

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

IN THE MATTER OF)	
CITY OF YORK,)	
)	
Petitioner,)	CIVIL DIVISION - LAW
)	
v.)	Docket No. 2020-SU-01897
)	
CLAYTON SWARTZ,)	
)	
Respondent.)	

PETITIONER THE CITY OF YORK'S PRE-TRIAL CONFERENCE MEMORANDUM

Petitioner City of York ("City" or "Petitioner") by and through its undersigned counsel, Clark Hill PLC, hereby submits this Pre-Trial Conference Memorandum in advance of the March 11, 2022 pre-trial conference in the above captioned matter.

I. SUMMARY OF FACTS AND BASIS FOR LIABILITY*A. The May 30, 2020 Graduation Party and Subsequent Investigation*

On May 30, 2020, Officer Clayton Swartz ("Officer Swartz" or "Respondent") attended a college graduation party in the City of York (the "Party") at the home of Jeannette Day, the mother of Officer Swartz's fiancé Zowie Day. Officer Swartz stated that he drank four to six beers that night, as well as two to three "lemon drop" shots, and was intoxicated. Jeanette Day's brother, Christopher Owens, was also in attendance and drank 10 or 11 beers at the Party. There is no dispute that late into the Party, an incident took place involving Officer Swartz and Mr. Owens that referenced the killing of George Floyd that had occurred just a few days before the Party. Officer Swartz and Mr. Owens claim that the incident was limited to Mr. Owens saying "I can't breathe" followed by laughter. However, three other attendees – Marley Dahlheimer, India Maldonado and Lexus Brown – lodged a complaint that Officer Swartz had approached Mr. Owens

as he was lying asleep on the couch, knelt on his neck, asked Mr. Owens if he could breathe, and laughed. They formalized their complaint with City Inspector Michael Davis on June 1, 2020, who then conducted an investigation into the allegations.

Inspector Swartz's investigation included transcribed interviews of each Complainant, two transcribed interviews with Officer Swartz, a transcribed interview with Mr. Owens, transcribed interviews with other Party attendees, including Logan Day, Jeannette Day, and Zoe Zambito, and fact gathering conversations with other potential witnesses and Party attendees. The investigation materials and report were provided to Police Commissioner Robinson who informed Officer Swartz that the conduct uncovered during the investigation could form the basis of disciplinary action against him and provided Officer Swartz an opportunity to respond.

Officer Swartz responded on July 16, 2020. Inspector Davis then issued a Notice of Charges that included charges for Unbecoming Conduct, Use of Alcohol off Duty and Truthfulness. Inspector Davis' investigation led him to the conclusion that the Complainants provided consistent and credible statements that Officer Swartz and Mr. Owens jointly reenacted the officer-involved death of George Floyd, while laughing, just days after it had occurred. Third-party witnesses also confirmed that the Complainants abruptly left the Party because of this incident, and that they had relayed the incident to other attendees as they were leaving.

Inspector Davis also found that Officer Swartz was not truthful during the investigation. For example, Officer Swartz told Inspector Davis that he had no memory lapses during his recorded statement. However, Officer Swartz texted Ethan Dean the morning after the Party saying that he "was blacked out last night", and acknowledging his actions upset Mr. Dean. Furthermore, Officer Swartz sent text messages to Officer Baez stating "Me and Zowie are fucked" and "Me and Zowie are drunk". In addition to lying to Inspector Davis, this evidence further supported that

Officer Swartz was excessively intoxicated, had committed an act that was unbecoming of his position and the York City Police Department, and harmed the public respect for all police officers in the City of York.

Pursuant to the procedure provided for in the Internal Affairs General Order, Officer Swartz elected to have a hearing on these charges before a Trial Board that included Captain Matthew Leitzel, who was appointed by the Police Commissioner, Detective Scott Nadzom, who was appointed by the Fraternal Order of Police, White Rose Lodge No. 15 (“FOP”), and Lieutenant Derrick Millhouse, who was agreed upon by the other appointees. Twelve witnesses and fifty-two exhibits were included in the Trial Board hearing. Less than 44 hours after the record closed, the Trial Board issued its Trial Board Findings that consisted of nothing more a conclusory statement that Officer Swartz was found Not Guilty on all charges.

B. The City Appeals and the FOP Retaliates against Inspector Davis

After the City filed its First Petition, it became aware of possible retaliatory action being taken against Inspector Davis by the FOP, who remains a member of the FOP despite his duties as a special inspector. Specifically, on September 21, 2020 the FOP held a meeting to discuss “several active and retirees” who were requesting that Inspector Davis be removed from his position in the police department and/or removed from the FOP. Although there is no description at all as to the facts supporting this request, the FOP created an “Investigating Committee” to determine whether the investigation was “not just poorly conducted, but may have been egregious or malicious.”

On November 16, 2020, the “Investigating Committee” gave an oral outline of its findings, which apparently included little more than watching the video of the original Trial Board hearing. Based on this video, on December 14, 2020 the FOP preferred two charges against Inspector Davis

for conduct unbecoming of a police officer and purportedly cheating, wronging or defrauding a member of the FOP. In support, the FOP stated only that during the Trial Board Hearing, it was revealed that some ambiguously described “exculpatory evidence” came to light, and that Inspector Davis’ “investigation was fatally flawed from the beginning.” Strangely, the FOP preferred these charges against Inspector Davis, but declined to prefer any charges against the Trial Board Member who was presented with the same evidence as the “Investigating Committee” and still voted Guilty on two of three charges against Officer Swartz.

C. The Trial Board Issues Revised Findings

On February 25, 2021, the Honorable Kathleen J. Prendergast issued a Memorandum Opinion granting in part and dismissing in part the City’s Petition for Review under Local Agency Law. Judge Prendergast held that “there is no doubt that [the] Trial Board’s findings are wholly insufficient and do not comply with the statutory requirements of the Local Agency Law.” The matter was therefore remanded so that the Trial Board could issue an adjudication that complies with the Local Agency Law. On March 2, 2021, the City informed Captain Leitzel of their intent to provide counsel to assist the Trial Board in preparing a legally compliant adjudication but, rather than wait for the assistance of counsel, on March 4, 2021 the Trial Board issued its revised findings in secret. These revised findings revealed a capricious disregard of evidence in the Trial Board’s decision of Not Guilty on all charges, were issued in secret in violation of the Sunshine Act, and were rushed for completion without counsel to avoid the pending retirement of one Trial Board Member. In sum, the Trial Board again sought to protect Officer Swartz and surreptitiously sweep this matter under the rug all while punishing Inspector Davis for performing his investigation. The

present Petition therefore seeks to compel compliance with the Sunshine Act and fairly adjudicate the underlying complaint against Officer Swartz.

II. STATEMENT OF UNDISPUTED FACTS/ADMISSIONS FROM PLEADINGS

Respondent has not filed an Answer and, therefore, there are no admissions from the pleadings.

III. STATEMENT OF DAMAGES

Petitioner is not seeking any monetary damages in this action. Rather, Petitioner seeks a finding that the Trial Board committed a capricious disregard of evidence in finding Officer Swartz not guilty on all three charges, and that the Trial Court find that there was sufficient evidence to sustain all three charges. Additionally, Petitioner is seeking a finding that the Trial Board violated the Sunshine Act.

IV. LIST OF WITNESSES AND SUMMARY OF TESTIMONY

Please see the attached Schedule A. Petitioner also reserves the right to call any witnesses listed by Respondent in his Pre-Trial Conference Memorandum.

V. EXPERT WITNESSES AND SUMMARY OF TESTIMONY

The City does not plan to call any independent expert witnesses. However, it is anticipated that Inspector Michael Davis will testify as to his specialized knowledge regarding internal affairs investigations.

VI. STATUS OF DISCOVERY

Discovery is complete.

VII. LIST OF EXHIBITS WITH BRIEF DESCRIPTION

Please see the attached Schedule B. Petitioner also reserves the right to introduce any documents listed by Respondent in his Pre-Trial Conference Memorandum.

VIII. LEGAL ISSUES INVOLVED**1. Were the Trial Board's Findings and Revised Findings based on a capricious disregard of the evidence?**

The City contends that the substantive findings of the Trial Board were faulty and based on a capricious disregard of the evidence. *City of Pittsburgh v. Henderson*, 2020 WL 1911414 (Pa. Commw. Ct. Apr. 20, 2020). As will be established at trial, both the Complainants and independent third-party witnesses confirmed that Officer Swartz engaged in a reenactment of the officer-involved death of George Floyd, blamed his drunken state for those actions when speaking with friends, and then lied to Inspector Davis. Accordingly, the City asks that this Honorable Court find that Officer Swartz was Guilty of all three charges preferred against him.

2. Did the Trial Board violate the Sunshine Act in issuing the Trial Board Findings and Revised Trial Board Findings in secret?

Petitioner contends that the Trial Board's original and Revised Trial Board Findings were in violation of the Sunshine Act because both were issued in secret.

IX. REQUESTS FOR STIPULATIONS NOT AGREED TO

The parties have not requested any stipulations not agreed to. It is anticipated that the parties will stipulate as to the authenticity of most or all documents and transcripts.

X. SPECIAL REQUESTS

Pending the availability of witnesses, it may be necessary or advisable to conduct certain, limited testimony by way of Zoom. Alternatively, Petitioner requests the opportunity to present trial testimony by prerecorded video as needed.

Petitioner also requests that Motions *in Limine* be filed and resolved sixty (60) days in advance of trial to avoid the preparation and expense of any witnesses who will not be permitted to testify.

XI. LIKELIHOOD OF SETTLEMENT: BEST SETTLEMENT AUTHORIZED

Settlement does not appear to be likely at the present juncture.

XII. ESTIMATED NUMBER OF TRIAL DAYS

It is estimated that this trial will take four days.

XIII. REQUESTS FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

In light of the extensive oral testimony that will form the basis of this matter, Petitioner requests that the Court delay the parties' requests for findings of fact and conclusions of law until after trial so that each can benefit from the use of a trial record in preparing same.

Date: March 4, 2022

CLARK HILL PLC

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SCHEDULE A

1. Officer Clayton Swartz

It is anticipated that Officer Swartz will testify as to his version of events on May 30, 2020, as well as various communications and documents from the investigation.

2. India Maldonado

Ms. Maldonado will testify as to Officer Swartz's actions on the night of May 30, 2020, her reaction to those events, and various communications and documents from the investigation.

3. Marley Dahlheimer

Ms. Dahlheimer will testify as to Officer Swartz's actions on the night of May 30, 2020, her reaction to those events, and various communications and documents from the investigation.

4. Lexxus Brown

Ms. Brown will testify as to Officer Swartz's actions on the night of May 30, 2020, her reaction to those events, and various communications and documents from the investigation.

5. Christopher Owens

Mr. Owens will testify as to his version of events on May 30, 2020, as well as various communications and documents from the investigation.

6. Zoe Zambito

Ms. Zambito attended the May 30, 2020 party and will testify as to her observations of the complaining witnesses and discussions with Officer Swartz and attendees at the party.

7. Anna Davis

Ms. Davis attended the May 30, 2020 party and will testify as to her observations of the complaining witnesses and discussions with others regarding the events that occurred.

8. Ethan Dean

Mr. Dean attended the May 30, 2020 party and will testify as to his observations and communications with various witnesses to the event.

9. Madi Chivers

Ms. Chivers attended the May 30, 2020 party and will testify as to the immediate reaction of various attendees, including the three complaining witnesses.

10. Saequan Whitaker

Mr. Whitaker drove Ms. Brown and Ms. Maldonado home after the incident on May 30, 2020 and will testify as to their immediate reaction.

11. Inspector Michael Davis

Inspector Davis will testify as to his investigation and the subsequent retaliatory action taken against him by the Fraternal Order of Police, White Rose Lodge No. 15.

12. Captain Matthew Leitzel

Captain Leitzel will testify as to the deliberative process of the Trial Board and decision to issue its findings in secret.

13. Detective Scott Nadzom

Detective Nadzom will testify as to the deliberative process of the Trial Board and decision to issue its findings in secret.

14. Lieutenant Derek Millhouse

Lieutenant Derek Millhouse will testify as to the deliberative process of the Trial Board and decision to issue its findings in secret.

15. Cali Hager

Ms. Hager will testify as to the immediate reaction of the complainants to the incident on May 30, 2020.

SCHEDULE B

1. York Police Department General Order 2.3 – Internal Affairs
2. July 16, 2020 Notice of Suspension without Pay
3. July 16, 2020 Notice of Charges
4. July 13, 2020 *Loudermill* Notice
5. Police Commissioner Review of Confidential Report
6. York Police Department General Order 1.8 – Code of Conduct
7. Inspector Davis Disciplinary Recommendations
8. Inspector Davis Investigative Conclusion
9. June 4, 2020 Notice of Administrative Leave
10. Misconduct Allegation Report
11. Collective Bargaining Agreement
12. December 14, 2020 Preferring of Charges against Inspector Davis
13. Text Messages of Derick Millhouse
14. Text Messages of Scott Nadzom
15. March 2, 2021 Email Correspondence re: Assignment of Counsel for Trial Board
16. Meeting Minutes of the Fraternal Order of Police, White Rose Lodge No. 15
17. September 21, 2020 Transcript of Kelly Tavares Interview
18. June 3, 2020 Email of Jeanette Day with Attachment
19. June 2, 2020 Memorandum of Officer Baez
20. June 2, 2020 Statement of Christopher Owens
21. June 4, 2020 Email of Breanna Shorten
22. June 11, 2020 Transcript of Jeanette Day Interview
23. June 11, 2020 Transcript of Logan Day Interview
24. June 10, 2020 Transcript of Lexxus Brown Interview
25. June 18, 2020 Transcript of Zoe Zambito Interview
26. June 12, 2020 Transcript of Marley Dahlheimer Interview
27. June 10, 2020 Transcript of India Maldonado Interview
28. June 10, 2020 Transcript of Christopher Owens Interview
29. June 3, 2020 Signed Email Statement of Lexxus Brown
30. June 2, 2020 Signed Email Statement of Marley Dahlheimer
31. June 2, 2020 Signed Email Statement of India Maldonado
32. May 31, 2020 Text Messages of Clayton Swartz
33. June 1, 2020 Signed Memorandum of Swartz
34. June 1, 2020 Signed Garrity Warnings of Swartz
35. June 1, 2020 Audio Recording of Swartz Interview
36. June 15, 2020 Audio Recording of Swartz Interview
37. June 1, 2020 Transcript of Swartz Interview
38. June 15, 2020 Transcript of Swartz Interview
39. June 1, 2020 Photograph of Conference Room Chair
40. June 1, 2020 Memorandum of Davis Regarding Demonstration of Incident
41. June 1, 2020 Recorded Statement Warnings
42. June 11, 2020 Audio Recording of Jeanette Day Interview
43. June 11, 2020 Audio Recording of Logan Day Interview
44. June 10, 2020 Audio Recording of Lexxus Brown

45. June 18, 2020 Audio Recording of Zoe Zambito Interview
46. June 12, 2020 Audio Recording of Marley Dahlheimer Interview
47. June 10, 2020 Audio Recording of India Maldonado Interview
48. June 10, 2020 Audio Recording of Christopher Owens Interview
49. July 2, 2020 Audio Recording of David Baez Interview
50. Reproduced Record of August 19, 2020 Trial Board Hearing
51. April 27, 2021 Transcript of Arbitration before Thomas Leonard
52. July 23, 2020 Litigation Hold Letter
53. September 10, 2020 Trial Board Findings
54. March 4, 2021 Revised Trial Board Findings
55. Six Photographs of Incident Location
56. Fifteen Emails from the Concerned Citizens Regarding the Incident
57. February 15, 2020 Discovery Affidavit of Swartz

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: March 4, 2022

CLARK HILL PLC

/s/ Joseph C. Rudolf
Joseph C. Rudolf, Esq.

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Petitioner,)	CIVIL DIVISION - LAW
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v.)	Docket No. 2020-SU-001897
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CLAYTON SWARTZ,)	
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Respondent.)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Pre-Trial Memorandum has been served via email upon the following on March 4, 2022:

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Date: March 4, 2022

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