

CASE NO. CSC-12-2017

THE CITY OF FORT WORTH

FIREFIGHTERS' AND
POLICE OFFICERS'

CIVIL SERVICE COMMISSION

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IN THE MATTER OF THE

APPEAL OF POLICE SERGEANT
KENNETH PIERCE

INDEFINITE SUSPENSION


ORDER OF THE HEARING EXAMINER IN CSC-12-2017

This matter came on for public hearing on January 30, 2019. Both parties appeared through counsel. The parties have represented that they were in agreement to forego a hearing on the merits of this appeal pursuant to the following findings of the Hearing Examiner:

After due consideration of the facts and evidence, including the attached letter submitted to the Police Chief from the District Attorney (Exhibit "A"), in which the District Attorney concludes that the arrest underlying this controversy was a lawful arrest, the Hearing Examiner sustains only the following allegation: failure to supervise in violation of Fort Worth Police Department General Order 703.00 B(11)(G)(1) and Fort Worth Local Civil Service Rule 13.004(12) based, in part, on Sergeant Pierce's failure to utilize de-escalation tactics during the underlying incident. The allegations that General Order 703(W)-Professional Conduct and General Order 306.05-Force Options were violated are not sustained.

Accordingly, the Hearing Examiner finds that Sergeant Pierce's indefinite suspension should be reduced to a 35-day suspension without pay. Any and all backpay due shall be mitigated in compliance with the terms of the current Meet and Confer Agreement between the City of Fort Worth and the Fort Worth Police Officers Association.

This matter is now closed.



Hearing Examiner Kathy Fragnoli

1/30/2019





EXHIBIT "A"

SHAREN WILSON
Criminal District Attorney
Tarrant County

September 5, 2018

Chief Joel Fitzgerald
Fort Worth Police Department
505 West Felix
Fort Worth, Texas 76115

Re: Review of Incident

Dear Chief Fitzgerald:

On August 9, 2018, the Fort Worth Police Department (FWPD) requested the Tarrant County Criminal District Attorney's Office review the facts and law to determine whether state criminal legal proceedings are warranted in the matter of the events of August 13, 2017, involving Sgt. Ken Pierce and Officers Bayona and Garcia. The matter involved FWPD personnel's response to a domestic disturbance call at 13936 Tristan Lane, referenced in FWPD report number 17-75125. The purpose of this letter is to answer whether there is a violation of state law and to explain the legal reasoning for that decision.

Previously, on or about January 8, 2018, FWPD had requested the Federal Bureau of Investigation (FBI) determine whether any violation of federal law occurred during that police response. After review, "the FBI advised that the actions of the officers during this incident did not violate federal law and thus they would not be initiating an investigation or taking any further action."¹

After reviewing body camera videos, reports, photos, narratives, and incident call sheets, we find that the FWPD narrative regarding the incident written by Detective C. D. Scroggins after he reviewed the body camera footage and the 9-1-1 call placed by Ms. Morris is the most correct rendition of the events of August 13, 2017.² He found that "there was no probable cause to file the charges of Aggravated Assault with a Deadly Weapon or Resist Arrest/Search/Transport"³ against Ms. Morris.

The evidence in this case indicates that Officers Bayona and Garcia lawfully responded to a 9-1-1 call made by Ms. Morris and encountered Ms. Morris and Mr. Savala in a public place, the landing outside the apartment. The call details known to the officers prior to their arrival justified the exercise of caution. Mr. Savala submitted to detention by Officer Garcia without incident. He was later arrested for Public Intoxication. Officer Bayona attempted to detain Ms. Morris to safely verify whether an offense had been committed, was being committed, or was about to be committed. Ms. Morris refused to cooperate and actively resisted attempts to detain her by Officer Bayona and Sgt. Pierce who had arrived on the scene

¹ Email from Capt. Bryan Jamison, FWPD to Robert Huseman, ACDA on August 13, 2018

² FWPD 17-75125, supplement 0004, by Detective C.D. Scroggins #3436

³ *Id.*

and she was arrested. Charges were later filed on Ms. Morris for Aggravated Assault with a Deadly Weapon and Resisting Arrest. These charges were properly dismissed by Det. Scroggins who found no probable cause for a charge for either Aggravated Assault or Resisting Arrest.

The conduct of Sgt. Pierce and Officer Bayona was examined to determine whether either of them committed a violation of the penal laws of Texas, specifically the crime of Official Oppression. The law provides that a public servant acting under color of his office or employment commits the offense of Official Oppression if he intentionally subjects another to arrest or detention ... that he knows is unlawful. An essential element of the crime of Official Oppression is that the officer knew that the detention or arrest was unlawful. This requires that the arrest or detention actually be unlawful. Under the facts, it was lawful for Officer Bayona and Sgt. Pierce to detain Ms. Morris. Given Ms. Morris' physical resistance to lawful detention, the resulting arrest was lawful.

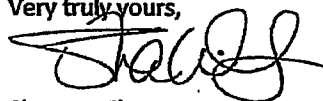
The detention of Ms. Morris was lawful. Several factors are considered in determining the legality of the detention: the amount of force displayed—handcuffing a person during detention is lawful, Balentine v. State, 71 S.W.3d 763 (Tex. Crim. App. 2002); the duration of detention—here, few minutes; efficiency—officers attempted to obtain the necessary information in a direct and efficient manner; location—Ms. Morris was initially detained where she was found and was only moved to a police car as a result of her refusal to cooperate; officer's expressed intent—Sgt. Pierce stated that Ms. Morris would be handcuffed and taken to jail unless she provided her identification, which did not legally equate to telling her that she was under arrest.

The arrest of Ms. Morris was lawful for the offense of Interference with Public Duties, Penal Code Sec. 38.15. Her affirmative actions, most notably pushing the officers away and trying to avoid being placed in handcuffs, while under detention interfered with the investigation by Officer Bayona and Sgt. Pierce in a manner sufficient under the law to warrant her arrest for interference with public duties, Trevino v. State, 512 S.W.3d 587 (El Paso, 2017).

Courts have found that overriding public policy requires a person to acquiesce to an officer's exercise of authority. "Use of self-help to prevent an unlawful arrest presents too great a threat to the safety of individuals and society to be sanctioned," Tucker v. State, 114 S.W.3d 718 (Tex. App. – Corpus Christi 2003, pet. re'f'd). Ms. Morris' actions in impeding her detention and arrest constituted the offense of Interference with Public Duties.

Because there was a lawful detention and a lawful arrest, there is no legal reason to find that Sgt. Pierce or Officer Bayona committed the offense of Official Oppression. We find no other crime that could be charged⁴. Therefore, under the facts and the law, we find that the actions of the officers during this incident did not violate state law. We will not be taking any further action.

Very truly yours,



Sharen Wilson
Criminal District Attorney

⁴ We are not making any determination about whether these actions violated FWPd policy or training.