CIVIL SERVICE COMMISSION

City of Tucson **Minutes**

Brandon Kelly
Appeal of Termination
Tucson Police Department
July 27, 28, 29, 2015

A quorum of the Civil Service Commission of the City of Tucson met at 9:00 a.m. on Monday, July 27, 2015, at the Community Resource Center, Sentinel Building, 320 S. Commerce Loop Park, in Tucson, Arizona for an Appeal of Termination filed by Brandon Kelly from the Tucson Police Department.

Present were Chair Max Parks, Commission Members David Flaugher and Malcom Pavey. Staff present: Barry Corey, Legal Counsel; Tameron Collins, Interim HR Deputy Director; and Armida Saufley, Executive Assistant of Human Resources (Recording Secretary).

Mr. Michael Storie represented Mr. Brandon Kelly; Ms. Sivan Korn, Principal Assistant City Attorney, represented the Tucson Police Department. Police Chief Roberto Villasenor was also present.

Per Exhibit A, the actions and behaviors of Officer Kelly #53104 are fully documented in Internal Affairs Investigation file OIA #14-0425. These actions were reviewed and serve as the basis of this disciplinary action and incorporated herein, providing just cause for termination and are synopsized as follows:

I. Behavior Officer Kelly knew or reasonably should have known would result in disciplinary action.

On July 22, 2014 an internal investigation was initiated after his supervisor discovered audio from Officer Kelley's Mobile Video Recorder (MVR) recorded him yelling and hitting something in his patrol car. On the recording, Officer Kelly could be seen stopped in the roadway and could be heard shouting "go around you stupid fucking foreigner". This comment was centered at the driver of a vehicle that had stopped behind him in the road. This comment was made in front of a citizen, Ms. Arnaud, an acquaintance, who he had met with. During an audit of the system, Information Services Officer Garman determined Officer Kelly's MVR had been intentionally manipulated in order to be disconnected. The MVR was disconnected shortly after the audio captured Officer Kelly yelling at the citizen in front of Ms. Arnaud. After Officer Kelley's chain of command review, it was determined he was untruthful internal investigation,

Captain Webb cited the following as examples of untruthfulness:

"Officer Kelley was not forthcoming during the interview with OIA Investigators on July 14, 2014 when he explained how he came into contact with his friend, Ms. Arnaud. He

described it as a chance encounter where he ran into her on the street Ms. Arnaud stated there were text messages sent between them with a specific location specified to meet up at. The Notice of Administrative Internal Investigation form served on him that date states in part; members are required to report completely, honestly and accurately all facts and information pertaining to any investigation or any other matter of concern to the Department as required under TPD General Order 1330.19 Untruthfulness. Officer Kelley did not completely and accurately describe his encounter with Ms. Arnaud.

"Officer Kelley stated that he would never say "foreigner." Once he had a chance to listen to the audio, he stated that he did not remember saying that comment. He acknowledged that if his comment had made it out to the public, it could have a severe image on the Department. I find that Officer Kelley was untruthful in his statement to OIA investigators. If Officer Kelley is to be believed, than the Agency has a uniformed officer, in a marked patrol vehicle making extremely offensive, racially-charged comments. Either way, his conduct has created a critical adverse impact on the Agency."

II. Violations of Department Policy and General Orders.

The investigation of OIA #14-0425 established that Officer Kelley was in violation of Tucson Police Department policy. A review conducted by Officer Kelley's Chain of Command has determined that Officer Kelley violated the following General Orders:

1330.19 Untruthfulness

A. *No member shall knowingly make an untrue statement about a fact, either orally or in writing, in connection with any investigation, assignment or inquiry.*

B. *Members are required to report completely, honestly, an accurately all facts and information pertaining to any investigation, whether criminal or administrative, or other matter of concern to the Department.*

III. Prior Discipline

Officer Kelley has no previous disciplinary history.

IV. Disciplinary Action

Based on a review of the Tucson Police Department management, the Chief of Police has determined Officer Kelley committed a Type E Violation. Due to Officer Kelley's actions in this matter, the listed violations constitute just cause for terminating Officer Kelley from his employment with the Tucson Police Department.

The listed violations constitute just cause for termination from the Tucson Police Department.

This appeal was held in Open Session; however, the rule was invoked.

Witnesses present were sworn:
Roberto Villasenor
Brandon Kelley

9:15 – 9:20 Preliminary Matters discussed

9:20 – 9:30 Ms. Korn's opening statement

9:30 – 9:40 Mr. Storie's opening statement

9:40 – 10:00 Ms. Korn moved to admit City's Exhibits and entered into the record as follows:

City's Exhibits Admitted

Exhibit A Tabs 1 – 4 Admitted with No Objection

Tab 1 – Notice of Intent to Discipline dated February 5, 2015
Tab 2 – Exhibit A, dated March 9, 2015
Tab 3 – PARF dated March 9, 2015
Tab 4 – Appellant's Notice of Appeal dated March 18, 2015

Exhibit B Tabs 1 – 20 Admitted with Objection to Tab 10

Tab 1 – March 3, 2015 Memorandum re: Ofc. Brandon Kelley, Response Hearing
Tab 2 – Cpt. Jim Webb's TPD Personnel Report dated December 17, 2014 and Chain of Command concurrence in discipline recommendation re: OIA File No. 14-0425
Tab 3 – Lt. Richard Anemone's TPD Personnel Report dated November 21, 2014 re: OIA File No. 14-0425
Tab 4 – OIA File No. 14-0425
Tab 5 – June 16, 2014 email from Sgt. L. Campos to Ofc. G. Garman, re: MVR Unit #499
Tab 6 – June 18, 2014 email from Ofc. G. Garman to Sgt. L. Campos, re: MVR Unit #499
Tab 7 – June 19, 2014 email from Ofc. G. Garman to Sgt. C. Lopez, re: MVR Unit #499
Tab 8 – MVR Video Search Results re: Unit #499
Tab 9 – July 10, 2015 letter from Kurt Kessel, Vice President for Engineering, L-3 Mobile Vision, Inc.
Tab 10 – Sgt. L. Campos, Sergeant file entries re: Ofc. Kelley, Admitted with Objection
Tab 11 – MVR video recording of June 7, 2014, Unit #499, at 16:54 p.m. (with captions)
Tab 12 – Tucson Police Training Center, Class 12-2 Syllabus
Tab 13 – TPD Wiki re: L3 In-Car Camera

Tab 14 – Certification and training records re: TPD Polygraph Examiner Det. David Miller
Tab 15 – February 25, 2014 TPD Polygraph Examination Report re: Ofc. Kelley
Tab 16 – Records and scoring re: February 25, 2014 TPD polygraph examination of Ofc. Kelley
Tab 17 – Quality Control Checklist and email correspondence between Det. David Miller and QC Polygraph Examiner
Tab 18 – American Association of Police Polygraphers (AAPP), Constitution
Tab 19 – AAPP Examiner Handbook
Tab 20 – American Polygraph Association, Bylaws

Exhibit C Tabs 1 – 8 Admitted with No Objection
Tab 1 – City Administrative Directive Sec. 2.02-5
Tab 2 – TPD Discipline Matrix
Tab 3 – TPD General Orders §1330.3
Tab 4 – TPD General Orders §1330.07
Tab 5 – TPD General Orders §1330.12
Tab 6 – TPD General Orders §1330.19
Tab 7 – TPD General Orders §3730 - 3739
Tab 8 – "Just Cause" definition, Civil Service Rules and Regulations, Rule X, Sec. 10-3
Tab 9 – City of Tucson "Police Officer" job description

Appellant's Exhibit Admitted
Exhibit 1 – Not admitted due to objection

City called first witness, Sergeant Luis Campos
10:00 – 10:30 Sgt. Campos gave testimony
10:30 – 10:38 Sgt. Campos was cross examined
10:38 – 10:43 Sgt. Campos gave testimony on redirect; the Commission asked clarifying questions and witness was excused
10:43 – 10:50 Break

City called second witness, Officer George Garman
10:50 – 11:42 Ofc. Garman gave testimony

11:45 – 12:45 Lunch Break

City called third witness, Mr. Kurt Kessel (telephonic)
12:45 – 1:00 Mr. Kessel gave testimony
1:00 – 1:01 Mr. Kessel was cross examined and witness was excused

City re-called witness, Officer George Garman

1:02 – 1:05 Ofc. Garman gave testimony
1:05 – 1:25 Ofc. Garman was cross examined
1:25 – 1:56 Ofc. Garman gave testimony on redirect; the Commission asked clarifying questions and witness was excused

City called fourth Witness, Mr. Richard Anemone

1:58 – 2:32 Mr. Anemone gave testimony
2:32 – 2:47 Mr. Anemone was cross examined
2:47 – 2:52 Mr. Anemone gave testimony on redirect; the Commission asked clarifying questions and witness was excused

2:52 – 3:00 Break

City called fifth Witness, Detective David Miller

3:05 – 3:42 Det. Miller gave testimony
3:42 – 4:01 Det. Miller was cross examined
4:01 – 4:14 Det. Miller gave testimony on redirect; the Commission asked clarifying questions and witness was excused

4:15 – The Civil Service Commission adjourned the hearing to resume for day two on Thursday, July 9, 2015 at 9:30 a.m.

9:00 Wednesday, July 29, 2015

A quorum of the Civil Service Commission of the City of Tucson met at 9:00 a.m. on Wednesday, July 29, 2015, at the Community Resource Center, Sentinel Building, 320 S. Commerce Loop Park in Tucson, Arizona for an Appeal of Termination filed by Brandon Kelley from the Tucson Police Department.

Present were Chair Max Parks, Commission Members David Flaugher and Malcom Pavey. Staff present: Barry Corey, Legal Counsel; Tameron Collins, Human Resources Deputy Director; and Armida Saufley, Executive Assistant of Human Resources (Recording Secretary).

Mr. Michael Storie represented Mr. Brandon Kelley; Ms. Sivan Korn, Principal Assistant City Attorney, represented the Tucson Police Department. Police Chief Roberto Villasenor was also present.

City called sixth Witness, Chief Roberto Villasenor

9:05 – 9:23 Chief Villasenor gave testimony
9:23 – 9:48 Chief Villasenor was cross examined
9:48 – 10:15 Chief Villasenor gave testimony on redirect; the Commission asked clarifying questions and witness was excused

10:15 City Rests

10:15 – 10:25 Break

City re-called Kurt Kessel (telephonically)

10:25 – 10:30 Mr. Kessel gave testimony; the Commission asked clarifying questions and witness was excused

Appellant called first Witness, Officer Adam Shaun

10:32 – 10:53 Ofc. Shaun gave testimony
10:53 – 11:18 Ofc. Shaun was cross examined; the Commission asked clarifying questions and witness was excused

10:20 – 11:25 Break

Appellant called second Witness, Officer Justin Knepp

11:25 – 11:34 Ofc. Knepp gave testimony
11:34 – 11:39 Ofc. Knepp was cross examined; the Commission asked clarifying questions and witness was excused

11:40 – 12:30 Lunch Break

Appellant called third Witness, Mr. Brandon Kelley

12:30 – 1:28 Mr. Kelley gave testimony

1:28 – 1:37 Break

1:37 – 2:43 Mr. Kelley was cross examined; the Commission asked clarifying questions and witness was excused

City re-called Chief Roberto Villasenor

2:44 – 3:00 Chief Villasenor gave testimony; the Commission asked clarifying questions and witness was excused

3:00 – 3:37 City's Closing Argument

3:37 – 4:09 Appellant Closing Argument

4:09 – 4:20 City's Closing Comments

4:20 – 4:25 Break

During the hearing, the Commission went into Executive Session for legal advice from Legal Counsel Barry Corey pursuant to A.R.S. §38-431.03(A)(3).

At 4:26 p.m. Commissioner Flaugher made a motion to go into Executive Session, the motion was seconded by Commissioner Pavey and the Civil Service Commission went into Executive Session. The Commission resumed the open meeting at 4:55 p.m.

4:55 – 5:45 p.m. Civil Service Commission Deliberations

In open session, at the conclusion of closing statements, based on the testimony presented and the exhibits admitted into evidence, Commissioner David Flaugher made motion that the appeal of Brandon Kelly be sustained and that he be reinstated to his position of employment with the City of Tucson except for a suspension without back pay for the reason that while there was evidence that Officer Kelly engaged in improper conduct, which the Commission finds that Officer Kelly knew or should have known could lead to disciplinary action, there was not just cause for the discipline which was imposed. Commissioner Malcom Pavey seconded the motion. The vote was 2-1, with Commissioner Parks dissenting.

Hearing Adjourned at 5:45 p.m.

08/12/15

Max Parks, Chair
Civil Service Commission

Date