
IN RE: : **CITY OF PHILADELPHIA**
EBONY KETTER : **POLICE ADVISORY COMMISSION**
: **COMPLAINT NO. 011034**

Before Commission Members William T. Cannon, Esq.,
Charles Harris, PPD Ret. , and Dr. Vivian Ray, Ph.D.
Commission Counsel, Michael Hayes, Esq.
Commission Endorsement: January 17, 2003

OPINION OF THE COMMISSION

1. INTRODUCTION

On Wednesday, November 14, 2001, Ms. Francis Ketter filed a Complaint with the Police Advisory Commission on behalf of her granddaughter, Ebony Ketter, alleging physical abuse, verbal abuse, and abuse of authority by uniformed officers of the 17th Police District in connection with an incident that occurred on November 12, 2001. This Opinion constitutes the disposition of the Complaint following the full Commission's review of the report and recommendation of the hearing panel.¹

2. HEARING TESTIMONY

On the referenced date Ebony Ketter, then 16 years old, a student at Prep Charter High School, was walking over Wharton Street in South Philadelphia intending to catch

¹ This Opinion represents the final disposition of the Police Advisory Commission concerning the complaint of Ebony Ketter, Commission Complaint No. 011034. The Hearing on Ms. Ketter's complaint was held on November 19th and 21st, 2002. The Commission discussed the hearing panel's findings and recommendations, and decided upon its final recommendations during its monthly meeting on January 17, 2003. Pursuant to the Mayor's Executive Order, this Opinion will be hand-delivered to Mayor John F. Street, Philadelphia Police Commissioner Sylvester M. Johnson, and City Managing Director Estelle Richman. The Opinion will also be mailed to the Complainant on the same date it is delivered to the Mayor, *et al.* Also pursuant to the Executive Order, the Police Commissioner has thirty days from the date of delivery of the Opinion to respond to the Commission's findings and recommendations. The Opinion will become a public document not sooner than three business days after its delivery to the Mayor and the other city officials.

the bus at the corner of 16th and Wharton Street that would take her to afternoon classes at Community College where she also matriculated. Walking alone, dressed in a jacket and jeans with a backpack behind her, she presented a typical schoolgirl appearance. Her gait did not betray that she suffered from multiple sclerosis, a condition that she kept in check through medication.

On the day of incident, Ebony was living with her aunt, Shirl Ketter, and the walk from her aunt's home over Wharton Street towards her bus destination took Ebony past Capitol Street, a small street off of Wharton Street between 20th Street and 21st Street. On Capitol Street at that time, members of the Philadelphia Police Department were conducting a surveillance of suspected drug activity. Surveillance Officers, the hearing panel was advised, observed a black female approach a black male on Capitol Street and engage in a suspected drug transaction. The surveillance team broadcast this event over a special police radio band being monitored by uniformed District Police Officers situated within several blocks of the surveillance location. The role of the uniformed officers was to stop and investigate anyone who ostensibly engaged in a narcotics transaction on Capitol Street.

On that day, at approximately 12:30 PM, Police Officer Robert J. Reed, Badge #3198, and Police Officer Edward Sadowski, Badge #5050, both members of the Narcotics Strike Force, were working uniform in a marked police vehicle. Officer Reed testified that he monitored a transmission by Officer Deoso, a member of the Capitol Street surveillance team, to the effect that he "had a buyer" and received a description of a black female, wearing a white scarf, a black jacket and blue jeans with some kind of a bag on her back. Officer Deoso also reported that the suspect female had walked off North from Capitol Street and East on Wharton. Moments later Officer Reed was advised by his superior, Sgt. Fitzgerald, that he had spotted the female walking Eastbound on Wharton Street. With all of this information known to them Officer Reed testified that he and Officer Sadowski thereafter took under observation Ms. Ketter walking East on Wharton Street now approaching Cleveland Street. The Officers pulled their car onto Cleveland Street just off of Wharton whereupon Officer Reed exited the vehicle, approached Ms. Ketter who had reached the corner of Wharton Street and Cleveland, and asked if she could step down Cleveland Street and speak with him. She obliged his

request whereupon he informed her that they had stopped her because she had been observed buying drugs from someone on Capitol Street. Officer Reed testified that Ms. Ketter's response was to say: "Are you fucking crazy? I don't even know where Capitol Street is and I don't use drugs". Officer Reed urged Ms. Ketter to make things easy on herself by simply admitting to the transaction. Ms. Ketter continued to protest vehemently that she had done nothing wrong. She grew upset, began to cry, and laced her denials admittedly with a great deal of profanity directed at Officer Reed. Officer Reed testified that he did not conduct a frisk or search of the person of Ms. Ketter because she was a female. Instead he put out a radio request for a female officer to come to the scene and conduct a search of her person. Meanwhile, he and Officer Sadowski maneuvered Ms. Ketter nearer to the police cruiser. When Ms. Ketter announced her intent to leave because she would be late for school, Officer Reed informed her that she was not permitted to leave. Ms. Ketter began to push the officer's hands away from her shoulder, and began to scream out to passersby who had gathered to watch. Ms. Ketter called out to one onlooker who she recognized to call her grandmother because the police were beating her up. Officer Reed decided to handcuff Ms. Ketter. He grabbed her left wrist and handcuffed her left wrist while Officer Sadowski grabbed her other arm and cuffed her right wrist, actions that both officers admitted to in their own testimony. At that point Officer Reed testified that he began to search through Ms. Ketter's backpack looking for evidence of drug possession. Instead he found inside her bag only schoolbooks and a small purse with a few dollars and her identification. Since Ms. Ketter was protesting loudly against the invasion of her property, Officer Reed testified that he decided to place her inside his police cruiser where her screams would be stifled while awaiting the arrival of the female officer.

Officer Reed testified to the arrival of female Police Officer Tracey Cooper, Badge #5468. Officer Reed testified that Officer Cooper removed Ms. Ketter from the police cruiser to permit a search of her person. The search by Officer Cooper, as well as the search of Ms. Ketter's backpack, proved negative for the presence of any contraband. Instead of releasing Ms. Ketter at that point, Officer Reed, now believing that "something was going to come of this", testified that he decided to put the still handcuffed Ms. Ketter back into the police cruiser to await a supervisor. He called for Sgt. Fitzgerald who

arrived on the scene. Shortly after Sgt. Fitzgerald's arrival Ms. Ketter's father arrived whereupon, following a heated discussion between Ms. Ketter's father and the police, Ms. Ketter was released to the custody of her father.

Officer Reed testified that he prepared a Philadelphia Police Department Vehicle Or Pedestrian Investigation Report of the incident. He testified that Ms. Ketter was never arrested and that he had simply conducted an investigative stop. He testified freely and unequivocally that Ms. Ketter could not be released until the completion of a search of her person that would verify or negate her role as a buyer of drugs.

Police Officer Sadowski testified that Ms. Ketter was merely **suspected** of being a buyer of drugs. He testified to his own experience over the past two years of his career as a member of the Narcotics Strike Force. He testified freely that in each instance in which a member of the surveillance team reported an ostensible transaction between a putative drug seller and a putative drug buyer that he had each time attempted to stop the buyer whether on foot or while attempting to drive away. In every situation so presented, he would not permit the citizen to depart without searching the suspect's pockets to determine if drugs were there located. Officer Sadowski testified that if drugs were then found that the person was arrested. If no drugs were found then the person was set free to go about their business.

In the case of Ms. Ketter, Officer Sadowski readily acknowledged that he helped Officer Reed handcuff Ms. Ketter and was present while Officer Cooper searched her person with negative results. Officer Sadowski, as had Officer Reed, testified that Ms. Ketter was repeatedly profane in her denials of suspected drug activity, but that neither he nor Officers Reed or Cooper had ever responded with profanity of their own.

Officer Cooper testified that she was called out to the location of Officers Reed and Sadowski for the purpose of searching the stopped female. She testified to going through Ms. Ketter's jacket pockets and her jean pockets as well as searching through Ms. Ketter's backpack in an unsuccessful search for the presence of drugs. As Officer Reed and Officer Sadowski before her, Officer Cooper testified that Ms. Ketter was never arrested, but simply detained until a search of her person could be carried out the results of which would determine if she was to be charged or released. Officer Cooper testified that Ms. Ketter was crying the entire time that she was in her presence.

Ms. Ketter herself testified to her experience. She described a state of disbelief that Officers Reed and Sadowski were accusing her of drug involvement. She admitted to a profanity-laced dialogue with Officer Reed in which she often resorted to the “F” word to drive home her indignation. She testified, however, that Officer Reed responded in kind, at least once calling her a “nigger bitch” and other derogatory terms up to the point where Officer Cooper arrived. Officer Cooper is African-American as was the complainant. Officer Reed and Sadowski are Caucasian.

Ms. Ketter testified that she explained to Reed and Sadowski that she was simply on her way to classes at Community College and asked to be permitted to continue her journey. Officers Reed and Sadowski would not permit her to leave, kept insisting that she had been clearly observed in a drug transaction, and that she would have to be searched before any thought could be given to releasing her. Seeing a friend among persons who had gathered nearby to witness her ordeal, Ms. Ketter requested that her friend call her grandmother at which point she was placed in handcuffs by the two officers and placed into their police cruiser. Though handcuffed behind her back Ms. Ketter was able to activate her cell phone with accompanying earpiece and call her aunt, Shirl Ketter, whom she implored to contact her father. When the officers saw her talking on the cell phone they took the cell phone away from her, an act acknowledged by the officers. She observed Police Officer Reed going through her possessions and told him he had no right to do that. When Officer Cooper arrived she was taken out of the police cruiser, still handcuffed, and subjected to a sidewalk search in public view. Even when that event was negative for the presence of drugs, she still was not extracted from her handcuffs, but placed back in the police car for a further period of time during which first Sgt. Fitzgerald, and then her father arrived.

When finally released she went to Children’s Hospital where she made complaint of her back aching and severe headaches. She testified that at one point, while still in the throes of the police, she fell down and Officer Reed nudged her with his foot to get up. Ms. Ketter denied ever being involved in drug activity.

The Reverend Earl Ivan Pope testified that on the day of the incident he lived on the corner of 18th and Wharton and observed most of the events that took place on Cleveland Street from his second floor window. He observed the police place Ms. Ketter

in handcuffs and saw them removing things from her bag. He described Ms. Ketter as in a state of distress. He stated that he was able to hear both Ms. Ketter and one of the officers engage in profanities with one another. He offered the observation that it looked like the police were attempting to do the job required of them, but their attitude, behavior, and bad language detracted from that objective.

Shirl Ketter identified herself to the hearing panel as the aunt of Ebony Ketter. She testified that Ebony had left her home to go to Community College perhaps 15 minutes before she received a call from Ebony who was then in a high state of agitation, crying, and requesting that she get in touch with her father because she was in the clutches of the police. She also testified that while listening to her niece she could hear profanities being directed at Ebony among a chorus of raised voices on both sides. Ms. Ketter testified that she was able to reach Ebony's father who then responded to the scene of her apprehension.

3. ALLEGATIONS AND FINDINGS

The complaint in this case alleged physical and verbal abuse by Officers Reed and Sadowski and abuse of authority by all three officers involved in this stop, including Officer Cooper.

Allegation 1: Physical Abuse

On the issue of physical abuse, Ms. Ketter testified that at some point in the interchange between her and the two male officers, perhaps when she was trying to twist away to avoid being handcuffed, she fell to the ground at which point Officer Reed nudged her with his foot and told her to get up. This event took place before the arrival of Officer Cooper. Both Officer Reed and Officer Sadowski denied that there was ever a time when Ms. Ketter was off her feet. Obviously the use of physical force by an officer against a civilian, which is not reasonable and necessary under the circumstances, constitutes misconduct. In this case we are convinced that if Ms. Ketter did lose her balance and found herself situated on the sidewalk it was not because of any deliberate action on the part of the officers. There is insufficient evidence to sustain any finding that Officer Reed abused Ms. Ketter by nudging her with his foot, an act that Officer Reed denied. Ms. Ketter acknowledged that Officer Reed did not kick her, but simply nudged

her with his foot while requesting that she rise. **The allegation of physical abuse on the part of Officers Reed and Sadowski is not sustained.**

Allegation 2: Verbal Abuse

Officer Reed is accused of verbal abuse of the complainant. Mere verbal abuse is not within our jurisdiction. What is within our jurisdiction is verbal abuse which contains an ethnic component. There was testimony from Ms. Ketter that Officer Reed, in the course of a tumultuous exchange between them, called her a “nigger bitch”. Officer Reed denied this allegation and Officer Sadowski denied as well that any ethnic remark was directed at the complainant. **We conclude that there is insufficient evidence to sustain a finding of verbal abuse against Officer Reed.** We note that although both Reverend Pope and Shirl Ketter testified to profanity on the part of the officer(s) neither portrayed the profanity engaged in as having an ethnic bent. At the same time we reject the testimony of Officer Reed and Officer Sadowski that the police did not resort to profanity in dealing with Ms. Ketter. Ms. Ketter was forthright in acknowledging that, given her state of upset, she made early and repeated use of profanity in dealing with the officers. She testified as well that Officer Reed reciprocated with profanity of his own, an allegation that Officer Reed denied. We find that denial to be disingenuous. We base this conclusion not only on the testimony of the complainant, but the corroborating testimony of the Reverend Pope and Shirl Ketter both of whom testified to profanity-laced exchanges each of them overheard between the complainant and the officer. Police officers must be prepared to accept the fact that situations of official detention or arrest of citizens will often predictably generate profanities and emotional responses on the part of the citizen targeted. Their professional training should allow them to avoid being drawn into verbal exchanges, which the Reverend Pope accurately described as behavior, which detracts from their image and mission. Officer Reed acted unprofessionally under the circumstances.

Allegation 3: Abuse of Authority

Police Officers are trained to act within the law. When they act outside of the law they abuse their authority. In this case, the abuse of authority by Officers Reed, Sadowski, and Cooper was pronounced, extensive, and without legal justification

In Commonwealth v. McCleave 750 A.2d 320 (Pa. Super. Ct. 2000), the Pennsylvania Superior Court has delineated three types of contact between a police officer and a member of the public. The first of these is a “mere encounter” (or request for information), which need not be supported by any level of suspicion, but carries no official compulsion upon the citizen to stop or to respond. The second, an “investigative detention” (often referred to as a Terry stop) must be supported by reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or “custodial detention” must be supported by probable cause.

Here all three officers who testified were explicit that they intended only an investigative detention of Ms. Ketter and that she was never under arrest. All three officers were blithely ignorant of the fact that telling Ms. Ketter that she could not leave until she was searched and detaining her for an extended period of time, let alone placing her in handcuffs, let alone confining her inside a police car, amounted to no less than a full arrest requiring probable cause at a time when these officer had none. Only if the person stopped consents to a search of their person and things, or where the search carried out is incident to a lawful arrest, can a search of the citizen’s person and things be lawfully conducted.

The kind of seizure and search to which Ms. Ketter was subjected is reasonable and legitimate only when the police have probable cause to arrest (i.e., if at the inception of the seizure the officers have knowledge of sufficient facts and circumstances, gained through trustworthy information, to warrant a prudent man in the belief that the person seized has committed, is committing, or is about to commit a crime). Officers Reed and Sadowski did not even attempt to contend that they had probable cause to arrest Ms. Ketter when they stopped her, the only situation that could give rise to a lawful search of her person. Instead they styled her stop as a detention, which under the circumstances here presented, could admittedly be termed reasonable. In this situation Officers Reed and Sadowski, like every other Philadelphia police officer similarly situated, had only limited powers. They could question the person stopped, but the person need not answer. They cannot search the citizen’s person or their things. They may not even conduct a frisk of the individual’s outer clothing unless the police officers observe unusual and

suspicious conduct on the part of the individual seized which leads them reasonably to conclude that criminal activity may be afoot and that the person with whom they are dealing may be armed and dangerous. Commonwealth v. Vassiljev, 275 A.2d 852 (Pa. Super. Ct. 1971). At no time did any of the officers express concern that the young lady they had stopped was armed and dangerous.

We find that the actions of Police Officers Reed, Sadowski, and Cooper in detaining, handcuffing, and searching Ms. Ketter and her possessions were unequivocally outside of the law. The actions of the officers represented a total disregard of the constitutional rights of Ms. Ketter to be secure in her person and in her things against unreasonable searches.

4. RECOMMENDATIONS

Given that verbal abuse of the kind engaged in by Officer Reed with Ms. Ketter is not within our jurisdiction we decline to make any formal recommendation for discipline based upon his perceived verbal misconduct. However, we are reminded again of the insightful observation of Reverend Pope, who described how such verbiage on the part of a police officer detracts substantially from the respect that police officers seek to enjoy in the community in which they work. We are hopeful that Officer Reed's direct supervisor will impress upon him the need to cease and desist from such self-demeaning conduct in the future.

The abuse of authority by Officers Reed, Sadowski, and Cooper that we so plainly found must of necessity result in a recommendation of discipline for the three officers. The war against drugs, in which these officers are clearly front-line soldiers, is a serious problem in our society calling for unprecedented vigilance to stem the flow of illegal drugs into the community. However, we have not yet reached the point where the gravity of the drug epidemic has resulted in a suspension of the civil and constitutional rights of our citizenry. It is hard to imagine a more flagrant violation of those rights than what befell this complainant at the hands of the three subject officers. Police officers are not lawyers and, in the performance of their duties on the street, are not expected to be familiar with the finer nuances of criminal and constitutional law. But, a raw recruit just out of the Police Academy would know enough to realize that a citizen merely suspected

of criminal activity cannot be dealt with in the manner here described, conduct not even denied by any of the subject officers. To say that these three officers need re-training, a course that we also emphatically recommend, will not serve by itself to dissipate the outrageous manner of abusive official misconduct engaged in by each of them during their dealings with Ms. Ketter. Accordingly, we recommend that Officers Reed, Sadowski, and Cooper be suspended from duty without pay for a period of three days.

It is up to the Police Commissioner to educate the entire command that searching a citizen merely suspected of criminal activity goes far beyond what the constitution permits. We have confidence in the Police Commissioner, and we recommend that he implement within the Training Division those measures that will eliminate the kind of blatant, howsoever unintended, abuse of authority to which the young woman in this case was subjected.