



CITY OF PHILADELPHIA

Police Department
HEADQUARTERS, FRANKLIN SQUARE
PHILADELPHIA, PENNSYLVANIA

JOHN F. TIMONEY
Commissioner

August 9, 2001

VIA U.S. MAIL

Ms. Jane Leslie Dalton, Chairman
Police Advisory Commission
P.O. Box 147
Philadelphia, PA 19105-0147

RE: Matter of Maria Mulero and Michael Feliciano
Police Advisory Commission File Number 94 0054

Dear Ms. Dalton:

The Philadelphia Police Department ("Department") is in receipt of the Police Advisory Commission's ("PAC") opinion regarding the above reference matter. The original PAC complainant, Ms. Maria Mulero, is the mother of Michael Feliciano, who is also a PAC complainant. Both Ms. Mulero and Mr. Feliciano submitted their PAC complaints as victims. Ms. Mulero and Mr. Feliciano alleged physical abuse, abuse of authority, and verbal abuse. PAC's opinion made the following findings:

- 1.) Police Officer Christopher DiPasquale allegedly used unreasonable force during the apprehension of Ms. Mulero in that he was alleged to have forcefully pushed Ms. Mulero into a patrol wagon allegedly caused her to fall onto the floor of the vehicle;
- 2.) Officer DiPasquale allegedly used unreasonable force in that he allegedly punched a handcuffed Mr. Feliciano in the face at the time that his mother, Ms. Mulero, was allegedly thrown into the police wagon;
- 3.) Police Officer Roger Sinick, Police Officer Donna Young, Police Officer George Orth, and Officer DePasquale allegedly lied concerning the arrival time of the patrol car that transported Ms. Mulero and the patrol wagon that transported Mr. Feliciano;
- 4.) Officer Sinick, who was present and allegedly observed the alleged unreasonable use of force by his partner, Officer DiPasquale, allegedly failed through his acts and omissions to protect the welfare, well-being, and rights of Ms. Mulero and Mr. Feliciano;
and

- 5.) Officers Sinick, Young and Orth by their testimony, or alleged lack thereof, and alleged demeanor during the hearing were allegedly dishonest, uncooperative and obstructionist.

Ms. Mulero and Mr. Feliciano identified one officer as the object of their complaints, Officer DiPasquale. Officer DiPasquale was the original target of PAC's inquiry in this case. Officer Sinick, Young, and Orth were initially identified as only possible peripheral witnesses.

In the fall of 1998, Officer DiPasquale shot Donta Dawson. On November 19, 1998, Officer DiPasquale was arrested and charged with Voluntary and Involuntary Manslaughter in connection with the Donta Dawson shooting. As a result of the arrest, on the following day, November 20, 1998, Officer DiPasquale was terminated as a member of the Philadelphia Police Department ("Department"). On the same date, Officer DiPasquale filed a union grievance that contested his termination and seeking reinstatement as a Police Officer. On November 2, 2000, the Arbitration Opinion and Award on the grievance filed by former officer DiPasquale concerning his termination was issued. The grievance was denied upholding the Department's termination, foreclosing former officer DiPasquale's demand for reinstatement.

PAC exonerated former officer Christopher DiPasquale with regard to the allegation that "he unlawfully entered, searched, and seized personal property from Ms. Mulero's garage (the knife).

PAC made the following recommendations with regard to its findings:

- 1.) that if Christopher DiPasquale is ordered reinstated to the Department through arbitration that he be again immediately suspended without pay pending termination for his alleged acts and alleged omissions regarding Ms. Mulero and Mr. Feliciano;
- 2.) that Officer Sinick be suspended without pay for a period of ten (10) days;
- 3.) that Officers Young and Orth be suspended for ten (10) days each for their alleged failure to provide truthful testimony regarding this matter; and
- 4.) that Officer Young, having been found by PAC to have allegedly violated her oath of truthfulness during another hearing (the PAC Matter of Moises DeJesus - 1996), be suspended for an additional ten (10) days for her alleged lack of honesty during the Mulero hearing.

PAC admitted that its findings and recommendation concerning former officer Christopher DiPasquale "are moot" as a result of the Arbitration Opinion and Award rendered on November 2, 2000. The Department declines to accept PAC's recommendations and findings.

The incident underlying Ms. Mulero's and Mr. Feliciano's complaint took place approximately six and a half years ago. On July 28, 1994, at approximately 3:00pm, Lieutenant Clark of the Department's Internal Affairs Division ("IAD") received a complaint filed by Ms. Mulero of 4648 Tampa Street, Philadelphia, Pennsylvania. Upon receipt, I.A.D. investigation file number 94-254 was started. Sergeant Sam Simon of I.A.D. was assigned this investigation. Ms. Mulero alleged that on July 28, 1994, while in the rear of 4648 Tampa Street, she (then forty years old) was physically and verbally abused by Officer DiPasquale. Furthermore, it was alleged that Mr. Feliciano (then fifteen years old) was physically abused by Officer DiPasquale. Ms. Mulero's complaint was filed against Officers DiPasquale and Sinick.

For approximately four months after the incident, I.A.D. investigated this matter to determine the facts in this incident. On November 16, 1994, the facts of this incident were reviewed by Sergeant Simon and Assistant District Attorney Wzorek of the Philadelphia District Attorney's Office. Based upon the facts of this incident, the District Attorney's Office has declined criminal prosecution.

The police officers involved in this incident have repeatedly, consistently, and specifically denied the complainants allegations of wrongdoings. The officers maintain that their actions in this matter were necessary and proper to: (1) effectuate the detention and arrest of Mr. Feliciano on a complaint by a neighbor alleging property damage and threats of physical violence and (2) effectuate the detention and arrest of Ms. Mulero for interfering with her son's arrest.

Mr. Feliciano also alleged that while at the rear of 4648 Tampa Street, after he was placed in the police wagon, Mr. Feliciano heard his mother yelling at the officers and he heard them curse at her. Mr. Feliciano alleged that the wagon doors opened and an officer threw his mother into the wagon and she struck her face on the floor. Mr. Feliciano claimed that he yelled at the officer and he was punched in the face. Mr. Feliciano alleged that he and his mother were then transported to a location on Whitaker Avenue where his mother was taken from the police wagon and placed into a police car. Mr. Feliciano stated that she fell to the ground and an officer kicked her in her back. The police then allegedly closed the doors and he lost sight of his mother.

Mr. Feliciano stated that he was then driven to another location near B & Wyoming Streets near a set of railroad tracks. Mr. Feliciano claims that the officers took him out of the wagon, that he was punched in the face three times, and struck in the ribs with a nightstick. Mr. Feliciano was allegedly then taken into the Twenty-fifth Police District where an officer pushed his head into a wall. Mr. Feliciano stated that the officer who physically abused him was Officer DiPasquale.

Mr. Feliciano's story was discredited because four officers (Officers Orth, Young, Sinick and DiPasquale) stated during the investigation that the police car followed directly behind the police wagon on the way to the Twenty-fifth Police District that day and arrived together.

Officers DiPasquale and Sinick stated that the transfer was made because both Ms. Mulero and Mr. Feliciano, prisoners at the time, were yelling and kicking the doors of the police wagon. Officer DiPasquale requested that a police radio patrol car meet the police wagon at Courtland and Whitaker Streets to transport the female prisoner.

Officers Orth and Young arrived at the police wagon in their police car. Officer Orth stated that he removed Ms. Mulero from the rear of the police wagon at Courtland and Whitaker Streets and placed her in his police car. Officers Orth and Young stated that Ms. Mulero did not fall to the ground or get kicked by any of the officers present. Officers Orth and Young also stated that they followed the police wagon into the Twenty-fifth Police District.

The I.A.D. investigation file number 94-254 was completed on December 13, 1994. It concluded that the allegation of physical abuse and verbal abuse were not sustained. The conclusion stated as follows:

Only the complainants and one of their family members have stated that the officers were verbally and physically abusive. All other witnesses have stated that the officers did not strike the complainants. Some have stated that the officers used restraint in handling this incident. The medical reports indicate injuries that could have occurred during the struggle described by witnesses.

As a result of interviews and a review of available information, PAC questioned the arrival time of police wagon number 2504 at the Twenty-fifth Police District based on the CAD reports, radio transcripts, and the statement of Officer Sinick to PAC on March 24, 1998.

An investigation conducted by William Smith, a PAC investigator, in February and March of 1998 led Mr. Smith to believe that there may be a discrepancy in the time police wagon number 2504 arrived at the Twenty-fifth District. Statements of the officers involved indicated that both police car number 25B and police wagon number 2504 arrived at the district at the same time.

As a result of this alleged confusion, Lieutenant Thomas Fournier of I.A.D. was assigned on May 6, 1998, to conduct a follow up investigation on I.A.D. file number 94-254.

Mr. Smith reviewed the CAD reports for police car number 25B and police wagon number 2504 and believed that the police car left the district five minutes before police wagon number 2504 arrived at the district. This was based on the CAD report that indicated that police car number 25B returned to service at 1931 hours and an entry at 1936 hours on the CAD report for police wagon number 2504 that indicated, "New Location: ARR." Smith believed that ARR meant arrival. In a statement by Officer Sinick to Mr. Smith on March 24, 1998, Officer Sinick said that ARR would be the arrival time at the district and that he would have notified radio when he arrived at the district because he is required to give starting and ending mileage whenever he transports a juvenile.

Corporal Gregory Masi ("Corporal Masi") reviewed the CAD information for DC# 94-25-058422 and patrol wagon number 2504 for July 28, 1994. Lieutenant Fournier interviewed and took the statement of Corporal Masi.

Police Directive #6 states that "ARR" is a disposition code for an arrest, and Corporal Masi confirmed that Radio room personnel use "ARR" to indicate arrest.

A review of the CAD report for DC# 94-25-058422, the original assignment at 4651 Whitaker Avenue which resulted in the arrest of Mulero and Feliciano, indicated that someone made a call to the administrative line at Police Radio and the job was cleared by Payroll #160977 (Tiroto) RTF at 1918 hours. The assignment sheet for July 28, 1994, for the 3:00 p.m. to 11:00 p.m. tour of duty shows that Tiroto was assigned to the Administrative lines.

Corporal Masi reviewed the CAD reports and concluded that the call to the administrative line would have been made by one of the officers from the wagon crew because they would need the DC numbers to process the arrest. Corporal Masi also concluded that the "ARR" entry at 1936 hours could have been made when the dispatcher attempted to call patrol wagon 2504 and someone informed the dispatcher that the wagon was out with an arrest. Unfortunately, this information could not be verified because the radio transcripts for this job ended at 1900 hours and the radio tape were not available.

Officer Sinick originally said that the CAD entry at 1918 was an error because he could not have called radio because he was on the street. However, after further review of the reports, Officer Sinick said that the CAD entry was an error because it showed police wagon number 2504 was available when they were still out of service, but it was correct in that he called the administrative line for the DC numbers to process the arrest.

The patrol log for police car number 25B showed that the officers arrived at the district at 7:05 p.m. However, the CAD report indicated that police car number 25B returned to service at 7:31 p.m. Since the radio tapes were not available, it could not be determined why there was a discrepancy between the log and the CAD report. One possibility was that the radio dispatcher did not return the unit back to service until giving out the next assignment.

Since all involved officers say that the wagon and the car arrived at the district at the same time, it would be logical to assume that they arrived at 7:05 p.m., and, after securing the prisoners, one of the officers from the wagon crew called radio at 7:18 p.m. for the DC number to process the arrest.

There was no additional information obtained during this investigation that would dispute the original finding of not sustained under IAD investigation number 94-254.

The addendum to IAD number 94-254 was concluded on June 15, 1998. The original investigation under IAD number 94-254 concluded that the allegations were not sustained. The addendum did not change that conclusion. The conclusion of the addendum was based on the review of the CAD report for DC number 94-25-058422 and the interviews of Corporal Masi and Officer Sinick.

As a result of Ms. Mulero's and Mr. Feliciano's allegations, the Department did two extensive and thorough I.A.D. investigations. These investigations consisted of extensive interviews, an analysis of a myriad of documents, in depth research, and an analysis of all the information obtained. The I.A.D. investigations were reviewed and approved by the Commanding Officer of I.A.D and the Chief Inspector of the Internal Investigations Bureau. Based on the aforementioned, the Department stands by its I.A.D. investigation into this matter and declines to accept PAC recommendations.

Respectfully yours,

John F. Timoney
Police Commissioner

By:



Daren B. Waite
Special Advisor for the
Police Commissioner

DBW:mm

cc: Honorable John F. Street, Mayor
Joseph Martz, Managing Director
Kenneth I. Trujillo, City Solicitor
Michael Butler, Esq., Commission Legal Counsel
✓ Hector W. Soto, Esq., Commission Executive Director