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**IN RE:**

**JOHN SPIVEY**

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Before Commissioners Jane L. Dalton, Esq., Carmen Marrero  
and Joseph T. Stapleton, Esq.  
Michael Butler, Esq., Legal Counsel

**CITY OF PHILADELPHIA**

**POLICE ADVISORY COMMISSION**

**COMPLAINT NO. 000743**

## **Opinion of the Commission**

### **I. Introduction**

On April 17, 2000, Philadelphia Police Officers executed search and arrest warrants at a three-story home on Cecil B. Moore Avenue looking for a Mr. Rodney Abrams. Mr. Abrams was wanted at that time on various felony charges arising out of his alleged involvement in a shooting of a ten year old. The premises was leased by a Mrs. Mable Abrams, who was home at the time the search and arrest warrants were served. Mr. John Spivey, the nephew of Mable Abrams, lived on the third floor of the premises. Mr. Spivey filed a complaint with the Police Advisory Commission (“Commission”) in connection with an incident that occurred during the search for Mr. Abrams. In his complaint, Mr. Spivey alleges both physical abuse and abuse of authority. This Opinion represents the final disposition of the Police Advisory Commission concerning the complaint of John Spivey, Complaint No. 000743.<sup>1</sup>

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The Commission endorsed the findings and recommendations set forth in this Opinion during its regular monthly meeting held on June 13, 2002. Pursuant to the Commission’s Executive Order and established procedures, this Opinion will be hand-delivered to the Mayor, the Police Commissioner and the City Managing Director. The Opinion will also be mailed to the Complainant on the date it is delivered to the City officials. The Police Commissioner, pursuant to the Executive Order, has thirty days from the date of the delivery of the Opinion to respond to the Commission’s findings. This Opinion will become a public document three working days after its delivery to Mayor and the other City officials.

## **II. Allegations and Evidence**

The Commission conducted a thorough investigation of this matter, including reviews of IAD interviews for fourteen officers, analyses of hospital records and investigative reports, and interviews with Mr. Spivey and Mrs. Abrams. In addition, the Commission conducted a panel hearing, and received the testimony of Mr. Spivey, Mrs. Abrams and four of the officers at the scene. Three of those officers, Vincent Testa, Andrew Oldrati and William Frazier, were on the third floor of the premises at the time of the confrontation with Mr. Spivey.

Police Officers Vincent Testa and Andrew Oldrati were assigned to search the third floor of 2437 Cecil B. Moore Avenue, along with Sergeant William Frazier. Officer Oldrati was the first officer on the floor, carrying a shotgun, Officer Testa was the second officer on the floor, carrying his Glock service revolver, and Sergeant Frazier was the third officer assigned to the third floor, covering the two primary officers. Officers Oldrati and Testa entered Mr. Spivey's third floor rear room, and there is no question Mr. Spivey was struck in the face several times by Officer Testa. Hospital records confirm the injuries to Mr. Spivey. The essential factual dispute involves the conduct of Mr. Spivey and the police officers immediately upon their entry into Mr. Spivey's room.

Mr. Spivey's testimony to the Commission's investigators and to the Commission's panel consistently described a scene of an unprovoked attack by Officers Testa and Oldrati. Mr. Spivey claims that Officers Testa and Oldrati entered his room with shotguns drawn, shouting for Mr. Spivey to get down. He stated that due to his physical condition, he was not able to get down quickly enough. He claims he never said a word to the officers, but when he failed to get down immediately, Mr. Spivey claims he was punched in the face, shoved against his bed,

handcuffed, and then beaten further. He admitted having scissors on a table in his room, but denied ever reaching for or threatening the officers with the scissors. Mr. Spivey also claims that there was cash missing from his room after he was arrested and taken from the premises.

The officers' account of the events is dramatically different. Officer Oldrati testified that when his team reached the third floor, he and Officer Testa immediately went to the nearest room with an open door, in accordance with standard operating procedures. That room happened to be Mr. Spivey's room. As they entered the room, Officer Oldrati claims that they clearly announced that they were police officers. They confronted Mr. Spivey standing in his room, and directed him to get down. It would have been apparent to the officers that Mr. Spivey was not the subject of the search warrant, since Mr. Spivey was in his late sixties, and the subject of the arrest warrant was a twenty-one year old.

Officers Oldrati and Testa both testified that Mr. Spivey reached for what turned out to be a pair of scissors, and shouted to the officers to get out of his room. They each testified to a struggle with Mr. Spivey to get him to drop the scissors. In the course of that struggle, Officer Testa testified that he struck Mr. Spivey in the face and sprayed Mr. Spivey with OC spray. Once Mr. Spivey was subdued, the officers testified that Mr. Spivey was handcuffed and placed on the bed. Sergeant Frazier was not a direct witness to the confrontation, but testified that he could hear the struggle. He confirmed that the officers identified themselves and said that he heard the command to put down the scissors.

A pair of scissors, approximately seven inches long, was confiscated from Mr. Spivey's room as evidence. Mr. Spivey was arrested and charged in connection with this incident with aggravated assault, possession of an instrument of crime, simple assault and recklessly

endangering a person. He was found not guilty of any of these crimes.

Mr. Spivey appeared at the hearing to be somewhat frail and slight of build. In his Commission interview, he was asked about the claims of threatening the officers with scissors. He told a Commission investigator, "I'm not crazy. What do I look like going after a pair of scissors while two cops got their guns on me? What am I going to do with a pair of scissors?" The officers testified, however, that Mr. Spivey forcibly resisted their efforts to subdue him.

### **III. Discussion and Findings**

The difficulty we face with this matter is that, other than the two officers involved, there were no other witnesses to the altercation to confirm or refute either Mr. Spivey's or the police officers' account. We are also presented with the equally plausible questions as to why two trained SWAT officers, who were credible witnesses, would beat Mr. Spivey during the course of their search for Mr. Abrams. They no doubt knew Mr. Spivey was not the subject of the arrest warrant, and the officers had not yet completed their search of the third floor of the home. Just as equally plausible is the question why the aged and frail Mr. Spivey, who although not as clear as the officers in his testimony, was credible, would choose to attack two armed, uniformed police officers who clearly had him at a disadvantage. His version is that he was told to get down and he simply didn't move fast enough. As a result, he alleges he was punched in the face, and beaten after being subdued. The officers testified, however, to the orderly execution of a felony arrest warrant and a confrontation precipitated solely by Mr. Spivey's reach for the scissors, instead of getting down as commanded by the officers.

With such conflicting testimony, we are required to determine whether it is more likely than not that the events happened as described by the complainant, after consideration of all the evidence presented. In this instance, on the basis of Mr. Spivey's and the police officers' testimony and in light of all of the other evidence presented, we cannot conclude that it was more likely than not that Mr. Spivey was severely beaten for not getting down quickly enough in response to the commands of the officers. Similarly, we find insufficient evidence to conclude that the police officers engaged in misconduct by initiating an unprovoked attack on Mr. Spivey in the course of their search for Mr. Abrams. We also find insufficient evidence to conclude that any of the target officers stole any cash from Mr. Spivey.

After careful consideration of this matter, the Commission concludes that Mr. Spivey's allegations cannot be sustained.