

**BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE**

In the matter of the appeal of

BOARD DECISION

POLICE SERGEANT JESUS ORTIZ

From MPD Personnel Order No. 2007-239

Having reviewed the complaint in this case, applicable Milwaukee Police Department rules, the transcript and exhibits resulting from a hearing conducted regarding this matter together with the proposed findings of fact and recommendation as prepared by Hearing Examiner John Carter, we reach the following decision:

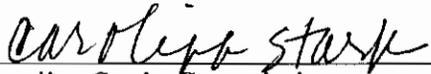
As to Count 1 alleging a violation of MPD Rule 4, Section 2/060.00 (failure to utilize appropriate courtesy and civility toward a member of the public) this charge was dismissed by stipulation of the parties prior to the hearing being commenced. As a result we take no action regarding this charge.

As to Count 2 alleging a violation of MPD Rule 4, Section 2/455.00 (unnecessarily striking a prisoner) **it is our unanimous decision that the record is not sufficient** to find that Police Sergeant Jesus Ortiz unnecessarily struck a prisoner as alleged. **This charge is hereby dismissed.**

We adopt the Findings of Fact and Recommendation of Hearing Examiner John Carter as attached hereto, and we make them a part of this Decision by reference.

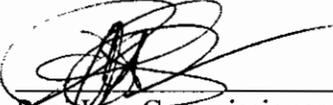
Board of Fire and Police Commissioners
Of the City of Milwaukee

By:



Carolina Stark, Commissioner

05/21/09
Date



Paul For, Commissioner

5/21/09
Date



Kathryn Heintz, Commissioner

5/21/09
Date

FINDINGS OF FACT

1. Sergeant Jesus Ortiz, at all times pertinent hereto, was a member of the Milwaukee Police Department and bound by the rules and procedures thereof.
2. On November 26, 2006 at a George Webb's restaurant located at 2935 N. Oakland Avenue, Milwaukee, WI, Sergeant Ortiz responded to a disturbance complaint involving Alphonso Young.
3. Sergeant Ortiz observed Mr. Young's wife, Khadijah Young, jumping on the back of Police Officer Thomas M. Lieske.
4. Sergeant Ortiz pulled Ms. Young off Officer Lieske and instructed her to stay back. Ms. Young did not comply and began pushing Sergeant Ortiz.
5. Sergeant Ortiz placed Ms. Young in handcuffs and walked her to a nearby patrol wagon by himself.
6. Once at the wagon, Sergeant Ortiz instructed Ms. Young approximately three times to enter the rear of the wagon. Ms. Young refused each time, so Sergeant Ortiz physically picked her up with his right hand, by the back of the pants at the waistband, and carried her into the wagon, placing her on the floor.
7. Once inside the wagon, Sergeant Ortiz was not able to stand upright and was hunched over Ms. Young, with one leg on either side of Ms. Young's knees or calves. Ms. Young was lying on the floor with her head toward the front of the patrol wagon, contrary to her testimony that she was facing the rear of the patrol wagon.
8. Over a period of approximately three seconds, Ms. Young repeatedly kicked Sergeant Ortiz in the thighs. Believing Ms. Young was attempting to kick him in the groin area and unable to safely exit the wagon, Sergeant Ortiz attempted to administer one strong side focus strike to Ms. Young's upper back between her

shoulder blades. At that same moment, Ms. Young twisted her body, rolling onto her back causing Sergeant Ortiz's strike to land under her left eye.

9. Ms. Young immediately stopped resisting, shackles were placed on her legs and there was no further incident.
10. Ms. Young consumed alcohol earlier in the evening prior to her arrest. She became physically ill and vomited immediately before officers responded to the disturbance at the George Webb's restaurant
11. Ms. Young testified that her recollection of the events may be confused as a result of her consumption of alcohol, being arrested, and because the entire incident was very upsetting.

APPLICABLE LEGAL STANDARDS

In order to prevail, the Chief must show by a preponderance of the evidence that the accused Department member acted in violation of Milwaukee Police Department rules and procedures.

The Board of Fire and Police Commissioners, in order to sustain the Chief, must find the member violated Department rules or standard operating procedures as alleged in the complaint and that a preponderance of the evidence supports a finding of just cause as defined in section 62.50(17)(b).

CONCLUSIONS OF LAW

As to Count 2, alleging that Sergeant Jesus Ortiz unnecessarily struck a prisoner who was handcuffed and confined to a patrol wagon in violation of MPD Rule 4, section 2/455.00:

1. The parties stipulate that Sergeant Ortiz reasonably had knowledge that unnecessarily striking a prisoner who was handcuffed and confined to a

patrol wagon would constitute a violation of the applicable laws, and that engaging in such conduct would likely result in disciplinary action.

2. The parties stipulate that Rule 4, section 2/455.00 is reasonable on its face.
3. Prior to issuing this charge against Sergeant Ortiz, the former Chief of Police or those acting on her behalf, made a reasonable, fair and objective effort to determine whether or not Sergeant Ortiz did in fact unnecessarily strike a prisoner who was handcuffed and confined to a patrol wagon. A number of citizen witnesses and police officers were interviewed and Sergeant Ortiz was given an opportunity to give his version of the events.
4. The investigation of the Chief of Police, or those acting on her behalf, was fair and objective. Even though there were some citizen witnesses who were present at the incident but were not interviewed, there is no allegation that anything was unfair as to how the investigation was conducted, or that other witnesses were in a position to observe the incident inside the patrol wagon.
5. There is insufficient evidence that Sergeant Ortiz unnecessarily struck Ms. Young while she was shackled and confined to the patrol wagon. Sergeant Ortiz acted quickly and decisively when he removed Ms. Young from the scene and placed her in the patrol wagon. Once Ms. Young began kicking the inside of his legs, Sergeant Ortiz appropriately responded to the threat and delivered a single focus strike. The testimony of Ms. Young is insufficient to establish that Sergeant Ortiz's actions were unnecessary.
6. The Chief has failed to meet its burden to show that Sergeant Ortiz's use of force was unnecessary and unreasonable.

DECISION

Sergeant Jesus Ortiz delivered a single focus strike to Ms. Young in an effort to terminate the threat that she posed to him in the patrol wagon. Although Ms. Young was handcuffed and on the floor, Ms. Young's actions in kicking the inside of Sergeant Ortiz's legs near his groin area posed a significant risk to his safety. Sergeant Ortiz appropriately responded to this threat by striking Ms. Young a single time. The fact that this strike inadvertently struck Ms. Young under her eye does not change the fact that Sergeant Ortiz's use of force was necessary given all the facts and circumstances.

As to Count 2: It is the recommendation of the hearing examiner that the charges not be sustained. The hearing examiner recommends that the Commission dismiss the charge and the punishment imposed by former Chief of Police Nannette Hegerty.