

In re: : **City of Philadelphia**
: **Police Advisory Commission**
Glen R. Ehly, on behalf of his : **Complaint No. 011035**
minor son, Gregory Ehly :
:

Before R. Burton, A. Holloway,
C. Marrero and J. Stapleton,
Commissioners
Michael Butler, Esquire, Counsel
Commission Endorsement : March 13,
2003

OPINION

A. Background

Glen R. Ehly, on behalf of his minor son, Gregory Ehly, filed a complaint with the Police Advisory Commission (“Commission”) in connection with an incident that occurred on September 17, 2001. On that Monday night at approximately 10:30 p.m., Gregory Ehly was involved in an altercation with off-duty Police Officer Peter Luca. On behalf of his son, Mr. Ehly alleges that Gregory Ehly was the victim of physical abuse at the hands of Officer Luca and other officers who arrived on the scene, and claims abuse of authority in Officer Luca’s off-duty conduct. The Commission heard testimony from seven civilian witnesses and four police officers, and considered numerous other statements culled from IAD interviews and the Commission’s comprehensive investigation of the incident. From this information, the Commission makes the following findings and draws the following conclusions.

At approximately 10:20 p.m. on September 17, 2001, Gregory Ehly, then age fifteen, was walking home with two friends, proceeding south on Ridge Avenue. At the intersection of Ridge and Shawmont Avenues, the youths encountered a sport utility vehicle traveling east on

Shawmont Avenue. The SUV was being driven by Officer Luca, who was returning from a first date with Megan Toner, a passenger in the SUV.

The three minors all testified that Officer Luca's car pulled up to the intersection quickly as they were in the crosswalk and about to approach the curb on the other side of the street. There was further testimony that Officer Luca beeped his horn and then swerved around them as he attempted to turn right in order to proceed South on Ridge Avenue. Gregory Ehly admits that he gave the finger to Officer Luca and shouted "Hey, watch where the f_ _ k you're going." He admits calling Officer Luca a "p_ _ sy" or an "_ sshole." Officer Luca and Megan Toner saw the obscene gesture and heard profanities shouted but gave a slightly different account of the scene at intersection. Both described the road being "blocked" by the presence of the youths. Ms. Toner claims the youths did not move and began to curse and scream obscenities. Officer Luca suggested that two of the youths actually jumped in front of his car. Instead of continuing South on Ridge Avenue, Officer Luca immediately pulled his SUV into the corner gas station, got out of his car and confronted the youths. He instructed Megan Toner to remain in the vehicle.

Officer Luca testified that, after he got out of his car, he told the youths "to move it along." He stated that they continued to shout profanities at him, so he walked up to the front of his car, where he claims they were standing. He identified himself as a police officer and showed his badge. He testified that his purpose in getting out of the car was to tell the youths to move along, and that he did not call 911 because he did not believe the incident would escalate as far as it did.

Officer Luca further testified that, after identifying himself as a police officer, Gregory Ehly responded by saying something to the effect of, "I don't give a f_ _ k who you are, my dad's a cop." Officer Luca claims he responded by saying that if Gregory's father was a police

officer, then Gregory should learn how to respect a police officer. The taunting continued until Officer Luca claims the boys rushed him, with Gregory grabbing Officer Luca in a bear hug. He stated that he got his hands free, shoved Gregory off, smacked Gregory's accomplice, Adrian Hustler, and ran to his SUV to get his handcuffs from his briefcase.

With handcuffs in hand, Officer Luca claims he walked towards the two boys, who he says started walking towards him with closed fists. Officer Luca stated that he walked away from his SUV, and towards the boys, out of concern for Megan Toner's safety. Officer Luca described a girl who was present, identified later as Jessica Holdsworth, who was trying to persuade Gregory to back off.

Officer Luca described a physical confrontation with the boys as he attempted to arrest and handcuff Gregory Ehly. He claims that Gregory called to his friend Adrian Hustler, "do you have my back," at which point, Adrian is alleged to have thrown a punch at Officer Luca stating "get off my boy." Officer Luca testified that he punched Gregory in the face, and as Gregory stumbled to the ground, he looked to see Adrian running away. He stated that, after chasing Adrian for a short distance, he handcuffed Gregory and then went to his SUV to call 911.

Megan Toner corroborated parts of Officer Luca's account, including the obscenities and taunting from Gregory Ehly. She claims Gregory said to Officer Luca, "If you're a cop show me your f_ _ king gun," but there is no indication that Officer Luca brandished his weapon. Megan Toner also confirmed Officer Luca's description of the young lady in the trio, Jessica Holdsworth, who was trying to get Gregory to move along. Megan Toner claims to have observed the boys approach Officer Luca and grab him from the front. She did not see the blow delivered to Gregory's face. In her version of the events, Officer Luca came back to the SUV to retrieve his handcuffs after Gregory was lying on the ground.

Gregory Ehly's version of the confrontation was different in several material respects. Gregory admits that he had a profanity laced verbal exchange with Officer Luca, when Officer Luca got out of his car and identified himself as a cop. He claims he said to Officer Luca, "So what are you going to do?" and that Officer Luca responded by saying he had a gun and would shoot Gregory. Gregory Ehly's response to this was to say, "go ahead," "do it." Gregory Ehly admitted trying to provoke Officer Luca.¹ He admits that Jessica Holdsworth tried to pull him away to keep him from challenging the officer's authority.

Gregory Ehly testified that after Officer Luca had threatened to shoot him, Gregory laughed at Officer Luca, saying that "he [Officer Luca] didn't have the balls to shoot me." This remark, Gregory believes, prompted Officer Luca to grab him. Gregory claims that, after provoking Officer Luca, the police officer grabbed him by the tee-shirt, around his neck. Gregory testified, "I guess I made him mad, just sitting there laughing at him."

Gregory testified that it was at this point that Adrian Hustler said that he had Gregory's back. Gregory said he told Adrian to leave, and then got punched in his right jaw by Officer Luca. Adrian Hustler's story is largely consistent. He said that he witnessed Gregory and Officer Luca exchanging verbal assaults and arguing back and forth, and remembered Jessica Holdsworth trying to pull Gregory away. He denies trying to hit Officer Luca and admitted running once Officer Luca punched Gregory in the jaw.

Gregory was taken first to the district and then to the hospital, where it was determined that he had a mandibular fracture. He was arrested for his role in this incident and ultimately pleaded guilty to simple assault on Officer Luca.

¹ The Commission notes that Gregory Ehly voluntarily admitted during his testimony to sharing a 32 oz. bottle of malt liquor (beer) with some friends, including Adrian Hustler, at some time prior to the incident involving Officer Luca. Officer Luca did not raise intoxication as an issue during or after the event and Gregory was not charged with an offense relating to underage drinking.

B. Discussion

(1) Physical Abuse Claims

Much of the testimony in the hearing centered around Officer Luca's confrontation with Gregory Ehly and Adrian Hustler in the gas station lot. The allegations of physical abuse were directed towards excessive force by Officer Luca in punching Gregory in the jaw, and by other officers on the scene once Gregory was handcuffed in placing Gregory in the patrol car.

We find Officer Luca's version of the physical confrontation with Gregory and Adrian lacking credibility in many respects. First, we do not believe that there is a preponderance of evidence supporting Officer Luca's testimony that Adrian Hustler was involved in the physical confrontation; that Adrian Hustler approached Officer Luca with a closed fist; or that Adrian Hustler threw a punch at Officer Luca. We believe that it is more likely that Adrian was present initially, when Gregory was taunting Officer Luca, but ran away immediately after Gregory was punched. We note that Officer Luca is approximately 6'0" and 240 lbs. and Adrian Hustler approximately 5'5", 100 lbs. We find insufficient evidence to conclude that Adrian Hustler joined with Gregory Ehly to attack Officer Luca as described by Officer Luca.

Gregory Ehly's situation is entirely different. Gregory admitted to an assault on Officer Luca, and we accept his prior admission of that criminal act. There was some indication that his decision to accept what his father referred to as a "deferred adjudication" was motivated by Gregory's expectation of a possible later expungement of his record.² Nevertheless, we do not believe it is appropriate for the Commission to make a finding inconsistent with that acceptance of culpability. Gregory had legal counsel with respect to the criminal charges and elected the

deferred adjudication rather than proceeding to trial. He admitted to an assault on Officer Luca and we find that admission binding on Gregory in this proceeding.

If we were not faced with Gregory's acceptance of culpability on the assault charge, we may be inclined to agree that Officer Luca's conduct would justify a finding of physical abuse. The scratches on Gregory's neck and the blow to Gregory's right jaw from the right handed Officer Luca cause us to question Officer Luca's version of the event. And, for the reasons set forth above, we do not believe Adrian Hustler joined in an assault on Officer Luca. Yet Gregory's admission for purposes of the deferred adjudication does not give us an opportunity to make a contrary finding on this specific issue. We conclude that the physical confrontation was precipitated by Gregory's assault on Officer Luca and reject the claim that Officer Luca knocked Gregory unconscious "by sucker punch" as set forth in the complaint filed with the Commission.

On the issue of physical abuse associated with Gregory being taken into custody, we find insufficient evidence of any excessive force. There was testimony of witnesses who observed from a distance Gregory being thrown on to the hood of the police vehicle once handcuffed. There was also testimony from the arresting officers consistently describing the appropriate level of force to address the situation. The eyewitness accounts described what was no doubt a frightening scene, with the officers placing Gregory under arrest. Nevertheless, based upon the testimony and our review of the records, we do not find sufficient evidence to conclude that the arresting officers used more force than reasonably necessary under the circumstances.

² According to the Police Department's Investigation Report, Gregory was charged with simple assault, aggravated assault, "REAP," making terroristic threats and conspiracy. It appears that the felony charges were dropped, in connection with the deferred adjudication on the simple assault charge.

(2) Abuse of Authority

Glen Ehly also asserts an abuse of authority claim, and on this issue, the Commission sustains the claim that Officer Luca exceeded his authority. His conduct prior to the physical confrontation was clearly out of bounds.

The Philadelphia Police Department's Memorandum 98-1, February 27, 1998, regarding off-duty police actions makes the officer's safety and the safety of others the paramount concern when deciding what course of action to take when responding to off-duty incidents. The memorandum includes a reminder that police officers are expected by the community to hold themselves to a higher standard of behavior and should conduct themselves accordingly. Clearly, Officer Luca did not follow a higher standard of behavior and an avoidable confrontation became an inexorable conclusion.

The principal guideline in the Department's memorandum on off-duty conduct is clear and succinct. "In most off-duty situations, the best action an officer can take is to be a good witness and call 9-1-1." The guidelines provide other applicable principles. In minor offenses such as disorderly conduct, unless such action is necessary to prevent bodily injury or death, the guidelines state that off-duty officers will not take police action. This theme finds its way throughout the memorandum. "In cases where the officer observes behavior warranting police intervention, the officer should dial 9-1-1. When possible, a call to 9-1-1 should be placed prior to taking any other action."

The Commission concludes that Officer Luca should not have taken this matter into his own hands by stopping his vehicle and confronting the youths for their conduct in the intersection. The conduct of Gregory Ehly was clearly unacceptable, if not offensive, but probably not much different than what one would see or hear at a football game. Roadrage

seemed to overcome Officer Luca, even though this was just the kind of minor offense that the Department's guidelines would call for an off-duty officer to remain on the bench. The higher standard of conduct called for of police officers was not demonstrated in this case. Nothing that the Commission could find in the record called for Officer Luca to pull his vehicle into the service station lot, get out of his SUV and confront these youths. His conduct resulted in personal injury; it was not necessitated to prevent it.

Assuming for the sake of argument that it was appropriate to stop and confront the boisterous Gregory Ehly, Officer Luca erred again in failing to be a good witness and instead taking things into his own hands. Ms. Jessica Holdsworth may have been wise beyond her years when she observed to the Commission, "I didn't even think it was necessary to argue. It was a stupid mistake that could have been easily corrected by just walking away from it, but they just kept on arguing." Gregory would not back down, perhaps because he had been drinking, and Officer Luca would not follow the procedures, perhaps because he felt that his authority had been challenged in front of Megan Toner.

It is the Commission's conclusion that Officer Luca should be suspended for three days for his violation of the Department's memorandum on dealing with off-duty incidents. We also recommend training for Officer Luca on the handling of incidents off-duty and suggest some anger management counseling. This may not be the last time that his authority will be challenged. We hope that in the future he will be better equipped to respond in the proper manner, consistent with the Department's procedures outlined in Memorandum 98-1.

C. Conclusion

This Opinion represents the final disposition of the Police Advisory Commission concerning the complaint of Glen Ehly, on behalf of his minor son, Gregory Ehly, No. 011035. The Commission endorsed the findings and recommendations as set forth in this Opinion during its regular monthly meeting held on March 13, 2003.

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. This Opinion also will 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 delivery of the Opinion to respond to the Commission's findings and recommendations. The Opinion becomes a public document three working days after its delivery to the Mayor and the other city officials.