

**CITY OF SEATTLE
PUBLIC SAFETY CIVIL SERVICE COMMISSION**

In the matter of the appeal of

LANCE BASNEY,

Appellant

v.

SEATTLE POLICE DEPARTMENT,

Respondent

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

PSCSC No. 04-005

This matter was heard pursuant to a Notice of Appeal filed by Officer Lance Basney. Officer Basney appeals a thirty-day suspension issued by the Seattle Police Department (Department). A full evidentiary hearing was held on September 21, 2005 before Commissioners Bown and Johnson, with Commissioner Nark acting as Presiding Officer.

Sgt. O'Neill, a Police Officers Guild official, assisted Officer Basney. Erin Overbey, Assistant City Attorney, represented the Department. After considering the evidence in this case, including the testimony, documentary evidence, and arguments of the parties and their representatives, the Commission by majority vote of those present makes the following Findings of Fact, Conclusions of Law, and Order.

I. FINDINGS OF FACT

A. Introduction

1. Officer Basney is a Patrol Officer for the Seattle Police Department assigned to the North Precinct.

2. On June 21, 2004, Officer Basney responded to a call regarding a disturbance at the Scarlet Tree Restaurant in Seattle. The Department later received a complaint concerning Officer Basney's handling of the ensuing events that evening. The Office of Professional Accountability Investigation Section began an investigation.

3. On October 27, 2004, the Investigation Section recommended the following proposed findings to the North Precinct Commander: (Ex.1, pages 138-140).

- a. A proposed finding of SUSTAINED for Misuse of Authority, based on the following:

Basney was on duty, in uniform and representing the SPD. He was in a position of public trust and was investigating a possible crime when he met the subject, and he chose to transport her in her intoxicated state to his home to engage in sexual relations with her, all within one hour of meeting her in the context of the investigation.

- b. A proposed finding of NOT SUSTAINED for Failure to Take Appropriate Action, for the following reasons:

Failure to make a written report of the investigation – Officer Basney made a reasonable decision in clearing the call There was not enough evidence to either prove or disprove that Officer Basney knew or should have known that the subject had been assaulted.

Failure to radio in transport of the female subject – SPD Manual Section 2.037 (IV)(A) regarding special transportation situations encourages, but does not require, officers to notify radio when transporting someone of the opposite sex. Officer Basney therefore did not violate department policy by failing to radio in the transport.

4. On November 5, 2004, the North Precinct Commander concurred with the above

proposed findings.(Ex. 1, p. 138).

5. The Department added a charge of Conduct Unbecoming an Officer at some point, apparently between November 5 and November 17, 2004.

6. On November 17, 2004, Chief Kerlikowske sustained allegations of Failure to Take Appropriate Action; Misuse of Authority; and Conduct Unbecoming an Officer. (Ex. 2). He reserved a final disciplinary decision pending a meeting with Officer Basney.

7. On December 15, 2004, Chief Kerlikowske met with Officer Basney and his representatives to discuss the findings and proposed disciplinary action.

8. On December 17, 2004, based on his review of all relevant materials and the information presented at the December 15 meeting, Chief Kerlikowske sustained findings of Failure to Take Appropriate Action and Conduct Unbecoming an Officer, found the charge of Misuse of Authority to not be sustained, and imposed discipline in the form of a 30-day suspension without pay. (Ex. 3).

9. On December 27, 2004, Officer Basney received written notice of Chief Kerlikowske's December 17, 2004 determination. (Ex. 3). On December 29, 2004, Officer Basney filed this appeal with the Commission.

B. Facts

10. On June 21, 2004, at approximately 10:24 p.m., SPD received several 911 calls regarding a possible assault at the Scarlet Tree Restaurant on Roosevelt Way in Seattle. One of the calls was from Mr. David Conway, who reported that he had seen a male hit a female and knock her to the ground.

11. At approximately 10:25 p.m., Officer Basney responded to a radio call regarding the incident at the Scarlet Tree Restaurant. The radio call indicated a possible assault.

12. At approximately 10:31 p.m., Officer Basney arrived at the scene and began to investigate.

13. At approximately 10:32 p.m., Officer Rusty Leslie arrived at the scene and assisted Officer Basney with the investigation.

14. Officers Basney and Leslie learned that there had been an argument between two patrons, Ms. M. and Michael Mirante.

15. Although the initial 911 call from Mr. Conway indicated the male had physically assaulted the female (Ms. M.), Officer Leslie did not locate any eyewitness to the alleged assault.

16. Officer Leslie testified he verbally announced to the restaurant patrons present that he would like to speak with anyone who had seen an assault. He also testified that no one came forward. Mr. Conway was still present at the restaurant.

17. Officer Leslie then spoke with the employees behind the bar and asked them if they had seen anything. The employees all said they had not seen any assault, although a few of them indicated their awareness of a loud verbal disturbance between a male and a female.

18. Officer Basney testified that he relied on Officer Leslie's statement that he had found no eyewitnesses to the assault.

19. Meanwhile, Officer Basney was questioning Ms. M. outside. Officer Basney testified that Ms. M. told him that she had not been assaulted at all. She further stated that she had been drinking, that another male had been involved in the conflict with Mr. Mirante, and that both males had left the scene.

20. Although various witnesses disagreed about the degree to which Ms. M. was intoxicated, all witnesses who provided information on the subject agreed that she was intoxicated.

21. Neither Officer Basney nor Officer Leslie observed any physical indications on the person of Ms. M. that she had been assaulted. No bruising was apparent, her clothing and hair showed no signs of any physical struggle, and her clothing showed no sign that she had been knocked to the ground, even though her clothing was light colored and the ground in the parking lot and surrounding area was mostly dirt and gravel.

22. Officers Leslie and Basney had access to Mr. Conway's cell phone number, but neither attempted to call him.

23. At approximately 11:17 p.m. Officer Basney cleared the call, reporting that the fight had been between two males, that the female had tried to intercede, that the female was not injured, and the two males had left the area.

24. Neither Officer Basney nor Officer Leslie prepared a written report of the incident.

25. Sometime between 11:17 and 11:30 p.m., Officer Basney contacted his acting supervisor, Sergeant Sausman, and requested and received permission to take vacation for the remainder of his shift.

26. At approximately 11:30 p.m., Officer Basney transported Ms. M. in his squad car to the North Precinct. Officer Basney did not give radio notification of the transport, as recommended in SPD Manual Section 2.037 (IV)(A).

27. Officer Basney testified he wanted to pursue a personal relationship with Ms. M. and that because she told him she was leaving the state the next day, he decided to ask for vacation time off for the rest of his shift.

28. Ms. M. waited outside the precinct while Officer Basney logged out and changed into civilian clothes.

29. Officer Basney then drove Ms. M. in his private vehicle to his own residence, where he engaged in consensual sexual relations with her.

30. On June 22, at approximately 2:00 am, Officer Basney drove Ms. M. in his private vehicle and dropped her off near Mr. Mirante's home.

31. Mr. Mirante filed a complaint on June 24, 2004, and the Department initiated an internal investigation. Sergeant Parker conducted the investigation. She spoke with several witnesses, including Mr. Mirante, Ms. M., Mr. Conway, Officers Basney and Leslie, Sergeant Sausman, and Chris Ohashi, an employee at the Scarlet Tree Restaurant.

II. CONCLUSIONS OF LAW

1. The Public Safety Civil Service Commission has jurisdiction over this matter pursuant to Article XVI, Section 3 of the Seattle City Charter and Seattle Municipal Code ("SMC") 4.08.190 E.

2. The Department bears the burden of proof in a discipline case such as this.

3. The Commission has the authority to affirm, reverse, or modify the decision of the employing department pursuant to SMC 4.08.100.

A. Failure to Take Appropriate Action

4. The first charge is that Officer Basney failed to take appropriate action by not reporting the disturbance as a domestic violence incident.

5. It is not for the Commission to determine whether Ms. M. was in fact assaulted by Mr. Mirante, but rather whether Officer Basney had sufficient evidence of a domestic violence incident that he was required to file a domestic violence report on the incident.

6. The totality of the circumstances at the scene included conflicting information, the denial by Ms. M. that she had been assaulted, the lack of any physical evidence of a domestic

violence assault, and Officer Basney's reliance upon Officer Leslie that there were no eyewitnesses to the incident. Although they had access to Conway's cell phone number, neither Officer Basney nor Officer Leslie attempted to call him to obtain further information.

7. The Commission finds, based on the information available to Officer Basney at the scene, that the Department has not met its burden of proof that it had just cause to discipline him for failing to file a domestic violence report.

B. Failure to Report Transporting Ms. M.

8. The second charge is that Officer Basney violated SPD Manual Section 2.037 (IV)(A) when he failed to report that he was transporting Ms. M. from the Scarlet Tree to the North Precinct in his police vehicle.

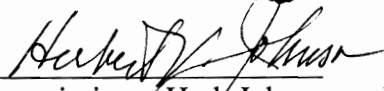
9. On that charge, the Commission finds that SPD Manual Section 2.037 (IV)(A) on its face encourages, but does not require, an officer to notify radio when transporting someone of the opposite sex.


10. While Officer Basney exercised very poor judgment under the circumstances in not reporting the transport, his failure to do so did not violate that Departmental manual section.

11. The Commission therefore finds that the Department has failed to meet its burden of proof regarding the second charge.

C. Conduct Unbecoming an Officer

12. On the third charge, that Officer Basney engaged in Conduct Unbecoming of an Officer, the Commission finds that the Department did meet its burden of proof that Officer Basney engaged in conduct unbecoming an officer and that the Department did act in good faith and for cause in imposing discipline on Officer Basney.


Commissioner Herb Johnson 8 OCT 05
Date


Commissioner David Bown 10/8/05
Date

PARTIAL CONCURRENCE AND PARTIAL DISSENT by Commissioner Joel Nark.

I write a separate opinion because I agree with only part of the majority opinion. I concur with the other two Commissioners that the Department had just cause for a positive finding concerning the Conduct Unbecoming an Officer charge, but I believe the thirty days imposed by the Department and the five days found by the Commission majority are excessive, for the following reasons.

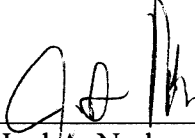
1. Discipline is supposed to be handed out so as to deter the officer and other officers from taking similar actions in the future; no more, no less. Discipline (with similar circumstances) is also supposed to be handed out in a fair and equitable fashion (i.e. a Failure To Take Appropriate Action under similar circumstances would result in the same number of days of suspension for two different officers who may have a sustained complaint and receive discipline months, or even a year, apart).

2. The addition of the Conduct Unbecoming an Officer charge, the only one sustained by this Commission, so late in the disciplinary process raises troubling issues regarding proper notice to Officer Basney of the charges against him.

3. The five-day suspension found by the Commission majority to be for just cause is, in my opinion, not proportional to the misconduct found by this Commission.

4. It is uncontested that Officer Basney had no prior sustained complaints in his twelve years on the Department. I find that a five-day suspension is not for just cause in light of the two-day

(nine hours per day) suspension imposed by the Department in what in my opinion is a much more serious case of misconduct (as described in the Disciplinary Action Report admitted as Exhibit 7 in this case).

 11-08-05

Joel A. Nark,
Commission Chairperson

13. Officer Basney's conduct described above including transporting while on duty and in his police car an intoxicated woman (who was a possible assault victim and whom he had just met in the course of his official duties investigating that possible assault) for the purpose of pursuing a personal relationship with her constitutes conduct unbecoming an officer.

D. The Discipline

14. In addition to determining whether the Department had good cause to impose discipline, the Commission also has the authority to modify the degree of discipline imposed by the Department.

15. The Commission finds that the charge of Conduct Unbecoming an Officer does not warrant a thirty-day suspension. The Commission majority concludes that Officer Basney's conduct justifies a five-day suspension without pay.

16. In reaching that conclusion, the Commission majority considered the Department's Disciplinary Action Report issued September 24, 2004, pursuant to another internal investigation, I.I.S. File No. 04-0034 (Exhibit 7).

III. ORDER

IT IS HEREBY ORDERED that:

1. The thirty-day suspension of Lance Basney be reduced to a five-day suspension, without the option for Officer Basney to forfeit forty-five (45) hours of vacation leave.
2. Signed at Seattle, Washington this ____ day of November, 2005.

**PUBLIC SAFETY CIVIL SERVICE COMMISSION
OF THE CITY OF SEATTLE**

Commission Chair Joel Nark Date