ill people have "no voice." Once an officer identifies a person as mentally ill, no one listens. Sgt. Sawal commented that both Officers Webster and Cabrera are Field Training Officers and they have received the week-long Crisis Intervention Team Training.

**Staff Remarks:** Following the committee meeting, Sgt. Sanchez confirmed that Officers Webster and Cabrera are trained members of the Crisis Intervention Team. He also provided the policy entitled "ECD [Electronic Control Device] Prohibitions." Prohibition 13c reads as follows:

An ECD shall not be used on women who are known to be pregnant and/or women who appear to be pregnant, unless exigent circumstances are present.

### **Committee Findings:**

#### **A. Regarding the allegations**

1. Officer Emilio Cabrera tased her while she was handcuffed and sitting in the police car, after she told him she was pregnant. **Insufficient Evidence to Support or Refute Allegation.**

There are conflicting statements regarding when the officers learned that Mrs. Q was pregnant. She said she told Officer Webster when he arrived at the door of her house and she told Officer Cabrera just before he tased her. Mr. Q stated that he heard Mrs. Q say, "Don't tase me I'm pregnant." The three officers stated Mrs. Q did not say she was pregnant until after she was tased.

2. Officer Emilio Cabrera agitated her by telling her to "shut up" and telling other officers to "put the f---ing handcuffs on her." **Insufficient Evidence to Support or Refute Allegation.**

There are conflicting statements regarding Officer Cabrera's language. Mr. Q said he heard Officer Cabrera say "shut up" and use the "F" word. Officer Cabrera denied using the alleged language, and Officers Webster and Gonzalez said they did not hear Officer Cabrera use defamatory language. An area canvass found no one who heard the alleged language.

#### **B. Other Findings:**

The allegation that Officer Emilio Cabrera tased Angela Q while she was handcuffed and sitting in the police car, after she told him she was pregnant was documented in the MDPD Professional Compliance Bureau (PCB) Preliminary Case Report and it was a specific allegation in the IRP Grievance Report sent to PCB. MDPD did not investigate the allegation. The Supervisor's Report of Response to Resistance (SRRR) was not an investigation of the allegation. The SRRR revealed discrepancies that were not investigated, such as when she told the officers she was pregnant.

### **Recommendations:**

1. That PCB document the justification for the decision not to investigate an allegation made by a complainant.
2. That the Panel conclude the complaint.

## SUPERVISOR'S REPORT OF RESPONSE TO RESISTANCE

Case Number: PD070712370449

July 12, 2007

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On Thursday, July 12, 2007 at approximately 0625 hours, Officers Emilio Cabrera and Roberto Gonzalez, C-2503, and Officer Edward Webster, C-2504, responded in an emergency mode to [REDACTED] in reference to a violent domestic disturbance signal. Remarks on the call related to a female mental patient not taking her medication, banging her head on the wall, and throwing rocks at her husband.

Upon arrival, Officer Webster observed Mr. [REDACTED] Q [REDACTED] standing across the street from the residence, and his wife, Mrs. [REDACTED] Q [REDACTED], throwing rocks at him. Officer Webster had Mrs. Q [REDACTED] go inside her residence and sit down, and had Mr. Q [REDACTED] respond to the front porch to speak with him. Officers Cabrera and Gonzalez then arrived, at which time Mrs. Q [REDACTED] exited the front door of the residence with her two year old son, and began screaming obscenities at Mr. [REDACTED]. Officer Webster escorted Mrs. Q [REDACTED] with her son, to the police vehicle and had them sit in the rear seat in order to separate her from her husband, calm her down, and interview her.

The officers began speaking with Mr. Q [REDACTED] again, and Mrs. Q [REDACTED] again began yelling obscenities from the rear of the patrol unit and striking the right rear passenger door with her right elbow. Officer Webster then removed the child from the rear of the police vehicle, and Officer Gonzalez handcuffed Mrs. Q [REDACTED] and placed her back into the police vehicle without incident. Mrs. Q [REDACTED] began striking her head against the divider causing a minor laceration to her forehead. Officers Cabrera, Webster, and Gonzalez then attempted to remove Mrs. Q [REDACTED] from the vehicle for her safety, at which time she began attempting to bite and kick at the officers. The officers backed away, at which time Officer Cabrera removed his Electronic Control Device (ECD) from his holster and repeatedly ordered Mrs. Q [REDACTED] to cease her actions, calm down, and cooperate, or she would be tazed. Mrs. Q [REDACTED] refused to comply, and continued acting irrational and hysterical by striking her head against the metal frame of the door. Since the officers could not approach Mrs. Q [REDACTED] without being assaulted, and to prevent her from further injuring herself, Officer Cabrera deployed his ECD, X-26 model (serial number #X00-211160) and cartridge (serial number #T05-838769), for one five second cycle. The ECD was deployed from approximately three feet away, and one probe struck Mrs. Q [REDACTED] in the right thigh and the other probe in the right breast area. Mrs. Q [REDACTED] immediately became calm and compliant, and no further cycles were necessary.

## SUPERVISOR'S REPORT OF RESPONSE TO RESISTANCE

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Miami-Dade Fire Rescue 52, Captain Northcutt, responded and treated Mrs. Q [REDACTED] on the scene. Due to the probe striking Mrs. Q [REDACTED] in her right breast, and Mrs. Q [REDACTED] having breast implants, the probes were not removed by Fire Rescue. Officers Cabrera and Gonzalez transported Mrs. Q [REDACTED] to Jackson Memorial Hospital (JMH), South - Crisis Intervention Center, where she was Baker-Acted. An emergency room surgeon subsequently removed the probes without incident. The minor laceration that Mrs. Q [REDACTED] sustained to her forehead while banging it against the police vehicle's divider required no treatment, other than being cleansed.

Sergeant Katherine Bierstedt, C-3400, responded to the scene at 0730 hours to conduct the supervisory investigation. Sergeant Bierstedt interviewed Mr. and Mrs. Q [REDACTED]. Mr. Q [REDACTED] advised that his wife was bi-polar, had not been taking her medication, was a threat to herself, and was violent towards him. He corroborated the officer's version of what transpired and believed that the responding officers acted appropriately. He was satisfied that his wife was going to be Baker-Acted. Mrs. Q [REDACTED] advised that she was bi-polar and acted in the manner she did, because she had not been taking her medication. She complained about being tazed because she believes that she is pregnant. Mrs. Q [REDACTED]'s pregnancy has not been confirmed. The witness officers on the scene corroborated what had transpired, and all of the officers stated that Mr. or Mrs. Q [REDACTED] never mentioned that Mrs. Q [REDACTED] was possibly pregnant until after being tazed. Sergeant Bierstedt took photographs of Mrs. Q [REDACTED] and the involved officers.

Sergeant Bierstedt notified the Communications Bureau Shift Commander, Sergeant Mercy Rizo, and Cutler Ridge District's Captain Ronald Rebozo. The Supervisor's Report of Response to Resistance was faxed to the Professional Compliance Bureau: