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**IN RE:** : **CITY OF PHILADELPHIA**

**MARK KELLY, a/k/a Finesse** : **POLICE ADVISORY COMMISSION**  
**Kelly, and CHRISTOPHER**  
**ALVAREZ, a/k/a Deja Alvarez** : **COMPLAINTS No. 021067 & 021068**

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Before Commission Members Paul M. Uychara, Esq.  
Robert S. Nix, Esq. and Anthony Holloway  
Counsel: Michael Butler, Esq.

## **OPINION OF THE COMMISSION**

### **I. INTRODUCTION**

On February 6, 2002, Finesse Kelly (legal name: Mark Kelly) and Deja Alvarez (legal name: Christopher Alvarez) filed complaints<sup>1</sup> with the Police Advisory Commission (the “Commission”) regarding an incident involving uniformed police officers of the Sixth Police District (the Sixth District primarily covers the eastern section of Center City). The incident occurred in the early morning hours of February 4, 2002. Ms. Kelly and Ms. Alvarez allege that, during the February 4th incident, they were verbally abused, and that their arrest on disorderly conduct charges was an abuse of authority. In response to the complaint, the Commission conducted a full investigation, and during the four nights of hearings on the complaint, the Commission heard the testimony of five witnesses and reviewed available documents and previously obtained statements. In addition to the testimony of complainant Ms. Kelly, the hearing panel also received the testimony of a second civilian witness, Anthony Young. Three

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<sup>1</sup> Complainants are transgender women who choose to be addressed by their adopted names of Finesse Kelly and Deja Alvarez rather than their legal names of Mark Kelly and Christopher Alvarez. Legal requirements necessitated the filing of the complaints under their given legal names, however for all other purposes, including the hearing and this Opinion, complainants have been addressed by their taken names and gender. Solely for purposes of these complaints, the Commission defined transgender as that self-defined status of a biological man who believes that he is of the other gender, and has taken actions, whether overt or covert, to become the other gender. The Commission recognizes that this may not be a universally accepted definition, nor is it intended to be such a definition.

police officer witnesses testified: Officer John Brady, Officer Susan Bevidas and Officer Bernadette McCafferty.

Although Deja Alvarez was invited, and subsequently subpoenaed to testify before the Commission, she failed to appear on several occasions. Consequently at this time, the Commission dismisses Ms. Alvarez's complaint, No. 021068. This Opinion represents the final disposition of the Police Advisory Commission concerning the complaint of Finesse Kelly, No. 021067.<sup>2</sup>

After hearing all testimony and reviewing the available evidence, the Commission finds that the target officer, P/O John Brady, engaged in misconduct and that disciplinary action is warranted.

## **II. EVIDENCE**

### **A. THE TESTIMONY OF FINESSE KELLY**

Finesse Kelly testified before the Commission on June 19, 2003. According to Ms. Kelly, the following events transpired: on February 4, 2002 at around 2:30 a.m., after leaving a nightclub called Key West, Ms. Kelly and Ms. Alvarez encountered some friends on the corner of 13<sup>th</sup> and Locust Streets. The group moved to a nearby parking lot to talk because Ms. Kelly felt that if they remained on the corner, the police would tell them to move. While they were in the parking lot, a police car did drive by and an officer (later identified as Officer

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<sup>2</sup> The final draft of this Opinion was submitted to the entire Commission for review on November 7, 2003, and approved by action of the Executive Committee on December 11, 2003. It was reviewed by the Commission a final time on January 8, 2004. Pursuant to the Commission's Executive Order, 8-93 executed by former Mayor Ed Rendell, the Opinion will first be released by personal delivery to the Mayor, Managing Director and Police Commissioner. No sooner than three business days subsequent to that delivery, the Opinion becomes a public document available for general release. A copy of the Opinion is mailed to complainant(s) the same day that delivery to the Mayor et al is accomplished. Subsequent to delivery, the Police Commissioner has 30 days to respond to the Commission's findings and recommendations.

John Brady) said over the patrol car loud speaker something to the effect of, “move it fellas,” or “go home fellas.” (Kelly transcript, p.6). The group then dispersed. Ms. Kelly and Ms. Alvarez walked to the corner of 12<sup>th</sup> and Locust Streets with the hope of finding a cab there. While they were on the corner of 12<sup>th</sup> and Locust, Officer Brady drove by and in a derogatory manner cursed at them and told them to go home, reminding them that he had already told them to do so. While Ms. Kelly could not recall the exact language used by the officer, she was certain that Officer Brady used typical men’s names, such as “Bill” to address her and Ms. Alvarez who were dressed in full female attire. Ms. Kelly responded to the officer’s comments by advising him, “don’t talk to me like that.”

Still attempting to flag down a cab, Ms. Kelly and Ms. Alvarez moved back to 13<sup>th</sup> and Locust Streets, where they expected to hail a cab more readily. Again, Officer Brady drove by and told them to leave; he also repeatedly called them “animals” and “retards.” Ms. Kelly informed the Officer that they were trying to get a cab. She also said to the Officer, “I don’t care who you are, you’re not going to talk to me like that.”<sup>3</sup> (Kelly transcript p. 8). At this point, a “yelling match” ensued between the officer and both complainants. A female Officer soon appeared on the scene (later identified as Officer Susan Bevidas). She too joined in the verbal exchange, and told Ms. Alvarez to “shut her fucking mouth.” Officer Bevidas reminded Ms. Kelly and Ms. Alvarez about the residential nature of the neighborhood and informed them that business owners in the area did not want them around.

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<sup>3</sup> At this point Ms. Kelly also informed the officer that she and Ms. Alvarez were not prostitutes. Later in her testimony, she told the Commission that on occasion, while in the 13<sup>th</sup> Street area, she has been accused of prostitution or mistaken for a prostitute. Consequently, she feels defensive on this point. Ms. Kelly feels that she is entitled to stroll the streets and talk to friends without fear of incrimination by the police. She also notes, however, that not all the police in the Sixth District are unfair or discriminatory.

A cab soon pulled up behind Officer Bevidas' car, and Ms. Kelly and Ms. Alvarez entered the cab with the intention of going home. Ms. Alvarez made a final comment to Officer Brady, which according to Ms. Kelly, angered the officer even further. In response, Officer Brady opened the cab door, pulled Ms. Alvarez out, handcuffed her and arrested her. Officer Bevidas then told the cab driver to take Ms. Kelly home. The cab driver, who now appeared uncomfortable with the situation, told Ms. Kelly to get out of the cab, so she did. Officer Bevidas told Ms. Kelly to get another cab and go home. However, Officer Brady continued to antagonize Ms. Kelly by asking her if she wanted "to be locked up too" and again addressed her by using a man's name and calling her an animal. Ms. Kelly's response was to ask Officer Brady why he continued "disrespecting" her. Officer Brady then told her he was going to "kick her in her fat ass," at which point Ms. Kelly responded by saying that was probably what he wanted to do. (Kelly transcript p. 13). With that, Officer Brady arrested Ms. Kelly and put her in the back of Officer Bevidas' vehicle.

B. THE TESTIMONY OF ANTHONY YOUNG

On June 17, Anthony Young, a civilian witness, testified to what he saw on the night of February 4, 2002. Mr. Young is an outreach worker with the Youth Health Empowerment Project (YHEP).<sup>4</sup> YHEP's office is located at 1229 Locust Street, which is not far from the corner of 13<sup>th</sup> and Locust Streets.

As Mr. Young was leaving YHEP's office, he saw Ms. Kelly and Ms. Alvarez getting into a cab on the north side of 13<sup>th</sup> Street, near Locust.<sup>5</sup> A police car passed the cab and

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<sup>4</sup> According to <http://www.yhep.org>, the Project is a citywide pilot project that targets youth in Philadelphia in order to reduce the spread of HIV and other sexually transmitted diseases.

<sup>5</sup> Mr. Young recognized Ms. Kelly and Ms. Alvarez. He does not know either of them by name, but he has seen them around the neighborhood

pulled in front of it.<sup>6</sup> Officer Brady got out of the police car and pulled Ms. Alvarez out of the cab. An verbal altercation ensued. Mr. Young could not hear exactly what was said because he was not on the corner where the altercation was taking place, and the conversation was loud and distorted.

Mr. Young characterized Officer Brady as “being really irate and angry and just, like, really treating Miss Alvarez...like she wasn’t even human.” (Young transcript p.11). Officer Brady was “literally in the middle of 13<sup>th</sup> Street...almost giving a speech about the reasons why [Ms. Alvarez] shouldn’t be in this community.” (Young transcript p.37). Ms. Alvarez was hyper, but not yelling.

Officer Brady was handcuffing Ms. Alvarez when Officer Bevidas pulled up behind the cab and asked Officer Brady if he needed any help. Officer Bevidas did not become involved at that point. Officer Brady then pulled Ms. Kelly out of the cab and told her to find another one. While Ms. Kelly tried to flag down another cab on 13<sup>th</sup> Street, Officer Brady was calling the complainants “whores and prostitutes” and told them that people in the neighborhood pay taxes and “they don’t need ya’ll whoring prostitution around here. That’s why this community is going down.” (Young transcript p. 12). Ms. Kelly responded by saying that she just wanted to go home. Officer Brady kept telling Ms. Kelly to “go ahead and prostitute where you are,” and she responded by saying, “I’m not a prostitute. I’m not a ‘ho. I’m not retarded.” (Young transcript p. 13). Ms. Kelly remained calm.

Officer Brady asked her several times whether she wanted to be arrested, and Ms. Kelly responded that she just wanted to go home, while she unsuccessfully tried to flag down a cab. Mr. Young testified that several cabs passed her and did not stop. Then Officer Brady said,

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<sup>6</sup> Later, Mr. Young testified that a police officer got on the loudspeaker to tell the cab to pull over.

“Are you still being smart?” She responded, “I’m just getting in this cab.” Then he began to arrest Ms. Kelly, but Officer Bevidas stepped in and handcuffed her. Mr. Young asked Officer Bevidas whether it was really necessary, and she said, “It’s not my call.” (Young transcript p. 14). Mr. Young was angry by the way Ms. Kelly was being treated and asked Officer Bevidas for her badge number, which she refused to give him. Mr. Young said that overall, Officer Bevidas was quiet and “kind of cool.” (Young transcript p 65). Mr. Young did not ask Officer Brady for his badge number because he was “so irate.” Mr. Young testified, “I mean, he was just so crazy...I’m a guy, too, and I just really felt like he would have probably pushed the limit with me.” (Young transcript p. 77).

Mr. Young remembered seeing only two officers, Brady and Bevidas; he did not remember seeing Officer McCafferty. He also did not remember seeing the cab driver motion that he wanted Ms. Kelly and Ms. Alvarez out of the cab.

He stated that during the altercation, somewhere between three and five people had gathered to watch the incident, but that not many people were outside that night because it was a cold night.

C. THE TESTIMONY OF OFFICER SUSAN BEVIDAS

Officer Susan Bevidas, badge number 3136, testified on July 1, 2003. Officer Bevidas stated that, in the early morning hours of February 4, 2002, she first spotted Ms. Kelly and Ms. Alvarez on the corner of 13<sup>th</sup> and Locust Streets yelling in the direction of Officers Brady and McCafferty’s patrol car (Car 68). Officer Bevidas had no recollection as to whether either Officer Brady or Officer McCafferty was out of the patrol car when she arrived on the scene. Upon arrival, Officer Bevidas exited her vehicle (which was now stopped in the middle lane of Locust Street), approached the two complainants, who were standing on the sidewalk,

and told them to lower their voices and that it was time to go home. Ms. Kelly and Ms. Alvarez, however, continued to scream and yell in the direction of Car 68.

At this point, a cab pulled up behind Officer Bevidas' patrol car, and Ms. Kelly and Ms. Alvarez entered the cab. Seconds later, Officer Bevidas was "high beamed" by the cab driver. She once again exited her patrol car,<sup>7</sup> now accompanied by Officer Brady, and approached the cab. The cab driver told Officer Bevidas, in broken English, that he did not want Ms. Kelly and Ms. Alvarez in his cab. Through this sequence of events, Ms. Kelly and Ms. Alvarez continued to yell and scream at the police. Officer Bevidas informed the complainants that they needed to find another cab. Ms. Kelly and Ms. Alvarez persisted in screaming profanities at the officers. At this point, Ms. Kelly and Ms. Alvarez were arrested for loitering. Officer Bevidas transported Ms. Kelly to the station while Officers Brady and McCafferty transferred Ms. Alvarez. As Officer Bevidas was leaving the scene with Ms. Kelly in the back of her vehicle, a male approached her and asked her about the arrests. The Officer asked Ms. Kelly if she knew the male and when Ms. Kelly answered in the negative, Officer Bevidas declined to answer his questions.

Officer Bevidas has no recollection of Officer Brady yelling or saying anything offensive that morning. In fact, she says she has never heard Officer Brady use the word "fuck" when dealing with civilians. She also testified that she had seen Ms. Kelly and Ms. Alvarez maybe 50 times in the past, and when asked to clear the area, they always left quietly. Finally,

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<sup>7</sup> It is unclear from the officer's testimony when she actually exited her vehicle. At one point she told the Commission she only left her car to respond to the cab driver's call. However, she also said she got out of the cab to tell Ms. Kelly and Ms. Alvarez to be quiet and that only moments later the cab arrived. It is not inconceivable that the officer got back into her car after telling the two complainants to go home, yet her testimony does not say as much and the time period between the two events appears to be of short duration.

Officer Bevidas told the Commission that, had the cab simply left with the Ms. Kelly and Ms. Alvarez, there would have been no arrests made that morning.

D. THE TESTIMONY OF OFFICER JOHN BRADY

Officer John Brady, badge number 3428, testified before the Commission on July 1, 2003. Officer Brady testified that Officer Bevidas arrived at the scene before he and his partner, Officer McCafferty, arrived. He testified that Ms. Kelly and Ms. Alvarez were loud and boisterous and he believed they were yelling at Officer Bevidas. According to Officer Brady, Ms. Kelly and Ms. Alvarez were continuously telling him and Officer Bevidas to “go fuck themselves”. They were constantly cursing at him, but Officer Brady did not curse back at them. Ms. Alvarez was louder than Ms. Kelly. Officer Brady asked Ms. Kelly and Ms. Alvarez to leave the area between two and ten times.

There were a few people standing on the corner, including the cleaning crew of a club called Signatures. Officer Brady testified that several people were told to leave, and they left immediately.

Officer Brady arrested Ms. Alvarez because “he continually was asked to leave the area; refused; became very verbally abusive towards [Brady and McCafferty,] and [Kelly and Alvarez] were locked up for disorderly conduct.” (Brady transcript p. 29). Officer Brady is not sure who arrested Ms. Kelly, but believes it was Officer McCafferty. Ms. Kelly was compliant after the arrest, but Ms. Alvarez was not.

Officer Brady put Ms. Alvarez in the back of Car 68. He testified that he transported both Ms. Alvarez and Ms. Kelly to the police station, but later testified that it is possible that he did not transport Ms. Kelly. At the station, Officer Brady did the paperwork. He does not remember anyone in the station making comments toward Ms. Alvarez or Ms. Kelly

about their status as transgender women. However, he acknowledged that it could have happened because “anything’s possible.” (Brady transcript p. 40).

Significantly, Officer Brady did not remember a cab being involved in the incident. However, he was not absolutely certain that a cab was not present. Officer Brady also did not recall using the loudspeaker that night, and he was sure that Officer McCafferty did not. He also did not remember whether or not Officer Bevidas’ headlights or siren were on. He also does not remember ever using the word “fuck.”<sup>8</sup>

Officer Brady said that throughout the incident, he probably referred to Ms. Kelly and Ms. Alvarez as “you,” rather than sir or ma’am. However, throughout his testimony, he referred to the complainants using masculine pronouns. Officer Brady testified that when he comes to a group of people, he usually says “ladies and gentlemen” or “folks” rather than gender specific terms like “fellas.” He is certain that he did not address Ms. Kelly and Ms. Alvarez as “Bill” or any men’s names.

Officer Brady testified that the police in the Sixth District regularly clear people from the street corners at 2:30 or 3:00 a.m. after the bars close because people tend to loiter, and there is a large drug and prostitution problem in that area, at least according to the police roll call complaints from local citizens.<sup>9</sup> When people are loitering, Officer Brady usually asks them to leave the area, and they usually do. Officer Brady usually gives two or three warnings before arresting someone.

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<sup>8</sup> Later in his testimony, he said that he has never used that language when asking someone to move.

<sup>9</sup> Brady was certain that he did not arrest Ms. Kelly and Ms. Alvarez that morning for being prostitutes.

E. THE TESTIMONY OF OFFICER BERNADETTE MCCAFFERTY

Officer Bernadette McCafferty, badge number 5018, testified on July 8, 2003.

Officer McCafferty remembered very little from the morning of February 4, 2002. She testified that she and her partner, Officer Brady, observed Ms. Kelly and Ms. Alvarez on the corner of 13<sup>th</sup> and Locust Streets, and asked them to leave the area, which they refused to do. Instead, they moved to the middle of the intersection of 13<sup>th</sup> and Locust Streets and yelled at the officers.<sup>10</sup> The complainants were arrested because they were causing a disturbance by standing in the middle of the intersection.

Officer McCafferty was unable to testify either affirmatively or negatively to several facts. A majority of the questions that were presented to Officer McCafferty were answered with “I don’t recall.” She does not remember if Officer Bevidas or any other officer was at the scene, she has no recollection of a cab being involved in the events of that morning, and she did not remember where Car 68 was actually parked while she and Officer Brady were engaged with Ms. Kelly and Ms. Alvarez.<sup>11</sup>

Officer McCafferty denies the allegations as presented by Ms. Kelly. She was specifically able to recall and testify to the fact that neither she nor Officer Brady used profanities or were verbally abusive to the complainants. In fact, she stated that she has never heard Officer Brady use profane language when addressing civilians. According to Officer McCafferty, she and Officer Brady transported both of the complainants to the station.

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<sup>10</sup> Initially, Officer Brady exited the patrol car, which was parked in the middle of 13<sup>th</sup> Street near the Locust intersection, to ask the complainants to move; but when Officer McCafferty heard yelling, she too exited the vehicle to assist Officer Brady.

<sup>11</sup> First she testified that it was parked in the middle of 13<sup>th</sup> Street – the only running lane on 13<sup>th</sup> Street at that time because both the left and right lanes had cars parked in them. This would imply that they were blocking traffic. Later, she testified that the car must have been pulled over to the side.

### III. ANALYSIS

Ms. Kelly's complaint alleges that on February 4, 2002, Officer Brady verbally abused her with profanity due to her status as a transgender person. In addition, she alleges that the officer abused his authority when he wrongfully arrested her for disorderly conduct.

In reaching a decision in this case, the Commission considered the testimony of all available witnesses, as well as the entire investigative file. Mr. Young's testimony was found to be generally credible. However, Mr. Young's retelling of the events in question was also exaggerated in some instances. For example, although Mr. Young alleges it to be true, the Commission does not find that Officer Brady referred to Ms. Kelly and Ms. Alvarez as "whores" and "prostitutes." The Commission also found the testimony of Ms. Kelly to be generally credible. Although she had several opportunities to agree with Mr. Young concerning the contention that Officer Brady referred to her and Ms. Alvarez as "whores" and "prostitutes," Ms. Kelly denied those allegations. Furthermore, throughout the hearing, her testimony was detailed, consistent and clear. Her recollection of the events was also materially similar to that of Officer Bevidas. Officer Bevidas' testimony, which was also detailed and clear, and who was the most credible of the police officers witnesses. By contrast, Officer Brady's testimony lacked clarity and consistency. The Commission found that his testimony, and the testimony of Officer McCafferty as well, contained gaps, contradictions, inconsistencies, and lacked detail. Accordingly, the testimony of both officers was found to be less credible.

#### A. ALLEGATION 1: VERBAL ABUSE

As noted above, Ms. Kelly claimed that Officer Brady referred to her and Ms. Alvarez as "fellas" and addressed them by using typical men's names such as "Bill." Ms. Kelly also claimed that Officer Brady called her and Ms. Alvarez "animals" and "retards". Ms. Kelly more specifically testified that she remembered Officer Brady saying disrespectful things like

you fucking retards or animals. Those two names [Ms. Kelly remembers Officer Brady] saying a lot, a lot of times...”[said] I can’t stand none of you fucking animals, you make me sick.” (Kelly transcript p. 67). Officer Brady, on the other hand, stated that he did not call Ms. Kelly and Ms. Alvarez “fellas” or men’s names. More specifically, Officer Brady testified that when he addresses a group of people, he usually calls them either “ladies and gentlemen,” or “folks” because “you don’t know by looking at all people if they are transgenders or if they’re not transgenders, or they’re male or female, or whatever the case may be.” (Brady testimony, p.36). Officer Brady also denied using any offensive language that evening.

As previously noted the Commission found that Ms. Kelly generally gave credible testimony, and as she *specifically* remembered Officer Brady using the words “retards” and “animals” numerous times, the Commission finds that Officer Brady did use the terms “animals” and “retards” in an offensive matter against Ms. Kelly and Ms. Alvarez. Anthony Young, the other civilian witness, corroborated that Officer Brady called Ms. Kelly a “retard”, but not an “animal”. However, Mr. Young admitted that he could not hear everything that was said between Officer Brady and the complainant. As for the testimony of Officers Bevidas and McCafferty to the effect that Officer Brady did not use any verbally abusive language in addressing Ms. Kelly and Ms. Alvarez, the Commission finds it not credible.

Executive Order 8-93 states that the Commission shall not study specific complaints of verbal abuse except those involving language related to race, ethnicity, religion, gender, sexual orientation or disability. Ordinarily, an allegation that an officer used the words retard or animal to refer to a complainant, standing alone, would be beyond the Commission’s jurisdiction as defined by Executive Order.<sup>12</sup> And clearly addressing a civilian as “fella”, is not

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<sup>12</sup> Executive Order No. 8-93.

on its face offensive. However sometimes the use of words when viewed in context, like in the circumstances of the present complaint, could refer to a person's race, ethnicity, religion, gender, sexual orientation or disability, and thus fall within the purview of the Commission's jurisdiction.

The Commission finds that Officer Brady did call the complainant and Ms. Alvarez "retards" and "animal". And furthermore, as Officer Brady used the words "retards" and "animals", the words did allude to the complainant's gender identity. The Commission also believes that but for Ms. Kelly's transgender status, Officer Brady probably would not have called her or Ms. Alvarez either a "retard" or an "animal". In short, the Commission finds that Officer Brady's use of the two terms were derogatory references to the complainant's gender and/or sexual orientation, bringing the allegation of verbal abuse within the Commission's jurisdiction. The Commission finds the allegation of verbal abuse is substantiated.

During his testimony, Officer Brady stated that he was insulted by all of the allegations brought against him. Officer Brady explained that his brother is gay, and that for that reason, he embraced working in the Sixth District. He stated that he understands "where most of the people in that area are coming from". (Brady transcript, p. 43). The Commission does not doubt that Officer Brady is sincere in his love and acceptance of his brother. However, his statement adds little credibility to his testimony concerning the events of February 4, 2002.

**B. ALLEGATION 2: ABUSE OF AUTHORITY**

The Commission finds that Officer Brady abused his authority when he arrested Ms. Kelly. According to the testimony of Ms. Kelly and Mr. Young, Officer Brady created quite a scene that morning. Moreover, Ms. Kelly alleges that Officer Brady instigated the altercation between the parties when he verbally harassed her and Ms. Alvarez. She testified that she and Ms. Alvarez were continuously trying to hail a cab and leave the scene. Officer Bevidas and Mr.

Young also stated that the complainants did get into a cab. At one point Officer Bevidas even noted that had the cab simply pulled away with the complainants there would have been no arrests that morning.<sup>13</sup> (Bevidas transcript, p.63). Officers Brady and McCafferty, on the other hand, have no recollection of a taxi being involved at all. Because three of the witnesses, including a police officer witness, testified that Ms. Kelly and Ms. Alvarez were in a cab, attempting to leave, the Commission does not find Officer Brady's or McCafferty's testimony that the complainant and Ms. Alvarez refused to move to be credible. Furthermore, Officer Bevidas testimony that she had encountered Ms. Kelly and Ms. Alvarez around fifty times in the past, and that they always moved on quietly bolsters Ms. Kelly's assertion that she and Ms. Alvarez were trying to comply with Officer Brady's directive and leave.

The issue for the Commission is whether or not Officer Brady abused his authority by initiating the arrest of Ms. Kelly and Ms. Alvarez. Having found that Officer Brady used offensive language in the first instance against Ms. Kelly and Ms. Alvarez, the Commission also finds, again based on the hearing testimony and the complete investigative record, that Officer Brady initiated whatever incident occurred on February 4, 2002 by his addressing the complainant and Ms. Alvarez in a the offensive manner that he did. The Commission also finds that Officer Brady then exacerbated the disturbance that he initiated by engaging in a verbal

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<sup>13</sup> Because Officer Bevidas' testimony clearly reflects that the complainant and Ms. Alvarez were attempting to leave the scene, it is reproduced here. Officer Bevidas also testified that the cab driver asked the complainant and Ms. Alvarez to leave the taxi:

QUESTION: The two complainants were already in the cab at some point, and presumably were in the cab because they were getting ready to leave the scene, from what you could see, right?

BEVIDAS: Yes.

QUESTION: And you said that for some reason not apparent to you, the cab driver did not want to drive?

BEVIDAS: Correct.

QUESTION: Had [the cab] left the scene at that point, there would not have been any arrest; is that correct?

BEVIDAS: Correct.

exchange with the Ms. Kelly and Ms. Alvarez. After behaving in such a manner, the Commission finds that Officer Brady abused his authority by “punishing” the complainants by initiating their arrest.

Police officers have an affirmative responsibility to act professionally and objectively toward the civilian populace without regard to race, color, creed, sexual orientation, gender preference or disability. The police must treat everyone with dignity, respect and in a nondiscriminatory manner. Police officers have the responsibility not to react in emotional or biased ways toward civilians with whom they interact. The Commission recognizes that this is a difficult task, but one that is nonetheless crucial if the laws are to be administered and enforced in a fair and impartial way; in a way that fosters and promotes justice. Both Officer Brady’s initial interaction with, and his ultimate response to the complainant and Ms. Alvarez were emotional and angry. If any person that morning created an incident, public disturbance or a risk thereof, it was Officer Brady.<sup>14</sup> But for Officer Brady’s presence and actions, there may not have been an incident, much less a public disturbance. For the foregoing reasons, the allegation of abuse of authority is also substantiated.

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<sup>14</sup> Furthermore, according to the testimony of Officer Bevidas and Officer McCafferty, the patrol cars may have been blocking traffic (McCafferty and Brady blocking 13<sup>th</sup> Street traffic and Bevidas blocking Locust Street traffic). If the testimony on this point is accurate then the officers may have acted to create a public inconvenience.

#### **IV. RECOMMENDATIONS**

Officer John Brady engaged in misconduct by directing derogatory comments to the Finesse Kelly based upon her gender identity, and then by detaining and arresting her. The Commission recommends that the officer be suspended for one day without pay, and that he not be permitted to forfeit a paid leave day in lieu of the suspension. We further recommend that Officer Brady be required to attend sensitivity and/or other relevant training regarding the proper treatment of civilians generally and transgender individuals particularly.

The Commission further recommends that the Police Department review, and report back to the Commission<sup>15</sup>, regarding the current curriculum and training on the subject of police interaction with transgender individuals. The Commission believes that it is essential that all police officers, regardless of rank, receive initial and continuing training on this topic.

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<sup>15</sup> The Commission respectfully suggests that the report of the recommended review also be shared with the Police Department's special Liaison Committee to the Gay, Lesbian and Transgender Community, if not released as a public document..