

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

CHARLES STARKS

APPELLANT

VS.

CASE NO. 60CV-19-7042

LITTLE ROCK POLICE DEPARTMENT
AND THE CITY OF LITTLE ROCK

APPELLEES

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

1. Appellant Starks is a certified law enforcement officer who began working as a patrol officer in the Little Rock Police Department in approximately August of 2013.
2. On Friday, February 22, 2019, Appellant Starks was working patrol and received notification of a stolen vehicle in the area of 12th Street and Rodney Parham.
3. Appellant Starks responded to the call and traveled to that general area.
4. Appellant Starks was subsequently notified the stolen vehicle had made a left turn into a parking lot near 7305 Kanis Road.
5. Appellant Starks was notified prior to entering the parking lot that the operator of the stolen motor vehicle had backed the car into a parking space.
6. Appellant Starks was notified prior to entering the parking lot that the stolen vehicle was stationary.
7. Appellant Starks knew prior to entering the parking lot that Officer Zebulum Tyler was in route to assist him.
8. Appellant Starks knew prior to entering the parking lot it was “gonna be a minute” for Officer Tyler to arrive to assist him.

9. Appellant Starks testified he thought the stolen vehicle was an emergency situation where he could not wait for backup because he did not want the operator of the stolen vehicle fleeing with the possibility of a high-speed pursuit.

10. Appellant Starks knew prior to entering the parking lot that the driver of the stolen vehicle would not be able to flee if he completely blocked operation of the stolen vehicle with his patrol car.

11. Appellant Starks knew prior to entering the parking lot there would be no possibility of a high-speed pursuit if he completely blocked operation of the stolen vehicle with his patrol car.

12. Appellant Starks testified he specifically parked his patrol car in such a manner that the operator of the stolen vehicle would still have room to flee.

13. Appellant Starks deliberately parked his patrol car in such a manner that a high-speed pursuit might still occur if the operator of the stolen vehicle chose to flee.

14. Appellant Starks had the choice of making a wide circle in the parking lot and parking where the passenger side of his vehicle was adjacent to the front of the stolen vehicle.

15. Appellant Starks chose not to park his vehicle in that manner.

16. The video footage of the incident evidences the period of time between Appellant Starks exiting his patrol car and being struck by the stolen vehicle, resulting in the firing of the initial shots from his service weapon, was approximately thirty-eight (38) seconds.

17. The video footage of the incident evidences the period of time between Appellant Starks exiting his patrol vehicle and Officer Michael Simpson, the first backup officer to arrive, arriving on the scene was approximately forty-five (45) seconds.

18. The operator of the stolen motor vehicle died as a result of gunshot wounds

sustained during the incident.

19. Appellant Starks sustained substantial injuries to his right leg as a result of the operator of the stolen vehicle's attempt to flee the scene.

20. There was a passenger in the stolen motor vehicle.

21. The passenger did not sustain any substantial injuries during the subject incident.

22. The passenger of the stolen vehicle was subjected to possible injury or death from the gunshots fired during the incident.

23. As a result of the incident, a number of Little Rock Police Department personnel and assets were involved in high-speed travel reporting to the incident scene.

24. The incident took place in a parking lot utilized by employees and patrons of several businesses.

25. Civilians were present in the parking lot during the incident.

26. Appellant Starks was investigated for possible violation of Little Rock Police Department General Order 303.II.E.2, which states:

Officers will not voluntarily place themselves in a position in front of an oncoming vehicle where Deadly Force is the probable outcome. When confronted by oncoming vehicle, officers will move out of its path, if possible, rather than fire at the vehicle.

27. A.C.A. § 14-51-301(b)(10) provides that a person subject to an employment action pursuant to A.C.A. § 14-51-301, *et. seq.*, may be suspended for not longer than thirty (30) calendar days.

28. A.C.A. § 14-51-301(b)(11)(A) provides that a person subject to an employment action pursuant to A.C.A. § 14-51-301, *et. seq.*, may also be discharged, receive a reduction in rank, or a reduction in compensation.

29. Sergeant Harold Scratch, an officer in Appellant Starks' chain of command,

recommended Appellant Starks be classified as “Exonerated” on the charge of violating General Order 303.II.E.2.

30. Lieutenant Dana Jackson, an officer in Appellant Starks’ chain of command, recommended Appellant Starks be classified as “Exonerated” on the charge of violating General Order 303.II.E.2.

31. Captain Heath Helton, an officer in Appellant Starks’ chain of command, recommended Appellant Starks be classified as “Exonerated” on the charge of violating General Order 303.II.E.2.

32. Assistant Chief Hayward Finks, an officer in Appellant Starks’ chain of command, recommended Appellant Starks be classified as “Exonerated” on the charge of violating General Order 303.II.E.2.

33. By letter dated May 6, 2019, Chief Keith Humphrey terminated Appellant Starks, for violation of General Order 303.II.E.2.

34. On May 7, 2019, Appellant Starks filed a *Notice of Appeal* with the Little Rock Civil Service Commission.

35. The Little Rock Civil Service Commission conducted its hearing on July 25, 2019, and September 4, 2019.

36. The Little Rock Civil Service Commission heard testimony from sixteen (16) witnesses: Appellant Charles Starks, Officer Wayne Kelley, Assistant Chief Alice Fulk, Police Chief Keith Humphrey, Detective Aaron Oncken, Assistant Chief Hayward Finks, Sergeant Jerry McCauley, Sergeant James Stephens, Captain Heath Helton, Lieutenant Dana Jackson, Sergeant Harold Scratch, Officer Michael Simpson, Sergeant Tori Trammell, Officer Heath Atkinson, Officer John Holt, and Chief Wayne Bewley.

37. The transcript of the civil service proceedings, with some page duplication, comprises approximately one thousand pages of testimony and argument.

38. At the conclusion of the hearing on September 4, 2019, the Little Rock Civil Service Commission voted 5-1 to affirm Appellant Starks' termination.

39. On or about September 4, 2019, a document entitled *Record of Hearing Outcome* was filed by Stacey Witherell, Director of Human Resources for the City of Little Rock.

40. On September 6, 2019, Appellant Starks filed his *Notice of Appeal* to this court.

CONCLUSIONS OF LAW

41. This court has jurisdiction over this appeal pursuant to A.C.A. § 14-51-308(e)(1)(A)-(B).

42. This court's review of the administrative record is *de novo*. The court is allowed in its discretion to take additional testimony or allow the introduction of further evidence.

43. This action is not a criminal proceeding concerning the use of excessive force or lethal force.

44. This action is not a civil proceeding concerning the use of excessive force or lethal force.

45. Appellant Starks was not charged with violating a Little Rock Police Department policy concerning the use of excessive force.

46. This action is an employment action to determine whether Appellant Starks violated Little Rock Police Department General Order 303.II.E.2. If the answer to such inquiry is yes, then the court is to decide the appropriate disciplinary punishment for such violation, within the parameters set forth by the Arkansas General Assembly for civil service actions.

47. Little Rock Police Department General Order 303.II.E.2 has three component pieces that must be analyzed to determine whether Appellant Starks committed a violation of such policy: (i) voluntary placement in a position in front of an oncoming vehicle, (ii) where deadly force is the probable outcome, and (iii) if confronted by oncoming vehicle the officer is required to move out of the vehicle's path, if possible, rather than fire at the vehicle.

48. In determining whether Appellant Starks violated Little Rock Police Department General Order 303.II.E.2, the court has applied two legal standards. For the relevant period of time up to Appellant Starks' exit from his patrol car, the court has utilized the standard of a reasonable certified law enforcement officer with five (5) years' training and experience in a non-emergency situation. For the relevant period of time from Appellant Starks' exit from his patrol car to conclusion of the incident, the court has utilized a reasonable certified law enforcement officer with five (5) years' training and experience in an emergency situation.

49. The court concludes that, with respect to all three components of the subject policy, for the relevant period of time from Appellant Starks' exit from his patrol car to conclusion of this incident, Appellant Starks' actions were those of a reasonable certified law enforcement officer with five (5) years' training and experience in an emergency situation.

50. If the scope of the inquiry were limited to the period of time from Appellant Starks' exit from his patrol vehicle to conclusion of this incident, the court's conclusion would have been that Appellant Starks did not violate Little Rock Police Department General Order 303.II.E.2.

51. As previously noted, this appeal involves a termination from employment. It does not address issues relating to any possible criminal charges. If such matter were within the scope of this court's review, it would be this court's opinion that as a matter of law, based on the

testimony and evidence submitted, Appellant Starks did not commit any violations of criminal law with respect to his actions in this incident.

52. As previously noted, this appeal involves a termination from employment. It does not address issues relating to any possible civil causes of action. If such matter were within the scope of this court's review, it would be this court's opinion that as a matter of law, based on the testimony and evidence submitted, Appellant Starks did not engage in any tortious conduct of any nature with respect to his actions in this matter.

53. The appropriate analysis of whether Appellant Starks violated Little Rock Police Department General Order 303.II.E.2 does not, however, begin when Appellant Starks exited his patrol vehicle at the scene. Appellant Starks did not suddenly appear by the driver's side door of the stolen vehicle. Complete analysis of whether there was a policy violation requires an examination of the entire sequence of events of Appellant Starks' actions beginning at the point in time when he first notified Dispatch he would respond to the notice concerning the stolen vehicle.

54. The court concludes that a number of Appellant Starks' non-emergency decisions fall below the threshold of a reasonable certified law enforcement officer with five (5) years' training and experience in a non-emergency situation.

55. These illogical decisions culminated in Appellant Starks' non-emergency decision to intentionally and voluntarily park his patrol car where it only partially blocked the parked stolen vehicle, and that he also made a non-emergency decision to intentionally and voluntarily park his patrol car in a configuration where he then had to walk across the front of the parked stolen vehicle to address the driver of the stolen vehicle.

56. The court therefore affirms the decision of the Little Rock Civil Service

Commission that Appellant Starks violated Little Rock Police Department General Order 303.II.E.2.

57. A.C.A. § 14-51-301 sets forth the possible employment consequences which may be levied in civil service cases. Suspension may be assessed up to a maximum of thirty (30) calendar days. A reduction in rank may be assessed. A reduction in compensation may be implemented. The absolute most severe sanction is the punishment levied in this case, termination.

58. There is no question Appellant Starks' violation of Little Rock Police Department General Order 303.II.E.2 had serious and substantial consequences. One person died. Appellant Starks was seriously injured. There was a passenger who was not severely injured but could have been severely injured or killed. There were civilians in the area who could have been injured or killed by the gunshots. There were other Little Rock Police Department officers whose lives, and those of the members of the public on the roads with them, were placed into danger when such officers responded at high speed to Appellant Starks' position. There was substantial property damage to at least one Little Rock Police Department vehicle. And just so the single most important point does not get minimized or lost in the court's enumeration of consequences—a human being lost his life in the subject incident.

59. In the range of employment action allowed under the civil service statutes, termination is the most severe penalty. The court is not minimizing the loss of human life and other material consequences from the subject incident. There are, however, any number of possible scenarios where the consequential results could have been even more substantial, to both civilians as well as law enforcement personnel.

60. The statutory maximum suspension period of thirty (30) calendar days without

pay is clearly warranted. Suspension by itself is insufficient for Appellant Starks' violation. It does not appear from the testimony and evidence that a reduction in rank is an option in the present matter. A reduction in compensation is the only other available statutory remedy.

61. A reduction in compensation is appropriate and warranted in this matter as the court has determined that Appellant Starks, in his non-emergency decisions, did not act in accordance with the standard of a reasonable certified law enforcement officer with five (5) years' experience. The court assesses the additional penalty of reducing Appellants Starks' salary to that of the entry level for the Little Rock Police Department newly hired officers, as of the final day of his 30-day suspension.

62. The court has determined the 30-day suspension and the reduction in salary to that of an entry level officer are sufficient sanctions for Appellant Starks' violation of Little Rock Police Department General Order 303.II.E.2. There are to be no additional or consequential penalties against Appellant Starks, *e.g.*, credit for years of service for purposes of retirement, credit of years of service for vesting in any retirement benefits, and/or credit for years of service for eligibility for promotion.

IT IS SO ORDERED AND DECREED.



TIMOTHY DAVIS FOX
CIRCUIT JUDGE



DATE