


January 7, 2015

Stewart Ferrin


Re: *Notice of Intent to Terminate and Pre-termination Hearing*

Dear Officer Ferrin:

This letter serves as official notice of intent to terminate you from your position as Police Officer with the Arizona State University Police Department (ASUPD). This action is taken subsequent to an administrative investigation and in accordance with ASU Policies SPP 809, Discipline, which provides for disciplinary action up to and including termination, and SPP 1101, Involuntary Termination.

As an ASUPD Police Officer, you are required to take law enforcement action consistent with Arizona and federal law, comply with ASUPD policies and procedures, and adhere to the ASU Code of Conduct. Your multiple acts of noncompliance and misconduct are briefly summarized below. For the full findings and conclusions which form the basis of this Notice of Intent to Terminate, please refer to the ASUPD Report of Administrative Investigation, IA No. 2014INT-008 (Investigative Research, Inc. (IRI) File No. 18477), which is incorporated by reference as if fully set forth herein.

I. Law Enforcement Encounter with Joseph Rheinhardt

A. Allegation

On May 15, 2014, while taking law enforcement action against Joseph Rheinhardt, as documented in ASUPD DR #2014-00037205, you acted contrary to ASUPD and ASU policies and procedures. Allegation – sustained.

B. Factual Background

On the morning of May 15, 2014, you were working traffic control detail in connection with commencement ceremonies taking place at Wells Fargo Arena. You were positioned in the intersection of 6th Street and Packard Drive controlling traffic turning onto Packard.

Joseph Rheinhardt, an ASU graduate student/researcher, was on his way to work. He was walking on the sidewalk, along 6th Street heading westbound, while talking on the phone to his property manager in Indiana regarding problems with his rental property. As Mr. Rheinhardt approached Packard, he noticed that no traffic was turning from 6th Street onto Packard and the way was clear, so he entered the crosswalk. He

claims that, as he entered the crosswalk and continued walking, he heard you yelling something about "crosswalk." Because he was, in fact, in the crosswalk, he continued walking.

You stated that, before Mr. Rheinhardt entered the crosswalk, you verbally called to him to use a different, more northerly crosswalk, and motioned north with your arm. At that time, vehicles were turning east onto 6th street. You gave Mr. Rheinhardt a second command to use a different crosswalk but no traffic was turning when you issued that command. You maintain that, at that point, Mr. Rheinhardt was in the crosswalk, told you "no" when you directed him to walk elsewhere, and he continued walking, so you issued the command a third time. You acknowledged that, when Mr. Rheinhardt entered and crossed the Packard and 6th Street crosswalk, no vehicles were turning and Mr. Rheinhardt was not in conflict with any vehicular traffic. You assumed, when you issued the commands, that there was left turning traffic but, upon turning, observed none. At that point, you elected to leave your duty post directing traffic to catch up with Mr. Rheinhardt. As you walked toward Mr. Reinhardt, his back was toward you. You called to him to show his ID, but he continued walking. As you explained:

At that point, I made the determination that he committed a misdemeanor by failing to obey a police officer while directing traffic and failing to identify himself. So I grabbed his arm and told him that he was under arrest.

As you caught up to Mr. Rheinhardt's backside, you grabbed his hand with the intent of placing him in handcuffs but you could not because he was wearing a backpack. You then grabbed his computer bag and lunch pail, placed them on the ground, and again asked for ID. You made no attempt to communicate with Mr. Rheinhardt again before physically seizing him. Mr. Rheinhardt was upset and asked to speak with your supervisor. After Mr. Rheinhardt produced his ID, an ASUPD motor officer arrived on scene and told you that you could return to your post directing traffic. You informed him that Mr. Rheinhardt needed to be cited for failure to obey a police officer. The officer subsequently released Mr. Rheinhardt without issuing any citation.

As you later explained to the IRI Administrative Investigator, even though Mr. Rheinhardt had safely crossed in a crosswalk and posed no danger to himself or anyone else, you had started enforcement action by giving him commands to cross elsewhere and, because he did not obey, you intended to complete the enforcement action by seizing and citing him for the criminal offense of disobeying an officer. As your actions confirm, you were willing to abandon your duty post directing commencement traffic, which can be high volume traffic with significant congestion, to effectuate an arrest by physically seizing and citing Mr. Rheinhardt, although he had crossed the street legally, safely, and posed no hazard to others.

C. Policy Violations

Based on a preponderance of the evidence, as a sworn officer, you did not consider the totality of the circumstances when handling the Rheinhardt matter and you did not employ sound judgment or discretion. Instead of considering alternatives to physical seizure and citation, you followed a rigid "Ask, Tell, Make"

approach to enforcement action which focuses on the officer's actions and not the best overall interest of public safety and community service. (Although "Ask, Tell, Make" is taught in law enforcement academies and is useful in certain circumstances, your rigid, inflexible application is a misapplication of this enforcement concept.) Furthermore, you employed a rigid, maximum enforcement approach to changing behavior and allowed that approach to trump your exercise of good judgment when you decided to abandon your duty post to pursue the arrest of Joseph Rheinhardt. Your actions were also inconsistent with the community policing focus of the department. Based on the foregoing, your actions violated the following policies:

- **ASUPD PSM 000-04, Forward**
[Requiring officers to use] "good judgment"
- **ASUPD PSM 012-01, Legal Authority, *Discretion***
When applying the law, officer will exercise mature judgment and discretion within the limits of the law and established policy.... When using discretion, officers should balance the objective of providing service with that of protecting the community....
- **ASUPD PSM 012-07, Arrests and Booking**
When making the determination to take enforcement action, officers shall consider what is required by law and what is in the best interests of the community....
- **ASUPD PSM 261-02, Code of Conduct**
Employees of the Police Department are among the most visible representatives of ASU. To the majority of people, police officers are symbols of stability and authority upon whom they rely. The conduct of employees of the Department is closely scrutinized, and when actions are found to be excessive, unwarranted, or unjustified, they are criticized far more severely than the comparable conduct of persons in other walks of life. Since an employee's conduct, both on and off-duty, may reflect directly upon the Department, employees should conduct themselves in a manner which does not bring discredit upon themselves, the Department, or ASU, and in a manner which exhibits the highest degree of professionalism. These professional standards are designed to promote efficiency, discipline, and good public relations by setting forth policies governing the conduct of all employees of the Police Department.

While on duty, under color of law, or on the premises of the Department, employees shall not ... conduct themselves in such a manner as to bring discredit upon themselves or the Department or [in a manner which] violates any ASU rule, policy or regulation....

- **ASUPD PSM 261-02, Code of Conduct, *Public Relations - General***
A. Employees shall be cognizant that public relations is the sum total of the attitudes, impressions and opinions of the public in relation to the Police Department.

B. Employees shall understand the mutual advantages of a friendly relationship between the citizens and department personnel. The success of the department, in the performance of duties, is measured largely by the degree of support and cooperation received from the people it serves. It is of great importance, therefore, to secure the confidence, respect and approval of the public. An attitude of insolence on the part of the member or employee will gain ill will for the department.

C. Courtesy toward the public is demanded of all employees. An employee shall be civil, orderly and courteous in his/her conduct. Even in the face of great provocation, he/she shall be diplomatic in the performance of his/her duties, controlling his/her temper and exercising the utmost patience and discretion.

- **ASUPD PSM 012-06, Alternatives to Arrest**

When possible and appropriate, Officers are encouraged to exercise alternatives to arrest. Because of the nature of the ASU community, alternatives to arrest frequently will have the same deterrent effect as an arrest and be less damaging to the person's future, especially for minor or first-time violations. In most situations, arrest and incarceration should be considered an act of last resort.

Alternatives may include, but are not limited to:

1. Warnings;
2. Referral to the Office of the Dean of Students (Student Code of Conduct or appropriate university department housing office if a resident); and
3. Referral to social agency.

Officers will use discretion when selecting the appropriate course of action for each situation, taking into account the person's past history, age, state at the time of incident, attitude, and any other extenuating circumstances. (emphasis added)

Alternatives to Arrest

A. Oral warning:

1. Issue for misdemeanor or petty offenses.
2. Document using a Departmental Report.
3. Make a referral if appropriate.

- **ASU SPP 801, Employee Conduct and Work Rules, Conduct**

Inappropriate conduct includes:

1. discourtesy toward others (e.g., failure to work harmoniously with fellow employees or serve the public with courtesy)
4. illegal conduct, conduct unbecoming to a university employee, or conduct damaging to the university's public relations
5. incompetency, neglect of duty, or unsatisfactory performance of assigned job duties

Inappropriate behavior in violation of rules and regulations includes:

1. failure to follow prescribed rules and regulations, or violation of university policy and procedure

In sum, you inappropriately handled the Joseph Rheinhardt incident. The job of a police officer is challenging; officers must make split second decisions in the field under difficult circumstances. However, because you employed a rigid approach to law enforcement which is wed to formulae (i.e., the use of "Ask, Tell, Make" and the use of maximum enforcement to "change behavior"), rather than using good judgment and discretion, considering the totality of circumstances, identifying reasonable alternatives to physical seizure and citation, and focusing on the unique nature of the community policing philosophy of ASUPD, you acted in a manner that is contrary to multiple ASUPD and ASU policies.

II. Law Enforcement Encounter with Ersula Ore

Joseph Rheinhardt filed a complaint with ASUPD regarding his encounter with you on May 15, 2014. As a result, you were administratively interviewed, and both Sgt. Daniel Macias, who was in charge of security for the commencement event, and Sgt. Bryan Epps specifically coached you regarding the use of discretion in the University context, the need to exercise better judgment, and the importance of good communication with the public. These coachings took place prior to the Ersula Ore incident -- so they would have been fresh in your mind on May 20, 2014.

A. Allegation

On May 20, 2014, while taking law enforcement action against Ersula Ore, as documented in ASUPD DR #2014-00038543, you acted contrary to ASUPD and ASU policies and procedures. Allegation – sustained.

B. Factual Background

1. Your Arrest of Dr. Ersula Ore

On Tuesday evening, May 20, 2014, at around 8:15 p.m., Dr. Ersula Ore was heading home after teaching her evening class at ASU. Streetlights were lit as she prepared to cross College Avenue, north of 6th Street; she was walking in a northwesterly direction toward the Light Rail Station.

Due to ongoing building construction, College Avenue had a hard closure at a point just north of 6th Street. Traffic could not travel on College Avenue south of this hard closure or turn onto 6th Street. Temporary fencing had been erected, barricades were up, and a "Street Closed" sign had been posted.

At the north end of College, at 5th Street, barricades were also positioned near the center line just south of the crosswalk. Three signs were posted – a "Street Closed" sign, a "Detour" sign, and a non-regulatory information sign stating "Businesses Open During Construction." No sign was posted that permitted vehicular traffic south of this point. Based on the Manual of Uniform Traffic Control Devices (MUTCD),

given the signage, this portion of College Avenue between 5th and 6th Streets should have been closed to all road users except construction or officially authorized vehicles. Nevertheless, vehicles were entering this roadway for the limited purpose of parking along the east or west side of College Avenue or parking in one small underground parking garage under the Sol Diablo restaurant. From a functional standpoint, College Avenue north of 6th Street was basically a driveway leading to limited parking spaces. Based on these conditions, a reasonable expectation for this roadway is that vehicular traffic volume and speed would be low.

You started work that day at 7:00 p.m. and, after briefing, began patrolling with ASUPD Police Aide Daniel Hollendonner accompanying you. You reported that as you were heading eastbound on 5th Street you observed a vehicle, with emergency flashers activated, parked in the northbound right turn lane on College Avenue south of 5th Street. To respond to this vehicle, you turned right onto southbound College Avenue. You maintain that, as you turned, you accelerated to a speed of 10-15 mph and saw Dr. Ore ahead walking across College Avenue. (According to PA Hollendonner, as you were turning, the vehicle with emergency flashers pulled away and turned onto 5th Street.)

What occurred next is based on a preponderance of the evidence as provided by you, multiple eyewitness accounts at the scene, an ASUPD audio recording, the ASUPD dash cam recording, and two bystander video recordings. This is a brief summary of material facts (for a full, detailed account of the relevant facts and circumstances, please refer to the IA Investigation Report).

Dr. Ore states that she saw a vehicle (your patrol car) approaching southbound as she was walking across the street in a northwesterly direction, but she did not initially know that it was a police vehicle. She waited at the center of the roadway at the yellow line for the vehicle to pass, but it slowed so she thought the driver was letting her finish crossing the street. Thereafter, the emergency lights of the vehicle came on and she knew it was a police vehicle.

You noted that, when you initially observed Dr. Ore, she was "just about to cross over the double yellow line heading northwest." Upon seeing Dr. Ore, you stopped your vehicle. You did not stop abruptly or slam on the brakes. You could not recall whether you stopped first or Dr. Ore stopped first. Based on your account, Dr. Ore's account, and additional evidence, you saw Dr. Ore in advance and she saw you; there was no near-accident from this encounter.

There were multiple witnesses at the scene with slightly varying accounts regarding the encounter between you and Dr. Ore. Based on a preponderance of the evidence, two general scenarios best fit the evidence:

- (1) After your patrol car stopped, Dr. Ore took a step or two out in front of the vehicle, putting her over the center line or in front of the patrol vehicle headlight, and then you turned on the emergency lights, at which point Dr. Ore stopped and began walking along the centerline to a position next to the driver's door of your patrol vehicle, or

- (2) Dr. Ore did not walk into the southbound lane or in front of your vehicle but walked directly to the driver's door of your vehicle when the emergency lights came on.

With either scenario, Dr. Ore did not constitute an immediate hazard nor was she almost hit by your patrol vehicle.

Thereafter, you ordered Dr. Ore to get out of the street and onto the sidewalk. As you recall, Dr. Ore stated, "Is that how you contact everyone?" or words to that effect. A similar exchange occurred a second time. You recall then saying something like, "I can get out of my vehicle and identify you if that's what you want to be done." You cannot recall if Dr. Ore responded. You then emerged from your vehicle and, just before turning on your audio recorder, you stated, "The reason I'm talking to you is because you're in the middle of the street. Can I see your ID?" or words to that effect.

A full transcript from the audio recording is found in the IA Investigation Report. In brief, you asked Dr. Ore for her license. She responded that she was asking for "respectful treatment." You informed her "let me see your ID," and told her "the reason you're being contacted is for an obstruction of a public thoroughfare." You stated that she was "walking in the middle of the street" and that is called obstruction of a public thoroughfare. You again asked to see her ID. Dr. Ore tried to speak with PA Hollendonner. You told her "let me see your ID or you will be arrested for failing to provide ID." When she asked if you were serious, you told her "that is the law." Dr. Ore said she has no problem abiding by the law but continued to question why you had to speak to her in such a disrespectful manner. You said "okay give me your ID." Dr. Ore did not produce her ID but, instead, asserted that everybody has been walking on the street "because it's all obstructed." Dr. Ore continued talking about the manner in which you approached her.

At that point, you instructed Dr. Ore to "put your hands behind your back" and you proceeded to try to handcuff her. Dr. Ore resisted; you repeatedly told her to put her hands behind her back; she continued to resist. You cuffed one hand and a scuffle ensued. At one point, you told Dr. Ore to put her hand behind her back and "I'm going to slam you on this car, put your hand behind your back." She informed you that she is an ASU professor. You eventually took her to the ground and handcuffed her; she continued to resist. While on the ground, Dr. Ore directed you to pull her skirt down which had ridden up to her buttock area; you told her to pull it down. Once Dr. Ore stood up, you reached over to pull her skirt down; Dr. Ore turned and kicked your shin area with her foot.

The physical seizure of Dr. Ore is captured on the ASUPD dash cam recording as well as two bystander video recordings.

2. You Wrongfully Arrested Dr. Ore for Violating A.R.S. § 13-2412

During your law enforcement encounter with Dr. Ore, you repeatedly demanded that she produce her ID. When she did not, you told her "let me see your ID or you will be arrested for failing to provide ID." When

she asked if you were serious, you responded, "yes, I'm serious, that is the law...." You asked her two more times to give you her ID. When she did not comply, you physically seized and handcuffed her.

During your administrative investigation interview, you acknowledged that you are aware of A.R.S. § 13-2412, which states:

Refusing to provide truthful name when lawfully detained; classification

A. It is unlawful for a person, after being advised that the person's refusal to answer is unlawful, to fail or refuse to state the person's true full name on request of a peace officer who has lawfully detained the person based on reasonable suspicion that the person has committed, is committing or is about to commit a crime. A person detained under this section shall state the person's true full name, but shall not be compelled to answer any other inquiry of a peace officer.

B. A person who violates this section is guilty of a class 2 misdemeanor.

Provisions of ASUPD Policy PSM 012-03, Search and Seizure, specifically address the use and applicability of A.R.S. § 13-2412.

Officers may question a detained person for the purpose of obtaining name, address, and an explanation of presence and conduct. If the person refuses to provide their true full name, officers should advise the person that his or her refusal to answer is unlawful. A person who continues to refuse to provide their name is subject to arrest for a violation of A.R.S. §13-2412.

The person may not be compelled to answer other questions. Officers may request the person to produce identification, but citizens are not generally required to carry identification. When the person has been operating a vehicle, the officer may demand to view certain documents (such as operator's license and vehicle registration).

The IRI Administrative Investigator confirmed that, while in the Arizona Law Enforcement Academy, you would have received training on the use and applicability of A.R.S. § 13-2412. Additionally, a review of your ASUPD Training Records confirms that you completed the required reading of ASUPD Policy PSM 012-03 during your first week in ASUPD Field Training. Furthermore, Sgt. John Thompson recalls that, in late 2013 or early 2014, he specifically instructed you that you cannot demand ID from a pedestrian or bicyclist. He talked to you about the applicable law and even sent you an email with a summary of the law regarding when it is lawful to ask for a name or ID.

You admit that you never asked Dr. Ore to state her name. A.R.S. § 13-2412 does not require a pedestrian to provide an ID. Therefore, you had no facts to support a finding that Dr. Ore violated A.R.S. § 13-2412.

During your interview with the IRI Administrative Investigator, you were asked about the lawfulness of arresting Dr. Ore for failing to provide her ID:

Q: I guess my question about that, though, is that here, you're saying that you're going to arrest her for failing to provide ID when that wouldn't be a good arrest, would it?

A: It, in, if *to arrest her for failing to provide ID, no, that would be a non-legal arrest. That is correct.*

Based on a preponderance of the evidence, you had no basis for concluding that Dr. Ore violated A.R.S. § 13-2412. You admit that you never asked Dr. Ore to state her name, and she was not lawfully required to provide her ID. By your own admission, your arrest of Dr. Ore for failing to provide her ID was not a lawful arrest.

3. You Had No Reasonable Basis to Arrest Dr. Ore for Violating A.R.S. § 13-2906

Although a preponderance of the evidence supports the conclusion that you arrested Dr. Ore for failing to produce her ID, you maintain that you also arrested her for obstructing a public thoroughfare. A.R.S. § 13-2906 states:

Obstructing a highway or other public thoroughfare; classification

A. A person commits obstructing a highway or other public thoroughfare if, having no legal privilege to do so, such person, alone or with other persons, *recklessly interferes* with the passage of any highway or public thoroughfare by creating an *unreasonable* inconvenience or hazard.

B. Obstructing a highway or other public thoroughfare is a class 3 misdemeanor.

During your administrative investigation interview, you asserted that Dr. Ore had no lawful basis for being in the road; as a pedestrian, she could not lawfully be in the roadway because sidewalks were provided along College Avenue. Your analysis is legally flawed because, according to A.R.S. § 28-793(A), a pedestrian can cross a road at any point, if not between adjacent signalized intersections, as long as the pedestrian yields to vehicles. You acknowledged that Dr. Ore was "crossing" College Avenue when you encountered her. You told the IRI Administrative Investigator, "I knew that she was attempting to cross the street." College Avenue was blocked at 6th Street so there was only one signalized intersection. Therefore, Dr. Ore could cross College Avenue north of 6th Street at any point as long as she yielded to traffic. A preponderance of the evidence supports the conclusion that Dr. Ore did yield to your patrol vehicle.

A.R.S. § 13-2906 requires a finding of reckless interference. You also argued that Dr. Ore acted "recklessly" in crossing the road: "I believe that the moment she decided to walk into the road and then as she walked in the road she met a vehicle. That's, that's reckless."

Reckless is a defined term in the Criminal Code. A.R.S. § 13-105 defines reckless as a circumstance where a person is aware of and consciously disregards a substantial and unjustifiable risk; "the risk must be of such a nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the circumstances." A.R.S. § 13-101(3) indicates that the mental state accompanying the act is an essential element in finding a violation of a criminal statute.

Again, as you failed to acknowledge, crossing the road at other than a marked crosswalk was Dr. Ore's lawful right under A.R.S. § 28-793(A) as long as she yielded to traffic. Therefore, engaging in conduct legislatively permitted under A.R.S. § 28-793 cannot be presumptively "reckless," and nothing about the facts and circumstances involved in Dr. Ore's crossing of College Avenue altered this lawful right or warranted a finding of reckless interference. If anything, the conditions on College Avenue made it more safe than most roadways for a pedestrian to cross. Dr. Ore was crossing:

- a street where a "Street Closed" sign was posted at either end, and this sign means, according to the MUTCD, that the street is closed to traffic except for authorized vehicles;
- a roadway where the traffic volume and vehicle speeds were low because of the signage, the road closure, barricades, limited parking spaces, and other factors;
- a roadway which was functionally a parking lot driveway given the hard closure at 6th Street and the absence of any intersecting streets; and
- a street which other pedestrians were crossing in a similar manner.

Finally, given her lawful right to cross the roadway, nothing in Dr. Ore's conduct while crossing College Avenue resulted in an unreasonable inconvenience or hazard. The evidence suggests that both you and Dr. Ore stopped in the roadway when you saw one another. You cannot recall whether she stopped first or you stopped first. No one had to make an emergency stop or change course. A preponderance of the evidence suggests that Dr. Ore did yield as lawfully required when she saw your vehicle approaching.

The IRI Administrative Investigator confirmed that, while in the Arizona Law Enforcement Academy, you would have received training on the use and applicability of A.R.S. § 13-2906. Additionally, a review of your ASUPD Training Records confirms that, in Week 10 of your ASUPD Field Training, you completed the required reading of A.R.S. § 13-2906. In Week 14, you also completed the required reading of Pedestrian Violations, A.R.S. § 28-791 through 28-797. Therefore, you had more than sufficient knowledge regarding the proper application of A.R.S. § 13-2906.

Despite your training and knowledge, based on the totality of the circumstances, you unreasonably and wrongfully cited Dr. Ore for a violation A.R.S. § 13-2906. If, as you maintain, you physically seized and handcuffed Dr. Ore for a violation of A.R.S. § 13-2906, then you also arrested Dr. Ore without a lawful basis.

C. Policy Violations

Based on a preponderance of the evidence, as a sworn officer, you did not consider the totality of the circumstances when handling the Ore matter. You did not employ sound judgment or discretion as you had been counseled to do just a couple days earlier following the Rheinhardt incident. Instead of considering alternatives to physical seizure and citation, you again followed a rigid "Ask, Tell, Make" approach to enforcement which focuses on the officer's actions and not the best overall interest of public safety and community service. Once again, you employed a rigid, maximum enforcement approach to changing behavior and allowed that approach to trump your exercise of good judgment and discretion. Most egregiously, you seized Dr. Ore without a lawful basis after wrongfully asserting that she had violated A.R.S. §§ 13-2412 and 13-2906. In so doing, you violated a multitude of ASUPD and ASU policies:

- **ASUPD PSM 000-04, Forward**
[Requiring officers to use] "good judgment"
- **ASUPD PSM 012-01, Legal Authority**
ASU Police work in partnership with the ASU community to provide a safe and secure environment through excellence in professional law enforcement services, and which include, but are not limited to:
 1. Protecting life, safeguarding property, preserving the peace, and maintaining good order;
 2. Responding promptly to emergencies and persons in need of aid or assistance;
 3. Preventing, controlling, and investigating crime, apprehending criminal offenders, and recovering stolen property;
 4. Being familiar with and enforcing applicable laws and university regulations;
 5. Creating a sense of safety and security through highly visible and vigilant preventative patrol;
 6. Accomplishing police objectives within the law and the constitutional guarantees of all citizens. (emphasis added)
- **ASUPD PSM 012-01, Legal Authority, Discretion**
When applying the law, officer will exercise mature judgment and discretion within the limits of the law and established policy.... When using discretion, officers should balance the objective of providing service with that of protecting the community. Officers shall rely on training, written directives, and state and federal law when making discretionary decisions. (emphasis added)
- **ASUPD PSM 012-03, Search and Seizure, Stops, Conduct during a Stop**
Proper justification for a stop does not permit unreasonable conduct during the stop. The courts, in determining whether the stop was reasonable and therefore lawful, will consider every phase of a stop.... Officers shall act with restraint and courtesy toward the person stopped.... Officers shall give an explanation of the reason for the stop.
- **ASUPD PSM 012-03, Search and Seizure, Conduct during a Stop**

Officers may question a detained person for the purpose of obtaining name, address, and an explanation of presence and conduct. If the person refuses to provide their true full name, officers should advise the person that his or her refusal to answer is unlawful. A person who continues to refuse to provide their name is subject to arrest for a violation of A.R.S. §13-2412. The person may not be compelled to answer other questions. Officers may request the person to produce identification, but citizens are not generally required to carry identification. When the person has been operating a vehicle, the officer may demand to view certain documents (such as operator's license and vehicle registration).

As discussed at length in the foregoing, by your own admission, you clearly misapplied A.R.S. § 13-2412. You did not tell Dr. Ore that she could be subject to arrest if she refused to provide a true name but, rather, that she would be arrested if she did not provide ID. You then proceeded to arrest her without having a reasonable basis for believing she had violated A.R.S. § 13-2412. You admitted that an arrest of Dr. Ore, for failure to provide ID, would not be lawful.

- **ASUPD PSM 012-06, Alternatives to Arrest**

When possible and appropriate, Officers are encouraged to exercise alternatives to arrest. Because of the nature of the ASU community, alternatives to arrest frequently will have the same deterrent effect as an arrest and be less damaging to the person's future, especially for minor or first-time violations. In most situations, arrest and incarceration should be considered an act of last resort.

Alternatives may include, but are not limited to:

1. Warnings;
2. Referral to the Office of the Dean of Students (Student Code of Conduct or appropriate university department housing office if a resident); and
3. Referral to social agency.

Officers will use discretion when selecting the appropriate course of action for each situation, taking into account the person's past history, age, state at the time of incident, attitude, and any other extenuating circumstances. (emphasis added)

Alternatives to Arrest

A. Oral warning:

1. Issue for misdemeanor or petty offenses.
2. Document using a Departmental Report.
3. Make a referral if appropriate.

ASUPD's Alternatives to Arrest policy clearly stresses an approach to law enforcement that requires officers to focus on the best interest of the ASU community members: "Because of the nature of the ASU community, alternatives to arrest frequently will have the same deterrent effect as an arrest and be less damaging to the person's future, especially for minor or first-time violations." This policy does not just suggest that alternatives to arrest are optional or available but encourages use of discretion by employing alternatives to arrest, "because in most situations, arrest should be considered an act of last resort." You also

did not exercise discretion in handling the Dr. Ore incident. Because of your hasty decision to arrest, a host of alternative and lawful means of handling the matter were bypassed.

- **ASUPD PSM 012-07, Arrests and Booking**

When making the determination to take enforcement action, officers shall consider what is required by law and what is in the best interests of the community. Officers shall remain objective and professional and shall not let emotions influence their actions....

The evidence shows that you did not have a reasonable basis, given the totality of circumstances, for believing that Dr. Ore had violated either A.R.S. §§ 13-2412 or 13-2906. By your own admission, you were focusing on “changing behavior” and following through with an “Ask, Tell, Make” formula for law enforcement, rather than making a decision about arrest based on a thoughtful consideration of applicable law, the totality of circumstances, good judgment, and discretion.

- **ASUPD PSM 012-07, Arrests and Booking, *Arrest Procedures***

B. An officer who makes an arrest shall:

1. Inform the person being arrested of the cause of the arrest.

At no time did you tell Dr. Ore that she was being arrested for not providing a true name or for obstruction of a public thoroughfare. You told Dr. Ore early on that you were contacting her because she obstructed a public thoroughfare, but then began demanding her ID, and told her that she would be arrested if she did not provide her ID. Ultimately, you acknowledged that an arrest for failure to provide ID would not be a lawful arrest.

- **ASUPD PSM 261-02, Code of Conduct, *Professional Conduct and Personal Bearing***

While on duty, under color of law, or on the premises of the Department, employees shall not conduct themselves in such a manner as to bring discredit upon themselves or the Department or violates any ASU rule, policy or regulation;... use indecent, profane or harsh language

During your efforts to handcuff Dr. Ore, you told her: “Put your hand behind your back right now. *I’m going to slam you on this car*, put your hand behind your back.” Given the totality of the circumstances, you employed inappropriately “harsh language” when addressing the Ore incident.

- **ASUPD PSM 261-02, Code of Conduct**

Employees of the Police Department are among the most visible representatives of ASU. To the majority of people, police officers are symbols of stability and authority upon whom they rely. The conduct of employees of the Department is closely scrutinized, and when actions are found to be excessive, unwarranted, or unjustified, they are criticized far more severely than the comparable conduct of persons in other walks of life. Since an employee's conduct, both on and off-duty, may reflect directly upon the Department, employees should conduct themselves in a manner which does not bring discredit upon themselves, the Department, or ASU, and in a manner which exhibits

the highest degree of professionalism. These professional standards are designed to promote efficiency, discipline, and good public relations by setting forth policies governing the conduct of all employees of the Police Department.

For the reasons discussed in the foregoing, your actions brought discredit to yourself as an officer, ASUPD, and ASU. You did not exhibit the level of professionalism, restraint, or, importantly, knowledge of the law and its applicability, required of an ASUPD officer.

- **ASUPD PSM 261-02, Code of Conduct, *Public Relations - General***

A. Employees shall be cognizant that public relations is the sum total of the attitudes, impressions and opinions of the public in relation to the Police Department.

B. Employees shall understand the mutual advantages of a friendly relationship between the citizens and department personnel. The success of the department, in the performance of duties, is measured largely by the degree of support and cooperation received from the people it serves. It is of great importance, therefore, to secure the confidence, respect and approval of the public. An attitude of insolence on the part of the member or employee will gain ill will for the department.

C. Courtesy toward the public is demanded of all employees. An employee shall be civil, orderly and courteous in his/her conduct. Even in the face of great provocation, he/she shall be diplomatic in the performance of his/her duties, controlling his/her temper and exercising the utmost patience and discretion. An employee, when required, shall act with firmness and sufficient energy to properly perform his/her duties.

The foregoing passages from this policy highlight the expectations of ASUPD officers within the overall community policing philosophy of the department. In response to Dr. Ore's assertions about your lack of respect for her and her refusal to provide ID, instead of working to de-escalate the situation, you chose to physically restrain and handcuff her. Although one might interpret Dr. Ore's assertions as provocative, ASUPD officers are required to be courteous, diplomatic, and to use the utmost patience and discretion, "even in the face of great provocation." However, by your own admission, you were in the "Make" phase of the "Ask, Tell, Make" formula and, therefore, you wrongfully asserted that you did not have any other option but to arrest her.

- **ASUPD PSM 611-01, Traffic Enforcement, *Specific Traffic Violations***

Warnings and citations may be issued to bicyclists or pedestrians who violate traffic laws. Educational brochures may be given to violators.

At ASU, officers can issue educational brochures, warnings, or citations for minor pedestrian violations. These options were trumped by your decision to arrest Dr. Ore for failure to provide ID.

- **ASU SPP 801, Employee Conduct and Work Rules, *Conduct; Rules and Regulations***

Inappropriate conduct includes:

1. discourtesy toward others (e.g., failure to work harmoniously with fellow employees or serve the public with courtesy)
4. illegal conduct, conduct unbecoming to a university employee, or conduct damaging to the university's public relations
5. incompetency, neglect of duty, or unsatisfactory performance of assigned job duties

Inappropriate behavior in violation of rules and regulations includes:

1. failure to follow prescribed rules and regulations, or violation of university policy and procedure

Based on a preponderance of the evidence, you demonstrated incompetency when you failed to comply with a significant number of ASUPD policies. Notably, despite receiving training on the applicability of A.R.S. § 13-2412, coaching on A.R.S. § 13-2412 from Sgt. Thompson, and acknowledging that you knew the correct application of A.R.S. §13-2412, you misapplied the statute, which served as the catalyst for the events that followed at the scene. Likewise, you had no reasonable or lawful basis for citing or seizing Dr. Ore for a violation of A.R.S. § 13-2906.

III. Prior Training, Coaching, Counseling, and Discipline

A. Allegation

When taking law enforcement action against Joseph Rheinhardt and Ersula Ore, you acted contrary to your prior training, coaching, counseling, and discipline. Allegation – sustained.

B. Factual Background

1. Training

As previously discussed, the IRI Administrative Investigator spoke with several of your instructors at the Arizona Law Enforcement Academy. They confirmed that your Academy training addressed the appropriate application of A.R.S. §§ 13-2412, 13-2906, and the Arizona Pedestrian Statutes.

Furthermore, your ASUPD Training Records confirm that you reviewed these statutes again during your ASUPD Field Training. Your ASUPD Training Records also confirm that, during your Field Training, you were required to review and did review each and every ASUPD policy cited in this Notice of Intent to Terminate.

2. Applicable Coaching, Counseling, and Discipline

You became an ASUPD Police Officer Recruit on April 30, 2012. Thereafter, you attended the 19-week Arizona Law Enforcement Academy and graduated in September 2012. As a Police Officer, you began ASUPD Field Training in October 2012 and completed that training in February 2013.

During your brief employment as a Police Officer with ASUPD, you have been the subject of discipline, counseling, and multiple coachings to address performance concerns. In June 2012, while still a Recruit in the Arizona Law Enforcement Academy, you received a First Level Letter of Reprimand for Untruthfulness, Insubordination, and Code of Conduct violations. These are serious sustained offenses, and ASUPD Commander Louis Scichilone, who conducted the administrative investigation, concluded that your actions demonstrated a lack of sound judgment.

Documentation and statements from supervisors and command staff confirm that you received the following coachings, counseling, and instruction prior to the Rheinhardt and/or Ore matters:

- On January 11, 2014, you stopped and cited a parent of an ASU student for driving the wrong way on College Avenue just north of Apache. Sgt. Michael Roper, who had arrived at the scene, states that he coached you that day regarding use of discretion. During that stop, you had opened the driver's car door and threatened to arrest the parent for disturbing the peace because she was upset. According to Sgt. Roper, he asked you why you would threaten arrest. You said because she was screaming and raising a ruckus. Sgt. Roper told you that nobody likes to get a ticket, you better re-read the statute, and you had no legal basis to arrest her. Sgt. Roper talked to you about use of discretion and said: "It's not us against the public, it's representing the public. And if we alienate mom and pop, whose children go to school here, we're going to have a problem." According to Sgt. Roper, you were dismissive regarding his instruction.
- In November 2013 and again in February 2014, while off duty but in uniform, you initiated two traffic stops and misdemeanor arrests in other jurisdictions. Your actions were contrary to ASUPD Policy PSM 012-01. Commander Kevin Williams issued a counseling memorandum wherein you were admonished that you are not required to act while off duty; your actions were dangerous and placed you in an extreme tactical disadvantage; and your actions unnecessarily exposed you and ASUPD to civil liability. You were counseled to use sound judgment in the future and prohibited from wearing your uniform to/from work for a period of six months unless you received supervisory approval. Subsequently, on May 15, 2014, prior to the Ore incident, Asst. Chief Jim Hardina spoke to you again regarding these off-duty law enforcement actions. He coached you on using good judgment and use of discretion.
- Before the Rheinhardt and Ore incidents, you received coaching from Sgt. Epps regarding balancing your work output and focusing less on traffic enforcement. He told you that not everyone deserves a ticket and you could get your point across through educational stops and warnings. Sgt. Epps stated that, despite this coaching, you continued to issue a lot of citations. You also received a separate coaching from Sgt. Jason Latella regarding focusing less on traffic enforcement and more on your other official police duties. According to Sgt. Latella, officers learn in Field Training and in ASUPD policy that, if you can curb behavior by giving a warning and the person did not endanger the public, then give the warning. Nonetheless, you continued to focus an inordinate amount of time on traffic enforcement and continued to issue citations rather than lesser means of curtailing behavior. Sgt. Mark Aston also separately coached you regarding using discretion; he coached you about issuing fewer citations and more warnings.
- In February 2014, you were late for a security assignment because you had initiated a traffic stop. Sgt. Larry Fuchtman questioned you about the stop and determined that the driver appeared to be lost but, by the time you made the traffic stop, the driver had found his way safely down the road. Sgt. Fuchtman

coached you that, if the risk was over and no safety concerns were continuing, then it would have been reasonable to use your discretion and keep your focus on the security duties which you had been assigned. (This instruction would certainly have relevance to the Rheinhardt incident.)

- Sgt. John Thompson coached and instructed you on three separate occasions prior to the Rheinhardt and Ore incidents. The first occurred during a traffic stop involving a student who was driving quickly because she got off work late and was on her way to a surprise birthday party being held for her. You placed her under arrest for reckless driving, which is a criminal traffic violation, and also cited her for other traffic offenses. Sgt. Thompson admonished you that you do not have to always throw the book at everybody; he questioned the need to arrest the student and talked to you about use of discretion. According to Sgt. Thompson, as an officer, you can still get your point across “without completely ruining someone.”

As previously discussed, Sgt. Thompson also coached and instructed you on the appropriate use of A.R.S. § 13-2412. When dealing with pedestrians and bicyclists, Sgt. Thompson specifically recalls telling you that you cannot require them to provide ID. He also sent you an email with details regarding the applicable law.

Sgt. Thompson recalls a third time when he coached you. That coaching involved the use of discretion, and the need to lay off the traffic stops and focus on other crimes that occur on campus. Sgt. Thompson told you that, if he was your supervisor, he would have you hang up your keys to the patrol car and put you on foot patrol.

- As previously noted, in the aftermath of the Rheinhardt matter, Sgt. Macias coached and instructed you about use of discretion. In light of your decision to abandon your traffic control assignment to corral Mr. Rheinhardt so you could issue him a citation, Sgt. Macias talked to you about picking your battles, understanding what you are there to do, the University environment, and the need for better communication with the public. This coaching from Sgt. Macias about using discretion, good judgment, and better communication with the public occurred only a couple days before the Ore incident. Likewise, after the Rheinhardt matter but before the Ore incident, Sgt. Epps coached you on using discretion and about exercising better judgment given your decision to abandon your duty post directing traffic to go after Rheinhardt.

Unfortunately, as discussed more fully in the IA Investigation Report, you did not heed your prior training, the admonishment in your Written Reprimand, or the counseling and coachings from your ASUPD supervisors and command staff when you took law enforcement action in the Rheinhardt and Ore matters. Instead, you employed a rigid “Ask, Tell, Make” and maximum use of force approach to law enforcement, which placed your demand that Rheinhardt and Ore comply with your police commands over good judgment, discretion, and your duty to consider the best interest of the University community. This mindset is absolutely inconsistent with numerous ASUPD policies and contrary to the community policing philosophy of ASUPD.

In short, your rigid, power-based approach to law enforcement and unwillingness to exercise discretion and sound judgment culminated in you arresting Dr. Ore without a lawful basis. In so doing, your actions brought discredit to yourself and ASUPD.

IV. Conclusion

Your arrest of Dr. Ore without a lawful basis; your failure to adhere to ASUPD and ASU policies during your law enforcement encounters with Dr. Ore and Mr. Rheinhardt; your resistance to sound supervisory counseling, coaching, and instruction; and your lack of good judgment and discretion, as summarized in this letter and set forth more fully in the IA Investigation Report, serve as sufficient grounds to find that you have engaged in acts of noncompliance and misconduct sufficiently grave to warrant your dismissal from employment. Accordingly, it is my intent to terminate your employment with the Arizona State University Police Department.

You have the right to respond to these allegations. In accordance with SPP 809, Discipline, you are entitled to a Pre-termination Hearing. A Pre-termination Hearing has been scheduled for Tuesday, January 13, 2015, at 8:30 a.m. in the ASU Office of Human Resources, 1100 East University Avenue, Room 151, Tempe, Arizona, with Beth Sepnieski, Hearing Officer. Per policy, an employee may waive his right to a Pre-termination Hearing by completing the attached Waiver form and faxing it to (480) 993-0001. Additionally, if you do not appear at the Pre-termination Hearing, you will be deemed to have waived your right to a hearing.

Pursuant to SPP 1101, Involuntary Termination, an employee must be given a two-week termination notice. This Notice of Intent to Terminate serves as that notice.

Upon reviewing the recommendation of the Hearing Officer following the Pre-termination Hearing or upon learning that you have waived your right to a hearing, I will make a final discipline determination. If you are involuntarily terminated, you will have the right to file a Grievance within 30 calendar days from the effective date of termination, as outlined in SPP 901, Grievance Process.

Sincerely,



Michael L. Thompson
Police Chief

Attachments:

ASUPD Policies

Waiver of Right to Pre-termination Hearing

cc: OHR Personnel File
Jen Treu, OHR Partner