



CITY OF PHILADELPHIA

POLICE DEPARTMENT
HEADQUARTERS, FRANKLIN SQUARE
PHILADELPHIA, PENNSYLVANIA 19106

SYLVESTER M. JOHNSON
Police Commissioner

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March 1, 2002

William Cannon, Esq., Chair
Police Advisory Commission
P.O. Box 147
Philadelphia, PA 19105

**Re: Commission Complaint No. 000697
Rosetta Nichols on behalf of her son,
Jamal Nichols
(Police Officers John Cawley, John Doyle and Christopher Buckman)**

Dear Chairman Cannon:

I am in receipt of your letter and the Opinion of the Commission dated January 23, 2002, regarding the above referenced matter. Your letter is dated January 23, 2002, however a corrected copy was delivered to my office on February 1, 2002, to which I am responding. PAC's report recommends that Officer John Cawley and Officer John Doyle be found guilty of "excessive use of force" and receive a 10-day suspension. PAC also recommends that Officer Christopher Buckman be found guilty of "excessive use of force" and receive a 20-day suspension. The Commission further recommended that Officer Buckman receive training on the use of a baton in accordance with Directive 22, and that all three of the officers receive training on the force continuum and techniques for subduing resisting subjects. The Police Department declines to accept PAC's recommendations.

The Police Department conducted an Internal Affairs Investigation into the above complaint and concluded that the charge of physical abuse could not be sustained. Internal Affairs interviewed numerous witnesses, reviewed countless documents and obtained an expert opinion from the City's Medical Examiner's office regarding the injuries sustained by Mr. Jamal Nichols. Also, on October 3, 2000, Jamal Nichols pled guilty to the following charges: resisting arrest of law enforcement officer; fleeing from a police officer and aggravated assault on a police officer.

The Police Department disagrees with the PAC findings in two key areas. Specifically, the amount of time that the struggle to control Mr. Nichols lasted and the force used during the struggle. The Commission also identified two independent witnesses, Ms. Barbara Turner and Mr. Stephen McWhorter, describing them as "very credible". In your conclusion, the Commission opinions that the struggle to control Mr. Nichols

could not have lasted the few seconds as the officers testified, but lasted about 10 minutes as the independent witnesses testified.

The Police Department's investigation included interviews of both Ms. Turner and Mr. McWhorter. Regarding the actual time frame of this incident, when questioned, Ms. Turner stated that "... it was just for a second and then they removed him". When asked the number of police vehicles on the scene, Mr. McWhorter stated that he didn't know because, "it happened so fast". A review of the Department's Computer Assisted Dispatch (CAD) printouts indicated that the entire incident which includes the vehicle investigation, vehicle pursuit, auto accident, foot pursuit and the apprehension, lasted six minutes. For these reasons, the Police Department determined that the actual apprehension of Mr. Nichols could only have lasted a matter of seconds.

More crucial to the Commission's opinion is the evidence regarding the force used to restrain Mr. Nichols. The Commission emphasizes the hearing testimony of Mr. McWhorter, that he looked out his window and saw several white male officers repeatedly kicking a black male in the head. This witness also identified Officer Donna Zampirri to Internal Affairs as participating in the alleged beating. A review of the Department's assignment sheets establishes that Officer Donna Zampirri was assigned to a different platoon and was working the 4X12 tour of duty on that day. This incident occurred at 10:00am on January 10, 2000. On more than one occasion, Mr. McWhorter stated to police investigators that a white female officer engaged in the struggle to subdue Mr. Nichols. The Police Department's investigation concluded that there were no white female officers on the scene during the incident.

As part of the Internal Affairs investigation, the Philadelphia Medical Examiner and members of his staff reviewed Mr. Nichols' medical records from January 10, 2000. The Medical Examiner concluded in his expert opinion that all of Mr. Nichols' injuries were consistent in nature with the type of automobile accident Mr. Nichols was involved in. Additionally, the Commission emphasizes that several of the civilian witnesses to this incident testified that Mr. Nichols was repeatedly beaten and kicked on the head while he lay face down on the ground. It must be noted that the medical records establish that Mr. Nichols did not have any injuries to the rear of his head and the Medical Examiner found that all injuries were consistent with Mr. Nichols' involvement in the automobile accident in the 2000 block of Christian Street.

To further the Police Department's investigation, numerous efforts were made to interview Mr. Nichols regarding this incident and the allegations of excessive use of force. The Internal Affairs investigator scheduled interviews at Mr. Nichols' attorney's office and Mr. Nichols failed to appear. Mr. Nichols' attorney subsequently notified Internal Affairs, by letter, that his client would not be available for any interviews.

The City's Law Department reviewed Mr. Nichols' claim and allegations of excessive use of force and rejected the claim at the pre-suit stage. Mr. Nichols pled guilty to felony and misdemeanor charges surrounding his resisting arrest and assaulting police officers during this incident. The Police Department has interviewed many witnesses regarding the incident of January 10, 2000 and have conflicting accounts of what occurred in the 1900 block of Catherine Street once Mr. Nichols was actually apprehended and taken into custody.

What the uncontradicted facts establish is that Mr. Nichols was driving a stolen vehicle and fled from police officers. The police pursued Mr. Nichols and he rear-ended a parked vehicle causing the occupant to receive treatment at the hospital. As a result of the accident, Mr. Nichols received head injuries when his head struck the windshield. He continued to flee on foot and was apprehended a short distance away after a struggle ensued. Mr. Nichols plead guilty to criminal charges including resisting arrest and aggravated assault on a police officer. The Medical Examiner opinioned that Mr. Nichols' injuries were consistent with the type of automobile accident he was involved in.

For the reasons outlined above, the Police Department cannot ratify the findings and conclusions reported by the Commission. If you have any questions, please do not hesitate to contact me. Thank you.

Respectfully yours,

Sylvester M. Johnson
Police Commissioner

By:



Karen Y. Simmons
Senior Counsel to
Police Commissioner

cc: Estelle Richman, Managing Director
Denise Wolf, Assistant City Solicitor
Hector Soto, Esq., Commission Executive Director