

ALSO PRESENT:

Jim Taylor, Esq., counsel for University of Delaware Police Department

Sean Moriarty, POST Executive Director

Ameshia Bucknor, POST Administrator

Charles Emory, POST Investigator

POST received a Notification of Employment Status Change form from the University of Delaware Police Department (“UDPD”), dated July 10, 2024, indicating that former Major Jason Pires (“Pires”) resigned from UDPD and that he may be subject to suspension or decertification by POST. After POST convened this Hearing Board to review the matter, the Board conducted a hearing on October 3, 2024.

SUMMARY OF EVIDENCE

The evidence submitted and accepted by the Board at the hearing included a binder consisting of a 31-page investigative report, dated May 8, 2024, from Chief Thomas Spell to Chief Patrick Ogden, with 18 tabbed exhibits, submitted by UDPD (the “Report”). Exhibits 19 and 20 were also marked and admitted, which were close-up photographs of photographs contained in Ex. 11. As explained further below, on behalf of UDPD, Chief Spell investigated the incident giving rise to this proceeding and testified before this Board regarding his investigation and conclusions. Pires also testified and called Chief Patrick Ogden in his case-in-chief.

At the commencement of the hearing, Pires moved to sequester Chief Ogden. Though UDPD planned to call only Chief Spell, Pires indicated that he intended to call Chief Ogden, UDPD’s only employee-representative, as a witness in his case-in-chief. While it is sometimes appropriate to sequester multiple fact witnesses being called by a particular party, the sequestration

motion made here was rather unusual. Because UDPD was presenting only one witness, and because Chief Ogden was UDPD's sole party-representative, the Board exercised its discretion to deny Pires' motion for sequestration. Moreover, no authority was cited to the Board in support of the motion demonstrating that Chief Ogden's sequestration was required under these circumstances.

FINDINGS OF FACT

The following findings are based upon Chief Spell's testimony and the Report. Chief Spell testified that Lewes Police Department agreed to conduct an investigation of Pires (the request came through the Chiefs of Police Executive Director). The investigation centered around an incident that occurred in the early morning hours of February 26, 2024, where Pires was arrested for suspected driving while intoxicated. Delaware State Police was on routine patrol near Long Neck and Rudder Road in Millsboro. A trooper observed a vehicle resting against a white fence surrounding a pool of the Sea Esta II hotel. The trooper investigated and found Pires who appeared to be asleep behind the wheel of the vehicle. Pires was dressed in a blue bathrobe and "flip-flop type shoes." Pires had a fanny pack on his person that contained a privately-owned firearm. Pires exhibited signs of possible intoxication. A portable breath test was administered and recorded a .10 BAC reading. Later, at Troop 7, an Intoxilyzer indicated a .074 BAC reading. While at the troop, Pires stated he had been prescribed Ambien and Xanax. Pires was ultimately not charged with a crime.

Chief Spell conducted a thorough investigation of the incident. Chief Spell obtained numerous videos and conducted several interviews. Among the evidence reviewed, Chief Spell reviewed a Ring Doorbell video that Pires provided. This apparently¹ showed Pires exiting his

¹ No actual video evidence was submitted or played for the Board.

residence just after midnight dressed in a bathrobe and flip flops. Chief Spell described the accident as extremely minor. The vehicle went up on a curb and struck a small fence.

Chief Spell ultimately concluded that Pires violated four UDPD rules: (1) General Conduct – Poor Judgment (pertaining to consuming alcohol and taking prescribed medication, leading to causing minor property damage at the hotel); (2) Alcohol and Other Intoxicants (driving a department vehicle while under the influence (over .02 BAC)); (3) Motor Vehicles (giving full attention to the operation of department motor vehicles); and (4) Carrying Firearms While Off Duty (carrying firearms while under the influence of alcohol).

During his testimony, Chief Spell testified that Pires' position was that he had no recollection of leaving his house and driving and, therefore, had no intent to violate any of the UDPD's rules. During Chief Spell's investigation, Pires provided information that he took medication to treat insomnia. On cross-examination, Chief Spell reiterated that Pires was found in a bathrobe and slippers. The trooper had to wake Pires. A portion of the cross examination focused on what really amounted to unhelpful legal argument regarding whether Pires conduct was volitional. There was also, unfortunately, several questions of Chief Spell about conversations that may or may not have occurred between the chiefs as the investigation and report developed.² The Board was much more concerned about learning the facts and circumstances of what occurred on the date in question³

² As a general matter, the Board is unaware of any impropriety when an investigator assisting a police department consults with the department's chief about findings or the status of a report. Absent evidence that a chief has directed an investigator to falsify a report, and there was none here, questioning implicating same without a basis is inappropriate and unfortunate.

³ There were also many questions implicating impropriety by substantiating charges when Pires' blood was not taken. The Board observes that the Delaware State Police conducted the DUI investigation, not Chief Spell, and not UDPD. There were two tests taken that fully support the violations of UDPD policy, but the lack of drawing blood (even if it was required, a fact not established during the hearing) is not attributable to UDPD. Relatedly, there were many questions

Chief Spell substantiated the charges, essentially, because the policies did not require intent and the conduct was determined to violate UDPD's policies.

As noted above, Pires testified on his own behalf. He testified that on the day in question he and his family were celebrating a birthday of a close family member at his house in Pot-Nets. He had as many as six alcoholic seltzer beverages throughout the day. When he went to bed, he took prescribed medication. He went to bed with his wife. He testified that things then got "foggy" and the next thing he remembered was seeing a trooper standing next to him, and he thought the trooper had entered his home. He left his house, wearing shorts, flipflops, no shirt, and a bathrobe, carrying his off-duty weapon, and got into his police car in February. He had no recollection of getting into the car and driving. When interacting with the trooper, he doesn't remember everything, he felt like he was "under water." He did not remember driving back to or entering Troop 7. He started recalling things when he took the Intoxilyzer. He was not charged and was released to his wife. Pires also testified that he did not have his phone on him when he left his house.

Pires elaborated about the existence and extent of his sleep disorder and other medical issues. He testified that he is a Gulf War Veteran, serving in 1991. He started developing mental health issues, identifying depression. He had to deal with his mental health issues while working for the Dover Police Department. He then sought mental health treatment. Thirteen years ago, he was diagnosed with depression, anxiety, and insomnia. He indicated that he is a disabled veteran,

during the hearing that implied that UDPD assured Pires it would not include BAC readings in the Report or that they would not form the basis of substantiated misconduct. Though the Board does not find there was any such agreement or assurance, any agreement along these lines would have been irrelevant, as the Board's focus is solely on Pires' conduct. The repeated questions attempting to illicit testimony that it was somehow unfair or improper for UDPD to include both the PBT and Intoxilyzer results in the Report or that they formed the basis for any internal discipline was both confusing and unhelpful.

relating to insomnia, and had written documentation from the Veteran's Administration (though this was not submitted as an exhibit). Among the exhibits submitted is a document titled "Medications Taken the Night of Incident," listing the prescribed medication that Pires took the night of February 26, 2024. This document lists, among other medications, Ambien, Xanax, and Celexa.

Pires pointed the Board's attention to a letter that the Executive Director of the Delaware Chiefs of Police Council submitted on his behalf in support of Pires providing anecdotal evidence that Pires does not have a problem with drinking alcohol. Pires testified that he disclosed all of his mental health issues with UDPD. Pires also testified he had taken the medication that he took that night with alcohol before and never had problems like he did then.⁴ In short, Pires testified that he was experiencing a medical crisis that evening. Pires stated that the events of February 26 scared him and he expressed sincere concern that he could have hurt someone. He contacted his therapist regarding his adverse reaction and stopped taking the medication that day.

On cross examination, it was confirmed that Pires had 4-6 seltzers throughout the day. His Intoxilyzer test was administered at 3:47 a.m., which read .074 BAC. Asked if he had an explanation as to this reading five-to-six hours after he stopped drinking, Pires "theorized," since he did not remember, that evidence in his house suggested that he probably drank more after he woke up and before getting into the car.

⁴ Upon further questioning from the Board, Pires did admit to two other incidents in a three-year span where he lacked memory after drinking, but those incidents appeared relatively minor compared to what occurred on February 26, 2024. In one case, he did not recall a conversation he had with one of his children. The second involved Pires forgetting he had done a load of laundry.

Pires confirmed he resigned from UDPD and did not pursue a LEOBOR hearing. Pires explained that he was not happy with how UDPD conducted the investigation and that he therefore no longer wanted to work there.

CONCLUSIONS OF LAW

11 *Del. C.* § 8404(a)(4)(e) provides that POST shall suspend or revoke certification where an officer has: (1) received an administrative hearing under Chapter 92 of Title 11 or has knowingly and voluntarily waived that individual's right to such a hearing; and (2) has either (a) been terminated for a breach of internal discipline or (b) resigned prior to the entry of factual findings concerning an alleged breach of internal discipline for which the individual could have been terminated. POST has jurisdiction over this certification matter since Pires retired after having received notification of charges for possible breach of internal discipline. And the Discipline Matrix (Report, Ex. 17) provided to the Board indicates that at least one of the substantiated charges is a terminable offense.⁵

POST has historically reserved suspensions and decertifications for cases where an officer's misconduct implicates honesty and integrity or where an officer's conduct places the public or fellow officers at risk of harm. Here, this Board finds and concludes that the evidence provided to the Board does not warrant decertification. First, there are no allegations of dishonesty or other conduct that calls Pires' honesty or integrity into question. Pires appeared contrite and was candid with this Board about his mental health issues. The only inquiry, therefore, is whether the misconduct substantiated by UDPD (through the Lewes Police Department's investigation)

⁵ Pires testified that he asked Chief Ogden whether termination was "on the table," and he replied that he could not answer that question and that he would have to speak with Human Resources.

raises sufficient concern about public safety to warrant a decertification or a suspension. For reasons that follow, this Board recommends a suspension.

Unfortunately, much of the hearing before this Board centered on implications of an improper and unfair internal investigation and other irrelevant issues. This Board finds none of those efforts helpful or well founded. The Board will not belabor the issue, but it should suffice to note that, apparently due to an admitted friendship between the two, Chief Ogden enlisted an outside agency to conduct the investigation into Pires. There was no evidence of any impropriety in the (very thorough) investigation of Pires by Chief Spell. But in any event, the Board's sole concern – and its jurisdictional limitation – is to assess officer conduct. It is not to assess whether the mandates of 11 *Del. C.* Chapter 92 were followed.

The conduct at issue here is admittedly concerning. The Board does not take driving under the influence of alcohol and/or medication lightly. It is a serious issue, regardless of the outcome. Fortunately, in this matter, no one was injured, including Pires. Pires certainly exhibited poor judgment, perhaps not by consciously choosing to drive his UDPD vehicle while intoxicated and armed, but more so in consuming alcohol while knowing he would later be taking several, albeit prescribed, medications. .

On the other hand, the unrebutted evidence shows that Pires drank in his own house and went to bed after taking medication. There did not appear to be any reason for him to drive at all. Regardless of whether Pires had the requisite *mens rea* to commit a criminal act or to violate an internal policy (even assuming UDPD's policy requires an intentional act), the evidence does support the conclusion that Pires had a severe reaction to a combination of medication and possibly alcohol causing him to drive at some level of unconsciousness. Absent expert testimony, it is unreasonable for this Board to find, one way or the other, whether Pires was in an unconscious

state while he drove his UDPD vehicle. But Pires did wake up in the middle of the night, leave his house and his wife, drove his vehicle in a robe and flip flops, apparently for no reason, in the middle of the winter, and without his cell phone. This evidence highly suggests that Pires was in fact experiencing some kind of adverse reaction from his medication and did not consciously choose to drive his UDPD vehicle that morning.⁶ Further, the unrebutted evidence shows that Pires was appropriately treating with mental health professionals and was taking prescribed medication for diagnosed mental health conditions. And he immediately addressed his medical issues following the incident. This evidence weighs against decertification.

In view of all of the evidence presented, the Board believes that a suspension of Pires' certification is appropriate. The Board's concern is not so much with past conduct, but rather with ensuring that it is not indicative of a larger issue. Accordingly, the Board recommends that the suspension be effective immediately and that it remain in effect until Pires can be cleared by an appropriate, and independent, mental health provider who submits written certification to that effect. The certification must satisfy POST that Pires is able to meet the qualifications for initial certification found at 1 *Del. Admin C.* 801-3.4.6 and 3.5.⁷

RECOMMENDATION

Based on the Hearing Board's findings of fact, the Board unanimously recommends to the full POST that Jason Pires certification be suspended as follows:

1. Suspension be effective immediately.

⁶ The Board notes that UDPD did not request or otherwise advocate that POST decertify Pires. Though in no way determinative, UDPD's position on certification supports the Board's independent assessment of the evidence and its finding that Pires' conduct did not appear volitional.

⁷ Section 3.4.6 pertains to an initial drug screening of officers, and Section 3.5 requires, among other things, that applicants take and successfully complete a validated psychiatric/psychological test to show competency to perform law enforcement duties.

2. That within 60 days, POST will provide Pires with the identity of at least two acceptable healthcare professionals from whom Pires will select to perform the evaluation and certification.
3. That the suspension shall remain effective unless and until POST is provided with certification that Pires meets the requirements set forth in 1 *Del. Admin C.* 801-3.4.6 and 3.5 and is otherwise fully capable of performing law enforcement duties

/s/ Benjamin Feldmann

Benjamin Feldmann, New Castle County Police
Department, Major
Presiding Officer

/s/ Anthony Bowers

Anthony Bowers, Wilmington Police Department,
Major
Member

/s/ Rosalie Morales

Rosalie Morales, Department of Education,
Education Associate
Member

Dated: October 21, 2024