

INDEPENDENT REVIEW PANEL MINUTES

July 24, 2008

LOCATION: 140 West Flagler Street, Conference Room 1103
Miami, Florida 33130

PANEL MEMBERS PRESENT

Julia Dawson, Esq., Chairperson
Michael R. Band, Esq., 1st Vice Chairperson
Jean-Robert Lafortune, 2nd Vice Chairperson
Moiez A. Tapia, Ph.D.
Julie Ferguson, Esq.
Jorge Reynardus, Esq.

EXCUSED

Josie Perez Velis, Esq.
Doris Shellow
Glenn P. Falk, Esq.

PANEL STAFF PRESENT

Carol Boersma, Executive Assistant to the Director
Kristin Anderson, Conflict Resolution Specialist
Anna Sidan, Conflict Resolution Specialist

AUDIENCE:

Professional Compliance Bureau: Sergeant M. Sawal; Sergeant C. Rosario; Lieutenant A. Artime

Complainant: Mrs. Q

Civilian Investigative Panel (CIP): Don March

Agenda Item #1) Call to Order. Ms. Dawson called the meeting to order at 2:02 p.m. and asked staff to call roll.

Agenda Item #2) Adoption of the minutes from the meeting held on June 26, 2008. Mr. Band moved to adopt minutes. Ms. Ferguson seconded. The motion passed unanimously.

Agenda Item #3) Ratification:

- Minutes from the meeting held on May 22, 2008
Ms. Ferguson moved to ratify the minutes. Michael Band seconded. The motion passed unanimously.
- Disposition for Complaint A 2007.030 Missick v. MDPD
Ms. Ferguson moved to ratify the disposition. Michael Band seconded. The motion passed unanimously.

Agenda Item #4) IRP Complaint A 2007.226 Mrs. Q v. Miami-Dade Police Department (MDPD)

Ms. Ferguson gave a synopsis of the complaint in which Mrs. Q alleged she was “tased” while handcuffed and seated in the back of a police vehicle, after she told the officer she was pregnant. Mrs. Q also gave her perspective of what took place on July 12, 2007 when she was “Baker Acted.”

Dr Tapia inquired about the Baker Act. Ms. Dawson responded that it is a state statute that allows a person to be involuntarily committed because they are a danger to themselves or to others.

Husband’s Interview

Mr. Band inquired if police officers interviewed the complainant’s husband regarding what took place. Ms. Boersma read a summary of Mr. Q’s statement. Ms. Dawson asked the complainant if the statement Ms. Boersma read was accurate. The complainant replied that it was. Mr. Band asked if the complainant’s husband said anything in reference to what occurred in the patrol vehicle. Ms. Boersma stated that according to the husband’s statement, he did not see Mrs. Q strike her head against the plastic divider while she was in the police car. He said he heard his wife call out 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

Mr. Lafortune queried how long it took the police to transport Mrs. Q after she was “tased.” Mrs. Q reported that it took a very long time and during that time Officer Cabrera walked around the vehicle, laughing. She stated that other officers gathered around the police vehicle and stood by the window while she watched in terror. Mr. Lafortune asked Mrs. Q how long the taser prongs were attached to her body. Mrs. Q reported that the prongs were attached until a surgeon removed them at the hospital, about an hour and a half.

Ms. Dawson inquired whether the wires from the taser prongs remained connected to the taser gun. Mrs. Q stated that the prongs in her breast and abdomen remained connected to the gun and Officer Cabrera had the taser in his hand most of time. Mr. Band asked whether a person could be “re-tased.” Lt Arttime responded, “Yes.”

Policy/Procedure of MDPD

Lt. Arttime stated that the tasing complied with departmental policy. The officers arrived at 6:20 pm and cleared the scene at 8:30 pm. During this time Fire Rescue responded to the scene. They transported Ms. Q to JMH South where the prongs were removed. It is police protocol to leave the prongs in place so the officer can redeploy if necessary. Each deployment is documented and must be justified. Lt. Arttime stated that he is not aware of a policy that addresses when the taser gun must be disconnected. All SRRRs (Supervisor’s Report of Response to Resistance) are sent to PCB for review. Tasing is a use of force.

Discussion of Allegations and Committee Findings

1. *Officer Emilio Cabrera tased Mrs. Q 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.

Dr. Tapia moved to adopt the finding as written. Mr. Band seconded the motion. Mr. Lafortune and Ms. Ferguson stated that they found Ms. Q to be credible and the finding should be in favor of the complainant. Mr. Band and Mr. Reynardus stated that the circumstances of this highly charged emotional incident made it difficult to determine credibility. After a lengthy discussion, Mr. Band moved to call the question. Dr. Tapia seconded the motion, and the motion passed. The Panel voted on the motion to adopt the finding as written. The motion failed by a vote of 4-2.

Mr. Lafortune moved to find insufficient evidence to support or refute allegation and add the statement: However the Panel also believes that Mrs. Q's statements regarding the allegation are credible, regardless of this finding. Ms. Ferguson seconded the motion.

Mr. Reynardus stated that the ability of Mrs. Q to perceive the events was compromised by her emotional state. Ms. Dawson disagreed, stated that she was consistent in relating the facts. Ms. Ferguson added that Mrs. Q has been consistent in her account of the incident throughout her contact with the IRP, from the time she filed her complaint, through the committee meeting to the Panel meeting. Mr. Band commented that there is insufficient evidence to make a determination regarding credibility because to sustain Mrs. Q's allegation would mean that the officers intentionally, with malice, tased a pregnant woman and there is no evidence to support that.

The motion passed by a vote of 4-2.

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.

Ms. Ferguson moved to adopt the finding as written. Dr. Tapia seconded the motion. The motion passed by a vote of 4-2.

3. *Other committee finding: 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. 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.*

Ms. Ferguson suggested that the Panel eliminate two sentences: *MDPD did not investigate the allegation* and *The Supervisor's Report of Response to Resistance (SRRR) was not an investigation of the allegation*. Ms. Ferguson stated that Lt. Artime from PCB explained that the tasing was investigated through the SRRR and the SRRR was reviewed by PCB. Ms. Boersma reported that MDPD did not conduct an Internal Affairs Investigation of the allegation, PCB accepted the SRRR as the investigation. Mr. Band inquired if the last sentence, *The SRRR revealed discrepancies that were not investigated, such as when she told officers she was pregnant* should be omitted as well. He stated the sentence was not accurate because the SRRR was an investigation solely for the purpose of the use of the taser. Ms. Dawson suggested that the language be changed to read: "The SRRR revealed discrepancies that were not reconciled by the Professional Compliance Bureau."

Dr. Tapia made a motion to accept committee finding with the deletion suggested by Ms. Ferguson and the revision suggested by Ms. Dawson. Mr. Robert-Lafortune seconded. It was passed unanimously.

Dr. Tapia made a motion to conclude the complaint. Ms. Dawson seconded. It was passed unanimously.

Agenda Item #5) Request from Major Nanney to Remove File from IRP Website

This request is related to an MDPD disposition written by Major Alex Casas (a lieutenant at the time) and approved by Major Nanney and Chief Leonard Burgess. The case (A2005.225) was reviewed by the Panel in 2006.

Ms. Dawson reported that Major Nanney mentioned Chief Leonard Burgess and Major Alex Casas in his request and asked if this is a request made by all three persons. Ms. Boersma reported that she believed they were all aware of his request; however, she did not know if they specifically are making the same request. She mentioned that she notified Major Nanney of today's meeting, and Major Nanney responded by email stating that he was on vacation, but he, Major Casas and Chief Burgess would be available at a later date to explain how they arrived at the disposition.

Ms. Boersma commented that all the IRP cases reviewed by the Panel are posted on the IRP website; the report to the Panel as well as the Panel disposition. Ms. Boersma stated that in this case the three names are mentioned in the disposition; therefore, when one of their names is googled, it takes you to the IRP report.

Ms. Dawson queried if the Panel minutes are available on the website. Ms. Boersma replied they are not. Ms. Dawson stated that a lot of the “meat” of what the Panel does is reflected in the minutes. Ms. Boersma reported that if the Panel wishes to include the minutes on the IRP website, it could be done. Ms. Dawson asked if the cases could be linked to the minutes. Ms. Boersma replied that she would research the matter.

Ms. Ferguson moved to defer this item so Major Nanney could be present. Dr. Tapia seconded the motion which passed 6-0.

Ms. Ferguson inquired if Major Casas had been invited to the Panel meeting when the case was reviewed. Ms. Boersma reported that historically the IRP sends an invitation to the Professional Compliance Bureau Major and the complaint investigator. She stated that historically the IRP has not sent an invitation to anyone involved in the MDPD disposition.

Ms. Ferguson made a motion directing staff to invite the individuals involved in the disposition of the complaint to the Panel meeting when the complaint is reviewed. Mr. Band seconded the motion which passed unanimously.

Mr. Band made a motion to post the Panel’s approved minutes on the IRP website and to look for a way to link the minutes to the disposition of the complaint. Ms. Ferguson seconded the motion which passed unanimously.

Agenda Item # 6). Adjourn. Dr. Tapia made a motion to adjourn. Ms. Dawson seconded. It was passed unanimously.