

May 6, 2003

To: Paul F. Evans
Police Commissioner

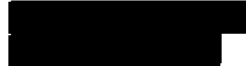
From: Deputy Superintendent Marie L. Donahue
Assistant Bureau Chief, Bureau of Internal Investigations

Subject: Internal Affairs Recommendations

Sir:

I respectfully submit the recommendations of the Internal Affairs Division in reference to:
Case #: 243-02

Complainant: Mr. Marc A. Mander



Employee(s): Sgt. John Hughes
I.D. #: 09022 - Area A-1
Violation of Rule 102, §27

- Sustained: (Investigation disclosed sufficient evidence to support allegations in the complaint.)
- Disciplinary Hearing
- Reprimand: Written Oral
- Not Sustained: (Investigation failed to prove or disprove the allegations.)
- Exonerated: (The action complained of did occur, but investigation revealed that action was proper, legal and reasonable.)
- Unfounded: (The investigation revealed that conduct did not occur.)
- Filed

Respectfully submitted,

Deputy Superintendent Marie L. Donahue
Assistant Bureau Chief, BII

Previous Complaint(s): see attached sheet

Reviewed by Chief, Bureau of Internal Investigations and forwarded to Legal Advisor

Reviewed by Legal Advisor and Forwarded to Police Commissioner

Mayor Thomas M. Menino • Commissioner Paul F. Evans

Handwritten notes and signatures: "MJD 5-27-03" and "6/18/03" with a signature.

Boston Police

DEPARTMENT

1 Schroeder Plaza, Boston, MA 02120-2014

May 6, 2003

To: Paul F. Evans
Police Commissioner

From: Deputy Superintendent Marie L. Donahue
Assistant Bureau Chief, Bureau of Internal Investigations

Subject: Internal Affairs Recommendations

Sir:

I respectfully submit the recommendations of the Internal Affairs Division in reference to:

Case #: 243-02

Complainant: Mr. Marc A. Mander

[REDACTED]

Employee(s): P.O. Mark Loewen
I.D. #: 11210 - Area A-1
Violation of Rule 102, §9

- Sustained: (Investigation disclosed sufficient evidence to support allegations in the complaint.)
- Disciplinary Hearing
- Reprimand: Written Oral
- Not Sustained: (Investigation failed to prove or disprove the allegations.)
- Exonerated: (The action complained of did occur, but investigation revealed that action was proper, legal and reasonable.)
- Unfounded: (The investigation revealed that conduct did not occur.)
- Filed

Respectfully submitted,

Marie L. Donahue

Deputy Superintendent Marie L. Donahue
Assistant Bureau Chief, BII

Previous Complaint(s): see attached sheet

Reviewed by Chief, Bureau of Internal Investigations and forwarded to Legal Advisor

Reviewed by Legal Advisor and Forwarded to Police Commissioner

Mayer Thomas M. Menino • Commissioner Paul F. Evans

Previous Complaint(s) re:
Date 05-06-03

Sgt. John Hughes
I.D. #09022

1. Conduct - Unfounded (Case #134-87)
2. Violation of Rule 304, §2 - Exonerated (Case #021-00)
3. Violation of Rule 102, §27 - Unfounded (Case #243-02) Current Case

Previous Complaint(s) Re:
Date: 05-06-03

P.O. Mark Loewen
I.D. #11210

1. Violation of Rule 303, §4 and 102, §4 - Sustained (Case #004-01)
2. Violation of Rule 102, §§3 and 14 - Not Sustained (Case #168-01)
3. Violation of Rule 102, §9 -- Unfounded (Case #027-02)
4. Violation of Rule 102,§9 - Unfounded (Case #243-02) Current Case

TO: Deputy Superintendent Marie L. Donahue
Assistant Chief, Bureau of Internal Investigations

FROM: Sergeant Detective Michael Conley
Internal Affairs Division

SUBJECT: IAD Case # 243-02, Complaint # 5019
Sgt. John Hughes, I.D. # 9022
P.O. Mark Loewen, I.D. # 11210
Violation of BPD Rule 102: Section 27 (Misuse of Process)

DATE: April 3, 2003

Deputy Donahue:

I respectfully submit the following:

Summary of Complaint

On December 16, 2002, the complainant, Mr. Marc A. Mander of [REDACTED] filed a complaint with IAD against Sgt. John Hughes and P.O. Mark Loewen assigned to Area A-1 for an incident (CC# 020367965) that occurred on July 4, 2002. In his complaint, the complainant states that on that date around 1:38 am he was placed under arrest for being a disorderly person. The complainant states that he was the victim of racial profiling. The complainant states that he was placed under arrest because he questioned the officers' reasons for stopping and conducting a pat frisk of him and his friends.

Summary of interview with the complainant, Marc A. Mander

On Monday, December 16, 2002, Sgt. Det. Michael Conley and Sgt. Det. William Chinetti conducted a taped interview with the complainant, Marc Mander relative to IAD Case # 243-02. In his interview the complainant stated that on July 4, 2002, around 1:38 am he was in the area of 148 State Street. He stated that at that time he was standing with some friends when they were approached by police officers. He stated that he had observed a white individual at 148 State Street point at his group and directs the police officers to them. The complainant stated that the police officers approached he and his friends and had them put their hands on a car as they pat frisked them. He stated the officers also asked them for their identification.

The complainant stated that he asked P.O. Loewen the reason for the search and was told by the officer to shut up and let him do his job. The complainant stated that he asked for the sergeant and Sgt. Hughes responded that he was in charge and needed to do his job. The complainant stated that he informed the sergeant that the police needed to and must articulate their reasons for the search based on "Terry vs. Ohio". The complainant stated that Sgt. Hughes was unable or unwilling to articulate the reasons for

stopping and frisking him and his friends. The complainant stated that he informed Sgt. Hughes that he needed to explain his reasons for this stop and that he would be subject to a lawsuit for racial profiling. The complainant further stated that he stated to Sgt. Hughes "that if he didn't like his job, he should quit." The complainant stated that Sgt. Hughes responded by informing the complainant that he didn't have time for this and that he was under arrest. The complainant went on to explain that Sgt. Hughes statements in his report were manufactured and that Sgt. Hughes told him at the A-I booking desk that he was guilty by association. The complainant stated it wasn't until later that Sgt. Hughes explained to him at the booking desk why he and the other officers stopped and frisked the complainant and his friends.

A discussion was held about the actual radio call made that summoned the police to 148 State Street. The complainant stated that neither Sgt. Hughes nor P.O. Loewen ever informed him or his friends at the scene about why they stopped them. He stated that Sgt. Hughes seemed frustrated with answering his questions while they were at the booking desk. The complainant went on to explain that police officers need to be able to articulate their reasons for stopping people. He also questioned why only the black males, who were pointed out by the white individual, were stopped and frisked. The complainant stated that he was not confrontational at all with the officers and spoke to them in the same manner as he was doing in this interview.

The CAD history for this incident was reviewed. The complainant stated that earlier he had been in the Exchange Night Club with two of his friends, Kenroy and Darius Cayetano. He stated that he did not have any altercation in the club nor did he observe any. The complainant interjected that this investigator could contact the 911 caller (Harry) and he could attest that neither he nor his two friends were involved in the earlier altercation at the club. He stated that he suffered the indignity of being frisked then as well as in the past. He went on to discuss the effects and conditions that need to be addressed based on this type of incident. The complainant was asked if he was preparing for a lawsuit but he declined to answer at this time. He stated that he wanted to see the outcome of this investigation to evaluate any further action. The complainant was asked why the delay in making his complaint. He answered that earlier he thought nothing would happen and did not feel the police could police themselves, nor accountants police themselves (citing Enron scandal) but upon seeing Cardinal Law resign last week, he felt some chance of an appropriate outcome. The complainant stated that he is frustrated being frisked because he happens to be a black male. He elaborated that there needs to be more of a suspect description other than just being a black male.

A discussion was held based on Sgt. Chinetti asking the complainant specifically about this particular incident and whether the complainant believed this stop was based on racial profiling. He stated that it was and argued that the white people in the vicinity weren't frisked and that they could have easily had received weapons passed to them by blacks. He argued that the police should have considered this if they were that concerned with total safety.

Summary of interview with Sgt. John Hughes, I.D. # 9022

On Tuesday January 21, 2003, Sgt. Det. Michael Conley and Sgt. Det. William Chinetti conducted a taped interview with Sgt. Hughes relative to IAD Case # 243-02. In

his interview, Sgt. Hughes stated that on July 4, 2002, he was working as the last half patrol supervisor on Area A-1. He stated that around 1:38 am he responded to a R/C for men running around yelling that they had firearms and would not leave the "Exchange Night Club" located at 148 State Street. He stated that the caller gave no description at the time of the 911 call. He stated that upon his arrival at the "Exchange", he met and spoke to a Mark Harding who he thought to be a doorman/bouncer at the club. Sgt. Hughes stated that Mr. Harding directed him to a group of black males standing in the intersection of State and Broad Streets. He stated that Mr. Harding informed him that they were the individuals who had made threats that they had firearms after they were ejected from the club.

Sgt. Hughes stated that he called for assistance and he and the other officers approached the group of about four to five black males. Sgt. Hughes stated that he explained to the group their reasons for being stopped. He stated there was no problem with these gentlemen and they cooperated during the threshold inquiry. Sgt. Hughes stated that as he and the other officers were conducting the threshold inquiry, the complainant, Marc Mander approached. Sgt. Hughes explained that he believed the complainant had been across the street and was not with this group at the time he and the other officers made their approach. He stated that the complainant demanded to know who was in charge and insisted on knowing what was going on. Sgt. Hughes stated that he attempted to explain to the complainant the reasons why they were conducting the threshold inquiry. He stated that the complainant objected to the police performing the threshold inquiry/ pat frisk of the group of black males. Sgt. Hughes stated that it didn't appear that the complainant was intoxicated and he did not know if he had been in the club earlier. Sgt. Hughes stated that he and the other officers believed at the time that the complainant was associated with the group when he walked over and started arguing with them. Sgt. Hughes stated that he informed the complainant numerous times that for reasons of safety; all of the parties in this particular group were to be pat frisked including him. Sgt. Hughes stated that the complainant was agitated and argued with him on the legality of the stop and frisk. He stated the complainant alluded to the fact that he was associated with Harvard University and smarter than the police.

Sgt. Hughes stated that the complainant continued to challenge the officers' authority while they attempted to conduct the threshold inquiry/ pat frisk. Sgt. Hughes stated that the group was somewhat agitated initially when stopped, but cooperated when explained the reason for stopping them. Sgt. Hughes stated that it appeared the group was aware of what happened earlier at the club. Sgt. Hughes stated that the complainant was pat frisked along with the group over his continued objections. Sgt. Hughes stated that the complainant was informed why he was pat frisked along with the others. Sgt. Hughes stated that he made several attempts to calm the complainant down and explain to him why they needed to conduct the threshold inquiry. He stated that the complainant continued to yell and argue with him and accuse the police of racial profiling.

Sgt. Hughes stated that the complainant continued to yell and scream at him and the officers. Sgt. Hughes stated that a group of people from the various club closings started to congregate around them as they stood in the street. Sgt. Hughes continued to attempt to calm the complainant down and advised him that he would be subject to arrest if he continued to be disorderly. Sgt. Hughes stated that the complainant continued to be

disorderly and was placed under arrest. Sgt. Hughes stated that he instructed P.O. Loewen to handcuff the complainant and transport him in the A201A to Area A-1 for booking. Sgt. Hughes stated that he believed the other black males were FIO'd and released without further incident. Sgt. Hughes stated that the complainant was placed under arrest for his continued disorderly behavior and not for just objecting to the stop and frisk as he alleges. Sgt. Hughes stated there was no racial profiling as alleged by the complainant. He and the other officers only stopped the group of black males because that was the group pointed out to him as the suspects by Mr. Mark Harding. Sgt. Hughes assumed the complainant was associated with the group when he came over and started arguing with him and the other officers.

Summary of interview with P.O. Mark Loewen, I.D. # 11210

On Tuesday January 21, 2003, Sgt. Det. Michael Conley and Sgt. Det. William Chinetti conducted a taped interview with P.O. Loewen relative to IAD Case # 243-02. In his interview, P.O. Loewen stated that on July 4, 2002 he was working a last half tour of duty on Area A-1 as the A202A along with his partner, P.O. John Calisi. P.O. Loewen stated that on that date at around 1:40 am he and his partner responded to the "Exchange Night Club" located at 148 State Street for a R/C for men running around screaming that they had guns. P.O. Loewen stated that when he responded the manager of the club pointed out a group of black males that he thought had firearm(s). P.O. Loewen stated that there were about six to seven black males in that group.

P.O. Loewen stated that the group was standing about ten yards away from the "Exchange". P.O. Loewen stated that when he approached this group, officers explained to them why they were subject to a threshold inquiry along with the pat down frisk. He stated that most of the individuals were cooperative except for the complainant. P.O. Loewen stated that when he arrived on scene, the complainant was with the group. P.O. Loewen stated that the complainant objected to being pat frisked and denied having anything to do with the incident. P.O. Loewen stated that the complainant was arguing with the officers on the legality of stopping and frisking them. He stated that he recalled the complainant alluding to the fact that he was attending Harvard Business School. P.O. Loewen was unsure if any of the officers did FIO's of the group. He stated that he did not. P.O. Loewen stated that the complainant along with the other black males were pat frisked based on the nature of the radio call and having been pointed out by the caller, and not as a result of racial profiling.

P.O. Loewen stated that the complainant continued to be loud and boisterous and challenge the officers' authority. He stated a crowd from the other surrounding clubs that were closing started to gather. He stated that Sgt. Hughes had attempted numerous times to explain to the complainant the reasons for conducting the threshold inquiry. P.O. Loewen stated that the complainant's disorderly behavior created a commotion and that he was warned by Sgt. Hughes several times that if he continued he would be subject to arrest. P.O. Loewen stated that the rest of the group just stood off to the side without incident. He stated that the complainant continued to be disorderly and Sgt. Hughes had him placed under arrest. P.O. Loewen stated that he had conversation with the complainant as he walked him over to the wagon. He stated that he does not recall

questioning the complainant's explanation to him that he was catching a cab. P.O. Locwen stated that he was never disrespectful to the complainant.

Summary of interview with witness, Mark Harding

On Friday January 24, 2003, Sgt. Det. Michael Conley and Sgt. Det. William Chinetti conducted a taped interview with Mr. Mark Harding of [REDACTED]. Mr. Harding is the owner of "The Exchange" located at 148 State Street and had placed the 911 call summoning police to that location. Mr. Harding stated that on July 4, 2002 at around 1:40 am he placed a 911 call for police to respond to investigate three black males threatening to shoot he and his staff. Mr. Harding stated that these three black males were asked to leave the club because of their disorderly behavior. It was while they were outside that they made these threats. Mr. Harding stated that he overheard a conversation between two of the three gentlemen about no (blue) police being around and he was free to do what he wanted to do. Just prior, Mr. Harding stated that he observed one of these gentlemen reach up under the wheel well of a vehicle and place an object under his jacket. Mr. Harding presumed that object to be a firearm. He also stated that one of his staff observed what he thought was a firearm under the jacket of one of the suspects.

Mr. Harding stated that he observed the police respond and the group of black males walked off in separate directions. He stated two of the three black males walked off together and the other individual walked around the corner over to another group of black males. He stated that he guided the officers to the first two individuals and then to the other individual who was standing with the other group. He stated that the officers pat frisked these individuals and found no firearm(s). Mr. Harding stated there were about five officers present with the sergeant. Mr. Harding stated that he informed and pointed out to Sgt. Hughes and the officers of the other group of black males standing by the club who he believed to be with these individuals. Mr. Harding stated that he was still fearful that a firearm(s) was possibly in their possession or in the general vicinity and he voiced that concern to the police.

Mr. Harding stated that he observed the complainant being placed under arrest. He stated that he observed the complainant to be with the group of black males standing outside that he had pointed out to officers. He stated that he observed officers approach the complainant and have conversation with him. He stated that it appeared to him that the complainant objected to the police conducting the threshold inquiry and pat frisking the group. He stated that the complainant was uncooperative and argumentative accusing the police of being racially insensitive. Mr. Harding stated that the police had conducted themselves professionally and were considerate to the group given the circumstances. He stated that the majority of his customers are African American. Mr. Harding stated that the complainant was being loud and uncooperative and refused to be pat frisked by officers. Mr. Harding stated that his club and other surrounding establishments were closing around this time and there were numerous onlookers that took notice to this incident. He stated that at that time when the clubs are closing, traffic is busy. Mr. Harding stated that it is his opinion that the complainant was being disorderly and that the officers had warned him several times to calm down. Mr. Harding stated that he was about fifteen to twenty feet away as officers conducted their threshold inquiry of these

individuals and the complainant. He stated that Sgt. Hughes and all the officers conducted themselves appropriately given the tense situation involving a possible threat to use a firearm.

Investigation/ Finding

On December 16, 2002, the complainant, Mr. Marc Mander came to BPD/IAD to file a complaint against Sgt. John Hughes and P.O. Mark Loewen assigned to Area A-1 for an incident that occurred on July 4, 2002 around 1:40 am. The complainant alleges that he was the victim of racial profiling. He alleges that he was placed under arrest simply for questioning the officers' reasons for conducting a threshold inquiry/pat frisk of him and other black males outside "The Exchange" nightclub located at 148 State Street, Boston. The complainant argues that these officers reasoned that he was guilty by his association with the other black males at that location who were accused of the wrongdoing.

On July 4, 2002 a R/C (CC# 020367965) was made around 1:40 am by Mr. Mark Harding, the owner of "The Exchange" nightclub. The nature of that R/C was for men running around screaming that they have guns at that location. Mr. Harding, who made the 911 call as he was standing out front of the club, stated that he overheard a conversation between two black males, who, along with another black male had been ejected from the club for causing a disturbance. Mr. Harding stated that the conversation referenced that they would carry out their original threat to use a firearm. Mr. Harding also stated that one of his staff observed what he thought to be a firearm under the jacket of one of the suspects. Mr. Harding stated that he had observed one of the individuals reach up under a vehicle wheel well and retrieve an unknown object.

When Sgt. Hughes and the other officers arrived, Mr. Harding observed that the three black males he suspected of the firearm threat walked away. He stated that two of the males were standing nearby and he pointed them out to the responding officers. The third black male was observed by Mr. Harding to walk around the corner and join another group of black males. The first two black males were pat frisked and no weapon(s) was found. Mr. Harding pointed out the other group to Sgt. Hughes and the other officers and they approached these individuals to conduct a threshold inquiry along with a pat frisk. Mr. Harding had identified the suspects as being black males. The complainant was not believed to be initially involved with the three black males who were ejected from the club and made the threats, but had joined the group of black males who Sgt. Hughes and the other officers engaged during their threshold inquiry of them.

While attempting to conduct a threshold inquiry of the complainant and the other black males, the complainant vehemently objected to the officers pat frisking him. By all accounts, the complainant attempted to argue the legality and the authority the officers had to do this. Both Sgt. Hughes and P.O. Loewen along with Mr. Harding attest to the fact that Sgt. Hughes attempted several times to explain to the complainant the reasons for the threshold inquiry/ pat frisk. By all accounts, the complainant was uncooperative and continued to yell and challenge the officers. The other black males were cooperative and subsequently left the area without further incident. The complainant escalated the situation with his yelling and failed several times to comply with Sgt. Hughes requests for him to cease his disorderly behavior. With a crowd gathering and his continuous refusal

to cease his disorderly behavior, the complainant was placed under arrest by Sgt. Hughes and transported to Area A-1 by the A202A.

In his interview, the complainant argued the legality of his arrest. Under Mass. Chapter 272, Section 53, the complainant, through his tumultuous behavior, created a public annoyance and threatening situation not only for the officers present but also for the general public who had gathered nearby. The complainant also cited that P.O. Loewen was disrespectful to him for questioning his explanation that he was hailing a cab and not with the group. The complainant stated that the two friends he was with at the nightclub would be his witnesses to this injustice. This investigator received a follow-up letter from the complainant stating that his two friends did not wish to get involved with a police matter. The complainant stated that he was a victim of racial profiling. The only suspects that were identified by the witness/caller and pointed out to the police as the perpetrators, was the group of black males that the complainant chose to associate with. Sgt. Hughes and the other officers had a lawful duty to fully investigate this matter, especially where it involved the possibility of a threat to use a firearm. The complainant's case charging him with "Disorderly Conduct" was dismissed at Boston Municipal Court on July 30, 2002. Sgt. Hughes was never notified of this matter. Sgt. Hughes faxed this investigator a copy of the court disposition.

In regards to the matter that Sgt. John Hughes violated BPD Rule 102: Section 27 (Misuse of Process), I find that this matter should be placed as **unfounded**. In regards to the matter that P.O. Mark Loewen violated BPD Rule 102: Section 9 (Respectful Treatment), I find that this matter be placed as **unfounded**.

Recommendations

After a thorough investigation, I respectfully recommend the following in the matter of IAD Case # 243-02, Complaint # 5019:

Sgt. John Hughes, I.D. # 9022

Rule 102:Section 27(Misuse of Process)

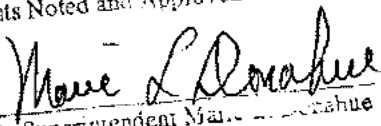
UNFOUNDED

P.O. Mark Loewen, I.D. # 11210

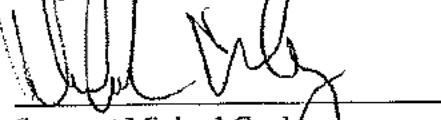
Rule 102:Section 9(Respectful Treatment)

UNFOUNDED

Contents Noted and Approved


Deputy Superintendent Marie L. Donahue

Respectfully submitted,


Sergeant Michael Conley
Internal Affairs Division