

city of miami



EILEEN DAMASO  
Chairperson

civilian investigative panel

CRISTINA BEAMUD  
Executive Director

June 28, 2018

Chief Jorge Colina  
Miami Police Department  
400 NW 2<sup>nd</sup> Avenue  
Miami, FL 33128

RE: CIP#: 18-015 IA #: 17-094S  
Complainant: David Fussell  
Involved Officer: Juan Ortega

Dear Chief Colina:

The Civilian Investigative Panel ("CIP") considered the above case at its meeting on June 19, 2018. They voted to sustain an allegation of improper procedure (failure to report off duty work to Special Events Unit) and to not sustain allegations of negligence of duty, discourtesy, and missing property.

**Procedural history:** Mr. Fussell filed a complaint with Internal Affairs on June 21, 2017. Sergeant Edwin Gomez was assigned to investigate the complaint. On November 1, 2017 the case was closed as exonerated. The CIP received the file on January 30, 2018.

**Complaint:** Mr. Fussell alleged that while he was working at NE 4<sup>th</sup> Avenue and 30<sup>th</sup> Terrace, Officer Ortega grabbed him by his shirt collar, thus choking him, shoved him against a police vehicle, and said, "If you ever put your fucking hands on me again, I will put you in the dirt and I'm going to kill you." Mr. Fussell was placed in a police vehicle and transported to 3601 Biscayne Boulevard, where he was released. Mr. Fussell also said Officer Ortega did not return his driver's license.

**Policies considered:** **Departmental Order 11, Chapter 1, Section 11.6.13.3** requires that officers be courteous. **Section 11.6.13.6** requires that officers be tactful and considerate. **Section 11.6.19.4** requires that officers comply with rules and regulations during off duty police work. **Departmental Order 11, Chapter 8, Section 8.3** requires officers who respond to police related incidents to complete the appropriate reports. **Departmental Order 11, Chapter 16, Section 16.4.21.2** requires that prisoners be transported directly to a police station or Miami Dade Jail or holding facility. If there is a delay in transporting or another destination, supervisory approval is required. **Departmental Order 12, Chapter 1, Section 1.5.4.4** requires officers working temporary extra duty police jobs to electronically register for the job using Extra Duty Trak. **Section 1.5.6** requires all permanent extra duty job requests to be submitted to the area NET Commander and then to the Special Events Unit for documentation and entry into Extra Duty Trak.

**Investigation:** Attempts were made to contact Officers Ortega, Erick Johnson, Elias Parrrales, Fernando Bermudez and Richard Efrece. None of the officers replied. Mr. Fussell provided a statement which was consistent with the statement he gave to Internal Affairs. He explained that he was working for Plaza Construction as a flagman at NE 4<sup>th</sup> Avenue and 30<sup>th</sup> Terrace. A restaurant owner in the area was upset because Mr. Fussell was allowing construction workers to park near her business and she believed that Mr. Fussell was charging them to park on her property. On the day of incident, Mr. Fussell said that he saw Officer Ortega having coffee with the owner of the restaurant. Officer Ortega approached him and said that "he has known this lady over many years. If she calls me about anything concerning you and this parking lot, I'm going to have you arrested for trespassing and I'm going to cause you to lose your job." Mr. Fussell said that he told the officer that he was going to call his boss. Officer Ortega told him to put his hands behind his back, pulled him up by his collar and tried to throw him to the ground. He claimed that Officer Ortega ordered him to get on the ground and while he held his collar with one hand, Officer Ortega removed his baton and struck a tree. He was handcuffed. Mr. Fussell's supervisor (Nicholas) and the company's safety manager (Mr. Loghran) arrived. Nicholas retrieved Mr. Fussell's wallet from his car and gave his license to Officer Ortega. Two male Caucasian officers arrived and transported Mr. Fussell to the Shell gas station on Biscayne Boulevard. Nicholas brought Mr. Fussell's car from the construction site to the gas station and Mr. Fussell was released from custody. While driving home, Mr. Fussell realized his driver's license had not been returned. Mr. Fussell later responded to Central Station and spoke to Officer Ortega's supervisor who contacted Officer Ortega. Officer Ortega denied knowing where the license was.

Paul Loghran, the Safety Director for Plaza Construction told Internal Affairs that on the date of incident he received a text message from Officer Ortega requesting a supervisor. He and another employee responded immediately. They observed Officer Ortega turn Mr. Fussell around and tell him to sit on the ground. Officer Ortega advised them that the restaurant owner had said that Mr. Fussell was selling parking spaces for \$10.00 behind her business. Officer Ortega told Mr. Loghran that he asked Mr. Fussell to stay away from the business and Mr. Fussell began yelling and pushed him. He was screaming. He thought that he was going to be arrested, so he moved Mr. Fussell's car to a side street. Officer Johnson arrived at the site and took custody of Mr. Fussell and left the area. Mr. Loghran said that Officer Ortega was calm and professional and Mr. Fussell was very irate.

Officers Efrece and Bermudez advised Internal Affairs that they did not recall the incident and Officer Parrrales said that he responded but did not recall seeing Mr. Fussell or any details of the incident. Officer Johnson said he observed Officer Ortega attempt to calm Mr. Fussell. For the safety of everyone involved, Officers Johnson and Efrece transported Mr. Fussell to 3601 Biscayne Boulevard. Officer Efrece gave Mr. Fussell his hard hat and his driver's license and instructed him not to return to the construction site. He was then released.

Attempts were made to identify Nicholas and to interview him. These were not successful.

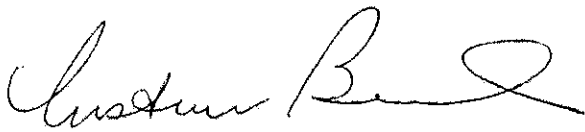
Officer Ortega advised Internal Affairs that he was working off duty at a construction site when he was waved over by a restaurant owner who advised that Mr. Fussell was selling parking on her land. Officer Ortega approached Mr. Fussell and told him not to go on the restaurant's property and Mr. Fussell began to yell and was out of control. He called for backup. Mr. Fussell tried to push Officer Ortega. Officer Ortega stepped back and handcuffed him. Backup officers arrived and moved Mr. Fussell out of

the area. Officer Ortega did not know whether Mr. Fussell was arrested. He had no knowledge of Mr. Fussell's license.

MPD Communications said that they were unable to provide Officer Ortega's transmissions because the recordings were irretrievable due to a malfunction. Uniform Officer Worksheets show that Officer Johnson responded as backup to a disturbance and was on scene for 1 hour and 16 minutes. Officers Parrales and Villegas did a "go by" of the disturbance involving an off duty officer. Officer Bermudez did a "go by" with an off duty unit who had a combative prisoner. Off duty records do not show Officer Ortega was working off duty on the date of incident. Sergeant Jose Ramirez responded by saying, "according to our records, it does not appear that he was working under an extra duty capacity on the dates requested."

**CIP resolution of the complaint:** The CIP voted to sustain the allegation of improper procedure for the failure of the officer to report his off-duty assignment. They voted to not sustain the allegation of negligence of duty for the failure to write a report concerning the complainant's arrest. They voted to not sustain the allegations of discourtesy and missing property.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cristina Beamud', with a stylized flourish at the end.

Cristina Beamud  
Executive Director

cc: Emilio T. González, City Manager  
Joseph Napoli, Deputy City Manager

# City of Miami



EMILIO T. GONZALEZ, Ph.D.  
City Manager

JUL 16 2018

Ms. Cristina Beamud  
Civilian Investigative Panel  
970 SW 1<sup>st</sup> Street #305  
Miami, Florida 33130

RE: Civilian Investigative Panel Complaint Review  
Internal Affairs Case #17-094S  
Civilian Investigative Panel Case #18-015

**RECEIVED**

**JUL 20 2018**

**C.I.P.**

Dear Ms. Beamud:

This letter is written in response to your letter regarding the findings and conclusions of the Civilian Investigative Panel (CIP) at its meeting on June 19, 2018, pertaining to the above-referenced case. Your letter was thereafter brought to the attention of the Internal Affairs Section for appropriate review and response. The outcome of their review is as follows.

- The complaint was filed with the Internal Affairs Section against Officer Juan Ortega alleging Improper Procedure, Negligence of Duty, Discourtesy, and Missing Property.
- The CIP reviewed the complaint on January 30, 2018, and voted to Sustain the allegation of Improper Procedure and to Not Sustain the allegations of Negligence of Duty, Discourtesy, and Missing Property against Officer Ortega.
- A review of the Internal Affairs case file revealed that Internal Affairs found the allegations of Discourtesy, Improper Procedure, and Missing Property to be Exonerated; due to the statement of an independent witness.
- Communication recordings in reference to this incident were not available due to system corruption.

If you should have any further questions, please contact Major Jesus Ibalmea at (305) 835-2000, Monday through Friday 8:00 am to 5:00 pm. If Major Ibalmea is unavailable when you call, please leave a contact number where you can be reached.

Thank you for bringing this matter to our attention.

Sincerely,

Major Jesus Ibalmea  
Commander  
Internal Affairs Section  
for Jorge R. Colina  
Chief of Police

JRC:JI:ac

cc: George Wysong, Legal Advisor  
Emilio T. Gonzalez, City Manager



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