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| IN RE: ROSETTA NICHOLS, | : | CITY OF PHILADELPHIA |
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| Complainant, | : | POLICE ADVISORY COMMISSION |
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| On behalf of Jamel Nichols, her son. | : | COMPLAINT NO. 000697 |

Before Commission Members Jane Leslie Dalton,
Anthony Holloway, Ronald Burton & Joseph Stapleton
Counsel: Jeanette Melendez Bead, Esquire

OPINION OF THE COMMISSION

I. INTRODUCTION

On January 21, 2000, Rosetta Nichols filed a complaint with the Police Advisory Commission (the "Commission") on behalf of her son, Jamel Nichols. In the Complaint, Ms. Nichols alleged that certain members of the Philadelphia Police Department had physically abused her son during his arrest on January 10, 2000.

On April 3, 2001, the four-member hearing panel (the "panel") heard the sworn testimony of the complainant, Rosetta Nichols, her son, Jamel Nichols, and six civilian witnesses: Aleshia Thomas, Attiya Ross, Omar Hammond, Barbara Johnson Turner, Stephan McWhorter and Rosheena Nichols. The panel heard the sworn testimony of police officers John Doyle, Christian Buckman and John Cawley and Sergeants James Gilrain and William Gallagher on April 5, 2001. On May 1, 2001, the panel heard the sworn testimony of Officers Francis J. Kelly, Danielle Ellis (formerly, Coleman), James McCrorey, James Hall and Donna Zampirri.

This Opinion constitutes the Commission's disposition of the complaint following the Commission's review of the report and recommendation of the panel.

II. SUMMARY OF FINDINGS

Mrs. Nichols' complaint alleged that her son had been physically abused. Specifically, Mrs. Nichols alleged that three Philadelphia police officers handcuffed her son and beat him "20 times" on each of his legs and on his back and neck. During the course of the hearings, various witnesses, including Jamel Nichols¹, testified that Mr. Nichols had been repeatedly kicked in the head *after* Mr. Nichols was arrested and handcuffed. Mr. Nichols also testified that he had been sprayed with mace even though he had already been apprehended and posed no immediate threat to the police officers at the scene of the arrest. Because these specific allegations of abuse fall within Mrs. Nichols' general claim of physical abuse, the Commission has made specific findings concerning these various allegations of abuse. The Commission's findings are as follows:

(1) During Mr. Nichols' arrest on January 10, 2000, Police Officer John Doyle (badge #6176) used O.C. spray in an apparent attempt to subdue Mr. Nichols. The Commission finds that there is insufficient evidence to support a finding that Officer Doyle's use of OC spray during Mr. Nichols' arrest was improper under Directive 43, which describes the Police Department's guidelines for the use of Oleoresin Capsicum (O.C.) spray.

(2) After Mr. Nichols was handcuffed, the arresting officers kicked Mr. Nichols in the head, neck and other areas of his body. The Commission finds that the officers involved in Mr. Nichols' arrest used unnecessary force during his arrest.

¹ Mr. Nichols testified at the Criminal Justice Center after transport from Albion Correctional Facility.

(3) Officer Christian Buckman's use of the baton during Mr. Nichols' arrest violated Department guidelines concerning the appropriate use of force to control an aggressively resisting subject.

III. SUMMARY OF INCIDENT

On January 10, 2000, at approximately 9:30 a.m., Jamel Nichols, accompanied by his fiancée, Attiya Ross, his son, Jamal Zachary Ross Nichols (“Zachary”), and Ms. Ross’ brother, Omar Hammond, drove from West Philadelphia to 24th and Kimball Streets in a 1987 red Honda Prelude. The occupants of the car were traveling to the home of Zachary’s babysitter located at 24th and Kimball Streets.

Before the occupants of the car arrived at 24th and Kimball Streets, they noticed at least one patrol car from the 17th District that appeared to be following them. At 24th and Kimball Streets, Ms. Ross, Mr. Hammond and Zachary exited the vehicle. According to Ms. Ross, she escorted her son to the entrance of the day care center; thereafter, an employee of the day care center stood outside the entrance of the center and escorted Zachary into the day care center.

What happened next is unclear. According to Mr. Nichols’ and Ms. Ross’ testimony, after Ms. Ross, Mr. Hammond and Zachary exited the vehicle, Mr. Nichols drove to the corner of 24th and Kimball to park. According to Mr. Nichols and Ms. Ross, the police officer who had begun to follow the Honda Prelude on Carpenter Street, cut Mr. Nichols off as he was attempting to park the car, exited the patrol car, aimed a gun at Mr. Nichols and told Mr. Nichols to “put [his] fucking hands in the air.”² Ms. Ross and Mr. Nichols gave conflicting testimony concerning whether Mr. Nichols immediately

² Ms. Ross testified that the police officer told Mr. Nichols to freeze.

raised his hand to surrender or whether Mr. Nichols' hands were on the steering wheel at all times. Both Mr. Nichols and Ms. Ross testified that the police officer in question did not turn his patrol car lights on or indicate why Mr. Nichols had been detained.

According to police officer John Cawley — the police officer who first interacted with Mr. Nichols on January 10, 2000 — he first noticed Mr. Nichols in the Honda Prelude on a routine patrol in the area of Grays Ferry Avenue. Officer Cawley testified that he had recognized Mr. Nichols and believed that Mr. Nichols had several outstanding bench warrants. Officer Cawley used the Mobile Data Terminal (MDT) in his vehicle to check the status of the registration tags for the car Mr. Nichols was driving; Officer Cawley testified that the MDT search determined that the car had been reported stolen.³ Officer Cawley proceeded to follow the Honda Prelude to 24th & Kimball Streets. Consistent with Ms. Ross' and Mr. Nichols' testimony, Officer Cawley testified that at that location, a young child, black female and black male exited the car; Mr. Nichols continued driving to the end of the block. According to Officer Cawley, he turned the patrol car dome lights on, exited the patrol car, walked to the driver's side of the vehicle and asked Mr. Nichols to step out of the car. At the Panel hearing, Officer Cawley denied that he had aimed a gun at Mr. Nichols; further, Officer Cawley did not recall that Ms. Ross was near the vehicle when he approached it. Both Mr. Nichols and Officer Cawley agree that at that point, Mr. Nichols sped off in his vehicle with Officer Cawley and other officers in the 17th District in pursuit of Mr. Nichols.

³ Mr. Nichols testified that he had purchased the vehicle at an auction and had not yet received registration tags.

During the pursuit, Mr. Nichols' car crashed into an occupied, parked vehicle at 21st & Christian Streets. The owner of the car was Aleshia Thomas. Ms. Thomas testified that her car was badly damaged by the crash. According to Ms. Thomas, after the impact, Mr. Nichols got out of the car and ran. She stated that his face was "red and shiny," but she could not recall if Mr. Nichols was actively bleeding. On the other hand, Ms. Ross testified that after she arrived at the scene of the accident, she "saw the windshield. It looked like it had a head print in it. I saw blood and stuff. Everything was crashed up." Ms. Ross testified that Mr. Nichols was not at the scene when she arrived, but she knew he could not have been alright because "[I]t was a lot of blood on there." Omar Hammond, the other occupant of Mr. Nichols' car, testified that when he arrived at the scene of the accident, he noticed blood by the wheel of the Honda Prelude and on top of the speedometer; Mr. Hammond testified that he did not see a lot of blood; just enough to notice. The photographs of the accident scene were made available to the Commission from various sources, including Aleshia Thomas and Officer Cawley.⁴

After the crash, several officers, including Officer John Doyle, pursued Mr. Nichols, who fled the scene of the accident on foot. According to Officer Doyle, he apprehended Mr. Nichols on the 1900 block of Catherine Street by tackling him to the ground. Mr. Nichols claims that he surrendered by dropping to his knees and putting his hands in the air. Officers Doyle, Cawley and Christian Buckman testified that Mr. Nichols resisted their attempts to place him under arrest. At this point, according to the officers, Mr. Nichols was kicking wildly. Officer Doyle testified that he determined to use

⁴ Officer Cawley testified that after Mr. Nichols' arrest, he returned to the accident scene to take photographs because he thought it would be in his best interest to do so given that the crowd at the scene of Mr. Nichols' arrest had been screaming and yelling at the officers.

O.C. spray to subdue Mr. Nichols. When asked in what context he determined to use the O.C. spray on Mr. Nichols, Officer Doyle replied,

A: When I thought he was going to still be able to get up and get away.

Q: So, at the time you used the OC spray, Mr. Nichols was still trying to flee?

A: Yes.

Officer Doyle further testified that he could see Mr. Nichols' hands so he felt safe; Officer Doyle simply wanted to stop Mr. Nichols from resisting.⁵ Officer Doyle testified that Mr. Nichols was on all fours and his face was facing to the side; Officer Doyle testified that he had to reach around Mr. Nichols in order to use the OC spray. Mr. Nichols claims that he was flipped over from his position lying face down on the ground and then was sprayed with mace.

Officer Buckman testified that when he exited the vehicle, Mr. Nichols was on his hands and knees and Officers Doyle and Cawley were "with him" around his head area. Officer Buckman admitted that he struck Mr. Nichols several times (5-6) with his baton to subdue him. Officer Cawley testified that he had not witnessed Officer Buckman strike Mr. Nichols with a baton because, at that point, Officer Cawley was on top of Mr. Nichols trying to get him handcuffed. The Officers testified that they were able to subdue Mr. Nichols and handcuff him. Once he was handcuffed, Mr. Nichols was lifted from the ground, placed in a police wagon and taken to Graduate Hospital for treatment. Officer Cawley testified that the entire struggle with Mr. Nichols lasted approximately 30 seconds.

⁵ In his testimony to the Panel, Officer Doyle stated that after he and Mr. Nichols had fallen to the ground, Mr. Nichols "tried to get up, was pulling away swinging his arms and at one point he grabbed my shirt." Statement of Officer John Doyle, dated April 28, 2000.

The panel also heard the testimony of several civilian witnesses. For purposes of its analysis of this matter, however, the Commission determined that it would rely heavily on the testimony of Stephan McWhorter and Barbara Turner, two area residents with no connection to Mr. Nichols. Ms. Turner is a former Temple University Security Officer. She testified that on the morning of Mr. Nichols' arrest, her son told her to look out the window. According to Ms. Turner, she looked out the third floor window of her home at 1912 Catherine Street and saw four white police officers repeatedly kicking a black male in the head. She testified further that the young man was handcuffed, was lying on the ground and was not struggling. Ms. Turner did not recognize the male. Ms. Turner described the scene as follows: "What upset me was the blood, the blood was just everywhere. And they were just constantly kicking. The more the young fellow bled, the more they were kicking." Ms. Turner stated that some of her neighbors were watching the incident as they stood on the sidewalk. Following the incident, Ms. Turner went to Graduate Hospital to make sure that Mr. Nichols had been treated for his injuries.

Stephan McWhorter also testified about the incident. Mr. McWhorter lives on the 1900 block of Catherine Street and is employed as a barber. According to Mr. McWhorter, he was in his kitchen the morning of the incident when he heard someone exclaim, "You're going to kill him, you're going to kill him!" Mr. McWhorter testified that he went to his bay window, which faces 19th and Catherine Streets, and saw several police officers repeatedly kicking a young black male in the head. According to Mr. McWhorter, Mr. Nichols was handcuffed and was not moving. Mr. McWhorter left his apartment and came outside to watch what was occurring. Mr. McWhorter testified that

at some point during the incident an officer — who later identified himself as "Buckman" — arrived at the scene, put his gloves on and began to strike Mr. Nichols' legs with his baton. Mr. McWhorter testified that he saw a female police officer also play a role in Mr. Nichols' arrest. According to Mr. McWhorter, the Hispanic female police officer repeatedly kicked Mr. Nichols in the head and struck him with her baton. Mr. McWhorter testified that he saw three officers at the scene — Officers Buckman and Doyle and the unidentified Hispanic female officer (who, according to Mr. McWhorter originally appeared to be of European descent).⁶

Mr. McWhorter testified further that the residents in the area were screaming at the officers and asked for the officers' names and badge numbers. Mr. McWhorter testified that one officer who appeared to be "in a rage" yelled back at the crowd, "My name is Buckman." Mr. McWhorter testified that Officer Buckman and at least one other officer walked towards the crowd of 15-20 people as if they were going to confront the crowd. Mr. McWhorter testified that after the incident, Mr. McWhorter went up to an officer who appeared to be a supervisor and asked the officer why Mr. Nichols had been beaten in that way. According to Mr. McWhorter, the officer told him that Mr. Nichols had been wanted for murder.

Following the incident, Mr. McWhorter contacted The Philadelphia Tribune. The Philadelphia Tribune published a story about the incident in which Mr. McWhorter and

⁶ Mr. McWhorter testified that since the incident, he has seen the female officer in the neighborhood several times. Mr. McWhorter later identified to the Panel the female officer who he believed had been involved in the incident as "Officer Donna Zampirri." Officer Zampirri testified, however, that her tour of duty on the day in question did not begin until 4:00 p.m. and that she was nowhere near the scene of the incident. The Commission finds that Ms. Zampirri's testimony is credible and that there is insufficient evidence to place her at the scene of the arrest.

other area residents were interviewed.⁷ Several residents also provided statements to IAD, including Yvette Kinney, who stated that she saw three police officers — one female, two male — strike Mr. Nichols on his head and legs with nightsticks. In her IAD statement, Ms. Kinney stated that "Officer Buckman identified his badge number and asked, 'Do you niggers want some of this too.'" Officer Buckman admitted that he yelled out his name and badge number in response to a male in the crowd who was yelling for Officer Buckman's name and badge number. Officer Buckman denied that he had cursed at anyone during the incident. Following the incident, residents organized a march to protest what they considered to be police abuse.

The Commission reviewed over 40 pages of medical records relating to Mr. Nichols' injuries relating to this incident. Those records indicate that Mr. Nichols sustained various injuries on January 10, 2000, including a large laceration on his forehead. The medical records reflect that Mr. Nichols had a large abrasion and multiple lacerations on his forehead and medical personnel noted glass fragments on his forehead. The medical records also indicate that Mr. Nichols was diagnosed as having left lower extremity lacerations, facial lacerations, renal contusions and "L4 fx pars fx," which means that the lumbar area of Mr. Nichols' spine was fractured.

IV. FINDINGS AND RECOMMENDATIONS

⁷ One of the residents — David Wells — provided a statement to IAD. In that statement, Mr. Wells stated that he saw Mr. Nichols lying on the ground in handcuffs. According to Mr. Wells, two police officers repeatedly kicked Mr. Nichols in his head and on his back and another officer repeatedly struck Mr. Nichols' legs. Mr. Wells told IAD that the incident lasted anywhere from 10 to 15 minutes. He recalled that he had been yelling at the police officers to stop when several police officers came to his front door and asked, "Do you want some of this?" Mr. Wells was not available for the PAC hearing. Prior to the hearing, the Commission was advised that Mr. Wells had passed away.

This incident is a difficult one to assess. First, the incident began with a fleeing suspect, who, after being involved in a car accident, was severely injured. At first blush, the facts of this case appear to be a clear-cut example of excessive use of force. The Commission's findings, however, are not so simplistic. First, the Commission recognizes that Mr. Nichols was involved in a car accident prior to his arrest, and thus some or all of his injuries could have been caused by that accident. Second, the Commission acknowledges that the apparent hostility of the crowd at the scene of the incident could have been fueled by the physical manifestation of the injuries Mr. Nichols sustained during the car accident. Thus, the Commission's findings are tempered by the recognition that some of the witnesses may have perceived a level of physical abuse that had not actually occurred.

It is important to note that although the Commission has found that the arresting officers acted improperly in certain respects, the Commission believes that there is insufficient evidence to show that the arresting officers acted improperly in attempting to detain Mr. Nichols at 24th and Kimball Streets or in pursuing him once he fled the scene at 24th and Kimball or the scene of the car accident at 21st and Christian Streets. Additionally, the Commission is particularly troubled by the effect of the incident on Aleshia Thomas, an innocent bystander who was injured when Mr. Nichols' car crashed into her car. The Commission appreciates Ms. Thomas' willingness to testify before the Commission, and does not wish to trivialize the effect of this incident on her physical health and livelihood.

The Commission finds as follows:

(1) **There is insufficient evidence to support a finding that Officer Doyle's use of O.C. spray to subdue Mr. Nichols was inappropriate.** Directive 43 of the Philadelphia Police Department states that the use of O.C. spray is justified when used "[t]o safely subdue an individual who is actively resisting an officer's efforts to arrest or take him/her in 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." Officer Doyle's use of the O.C. spray appears consistent with Directive 43. Officer Doyle was the first individual to come into contact with Mr. Nichols at the scene of the incident. It is certainly possible that Mr. Nichols was resisting at that time, given that he had enough strength to flee the scene of a seemingly jarring car accident. Officer Doyle testified that he used the O.C. spray because Mr. Nichols was actively resisting Officer Doyle's attempts to subdue him. Although Mr. Nichols alleges that he was already handcuffed when he was sprayed with mace, the Commission finds that there is insufficient evidence to credit either version of the events. Therefore, there is no evidence to support the allegation that Officer Doyle's use of O.C. spray was improper.

(2) **Officer Buckman's use of the baton to repeatedly strike Mr. Nichols' legs violated Directive 22.** Officer Buckman admitted that he struck Mr. Nichols several times in the legs in order to subdue him. Thus, the only issue is whether Officer Buckman's use of the baton was proper under the circumstances. Directive 22 provides that a baton "may be used to control an aggressively resisting subject." Directive 22 also states that "[b]efore resorting to a baton strike, the officer should attempt alternate forms of control, such as physical presence, verbal persuasion/warnings, hands-on

techniques/control holds, OC pepper spray, the assistance of other officers, and/or handcuffs." The Commission finds that Officer Buckman violated Directive 22 in two respects. First, Officer Buckman testified that he struck Mr. Nichols *after he had successfully restrained Mr. Nichols' legs*. Given that admission, Officer Buckman's decision to escalate the use of force by striking Mr. Nichols with a baton was unwarranted and violated Directive 22. Second, Officer Buckman testified that when he struck Mr. Nichols' legs, he did not know that Mr. Nichols' had already been sprayed with O.C. spray. The Commission believes that Officer Buckman did not appropriately assess the situation to determine whether O.C. spray was the next appropriate level of force to be used to subdue Mr. Nichols. The Commission believes Officer Buckman exited his vehicle and began to strike Mr. Nichols. Officer Buckman testified that Mr. Nichols was swinging his arms and legs and kicking the officers, but Officer Buckman also testified that Mr. Nichols was on his hands and knees when he arrived on the scene, and that Officers Cawley and Doyle were "at Mr. Nichols' head area."

The Commission cannot credit Officer Buckman's testimony for at least three reasons: First, Officer Buckman's testimony that Mr. Nichols was actively resisting and kicking the officers seems physically impossible in light of Mr. Nichols' position as Officer Buckman described it. Second, Officer Buckman's testimony concerning Mr. Nichols' position is inconsistent with the injuries Mr. Nichols sustained on his shin. Third, the Commission does not believe that the use of a baton would have been necessary to subdue a suspect who had been in an accident that, according to Officer Doyle, caused him significant injury, especially where, as here, there were three officers attempting to

subdue him. For these reasons, the Commission finds that Officer Buckman's use of the baton to subdue Mr. Nichols was improper.

(3) **The arresting officers (Officers John Doyle, John Cawley and Christian Buckman) used excessive force during Mr. Nichols' arrest.** The most troubling aspect of this incident concerns the allegation that Mr. Nichols was kicked in his head and other areas of his body *after* he had been handcuffed. The Commission finds that there is sufficient evidence to support this allegation, and thus it is sustained. The Commission's findings are based on the following facts and credibility determinations: First, Mr. Nichols's injuries, specifically, the renal contusion and lumbar injuries, suggest that he sustained injuries at the scene of his arrest in addition to the injuries he sustained at the scene of the car accident. These injuries appear to be consistent with the testimony concerning repeated baton blows to the body. Second, the Commission believes that the eyewitness accounts of what occurred are consistent with the time frame of the incident. The Commission cannot credit Officer Doyle's account that Mr. Nichols was subdued in 30 seconds. Indeed, according to the Officers' testimony, Officer Buckman arrived later in time, and Officers Doyle and Cawley were still attempting to subdue Mr. Nichols. Moreover, a number of witnesses testified at the hearing and gave statements to IAD concerning their whereabouts during the incident. Mr. McWhorter and Mr. Wells stated that the incident lasted at least 10-15 minutes. Mr. McWhorter saw the incident from his second floor window and came downstairs to the sidewalk to continue witnessing the incident. Yvette Kinney also told IAD that she heard the commotion, got dressed and came outside to witness the incident. The Commission believes that it would not have taken Officers Buckman, Cawley and Doyle 10-15

minutes to subdue Mr. Nichols. Based on the testimony of the witnesses at the scene, whatever occurred at the scene happened over a longer period of time than 30 seconds and more likely occurred in a ten-minute span of time.

Most significantly, the Commission credits the testimony of Barbara Turner, a disinterested witness and former Temple Security Officer, who testified that Mr. Nichols was repeatedly kicked in his head and was handcuffed and lying still at the time. In the Commission's view, Ms. Turner's testimony was the most credible testimony received by the Panel. Moreover, the Commission believes it is significant that the Officers in question described a struggle with Mr. Nichols, while the eyewitnesses all described specifically that Mr. Nichols was kicked in the head and other areas of his body during the incident.

This incident did not go unnoticed by the public and the media. Several witnesses to the incident contacted the media and there were several protests against the Police Department as a result of this incident. The Commission recognizes that some of the injuries Mr. Nichols sustained – specifically the large laceration on his forehead – likely resulted from the impact of his head hitting the windshield during the car accident, and that Mr. Nichols injuries from the arrest likely appeared more significant given his pre-existing injuries. Nevertheless, the Commission believes that the eyewitnesses to this incident were provoked by fear that Mr. Nichols was being severely harmed by the officer's actions that morning and that this fear was warranted. It is important to note that several witnesses not only came forward, but also filed complaints with the Police Department.

Based on these findings, the Commission recommends a 10-day, no pay suspension for Officers John Cawley and John Doyle, and a 20-day, no pay suspension for Christian Buckman.⁸ The Commission further recommends that Officer Buckman receive training on the use of a baton in accordance with Directive 22, and that all of the Officers receive training on the force continuum and techniques for subduing resisting subjects.

V. CLOSING

This Opinion represents the final disposition of the Police Advisory Commission concerning the complaint of Rosetta Nichols o/b/o her son Jamal Nichols, Commission Complaint No. 000697. The Commission endorsed the findings and recommendations as set forth in this Opinion during its regular monthly meeting held on January 10, 2002.

Pursuant to the Commission's Executive Order and established procedures, this Opinion is hand-delivered to the Mayor, the Police Commissioner and the City Managing Director. The Opinion will also be mailed to the Complainant on the same date it is delivered to the Mayor, et al. Also pursuant to the Executive Order, the Police Commissioner has 30 days from the date of delivery of the Opinion to respond to the Commission's findings and recommendations. The Opinion becomes a public document three working days after its delivery to Mayor and the other city officials.

⁸ The Commission notes that Officer Buckman was a target officer in another matter, In Re Marvin Hightower. In that matter, Marvin Hightower alleged that he had been repeatedly beaten in the head and kicked by police officers during his arrest on December 14, 1998. Officer Buckman was one of the arresting officers. In the Commission's Opinion in the matter, the Commission concluded that Officer Buckman had violated departmental policy by using OC spray during Mr. Hightower's arrest. Like here, Officer Buckman arrived when other police officers were already attempting to subdue the suspect. Like here, the Commission was critical of Officer Buckman's actions because he failed to assess the situation before using force to subdue the suspect. The Commission is hopeful that the Police Commissioner will address Officer Buckman's actions given that Officer Buckman's actions here and in the Hightower matter suggest that he has developed a pattern of failing to appropriately assess the scene of an arrest, thereby resulting in the use of unnecessary force.

