

**OFFICE OF THE STATE ATTORNEY
20TH JUDICIAL CIRCUIT
P.O. BOX 399
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Amira D. Fox, State Attorney

MEMO

TO: Sgt. Thomas Lewis, Clewiston Police Department
FROM: Abraham R. Thornburg, Deputy Chief Assistant State Attorney
DATE: May 7, 2021
RE: Agency Review of CLPD21OFF000225 (Melissa Carter)

I have completed the requested review in this case. All documents submitted by both the Hendry County Sheriff's Office and the Clewiston Police Department have been reviewed in full. This includes the initial incident report from HCSO, the initial incident report from CPD, all supplemental reports from both agencies, a CPT interview of the child, a video of the incident submitted to HCSO by the child's mother, photographs submitted to HCSO by CPT nursing staff, and photographs submitted to CPD by the child's mother's attorney, Brent Probinsky. Additionally, I had a brief conversation with Mr. Probinsky, wherein he stated that he believed the incident amounted to both child abuse and aggravated battery. Upon review of the totality of the evidence and the law, it does not appear that any crime was committed by Ms. Carter in this case.

The witness statements and evidence in this case indicate that on April 13, 2021, a first grader at Central Elementary School in Clewiston was disciplined by school staff, including Ms. Carter and another staff member, Cecilia Self, for intentionally damaging a piece of computer equipment. According to statements by both staff members, Ms. Self phoned the child's mother, Fabiola Rivera, to explain the damage to the computer equipment and that she would be charged for the damage. Ms. Self stated that during that phone call (which appears to have been conducted in Spanish), Ms. Rivera explained that her daughter was also damaging things at home and that she (Ms. Rivera) is afraid to discipline her by spanking, because her daughter threatens to call the police and DCF. Ms. Self further stated that Ms. Rivera then requested that the school spank the child for her, to which Ms. Self replied that she would have to physically come to the school, specifically request such discipline, and be present during the spanking if she wished for school staff to do it for her. According to both Ms. Carter and Ms. Self, Ms. Rivera then arrived at the school and made that request.

It appears based upon the angle and action of the video recording submitted by Ms. Rivera to law enforcement that it was recorded without the knowledge of any other parties in the room, which Ms. Rivera later confirmed to DCF staff. In the video, you can clearly see Ms. Carter explaining to the child what is about to occur and why. She also makes reference to "calling the police" on her for the spanking, which corroborates Ms. Self's account of her phone call with Ms. Rivera. Ms. Self and Ms. Carter then appear to make efforts to position the child so that she can be safely spanked without injury. Ms. Carter then strikes the child with a wooden paddle three times in succession on the buttocks. After the spanking, both staff members ask the child to apologize to her mother, and again explain the reason for the spanking and that it may occur again if she continues misbehaving. Both staff members appear to treat the child and her mother with respect throughout the process. At several times, Ms. Self translates Ms. Carter's comments into Spanish for Ms. Rivera. At no time during the video of the incident does Ms. Rivera raise any objection to what is taking place, by word or act in any fashion whatsoever, further corroborating the accounts of Ms. Self and Ms. Carter. Near the conclusion of the video, as Ms. Rivera is leaving the office, she can clearly be heard saying "thank you" to Ms. Carter and Ms. Self—again, corroborating their account of the consent and request of Ms. Rivera. (It is of note that edited portions of the full video appear to have been cut and released to the media at different times, and have resulted in an incomplete and misleading account of the incident to the public.)

The CPT interview of the child is consistent with the above account as well. The child reports that

Several photographs were taken of the child's buttocks, which appear to have been taken the day after the incident. Some of the photographs in the case file came from CPT nursing staff and others were forwarded to CPD by Ms. Rivera's attorney. In each of the photographs, mild bruising can be seen on the child's left buttock consistent with having been spanked with a wooden paddle. There does not appear to be any welting or other injury.

Ms. Rivera gave an initial account of the incident to HCSO on April 14, 2021. At that time, she indicated that she understood the reason she was going to the school was that she was required to be present in order for the school staff to spank her daughter. She further indicated to HCSO that there was a language barrier and that she was "confused" and "did not understand the process correctly." CPD made several attempts to obtain a more specific and detailed statement from Ms. Rivera, but she did not return phone calls from the agency. Her attorney, Mr. Probinsky, did call back, first indicating that Ms. Rivera would give an interview, but later indicated to CPD that she would not give a statement after inquiring as to whether she would be a suspect of criminal misconduct in the case. After the case was submitted to the SAO for review, an additional attempt was made by CPD to obtain a sworn statement from Ms. Rivera prior to the final determination in this case, with similar results. It is of note that despite refusing to give a sworn statement to law enforcement, Ms. Rivera has made several statements to the media during the pendency of the investigation—one of them indicating that she intentionally "sacrificed" her daughter because no one would believe her about what was happening at the school unless she video recorded it. Such a statement that she knew all along that the paddling was

going to occur is wholly inconsistent with her initial statement to law enforcement that she was confused and did not consent.

Based upon the evidence reviewed, the actions of Ms. Carter in this case do not meet the elements of any criminal offense in the State of Florida.

To the extent that paddling the child constitutes a misdemeanor battery (touching or striking a person against their will), the evidence in this case appears clear that the child's mother sanctioned and consented to the spanking of her daughter as discipline for misbehavior. A parent has a right to use corporal punishment to discipline their children, and similarly has the right to consent that others do so on their behalf. While there are significant concerns regarding Ms. Rivera's credibility given the inconsistencies outlined above, even if her account of events to law enforcement were true (*i.e.*, that she did not consent, because she was confused during the incident and misunderstood what was happening), there is no reason to believe that Ms. Carter was aware of any such lack of consent at the time of the discipline. In fact, all evidence points to the contrary: that any reasonable person in Ms. Carter's position would have believed that Ms. Rivera consented to the spanking in the manner it was performed.

With respect to the offense of aggravated battery as alleged by Mr. Probinsky, there is simply no evidence of such crime. The offense of aggravated battery requires either the intentional infliction of great bodily harm, permanent disability, or permanent disfigurement to the child, or the use of a deadly weapon during the course of a battery. Here, there is no evidence or indication of great bodily harm, permanent disability, or permanent disfigurement. Likewise, a deadly weapon is defined by law as "any object that is likely to cause death or great bodily harm in the manner used or threatened to be used," and it is clear that using a paddle to spank a child is not likely to cause death or great bodily harm.

Similarly, the law in Florida is clear that spanking a child does not amount to child abuse. In fact, incidents of corporal punishment that have resulted in significantly greater injury to a child than this incident have been repeatedly upheld by courts as legitimate punishment and not child abuse. *See, e.g., King v. State*, 903 So. 2d 954 (Fla. 2d DCA 2005) (a teacher paddling a child resulting in "significant bruises or welts" does not rise to the level of child abuse); *State v. McDonald*, 785 So. 2d 640 (Fla. 2d DCA 2001) (a father twice striking son in the face, splitting his lip, and forcing him to eat food as punishment for failure to eat the dinner is not child abuse as a matter of law).

Please let me know if you receive any additional information in this case that would merit additional review.

As you are aware, this legal review is limited to the issue of the potential criminal liability of Ms. Carter for the above-referenced incident, as your agency requested. No policy, procedural, or civil issues outside of the jurisdiction of the State Attorney's Office are addressed, and no comment on such matters is intended.

Abraham R. Thornburg
Deputy Chief Assistant State Attorney