



## Fire and Police Commission

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October 5, 2012

### **PUBLIC STATEMENT REGARDING THE INVESTIGATION OF THE HOMICIDE OF DARIUS SIMMONS ON MAY 31, 2012**

#### **PREFACE**

The citizen board of the Milwaukee Fire and Police Commission shares the concerns of the community with respect to the investigation of the homicide of Darius Simmons. While the investigation was conducted in a manner that did result in the issuance of homicide charges, some of the procedural methods that were utilized unnecessarily exposed the police department to a negative public perception. Certain actions taken during the investigation, while not necessarily purposeful, created a dimension of racial insensitivity that negatively influenced the trust of some members of the community. This report acknowledges the underlying racial dimension that inevitably exists in policing diverse communities across America, and provides another step in the continual process of promoting public trust in our own police department. This report explicitly recognizes that certain aspects of the investigation could have been conducted in a manner that would not arouse a suspicion of racial insensitivity by some members of our community.

This incident should not singularly define the Milwaukee Police Department, its chief, or its officers. Chief Flynn has instituted many initiatives that have improved the department to the benefit of our community. This incident exemplifies the need for Chief Flynn to continue those efforts to promote positive change within the police department.

#### **SUMMARY**

On May 31, 2012 at 9:48 a.m. Darius Simmons, 13 years of age, was standing on the sidewalk in front of his residence, 1905 W. Arrow Street, Milwaukee, WI, when he was confronted by his neighbor, John H. Spooner. Mr. Spooner demanded that Darius return his stolen shotguns. Darius responded that he did not have Mr. Spooner's shotguns.

Mr. Spooner then shot Darius Simmons two times with a .32 caliber pistol. Darius Simmons ran around the corner and collapsed. When police and paramedics arrived on the scene, both his



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mother, Patricia Larry, and his brother, T.L.,<sup>1</sup> were standing near him. Ms. Larry was placed in a police car. T.L. was arrested for municipal warrants. Darius Simmons was transported to Children's Hospital where he was pronounced deceased shortly thereafter. Mr. Spooner remained on the scene and was arrested by officers.

The tragic death of Darius Simmons has raised questions within the community as to whether the actions of Milwaukee Police Officers during the investigation were appropriate. The following events resulted in, or were a product of, a heightened public scrutiny of the police investigation.

DATE	EVENT
June 2, 2012	<ul style="list-style-type: none"><li>▪ Milwaukee Police Department completed its criminal investigation and referred it to the Milwaukee County District Attorney.</li><li>▪ Mr. Spooner was charged with 1<sup>st</sup> Degree Intentional Homicide.</li></ul>
June 8, 2012	<ul style="list-style-type: none"><li>▪ Mayor Tom Barrett and the Executive Director of the Fire and Police Commission met with various local and state legislators and community members to hear their concerns with the police investigation. At the conclusion of the meeting Mayor Barrett requested the Fire and Police Commission conduct a review of the police investigation.</li></ul>
June 11, 2012	<ul style="list-style-type: none"><li>▪ Milwaukee Police Chief Ed Flynn met with various community members to discuss concerns regarding the police investigation.</li></ul>
June 26, 2012	<ul style="list-style-type: none"><li>▪ Patricia Larry, through her attorney, filed a civil lawsuit against Mr. Spooner in Milwaukee County Circuit Court.</li></ul>
July 12, 2012	<ul style="list-style-type: none"><li>▪ The Board of Fire and Police Commissioners held a public listening session to learn about the community concerns with the investigation conducted by the Milwaukee Police Department.</li></ul>

Upon conclusion of this series of events the Executive Director initiated a review of the incident. This report is a summary of the incident based upon witness statements, police reports, district attorney reports, and police radio and computer-recorded communications. Because there is a pending criminal case and also a civil lawsuit pending in Milwaukee County Circuit Court, this report will not provide a detailed analysis of the events pertaining to the homicide of Darius Simmons.

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<sup>1</sup> For the purposes of this public statement, civilian witnesses are identified by initials only, with the exception of the mother of the homicide victim, Patricia Larry. The identity of Patricia Larry was disclosed in published news media reports. The full identities of all witnesses are contained in the Milwaukee Police Report Files related to this case.

This report will review four primary areas of concern with respect to police procedures during the investigation. These areas of concern have been brought to our attention through our local community contacts and the community meetings that were held:

1. The interview of Ms. Larry;
2. The search of Ms. Larry's residence;
3. The arrest and detention of Darius Simmon's brother, T.L.; and
4. The disposition of Mr. Spooner's personal property and search of his residence.

Among the implicit purposes of issuing this report is to provide an increased level of accountability and public transparency regarding instances in which police actions may be questioned by the community. A police department that is transparent in its operations and accountable for its actions will enjoy the trust and respect of the community. The Fire and Police Commission shares the concerns of the community in its role as a citizen board that oversees the police department. An incident that is perceived as mishandled or improperly investigated only serves to adversely affect the public's trust in and perception of its police officers, as well as their trust in those responsible for selecting, training, and disciplining those officers.

This report necessarily involves a careful and responsible interpretation of the facts, evidence, and witness statements. The actions of the involved officers are interpreted with respect to the rules, policies, and procedures of the police department at the time of the incident. The concerns of the victim's family are certainly acknowledged and addressed by the same evidentiary standards applicable to every member of our community.

By necessity this report does not provide the observations and perspective of Patricia Larry. Ms. Larry has declined to provide a statement or avail herself to an interview for this report. Ms. Larry did not participate in the Fire and Police Commission public listening session and has not filed a formal or informal complaint with the Milwaukee Police Department (MPD) or Fire and Police Commission with respect to this incident.

### **THE INCIDENT**

On Thursday, May 31, 2012 at 9:48 a.m., Squad 2131, Officer Michael Kopel and Officer Dustin Kegley responded to a shooting at S. Comstock Avenue and W. Arrow Street. They were the first officers to arrive at the scene with Milwaukee Fire Department (MFD) Engine 26 and Med 3 arriving minutes later at 9:52 a.m.

Officer Kopel observed the shooting victim, Darius Simmons, lying unconscious in front of 1508 S. Comstock Avenue. Darius Simmons' mother, Patricia Larry, identified Darius as her son. When asked by Officer Kopel who was responsible for the shooting, Ms. Larry pointed down the street to Mr. Spooner who was being handcuffed by officers on the corner of W. Arrow Street and S. Comstock Avenue. At 10:14 a.m. Detective Gust Petropoulos was the first detective to arrive on the scene and initiate the criminal investigation. At 10:14 a.m. Officer Kopel

accompanied MFD Med 3 as the paramedic unit conveyed Darius Simmons to Children's Hospital. The ambulance arrived at the hospital at 10:24 a.m. The hospital physician made a pronouncement of death at 11:10 a.m.

### **AREAS OF COMMUNITY CONCERN**

#### **1. INTERVIEW OF MS. LARRY**

Officer Kopel escorted Patricia Larry to his marked squad car while paramedics were attending to Darius Simmons. Ms. Larry was placed in the rear seat of the squad car. Officer Kopel then rode with the MFD paramedic unit as they transported Darius Simmons to the hospital. The rear seat of the marked squad car is enclosed by metal panels and separated from the front seat area by a Plexiglas window that horizontally slides open. The rear passenger doors cannot be opened by rear seat occupants.

Patricia Larry was seated in the rear seat of the marked squad car for approximately 15-30 minutes, until Detective Petropoulos had completed other investigatory tasks and was prepared to interview her. It is unclear whether Patricia Larry was accompanied by officers while she was seated in the rear of the marked squad car.

Detective Petropoulos had arrived at the scene at 10:14 a.m. and initiated his interview of Patricia Larry at approximately 10:50 a.m. Detective Petropoulos had a uniformed officer walk Patricia Larry to his unmarked squad car, where Ms. Larry was seated in the right front passenger seat. Detective Petropoulos interviewed Ms. Larry for approximately 30 minutes, from 10:50 a.m. to 11:20 a.m. During the interview Ms. Larry requested to go to the hospital but did agree to remain at the scene until the interview was completed.

While Ms. Larry was seated in the squad car she was observed speaking on her personal cell phone on at least one occasion. It could not be determined to whom, for what length of time, or how often Ms. Larry utilized her cell phone while seated in either squad car.

Upon conclusion of the interview, an officer was located to convey Ms. Larry to the hospital. Ms. Larry was conveyed from the scene in a police squad car at 11:36 a.m. and arrived at the hospital at 11:58 a.m. Ms. Larry was seated in the two squad cars for a total period of approximately 1½ hours. Ms. Larry was notified of the death of her son upon arrival at the hospital.

#### **DISCUSSION**

- *The interviewing detective followed customary protocols for a homicide investigation.* Ms. Larry arrived at the hospital approximately 1½ hours after Darius Simmons arrived at the hospital. During that time, Ms. Larry was seated in a marked, and later in an unmarked, squad car. Other witnesses that were located at the scene were also seated in separate squad cars awaiting their interviews during this time.

It is a common practice for MPD officers to separate and seat major crime witnesses in a squad car at the scene in order to conduct their interview. The MPD Felony Investigation Checklist instructs officers to “separate witnesses and keep separate.” Investigators involved in this case opined that it is standard practice to follow this protocol even if the witness is the mother of the victim. Investigators further opined that allowing Ms. Larry to immediately proceed to the hospital prior to an interview would jeopardize the investigation and potentially damage the ability to successfully prosecute the case in criminal court. Investigators also indicated that MFD protocol prohibited Ms. Larry from accompanying her son in the ambulance to the hospital.

- *No published written directive or training required the interview to be conducted at the scene.*

While it is customary, and indeed, preferred by MPD investigators, there is no MPD directive that required Ms. Larry to be interviewed at the scene and prior to her conveyance to the hospital. Written directives for this level of detail are necessarily silent in mandating the exact time, place, and mode of interviewing witnesses. No particular written directive exists because investigators require some degree of discretion when conducting such interviews. Experienced investigators and interview experts may reasonably disagree on the correct course of action in this case. However, it is incontrovertible that the interviewing investigator and on-scene supervisor possessed the discretion to determine the time, place, and mode of interview.

- *Alternative methods of conducting the interview were not considered.*

Investigators followed normal witness interview protocols and did not consider the unique circumstances of this incident. The failure to consider the unique circumstances of a mother witnessing the shooting death of her 13 year-old son is a primary precipitating factor in the resulting community frustration concerning the investigation. Community members presumed that malice and prejudice were overwhelming reasons for the failure to consider the unique circumstances of this homicide investigation.

- *Investigators mistakenly believed that MFD would not transport Ms. Larry to the hospital with her son.*

The interviewing investigator stated that MFD protocols prohibited Ms. Larry from accompanying her son to the hospital in the ambulance. The investigator believed that due to the multiple medical personnel that were actively engaged in performing medical treatment on Darius Simmons, there would be no room in the ambulance for Ms. Larry. However, MFD protocols and custom would have allowed the transportation of Ms. Larry in the ambulance right front passenger seat. The right front passenger seat is otherwise vacant during a conveyance to the hospital because the paramedic normally occupying the seat is in the rear patient transportation area providing medical treatment on the patient. The interviewing investigator did not inquire of MFD personnel at the scene whether they would be able to accommodate Ms. Larry during the conveyance to the hospital. The interviewing investigator did not

consider this alternative and followed the customary method of retaining all witnesses at the scene of the homicide until their interview was completed.

- *Allowing Ms. Larry to immediately proceed to the hospital would not have unduly jeopardized the investigation.*

Homicide investigators customarily strive for perfection. No officer wants to be blamed for taking actions that later allow a criminal to go free. There is much at stake in a homicide investigation, and botched interviews can have significant detrimental effects on a criminal case. With the benefit of hindsight, alternative methods of handling the interview of Ms. Larry can be identified. None of the alternative methods are perfect, but neither was the method chosen by the interviewing investigator.

A primary reason for sequestering witnesses at the scene is to prevent communications between the witnesses and third parties from influencing their recollection of the events. Another reason for conducting the interview at the scene is to guard against the danger of the passage of time affecting the human mind's recollection of events. Addressing these concerns can be accomplished by several alternative methods. Having an officer accompany Ms. Larry to the hospital, either in the ambulance or in a police vehicle could address the sequestration concern. An initial basic interview can be conducted at the scene, and a follow-up interview can be conducted at the hospital or at the witness's residence. Alternatively, the witness can be transported from the hospital back to the scene for the interview. There are also other options available for conducting a full interview at a later time. All of the possible alternative options present opportunities to jeopardize the investigation, as did the actual method that was used to interview Ms. Larry.

Appropriate safeguards exist to allow the use of a number of alternative interview methods. The interviewing investigator selected the interview method that is customary and commonly used in the vast majority of MPD homicide investigations. It was the investigator's determination that this method would minimize the possibility of jeopardizing the investigation. However, in their mission to strive for excellence, homicide investigators failed to realize and did not anticipate the impact of their decision on the public's perception of its police officers. In addition, investigators failed to realize the devastating personal impact of an extremely tragic incident on the mother of the victim.

## **2. SEARCH OF MS. LARRY'S RESIDENCE**

Based upon the investigator's account of the incident, Ms. Larry was asked and voluntarily consented to a search of her residence. Ms. Larry signed a handwritten consent form during the course of her witness interview while she was seated unrestrained in the front seat of an unmarked squad car. The purpose of the search was to determine the presence or absence of Mr. Spooner's firearms that were stolen in a burglary of his home two (2) days earlier. The search was conducted by at least one police detective and a police captain. Interior photographs of the residence during and

after the search were taken. The photographs did not depict any damage to the home. The police captain and detective denied causing any damage.

Based upon this information, and without the benefit of Ms. Larry's version of events pertaining to the search, no policies or procedures were violated by officers involved in the search. No personal property, home furnishings, or interior structure of the residence was damaged as a result of the search.

### **3. ARREST AND DETENTION OF T.L.**

Darius Simmon's brother, T.L., was present in Ms. Larry's residence at the time of the incident. During the course of interviewing T.L. at the scene it was determined that he had five (5) outstanding municipal arrest warrants.<sup>2</sup> At approximately 11:31 a.m. T.L. was taken into custody and transported to the Police Administration Building. At 8:10 p.m. he was interviewed by MPD Detectives. He was interviewed on the topic of the homicide of his brother, Darius Simmons, and on the topic of the burglary of Mr. Spooner's residence. T.L. was released from custody at approximately 9:30 p.m.

### **DISCUSSION**

- *The municipal arrest warrants did not require detention in police custody for a period of ten (10) hours.*

Wisconsin law provides authority for a law enforcement officer to take a person into custody for a valid outstanding warrant. Investigators utilized that authority to lawfully detain T.L. in order to interview him regarding the homicide of his brother and the burglary of Mr. Spooner's residence that had occurred two (2) days earlier. It is not unusual or unlawful for investigators to utilize the existence of outstanding warrants to detain witnesses for an interview.

While not unlawful, the length of time that T.L. was detained was not appropriate given the unique and unusual circumstances of this incident. No evidence of a purposeful delay in the interview process was identified. Investigators were actively involved in conducting the investigation of the homicide during the time that T.L. was detained. Investigators proceeded to interview T.L. as soon as practicable during the course of their investigation. The delay of 8½ hours, from the time that T.L. was taken into custody to the time that his interview commenced indicates that an insufficient number of investigators may have been assigned to conduct interviews.

While the facts strongly suggest that insufficient personnel resources may have been allocated to the interview portion of this investigation, alternative methods of conducting the interview of T.L. were not considered. The portion of the interview of T.L. that pertained to the burglary of Mr. Spooner's residence should have ideally been conducted two (2) days earlier when the burglary was initially reported to MPD. T.L. was not a flight risk, was positively identified as the warrant recipient, and the

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<sup>2</sup> Since T.L. is under the age of 18, the details and nature of the arrest warrants are not disclosed in this report.

municipal arrest warrants pertained to juvenile civil forfeitures, and not criminal offenses. Given the personnel resources allocated to this investigation, it was more efficient for investigators to detain T.L. until they had time to conduct the interview later in the day. Under most circumstances the investigators' actions in detaining T.L. until he could be interviewed at a later time could be considered entirely appropriate. In this case, however, investigators did not consider the negative public perception and unusual personal circumstances as it related to T.L.

#### **4. SEARCH OF MR. SPOONER'S RESIDENCE**

Investigators received voluntary consent from Mr. Spooner to search his residence. Evidence was recovered from his residence pursuant to the search.<sup>3</sup> Mr. Spooner's residence was cordoned off by crime scene tape and was part of the active crime scene. After the search was completed, members of Mr. Spooner's family were contacted by investigators. The family members were allowed to remove Mr. Spooner's dog and various firearms stored in the residence. None of the firearms were evidence in the investigation. Investigators indicated that they were concerned that Mr. Spooner's house would be known to be vacant and that the firearms would be stolen and placed into the hands of criminal elements.

#### **DISCUSSION**

- *Customary investigation practice calls for the firearms in the residence to be confiscated and inventoried for safekeeping.*

MPD Standard Operating Procedure (SOP) 560.10 and 560.90 provide a written directive to department members for the inventory procedures pertaining to the safekeeping of firearms.<sup>4</sup> The SOP appropriately does not address all circumstances in which firearms must be confiscated for safekeeping. Under the circumstances of this incident, investigators were not required to confiscate and inventory Mr. Spooner's firearms.

However, the customary MPD procedure is to confiscate and inventory the firearms for safekeeping. This practice is normally followed so that the firearm serial numbers can be recorded and checked against national databases to determine if they have been reported stolen by another law enforcement agency. This procedure also provides a mechanism for the Assistant Chief or their designee to authorize the return of firearms or safekeeping inventory only to lawful owner/claimants who are not prohibited by Federal or State law from possessing a firearm.

Candid discussion with knowledgeable investigators revealed that due to the large number of firearms in Mr. Spooner's residence and the number of personnel allocated to the investigation, it was determined that family members would be allowed to

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<sup>3</sup> Due to the pending criminal case, this report does not identify the specific evidence recovered.

<sup>4</sup> Three categories of inventory property are recognized by MPD: evidence, contraband, and safekeeping. There are different procedures for each property category.

retrieve the firearms from the scene rather than after they were inventoried for safekeeping. It could not be determined how many firearms were turned over to family members. Investigators believed that inventorying the large number of firearms in Mr. Spooner's residence would be a time-consuming exercise and require several hours of multiple investigators' time.

The decision not to inventory the firearms may have been the most expedient method of safeguarding them. However, the decision unnecessarily exposed the department to accusations of preferential treatment being granted to Mr. Spooner. The decision also contributed to creating an appearance of an underlying racial dimension to the investigation. The mere appearance of preferential treatment, even in just a single instance, can greatly influence the public's perception and trust of the police department.

### CONCLUSIONS

The City of Milwaukee is served by a police department composed of hard-working and dedicated individuals. Department operational goals include the task of constantly seeking ways to improve service. This report will assist the department in its goal of identifying means to continue improving delivery of public safety services.

- The MPD investigation was thorough and complete. The investigation resulted in the Milwaukee County District Attorney issuing charges of 1<sup>st</sup> Degree Intentional Homicide against Mr. Spooner.
- There were no rules, policies, or procedures that were violated by members of MPD as it pertains to the four (4) areas of community concern reviewed in this report. The issues that arose as a result of the investigation occurred within areas of department-authorized, discretionary decision-making.
- The MPD should review the methods in which investigative personnel are allocated to the scene of an active homicide investigation. The review could provide insight into methods to adjust the number of investigators when unique or unusual circumstances exist.
- The MPD should evaluate establishing a Standard Operating Instruction (SOI) for homicide investigations. The SOI could provide a mechanism for improved supervisory oversight of the discretionary decisions made by investigators on the scene.

The SOI could also address the need for supervisors to consider the effects that their discretionary decisions have on community relations and the public's trust of its police department.

- The MPD should review and significantly expand the existing training regimen pertaining to cultural awareness and general interpersonal communication. A primary objective of the training should be to continue to foster sensitivity to the full range of

effects that an officer's words, actions, and decisions have in their interactions with Milwaukee's diverse community.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Tobin".

Michael Tobin  
Executive Director  
Milwaukee Fire and Police Commission

MGT:kj