



# CITY OF PHILADELPHIA

POLICE DEPARTMENT  
HEADQUARTERS, FRANKLIN SQUARE  
PHILADELPHIA, PENNSYLVANIA 19106

JOHN F. TIMONEY  
Commissioner

October 6, 2000

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

RE: Matter of Marvin Hightower  
PAC File Number 980526

Dear Ms. Dalton:

I am in receipt of your letter dated August 31, 2000 regarding the above referenced matter. The Police Advisory Commission's ("PAC") report recommends that: (1) Officer Christian Buckman (incorrectly spelled as "Officer Bushman" in the conclusion of PAC report) be found guilty of improperly using oleoresin capsicum ("O.C." or "pepper") spray and receive a one week suspension; (2) Officer Layton Cornish (incorrectly spelled as "Officer Cornigh" in the conclusion of PAC report) and Officer Hattie Roberson be found guilty of being "not candid in their testimony" and receive oral reprimands; and (3) Sergeant Quinter be found guilty of being "not forthright with the hearing panel" and receive a written reprimand. The Police Department declines to accept PAC's recommendations.

The incident underlying Marvin Hightower's complaint took place over two years ago. The Police Department was not provided with the transcripts from PAC's hearings. The Police Department was only provided with your cover letter dated August 31, 2000 and the Panel Report and Recommendation. The Department can only judge the case by reviewing the aforementioned documents and the Internal Affairs Division investigation.

On March 29, 1998, at 2:25p.m., Lieutenant Alfred Sawa received a complaint letter from PAC on behalf of Mr. Hightower. Upon receipt, the Internal Affairs Division ("IAD") assigned this investigation to Lieutenant Aloysius Martin under File Number 99-158. Mr. Hightower alleged in his complaint that on December 14, 1998, at 11:00a.m., he was physically abused by unknown officers at 1933 McClellam Street, which is in the First Police District.

Mr. Hightower's complaint was received by PAC on December 16, 1998. It is inconceivable why PAC would hold on to and not notify the Philadelphia Police Department for almost three months of an alleged civilian complaint against police for excessive force. This type of dilatory conducts allows for the loss of witness, evidence, memories, and important facts and information needed to properly and adequately resolve cases.

Lieutenant Martin attempted to contact Mr. Hightower by telephone, leaving several messages with his girlfriend and mother, and by several certified letters.

Mr. Hightower, at the time of his arrest on December 14, 1998, identified himself as Aaron Minors. Mr. Hightower's criminal history indicates that he identified himself as Lawrence Johnson at the time of previous arrest. Marvin Hightower also known as Aaron Minors and Lawrence Johnson all have the same Philadelphia Police Identification number – 870742. Since 1999 Mr. Hightower has been wanted since his failure to appear for drug charges.

Under Executive Order Number 8-93, which established PAC, Section 4 (a) provides:

The Commission shall advise the Managing Director and the Police Commissioner on policies and actions of the Police Department with the purpose of improving that ability of police personnel to carry out their duties, and to improve the relationship between the Police Department and the community.

PAC has been given the task of monitoring and improving the relationship between the Philadelphia Police Department and the communities and citizens that the Department was established to serve. Executive Order Number 8-93 specifically states that "it is incumbent upon the government of the City of Philadelphia to ensure that agencies directly responsible for public safety, particularly the Police Department, have the proper support from the government and its various agencies . . ."

The IAD investigative file regarding Mr. Hightower's complaint (file #99-158) specifically stated that "Marvin Hightower is wanted for failure to appear at trial for drug charges." The file also stated that the plaintiff never communicated in any way with the assigned IAD investigator. Mr. Hightower testified before PAC in April of 2000. PAC knew or should have known of Mr. Hightower's wanted status on or before April 2000. Since the IAD investigation was completed in October of 1999 no official employee or agent of PAC called, contacted, or notified anyone in the Police Department at or before Mr. Hightower testified in April of 2000 that he (Mr. Hightower) was going to testify. It is inconceivable why PAC would allow a wanted individual to testify without contacting the Philadelphia Police Department to apprehend him. This should not have happened and nor should it happen again. PAC is an official agency established by the Executive Order by the Mayor of the City of Philadelphia. By allowing an individual known to be wanted to testify before PAC without taking any action, PAC did not improve the relationship between the Police Department and the community, did not provide proper support for the Police Department, did not give respect to the Court system, and destroyed the confidence and faith of the citizenry of the City of Philadelphia in its government, officials, and employees. PAC should not act in an outrageous manner nor tolerate, encourage or support people who refuse to be held accountable for their actions.

According to Ms. Tasha Mine's statement, on Monday, December 14, 1998, in the morning, she was at her residence at 1933 McClellan Street, Philadelphia, Pennsylvania. Ms. Mines had broken up with her ex-boyfriend, Mr. Hightower, a few days earlier and had told him not to come over to her home. At approximately 12:00p.m., Mr. Hightower entered the building through the second floor rear window. He did not have a key. Ms. Mines heard someone coming down her stairs from the second floor, went to see who it was, and found Mr. Hightower. Ms. Mines was angry. She repeatedly asked Mr. Hightower to leave. He did not leave. Ms. Mines called the police and informed the police that Mr. Hightower must have entered in through the second floor window, that Mr. Hightower entered her residence without her permission, and that she wanted him to leave.

Officers Hattie Roberson and Layton Cornish stated that they were on duty in the First Police District in separate police vehicles. They received a radio call about a "disturbance at 1933 McClellan Street." Upon their arrival, they were met by Ms. Mines and were informed of the incident. Ms. Mines told the officers that she wanted Mr. Hightower out of her home, that Mr. Hightower entered her house without her permission, and that Mr. Hightower had no legal right to be there.

After Officer Roberson spoke with Mr. Hightower and he (Mr. Hightower) agreed to leave the house. The officers started to escort Mr. Hightower out of the house. When Mr. Hightower reached the front door, he turned around, pushed both Officers, and tried to force his way back into the doorway of Ms. Mines' home. The officers tried to prevent Mr. Hightower from re-entering the house. During this struggle, both officers used their arms and body to prevent Mr. Hightower from re-entering the house. Mr. Hightower pushed his way back into the house and began swinging his arms and fighting with the officers. The officers forced Mr. Hightower to the floor. Mr. Hightower was violent and resisting the officers. Ms. Mines witnessed the struggle of the male and female officer trying to handcuff Mr. Hightower.

Officers Roberson and Cornish could not control Mr. Hightower by placing his hands behind his back. Officer Roberson told Mr. Hightower several times to cooperate, Mr. Hightower refused to obey her order, and she called for help over Police Radio. Officer Roberson said the struggle with Mr. Hightower continued for a couple of minutes before backup arrived on the scene.

During the struggle Mr. Hightower scratched Officer Cornish's face and left hand. Officer Roberson and Cornish were exhausted when backup arrived. They believed the force used was necessary to overcome the resistance by Mr. Hightower.

Police Officer Christian of the Seventeenth Police District responded to an "assist officer" call at "1933 McClellan Street". Upon Officer Buckman's arrival he observed Mr. Hightower aggressively resisting Police Officers who were attempting to detain him. Mr. Hightower was struggling, was not handcuffed and was not under control. Mr. Hightower was swinging his arms and trying to break free from the officers. Officer Buckman also tried to restrain Mr. Hightower who continued struggling and resisting efforts to be handcuffed. After several verbal warnings to stop resisting and struggling, Officer Buckman used his O.C. spray to subdue and get control of Mr. Hightower. Officer Buckman sprayed Mr. Hightower in the face at close range.

After the use of O.C. spray, the officers were able to place Mr. Hightower in handcuffs. Mr. Hightower was transported to St. Agnes Hospital for first aid treatment from exposure to O.C. spray immediately after being placed in handcuffs. After treatment, Mr. Hightower was transported to South Detective Division for processing.

After use of the O.C. Spray Officer Roberson instructed Ms. Mines to take her two children outside of the house because the home became filled with O.C. spray. Ms. Mines did not take her children outside and stayed inside the house. Officers Roberson and Cornish were very tired and subsequently left the house to get fresh air.

Sergeant Theresa Quinter also responded to the assist officer radio call for this incident. Sergeant Quinter observed Officers Cornish and Roberson exiting the house wiping their eyes. She also smelled O.C. spray in the air on the scene. Sergeant Quinter observed officers from other patrol districts on the scene.

PAC explicitly discredited all of the officers' reports of what occurred during the incident. PAC stated that "all of the officers lied about what happened." PAC attempts to substantiate its vast allegation by stating that "[n]one of the officers except Officer Buckman admitted to seeing any cut or laceration on Hightower and by stating "[n]o police officer other than Officer Buckman admitted to observing the spraying of the mace." PAC discredits all of the officers despite the fact that PAC was in possession of: (1) the Incident Report filled out right at the incident by Officer Buckman; (2) the Investigation Report prepared by Detective Thomas Fleming; (3) the O.C. Spray Usage Report prepared by Officer Buckman the night of the incident; (4) the Arrest Photograph of Mr. Hightower (a.k.a. Aaron Minors and Lawrence Johnson); and (5) the Internal Affairs Division Investigation Report for this case.

The Incident Report documents Mr. Hightower's intense struggling during the incident, that O.C. spray was used, and that Mr. Hightower was subsequently transported to the hospital. The significance of the Incident Report is not discussed or mentioned in PAC's decision.

The Investigation Report contains the interviews of Ms. Mines, Officer Cornish, and Officer Buckman. It details the circumstances surrounding Ms. Mines calling the police because she wanted Mr. Hightower out of her house, describes the extensive struggle between the officers and Mr. Hightower, the use of the O.C. spray, and the fact that Mr. Hightower refused to give an interview. The significance of the Investigation Report was not discussed or mentioned in PAC's decision.

The O.C. Spray Usage Report describes the incident: that Mr. Hightower was hostile and offered strong resistance, that Mr. Hightower was injured during the struggle; blood was seen on Mr. Hightower; and the use of the O.C. spray was necessary to prevent additional injury to officers and Mr. Hightower. It is a form that is required to be prepared whenever O.C. spray is used. The significance of the O.C. Spray Usage Report was not discussed or mentioned in PAC's decision.

The Arrest Photograph of Mr. Hightower clearly shows a facial laceration that is consistent with the struggle described by the officers. In fact, PAC admitted that Mr. Hightower “did sustain a facial laceration, which is consistent with being injured while on the floor and being handcuffed.” In spite of this admission, PAC blames the officers who arrived on the scene for causing Mr. Hightower laceration. The Arrest Photograph is not discussed or mentioned in PAC decision.

The Internal Affairs Division Investigation Report contains thirteen specific, in-depth interviews concerning this incident, over eleven separate documents, and gives a detailed analysis of the complete incident. The documents show Mr. Hightower had facial injuries at the scene, provides multiple witnesses to demonstrate O.C. spray was used at the scene, and explains why the O.C. was needed and used in this matter. The significance of the Internal Affairs Division Investigation Report was not discussed or mentioned in PAC’s decision. The omission of all of these important documents belies the question whether PAC was intent on a particular finding regardless of the available facts.

Furthermore, the broad allegations made by PAC are irrelevant, immaterial, misleading, and false. No officer denied that Mr. Hightower had any injury as a result of the struggle. No officer denied that O.C. spray was used. No officer denied that there was a vigorous struggle to detain, control, and handcuff Mr. Hightower. These acts were admitted. PAC is attempting to make issues out of events which clearly occurred. PAC’s allegations do not raise and deal with the key questions – whether the officers’ actions were justified and whether the officers’ actions violated Police Department policy or procedures.

A more troubling conclusion by PAC is the baseless statement that Officer Buckman’s use of the O.C. spray was “in violation of Departmental policy, “that the situation did not warrant the use of mace”, and that “Officer Buckman acted with unnecessary force and without taking time to consider all of the circumstances.” There is no support for these allegations.

PAC never discussed or explained the relevant Departmental policy in its decision.

Philadelphia Police Directive 43 provides in relevant ---- the following:

**SUBJECT: PEPPER SPRAY – OLEORESIN CAPSIUM (O.C.) SPRAY**

**I. POLICY**

A. The use of O.C. Spray constitutes a “police use of force”. Police personnel are justified in the use of O.C. Spray, a less-than-lethal weapon, when they reasonably believe it to be necessary:

1. To defend themselves or another from bodily injury.

2. To safely subdue an individual who is actively resisting an officer's effort to arrest or take him/her into custody, when successful apprehension would require the officer to increase the level of necessary force (beyond just verbalization and escort/control holds) in order to safely arrest or take the individual into custody . . .
- B. In all cases, the officer's actions must be based solely in response to the actions of the subjects (s), along with the attending facts and circumstances, which would cause the officer to reasonably believe he/she has placed in fear of imminent bodily injury in carrying out those police action . . .

PAC also never provided any support to its baseless conclusion. It totally ignored all of the aforementioned investigation, interviews, and documents. Officers Roberson, Cornish and Buckman were attempting to arrest Mr. Hightower after he unlawfully entered the property at 1933 McClellan Street. Mr. Hightower purposely resisted the officer's efforts to arrest him causing the officers to increase the level of force to complete a lawful arrest. The officers continually ordered Mr. Hightower to stop resisting and he refused, thereby escalating the necessary level of force.

Officer Roberson and Cornish specifically stated that they were exhausted from the struggle with Mr. Hightower when back up officers arrived on the scene. Mr. Hightower's actions caused the officers to reasonably believe they were placed in fear of imminent bodily injury while trying to make a lawful arrest. The use of O.C. spray by Officer Buckman helped gain control over Mr. Hightower and prevented this incident from resulting in serious bodily injury. The officers involved in this arrest used the force that was necessary and reasonable to overcome Mr. Hightower's resistance. The officers' actions were clearly justified and fell within Departmental policy.

PAC also concluded that "Officers Cornish and Roberson were not candid in their testimony" because if Mr. Hightower was as violent as described by Officer Buckman, they would not have left the room to go outside." PAC "believes" Officers Cornish and Roberson were protecting Officer Buckman for some unknown reason. PAC offers no evidence – via testimony or document to support its allegations. In fact the documents and witnesses directly conflict with PAC's baseless conclusions. Sergeant Quinter stated that when she arrived at the scene she observed Officers Cornish and Roberson exiting the house wiping their eyes. This is consistent with the accounts by all those interviewed about this incident.

Furthermore, there is no motivation for Officers Cornish and Buckman to protect Officer Buckman. Officer Buckman was from the 17<sup>th</sup> Police District and Officers Cornish and Roberson were from the First Police District. Moreover, Officer Buckman filled in and filed all of the required documents – the Incident Report and the O.C. Spray Usage Report. These documents were read and reviewed by his supervisors. Officer Buckman also gave detailed interviews regarding the incident to both Detective Fleming and IAD. He needed no one to protect him with regard to this incident.

Finally, PAC concluded that Sergeant Quinter was not forthright with the hearing panel because Sergeant Quinter allegedly stated that "Ms. Mines was making more of a scene than Hightower" and because Sergeant Quinter did not observe the abrasion on his face, even though he was taken directly to the hospital from the scene of the arrest. These allegations are baseless and unsubstantiated. PAC has no evidence of any kind to support these allegations. It is unfair to accuse an officer of not being forthright especially without any evidence or proof to substantiate such accusation.

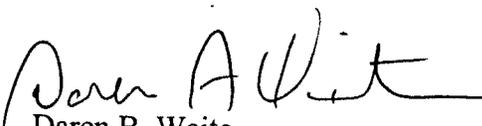
The Police Department has and would be willing to use PAC recommendations, even if it disagreed with its conclusions, as material for developing training and minimizing misunderstanding. The Police Department is not prepared to do so in the instant case. For the reasons outlined above, the Police Department can not ratify the findings and conclusions reportedly by PAC.

If you have any additional information not already in the Police Department's possession, I would ask that you make it available.

Respectfully submitted,

John F. Timoney  
Police Commissioner

By:



Daren B. Waite

Special Advisor to the Commissioner

DBW/ps

cc: Joseph Martz, Managing Director  
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