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

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7 **IN RE THE APPEAL OF:**)

8)
9 **FELTON J. MILES, III**)

10) **NO: 07-007**

11 **Appellant,**)

12 **vs.**)

13) **FINDINGS OF FACT,**

14) **CONCLUSIONS OF LAW,**

15) **AND ORDER**

16 **CITY OF SEATTLE, SEATTLE POLICE**)

17 **DEPARTMENT,**)

18 **Respondent.**)
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I. INTRODUCTION

The Commission heard this matter pursuant to a Notice of Appeal filed by Officer Felton J. Miles, III. Chief of Police Kerlikowske terminated Officer Miles on October 4, 2007.

Officer Miles timely appealed to this Commission. The Commission held a full evidentiary hearing on June 4, 10 and 11, 2008, before Commissioners Bown, Johnson, and

1 Nark, with Commissioner Nark acting as Presiding Officer. The record was held open through
2 June 25, 2008, for written closing statements from the parties. Both parties filed statements,
3 which are part of the record in this matter. On July 18, the Commission issued an Order in this
4 matter, reversing the termination and determining that the Department had shown just cause to
5 suspend Officer Miles for 20 days.

6 Attorney Alexander Higgins represented Appellant Officer Miles. Fritz Wollett and
7 Jennifer Schubert, Assistant City Attorneys, represented the Chief of the Seattle Police
8 Department (Chief or Department). After considering the evidence in this case, including the
9 testimony, documentary evidence, and arguments of the parties and their representatives, the
10 Commission enters the following Findings of Fact, Conclusions of Law, and Order. A dissenting
11 opinion has been issued by Commissioner Johnson.¹

11 **II. FINDINGS OF FACT**

12 1. The Appellant, Officer Felton Miles, was employed as a Seattle Police Officer for
13 over 20 years prior to his termination, which took effect on July 30, 2007. At the time of his
14 termination, Officer Miles was assigned to the East Precinct.

15 2. Prior to being terminated, Officer Miles had never been disciplined during his 20
16 years of employment with the Department. According to fellow SPD officers Whalen and
17 Petersen, who have both worked with him for years, he is an outstanding officer.

18 3. Officer Miles and Tondi Miles had been married for approximately 20 years, but
19 were divorced in April of 2007. During their marriage, the couple had lived in a house located
20 in the City of Mill Creek, Washington. After the divorce, Tondi resided at the house with the
21 couple's two minor children.

22 4. Lora Alcantara, a Seattle Police Detective, lives near the Miles residence, and is
23 an acquaintance of Felton and Tondi Miles.

¹ Individual findings of fact and conclusions of law are unanimous unless noted otherwise.

1 5. On June 28, 2007, at approximately 7:30 p.m., Officer Miles went to the Mill
2 Creek house. He was off-duty and had stopped by the house, with his six-year-old daughter in
3 his vehicle, to pick up a portable stereo.

4 6. John Beers, a friend of Tondi Miles, was visiting her at the time. The two were
5 sitting on a couch watching television. The front door was open, although the screen door was
6 closed. Officer Miles slid the screen door aside and entered the house. Tondi Miles attempted
7 to block his path into the living room, but Officer Miles came in and confronted Beers, who was
8 still seated on the couch. The facts are in dispute as to what Officer Miles did and said just
before he entered the house, and after he entered the house.

9 7. According to Beers, Officer Miles began shouting obscenities from the doorway
10 before he entered the house, and at least twice threatened to kill Beers, saying “I ought to kill you
11 bitch,” at one point reaching towards his hip as if he were drawing a gun. Beers also testified
12 that Officer Miles made punching motions at him. According to Officer Miles, he called Beers
13 a “bitch” and told Beers “I ought to slap the shit out of you” because he believed Beers was
14 making faces at him. Officer Miles claimed that he made no gesture to draw a weapon, and that
15 he was not armed when he entered the house. Tondi Miles also testified that Officer Miles had
16 said he ought to “slap the shit out of you” to Beers. This testimony was consistent with her
17 initial statement to the Mill Creek Police Department. However, in her petition for an order for
18 protection (Exhibit 17), Tondi Miles stated that Officer Miles had “threatened to kill” Beers; at
19 hearing, Tondi Miles stated that her petition statement reflected her desire to be supportive of
Beers, who had wanted to seek the protective orders.

20 8. The Commission majority finds the testimony of Officer Miles more credible than
21 the testimony of Beers as to whether Officer Miles threatened to kill Beers. Officer Miles’
22 version of the events was also corroborated by Tondi Miles in her initial statement to the Mill
23 Creek Police Department, as well as her later testimony. Considering and weighing the relevant
evidence in this record, the Commission majority finds that Officer Miles did not threaten to kill

1 Beers, but did angrily yell obscenities at Beers and threatened to slap him, and that Beers was in
2 fear of being harmed by Officer Miles.

3 9. After Officer Miles left the house, Beers called 911 and the Mill Creek Police
4 Department arrived at the house and took statements from both Tondi Miles and Beers. The
5 next day, June 29, Officer Miles, accompanied by Seattle Police Department Captain Gleason,
6 arrived at the Mill Creek Police Department. Officer Miles was arrested for “burglary 1 DV”
7 and taken to the Snohomish County Jail, and later released on bail. That same day, the
8 Department placed Officer Miles on administrative reassignment pending the criminal and
9 administrative investigations of the incident. The administrative investigation was assigned to
10 the Special Victims unit of the Investigations Bureau, rather than OPA-IS as would normally be
11 the case, because Officer Miles’ brother was an investigator with OPA-IS, and because Captain
12 Gleason was also assigned to that division.

13 10. On July 23, 2007, the Snohomish County Prosecuting Attorney’s office charged
14 Officer Miles with felony harassment under RCW 9A.46.020(1) and (2)(b)(ii) (SC Superior
15 Court cause #07-1-02187-1). Deputy Prosecutor George Appel made the initial decision to
16 charge Officer Miles after reviewing information about the incident, including statements by the
17 arresting officers, a July 3, 2007 statement taken from SPD Detective Lora Alcantara describing
18 conversations she had with Tondi Miles, and after interviewing John Beers and Tondi Miles.

19 11. A letter signed by Chief Kerlikowske, dated July 24, 2007, advised Officer Miles
20 that “You have been charged with felony harassment in Superior Court cause #07-1-02187-1 by
21 the Snohomish County Prosecutor’s Office. Based on this information Chief Kerlikowske has
22 sustained an allegation of Violation of Law against you.” The letter advised Officer Miles of the
23 date, time and place of his Loudermill hearing with the Chief, and advised that the Chief was
24 considering termination as the discipline.

25 12. The Loudermill hearing was held on July 30, 2007 by Chief Kerlikowske. In
26 addition to the Department representatives, Officer Miles and his attorney were present, along

1 with Richard O'Neill, the President of the Seattle Police Officers Guild, and the Guild's attorney.
2 The complete investigation file was made available to Officer Miles only five minutes prior to
3 the hearing.

4 13. At the Loudermill hearing, the Chief gave Officer Miles and the Guild
5 representatives an opportunity to speak. They noted that they had not been given a complete
6 internal investigation file prior to the hearing; that there was a pending trial on the felony charge
7 and therefore Officer Miles would not speak to the facts; and requested that the discipline be held
8 in abeyance until the criminal charge had been resolved. At the end of the hearing, the Chief
9 told Officer Miles that he would impose the recommended discipline of termination.

10 14. The Chief issued a letter, dated October 4, 2007, to Officer Miles, referencing the
11 July 30 meeting, and stating that, "As Chief Kerlikowske notified you at the conclusion of that
12 meeting, based upon the information presented at the meeting, and a review of all relevant
13 materials, he decided to accept the sustained finding of misconduct for violation of
14 Rules/Regulations/Laws and the proposed discipline of termination." The letter also referenced
15 a Disciplinary Action Report (DAR) dated October 4, 2007, which listed the "Sustained
16 Allegation(s)" as "Violation of Law 1.003(III)(A)(1)." The DAR "specification" referenced the
17 July 23, 2007 felony harassment charge.

18 15. The trial in Snohomish County was held in January, 2008. The jury did not
19 convict Officer Miles of the charge, with 10 jurors voting to acquit, and two voting to convict.
20 The Prosecuting Attorney decided not to re-try the felony harassment case against Officer Miles,
21 and instead offered a plea agreement to a misdemeanor. Officer Miles pled guilty to one count
22 of misdemeanor harassment. The plea was entered into on February 13, 2008.

23 16. The Department completed its investigation several months after the plea was
entered. In its investigation, the Department took statements from Officer Miles, Tondi Miles
and John Beers. The May 7, 2008 report of the investigation concluded that "it is appropriate to
sustain this case based on the former employee's plea to harassment and his admission to the

1 OPA/IS sergeant concerning the threats he made.” The report went on to note that there “was no
2 preponderance of evidence” as to whether Officer Miles entered the house without consent,
3 whether he threatened to kill Beers, whether he was armed when he entered the residence, and
4 whether he physically pushed Tondi Miles aside when he entered the house. The report
5 recommended that, “based upon a preponderance of evidence for the misdemeanor harassment
6 charge, I recommend a finding of SUSTAINED.” Respondent’s Exhibit 36.

7 17. Chief Kerlikowske reviewed the investigation report, but did not revise or
8 withdraw the decision to terminate Officer Miles.

9 18. The Chief has a policy of terminating officers who are charged with a felony, a
10 policy which Department witnesses testified was also followed by his predecessor, Norm
11 Stamper. The Chief noted at hearing that the reasons for this practice are that felony charges
12 erode the public’s trust in the SPD, and that he places great weight on a prosecutor’s decision to
13 charge. The Department also believes that mere suspension pending the resolution of the felony
14 charges does not create an adequate separation between the department the officer in the public’s
15 eyes. In eight years as Chief, Chief Kerlikowske has terminated three officers who have been
16 charged with felonies. In one instance, he had agreed to reinstate an officer who had been
17 terminated, following an arbitrator’s advisory opinion that the discipline was too severe under
18 the facts of that case; however, reinstatement did not take place because the officer failed to
19 comply with a condition of reinstatement.

20 19. Officer Miles went on disability leave status effective July 25, 2007, and
21 remained in this status through late January 2008. Following his six months of disability leave,
22 Officer Miles took a service retirement.

23 20. Several other instances of discipline regarding other officers are in the record,
including an incident reported in Exhibit A-12. In that case, the OPA-IS findings were that: the
subject officer had yelled at a subject that she was going to kill him; that during her pursuit of the
subject, she discharged a weapon she was not authorized to carry; that she falsely told officers at

1 the scene that she was not armed, that she misstated facts in a report that resulted in the wrongful
2 arrest of the subject and his booking into jail; and failed to report the discharge of the firearm in
3 a timely manner. A 15-day suspension was recommended in this case.

4 21. Section 1.003 of the Seattle Police Department Policies and Procedures Manual
5 provides that:

6 *III. Knowledge of and adherence to laws and Department Policy and
7 Procedures*

8 *A. Laws.*

9 *1. Employees shall be knowledgeable of and obey Federal and State
10 laws, and the laws and ordinances of the City of Seattle. Employees shall be
11 knowledgeable of the methods to access and obtain the specific law or laws
12 relating the discharge of their duties, or their own conduct, and take the steps
13 necessary to ensure that they are fully informed of the contents of the law relating
14 to their decisions or enforcement action.*

15 **III. CONCLUSIONS OF LAW**

16 1. The Public Safety Civil Service Commission has jurisdiction over this matter
17 pursuant to Article XVI, Section 3, of the Seattle City Charter and Seattle Municipal Code
18 Section 4.08.190E. Under SMC 4.08.190, the Commission may affirm, reverse, or modify the
19 Department's decision.

20 2. Under PSCS Rule 6.21, the Department has the burden of showing by a
21 preponderance of the evidence that the termination was "in good faith for cause." "In good faith
22 for cause" has been held to equate to just cause, i.e. "for a fair and honest cause or reason,
23 regulated by good faith on the part of the employer." *Baldwin v. Sisters of Providence*, 112
Wn.2d 127, 139 (1989).

3. In determining whether there has been such a showing, the Commission considers
several factors. These factors include whether: (1) the employee had notice that his or her
conduct would result in disciplinary consequences; (2) the rule was reasonable; (3) the employer
investigated to determine whether the rule was in fact violated; (4) the investigation was fair;

1 (5) the employer's decision-maker had substantial evidence that the employee violated the rule
2 as charged; (6) the employer applies its rules even-handedly; and (7) the discipline administered
3 was fair in relation to the nature of the offense and imposed with regard to the employee's past
4 work record. *In Re Roberson*, PSCS 06-006, at 3.

5 Notice

6 4. Officers are responsible for knowing the contents of the Department Manual,
7 including Section 1.003. Officer Miles was aware that officers who threatened to harm others,
8 such as his threat to "slap the shit" out of John Beers, could be disciplined. Officer Miles thus
9 had notice that his conduct could result in disciplinary consequences.

10 Reasonableness of the Rule

11 5. Manual Section 1.003 is objectively reasonable. The Department must be, and is,
12 able to discipline officers for violating the laws they are sworn to uphold.

13 The Department Investigation and the Evidence that Officer Miles Violated the Rule

14 6. The Department first relies on its practice of automatically terminating any officer
15 charged with a felony. The Commission unanimously concludes that simply being charged with
16 a felony is not by itself a sufficient basis for concluding that the officer has violated a law. The
17 Commission also further unanimously concludes that such a practice is not reasonable and in
18 effect abdicates the Department's obligation to independently evaluate the evidence to determine
19 whether the officer has in fact engaged in conduct that would violate a law. By automatically
20 terminating officers who are charged with a felony, the Department relies on a discretionary
21 charging decision by a prosecutor, a decision based on that agency's own investigation and
22 evaluation of whatever evidence it uncovers during its investigation. Under this rule, officers
23 may be terminated with little or no independent evaluation of the evidence by the Department,
or, as in this case, before the Department has even completed its own investigation. The rule is
not reasonable because it calls for the termination of officers regardless of the results of the
Department's own investigation. (It should also be noted that, while there were suggestions from

1 the Department that domestic violence was a factor in its disciplinary decision, it is clear from
2 the record that the decision to terminate was based on the felony charge, which was not based on
3 allegations of domestic violence.)

4 7. However, the Commission's inquiry does not end there. The Chief of Police also
5 had at least some familiarity with the contents of the Mill Creek Police Department and
6 Snohomish County Prosecutor's investigations. The contents of those investigations could, if
7 independently evaluated by the Police Chief, provide a basis for determining that Officer Miles
8 had violated a law and could be the basis for imposing at least some discipline.²

9 8. The Commission unanimously concludes that the investigation provided the Chief
10 of Police with the basis for concluding that Officer Miles had threatened to "slap the shit" out of
11 Mr. Beers. That, in turn, is sufficient to provide a basis for the Chief of Police to conclude that
12 Officer Miles had engaged in conduct that would constitute a violation of Section 1.003 (a
13 violation of law). Such a violation could be the basis for imposing discipline.

14 9. The Commission unanimously concludes that the Department therefore met its
15 burden of proving that Officer Miles violated Section 1.003.

16 Evenhandedness of Discipline.

17 10. The Commission unanimously concludes that the Department has not applied
18 Section 1.003 in an evenhanded manner. After reviewing disciplinary actions taken in cases
19 involving officer misconduct, the Commission majority also concludes that a termination is not
20 justified by the facts in this case.

21 11. The case reported in Exhibit A-12, for example, presents a far more egregious set
22 of facts, including that officer's threats to kill, her discharge of a firearm that she was not
23 authorized to carry, and her untrue statements to the officers at the scene. Yet this misconduct

² The Department's own independent investigation prior to its decision was minimal. Statements from witnesses were not taken, but it did include a statement from Detective Alcantara, who did not witness the incident, about previous conversations she'd had with Tondi Miles. The Department did not complete its own investigation, including taking witness's statements, until after the decision to terminate Officer Miles had been made.

1 resulted in only a 15-day suspension. The Wahlgren case, cited by both parties, also shows that
2 the automatic termination practice is apparently subject to exception, and is not always
3 administered consistently. There the reinstatement of an officer charged with a felony was
4 considered and would have occurred, had the officer not failed to comply with a condition of
5 reinstatement.

6 Proportionality

7 12. Finally, the Commission majority concludes that the Police Chief's termination
8 decision did not give fair consideration to the nature of the offense as shown on this record, in
9 relation to Officer Miles' 20-year excellent work record as a Seattle police officer. The officer's
10 behavior, which included yelling obscenities and threatening to hit Beers, is serious and calls for
11 discipline, but the Department failed to show that termination was a fair discipline in this case.

11 **IV. DECISION**

12 13. The Commission unanimously concludes that the Department has not shown by a
13 preponderance of the evidence that it had good cause to terminate Officer Miles based simply on
14 his being charged with a felony.

15 14. The Commission majority also concludes that the Department has not shown by a
16 preponderance of the evidence that it had good cause to terminate Officer Miles based on the
17 facts contained in the Mill Creek Police Department and Snohomish County Prosecutor
18 investigations.

19 15. The Commission majority also concludes that, based on this record, the
20 Department did have good cause to suspend Officer Miles. Officer Miles does not deny that he
21 threatened to slap Beers, and that Beers felt threatened by his words. These actions constituted a
22 violation of Section 1.003.III.A. Officer Miles' 20-year record of exemplary service, without
23 any previous disciplinary action, must also be considered when determining the appropriate
discipline. The Commission majority concludes that a maximum of a 20-day suspension is
justified under the facts of this case.

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V. ORDER

1. The Seattle Police Department did not meet its burden of proving it had just cause to terminate Appellant Felton Miles. The Department did meet its burden of proving it had just cause to suspend Appellant Miles for a maximum period of twenty days.

2. The Commission therefore orders the Department to reverse the termination, to reinstate Appellant Miles if and when he is determined under applicable Department procedures to be fit for duty, and to make Appellant Miles financially whole if he loses any earnings or benefits between the date he is determined to be fit for duty and the date of his reinstatement, if any.

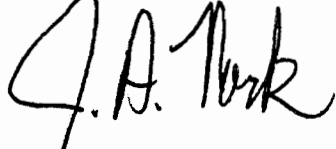
3. The present state of the factual record in this case presents challenges in crafting an appropriate make whole remedy. Appellant Miles was on paid disability leave for a period of time as provided under applicable state law. During that period of time, he was unable to perform the duties of Police Officer and presumably received full disability pay. Appellant Miles later requested and obtained a service retirement, also as provided under applicable state law. The record does not presently include information sufficient to determine whether Appellant Miles is fit for duty as a Police Officer.

4. The Commission urges the Department and the Appellant to attempt to agree on an appropriate make-whole remedy. The Commission will retain jurisdiction over this case and may hear additional evidence and issue a subsequent additional order regarding remedies if the parties are unable to present to the Commission an agreed remedy within 30 days after the date of these Findings of Fact, Conclusions of Law, and Order.

Dated this 7th day of August, 2008.

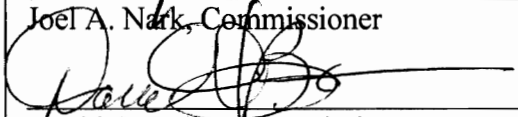
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2 **PUBLIC SAFETY CIVIL SERVICE COMMISSION**

3 **OF THE CITY OF SEATTLE**

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5 _____
6 Joel A. Nark, Commissioner

08-04-08

Date

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9 David C. Bown, Commissioner

8/5/08

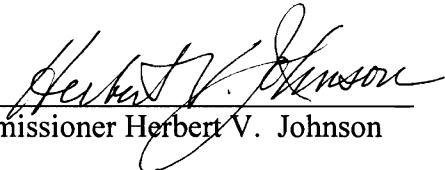
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10 **DISSENT IN PART**

11 I dissent from the portions of the majority's findings, conclusions and order. I agree with
12 the majority that the Department's policy of automatically terminating officers on the basis of
13 felony charges is not reasonable. However, I would affirm the decision to terminate based on the
14 conduct of Officer Miles as shown by the record.

15 I find the testimony of John Beers to be more credible than that of Officer Miles and Tondi
16 Miles, and find that Officer Miles did enter his former wife's home with intent to commit a crime,
17 and did threaten to kill Mr. Beers without provocation. I also conclude that, while the Department's
18 internal investigation should have been completed prior to the Chief's final decision, the Chief of
19 Police did have sufficient information to conclude that Officer Miles had engaged in conduct that
20 constitutes a serious violation of law that would justify termination. I would therefore affirm the
21 termination as supported by just cause. Furthermore, even if it were true, as found by the majority,
22 that Officer Miles did not actually threaten to kill Mr. Beers, but instead told Mr. Beers that he
23 ought to "slap the shit out of him," that conduct by itself would warrant serious discipline greater
than the 20 day suspension approved by the majority. Although I too am concerned by some of the

1 other disciplinary cases in the record, I do not conclude that one case in which the Department
2 imposed what I consider to be an overly lenient suspension precludes the Department from
3 terminating an officer for what I consider to be a serious violation of law. I therefore respectfully
4 dissent from those portions of the majority decision.

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6 
7 Commissioner Herbert V. Johnson


Date

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