FILED
FEB 26 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

48

RICHY J. CAIRNS,

Plaintiff-Appellant,

vs.

CITY OF CENTERVILLE, IOWA, CENTERVILLE CIVIL SERVICE COMMISSION, DONALD SCOTT, in his Official Capacity as Mayor of the City of Centerville, Iowa, and JOHN T. RIDDICK, in his Official Capacity as Chief of Police of the City of Centerville, Iowa,

Defendants-Appellees.

Filed February 26,1986

5-647
85-378

Appeal from the Iowa District Court for Appanoose County (1133-0383) - Richard J. Vogel, Judge.

The district court below affirmed the decision of the Centerville Civil Service Commission approving the dismissal of the appellant police officer. **AFFIRMED.**

John A. Pabst of the Pabst Law Firm, Albia, Iowa, for plaintiff-appellant.

James S. Craver of Milani & Craver, Centerville, Iowa, for defendants-appellees.

Considered by Oxberger, C.J., Donielson, and Snell, JJ.

OXBERGER, C.J.

The district court below affirmed the decision of the Centerville Civil Service Commission approving the dismissal of the appellant, police officer Richy Cairns. We affirm.

Cairns was dismissed by the chief of police December 14, 1982. The action was affirmed by the mayor. Upon appeal to the Commission, a bill of particulars was requested which indicated Cairns was fired because he: (1) had threatened harm to four people; (2) made an unwarranted assault while on duty upon Mike Houser in October 1982; (3) used his personal car during off-duty hours to stop Art Thomas for speeding; (4) injured a minor child; (5) refused to cooperate with a deputy; (6) followed a woman; (7) personally intervened in an inappropriate manner in a case; (8) was reprimanded by a judge; and (9) failed to testify in five cases, resulting in dismissal of the charges involved.

Both parties agree our review is de novo. Cairns presented evidence which he says shows his termination was "set up." He said the mayor did not want him to continue in his job because Cairns had previously been involved in arrests at a tavern owned by the mayor's brother. The witnesses who testified against him were biased, and included the friends of the former husband of a woman he was dating.

We will briefly review the pertinent evidence, as thoroughly set out by the appellant. One individual had claimed that Cairns stole a washer and dryer from the residence he owned and which Cairns used to rent. During the dispute over ownership of the property, the former landlord said Cairns threatened him. Cairns denies the events. The chief of police testified he investigated this incident, and when discussing it with Cairns, the officer told him what he did off duty was none of the chief's business.

Another witness for the City, Mark Hancox, testified that Cairns came to the home of Hancox's mother and said he wanted Hancox to get into his squad car. At the time, Cairns was in uniform. Hancox stated he was told by Cairns to quit spreading rumors about him and said "If I hear of it again I'll take care of it any way I can." Cairns denies he threatened Hancox, but agreed he had, at some time, said to Hancox, "If all these lies don't stop . . . there was ways to take care of it."

The City also called the stepfather of the woman Cairn was dating. He described an incident in which he and Cairns were arguing about the discipline of the woman's child. The stepfather, Paul Bailey, said Cairns made a gesture indicating he was going to hit him. Cairns agrees the argument took place, but denies any threatening gestures were made.

An eighteen-year-old high school student, Michael Houser, testified that he was in his car near a recreational area when Officer Cairns approached him, in uniform, and kicked his car, hit him, and yelled at him. According to Cairns, he tapped the rear panel of the car as he approached it, then tapped Houser lightly on the shoulder.

The police chief testified that he did not have written rules provided for the officers, but orally informed them they were not to use their personal cars to stop people for minor traffic violations. Cairns agreed with the testimony showing he stopped an individual, Arthur Thomas, when he saw that Thomas was driving fast. Cairns said Thomas was, in his opinion, drag racing.

The incident regarding the minor child involved the three-year-old son of the woman he was dating. The ex-husband of the woman and her stepfather did not approve of her dating Cairns. The chief of police testified he was called to the home of the ex-husband. The boy had several bruises on his head and face and claimed that Cairns had hit him. Cairns denies this. The mother

testified there were no bruises on the child when he left her home to visit his father.

Cairns was on duty when he advised Deputy Sheriff Larry Robinson he was following a vehicle and the driver appeared drunk. Robinson told Cairns to stop the vehicle. The driver could not pass several field tests, but the chemical test did not indicate he was drunk. Deputy Robinson then told Cairns to file charges for eluding police and speeding. Cairns refused. Cairns explains he did not want to file charges and put a person in jail for a simple misdemeanor.

A witness also testified that Cairns had been watching her at her business. Cairns explained that he frequently had to patrol the area where the business was located, and further stated the woman had been previously arrested by him for drunk driving.

Cairns had been told by a friend of his that a person from their county was on his way to kidnap his son from the mother in California, who had legal custody of the child. Testimony indicated the proper procedure in such an instance would have been for Cairns to file a report and notify the department, or notify the Appanoose County Sheriff's Department. Instead, Cairns sent a teletype message to California warning authorities to watch out for the person, and that he might be on his way to kidnap the boy.

The record before this court does not indicate that Cairns was reprimanded by a judge, and he denies this happened.

Finally, a judicial magistrate was called who testified that Cairns had missed five hearings at which he was to appear, and that as a result of his inaction, the cases were dismissed. Cairns says he recalls missing two hearings.

A police officer does not have a constitutional right to his employment, and is subject to reasonable supervision and restrictions. Sieg v. Civil Service Commission, 342 N.W.2d 824, 829 (Iowa 1983). Police departments have been

compared to military organizations, where discipline must be strictly enforced. Id. It is the primary duty of an officer to serve and defend the public, and as a result, his conduct must be above reproach whether he is on-duty or off-duty. Millsap v. Cedar Rapids Civil Service Commission, 249 N.W.2d 679, 687 (Iowa 1977).

Cairns argues that the real reason he was fired was because the mayor was upset about the arrests at his brother's establishment. He points out that many of the witnesses were biased against him.

However, the evidence shows at a minimum that Cairns admits missing two hearings resulting in the dismissal of cases. He agrees he told William Vander Ecken he would "change his face" and said to Hancox he would find ways to take care of the situation he felt Hancox was creating. He admits he used the teletype rather than using usual procedures, although he felt justified. Cairns testified he did refuse to follow Deputy Robinson's orders. He also agrees he stopped a person for speeding in his personal car, although told not to do so previously by the police chief.

We find, in our de novo review, that the trial court was correct in upholding the decision of the Civil Service Commission. There was adequate evidence to find that Officer Cairns had frequently acted in a manner not in the interests of the general public which he served. We uphold the ruling.

AFFIRMED.