

**MINUTES of SPECIAL MEETING
of the BOARD of COMMISSIONERS
of the CITY of BOWLING GREEN, KENTUCKY
held SEPTEMBER 9, 2014**

The Board of Commissioners of the City of Bowling Green, Kentucky met in special session in the Commission Chamber of City Hall, Bowling Green, Kentucky at 9:00 a.m. on Tuesday, September 9, 2014. Mayor Bruce Wilkerson called the meeting to order. Assistant City Manager/City Clerk Katie Schaller called the roll, and the following members were present: Commissioner Joe W. Denning, Commissioner Melinda M. Hill, Commissioner Bill Waltrip, Commissioner Rick Williams and Mayor Bruce Wilkerson. Absent: none. There was a full quorum of the Board of Commissioners.

PERSONNEL HEARING

Mayor Wilkerson explained the purpose for this personnel hearing and inquired if Police Sergeant Donitka Kay preferred for this hearing to be closed to the public pursuant to KRS 61.810 (1) (f), and Sergeant Kay's Attorney, Alan Simpson, confirmed the hearing would be open to the public. At the Mayor's request, Assistant City Manager/City Clerk Katie Schaller read the Statement of Charges into the record as follows:

“On Saturday, April 26, 2014 at 2144 (twenty-one hundred, forty-four hours), Sergeant Donitka Kay responded to a report of subjects fighting at West 11th Avenue and Payne Street. Police report 2014-0329 describes a scene in which Sergeant Kay discovered an adult female, Christy Faye Gammon to be intoxicated and bleeding from her hands. Gammon was yelling and cursing at subjects on Payne Street. Sergeant Kay warned Gammon about disorderly behavior. Gammon continued to yell and curse at the initial subjects and Sergeant Kay. Sergeant Kay informed Gammon that she was under arrest and attempted to place her in handcuffs. Gammon pulled away from Sergeant Kay, and a brief scuffle ensued on the ground. Gammon was handcuffed by Sergeant Kay and continued to kick at Sergeant Kay from a seated position. After Sergeant Kay had the subject arrested, Officer Owen arrived at the scene. Gammon then spit on Sergeant Kay's uniform. Upon being spat on, Sergeant Kay lost all patience with Gammon and struck her a number of times in the face with a closed fist, while Gammon was handcuffed on the ground. Witness accounts of the incident describe the brutality of this beating delivered by Sergeant Kay. Prior to the beating, Sergeant Kay had called EMS to the scene to examine the subject. However, when EMS arrived after the beating, they were advised by Sergeant Kay that the subject did not need treatment and EMS personnel was never given access to the subject, who was instead transported to the Warren County Regional Jail for booking. The Incident Reports indicate Gammon refused treatment.

COUNT I: The foregoing Statement of Facts constitutes an assault under KRS 508.020 and/or 508.030 by Sergeant Donitka Kay.

COUNT II: The foregoing Statement of Facts constitutes a violation of KRS 431.025(3) by Sergeant Donitka Kay (unnecessary use of force and violence).

COUNT III: The foregoing Statement of Facts constitutes a violation of KRS 503.090 by Sergeant Donitka Kay (unjustified use of physical force).

COUNT IV: The foregoing Statement of Facts constitutes a violation of Bowling Green Police Department Policy 2.10.2.2.8 (conformance to law) by Sergeant Donitka Kay.

COUNT V: The foregoing Statement of Facts constitutes a violation of Bowling Green Police Department Policy 2.10.2.2.31 (truthfulness) by Sergeant Donitka Kay.

COUNT VI: The foregoing Statement of Facts constitutes a violation of Bowling Green Police Department Policy 2.10.2.2.33 (unsatisfactory performance) by Sergeant Donitka Kay.

COUNT VII: The foregoing Statement of Facts constitutes a violation of Bowling Green Police Department Policy 2.1.2.2.37 (use of force) by Sergeant Donitka Kay.

COUNT VIII: The foregoing Statement of Facts constitutes a violation of Bowling Green Police Department Policy 4.3.24.2(2) (special transportation situations) by Sergeant Donitka Kay.”

Following a review of the proceedings, Attorney Wesley Milliken, representing the Police Department, and Attorney Alan Simpson, representing Sergeant Donitka Kay, gave opening statements. Mr. Milliken then presented the plaintiff’s case through the testimony of Terry Campbell, Police Officer Michele Owen, Warren County Deputy Jailer Stacy Ennis, Christy Faye Gammon, Police Captain Brian Harrell, Police Major Penny Bowles, Police Sergeant Khalil Flesher and Police Chief Doug Hawkins. Mr. Simpson followed with the presentation of the respondent’s case through the witness testimony of James Allen and Police Sergeant Donitka Kay. Both sides also introduced a number of exhibits into the record in support of their respective positions.

Once all testimony was presented and each side was given an opportunity to provide closing arguments, Mayor Wilkerson withdrew the charge in Count I for violation of KRS 508.020 (Assault in the Second Degree) since the preponderance of evidence presented during the hearing was insufficient to support that specific charge.

CLOSED SESSION

For deliberation of the remaining charges presented against Police Sergeant Donitka Kay, Mayor Wilkerson requested that Assistant City Manager/City Clerk read the purpose for a closed session pursuant to KRS 61.810 (1) (f) for discussion which might lead to the discipline or dismissal of an individual employee without restricting that employee’s right to a public hearing if requested, and pursuant to KRS 61.810 (1) (j) deliberations of judicial or quasi-judicial bodies regarding individual adjudications or appointments, at which neither the person involved, her representatives, nor any other individual not a member of the agency’s governing body or staff is present, but not including any meetings of planning commissions, zoning commissions, or board of adjustments.

Motion was made by Waltrip and seconded by Hill to convene in closed session pursuant to KRS 61.810 (1) (f) and (j). Wilkerson called for roll call vote.

ROLL CALL: Voting Yea: Denning, Hill, Waltrip, Williams and Wilkerson
 Voting Nay: None

Motion to convene in closed session pursuant to KRS 61.810 (1) (f) and (j) was approved by unanimous vote. At approximately 8:35 p.m., the Board of Commissioners commenced its deliberations regarding the charges against Sergeant Kay in closed session. Written instructions agreed to by both the plaintiff's and respondent's attorneys were provided to the Board of Commissioners by City Attorney Gene Harmon for their consideration during the deliberations.

RECONVENE IN OPEN SESSION

Following the deliberation in closed session, the Board of Commissioners reconvened in open session at approximately 9:00 p.m. for consideration of the following charges against Police Sergeant Donitka Kay:

COUNT I: The Board of Commissioners finds Sergeant Donitka Kay did not violate KRS 508.030 (Assault Fourth Degree). Wilkerson called for roll call vote.

ROLL CALL: Voting Yea: Denning, Hill, Waltrip and Williams
 Voting Nay: Wilkerson

By majority vote, Sergeant Kay was found not guilty of violating KRS 508.030.

COUNT II: The Board of Commissioners finds Sergeant Donitka Kay did not violate KRS 431.025(3) (Unnecessary Use of Force and Violence). Wilkerson called for roll call vote.

ROLL CALL: Voting Yea: Denning, Hill and Waltrip
 Voting Nay: Williams and Wilkerson

By majority vote, Sergeant Kay was found not guilty of violating KRS 431.025(3).

COUNT III: The Board of Commissioners finds Sergeant Donitka Kay did not violate KRS 503.090 (Unjustified Use of Physical Force). Mayor Wilkerson called for roll call vote.

ROLL CALL: Voting Yea: Denning, Hill, Waltrip and Williams
 Voting Nay: Wilkerson

By majority vote, Sergeant Kay was found not guilty of violating KRS 503.090.

COUNT IV: The Board of Commissioners finds Sergeant Donitka Kay did not violate Bowling Green Police Department Policy 2.10.2.2.8 (Conformance to Law). Mayor Wilkerson called for roll call vote.

ROLL CALL: Voting Yea: Denning, Hill, Waltrip and Williams
 Voting Nay: Wilkerson

By majority vote, Sergeant Kay was found not guilty of violating Bowling Green Police Department Policy 2.10.2.2.8.

COUNT V: The Board of Commissioners finds Sergeant Donitka Kay did not violate Bowling Green Police Department Policy 2.10.2.2.31 (Truthfulness). Mayor Wilkerson called for roll call vote.

ROLL CALL: Voting Yea: Denning, Hill, Waltrip and Williams
 Voting Nay: Wilkerson

By majority vote, Sergeant Kay was found not guilty of violating Bowling Green Police Department Policy 2.10.2.2.31.

COUNT VI: The Board of Commissioners finds Sergeant Donitka Kay did not violate Bowling Green Police Department Policy 2.10.2.2.33 (Unsatisfactory Performance). Mayor Wilkerson called for roll call vote.

ROLL CALL: Voting Yea: Denning, Hill and Waltrip
 Voting Nay: Williams and Wilkerson

By majority vote, Sergeant Kay was found not guilty of violating Bowling Green Police Department Policy 2.10.2.2.33.

COUNT VII: The Board of Commissioners finds Sergeant Donitka Kay did not violate Bowling Green Police Department Policy 2.10.2.2.37 (Use of Force). Mayor Wilkerson called for roll call vote.

ROLL CALL: Voting Yea: Denning, Hill and Waltrip
 Voting Nay: Williams and Wilkerson

By majority vote, Sergeant Kay was found not guilty of violating Bowling Green Police Department Policy 2.10.2.2.37.

COUNT VIII: The Board of Commissioners finds Sergeant Donitka Kay did not violate Bowling Green Police Department Policy 4.3.24.2 (Special Transport). Mayor Wilkerson called for roll call vote.

ROLL CALL: Voting Yea: Denning, Hill and Waltrip
 Voting Nay: Williams and Wilkerson

By majority vote, Sergeant Kay was found not guilty of violating Bowling Green Police Department Policy 4.3.24.2.

ADJOURNMENT

Since all of the charges provided a finding of not guilty by majority vote of the Board of Commissioners and no further deliberation was required, the proceedings were closed. At approximately 9:10 p.m., Mayor Wilkerson declared this meeting adjourned.

ADOPTED: _____

APPROVED: _____
Mayor, Chairman of Board of Commissioners

ATTEST: _____
Assistant City Clerk