

In re: : **City of Philadelphia**
:
Grupo Fuego : **Police Advisory Commission**
:
:
:
Complaint Nos. 061678-81, 061684-90

Before:
Commissioners
Nix, Burton, and Stapleton
Counsel
Michael Hayes, Esquire and
Dennis Young, Esquire

OPINION

I. INTRODUCTION

This matter is before the Police Advisory Commission (the “Commission”)¹ based on allegations against various police officers of physical abuse, verbal abuse, and/or other abuses of authority arising out of an incident that occurred on November 11, 2005 at Diana’s Ballroom, which is located at 900 E. Luzerne Street in Philadelphia, Pennsylvania. The Commission conducted a full investigation of the claims and, during six nights of hearings, Members of the Commission received the testimony of more than a dozen witnesses. This Opinion constitutes the final disposition of this matter following the Commission’s review of the report and recommendations of its Hearing Panel Members.²

II. EVIDENCE

A. The November 11, 2005 Incident

The incident giving rise to the Commission’s investigation involved a fundraising event held by Grupo Fuego on November 11, 2005 at Diana’s Ballroom. Grupo Fuego is a Philadelphia-based professional dance team founded in 1987 by Hector Serrano. Diane Guzman, the owner of Diana’s Ballroom, rented the ballroom to Mr. Serrano for the fundraising event, which was open to the public. Students involved in Grupo Fuego were given permission by Mr. Serrano to sell tickets for the event from their homes, at their schools, and at the door.

¹ Commission Member A. J. Thomson did not participate in the Grupo Fuego hearings or in the review and approval of this Opinion.

² This Opinion was submitted to the entire Commission for review on January 21, 2009, and approved by action of the Executive Committee on February 25, 2009. Pursuant to Executive Order No. 8-93, a copy of this Opinion and the findings of the Commission as they relate to conclusions drawn from the interviews, study, and review of documents, etc., have been provided to the Mayor, the Managing Director and the Police Commissioner. No sooner than three working days after such delivery, this Opinion becomes a public document available for general release. The Police Commissioner has thirty days to respond to the Commission’s findings and recommendations.

According to Mr. Serrano, approximately 350 guests attended the fundraising event. A large majority of the guests were under eighteen years of age and most were Hispanic. Grupo Fuego provided its own security for the event, which (according to Mr. Serrano) included Angel Rivera, who is a retired police officer, and three adult volunteers. Although Ms. Guzman offered to provide security for the event at cost, Mr. Serrano declined to hire Ms. Guzman's security officers.

Grupo Fuego's security personnel were dressed all in black and their shirts were labeled with the word "security." Mr. Serrano testified that Grupo Fuego members and other dance team members served as volunteer security as well, patrolling the ballroom and guarding the emergency exits. Many of these additional "security" volunteers were under the age of eighteen. As the testimony before the Commission bore out, teenagers involved with Grupo Fuego were also used as bouncers to eject unruly attendees from the event. According to Mr. Serrano, adult security staff, including Angel Rivera, performed pat-downs of the guests upon their entry into the ballroom.

Based on the testimony presented, it appears that a fight started inside the ballroom and spilled out into the street, when participants in the altercation were ejected from the premises. According to the testimony of several witnesses, a group of approximately six juveniles, possibly of Arab background, were involved in a struggle with one Hispanic student inside the ballroom. The juveniles involved were ejected by Grupo Fuego "security" personnel, including students involved in Grupo Fuego. According to the testimony, the juveniles who were ejected from the event created a disturbance in the street, and Grupo Fuego members and guests started to spill out into the street to see what was happening. Although Mr. Serrano testified that Grupo Fuego security attempted to prevent students from leaving the ballroom, their efforts were ineffective. The street soon became crowded with guests exiting the ballroom and the situation quickly became chaotic.

At least two police cars initially responded to the situation developing outside Diana's Ballroom. Officer John Swift [Badge Number 5600] testified that he was one of the initial responding officers at the scene. Officer Swift testified that, when he arrived at the Diana's Ballroom, there were approximately 200 to 250 juveniles out in the street.

Detective Matthew Gillespie [Badge Number 829] was also among the first officers to arrive at the scene. He testified that he was directed to assist with the incident at Diana's Ballroom. In his estimation, he was the fourth or fifth officer at the scene. He testified that he saw a "tidal wave" of people running out of Diana's Ballroom and, in response, called for additional officers to provide assistance in controlling the crowd.

Officer Raymond Masciocchi [Badge Number 2115] explained that there are three levels of formal assist calls within the Philadelphia Police Department. A first assist directs all of the available officers in a particular district to come to the location of the incident. A second assist directs all the officers in the adjoining districts to come. A third assist is a City-wide call for assistance. As more and more juveniles spilled out into the street outside Diana's Ballroom, a first, second, and third assist were requested.

At the height of the incident, police officers from throughout the City were deployed to provide crowd control outside Diana's Ballroom. At one point, it was estimated that there were more than two hundred juveniles packed into the street outside Diana's Ballroom, with approximately fifty police officers attempting to disperse the crowd. As described below, there were several altercations involving the police and the juveniles during the incident.

One of the responding officers, Police Officer Pablo Polaco [Badge Number 9756] was directly involved with Diane Guzman and Hector Serrano, the organizer of the event, during the course of the incident. Officer Polaco testified that shortly after arriving at Diana's Ballroom, he was called to come inside the ballroom by Ms. Guzman. She asked the officer to help her with some kids who were not involved in the situation. Ms. Guzman expressed concern for the safety of the children. Officer Polaco helped bring the children back inside the ballroom where they would be safe. Inside the ballroom, Officer Polaco heard Hector Serrano making an announcement over the microphone to all of the Grupo Fuego members and guests that the police were beating some kids outside.

Later that evening, Ms. Guzman approached Officer Polaco, told him that Mr. Serrano was in a police car and asked Officer Polaco to assist. Officer Polaco convinced his fellow officers to release Mr. Serrano since he was one of the adults in charge and could help calm the children. Mr. Serrano was very emotional about what was happening outside the ballroom, and Officer Polaco expressed his concern as to the overall situation that was unfolding. Eventually, the police were able to gain control and disperse the crowd that had gathered outside Diana's Ballroom.

During the course of the incident, the police arrested several students and at least one parent. Several of those arrested were charged with disorderly conduct, resisting arrest and/or aggravated assault. In addition, several individuals were injured, at least two seriously.

A community meeting was held several days after the incident at the Lighthouse Community Center. At the meeting, a number of residents voiced their complaints concerning the conduct of some of the police officers outside Diana's Ballroom. Thereafter, citizens filed eleven separate complaints with the Commission.³ The complaints include allegations of excessive use of force, verbal abuse, and the use of racial and ethnic slurs.

Mr. Serrano testified that he continues to hold events for Grupo Fuego. Prior to such events, however, Mr. Serrano now contacts the Philadelphia Police Department in advance to ensure open lines of communication and to coordinate a police presence whenever reasonably necessary. Mr. Serrano testified that he has not had any problems at any of Grupo Fuego's

³ Complaints were filed by Susette Pinero (No. 061678), Benny Martinez (No. 061679), Susette Martinez (No. 061680), Iesha Martinez (No. 061681), Hector Serrano (No. 016184), Pablo Negron (No. 061685), Eva Rodriguez (No. 061686), Santina Hernandez (No. 061687), Angelina Hernandez (No. 061688), Lidevina Bonilla (No. 061689); and Marva Lopes (No. 061690).

subsequent fundraising events. The following is a summary of the allegations of police misconduct asserted by the complainants in connection with the incident outside Diana's Ballroom.

B. Allegations of Excessive Use of Force and the Use of Racial Slurs

1. Incident Involving Susette Pinero and her daughter, Susette Martinez

Susette Pinero and her daughter, Susette Martinez, among others, filed complaints with the Commission in connection with the alleged actions of several Philadelphia Police Officers.

a. Testimony of Susette Pinero

Testifying before the Commission, Ms. Pinero explained that she received a call from her daughter Iesha Martinez, a member of the Grupo Fuego step program, sometime between 9:30 p.m. and 10:30 p.m. on the evening of November 11, 2005. Iesha reported to her mother that a fight had broken out at the ballroom and asked her mother to come get her. Ms. Pinero brought her daughter, Susette Martinez, with her to pick up Iesha. Ms. Pinero testified that when she arrived at the ballroom, she saw approximately one dozen police officers in the vicinity.

After arriving at the ballroom and locating Iesha, Ms. Pinero intended to take Iesha back to the car and leave. Iesha, however, asked her mother to help her friend David Neris, who was involved in an altercation with several police officers across the street. As Ms. Pinero began to walk toward David Neris, a female police officer directed Ms. Pinero to turn around. According to Ms. Pinero, she agreed to turn around and began to walk in the direction of her car. When Ms. Pinero testified that after she turned around, a police officer, now identified as Sergeant Fraser [Badge Number 8666], began to push Ms. Pinero with his baton.

Ms. Pinero testified that Sergeant Fraser caused her to bump against another police officer. Ms. Pinero claims that when Sergeant Fraser pushed her into the officer a second time, the second officer turned around and wrestled Ms. Pinero and her daughter Susette to the ground. Because of the commotion, several other officers came towards them and assisted in handcuffing Ms. Pinero and Susette, who were still on the ground. Ms. Pinero testified that neither she nor her daughter used any obscenities towards the officers. She stated that she heard someone use the term "Spic" and she believed that this was directed at her and her daughter. Ms. Pinero, however, was unable to identify who uttered the slur because she was on the ground at the time.

Ms. Pinero described the officer who arrested her as standing 5'6" and weighing approximately 200 pounds. She stated that the officer placed his foot on her daughter's face when he was handcuffing Ms. Pinero's daughter. After being handcuffed, Ms. Pinero and her daughter, Susette Martinez, were placed in a police wagon and taken to a police station. When they arrived at the station, the arresting officer asked Ms. Pinero and Ms. Martinez which of the two spat at him. Initially, both denied spitting on the police officer. Later, according to the testimony of Susette Martinez, her mother admitted to spitting at the officer. Susette Martinez was released from custody, and Ms. Pinero believes that she was charged with aggravated assault

in the third degree. Thereafter, she was offered and agreed to participate in an ARD (Alternative Rehabilitative Disposition) program.

b. Testimony of Susette Martinez

Susette Martinez testified that she and her mother were pushed by Sergeant Fraser into a husky Caucasian officer. Susette testified that, after being pushed, she turned around to say something to Sergeant Fraser. At the same time, however, the officer whom she claims to have been pushed into turned around and threw her on the ground. She stated that one officer put his foot on her face and kept pushing her face into the ground.

When Susette and her mother later arrived at the police station, a Caucasian officer with short hair asked which one of them had spit at him. According to Susette, the officer told them that one of them was “going down” for spitting in his face. Susette testified that her mom offered to take the blame, and Susette was allowed to leave the station without being charged with any crime.

c. Testimony of Iesha Martinez

Iesha Martinez was fourteen years old at the time of the incident and a member of the after-school step program, the youngest contingent of Grupo Fuego. Iesha testified that she observed Sergeant Fraser push her sister and her mother with his nightstick into another officer. According to Iesha, that other officer then threw her mother and sister to the ground and another officer, who was shorter, put his foot on Susette’s face. Iesha testified that additional officers arrived at the scene to assist. At that point, Iesha testified that she continued to walk towards the car with her brother, Benny Martinez, in order to avoid any further problems with the police.

d. Testimony of Sergeant Austin Fraser

Sergeant Austin Fraser testified that when he first arrived at the ballroom, he observed approximately 100 to 150 civilians on the scene. He explained to the Commission that he left his baton in his police car after visually inspecting the situation and determining that any fighting that may have occurred was over. After making an announcement for the crowd to disperse, he formed a line with several other officers and began to move the students away from the ballroom.

According to Sergeant Fraser, while he was attempting to disperse the crowd, a young woman kept turning towards him and raising her fist as if she was about to strike him. He described her as a Hispanic woman in her late teens or early 20s. After she made such a motion three times, Sergeant Fraser testified that he decided to take her into custody. He testified that he turned her around, leaned her against a car, put her hands behind her back, and put her in handcuffs. He then handed her over to two other officers to take her to a police wagon. He testified that he later saw the young woman he had arrested at the 24th District Police Station. At the station, he released Susette Martinez, who did not have any charges filed against her.

e. Testimony of Detective Matthew Gillespie (Badge Number 829)

Detective Gillespie was also involved in the incident with Ms. Pinero and her daughter Susette Martinez. At the time of the incident, Detective Gillespie was 24 years old, weighed approximately 190 pounds, and stood 5'10" tall. Detective Gillespie is Caucasian.

In his testimony before the Commission, Detective Gillespie explained that when he first saw Ms. Pinero, she was arguing and yelling with another female. He observed Sergeant Fraser trying to separate them. Since Sergeant Fraser was not in uniform, Detective Gillespie decided to go over toward them in order to provide a uniformed presence. By the time that he made his way through the crowd to Sergeant Fraser, Ms. Pinero was lying on the ground near a parked car, which was idling. When he saw the driver begin to back up, he became concerned that Ms. Pinero was in danger of being run over by the vehicle. He testified that he pulled Ms. Pinero off the ground and told her that he was a police officer. He described Ms. Pinero as being very upset and angry. According to Detective Gillespie, after he picked her up, Ms. Pinero turned her head and spit in his face. At that point, Detective Gillespie put her in handcuffs and placed her into a police wagon.

Detective Gillespie waited by the police wagon for several minutes. During that time, Sergeant Fraser brought a second woman over to the police wagon and Detective Gillespie opened the doors and helped her inside the wagon. Detective Gillespie then left the ballroom and met Ms. Pinero back at the district to complete the necessary paperwork. At the district, he testified that he again informed her that she was under arrest.

2. Incident involving David Neris and Alfredo Sanchez

a. Testimony of David Neris

David Neris was sixteen years old at the time of the incident and a member of all three levels of Grupo Fuego. As a member of the dance troupe, he was assigned to patrol the parking lot area to make sure that none of the guests broke any rules or did anything illegal. David checked on the activities in the parking lot twice that evening.

On the second occasion when David went outside, he saw his friend Alfredo Sanchez in what appeared to be an altercation with a stocky, Caucasian police officer. David testified that he moved towards Alfredo and gave him a bear hug in order to get him under control. Prior to grabbing Alfredo, he looked directly at one of the officers and said something to the effect of, "I got him." David testified that shortly thereafter, he was struck on his head with a baton by an officer who was standing behind him. Although he was unable to see the officer who struck him, he believes that the officer who hit him was the same stocky Caucasian officer who was speaking to Alfredo initially. This officer was later identified to be Officer John Swift.

Upon questioning by the panel, David testified that there was a significant gap or distance between Officer Swift and Alfredo when David grabbed his friend. According to Mr. Neris's testimony, the altercation between Officer Swift and Alfredo Sanchez was entirely verbal, and not physical.

David testified that he did not remember what happened immediately after he was struck in the back of the head, but that when he regained his senses he was on the ground bleeding from both the front and the back of his head. David testified that he had a cut in front of his head, close to his forehead, and a cut on the rear left side of his head. These injuries were substantiated with photographs provided to the Commission. Police officers at the scene outside Diana's Ballroom arranged for David to be transported to a local hospital for medical treatment, where he received twelve staples for each of the two cuts on his head.

Upon being released from the hospital, Mr. Neris was detained for two and one-half days; first in the police district, and then at the Youth Study Center. He was charged with several criminal offenses, all of which were dismissed following a bench trial.

b. Testimony of Alfredo Sanchez

At the time of the event, Alfredo Sanchez was sixteen years old and a member of the dance troupe. He testified that, as a member of the group, his responsibility that evening was to patrol the ballroom to ensure that the guests were not misbehaving. After hearing that a fight was occurring outside, Alfredo went to see what was happening. Once outside, he saw his friend, Erica Martinez, and approached her. According to his testimony, Ms. Martinez explained that she wanted to go back inside to look for her younger sister, but that a police officer refused to let her return into the ballroom.

When Alfredo and Erica began to walk away from the officer, Alfredo stated that the officer said something to the effect of "a bunch of spics." Alfredo claims that he responded by saying, "[t]hat's real inappropriate." Alfredo later clarified his response by indicating that those were not the exact words he used and explained to the Commission, "[i]t wasn't a verbal argument, but I turned around, and I just let him know that I didn't feel comfortable with him calling me a Spic." Then, according to Alfredo, the officer slammed him against a nearby fence. At this point, Alfredo explained that David ran over to him and attempted to defuse the situation by saying to one of the officers something to the effect of, "I got him." Alfredo stated that three additional officers then jumped on them, causing David and him to fall to the ground. At that point, according to Alfredo, the officers started to hit them with their batons. When he was on the ground, Alfredo looked over at David and saw that his head was bleeding. Alfredo testified that a total of three officers hit David with their batons.

c. Testimony of Officer John R. Swift (Badge No. 5600)

Officer John R. Swift had been a police officer for approximately five years at the time of the incident. Shortly after arriving at Diana's Ballroom, Officer Swift testified that he began directing people to move away from the vicinity of the ballroom. Officer Swift explained that one young Hispanic male, however, was not cooperating. The youth refused to move, explaining that he had friends who were still inside of the ballroom. When Officer Swift told the male, identified as Alfredo Sanchez, that he was going to be placed under arrest if he did not move, the young man took a defensive stance and started to fight with Officer Swift and the other officers.

According to the testimony, this prompted Officer Swift and the other officers to move in to arrest him. When they did so, another young Hispanic male, David Neris, jumped in between the officers and Mr. Sanchez. According to Officer Swift, Mr. Neris was not able to control Mr. Sanchez, and Officer Swift told Mr. Neris that he was going to arrest him. Officer Swift testified that Mr. Neris then turned and grabbed Officer Swift's vest. Officer Andraka, who was nearby, assisted Officer Swift by grabbing the arm of Mr. Neris. According to the testimony, David resisted and Officer Swift struck him twice with his baton on his arm in order to get him to let go of his vest. According to Officer Swift, the struggle continued and Officer Swift hit David two or three more times on his arm. According to the testimony, Officer Andraka then grabbed David again and Officer Swift struck him on the left side of his head with his baton.

Officer Swift explained to the Commission that he did not intend to hit David on his head; rather, he maintained that Officer Andraka and David had bounced off a nearby fence and were in motion at the time that his baton struck Mr. Neris. After Mr. Neris was on the ground, the officers were able to handcuff him quickly.

The panel questioned Officer Swift about the second wound to David's head. Officer Swift denied that he hit David twice on the head with his baton. He explained that the second cut on David's head must have been the result of falling on the ground combined with Officer Swift falling on top of him.

3. Incidents involving Jessica Lebron and Benny Martinez

a. Testimony of Jessica Lebron

Jessica Lebron testified that she received a phone call from Mr. Martinez's younger sister, Iesha Martinez, who asked that Ms. Lebron and Mr. Martinez pick Iesha up from the Grupo Fuego event at Diana's Ballroom. At the time of the incident, Ms. Lebron was approximately eight months' pregnant. Ms. Lebron and her fiancé, Benny Martinez, immediately drove to the ballroom to pick up Iesha. Ms. Lebron explained that when they arrived at the ballroom they saw a large number of people and police officers in the street. According to Ms. Lebron, she and Mr. Martinez intended to enter the ballroom to get Iesha, but some officers directed them to keep walking in a direction away from the ballroom. They soon located Iesha in the street outside the ballroom and started to walk back toward their car. According to Ms. Lebron, some officers were behind them pushing them along with their nightsticks. Sergeant Fraser was one of the officers moving them along.

When they arrived at her car, Ms. Lebron became pressed against the car because the officers were pushing other people in that same direction as well. Ms. Lebron explained that, after she was pressed up against the car, she tried to tuck her belly near the car tire wheel well and, in doing so, turned her body. When she did so, she testified that she was struck with a baton on the side of her stomach. She testified that she turned to the officer who struck her and told him that he had hit her.

According to Ms. Lebron, the officer stated in response, “I don’t give a F- when I say you move, you move.” She told the Commission that she saw the baton in his hand, as opposed to being lodged under his armpit. Ms. Lebron testified that she began to move away from her car and started to yell, to no one in particular, that she had been hit. Soon thereafter, an officer with a taser approached her and told her to keep moving. The Commission was informed that Ms. Lebron had previously identified this officer as Sergeant Paul Seeger [Badge Number 339].

Ms. Lebron testified that when Sergeant Seeger approached her with the taser, Iesha informed him that Ms. Lebron was pregnant. Ms. Lebron continued to walk further from her car, and was screaming and crying. After five or ten minutes, an African-American female officer, Officer Mary Powell [Badge Number 3015], approached her and asked her what had happened. Officer Powell called an ambulance for Ms. Lebron. Ms. Lebron told the emergency medical technician (EMT) that she wanted to get the name of the officer who struck her. Ms. Lebron observed Officer Brian Williams [Badge Number 4793] and approached him with the EMT. Ms. Lebron saw his name tag, which read “Williams,” on his sweater.

Ms. Lebron also testified that she saw her fiancé, Benny Martinez, get struck with a baton. She testified that Mr. Martinez was standing in front of the hood of her car when a slim Caucasian officer, who was wearing a white shirt, struck him on his head with his nightstick. She claims that Mr. Martinez was “just standing there” before he was hit. Ms. Lebron testified that she then saw Benny turn around to face who hit him. At this time, she testified that she saw a number of officers start to hit Mr. Martinez.

b. Testimony of Benny Martinez

Benny Martinez testified that he and Ms. Lebron began to walk back toward their car after they located Iesha. Mr. Martinez also testified that they were being pushed by officers who were using batons. Mr. Martinez explained that he came into contact with Sergeant Fraser and informed him that they were attempting to return to their car. According to Mr. Martinez, Sergeant Fraser instructed them to return to their car. Sergeant Fraser, however, continued to move them along with his baton. When asked by the Commission concerning the position of the officers’ batons, Mr. Martinez testified that the officers were holding their batons with two hands out in front of their chests.

Mr. Martinez testified that Sergeant Fraser pushed Mr. Martinez’s mother, Susette Pinero, so hard that she almost fell. He explained to the Commission that he told Sergeant Fraser that they were walking toward their car and asked him to stop pushing his mother. He said to Sergeant Fraser, “[y]ou don’t have to push my mother, she’s of age.” He explained to the Commission that his mother looks very young for her age. According to Mr. Martinez, Sergeant Fraser told him to “[k]eep on f___ing moving. Don’t turn around.” Mr. Martinez testified that when he reached the car and attempted to open the driver’s side door, he was hit on his head from behind with the baton. After he was hit, he claims that he fell on the trunk of the car and was hit by officers all over his body. He estimates that he was hit over 30 times. When he looked to see who was hitting him, he testified that he observed Sergeant Fraser and Officer Masciocchi. Mr. Martinez testified that Officer Masciocchi called him a “f___ing spic” and hit

him multiple times, including on the side of his eye. He received three or four stitches on account of the strike and he suffered bruises all over his body. He testified that he still experiences headaches as a result of the head strike.

Mr. Martinez testified that when the officers stopped hitting him, he was approached by Sergeant Seeger who pointed his taser at him. According to Mr. Martinez, Sergeant Seeger told him “to make a move” because “he wanted to use his taser.” Mr. Martinez was then handcuffed and taken to a police wagon. Sergeant Fraser later released him without any criminal charges.

c. Testimony of Officer Brian Williams (Badge No. 4793)

Officer Brian Williams testified that when he arrived at the ballroom he began to engage in crowd control. He explained that he placed his baton under his elbow, made a waving motion, and told the children that they had to clear the area. He testified that Jessica Lebron approached him and accused him of hitting her with his baton. He said that he did not hit her and he directed her to Officer Mary Powell, who was standing nearby.

Ms. Lebron approached Officer Williams a second time that evening. On this occasion, a paramedic accompanied her. The paramedic asked Officer Williams for his badge number and explained that Ms. Lebron had claimed that he had hit her with his baton. He provided the paramedic with his information.

In his testimony before the Commission, Officer Williams maintained that he did not use his baton on Ms. Lebron. He did, however, acknowledge that it was possible that he could have hit her with his baton as he was carrying out his crowd control techniques, without knowing that he had struck her.

d. Testimony of Officer Mary Powell (Badge No. 3015)

Officer Mary Powell testified that she saw approximately 100 to 150 civilians in the street when she first arrived at Diana’s Ballroom. The first person that Officer Powell specifically noticed when she arrived was Jessica Lebron. Officer Powell proceeded to move Ms. Lebron away from the crowd because she was pregnant and should not be in the middle of a large crowd. Officer Powell testified that she moved Ms. Lebron across the street to be with her friends.

Sometime later that evening, Officer Powell saw Ms. Lebron move back toward the middle of the crowd. Ms. Lebron told Officer Powell that she was looking for her friend. Officer Powell testified that she escorted Ms. Lebron back to the same place as she did earlier in the evening. On a third occasion, Ms. Lebron approached Officer Powell and told her that her stomach was hurting. Officer Powell called the paramedics.

e. Testimony of Sergeant Paul Seeger (Badge No. 339)

Sergeant Paul Seeger testified that, as a sergeant, he is authorized to carry and operate a taser. He testified that he had his taser on his person at Diana’s Ballroom. While at the

ballroom, he observed two police officers attempting to handcuff a man who was bleeding from his head. He described the man as resisting but not combative. Sergeant Seeger testified that he did not see how the man had received his head wound.

Sergeant Seeger observed a pregnant female nearby and saw her pulling at the back of an officer who was attempting to handcuff the bleeding male. Sergeant Seeger acknowledged threatening to use the taser on her if she did not back away from the officer. The woman told him that she was pregnant, but did not move away from the officer. Although she was not physically grabbing the officer at that moment, Sergeant Seeger was concerned that she could resume grabbing the officer so he continued to tell her to back away. He explained that he did not use his taser because some other civilians were able to move the pregnant woman away from the officer.

f. Testimony of Iesha Martinez

Iesha Martinez testified that she and her brother, Benny Martinez, were walking back towards Mr. Martinez's car after Susette Pinero and Susette Martinez were handcuffed. As they were nearing the car, Iesha testified that a tall officer went after Mr. Martinez and swung at him. Iesha testified that Mr. Martinez did not say anything to provoke the officer. Soon thereafter, six or seven officers surrounded Mr. Martinez. Iesha testified that she told Mr. Martinez to run, but a tall officer struck Mr. Martinez on the head. Iesha testified that the officers then threw him on the car, and Mr. Martinez asked why they had hit him. At this point, Jessica Lebron, Mr. Martinez's fiancée, got out of the car and asked the officers why they were arresting Mr. Martinez. Iesha testified that the tall officer swung his baton at Ms. Lebron and hit her in her belly. After she was struck, Iesha testified that Ms. Lebron had difficulty breathing and Iesha approached her to see whether she was hurt. Iesha then testified that the tall officer pointed a taser at Ms. Lebron, but did not use it on her.

g. Testimony of Officer Raymond Masciocchi (Badge No. 2115)

Officer Raymond Masciocchi testified that when he arrived at Diana's Ballroom, he saw six or seven juveniles yelling at one officer. Officer Masciocchi testified that he tried to talk to one of the juveniles in an effort to calm him down. Officer Masciocchi noted that there were three officers outside Diana's Ballroom at the time. One of the young men rushed one of these officers. Upon observing this altercation, Officer Masciocchi went to assist the officer. When he reached the officer, the juvenile who had rushed the officer was already on the ground. Officer Masciocchi testified that he did not see how the juvenile ended up on the ground. In addition, he did not see any blood on the juvenile and he did not know whether or not he was ultimately arrested.

When asked about Benny Martinez, Officer Masciocchi maintained that he was not involved in any arrest that evening. Officer Raymond Diaz [Badge Number 1540], had previously testified that he had seen Officer Masciocchi involved in a struggle on the ground with Benny Martinez in an attempt to place him into custody. When he was asked about Officer Diaz's testimony, Officer Masciocchi continued to assert that that he was not involved in any arrest that evening.

h. Testimony of Karen Bucca, Emergency Medical Technician

Karen Bucca, an Emergency Medical Technician (EMT), testified that Jessica Lebron was the woman she assisted on November 11, 2005. When Ms. Bucca first observed Ms. Lebron that evening, Ms. Lebron was walking toward her EMT vehicle. Although Ms. Lebron was walking in a normal fashion, Ms. Bucca heard Ms. Lebron screaming and crying. Ms. Bucca expressed her belief that it sounded like Ms. Lebron was screaming out of anger, rather than out of pain.

Ms. Lebron told Ms. Bucca according to the testimony that there had been a huge fight and that she had been hit in the stomach with a nightstick. When Ms. Bucca asked her whether she was hit intentionally, Ms. Lebron said “no,” and explained that she was hit while she was in the middle of a large crowd involved in a fight. Ms. Bucca testified that she did not observe any marks or injuries on Ms. Lebron. As Ms. Bucca did not observe any injuries that needed medical care, Ms. Bucca instead comforted Ms. Lebron, assured her that her baby was well protected, and explained that the hospital would perform an ultrasound to be sure that everything was okay.

Ms. Bucca testified that when Ms. Lebron was stepping into the EMT vehicle, Ms. Lebron saw a police officer and screamed for him to come over to her. When the officer approached, Ms. Lebron informed him that she got struck in the stomach and asked him for his badge number. The police officer told Ms. Lebron that he was sorry, that no one meant to hit her on purpose, and that she had been mixed-up in a large crowd. According to Ms. Bucca, the police officer was very courteous toward Ms. Lebron, while Ms. Lebron appeared upset.

C. Allegations Concerning the Use of Racial and Ethnic Slurs

Some of the complainants testified that they heard police officers use ethnic and racial slurs. Both Susette Pinero and Susette Martinez testified to hearing racial slurs when they were arrested. Alfredo Sanchez similarly testified that an officer made a derogatory comment in his direction as he and Erica Martinez were walking away from one police officer.

By contrast, none of the police officers who testified stated that they either used or heard any other officer make any derogatory comments. Officer Masciocchi testified that he did not recall hearing any officers use any racial or ethnic slurs. Similarly, Officer Diaz testified that he did not hear any racial or ethnic slurs. Officer Polaco testified that he did not hear any ethnic slurs. Likewise, Sergeant Fraser did not hear any racial slurs or derogatory comments.

III. ANALYSIS

The Commission believes that a number of factors contributed to the unfortunate series of incidents that occurred on November 11, 2005 at Diana’s Ballroom. At the outset, the Commission finds that there was inadequate security and adult presence at the ballroom. The four-person security team organized by Mr. Serrano was wholly inadequate to patrol an event with several hundred juveniles. The Commission also concludes that the use of Grupo Fuego dance team members to patrol the ballroom and monitor the exit doors and serve as security

showed poor judgment on the part of the organizers. Mr. Serrano's decision to task teenagers with the responsibility of safety and welfare of what he described as 350 young guests was irresponsible and, in the Commission's view, contributed significantly to the events that unfolded outside the ballroom that evening. The Commission believes that, had there been better planning, the fight that occurred at the ballroom that evening would not have escalated into the near riot that quickly unfolded in the street.

Since November 11, 2005, Mr. Serrano has worked with the police in providing security at Grupo Fuego's fundraising events, which has proved to be effective in preventing a repeat of the incident underlying this Opinion. Although we are pleased that Mr. Serrano now works in cooperation with the police, we believe it is unfortunate this relationship was not in existence at the time of the 2005 event – and we find that Mr. Serrano's poor planning and decision-making ahead of the November 11, 2005 event put guests who attended the event at risk.

The Commission also finds that the conduct of several officers on the scene was out of line. Before discussing that conduct, we note that a great majority of the responding officers deserve to be commended for the way that they conducted themselves on the evening of November 11, 2005. In particular, we believe that Officer Polaco handled the situation professionally and honorably. Officer Polaco strove to diffuse the hostile situation by talking to the people involved in the incident, including Diane Guzman and Hector Serrano. He listened to their needs and sought to calm the situation, even after he heard Hector Serrano on a microphone telling the student attendees still inside the ballroom that the police were beating kids outside. Whereas Officer Polaco acted responsibly to help calm the situation, the Commission finds that Hector Serrano acted irresponsibly, exacerbating the riotous atmosphere that developed at the scene.

A. Detective Matthew Gillespie (Badge No. 829)

The Commission finds that it is likely that either Ms. Pinero or her daughter, Susette Martinez, spat at Detective Gillespie. We find that Detective Gillespie was credible when he testified that a person at the ballroom spat on his face. We cannot conclude, however, whether it was Ms. Pinero or her daughter who did so. Although we find that Detective Gillespie's recitation of his arrest of Ms. Pinero to be confusing, we cannot conclude that he engaged in any wrongdoing.

B. Sergeant Austin Fraser (Badge No. 8666)

The Commission concludes that Sergeant Fraser was utilizing his police baton in his efforts to disperse the crowd. Although Sergeant Fraser testified that he left his baton in his police vehicle, we do not find his recollection to be credible, especially given the number of juveniles present at the ballroom and the chaotic atmosphere on the street. We also find it very likely that Ms. Pinero and Susette Martinez were indeed pushed by Sergeant Fraser's baton during his crowd control efforts. The Commission does not, however, find that Sergeant Fraser's use of his baton was improper or inappropriate given the circumstances. Nor did the Commission find credible the testimony of Ms. Pinero that Sergeant Fraser used derogatory

ethnic terms toward her. Accordingly, the Commission makes no finding of misconduct against Sergeant Fraser.

C. Officer John R. Swift (Badge No. 5600)

Based on the testimony, allegations, and photographic evidence presented, the Commission concludes that Officer Swift intentionally struck David Neris in the head with his baton, seriously injuring Mr. Neris. Although Officer Swift testified that he only hit David Neris in the head once, and even then insisted that the blow was not intentional, the Commission does not find Officer Swift's testimony to be credible in light of the other evidence introduced at the hearing. Based on the totality of the evidence, the Commission concludes that Officer Swift intentionally struck David Neris with his baton at least once, and likely twice, causing significant lacerations to open in Mr. Neris's scalp and more than likely causing him to suffer a concussion.

D. Officer Raymond Masciocchi (Badge No. 2115)

The Commission finds that the testimony offered by Officer Masciocchi was wholly in contrast to the testimony of Complainant Benny Martinez. Mr. Martinez specifically identified Officer Masciocchi as one of the officers who struck him. By contrast, Officer Masciocchi testified that he was not familiar with the name Benny Martinez and that he took no part in any arrest that evening. In addition to Mr. Martinez, Officer Diaz also testified that Officer Masciocchi was involved in a struggle on the ground with Mr. Martinez in an attempt to arrest Mr. Martinez. Based on the evidence, the Commission finds it likely that Officer Masciocchi was involved in the arrest of Benny Martinez. The Commission, however, does not find that there is clear and convincing evidence that Officer Masciocchi engaged in any violation of the Police Department Directives in connection with the arrest. As discussed more fully below, the Commission finds that there was insufficient evidence presented as to the circumstances surrounding the head strike to Benny Martinez. As such, the Commission cannot specifically attribute any wrongdoing to Officer Masciocchi.

E. Unknown Officer who Struck Benny Martinez

First, the Commission concludes the obvious – that Benny Martinez was, indeed, struck in his head by a police baton. Based on the testimony and allegations before it, however, the Commission cannot conclude with any certainty that the baton strike to Mr. Martinez's head was intentional.

In addition, the Commission believes that several important details are missing concerning the incident with Mr. Martinez. Although Mr. Martinez claims that he did nothing to provoke the police, the Commission is reluctant to accept that a police officer would intentionally strike a civilian with a baton for no reason. The Commission believes that something else likely occurred between Mr. Martinez and the officers who were present to precipitate the baton strike. We note that none of the officers who testified witnessed the circumstances leading up to Mr. Martinez being struck in the head or the strike itself. From the testimony presented, the Commission believes that Mr. Martinez was upset because of the way in which Sergeant Fraser was using his night stick to push his mother, Susette Pinero. We believe

that it is possible that Mr. Martinez's emotions may have had some bearing on the officer's behavior toward him.

Furthermore, the testimony presented to the Commission is insufficient to support a definitive conclusion concerning the identity of the officer who struck Mr. Martinez. Accordingly, the Commission cannot, at this time, make a recommendation for discipline against any specific officer in connection with the arrest of Benny Martinez.

F. Officer Brian Williams (Badge No. 4793)

Jessica Lebron has alleged that Officer Brian Williams struck her in her belly with his baton. Although the Commission concludes that Jessica Lebron was likely pushed or otherwise struck by a baton during the incident, we cannot recommend any discipline against any particular officer for this unfortunate incident based upon the evidence presented.

We observe that Ms. Lebron exercised very poor judgment by exiting her vehicle after arriving at the ballroom. As she was approximately eight months pregnant, Ms. Lebron clearly put herself at risk by choosing to be present in the tumultuous crowd outside of the ballroom that evening. Furthermore, Ms. Lebron was told by at least two adults to leave the scene because she was pregnant and should not be there. Ms. Lebron apparently ignored those warnings, putting herself and her unborn child at risk.

The Commission finds Ms. Lebron credible when she testified that she was struck or pushed by a baton. On the evening of the incident, Ms. Lebron told Officer Powell that her stomach hurt and she later told Karen Bucca, an EMT, that she had been struck.

The Commission, however, does not find clear evidence that any officer intentionally struck Ms. Lebron with a baton. First, we note that Ms. Lebron's testimony and Officer Williams' testimony are inconsistent concerning the manner in which Ms. Lebron may have been struck. Ms. Lebron, on the one hand, testified that she was pressed up against her car at the time that she was struck by the baton. Officer Williams, on the other hand, testified that he may have waived his baton as he was utilizing it to control the crowd. He did not, however, mention any incident involving a civilian near a parked car. Next, we find that Ms. Lebron's testimony conflicts with that of Ms. Bucca with regard to whether the strike was intentional and the place in which the strike allegedly occurred. According to Ms. Bucca, Ms. Lebron had stated that the strike was not intentional. More specifically, Ms. Lebron told Ms. Bucca that she was struck because she was present in a large crowd involved in a fight.

In light of all of the evidence, the Commission finds it most likely that Officer Williams inadvertently struck Ms. Lebron while he was waving his arm in an effort to direct the crowd, as he acknowledged during his testimony that this may have occurred. This conclusion is also consistent with the testimony offered by Ms. Bucca. These facts, the Commission concludes, while regrettable, do not form the basis for a recommendation of discipline against Officer Williams.

G. Use of Racial or Ethnic Slurs

The Commission is particularly troubled by the testimony and allegations that some of the police officers who responded to the disturbance outside Diana's Ballroom directed racial or ethnic slurs at the citizens whom they were trying to move out of the street and away from the scene. The use of any ethnic or racial slur by any member of the police force is unacceptable, no matter the circumstance. Based on the testimony provided, we believe that it is likely that one or more officers made inappropriate racial or ethnic comments toward citizens during the disturbance. The Commission cannot, however, definitively conclude that any particular officer was responsible for uttering a particular derogatory term. Although we heard some testimony suggesting the involvement of particular officers, we are hesitant to find any particular officer culpable in this regard, especially given the riotous nature of what unfolded outside the ballroom, the confusion surrounding the event, and the conflicting testimony of credible witnesses who appeared before the Hearing Panel. We reiterate, however, that the use of racial or ethnic slurs has no place in the Philadelphia Police Department, and that the use of such language can only serve to harm community/police relations and exacerbate tensions during police encounters with citizens.

IV. RECOMMENDATIONS

A. We recommend additional training regarding the need for sensitivity toward people of different racial and ethnic groups in crowd control situations. In the Commission's view, officers responding to the incident at Diana's Ballroom were not provided sufficient direction and command to clear the street in an effective manner, and the use of profanities and racial and ethnic slurs while attempting to control the crowd only exacerbated the anger and tension of the crowd toward the officers responding to a volatile and dangerous situation.

B. We recommend additional training regarding proper baton use. In this case, two individuals were taken to the hospital as a result of significant head injuries due to police baton strikes. As Police Department Directive 22 indicates, the purpose of the baton is for defense and to assist in effecting an arrest. The Directive specifically prohibits an officer from striking a civilian on the head. In light of the fact that two unarmed civilians received multiple head strikes from police batons, it is clear that additional training on proper baton use is necessary.

C. We recommend that Officer Swift be placed on a three day suspension without pay as a result of his improper use of a baton.