

Independent Review Panel Disposition Addendum



Complainant: Blanton Harris

IRP Case: A2005.225

Date: September 25, 2008

MDPD Case: PC2004-0248

The Independent Review Panel met on September 25, 2008 to consider the request from Major Charles E. Nanney that the posting of this case be removed immediately from the IRP website. Major Nanney stated that his “reputation, along with that of Chief Leonard Burgess and Major Alexander Casas, was tarnished by the posting which alleges improper review of an Internal Affairs case.”

A. Background

On February 23, 2006, the Independent Review Panel reviewed a complaint in which the complainant alleged that two Miami-Dade police officers conducted an improper crash investigation by refusing to interview witnesses on the scene. As a result, the complainant was cited. The complaint was investigated by the Miami-Dade Police Department’s Internal Affairs Unit. The MDPD disposition, written by Major (then Lt.) Alexander D. Casas and approved by Major Charles E. Nanney and Chief Leonard Burgess, was “**Not Sustained**,” because “there were no independent witnesses that could corroborate or refute the allegation.”

The Independent Review Panel **sustained** the allegation, based on statements taken by the Internal Affairs investigator from three independent witnesses. Two store owners and a shopper testified that the complainant was not in his vehicle at the time of the crash. The Independent Review Panel found that: “The MDPD disposition, written by Lt. Alexander D. Casas and approved by Major Charles E. Nanney and Chief Leonard Burgess, ignored facts documented in the Internal Affairs investigation.”

Major Nanney stated that he learned about the IRP finding when a relative “googled” his name and the search linked to the IRP disposition.

B. Panel Discussion

The issue is that MDPD stated there were no independent witnesses and the Panel identified independent witnesses. Also, Panel staff sent Major Nanney, Major Casas and Chief Burgess letters advising them of the Panel’s findings and asking them to respond. No one responded.

Mr. Falk stated the Independent Review Panel is a quasi-judicial body that, based on the evidence presented to it, made a reasonable and fair finding.

Major Casas stated that the IRP finding implies that he deliberately ignored what the IRP considered to be independent witnesses. Major Casas said that the statements he saw in the IA file did not corroborate or refute the allegation; therefore the finding was “not sustained.” Major Nanney and Chief Burgess concurred.

C. Disposition

The Panel accepted the testimony provided by Major Charles Nanney, Major Alex Casas, and Chief Leonard Burgess, that they did not ignore facts documented in the Internal Affairs investigation. They stated that they took into consideration the evidence presented by witnesses; however they did not find sufficient evidence in the witnesses' statements to corroborate or refute the allegation.

Disposition of the Independent Review Panel



Complainant: Blanton Harris

IRP Case: A2005.225

Date: February 23, 2006

MDPD Case: PC2004-0248

The Independent Review Panel met on February 23, 2006 for the purpose of publicly reviewing the complaint made by Mr. Blanton Harris 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 require the authors of Disposition Memoranda to document they have read the Internal Affairs investigation by signing a statement affirming that they have thoroughly reviewed the Internal Affairs file.
2. That MDPD re-review the MDPD Disposition and consider the independent witness statements documented in the Internal Affairs investigation.
3. That Officers Dale Colbourne and Jorge Baluja receive additional training in crash investigations and report writing.
4. That MDPD Director Robert Parker review the PC Complaint and counsel the commanders involved in the disposition on providing facts to support their findings.
5. That Officer Baluja receive counseling on how to avoid discourteous behavior towards civilians, especially minors.
6. That a copy of the Panel's Disposition Report be added to the personnel files of Officer Baluja, Officer Colbourne, Lt. Alexander Casas, Major Charles Nanney and Chief Leonard Burgess.

B. Incident

Mr. Harris was with his stepson, Jakeem Atwell, when he parked his 1994 Toyota pickup truck in front of a TV repair shop located at 10461 Northwest 7th Avenue. While he was inside "Charles TV Repair Shop" his parked truck was struck by a sports utility vehicle.

Northside District Officers Jorge Baluja and Dale Colbourne responded to the scene. Officer Baluja accused him of illegally parking his truck on the roadway and refused to consider a Florida Department of Transportation (FDOT) letter given to him by local business owners, authorizing parking where Mr. Harris was parked.

After speaking with the driver of the SUV and someone who may have known the driver, Officer Baluja determined that Mr. Harris was driving his vehicle at the time of the crash. Both officers refused to consider the testimony of independent witnesses that Mr. Harris' vehicle was parked when struck by the SUV.

Mr. Harris was cited for improper U-turn. The case was dismissed for lack of prosecution.

C. Allegations

Northside District Officers Dale Colbourne and Jorge Baluja conducted an improper crash investigation by ignoring obvious physical evidence on the scene and refusing to interview witnesses on the scene provided by him. As a result of the improper investigation, he was unjustly cited for the crash.

D. Disposition of the Independent Review Panel

The Panel found the allegation to be **SUSTAINED**.

Independent witness Frantz Raymond (TV Repair Shop Employee) stated that Officers Baluja and Colbourne would not afford him the opportunity to attest to the fact that Mr. Harris was with him, inside the repair shop, at the time of the crash.

Independent witness Chris Marshall (Bike Store Owner) stated that he attempted to explain to Officer Baluja that Mr. Harris was not in his vehicle at the time of the crash, however Officer Baluja refused to listen to him.

Independent witness Arlene Cameron (shopper) stated she saw Mr. Harris coming from the store immediately after the crash and he was not in his vehicle at the time of the accident.

E. Other Findings

1. The MDPD disposition, written by Lt. Alexander D. Casas and approved by Major Charles E. Nanney and Chief Leonard Burgess, ignored facts documented in the Internal Affairs investigation.

The allegation was NOT SUSTAINED because “there were no independent witnesses that could corroborate or refute the allegation.” The IA investigation contains statements from three independent witnesses who corroborated Mr. Harris position that he was not driving his vehicle at the time of the crash.

2. Officers Dale Colbourne and Jorge Baluja failed to comply with MDPD Departmental Procedure for Traffic Crash Responsibilities (Chapter 28 – Part 1 Sec. IV.B & L), which states in part:

“Employees responding to traffic crash scenes shall... separate and interview drivers and witnesses and record traffic crash information in compliance with existing legislation and departmental policy.”

Although at least four witnesses were identified in the Internal Affairs investigation, no names were written in the witness section on the Crash Report.

“Collision diagrams will be based on physical evidence, measurements, roadways, conditions, and statements of drivers and witnesses...”

The officers rejected the statements of independent witnesses on the scene who testified that Mr. Harris’ vehicle was parked at the time of the crash.

3. Officer Baluja was discourteous when he threatened to arrest Mr. Harris and threatened to take his son Jakeem to the Juvenile Assessment Center (JAC).

F. Observations to Promote Healthy Police/Citizen Interactions:

The Panel commends Blanton Harris for behavior which kept a police situation calm during a time when he was stressed and frustrated. An SUV had just crashed into Mr. Harris' parked vehicle. Officer Baluja initially accused Mr. Harris of being illegally parked and refused to consider a FDOT document authorizing parking where Mr. Harris was parked. Then Officer Baluja accused Mr. Harris of driving his vehicle at the time of the crash and Officer Colbourne charged him with making an illegal U-turn, even though witnesses testified that his vehicle was parked at the time of the crash. Mr. Harris made every effort to provide information to the officers, but refrained from behavior which would have escalated the situation to the point of getting arrested.

The Independent Review Panel concluded the complaint on February 23, 2006.

Independent Review Panel

Committee Recommendation to the Panel

February 23, 2006

Complaint: A2005.225

MDPD Case: PC2004-0248

Complainant: Blanton A. Harris

Accused Party: Miami-Dade Police Department (MDPD), Officers Dale Colbourne and Jorge Baluja

Date Complaint Received: December 7, 2005

Materials Reviewed: Correspondence, IA Case PC2004-0248, staff notes and committee notes

Committee: Glenn P. Falk, Esq., Panel Member; Dr. Eduardo Diaz, Executive Director; Carol Boersma, Executive Assistant to the Director; Linda Pierre, Conflict Resolution Specialist

Meeting Date: January 17th, 2006

Present: From MDPD Professional Compliance Bureau: Sgt. Damaris Prieto-Palmer and Sgt. Gary Oliver; Blanton Harris, Complainant; Jakeem Atwell, Witness; O.J. O'Donnon, Counsel to Mr. Harris.

Complaint: Mr. Harris stated that on Saturday, December 13, 2003, at approximately 3:30p.m., he was with his stepson, Jakeem Atwell, when he parked his 1994 Toyota pickup truck in front of a TV repair shop located at 10461 Northwest 7th Avenue. Mr. Harris explained that his truck was parked facing north on the northbound lane of Northwest 7th Avenue, along the curbside.

Mr. Harris stated that Jakeem Atwell went into the "Broken Spoke Bicycle Shop" located at 10551 Northwest 7th Avenue while Mr. Harris went into "Charles TV Repair Shop" located at 10461 Northwest 7th Avenue. Mr. Harris advised that as he was inside "Charles TV Repair Shop" speaking to the shop worker, Mr. Frantz Raymond, he heard a loud screech and collision just outside the store. Mr. Harris further advised that he and Mr. Raymond exited the TV repair shop, looked north towards the roadway, and observed Mr. John Oscar climbing out of his overturned maroon sports utility vehicle.

Mr. Harris stated that when he looked north toward the roadway, he realized that his parked truck had been struck by Mr. Oscar's sports utility vehicle. Mr. Harris related that Ms. Arlene Cameron approached him and advised that she was a nurse and that she had witnessed the crash from the west side of Northwest 7th Avenue. Mr. Harris advised that Ms. Cameron provided him with her contact information.

Mr. Harris stated that Northside District Officers Jorge Baluja and Dale Colbourne responded to the scene and made contact with him. Mr. Harris stated that he advised Officer Baluja that his truck was parked along the northbound lane of 7th Avenue when Mr. Oscar's sports utility vehicle rear-ended it. Mr. Harris stated that Officer Baluja began to accuse him of illegally parking his truck on the roadway. Mr. Harris stated that Officer Baluja asked to see his driver license, vehicle registration, and proof of his auto insurance.

Mr. Harris stated that he gave Officer Baluja the documents he requested. Shortly after, Mr. Raymond (TV repair shop owner) and Mr. Chris Marshall (Bicycle shop owner) approached Officer Baluja with copies of a letter from the Florida Department of Transportation (FDOT document attached), which authorized vehicles to park along the curbside of Northwest 7th Avenue. Mr. Harris stated that when he attempted to show Officer Baluja the letter, the officer threatened to arrest him for Obstructing Justice.

Officer Baluja left and then returned to tell Mr. Harris that he had a new theory, that Mr. Harris was driving his vehicle at the time of the accident. According to the Florida Traffic Crash Report (attached) written by Officer Colbourne, Mr. Harris was attempting a U-turn when the crash occurred. Mr. Harris was cited for improper U-turn. The case was dismissed for lack of prosecution.

Mr. Harris alleges that: Northside District Officers Dale Colbourne and Jorge Baluja conducted an improper crash investigation by ignoring obvious physical evidence on the scene and refusing to interview witnesses on the scene provided by him. As a result of the improper investigation, he was unjustly cited for the crash.

Department Response: MDPD File PC*2004-0248, Investigators: Sgt. Alex Diaz de Villegas and Sgt. Damaris Palmer

The MDPD disposition was **Not Sustained**. Officer Baluja was unable to recall details regarding the crash investigation and was unable to provide additional information regarding the allegation. Officer Colbourne denied the allegation. There were no independent witnesses that could corroborate or refute the allegation.

* (PC) Personnel Complaint Investigations address allegations of discourtesy or other lesser violations of Dade County or departmental polices rules, and procedures. The Personnel Complaint Investigation case file is sent to concerned command for disposition. The MDPD disposition in this case was written by Northside Lt. Alexander D. Casas and approved by Northside District Major Charles E. Nanney, and North Operations Division Chief Leonard Burgess.

Witness Statements:

Mr. Frantz Raymond (Charles TV Repair Shop)

Mr. Raymond advised that while he was speaking to Mr. Harris inside of his shop, he heard a loud crash emanating from the nearby street. Mr. Raymond further advised that he and Mr. Harris immediately exited the repair shop and discovered an overturned SUV along the northbound lane of Northwest 7th Avenue. Mr. Raymond stated that when the police officers arrived, an unknown female claimed that she witnessed the crash. Mr. Raymond recalled that the female, who had arrived after the crash, began to claim that Mr. Harris was driving his pickup truck at the time of the crash. Mr. Raymond advised that Officers Baluja and Colbourne would not afford him the opportunity to attest to the fact that Mr. Harris was with him, inside the repair shop, at the time of the crash.

Jakeem Atwell (Mr. Harris' stepson)

Jakeem stated that Officer Baluja questioned him about the crash privately. Jakeem stated that when he told Officer Baluja that Mr. Harris was not driving his pickup truck at the time of the crash, Officer Baluja accused him of lying and threatened to take him to "the JAC" if he did not tell the truth.

Mr. Chris Marshall (Broken Spoke Bicycles)

Mr. Marshall stated he was inside his store and recalls seeing Mr. Harris park his blue pickup truck in front of Charles TV Repair Shop, enter the store and remain there for several minutes. During this time, he heard a loud crash outside. Mr. Marshall stated that he immediately responded to the sidewalk directly in front of his store and discovered a small utility vehicle overturned. Mr. Marshall advised that it appeared as if the SUV had rear-ended Mr. Harris' parked pickup truck. Mr. Marshall also advised that Mr. Harris was standing next to him on the sidewalk at that time.

Mr. Marshall stated that he went back into his store and called 9-1-1. According to Mr. Marshall, after several emergency units responded to the scene, he spoke briefly with Officer Baluja while Officer Baluja was seated in a marked MDPD vehicle. Mr. Marshall advised that he presented a letter prepared by the FDOT to Officer Baluja, which gave vehicles authorization to park along the northbound lane, nearest the curb, but Officer Baluja was not interested. Mr. Marshall advised that he attempted to explain to Officer Baluja that Mr. Harris was not in his vehicle at the time of the crash; however Officer Baluja did not want to listen to him.

Officer Colbourne

Officer Colbourne rendered his statement on May 18, 2005, 17 months after the accident.

Officer Colbourne advised that he spoke to several individuals who were on the scene, including Mr. Marshall, the owner of the bicycle shop. Mr. Marshall could not provide him with information if Mr. Harris was inside the vehicle because he could not see the passenger compartment of Mr. Harris' vehicle. However, Mr. Marshall did verify that Jakeem was inside of

his shop. Officer Colbourne did not take Mr. Marshall's account into consideration when making the decision as to who was at fault in the traffic crash.

Officer Colbourne stated that he was provided with a Department of Transportation (DOT) letter from an unknown store owner, but did not read it because he was not going to cite Mr. Harris for parking on the side of the road, he cited Mr. Harris for the improper U-turn.

Officer Jorge Baluja

Officer Baluja rendered his statement on May 24, 2005, 17 months after the accident.

Officer Baluja stated that he did not recall if he was working on that date. He was then shown a picture of Mr. John Oscar, one of the drivers involved in the traffic crash and also the red sports utility vehicle that Mr. Oscar was driving. Officer Baluja looked at the photographs and replied that he did not recall the incident.

Committee Remarks:

Mr. Harris' concerns

Mr. Harris advised that both officers (Officer Colbourne and Officer Baluja) disregarded facts that were presented on the scene of the accident and cited him for an accident he did not cause.

IA Investigation

Sgt. Palmer advised the case was originally assigned to Sgt. Alex Diaz de Villegas and reassigned to her on November 1, 2004, due to Sgt. Diaz de Villegas' promotion.

The MDPD disposition appears to be based on the accident investigation and the allegation was Not Sustained, because "there were no independent witnesses" to corroborate the allegation.

The I.A. file made reference to witnesses but there were no witnesses listed on the Crash Report.

Dr. Diaz asked MDPD representatives to clarify why the TV repairman and Bicycle shop owner were not considered to be independent witness. Sgt. Palmer stated that the TV repairman or any bystander could have been independent witnesses, but due to conflicting statements on the scene, the officer chose not to add those statements in the Crash Report.

MDPD Officers unprofessional behavior

Mr. Harris stated that a lady (Marsha Cazeau) came on the scene after the crash and started asking him about the accident. Mr. Harris heard Ms. Cazeau tell Officer Baluja that she saw "the maroon car making a U-turn." Officer Baluja then prompted Ms. Cazeau to correct her statement to say the gray car, the color of Mr. Harris' vehicle. The overturned vehicle was maroon. Mr. Harris later noticed the same women consoling Mr. Oscar as he sat on the ground.

Witnesses

Ms. Boersma asked Sgt. Palmer to explain how police officers determine who is at fault in a traffic accident. Sgt. Palmer advised that normally the officer would gather information from the two drivers and any other independent witnesses, and make a determination as to who was at fault. Sgt. Palmer indicated that all witness information should be documented on the Crash Report. Sgt. Palmer stated that Officer Colbourne did place Ms. Marsha Cazeau on the witness list but not on the Crash Report.

Mr. Falk stated that he was concerned about the officers' disregard for the statements of witnesses on the scene. Mr. Falk added that Mr. Raymond (TV Repair Shop Employee) tried to explain to the officers that Mr. Harris was in his shop at the time of the incident but the officers did not want to listen. The officers disregarded Mr. Marshall's (Bike Shop Owner) document from the State of Florida which states parking is permitted along N.W. 7th Avenue. Mr. Falk added that he found consistency between Jakeem's statement and the other witnesses, who stated that the officers threatened to arrest Mr. Harris.

Florida Traffic Crash Report

Sgt. Palmer stated the Crash Report was written by Officer Colbourne, who was the reporting officer on the scene of the accident. Sgt. Palmer added that 10 or more officers can arrive on a scene and not necessarily be placed on the Crash Report.

Mr. Harris stated that Officer Baluja arrived on the scene first and began talking to the subjects and witnesses. Mr. Harris stated that he was surprised that Officer Baluja was not identified on the Crash Report because he was interacting with everyone as if he was part of the accident investigation. Sgt. Oliver stated that Officer Baluja may have been closer to the area, so he responded in order to provide assistance until Officer Colbourne arrived on the scene. Sgt. Oliver stated that the officer who is dispatched to the scene is the reporting officer; in this case, the reporting officer was Officer Colbourne.

Committee Findings:

A. Regarding the allegation

Northside District Officers Dale Colbourne and Jorge Baluja conducted an improper crash investigation by ignoring obvious physical evidence on the scene and refusing to interview witnesses on the scene provided by him. As a result of the improper investigation, Mr. Harris was unjustly cited for the crash. **SUSTAINED**

Independent witness Frantz Raymond (TV Repair Shop Employee) stated that Officers Baluja and Colbourne would not afford him the opportunity to attest to the fact that Mr. Harris was with him, inside the repair shop, at the time of the crash.

Independent witness Chris Marshall (Bike Store Owner) stated that he attempted to explain to Officer Baluja that Mr. Harris was not in his vehicle at the time of the crash, however Officer Baluja refused to listen to him.

Independent witness Arlene Cameron (shopper) stated she saw Mr. Harris coming from the store immediately after the crash and he was not in his vehicle at the time of the accident.

B. Other Findings:

1. The MDPD disposition, written by Lt. Alexander D. Casas and approved by Major Charles E. Nanney and Chief Leonard Burgess, ignored facts documented in the Internal Affairs investigation.

The allegation was NOT SUSTAINED because “there were no independent witnesses that could corroborate or refute the allegation.” The IA investigation contains statements from three independent witnesses who corroborated Mr. Harris position that he was not driving his vehicle at the time of the crash.

2. Officers Dale Colbourne and Jorge Baluja failed to comply with MDPD Departmental Procedure for Traffic Crash Responsibilities (Chapter 28 – Part 1 Sec. IV.B & L), which state in part:

“Employees responding to traffic crash scenes shall... separate and interview drivers and witnesses and record traffic crash information in compliance with existing legislation and departmental policy.”

Although at least four witnesses were identified in the Internal Affairs investigation, no names were written in the witness section on the Crash Report.

“Collision diagrams will be based on physical evidence, measurements, roadways, conditions, and statements of drivers and witnesses...”

The officers rejected the statements of independent witnesses on the scene who testified that Mr. Harris’ vehicle was parked at the time of the crash.

3. Officer Baluja was discourteous when he threatened to arrest Mr. Harris and threatened to take his son Jakeem to the Juvenile Assessment Center (JAC).

Observation to Promote Constructive Police/Citizen Interactions

The committee commends Blanton Harris for behavior which kept a police situation calm during a time when he was stressed and frustrated. An SUV had just crashed into Mr. Harris’ parked vehicle. Officer Baluja initially accused Mr. Harris of being illegally parked and refused to consider a FDOT document authorizing parking where Mr. Harris was parked. Then Officer Baluja accused Mr. Harris of driving his vehicle at the time of the crash and Officer Colbourne charged him with making an illegal U-turn, even though witnesses testified that his vehicle was parked at the time of the crash. Mr. Harris made every effort to provide information to the

officers, but refrained from behavior which would have escalated the situation to the point of getting arrested.

Recommendations: The committee recommends that:

1. MDPD require the authors of Disposition Memoranda to document they have read the Internal Affairs investigation by signing a statement affirming that they have thoroughly reviewed the Internal Affairs file.
2. That MDPD re-review the MDPD Disposition and consider the independent witness statements documented in the Internal Affairs investigation.