

IN RE: : **CITY OF PHILADELPHIA**
Trudy Kidder-Marks : **POLICE ADVISORY COMMISSION**
: **No. 980364**

PANEL REPORT AND RECOMMENDATION

This matter was heard before a panel of the Police Advisory Commission including Jane Leslie Dalton, Chair, Vivian D. Ray, Ph.D., and Charles Harris¹. The panel heard testimony on Tuesday, June 29, 1999 and December 2, 1999.

Ms. Kidder-Marks filed a complaint with the Police Advisory Commission alleging physical and verbal abuse by Philadelphia Police Officer Gary Moore. Based upon the information and evidence presented at the hearing, the panel concludes that the allegation of physical abuse is sustained.

On August 5, 1997, Police Officer Moore stopped his police car behind cars which were double-parked on Conrad Street in front of McKeever Beverage. He began writing a ticket for a white van which was in front of his police vehicle. Ms. Kidder-Marks, the proprietor of McKeever Beverage, came out of the building. She asked him not to write the ticket and was upset because of her concern that the officer's writing tickets would cause her to lose customers. A discussion ensued.

Officer Moore completed writing the ticket. He walked to the white van and placed the ticket on the window of the van.

Although Officer Moore alleged that Ms. Kidder-Marks was obstructing his access to

¹ At the first hearing date, Eddie T. Graham sat as a panel member. However, Mr. Graham did not participate in the second hearing, or in any way in the decision in this matter. Mr. Harris, who joined the panel for the second hearing, read the transcript of the first day of the hearing.

the van, the panel did not find this statement credible. Officer Moore was able to walk to the front of the van and return to his police vehicle without any physical contact between himself and Ms. Kidder-Marks. Both Officer Moore and Ms. Kidder-Marks agree that the officer told her several times that the ticket he was writing was no concern of hers and advised her to return to her business establishment.

When Ms. Kidder-Marks asked for Officer Moore's badge number, he became angry. Both Officer Moore and Ms. Kidder-Marks agree that Ms. Kidder-Marks then turned to walk back into the building. Officer Moore then advised her that she was under arrest.

Officer Moore testified that the probable cause for the arrest was that Ms. Kidder-Marks was screaming profanities at him and refused to get out of the way, that she was interfering with his doing his duty in writing the ticket and that she blocked his trip to place the ticket on the vehicle and blocked the return to his car; she would not get off the highway; and that she was causing a nuisance because she refused to leave the area. Ms. Kidder-Marks denies screaming profanities and there is no other evidence to substantiate that claim. The panel found most convincing the testimony of Pernell Temple, a patron of the store who observed the incident. He stated that Ms. Kidder-Marks did not curse, yell or insult the officer.² In any event, profanities in and of themselves would not justify Officer Moore's subsequent conduct.

We find that Ms. Kidder-Marks did not interfere with Officer Moore writing the ticket. Indeed, the officer was able to write the ticket, place it on windshield of the vehicle in front of him and return to his police vehicle without ever having physical contact with Ms. Kidder-Marks. Ms. Kidder-Marks is a frail, fragile woman. At the hearing she looked old for her age. She was not a physical threat of any kind to the officer. There was no physical touching until Ms. Kidder-Marks turned away from Officer Moore to return to the building.

² In reaching its decision, the panel considered the testimony of all of the witnesses who appeared before it and the affidavit James Rossini.

Officer Moore grabbed her by both arms. He threw her into the right passenger side of the police vehicle. He cuffed her arms tightly, and grabbed her by the thumbs and pulled up on her arms in taking her around the police vehicle where he put her in the left rear seat. Pernel Temple testified that he heard Ms. Kidder-marks ask for the officer's badge number. He confirmed that the officer then grabbed her, threw her against the car, hand-cuffed her and pulled her by the thumbs to raise her arms up behind her back.

Photographs and medical evidence corroborate that Ms. Kidder-Marks was injured. Her injuries included bruises on her arms which are consistent with her testimony and the officer's testimony that she was grabbed by the arms. She also sustained abrasions and a cut to one of her wrist where the handcuffs had been. She provided documented medical evidence of injury to her thumbs.

We conclude that Officer Moore had no basis to make the arrest because Ms. Kidder-marks was returning to the building and his stated reasons are insufficient. We also conclude that he grabbed her and used excessive, totally unnecessary force. The officer points to the fact that Ms. Kidder-Marks did not challenge the arrest. Instead, upon advice of her then counsel, she agreed to go to the "ARD" class. We find credible her statement that this was recommended by her attorney and that she was physically and mentally unable to face the officer in court so soon after the incident.

For all of the above referenced reasons, the panel recommends that Officer Moore be disciplined by a suspension for five (5) days.