

INDEPENDENT REVIEW PANEL MINUTES

August 23, 2007

LOCATION: 140 West Flagler Street, Conference Room 908
Miami, Florida 33130

PANEL MEMBERS PRESENT

Julia Dawson, Esq., 1st Vice Chairperson
Glen P. Falk, Esq.
Julie C. Ferguson, Esq.
Josefa Velis, Esq.
Michael Band, Esq.
Jean-Robert Lafortune

MEMBERS ABSENT

Jorge Reynardus, Esq., Chairperson
Moiez Tapia, Ph. D., 2nd Vice Chairperson
Doris Shellow

PANEL STAFF PRESENT

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

AUDIENCE: Sgt. Marcel Palau, MDPD Professional Compliance Bureau; Don March, Civilian Investigative Panel (CIP); Grisel Rodriquez, Team Metro; Raul and Yolayne Ponce, Complainants

Agenda Item #1) Call to Order. Julia Dawson called the meeting to order at 2:00 p.m. and asked staff to call roll.

Agenda Item #2) Approval and adoption of the minutes from July 26, 2007. Ms. Dawson commented on the July 26 minutes, page 2, the last paragraph of agenda item 4. She stated that she believes the word “conference” should not have been placed there. Julie Ferguson made a motion to adopt the minutes as revised. Josie Velis seconded the motion and it was passed unanimously.

Agenda Item # 3) Ratification of minutes from May 24, 2007. Ms. Dawson advised that the minutes from May 24, 2007 had to be ratified, due to a lack of quorum at that meeting. Ms. Ferguson moved to ratify the minutes. Michael Band seconded the motion and it was passed unanimously.

Agenda Item #4) IRP Complaint A2006.249 Ponce v. MDPD. Ms. Boersma presented the complaint. She reported that Mr. Ponce’s main issue is the authorization Officer Garcia gave Mr. Valdes, Mr. Ponce’s neighbor, to jump the fence into Mr. Ponce’s yard. Mr. Ponce said that Mr. Valdes had been drinking and doing drugs prior to this incident. Ms. Boersma reported that during the Committee Meeting, Sgt. Palau stated that PCB (Professional Compliance Bureau) supervisors looked at the situation and determined that Officer Garcia believed that Mr. Valdes’ complaint about Mr. Ponce’s barking dog was not going to be resolved until he made

contact with Mr. Ponce; therefore, Officer Garcia allowed Mr. Valdes to enter Mr. Ponce's yard and knock on the Mr. Ponce's doors to wake him up. PCB found Officer Garcia's actions to be acceptable.

Ms. Boersma advised the Panel that MDPD investigated the allegation that Officer Garcia called Mr. Ponce an "Indian" and used an offensive term. MDPD did not investigate Mr. Ponce's allegation that Officer Garcia gave Mr. Valdes permission to enter Mr. Ponce's property illegally or the allegation that Officer Garcia overreacted when he arrested Mr. Ponce for a noise violation.

Mr. Ponce advised the Panel that this incident was a very painful experience for his family and he did not want to repeat the details again. He stated that, following the incident, he and his wife were threatened several times by Mr. Valdes. Mr. Ponce focused on Committee Recommendation #3, that an MDPD work with him and his wife to combat drug activity in the neighborhood. Mr. Ponce stated that everyday around 2 AM there is drug activity on the street and he would like to have a camera installed.

Ms. Dawson asked Sgt. Palau why only one of the three allegations made by Mr. Ponce was investigated. Sgt. Palau responded that he investigated the allegation of discourtesy. The other allegations were reviewed by PCB command staff and they found nothing improper.

Ms. Dawson stated that she was shocked that an officer would give someone permission to go on someone else's fenced property. Sgt. Palau responded that the officer's job is to resolve the dispute and in order to do that; he needed to contact both parties. Officer Garcia did that.

Mr. Band stated that he found Mr. Ponce's arrest more grievous than jumping the fence.

The Panel looked at a map and identified the location of Mr. Ponce's house, Mr. Valdes' apartment and the dog. Mr. Ponce owns three properties, surrounded by one fence. There are two properties between Mr. Ponce's house and Mr. Valdes' apartment.

Discussion of Committee Findings

Allegation 1- Mr. Band moved to adopt the finding as written. Mr. Falk seconded the motion which passed by unanimous vote.

Allegation 2- Ms. Dawson made a suggestion to re-phrase the finding for allegation 2 as follows: A finding of Insufficient Evidence, "as a result of not finding anything that addressed the legality of an officer allowing someone to jump the fence into someone else's property. The officer lacked sound judgment when he allowed a civilian to do police work."

Mr. Band objected to the finding that "the officer lacked sound judgment"

Ms. Ferguson made a motion to revise the finding for allegation 2 so that it reads: "The Panel found nothing that addressed the legality of an officer allowing someone to jump the fence into

someone else's property. Mr. Falk seconded the motion, which passed by a vote of 5-1. Ms. Dawson opposed.

Allegation 3- Mr. Band moved to adopt the finding for allegation 3 as written. Ms. Ferguson seconded. The motion passed by a vote of 4-2. Mr. Falk and Mr. Lafortune opposed.

Discussion of Committee's Other Findings: The committee found that Officer Garcia did not conduct a thorough investigation of Mr. Ponce's concerns and past experiences before arresting Raul Ponce. The Arrest Affidavit documents the arrest at 3:50 AM.; ten minutes after Officer Garcia arrived on the scene. At the time Officer Garcia arrived, the dog was tied at least 100 feet from Mr. Valdes' window, not 10 feet as stated twice by Mr. Valdes in his calls requesting police assistance.

The Panel discussed the Arrest Affidavit which documents a 3:50 AM arrest time. The records reflect the call was dispatched at 3:36 AM, Officer Garcia arrived 3:40 AM and left at 5 AM. Sgt. Palau stated that the arrest time is when the violation happened; when the officer heard the dog barking. Ms. Dawson found Sgt. Palau's response confusing, because the Arrest Affidavit asks for the "arrest time," not violation time. Ms. Ferguson interjected that the issue is: how long did it take the officer to effect the arrest. Sgt. Palau stated that Officer Garcia did several things after he arrived: he had to contact Mr. Ponce, Mr. Valdes had to knock on doors, Officer Garcia had to get ID, go back to his unit, run a records check, prepare the report, etc. 3:50 is the time Officer Garcia was there and heard the dog barking. Ms. Dawson inquired whether 3:50 could be the time that Officer Garcia determined he was going to arrest Mr. Ponce.

Mr. Falk read the following from the Arrest Affidavit, which was signed by Officer Garcia: "The undersigned certifies and swears that he has just and reasonable grounds to believe...the above mentioned Defendant on the 14th day of September 2006, at 3:50 AM committed the following violation of law." Officer Garcia then describes hearing the barking dog plainly audible at 100 feet. Mr. Falk stated there clearly was a violation; however the Officer could have asked Mr. Ponce to take the dog inside instead of arresting him.

Ms. Ferguson made a motion to eliminate other findings. Mr. Falk seconded the motion and it passed by a unanimous vote.

Discussion of Committee Recommendations

1. That MDPD discuss the IRP findings with Officer Humberto Garcia. Mr. Band moved to accept the recommendation. Ms. Ferguson seconded. The motion passed by unanimous vote.
2. That an MDPD Community Resource Officer work with Raul and Yolayne Ponce to combat drug activity in the area. Mr. Band moved to accept recommendation. Mr. Lafortune seconded. The motion passed by unanimous vote.
3. Mr. Lafortune proposed a recommendation that MDPD look at the policy that allows officers to give permission to enter someone's yard. Ms. Dawson proposed the following wording: That MDPD review policies regarding neighborhood disputes and counsel Officer Garcia

regarding using civilians to do police work such as allowing them to enter private property. Mr. Lafortune made the motion to adopt Ms. Dawson's wording. Ms. Velis seconded the motion. Ms. Ferguson suggested removing the part about counseling Officer Garcia. Mr. Lafortune accepted Ms. Ferguson's amendment. The motion passed by a vote of 5-1. Mr. Falk opposed.

4. Ms. Dawson commented that IA investigated only one of Mr. Ponce's three allegations. She proposed a recommendation that IA respond formally in writing to all allegations made by a complainant. Mr. Falk seconded the motion. The motion failed by a vote of 3-3.
5. That the Panel adopt the committee meetings findings and recommendations as amended. Mr. Band moved to accept recommendation. Ms. Ferguson seconded. The motion passed by unanimous vote.
6. That the Panel conclude the complaint. Mr. Band moved to accept recommendation. Mr. Lafortune seconded. The motion passed by unanimous vote.

Agenda Item # 5) Update of Mobile Vendor Ordinance Draft. Ms. Boersma stated that staff received an email response from MDPD Attorney Robert Diers, which included a draft of the revision to the ordinance. Mr. Diers advised that he is reviewing a case (*Sun Sentinel v. Cox*, 702 F. Supp. 891) that may cause further revisions to the ordinance. The draft he provided reads as follows:

(a) Solicitation Upon Streets, Intersections, Medians Separating Intersections, Paved Roadways and other places of Vehicular Travel.

No person shall stand or walk in the streets, intersections, median separating intersections where traffic flows in opposite directions, paved roadways and other places of vehicular traffic whether or not the vehicles are stopped or moving, for the purpose of soliciting funds, collecting of monies, donations or contributions, freely distributing or handing and receiving of anything to the occupant of any motor vehicle.

(b) The intention of the Board of County Commissioners is to use the least restrictive means to advance the significant governmental interest of traffic safety and public safety, and the prohibition is therefore limited to streets, intersections, median separating intersections. Sidewalks are still available the exercise of First Amendment freedoms.

Ms. Dawson inquired whether the Panel wanted to provide feedback to Mr. Diers at this time. She had some grammatical suggestions. Mr. Falk stated that Mr. Diers referenced a federal case that may cause modifications to the current draft, so the Panel may have to wait until it sees what those modifications are. At the same time, the draft doesn't seem to directly address the vendor ordinance, but rather focuses on people who are standing in the roadway selling things. Mr. Falk stated that the Panel's concern with the ordinance was generated by a complaint from a flower vendor who was arrested while on the side of the roadway, and that's not addressed in this ordinance revision.

Michael Band inquired whether firefighters standing in the street and asking for donations for the Jerry Lewis telethon would be in violation of the proposed law.

Julia Dawson asked that Mr. Diers be advised of the following:

- In the first line on page 2, typically you would just say “collecting monies” as opposed to “collecting of monies.”
- The last sentence in that paragraph where it states “sidewalks are still available,” the word “for” should be placed before “the exercises of the First Amendment Freedoms.”
- Streets, intersections, median separating intersections, paved roadways and other places of vehicle trafficking are mentioned, however there is no mention of swales.

Ms. Dawson asked staff to provide Panel members with a copy of MDPD Legal Bulletin 95-4, so the Panel can review it in conjunction with the draft ordinance. Ms. Boersma responded that she would send it via email.

Agenda Item # 7) Executive Director’s Report Ms. Boersma advised that Dr. Diaz was attending a budget workshop of the Health and Public Safety Committee. Directors were required to attend.

Agenda Item # 8) Adjourn Mr. Band made a motion to adjourn. Ms. Ferguson seconded. The motion passed by unanimous vote.