

Disposition of the Independent Review Panel



Complainant: Fernando Justiniani

IRP Case: A2007.311

Date: March 27, 2008

MDPD Case: CR 2007-1029

The Independent Review Panel met on March 27, 2008 for the purpose of publicly reviewing the complaint made by Fernando Justiniani 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 take recorded or transcribed statements in all complaint investigations, whether the investigation is conducted by the Professional Compliance Bureau (PCB) or the District.

Many years ago the Panel recommended that all complaints be investigated by PCB, whether classified "major" or "minor," and that recommendation was implemented. After the Officer's Bill of Rights was revised in 2005 to require that an Internal Affairs investigation be completed within 180 days if the officer was to be disciplined, PCB began to generate more "Contact Reports," which document "minor" complaints and are sent to the District for investigation. The investigation at the District level is less formal.

2. That MDPD include the Independent Review Panel disposition of Mr. Justiniani's complaint with the Contact Record 2007-1029 file.
3. That an MDPD supervisor discuss the Independent Review Panel disposition with Lieutenant Jose Gonzalez, Officer Jonathan Santana, and Officer Meagan Schrader.
4. That MDPD adopt a policy which requires that an objective sobriety test be performed on any person arrested for disorderly intoxication prior to being transported to booking.

B. Incident

A neighbor called the police to complain that a car from the complainant's party was improperly parked and blocking her vehicle. The first set of police officers responding said that the parking issue was a civil matter, not a police matter. The second set of police officers wanted Mr. Justiniani to move the car from the parking space, even though Mr. Justiniani told them it was located in the common area of the private community. Mr. Justiniani refused to move the car. Mr. Justiniani was arrested and charged with disorderly intoxication and resisting arrest without violence.

C. Allegations

1. Lieutenant Jose Gonzalez put his face close to the complainant face and told him: "You are pissing me off."
2. Lieutenant Gonzalez abused his power when he arrested Mr. Justiniani and charged him with disorderly intoxication and resisting without violence.

D. Disposition of the Independent Review Panel

Allegation 1: SUSTAINED

Two witnesses (Juan Barquero and Dinesh Balasubramanian) stated the lieutenant used the "piss" word; one witness (Zuzel Fernandez) stated he used the "shit" word; one witness (Juan Barquero) stated he used the "fuck" word. Neither Lt. Gonzalez nor Officers Jonathan Santana and Megan Schrader were questioned about the language used by the lieutenant. The preponderance of the evidence available supports the allegation that Lt. Gonzalez used offensive language.

Allegation 2: SUSTAINED

Witnesses agree that Mr. Justiniani was loud, argumentative and uncooperative, however the evidence does not support the conclusion that his behavior was due to intoxication. No witness stated that Mr. Justiniani had been drinking. Two witnesses (Dinesh Balasubramanian and Sunita Dinesh) stated that was no alcohol at the party, one (Zuzel Fernandez) said there was. One witness (Juan Barquero) said Mr. Justiniani had not been drinking. Neither 911 caller mentioned anything about alcohol. The charge was nolle prossed.¹

E. Other Findings

1. The disorderly intoxication charge was a pretense for arresting the complainant due to the fact that no objective testing for alcohol intoxication was performed during the investigative process of this case.
2. The Arrest Affidavit contains unfounded allegations that caused undue harm to Mr. Justiniani.
3. Although the officer has the greater responsibility in making citizen contacts which inspire respect and generate cooperation, the citizen also influences the interaction between the officer and the citizen. In this case Mr. Justiniani's refusal to give the keys to the vehicle in question to the owner, who was willing to move the vehicle, and his refusal to be guided back to the house by his friend, Juan Barquero, who realized the lieutenant was irritated with Mr. Justiniani's "shenanigans," caused the situation to escalate. The lieutenant reacted to Mr. Justiniani's behavior by placing him under arrest.

¹ Short for nolle prosequi, which in Latin and means "case dismissed." The criminal charges which were dismissed by the state attorney, therefore there is no criminal conviction. The arrest record remains however.

Independent Review Panel

Committee Recommendation to the Panel

March 27, 2008

Complaint: A2007.311

MDPD Case: CR 2007-1029

Complainant: Fernando Justiniani

Accused Party: Miami-Dade Police Department (MDPD): Lieutenant Jose Gonzalez, Officers Jonathan Santana and Megan Schrader.

Date Complaint Received: 10/31/2007

Materials Reviewed: Correspondence, MDPD Case CR 2007-1029, staff notes and committee notes

Committee: Josie Perez Velis, Panel Member; Carol Boersma, Executive Assistant to the Director; Anna Sidan, Conflict Resolution Specialist.

Meeting Date: February 12, 2008

Present: Lt. Jeanette Mallary and Sgt. Richard Conover, MDPD Professional Compliance Bureau (PCB); Sunita Dinesh and Dinesh Balasubramanian, witnesses and Fernando Justiniani, complainant

Complaint: On August 5th, 2007, Mr. Justiniani was holding a baby shower for his god daughter in his house located in the Crossings, a private community. He had more than 50 guests. There were not enough parking spaces. One of his neighbors called the police to complain that one car from the party was parked on her property. Mr. Justiniani and this neighbor have had a problem with this parking space before. Police officers responded twice to the party. The first set of police officers said that that the parking issue was a civil matter, not a police matter. The second set of police officers wanted Mr. Justiniani to move the car from the parking space, even though Mr. Justiniani told them it was located in the common area. Mr. Justiniani refused to move the car. Mr. Justiniani was arrested and charged with disorderly intoxication and resisting arrest without violence. Mr. Justiniani stated said that he was not intoxicated and there was no alcohol at the party. The charges were nolle prossed.

Following the incident, Mr. Justiniani obtained a letter from the Crossings Association documenting that the parking space in question was located in the common area.

Mr. Justiniani alleges that:

1. Lt. Gonzalez put his face close to the complainant face and told him: "You are pissing me off."
2. Lt. Gonzalez abused his power when he arrested Mr. Justiniani and charged him with disorderly intoxication and resisting without violence.

Department Response: Mr. Justiniani filed his complaint at the Hammocks District. Captain Michael Mouring explained the options for handling his complaint and Mr. Justiniani asked that it be investigated by the Professional Compliance Bureau (PCB). His complaint was forwarded to PCB. About two weeks later the complaint was referred back to the Hammocks District as a "Contact Report" and assigned to Captain Mouring for investigation.

According to Captain Mouring's report, the witnesses he contacted described Mr. Justiniani as "loud, obnoxious, argumentative, agitated." One witness said there was alcohol at the party; two said there was no alcohol. Lieutenant Gonzalez said the owner of the vehicle in question offered to move her car, but Mr. Justiniani loudly interfered. He became increasingly agitated and disorderly, causing a crowd to form. He was arrested when he ignored several requests to calm down. The statements of the other two officers were consistent with Lieutenant Gonzalez. Officer Schrader said that Mr. Justiniani "reeked of alcohol."

When Captain Mouring contacted Mr. Justiniani during his investigation, Mr. Justiniani said it was his understanding that PCB was investigating his complaint. Captain Mouring contacted PCB, who then contacted Mr. Justiniani. Following the PCB contact, Mr. Justiniani advised Captain Mouring that he was comfortable with his complaint being handled at the District level.

Conclusion of the District investigation: "...due to conflicting statements amongst the involved officers and the witnesses, there is insufficient evidence to substantiate the allegations."

Committee Remarks: Mr. Justiniani said the baby shower was going well until two incidents with the police, one about 4:30 pm and the other one about 5:30 pm. Mr. Justiniani stated that his neighbor called the police and reported that someone had taken her parking space. The first set of officers advised that the parking problem was a civil matter. They left. The second set of officers arrived about an hour later, followed by the lieutenant. They tried to convince Mr. Justiniani to move the car the neighbor was complaining about.

The arrest

Ms. Perez Velis asked Mr. Justiniani how the situation moved from interaction with the officers to his arrest. Mr. Justiniani answered: "I was frustrated; officers were hearing me but not listening. They were trying to convince me to move the car, which would have been what my neighbor wanted." Mr. Justiniani stated that the officers got frustrated with him because he challenged them by not moving the car. After Mr. Justiniani refused to move the car several times, Lieutenant Gonzalez said: "You are starting to piss me off." When Mr. Justiniani responded: "Just because you are wearing a badge does not mean you have the right to talk to me like that," the officers grabbed him from the back and arrested him.

PCB vs. District Investigation.

Lt. Mallary explained that the Professional Compliance Bureau (PCB) investigates “major” complaints, such as excessive use of force. The District investigates “minor” personnel complaints as discourtesy. Sgt. Conover stated that Mr. Justiniani’s complaint was sent to PCB because he alleged that the handcuffs were too tight. When Sgt. Conover spoke to Mr. Justiniani, Mr. Justiniani said he was not concerned about the handcuffs, but rather about the overreaction and discourtesy of the officers. Based on that conversation and Mr. Justiniani’s request to speak with a supervisor, a determination was made to have the complaint investigated by the District.

Ms. Boersma pointed out the differences in the PCB and District investigations: PCB takes tape recorded or transcribed statements. The District investigator talks to the involved officers and witnesses by telephone or in person, and writes a brief summary of the conversation. In this complaint, the IRP can only review the summary of the officers’ statements because the statements were not recorded.

Witness I (Sunita Dinesh)

She lives across the street from Mr. Justiniani and has known him for 8 years. She was not present for the first incident, but she was 5 inches away from Mr. Justiniani during the second incident. Mr. Justiniani’s voice was loud. While Mr. Justiniani was talking to the officers, she went to get a neighbor who is an attorney so he could verify Mr. Justiniani’s statement that the parking space was common area parking.

Witness II (Dinesh Balasubramanian)

He lives across the street from Mr. Justiniani and has known him for approximately 9 to 10 years. He was with Mr. Justiniani in the computer room of Mr. Justiniani’s house during the baby shower. He heard when Lieutenant Gonzalez asked Mr. Justiniani to move the car. Both the lieutenant and Mr. Justiniani were “a little upset.” Mr. Justiniani’s voice was loud. He did not want to move the car. They were arguing and suddenly Lieutenant Gonzalez said: “You are f... pissing me off.” Then Mr. Justiniani was arrested.

Ms. Boersma asked both witnesses if they saw any alcohol at the party. Both stated they did not. Ms. Perez Velez asked whether a sobriety test was ever done when someone who is not driving is charged with intoxication. Both Lt. Mallary and Sgt. Conover replied not to their knowledge.

Staff Remarks

Following the Committee Meeting, two witnesses who were present at the baby shower, provided the IRP with written statements.

Zuzel Fernandez

One marked vehicle with two MDPD Officers was first on the scene. They requested Mr. Justiniani to move the vehicle, but he refused. He said that this parking space did not belong to the neighbor. After going back and forth with the officers with no solution, a second police vehicle arrived. That officer (a sergeant or a lieutenant) got out of his vehicle and said he was tired of this "bullshit" and that they had more important calls to respond to, than to have to deal with a petty neighbor dispute. At this time Mr. Justiniani asked this officer for his name and badge number. The officer became irate and said "that's it, you're going to jail, I'm tired of your shit." This officer got back in his car and left the other two officers to complete the arrest.

Juan Barquero The baby shower was for his wife.

The first time the police arrived the situation was resolved without a problem. The officers said it was a civil matter between the neighbors and the association, and not a police matter.

After the officers left, the neighbor complained about the parked vehicle to the association's security guard. While Mr. Justiniani, Mr. Barquero, Sunita Dinesh and Dinesh Balasubramanian were talking to the security guard, the second set of officers arrived. When Mr. Justiniani tried to explain that the vehicle was parked in the common area, the female officer told him to "shut up and move the vehicle." Mr. Justiniani refused.

A third officer (lieutenant) arrived and asked Mr. Justiniani "in a nice way" to move the vehicle. Mr. Justiniani refused. Then the lieutenant approached the owner of the parked vehicle and told her that if she did not move it, he would give her a ticket for parking in a privately owned parking space. The owner wanted to move her car but Mr. Justiniani had the keys and would not give them to her. At this point the lieutenant said: "You are starting to piss me off and you are wasting my fucking time in bullshit matters when I could be doing something productive."

Mr. Barquero said: "I witnessed that the officer was beginning to get irritated with [Mr. Justiniani's] shenanigans... I grabbed [Mr. Justiniani] hard pulling him away from the officer and trying to take him back into the house. ...he got away and took my pen and went forward to the [lieutenant] and told him that he had no right to talk to him in the way he did, and that he... was going to report [the lieutenant] for his verbal abuse..." When Mr. Justiniani said this, the lieutenant responded, "That's it, you're under arrest."

Mr. Barquero stated that Mr. Justiniani had not been drinking. He believes Mr. Justiniani was arrested "simply because the officer felt like it."

911 tapes

Mr. Justiniani provided copies of the 911 tapes regarding the incident, which revealed the following:

First Call 16:42 (4:42 pm)

Caller states that her neighbors are parking by her part of the house, blocking her way out.

Second Call 18:26 (6:26 pm)

My Mom, like the neighbors are harassing her. It's just like she's diabetic and she has high blood pressure because he won't move his car. It's so ridiculous.

Does she need Fire Rescue.

No, no the police. The neighbor's harassing her.

What are they doing?

My mom's feeling faint. I'm looking at him. I'm scared to go outside because he's screaming.

So they're having a violent dispute?

At far as I can tell it's a verbal dispute.

How many people involved?

There's a security guard here because he won't move the car, there's my mom and the next door neighbor.

Does anyone have any weapons?

No

Committee Findings:

A. Regarding the allegations

1. Lt. Gonzalez put his face close to the complainant face and told him: "You are pissing me off."

The committee found the allegation to be SUSTAINED, based on the following:

Two witnesses (Juan Barquero and Dinesh Balasubramanian) stated the lieutenant used the "piss" word; one witness (Zuzel Fernandez) stated he used the "shit" word; one witness (Juan

Barquero) stated the used the “fuck” word. Neither Lt. Gonzalez nor Officers Jonathan Santana and Megan Schrader were questioned about the language used by the lieutenant. The preponderance of the evidence available supports the allegation that Lt. Gonzalez used offensive language.

2. Lt. Gonzalez abused his power when he arrested Mr. Justiniani and charged him with disorderly intoxication and resisting without violence.

The committee found the allegation to be SUSTAINED, based on the following:

Witnesses agree that Mr. Justiniani was loud, argumentative and uncooperative, however the evidence does not support the conclusion that his behavior was due to intoxication. No witness stated that Mr. Justiniani had been drinking. Two witnesses (Dinesh Balasubramanian and Sunita Dinesh) stated that was no alcohol at the party, one (Zuzel Fernandez) said there was. One witness (Juan Barquero) said Mr. Justiniani had not been drinking. Neither 911 caller mentioned anything about alcohol. The charge was nolle prossed.²

B. Other Findings:

Although the officer has the greater responsibility in making citizen contacts which inspire respect and generate cooperation, the citizen also influences the interaction between the officer and the citizen. In this case Mr. Justiniani’s refusal to give the keys to the vehicle in question to the owner, who was willing to move the vehicle, and his refusal to be guided back to the house by his friend, Juan Barquero, who realized the lieutenant was irritated with Mr. Justiniani’s “shenanigans,” caused the situation to escalate. The lieutenant reacted to Mr. Justiniani’s behavior by placing him under arrest.

Recommendations:

1. The IRP adopt the committee findings and conclude the complaint.
2. That MDPD take tape recorded or transcribed statements in all complaint investigations, whether the investigation is conducted by the Professional Compliance Bureau or the district.
3. That MDPD include the Independent Review Panel disposition of Mr. Justiniani’s complaint with the Contact Record 2007-1029 file.

² Short for nolle prosequi, which in Latin and means "case dismissed." The criminal charges which were dismissed by the state attorney, therefore there is no criminal conviction. The arrest record remains however.