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**IN RE:**

**CARMEN FELICIANO**

**CITY OF PHILADELPHIA**

**POLICE ADVISORY COMMISSION**

**COMPLAINT NO. 000728**

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Before C. Harris, V. Ray and J. Stapleton, Commissioners  
Michael Butler, Esquire, Counsel

## **OPINION**

### **A. Background**

Carmen Feliciano (“Mrs. Feliciano”) filed a complaint with the Police Advisory Commission (“Commission”) in connection with an altercation that allegedly occurred at her home on August 7, 1999 involving Police Officer Wayne Hunter (“Officer Hunter”). In her complaint, Mrs. Feliciano alleged both physical abuse by Officer Hunter and abuse of authority. The events that occurred on August 7, 1999 were precipitated by a dispute between Mrs. Feliciano and her former husband, Billy Feliciano (“Mr. Feliciano”), over custody of their nine year old daughter, Carmen Feliciano. Mr. Feliciano and Mrs. Feliciano each daim to have a protection from abuse order against the other, and an agreement between the Felicianos allocates partial custody of Carmen Feliciano to Mr. Feliciano on alternating weekends.

Officer Hunter was dispatched to Mrs. Feliciano’s home on August 7, 1999 in connection with a claim by Mr. Feliciano that he was entitled to see his daughter on that particular Saturday. Carmen Feliciano had visited her father earlier that day, but then returned to her mother’s home. Much of what took place upon Officer Hunter’s arrival at the home of Mrs. Feliciano is in dispute in this matter, including the conduct and role of Barry Stith, who was brought to the scene by Officer Hunter in his patrol car. Mr. Stith is not and was not a police officer at the time of his incident, and his presence on the scene and alleged participation in the physical abuse of Mrs. Feliciano are essential elements of Mrs. Feliciano’s complaint.

In addition to hearing testimony concerning the ongoing domestic dispute between Mr. and Mrs. Feliciano, the Commission hearing panel was confronted yet again with the ongoing domestic dispute between the Philadelphia Police Department (“Department”) and the Commission over the obligation of police officers, who have been properly subpoenaed to testify before the Commission, to answer questions posed by the Commission’s counsel and Panel Members.

On June 28, 2001, the Commission heard the testimony of five witnesses, including the testimony of Mr. and Mrs. Feliciano. On the advice of his FOP attorney, Officer Hunter refused to answer any questions from Commission Panel Members or Commission counsel, other than to confirm the truthfulness of prior answers given by Officer Hunter to the Department’s Internal Affairs Division (“IAD”). This Opinion, with its findings and recommendations, addresses both the merits of Mrs. Feliciano’s complaint and Officer Hunter’s refusal to testify at the Commission hearing. For the reasons set forth herein, the Commission believes that Officer Hunter should be disciplined for his conduct in both instances.

## **B. Discussion**

### **I. Officer Hunter’s Conduct at the Panel Hearing**

For the second time in as many months, the Commission was confronted with an officer’s refusal to testify before a properly convened panel and in the face of a properly served subpoena. The Commission’s authority in this regard is without question and has been clearly set forth in prior opinions. See In re Alexander Kuilan; see also In re Gordy/Lauber. The obligation of police officers subpoenaed to testify before the Commission to cooperate in all matters properly before the Commission is firmly grounded in the Commission’s Executive Order 8-93, as amended, and in the General Orders of former Police Commissioner Richard Neal and current Commissioner John F. Timoney.

In another example of the disdain that certain members of the Department appear to have for the Commission, and contrary to Commissioner Timoney’s unambiguous directive, General Order 7595, issued in June of 1998, Officer

Hunter appeared before the panel on June 28, 2001, was given his Garrity “warnings”, and left without saying much more than what has now become the standard drill:

On the advice of my attorney, I will only answer questions as to whether or not I gave truthful answers in my prior [statement]...

This answer was given by Officer Hunter to a preliminary question posed by counsel to the Commission, Michael Butler (“Mr. Butler”), as follows: “I’m going to direct your attention to August 7 of 1999. Can you tell me if you were on duty that day?” One would think that a question as simple as the one posed could be answered with a simple yes, no or I do not recall; but the game being played during this proceeding apparently had more complicated rules and Officer Hunter refused to answer the question, on the advice of his counsel.

The melodrama in this proceeding continued as counsel to the Commission approached the stenographer to have a document marked as an exhibit. Counsel to Officer Hunter objected to the Commission counsel’s approach to the witness, who was seated at a table several feet from the stenographer. Counsel to Officer Hunter characterized Mr. Butler’s conduct as intimidation and improper. None of the Panel Members observed any sign of intimidation on the part of Officer Hunter, and the Panel’s Presiding Officer, retired Police Lieutenant Charles Harris, properly ruled that Mr. Butler’s approach to the stenographer was permissible.

Counsel for Officer Hunter continued his jousting with Commission counsel as Panel Members waited patiently for the testimony of Officer Hunter. The Panel Members had to endure accusations by Officer Hunter’s counsel that questions posed by Mr. Butler were intended to set up the officer; were unjust and uncalled for; that Mr. Butler was acting in a manner completely unknown to most sorts of official proceedings; that Mr. Butler threw papers at Officer Hunter; that Mr. Butler stood over Officer Hunter in a clearly inappropriate manner; and that Mr. Butler was not conducting himself in a professional manner. The Panel

Members found these accusations to be without basis, and these disruptions by Officer Hunter's counsel did nothing more than to delay the proceeding.

After the display of histrionics by counsel for Officer Hunter, Officer Hunter confirmed that on October 4, 2000, on September 14, 2000 and on January 3, 2001, he gave statements to the IAD. He testified that each of these three statements was truthful. When asked about certain inconsistencies in the three statements, Officer Hunter allowed that earlier statements were truthful, but at a later time he remembered something different. Attempts by Panel Members and Commission counsel to question Officer Hunter beyond the questions previously asked and previously answered to IAD were met with an objection and a refusal to answer on the advice of counsel.

The entire colloquy with Officer Hunter would be considered a joke if not for the seriousness of these proceedings, the importance of Officer Hunter's truthful testimony, and the panel's painstaking search for what exactly happened on August 7, 1999. It is no excuse, as offered by counsel for Officer Hunter, that the Panel Hearing was scheduled before Officer Hunter's appearance before the Police Board of Inquiry ("PBI"). There is no requirement that the Commission await the completion of a PBI proceeding.<sup>1</sup>

Officer Hunter could have answered the questions properly posed to him that night, and helped the Panel to understand why Barry Stith was in Officer Hunter's patrol car that day, why Mr. Stith came into Mrs. Feliciano's home, and what transpired in Mrs. Feliciano's garage during which interaction Mrs. Feliciano claims to have been physically abused by both individuals. The giving of truthful testimony by Officer Hunter should not turn on whether the Commission was able

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<sup>1</sup> Counsel to Officer Hunter wanted to delay the proceedings until after July 9, 2001, to permit the PBI proceedings to be completed. In the words of counsel to Officer Hunter, "In the event that [the PBI hearing] were over, we certainly would allow any questions whatsoever, but it's been the practice in the past, we are not going to permit any questions which extend beyond the veracity of the prior statement because the officer, at this juncture, still faces possible sanctions related to his employment." Counsel for Officer Hunter later confirmed that, in his view, the events of August 7, 1999 were not so serious of a nature that they could not wait fourteen days to allow Officer Hunter the opportunity to answer each and every question posed by the Commission. We respectfully disagree with counsel's assessment of the seriousness of the events of August 7, 1999, and with the past practice of not answering questions because of a pending PBI proceeding.

to ask questions of Officer Hunter before the conclusion of the Department's Police Board of Inquiry (PBI) fact-finding process or penalty phase. Any potential "sanctions related to [Officer Hunter's] employment" would arise solely from his misconduct, if any, and not result from the search for truth.

Subsequent to the June 28, 2001 Commission hearing in this matter, and in response to the Commission's decision in the Kuilan matter (October 1, 2001), the Police Commissioner wrote to the Fraternal Order of Police and confirmed the Department's commitment to the mandates set forth in Executive Order 8-93, dealing with the power and authority of the Commission. The Commissioner further confirmed that the PBI is not and has never been an investigative part of the Department. The PBI, according to the Commissioner, is the internal administrative fact-finding process of the disciplinary system that determines guilt or innocence and makes recommendations for penalties. Cases go the PBI, according to the Commissioner, once the investigation is completed.

In this case, the Panel was confronted with a Police Officer who was clearly concerned that the Commission's inquiry into the events of August 7, 1999 could adversely impact the outcome of his PBI proceeding scheduled for approximately two weeks thereafter. Delay in this case was in Officer Hunter's best interest, particularly in light of the inconsistencies in his three IAD statements and the revelations as to Barry Stith's role in this matter. The questioning before the Commission would invariably go beyond the questions posed by IAD, hence the reason for the tenacious efforts by his counsel to limit the Commission and its counsel to questions previously asked and previously answered. Officer Hunter no doubt understood the risk of further inquiry into his conduct on August 7, 1999, his relationship with Mr. Feliciano<sup>2</sup> and the role of

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<sup>2</sup> There was an issue raised as to whether Officer Hunter and Mr. Feliciano were friends or at least knew each other prior to August 7, 1999. Mrs. Feliciano testified that her former husband was a friend of Officer Hunter. Mr. Feliciano denied knowing Officer Hunter or ever having met Officer Hunter prior to August 7, 1999. Curiously, Mr. Feliciano testified at the Commission hearing that there was no one else in the patrol car when they went to Mrs. Feliciano's home, that there were no other police officers accompanying Officer Hunter, and that it was just Officer Hunter dealing with Mrs. Feliciano. This testimony was consistent with the testimony Mr. Feliciano provided in his interview with IAD, a copy of which was provided to Mr. Feliciano's counsel for review with Mr. Feliciano prior to Mr. Feliciano's testimony before the Commission. Even after being advised of testimony concerning an African American male (Barry Stith) at the scene with Officer Hunter, Mr. Feliciano continued to insist that there was no one in the front

Barry Stith. Officer Hunter wanted no part of the Commission's investigative process until after the PBI had completed its fact-finding process. We believe, as suggested by his counsel, that there was a concern about possible sanctions related to his employment.

The efforts of Officer Hunter's counsel to delay and obstruct the Commission's process and to limit any questions to the veracity of prior statements made a mockery of the Commission's search for the truth. We believe Officer Hunter's refusal to testify in this matter was deliberate, willful and contemptuous. The search for truth at that hearing became a game of cat-and-mouse, intended only to delay inquiry into Officer Hunter's conduct until after the PBI proceeding. It was a waste of time for all parties involved.

The Commission recommends that Officer Hunter be disciplined for his refusal to testify on June 28, 2001. If discipline is not in order for his disrespect for the Commission, it surely should be in order for his disrespect of Commissioner Timoney's prior directive, No. 7595, to cooperate with the Commission. We recommend that Officer Hunter be suspended for a period of time to be determined by the Commissioner.

## **II. Officer Hunter's Conduct on August 7, 1999**

Although there are many irreconcilable differences between the testimony of Mr. and Mrs. Feliciano concerning the events of August 7, 1999, there are a number of facts relevant to the panel's decision, that are either undisputed or indisputable.

Officer Hunter arrived in a patrol car at the home of Carmen Feliciano on August 7, 1999. He brought with him in the patrol car Mr. Feliciano and Barry Stith. Barry Stith was described in Officer Hunter's third IAD interview as a "ride-along" assigned, according to Officer Hunter, by Corporal Bradley to ride with

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passenger seat of the patrol car. We cannot explain why Mr. Feliciano would continue to deny that Barry Stith was in the car or in the house, even though Officer Hunter had admitted his presence, and everyone else at the scene confirmed Mr. Stith's participation. Mr. Feliciano may have been trying to protect Officer Hunter from criticism for bringing Barry Stith with them in the patrol car to Mrs. Feliciano's home (not knowing that Officer Hunter had already conceded Barry Stith's presence in Officer Hunter's third IAD interview). It appeared that Mr. Feliciano was deliberately trying to cover up Barry Stith's participation in the events.

Officer Hunter on that particular day. In Corporal Bradley's IAD interview, he disputed this point, noting that a ride-along was not indicated on his S&R sheet for that day and that he had no waiver form from Barry Stith, as required by department policy. Officer Hunter made no notation in his patrol log that Barry Stith was with him, but did indicate that Barry Stith may have made some entries himself in the patrol log.

Assuming for purposes of this decision that Barry Stith was an authorized ride-along, and without deciding at this point whether Officer Hunter's recollection of events was faulty or intended to conceal Barry Stith's presence at the scene and/or his participation in the events at Mrs. Feliciano's home,<sup>3</sup> one thing was abundantly clear to the Panel, and subsequently the Commission. Officer Hunter permitted a civilian to enter into the home of Mrs. Feliciano and participate in Officer Hunter's attempt to resolve the conflict involving Mr. Feliciano's right to see his daughter on that date.

Officer Hunter testified during his third IAD interview that Barry Stith stood by in Mrs. Feliciano's house and listened to what was being said. He admitted, however, that Barry Stith was directly involved in the physical struggle with Mrs. Feliciano that took place in a garage in the rear of the home; that Barry Stith grabbed Mrs. Feliciano's wrist; and that Barry Stith may have been wearing a ballistic vest.<sup>4</sup> Officer Hunter could not recall whether Barry Stith had any type of police equipment with him, although Mrs. Feliciano claims he carried a ticket pad book and gave the impression that he was a police officer. Officer Hunter could

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<sup>3</sup> In Officer Hunter's first IAD interview, he referred to the person with him on August 7, 1999 as his "partner." He described him as a 25 to 26 year old white male, in uniform, from the 24<sup>th</sup> District, in a marked patrol car. In his second IAD interview, Officer Hunter confirmed this description and added that this second officer followed him to 3446 Reach Street, the home of Mrs. Feliciano, in the second officer's squad car. At the time of the second IAD interview, Officer Hunter was asked to review thirty photographs of police officers, but he could not identify the officer on assignment with him on the date in question. It was not until this third IAD interview that Officer Hunter remembered the person with him as Barry Stith, an 18 year old black male "ride along."

<sup>4</sup> Officer Hunter could not say for certain that Barry Stith was wearing a vest but thought that there was a good possibility that Barry Stith was wearing one because Officer Hunter knew that on prior ride alongs Mr. Stith had worn a vest and on a ride along after this particular date he had worn a vest. Barry Stith did not testify before the Commission. Nevertheless, if Officer Hunter is correct, Mr. Stith appears to have been a frequent ride along candidate and clearly played a role in this matter beyond that of a mere observer.

not recall whether he told Mrs. Feliciano she was under arrest and could not remember whether he or Barry Stith handcuffed Mrs. Feliciano.

At some point after Officer Hunter's and Barry Stith's entry into Mrs. Feliciano's home, Mrs. Feliciano began to search for documents to satisfy Officer Hunter that she had a protection from abuse order against Mr. Feliciano and that Mr. Feliciano was not permitted to visit with Carmen Feliciano without first contacting Mrs. Feliciano's lawyer. The testimony suggested a somewhat chaotic scene, with children crying and Mrs. Feliciano frantically trying to find the paperwork. Mrs. Feliciano indicated her desire to prevent Officer Hunter from taking Carmen Feliciano to Mr. Feliciano, who was waiting outside in the patrol car. Mrs. Feliciano testified that Officer Hunter hovered over her as she tried to telephone a friend, Margaret Miller, to help her find her documents.

Ms. Miller testified to the commotion in the house, the apparent dispute over the paperwork that Officer Hunter had with him, and Mrs. Feliciano's efforts to find her paperwork. Ms. Miller apparently could hear over the telephone the voices of both Mrs. Feliciano and Officer Hunter. Finally, Mrs. Feliciano testified that she took her daughter by the hand and left the rear of the house for the garage. She claimed that she was either going to find her papers or get in the car and go for help. Officer Hunter and Barry Stith followed Mrs. Feliciano out to the garage.

What actually happened in the garage is hotly disputed. Mrs. Feliciano testified that her daughter was in the car the entire time. Mrs. Feliciano's son testified that he could hear, from inside the house, his mother screaming, but he did not hear anything being knocked over or any punches. One possible adult witness to the incident, Mrs. Feliciano's friend Lucy Colon, never testified.

Mrs. Feliciano's version of the events is quite frightening. She claims Officer Hunter grabbed her, handcuffed her, slammed her against the garage door, slammed her on the ground and slammed her on the tools in the garage. She claims Barry Stith jumped in, told her she was going to jail, put his knee in her back, put her in a headlock and hit her "real bad." She testified that her friend Lucy Colon jumped on Barry Stith, because he was hitting her. She stated



that Ms. Colon screamed, among other things, “You’re going to kill her”, and that Officer Hunter and Barry Stith then backed off.

In Officer Hunter’s IAD interviews, he described an entirely different scene.<sup>5</sup> In his first IAD interview, Officer Hunter testified that he was unsure of whether Mrs. Feliciano intended to harm her daughter. He claimed to have grabbed Mrs. Feliciano to separate her from her daughter, because Mrs. Feliciano was very irate and excited. He testified that he grabbed Mrs. Feliciano only once, to free her daughter from her grip. He answered in the affirmative when asked if the other “officer” was with him in the garage, and confirmed that the other “Officer” helped separate the mother and daughter. Officer Hunter could not recall in his first IAD interview whether he or the other “Officer” handcuffed Mrs. Feliciano. He had no recollection of pushing Mrs. Feliciano into a wall and testified to IAD that Mrs. Feliciano exaggerated the incident.

In his second interview with IAD more than two months after the first, Officer Hunter recalled more details of the altercation in the garage. On further reflection, he remembered that there was hair being pulled out by Mrs. Feliciano. He remembered handcuffs being put on to prevent Mrs. Feliciano from pulling the hair of her daughter. He felt no need to notify DHS of the incident because he thought Mrs. Feliciano was a bit excited, and was simply trying to prevent her daughter from leaving. Officer Hunter testified that he and his “partner” were trying to prevent injury to Mrs. Feliciano’s daughter. He clarified the reference to his “partner” to mean “the other officer that was with [him] at that location.”

At his third IAD interview, Officer Hunter identified the other “Officer” as 18 year old Barry Stith. Officer Hunter denied that Barry Stith ever pushed, shoved, punched or struck Mrs. Feliciano. All he could remember was that Barry Stith was trying to remove Mrs. Feliciano’s hands from her daughter’s hair by grabbing her wrists -- “he was on one arm and I was on the other trying to pull her hands off.” He also denied that he ever pushed, shoved or struck Mrs. Feliciano, and

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<sup>5</sup> These facts have been gleaned from the IAD interviews only, with no direct testimony to the Commission from Officer Hunter, and no ability to assess Officer Hunter’s credibility. For purposes of this decision, we are prepared to accept these statements, recognizing their limitations. We see no benefit at this point to reconvene or to reopen the proceedings in this matter.

did not remember Mrs. Feliciano being in a headlock with someone's knee in her back. Mrs. Feliciano was not placed under arrest nor charged with any crime.

Mrs. Feliciano was treated at Parkview Hospital on August 7, 1999. She testified to having a swollen hand and injuries to her back and neck. These conditions are corroborated in Parkview records, which indicate mild swelling and tenderness in the neck/back area and a red and swollen wrist. Mrs. Feliciano further testified to the need for counseling because of the effects of this incident.

Notwithstanding these two remarkably different versions of what happened on August 7, 1999, the Commission is, nevertheless, convinced that Officer Hunter mishandled the situation from the start. We are not unmindful of the dangerous situation that any police officer faces when confronted with a domestic dispute. Nor can we ignore Mrs. Feliciano's flight to the garage with her daughter in hand in the face of Officer Hunter's attempt to determine Mr. Feliciano's right to see his daughter.

The Commission finds, however, that Officer Hunter should not have involved Barry Stith in this dispute in the first instance, nor should he have involved Barry Stith in his confrontation with Mrs. Feliciano in the garage. The Commission also finds it more likely than not that Officer Hunter and Barry Stith, together, used unreasonable and unnecessary force to restrain Mrs. Feliciano. The Commission found abundant evidence of Mrs. Feliciano's care and concern for her daughter, and finds it unlikely that Officer Hunter and Barry Stith had to intervene in the garage to prevent Mrs. Feliciano from pulling her daughter by the hair. To the contrary, we believe it is more likely that Officer Hunter and Barry Stith forcibly restrained Mrs. Feliciano to prevent her further flight. The hospital records support Mrs. Feliciano's claim of injuries as a result of a scuffle that obviously took place.

Officer Hunter's judgment in this matter was flawed from the outset. There was no need to bring Mr. Feliciano to the home of Mrs. Feliciano, and his presence, even though he stayed in the car, plainly exacerbated the situation. There was similarly no need to bring Barry Stith into the home of Mrs. Feliciano and, indeed, his presence in the home is likely a violation of department policies.

Officer Hunter's admitted purpose for going into the house was to check on the well being of Carmen Feliciano. He was relying on custody papers from Mr. Feliciano that gave Mr. Feliciano custody of his daughter on alternating weekends. Officer Hunter appears to have conducted no inquiry as to Mr. Feliciano's right to see his daughter on the weekend of August 7, 1999 and appeared unsympathetic to Mrs. Feliciano's protests that she had a valid protection from abuse order against Mr. Feliciano.

The Commission has no doubt that Mrs. Feliciano feared that Officer Hunter was there to take Carmen Feliciano away from her. Indeed, Officer Hunter testified at his first IAD interview that this was the reason why Mrs. Feliciano ran to the garage. He confirmed in his second IAD interview as well that Mrs. Feliciano became "excited that we might be there to take the daughter..." The Commission finds Mrs. Feliciano's testimony credible that once in the house Officer Hunter asked Carmen Feliciano to come with him to see her father, who was outside in the patrol car. Mrs. Feliciano was clearly flustered by her inability to find the paperwork to show to Officer Hunter that her husband had no right to see Carmen Feliciano at that time and place, and seemed sincere when she said "how can you concentrate if you're trying to find your paper and trying to not let your daughter to leave."

Mrs. Feliciano's decision to take her daughter and run for the garage was wrong, but the harm was compounded by Officer Hunter's and Barry Stith's pursuit. The confrontation in the garage was almost inescapable given Mrs. Feliciano's determination to protect her daughter and Officer Hunter's determination to take Carmen Feliciano to her father. Without deciding whether Mrs. Feliciano's version of the events in the garage was entirely accurate, the Commission finds by a preponderance of the evidence that excessive and unnecessary force was used to bring the situation under control.

The Commission recommends that Officer Hunter be disciplined for his conduct in handling this situation. The Commission finds his conduct in this matter was unbecoming of a police officer. Officer Hunter should not have had Barry Stith in his patrol car; he should not have brought Barry Stith into Mrs.

Feliciano's house; he should never have involved Barry Stith in the confrontation with Mrs. Feliciano; and he used excessive and unnecessary force to bring this custody dispute under control.

The Commission recommends a 20-day suspension from duty, without pay, and supplementary training for Officer Hunter regarding the handling of situations of this nature in the future.

### **C. Closing**

This Opinion represents the final disposition of the Police Advisory Commission concerning the complaint of Carmen Feliciano, No. 000728. The Commission endorsed the findings and recommendations as set forth in this Opinion during its regular monthly meeting held on November 8, 2001.

Pursuant to the Commission's Executive Order and established procedures, this Opinion is hand-delivered to the Mayor, the Police Commissioner and the City Managing Director. The Opinion will also be mailed to the Complainant on the date it is delivered to the City officials. The Police Commissioner, pursuant to the Executive Order, has 30 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 Mayor and the other city officials.