IN RE:	:	CITY OF PHILADELPHIA
CALVIN BUTLER, JR.	:	POLICE ADVISORY COMMISSION
	:	No. 95-0192

#### PANEL REPORT AND RECOMMENDATION

Before: Uyehara, Ray and Savitt, Commissioners

# I. INTRODUCTION

Calvin Butler, Jr. filed a complaint with the Police Advisory Commission on October 18, 1995, concerning an incident involving Philadelphia police officers which occurred on October 12, 1995. PAC staff completed an investigation in December, 1995<sup>1</sup>. On November 5, 1998, a hearing panel heard testimony from the complainant and two police officers. Butler complained that although he was the victim of a frightening assault on the street, Police Officer Michael Kelly treated him as a criminal suspect, failed to investigate and act upon his allegations and refused his requests to be transported for medical care or otherwise removed from the neighborhood. We conclude that the complaint should be sustained in part and that the officer's conduct merits review and discipline by the Police Department.

<sup>&</sup>lt;sup>1</sup>PAC investigators were unable to conduct interviews of the police officers involved in the case for over two years for reasons beyond their control.

#### II. EVIDENCE

On October 12, 1995, Butler, an African American then 20 years old, was providing overnight security at a construction site in Frankford. He was unarmed and not in uniform. On the way to work that night, at about 10:45 p.m., Butler walked past an incident at a bar where a crowd had gathered and three police cars were present.

According to his testimony, Butler left his work site as it was nearing midnight to go to a store. Two white males, who were in or around the bar Butler had previously walked past on the way to work, observed Butler, then got into two sport utility type vehicles - a black Bronco and a blue/gray Bronco - and drove towards him. The man who got into the black car appeared to Butler to be intoxicated. When one vehicle drove up next to Butler, he started running back to his work site, and the two vehicles pursued him. He ran into a nearby park, seeking protection from the park's walls and the darkness. He testified that he observed the driver of the black vehicle hit the low wall at the edge of the park, breaking his headlights and denting the bumper as the driver sought to chase Butler into the park.

Butler testified that two unidentified African American males apparently observed the events and advised him to stay in the park. Feeling menaced by one of the vehicles, Butler nevertheless ran out of the park and then tripped in the street. He recalled that the two vehicles pulled up next to him and the drivers stepped out of the cars. A third white male appeared and struck Butler repeatedly with some type of object, which he thought was a baseball bat, hitting him in the face, ribs, arm and back.

During the assault, an unidentified, apparently off duty, police officer arrived upon the scene and intervened. In a minute or two, according to Butler, Police Officer Michael Kelly (Badge # 3814)

arrived. At the time that Kelly arrived, the third white male had walked away from the scene. Butler recalled that Kelly spoke to the other officer. The driver of the black Bronco drove away as did the off duty officer. Kelly spoke to Butler and then placed him in the back of his patrol car.

Butler testified that the two black males who had spoken to Butler earlier then approached and informed Kelly that Butler had not done anything and the others had attacked him. They also informed Kelly, according to Butler, that they saw the attackers come out of an apartment near the bar. The witnesses offered to show Kelly where the men who attacked Butler lived. Kelly did not take up the witnesses on their offer, did not record any identifying information on the witnesses and dismissed them. Kelly then spoke to the remaining driver, whereupon two white women appeared, got into the car and pointed at Butler. Kelly then ordered Butler out of the police car, handcuffed him "for his own safety" and patted him down. Kelly accused Butler of having pointed a gun at someone while in a car.

Butler stated that, while in the car, he asked Kelly twice to be taken to the hospital. Kelly told him to be quiet and stop whining. Kelly released Butler. Butler then asked Kelly to drive him to the next stop of the Market Frankford El so that he would be clear from the immediate area, which Kelly refused to do. As Butler walked away, one of the two vehicles that had pursued him drove by him slowly. He proceeded to a store and called his father for a ride, went home, then was seen at the hospital.

Butler reported that he had suffered a bruised arm, sore ribs, lacerations on his face and knee and a sore wrist. He was treated and released at the Einstein Medical Center emergency room later in the morning. The medical records verify various bruises, abrasions, swelling and tenderness.

Butler denied that he had attempted to rob anyone. Officer Kelly testified that at the

beginning of his night shift, he had heard a radio call regarding shots fired on the 4200 block of Frankford Avenue<sup>2</sup>. At about 1 a.m., he responded to the 1300 block Unity Street, where residents reported seeing a black Ford Bronco chasing a red Mustang and hearing shots fired. Driving southbound on Frankford Avenue near the 4200 block, a few blocks from the1300 block of Unity, Kelly spotted a black Bronco, operated by a white male, driving northbound on Frankford Avenue. The front end of the Bronco was heavily damaged and the car may have had a flat tire. At the same time, Kelly heard a radio call to assist an officer in the 4200 block of Frankford Avenue and observed the officer down the block who had "three black males stopped." He also observed a red and white Bronco at the scene, together with a substantial and noisy crowd of people, all white. Kelly alerted others by radio regarding the black Bronco and proceeded to the officer to assist him.

At the scene, the other officer informed Kelly that there had been a fight on the street. Some white women at the scene, according to Kelly, loudly accused Butler of having earlier used a gun and attempted to rob the driver of the damaged black Bronco<sup>3</sup>. Kelly then handcuffed Butler, frisked him and placed him in the back of Kelly's car. The white bystanders told Kelly that the two other African American men were not involved in the robbery attempt, so he said that he told them they could leave. Kelly testified that he had no recollection of the two men telling him anything about the attack on Butler.

<sup>&</sup>lt;sup>2</sup>In his statement to the Internal Affairs Division taken 1/2/96 in connection with the same incident, Kelly further recalled that the radio call referred to three black males in a red Mustang with a white roof, and that he did not respond to the call.

<sup>&</sup>lt;sup>3</sup>In his statement to IAD, Kelly further explained that the bar patrons reported that the Bronco driver had chased Butler through the park with his car and that other men were with Butler during the robbery attempt.

Kelly testified that the driver of the red and white Bronco who was at the scene seemed not to be involved in the incidents. However, he did appear to be very intoxicated. Kelly recorded information on the driver and the vehicle on a form 75-48 incident report. At the hearing, he could not explain his reason for recording this information.

At some point, according to Kelly, the other officer simply left the scene without saying anything further to Kelly. Kelly testified that the other officer did not tell him that Butler had been beaten.

Kelly testified that he moved his car, with Butler still in it, to the bar. After further discussing the incidents with the bar patrons, he concluded that the victim of the attempted robbery was the driver of the damaged Bronco that had left the scene and could not be found by other officers. Without a complainant<sup>4</sup>, Kelly said he had no reason to further detain Butler, so he released him. At some point while Butler was in the car, he told Kelly that he had been attacked. Kelly prepared an incident report stating that Butler had been assaulted by two unidentified white men and that he had sustained minor cuts and bruises to the head. He testified, and recorded in the 75-48, that he offered to transport Butler to the hospital or to Northeast Detective Division but that Butler declined and asked instead to be taken home. Kelly said he refused to take Butler home, directing him instead to nearby SEPTA stops. He said he observed Butler walk away from the scene.

The panel reviewed IAD interviews of 15 other officers on duty that evening in the 15<sup>th</sup> District who had responded to this scene and the related location. Officer William Devine stated to IAD that he also responded to the radio call regarding the 4200 block of Frankford. As he

<sup>&</sup>lt;sup>4</sup>Kelly told IAD that the bar customers who had implicated Butler became uncooperative in that they refused to identify themselves or get further involved in the matter.

approached, he saw a black Bronco leaving the scene at a high rate of speed, with African American men at the scene pointing at the Bronco. He pursued the Bronco, lost sight of it and then found it empty in the 4200 block of Salem Street. Residents reported seeing a white man run away from the car, which had a damaged front end. According to the statements given to IAD, Divine and about a dozen other officers searched the yards and alleys in the immediate area for the driver but could not find him.

Divine returned to the Bronco and prepared a 75-48 on it. The 75-48 describes the vehicle as a black 1985 Chevy Blazer<sup>5</sup> that had front end damage. The report further identifies the owner as a resident of the 1300 block Unity Street. Although the owner resided in the immediate area, none of the many officers searching for the driver reported to IAD that they had gone to his home to investigate.

### III. ANALYSIS

Butler's concise PAC complaint raised two matters of concern to him - that he had been wrongfully detained and handcuffed for something he did not do, and that the police let his attackers go.

Because it is clear that one or more of the bar patrons had implicated Butler as a participant in an attempted armed robbery, Kelly cannot be faulted for having handcuffed and detained him pending further investigation. However, Officer Kelly made several missteps in handling the incident. He did not obtain the identities of the two African American male bystanders who witnessed the assault on Butler. He failed to respond to their offer to point out the whereabouts of one of the men

<sup>&</sup>lt;sup>5</sup>It would appear that the black Bronco referred to by various individuals is the same vehicle later identified by Officer Devine as the black Chevy Blazer.

involved in the assault. Likewise, he made no effort to ascertain the identities of the two white bystanders who claimed to have witnessed the attempted armed robbery. Despite indications that a serious assault and an attempted armed robbery had occurred, Kelly failed to identify anyone involved other than Butler, took no one other than Butler into custody, and transported no one to the Detective Division for further investigation.

The weight of the evidence does not support a finding that Kelly let the driver of the black Bronco leave the scene. It is clear that that vehicle left the scene as Kelly arrived and that Kelly had put out a radio call for others to pursue the fleeing vehicle while he assisted the unidentified officer at the scene.

The panel is concerned by the role that race seemed to have played in the officer's response to the events that night. Upon his arrival at the scene, Kelly failed quickly to grasp everything that had happened. His initial description of what he saw is telling - "three black males stopped" by the unidentified officer. In fact, the men Kelly saw were Calvin Butler, who had just been beaten, and the two men who had tried to assist him. Viewing the three as suspects, Kelly proceeded to investigate them and took Butler into custody. Because he did not understand for some time that Butler was the only victim present, he failed to act upon the information the other two men attempted to provide or to ascertain their identities. He also failed to question Butler promptly about the identity of his assailants, making it difficult to apprehend anyone. He seemed to respond actively only to the allegations of the white bar patrons, whose claims led to Butler's being detained.

Based upon all the evidence received by the panel, we credit Butler's testimony that he asked Kelly to take him to the hospital and was refused, and that he then asked to be taken out of the immediate area for his own safety and was refused. We further view the officer's failure to transport Butler out of the area, whether to the hospital, or just away from the zone of danger, as a manifestation of Officer Kelly's lack of sensitivity to the racial overtones of the incident.

In short, Officer Kelly failed properly to discharge his duties that night.

## IV. CONCLUSION

The panel concludes that Officer Kelly mishandled the incident about which Calvin Butler complained, although he did not engage in misconduct by taking Butler into custody briefly pending investigation. His handling of the incident warns of inadequacies on the officer's part in his dealings with racial minorities which merit close review by the Police Department. His failure to transport Butler to the hospital in light of his injuries, or to remove him from the scene to a place of relative safety was inappropriate. We recommend that Officer Kelly be provided a written reprimand and additional training in police procedures.