CIVIL SERVICE COMMISSION, CITY OF AURORA, COLORADO

FINDINGS, CONCLUSIONS AND ORDER

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST:

JASON ROSENBLATT, A MEMBER OF THE AURORA CIVIL SERVICE, AURORA POLICE DEPARTMENT,

Petitioner.

THIS MATTER involves Officer Jason Rosenblatt's appeal of discipline imposed by Aurora Police Chief Vanessa Wilson based on allegations that Officer Rosenblatt violated Directive 14.2.1 Conduct Unbecoming, resulting in Chief Wilson terminating Officer Rosenblatt's employment with the Aurora Police Department.

The appeal was heard by the Aurora Civil Service Commission on January 21 and 22, 2021, at the Aurora City Council Chambers. Chair James Weeks, Commissioner Barbara Shannon-Banister, and Commissioner AJ McDonald were present with counsel, Scotty P. Krob. Respondent Chief Wilson of the Aurora Police Department was represented by Corey Hoffman and Katharine Vera of Hoffman, Parker, Wilson & Carberry, P.C. Petitioner Rosenblatt was present and represented by Brian Reynolds of Reynolds Gillette LLC. Having heard the testimony and considered the evidence, and being now fully advised in the matter, the Commission hereby finds, concludes and orders as follows:

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Most of the facts in this case were undisputed and many were stipulated to by the parties in advance of the hearing. On August 24, 2019, Officers Rosenblatt, Nathan Woodyard and another member of the Aurora Police Department were involved in the arrest of Elijah McClain, during which a struggle ensued and a carotid hold was applied by one of the officers in order to restrain Mr. McClain. Elijah McClain was conscious and responsive prior to being given a shot of Ketamine by EMTs. Mr. McClain was subsequently taken to the hospital where he fell into a coma and later died. Elijah McClain's death has resulted in substantial media coverage and added to racial unrest within the City of Aurora and throughout the country.

On October 20, 2019, at 1:44 a.m., Officer Kyle Dittrich took two selfie photos of himself and Officers Erica Marrero and Jaron Jones. In the second photo, Officers Marrero and Dittrich are smiling and standing next to Officer Jones who has his arm around Officer Dittrich's neck in simulation of a carotid hold that was used during the arrest of Elijah McClain, and the Elijah McClain memorial is visible in the background. All three Officers are in uniform and the top part of Officer Dittrich's badge is visible as is a portion of the

Aurora Police patch on Officer Jones' uniform. That same night Officer Dittrich texted the second photo to Officers Rosenblatt and Woodyard. Officer Rosenblatt did not recognize the number the text came from, as it was not a contact in his cell phone, though he assumed it was from a member of the Aurora Police Department. Officer Rosenblatt responded to the texted photo with a message that said, "Ha ha." None of the officers with knowledge of the photos - Officers Marrero, Dittrich, Jones, Rosenblatt, or Woodyard - reported to any superiors at the Aurora Police Department that the photos had been taken or existed.

Officer Justin Parker claimed that, in March 2020, Officer Rosenblatt told him some officers sent him a picture via text message of them standing in front of Elijah McClain's memorial. Officer Rosenblatt recalled no such conversation with Officer Parker.

On June 25, 2020, Officer Parker informed Sergeant Marc Sears that Rosenblatt told him about the picture he had received of the officers in front of the memorial site. Sergeant Sears informed Deputy Chief Glidden and Chief Wilson about the incident and the photograph. Chief Wilson immediately ordered an Internal Affairs investigation to be conducted on an expedited basis. As a result, several other events occurred that same day. Officer Rosenblatt was given a notice of investigation informing him that investigation IAB case #20-25 was being opened in connection with his alleged violation of Directive 14.2.1, Conduct Unbecoming, for receiving a photograph via text message that depicted unprofessional conduct by members of the Department that would bring the Department into direct disrepute and failing to notify a supervisor about the incident.

That same evening Officer Rosenblatt was interviewed at which time he received and signed a Garrity advisement in connection with the ensuing interview and investigation. Officer Rosenblatt was informed that he was being placed on paid administrative leave for the duration of the investigation.

Also, on June 25, 2020, Internal Affairs required the officers involved, including Officer Rosenblatt, to submit their personal cell phones for inspection in connection with the investigation. Mobile device extraction was conducted on the officers' cell phones. The two selfie photos described above were found on Officer Dittrich's cell phone. No photos were found on any of the other phones. Officer Rosenblatt's response of "Ha ha" had been deleted prior to the search of his phone. However, Officer Rosenblatt admitted that he had replied, "Ha ha" to the text photo.

On June 30, 2020, Officer Rosenblatt was informed the investigation and review of the IAB case had been completed, the Conduct Unbecoming violation was sustained, and the Chief's Review Board recommended termination. A pre-disciplinary meeting between Officer Rosenblatt and Chief Wilson was set for and conducted that same day.

Also on June 30, 2020, Officer Rosenblatt sent emails to Chief Wilson and to the Aurora HR Director, requesting to have his IAB case reviewed by an Independent Review Board. On July 2, 2020, Chief Wilson denied Officer Rosenblatt's request. Chief Wilson believed that whether to have an Independent Review Board examine a case was a matter in her sole discretion and was not a right of an officer. She also felt the purpose of an IRB was to

provide guidance to a police chief regarding the appropriate level of discipline. Chief Wilson concluded that in this instance she did not need guidance, and convening an IRB would unduly delay matters. Chief Wilson testified the intense public scrutiny of this incident and potential safety risk to officers because of the public's response to Officer Rosenblatt's conduct, made it crucial to complete the disciplinary process as expeditiously as possible.

On July 3, 2020, Chief Wilson issued a disciplinary order terminating Officer Rosenblatt effective immediately. On July 9, 2020 Officer Rosenblatt filed a petition with the Civil Service Commission appealing his termination.

FINDINGS AND CONCLUSIONS

Based on the facts set forth above and the evidence presented during the hearing, the Commission unanimously finds and concludes as follows with regard to the charge specified against Petitioner. Aurora Police Department Directive 14.2.1 Conduct Unbecoming, provides, in relevant part:

> Members will conduct themselves at all times, ... in such a manner as to reflect most favorably on the Department. Unprofessional conduct and responsibility will include that which brings the Department into direct disrepute, publicly or amongst its members, reflects direct discredit upon the member, or impairs the operation or efficiency of the Department or member.

During the hearing, Chief Wilson's counsel indicated they were not relying on the fact that Officer Rosenblatt failed to report the incident after he received the photo, as there is no directive containing such reporting requirement. Rather, Chief Wilson relied on Officer Rosenblatt's response to the text photo - his response of "Ha ha" - as the basis for termination. Accordingly, it is this response that is the focus of the Commission's consideration.

Officer Rosenblatt testified he did not know who the texted photo came from, as it was not from anyone in his contacts on his cell phone. He assumed it was from a member of the Aurora Police Department, but admitted that it could have been from anyone, including an unknown member of the public.

Officer Rosenblatt failed to provide a credible explanation regarding his response of "Ha ha" and why he did what he did. At the hearing Officer Rosenblatt testified that when he received the photo he did not know what to do, that he was trying to be polite and yet not engage the sender. According to Officer Rosenblatt, by responding "Ha ha" he was trying to shut down the conversation. He testified that anyone who knew him well would have understood that.

The Commission finds Officer Rosenblatt's explanation is simply not credible. Officer Rosenblatt admitted the text came from someone who was not in his contact list, so it is unlikely the person receiving his response was someone who knew him well and would

view his response as merely an effort to shut down the conversation. Furthermore, the Commission does not believe that the response of "Ha ha" can reasonably be interpreted as an effort to discourage, rather than encourage further discussion or communication.

On the contrary, the Commission concludes that when Officer Rosenblatt sent his "Ha ha" response, there was a very substantial risk that it would go to persons unknown to Officer Rosenblatt, possibly including members of the public, and that the nature of the response, particularly if disclosed to the public, would be viewed as a callous disregard for the tragic loss of Elijah McClain's life. The likely interpretation of someone who saw the photo and Officer Rosenblatt's "Ha ha" response was that Officer Rosenblatt was laughing at Elijah McClain's death. Officer Rosenblatt testified that in sending the response he never intended to laugh at the photo and certainly not at Elijah McClain's death.

Upon receiving the photo Officer Rosenblatt had several options available to him much more appropriate and less risky than responding, "Ha ha." He could have deleted the text. He could have ignored the text and sent no response. He could have reported the text to his superiors. He could have expressly told the sender he strongly disapproved of the text and not to send him anymore. At a minimum, he could have inquired as to who sent him the photo. Any of those responses required little thought or effort by Officer Rosenblatt and would have avoided adverse consequences for him. Instead, Officer Rosenblatt made the conscious decision to respond to the unknown sender in a manner that, if read by the public, would portray Officer Rosenblatt, his fellow officers and the Aurora Police Department in a deplorable light.

Moreover, Officer Rosenblatt's intent in sending his response is not determinative of whether he violated the directive, as it is his conduct and the impact of that conduct that is at the heart of the Conduct Unbecoming directive. Officer Rosenblatt's response to the photo was disclosed to the public, causing damage to Aurora police officers and the Aurora Police Department as a whole, as well as additional pain to the McClain family. These events did not occur in a historical vacuum. Viewed against the backdrop of tense race relations in Aurora following Elijah McClain's death, along with the George Floyd shooting and the Black Lives Matter movement, the disclosure of the texted photo and Officer Rosenblatt's thoughtless response caused extraordinary harm.

The Commission finds and concludes that Officer Rosenblatt's response to the photo violated virtually every subsection of Directive 14.2.1. His response reflected unfavorably on the Aurora Police Department, brought the Department into direct disrepute, both publicly and amongst its members, reflected direct discredit upon Officer Rosenblatt, impaired the operation and efficiency of the Aurora Police Department, and rendered Officer Rosenblatt virtually unable to perform the duties of a police officer, at least in the City of Aurora.

Accordingly, the violation of Directive 14.2.1 – Conduct Unbecoming, is SUSTAINED.

DISCIPLINE

Whether Officer Rosenblatt violated Directive 14.2.1 as alleged by Chief Wilson is determined solely by the Commission as the trier of fact. Having determined the violation has been established, the Commission must, after giving due consideration to the Chief's need for administrative control over the Aurora Police Department, determine whether the Chief's termination Officer Rosenblatt should be affirmed, reversed or modified.

The Commission notes and acknowledges that after Officer's Rosenblatt's employment in 2017 as a new officer graduating from the academy, he received no formal discipline and his performance evaluations were satisfactory or above. At the hearing Officer Rosenblatt appeared genuinely contrite and remorseful for his action.

With regard to the issue of comparative discipline, Officer Rosenblatt argued his actions were very similar to those of Officer Woodyard, who also received the texted photo and did not report it. Officer Woodyard was not sustained for violating any directive and received no formal discipline. The main difference between Officer Rosenblatt and Officer Woodyard is that Officer Woodyard did not respond to the photo, and Officer Rosenblatt did. At the hearing Chief Wilson did not argue that the failure to report constituted a violation of the directive. It was Officer Rosenblatt's response to the photo that violated the directive and caused the harm leading to his termination. Accordingly, the Commission finds that Officer Woodyard's case, is not comparable to Officer Rosenblatt's case.

Other previous disciplinary cases were offered by Officer Rosenblatt as comparables, some involving horrific statements by the officers involved. Most of those cases involved discipline imposed by previous chiefs, not Chief Wilson. Rule 10 of the Commission's Rules expressly recognizes that in considering discipline imposed in other cases, the greatest weight is to be given to those cases involving the same chief as is involved in the current case. In any event, none of the comparables offered by Officer Rosenblatt involved an officer, in essence, making light of a tragic death of an Aurora citizen. Accordingly, the Commission finds that none of the cases presented were comparable to Officer Rosenblatt's misconduct.

With regard to the issue of progressive discipline, this case involves a single act of misconduct by an officer with no previous discipline. While progressive discipline is appropriate in many instances, the Commission concludes it is not proper here. Officer Rosenblatt's response, though brief, had a massive impact on his fellow officers and the Aurora Police Department once it was disclosed to the public, bringing them all into severe disrepute, undermining the Department's efforts to improve its relationship with the citizens it serves at a critical time in Aurora's history.

Officer Rosenblatt's response to the photo was, at best, incredibly thoughtless, with no consideration for its impact on a wide range of other people. Given Chief Wilson's need for administrative control over the Department, as well as her expressed desire to create a transparent police department, it is appropriate for Chief Wilson to send a clear message that conduct that is so offensive when viewed under the lens of public scrutiny will not be

tolerated. The Commission supports that message and concludes termination was warranted.

ORDER

Based on the foregoing findings and conclusions, the Commission hereby sustains the violation and Chief Wilson's termination of Petitioner Rosenblatt.

ENTERED THIS 9th DAY OF FEBRUARY, 2021.

AURORA CIVIL SERVICE COMMISSION

James Weeks

James Weeks, Chair