

**IN RE:** : **CITY OF PHILADELPHIA**  
**Marvin Hightower** : **POLICE ADVISORY COMMISSION**  
: **No. 980526**

Before Dalton, Burton, Oh , DeMarco Commissioners

## **PANEL REPORT AND RECOMMENDATION**

### **I. INTRODUCTION**

This matter was heard before a panel which included Jane Leslie Dalton, chair, Ronald Burton, Ph.D., David Oh, Esquire and James DeMarco, Esquire. The panel heard testimony on April 4 and April 6, 2000.

### **II. DISCUSSION**

A complaint was filed concerning an incident which took place on December 14, 1998 at approximately 11 a.m. While much of the testimony was conflicting, the following facts are undisputed: Marvin Hightower and his then girlfriend, Tasha Mines, got into an argument because he was "off schedule." Things did not go as planned and he was late. Therefore, he entered her building through the second floor rear window. He has done this before because he does not have a key. Ms. Mines was angry. She asked him repeatedly to leave. He did not leave.

The police were called. Two police officers, Officers Roberson and Cornish, responded to the call. When they arrived, Hightower, Mines and their two children, ages 4 months and 2 years, were in the living room. The police officers asked Hightower to leave. Hightower said he was leaving. Initially he did head for the door, but then he turned back going past the two police officers back into the room and said he was going to get his belongings. As he said he was trying to reach for his jacket, he said they "buzzed him."

The testimony and the Commission's conclusions follow. Officer Layton Cornish testified that as Hightower pushed through the two officers, a scuffle ensued. During this time, radio called with an assist officer. By the time officers entered the living room to respond to the assist officer call, Officer Cornish had Hightower by the arm. He did not describe Hightower as a risk to himself or to any other officer. Another officer, he thought it was Officer Buckman, grabbed Hightower by the arm. Buckman had Hightower on the ground and Hightower was "fighting" and "swinging his arms." Several other officers (records reflect that 6 officers in addition to Cornish and Roberson were at the scene at some point) were entering the house. Officer Cornish testified that at this point he left the living room and went outside so that he did not see Hightower injured and did not see the OC sprayed. The panel found that this portion of Officer Cornish's testimony was not credible. If Hightower was indeed resisting to the point where OC spray was necessary, it is incredible that Officer Cornish would leave the scene and go outside.

Officer Roberson said that Hightower was resisting leaving and a scuffle ensued. When radio called for backup, she did not hear the radio call her. As a result, radio issued an assist officer call. When the officers arrived, she confirmed that Hightower was on his feet and the scuffle was over. She described Hightower as moving his arms, but he was not trying to hit or punch her. Her demonstration of his movements did not show any threat to her or to Officer Cornish. When the officers arrived, she did not know how Hightower got to the floor. She did not see who sprayed OC spray, but Officer Buckman later told her he had sprayed it. She immediately went outside because of the OC spray. She did not see anyone hit or kick Hightower. She did advise another officer that there were two children inside.

Ms. Mines became upset at the disturbance by the police, particularly because her two children, ages 2 and 4, were in the room with the OC spray. When she became upset, an officer handcuffed and arrested her, incorrectly concluding that she was threatening Officer Buckman, when she was trying to stop the OC spray.

Officer Buckman testified that when he arrived he saw a man swinging his arms at a female officer. He grabbed Hightower from behind, grabbed him by the arms and shoulders and fell on him so that he was safely down. He gave a verbal command to stop resisting and put his hands back. [Neither Officer Roberson or Officer Cornish testified to having heard any such warning.] He said he tried to pull Hightower's hands back to handcuff him. He admitted to spraying the OC spray in Hightower's face, two to three times from a distance of about three inches. He admitted that the regulations said

to be farther away [indeed, the regulations mention a distance of 5 to 6 feet], but he said he could not get farther away. He did not recall any assistance in handcuffing although he admitted that several officers were in the area. He justified the use of OC spray because he testified that he thought that Officer Roberson was in danger of immediate bodily injury dealing with a violent person. He admitted that spraying OC spray from three inches could lead to permanent eye injury but asserted that because Hightower was in a direct struggle and not in control he should be subdued. He later described it as "acting combative" towards the officer. He did not recall whether Hightower's arms made any contact with the female officer's arm. He demonstrated the movement as a swing (perhaps to get away) and nothing that resembled a punch. When he sprayed the OC, he was not aware that there were children in the living room.

Hightower testified that he was beaten in the head and kicked by the officers. No officer admitted to beating or kicking or to seeing anyone beating and kicking Hightower. Officer Buckman agreed that he saw blood on Hightower's lip but thought that it was from a domestic disturbance. Both Officer Roberson and Officer Cornish agreed that Hightower did not have any abrasions, cuts or bruises when they first entered the house.

Sergeant Theresa Quinter testified that Mace was sprayed before she arrived at the scene. When she arrived, Ms. Mines was making more of a scene than Hightower. She instructed officers to handcuff her and take her out of the house. She observed Hightower being escorted out of the house. She did not observe any cuts or abrasions

at that time. She spoke with two neighbors about taking the children to their grandmother's house.

One civilian testified that she saw officers kicking and beating Hightower on the way out of the house. The other civilian testified that she saw no police misconduct at any time. While the first civilian was clearly on the scene first and may have observed conduct that the second civilian did not, the panel was unable to resolve that conflict in the testimony and does not find, therefore, that police officers kicked or hit Mr. Hightower on his way to the vehicle.

However, Hightower did sustain a facial laceration, which is consistent with being injured while on the floor and being handcuffed. Hightower was taken to St. Agnes hospital before he went to the police station. The hospital report confirms the laceration. Consistent with police practices when mace is used, a special report was prepared.

The panel concludes that one or more officers punched Hightower, but is not certain whether it was Officer Buckman or another officer. The panel is also convinced that all of the officers lied about what happened. None of the officers except Officer Buckman admitted to seeing any cut or laceration on Hightower. No police officer other than Officer Buckman admitted to observing the spraying of the mace. Either the officers left before or arrived after the OC was sprayed.

Given the tremendous number of police officers, the use of mace in such close quarters, particularly in the presence of small children, was not appropriate.

Finally, it is not certain how an assist officer call developed, but the officers who arrived on the scene took matters into their own hands without checking with the officers who were there, who were not in any way fearful of bodily harm to themselves or others. As a result, Hightower suffered a laceration.

### **III. CONCLUSIONS**

The Commission concludes that Officer Buckman's admitted use of the OC spray in violation of Departmental policy warrants discipline of suspension of one week. The situation did not warrant the use of mace because there were many officers there to help him make the arrest. The Commission is particularly concerned because in his rush Officer Bushman did not even observe the two small children in the living room who could have been adversely affected by the OC spray. Since the arrest was that of the officers originally on the scene, Officer Buckman acted with unnecessary force and without taking time to consider all of the circumstances.

The Commission concludes that Officers Cornigh and Roberson were not candid in their testimony. If Hightower was as violent as described by Officer Buckman, they would not have left the room to go outside. We believe they have made these

statements to protect Officer Buckman. Because their testimony undermines the integrity of the fact finding process, we recommend an oral reprimand

Finally, we recommend that Sergeant Quinter receive a written reprimand because she was not forthright with the hearing panel. She admitted that Ms. Mines was making more of a scene than Hightower, but did not observe the abrasion on his face, even though he was taken directly to the hospital from the scene of the arrest..