

FINDINGS, CONCLUSIONS AND ORDER

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST:

LEVI HUFFINE, A MEMBER OF THE AURORA CIVIL SERVICE, AURORA
POLICE DEPARTMENT,

Petitioner.

This matter involves Officer Levi Huffine's appeal of discipline imposed by Aurora Police Chief Vanessa Wilson based on allegations that Petitioner Huffine violated Directive 6.5.8 Conduct During Transport and Directive 14.2.1 Conduct Unbecoming, resulting in Chief Wilson terminating Petitioner Huffine's employment with the Aurora Police Department.

The appeal was heard remotely by the Aurora Civil Service Commission on September 29 and 30 and October 1, 2020. Chair James Weeks, Vice Chair Pamela Turner, Commissioner Barbara Shannon-Banister, and Commissioner A.J. McDonald were present with counsel, Scotty P. Krob. Chief Wilson was represented by Assistant City Attorneys Isabelle Evans and Peter Ruben Morales. Petitioner Levi Huffine was present and represented by Carrie Slinkard of Frontline Lawyers. Having heard the testimony and considered the evidence, and being now fully advised in the matter, the Commission hereby finds, concludes and orders as follows:

PROCEDURAL HISTORY

Based on a pre-disciplinary hearing, IAB Case No. 19-32, and other matters presented to her, Chief Wilson sustained allegations the Petitioner violated Directives 6.5.8 Conduct During Transport and 14.2.1 Conduct Unbecoming. Based on those findings, Chief Wilson signed a Disciplinary Order on February 6, 2020 terminating Petitioner and was received by Petitioner on February 24, 2020. On March 4th, 2020, Petitioner Huffine, through his counsel, filed a Petition for Appeal with the Civil Service Commission. The Petitioner asserted a variety of grounds for the appeal.

FINDINGS AND CONCLUSIONS

Based on the facts stipulated to by the parties in advance of the hearing, as well as the evidence presented during the hearing, the Commission unanimously finds and concludes as follows regarding the charges specified against Petitioner.

This case involves whether Petitioner violated the directives while transporting a hobbled detainee, Ms. Shataeah Kelly to jail. Most of the facts were not in dispute and were stipulated to by the parties.

On August 27, 2019, Petitioner, along with other Aurora Police officers, responded to Fletcher Plaza at 9800 E. Colfax. Upon arrival, Petitioner and Officer Elliott observed Ms. Kelly attempt to engage several people in fights, eventually succeeding with one individual. Petitioner approached the combatants and ordered them to stop. Ms. Kelly failed to comply, so Petitioner discharged his taser. One taser probe missed Ms. Kelly, while the other lodged in her clothing. However, at that point Ms. Kelly stopped and lay on the ground where Petitioner handcuffed her behind her back and then put her in the backseat of his patrol car, buckling her on the passenger side. Ms. Kelly was able to unbuckle her seat belt and move from the passenger side of the patrol car to the driver's side. Although initially compliant, once Ms. Kelly understood Petitioner intended to take her to jail, Ms. Kelly became combative and verbally abusive toward Petitioner. Ms. Kelly kicked the rear driver's side window so hard that both the window and upper door frame bent out, resulting in damage to the patrol car. At that point, Petitioner, with the assistance of other officers, removed Ms. Kelly from the patrol car and placed her on the ground, where Petitioner hobbled her and, again with the assistance of other officers placed her back in the patrol car on her side, in what was referred to as the "recovery" position to facilitate Ms. Kelly's breathing.

In deciding to terminate Petitioner, Chief Wilson relied solely on the events that occurred during Petitioner's transport of Ms. Kelly. To record what transpired while transporting Ms. Kelly to the detention facility, Petitioner hung his body worn camera on the driver's side rear window. As a result, the Commission received and reviewed a video showing what happened to Ms. Kelly prior to and during transport.

The transport occurred during rush hour. Initially and throughout much of the transport, Ms. Kelly remained belligerent, yelling obscenities at Petitioner, accusing him of arresting her because she was black and a lesbian. At some point, Ms. Kelly rolled off the seat and onto the rear floorboard, where she remained in an inverted position, with her head and neck on the floorboard for 21 minutes until they arrived at the jail. During those 21 minutes, Ms. Kelly repeatedly yelled to Petitioner that she needed help, that she could not breathe, that her neck was going to break, and

that she did not want to die like that. At one point, Ms. Kelly became quiet and much more subdued, pleading with Petitioner to help her.

Petitioner Huffine admitted that he heard Ms. Kelly. He testified that he did not know she had slid onto the floorboard or that she was upside down. According to Petitioner he did not believe Ms. Kelly and thought she was just “playing squirrel.” Petitioner Huffine admitted he did nothing to visually check on Ms. Kelly or to assist her, even after arriving at the detention facility.

Upon arriving at the jail, the detention officer who opened the rear door of Petitioner’s vehicle and saw Ms. Kelly upside on her head and neck, expressed surprise and concern stating, “Honey, why are you head down like that?” and, “That didn’t look pleasant at all.” Petitioner Huffine responded that Ms. Kelly “was in the seat, but she decided she wanted to roll, so.” Fortunately, it did not appear that Ms. Kelly suffered any physical injuries as a result of these events.

Aurora Police Department Directive 6.5.8 – Conduct During Transport, provides in relevant part:

The transporting member will always be aware of the detainee’s location and actions ... During the transport, the member will maintain as much visual contact with the detainee as safety allows.

The safety and security of the detainee ... must be considered as part of the actions taken by the transporting member.

Aurora Police Department Directive 14.2.1 Conduct Unbecoming, provides in relevant part:

Members will conduct themselves at all times, ... in such a manner as to reflect most favorably on the Department. Unprofessional conduct and responsibility will include that which brings the Department into direct disrepute, publicly or amongst its members, reflects direct discredit upon the member, or impairs the operation or efficiency of the Department or member.

The Chief’s Review Board considered the matter and issued its memorandum on January 23, 2020, sustaining violations of Directive 6.5.8 – Conduct During Transport, and Directive 14.2.1 – Conduct Unbecoming. The Chief’s Review Board recommended a 180-hour suspension. On January 30, 2020, Chief Wilson conducted a pre-disciplinary hearing with Petitioner Huffine.

At the hearing, Chief Wilson noted that Petitioner had been a long time and valued member of the Aurora Police Department, with only minor previous formal discipline. However, Chief Wilson testified that Petitioner Huffine's actions in this instance were egregious. According to Chief Wilson, during the pre-disciplinary hearing Petitioner Huffine showed little remorse for his actions and more concern over the impact those actions might have on his career than the impact they had on Ms. Kelly's well-being. Chief Wilson testified that Petitioner Huffine's conduct and his mistreatment of Ms. Kelly were the opposite of what the Aurora Police Department is about. She concluded she simply could not take the risk of putting him back on the street as a representative of the Aurora Police Department and having something like this happen again. Therefore, Chief Wilson terminated Petitioner Huffine's employment.

Having heard the testimony and considered the exhibits, including the body worn camera video depicting what happened to Ms. Kelly while being transported by Petitioner Huffine, the Commission concludes the City has shown that Petitioner Huffine violated Directive 6.5.8 Conduct During Transport. Petitioner failed to remain aware of Ms. Kelly's location and actions. He failed to maintain as much visual contact with Ms. Kelly as safety allowed. Although his view was somewhat obstructed by other items in his patrol car, he could have looked over his shoulder at a stop sign or when it was otherwise safe to do so. He could have also pulled over with the assistance of the other officer who was following him. At a minimum, that would have revealed that Ms. Kelly was no longer on the seat and he likely would have seen her feet in the air, clearly indicating she was upside down on the floorboard.

During the transport, Petitioner blatantly disregarded Ms. Kelly's safety and security. Petitioner admitted that, because she was hobbled, Ms. Kelly was likely to end up on the floorboard. He admitted he heard her cries for help and screams that she could not breathe and that she thought her neck would break. Petitioner chose to ignore Ms. Kelly's outcries because he felt she was "just another drunk." Petitioner's decision to ignore Ms. Kelly, particularly when he could not see her, and to choose to do nothing clearly failed to consider Ms. Kelly's safety and security, and violated the directive governing conduct during transport. The Commission finds that Petitioner's lack of response to Ms. Kelly's predicament is particularly serious given Petitioner's testimony about his extensive experience transporting prisoners. Petitioner made the conscious decision not to believe Ms. Kelly. It is simply not acceptable to refuse to believe a detainee who is screaming for help - screaming "I can't breathe; my neck is breaking," without making any effort to confirm that she is safe. None of the other circumstances testified to by Petitioner, such as rush hour traffic, or obstructions in his vehicle, justified his inaction.

Accordingly, the violation of Directive 6.5.8 – Conduct During Transport, is SUSTAINED.

The Commission also finds and concludes Petitioner Huffine violated the directive on conduct unbecoming an officer. Petitioner Huffine's total disregard for the health and safety of Ms. Kelly during transport reflects direct discredit on Petitioner. It reflects poorly on the Aurora Police Department that he was representing. Petitioner's demonstration of inhumanity to Ms. Kelly will undoubtedly bring the Department into direct disrepute in the eyes of the public as the video of what transpired is viewed by more and more of the public.

The Commission's conclusion that Petitioner engaged in conduct unbecoming an Aurora Police officer is further confirmed by Petitioner's conduct throughout his interactions with Ms. Kelly. Petitioner made no effort to de-escalate the situation beginning with before he hobbled Ms. Kelly and continuing throughout the course of their contact. He verbally berated her, stacked unnecessary charges in the summons issued to her, hobbled her, ignored her pleas, and showed no remorse in doing so.

Accordingly, the violation of Directive 14.2.1 – Conduct Unbecoming, is SUSTAINED.

DISCIPLINE

Whether an Officer committed violations as alleged by a Police Chief is determined solely by the Commission as the trier of fact. Once the Commission has determined whether the violations have been established, the Commission must then determine, after giving due consideration to the Chief's need for administrative control over the Aurora Police Department, whether the Chief's discipline should be affirmed, reversed or modified.

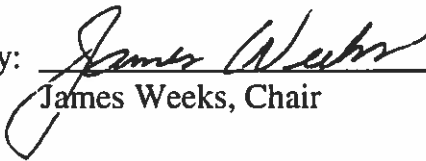
The Commission notes and acknowledges Petitioner Huffine's testimony during the hearing of remorse and regret for the chain of events he caused. The Commission also takes note that Petitioner served as an Aurora Police Officer since 2012 and the only formal discipline he received prior to this occurrence consisted of a written reprimand and a 10-hours suspension. Nonetheless, Petitioner Huffine's callous and intentional disregard for the safety and well-being of Ms. Kelly was so egregious that the ultimate sanction of termination was warranted.

ORDER

Based on the foregoing findings and conclusions, the Commission hereby sustains the violations and Chief Wilson's termination of Petitioner Huffine.

ENTERED THIS 6TH DAY OF OCTOBER, 2020.

AURORA CIVIL SERVICE COMMISSION

By:  _____
James Weeks, Chair